



## FACULTY SCHOLARSHIP DIGITAL REPOSITORY

1-1-1997

### Voicing Differences (Comment)

Margaret E. Montoya

*University of New Mexico - School of Law*

Follow this and additional works at: [https://digitalrepository.unm.edu/law\\_facultyscholarship](https://digitalrepository.unm.edu/law_facultyscholarship)



Part of the [Law and Gender Commons](#), and the [Law and Race Commons](#)

---

#### Recommended Citation

Margaret E. Montoya, *Voicing Differences (Comment)*, 4 *Clinical Law Review* 147 (1997).

Available at: [https://digitalrepository.unm.edu/law\\_facultyscholarship/57](https://digitalrepository.unm.edu/law_facultyscholarship/57)

This Article is brought to you for free and open access by the UNM School of Law at UNM Digital Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UNM Digital Repository. For more information, please contact [amywinter@unm.edu](mailto:amywinter@unm.edu), [lsloane@salud.unm.edu](mailto:lsloane@salud.unm.edu), [sarahrk@unm.edu](mailto:sarahrk@unm.edu).



SMALL SCHOOL.  
BIG VALUE.

# Comment

## VOICING DIFFERENCES

MARGARET E. MONTOYA\*

I.  
For a long time  
I held  
my breath;  
the pressure grew  
but somehow did not kill  
.....  
Voice?  
I had none.  
.....

II.  
So I tried to look  
like them. Walk and talk  
and ride like them.  
.....  
For someone with no  
voice, I gave away my own  
Quickly enough.  
.....  
Like Malinche, and for  
her reasons.

V.  
Sometimes I sit  
in my room and think about voice.  
Wondering how to bounce it.  
How to catch it. How to sew  
it to my skin so it can't stray.  
Sometimes language,  
sounds, my voice, comes up  
to my ears and I feel it  
tilting like water  
in a cup—

*"Voice" by Dorotea Reyna<sup>1</sup>*

Jane Aiken and Kimberly O'Leary undertake the difficult work of developing specific approaches and techniques for taking account of characteristics such as race/ethnicity, gender, dis/ability, and sexual identity in clinical pedagogy.<sup>2</sup> Carolyn Grose uses outsider narratives and popular culture to challenge the "pre-understanding" of students, and to assist them to accept client stories as true and valid.<sup>3</sup>

Focusing on the professional value of striving to promote justice,

---

\* Associate Professor of Law, University of New Mexico School of Law. My thanks to my colleagues Kenneth Bobroff, Alfred Mathewson, Peter Winograd, and Christine Zuni-Cruz. I dedicate this work to my daughter Diana as she struggles to voice differences.

<sup>1</sup> Dorotea Reyna, *Voice*, in TEY DIANA REBOLLEDO, *WOMEN SINGING IN THE SNOW: A CULTURAL ANALYSIS OF CHICANA LITERATURE* 154, 154-56 (1995).

<sup>2</sup> Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLIN. L. REV. 1 (1997) and Kimberly E. O'Leary, *Using "Difference Analysis" to Teach Problem Solving,* 4 CLIN. L. REV. 65 (1997).

<sup>3</sup> Carolyn Grose, *A Field Trip To Benetton . . . And Beyond: Some Thoughts on "Outsider Narrative" in a Law School Clinic,* 4 CLIN. L. REV. 109 (1997).

fairness, and morality identified in the MacCrate Report,<sup>4</sup> Professor Aiken exhorts us to promote justice by unmasking privilege, the invisible package of unearned assets—about which I (we? or you?) was “meant” to remain oblivious.<sup>5</sup> She argues that the best way to teach about justice is to provide students with the opportunity to exercise judgment.<sup>6</sup> Using adult learning theory, Professor Aiken demonstrates that “disorienting moments” can bring the meaning schemes of students into jeopardy and that students can, with time for exploration and reflection, reorient existing patterns for interpreting the world.<sup>7</sup> Professor Aiken provides examples from both her clinical and traditional classroom teaching experiences of means of “creat[ing] opportunities for learners to use their own sense of justice”<sup>8</sup> and finding openings within traditional legal analysis for discussions about justice, privilege, and difference.<sup>9</sup>

Professor O’Leary proposes the concept of “difference analysis,” that is, “analyz[ing] and understand[ing]” “diverse perspectives” on a legal problem<sup>10</sup> and she asserts that this positioned problem-solving may be the “one of the most important” lawyering skills in clinical courses.<sup>11</sup> Professor O’Leary examines the goals, content, as well as the problems with such a pedagogical model.<sup>12</sup>

Attorney Grose uses a hypothetical narrative to enact students’ resistance to outsider stories.<sup>13</sup> She analogizes the students’ rejection of their clients’ stories to certain insiders’ responses to some of the, by now, canonical examples of outsider narratives found in legal literature, such as Professor Patricia Williams’ autobiographical “Benetton incident” and Professor Catherine MacKinnon’s analysis of sexual harassment.<sup>14</sup> She argues persuasively that exposing students to outsider stories—whether in the form of critical race or gay/lesbian theory or movies and novels—is an important part of students’ preparation for representing outsider clients.<sup>15</sup>

---

<sup>4</sup> AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap)(1992) (commonly known as the “MacCrate Report”).

<sup>5</sup> Aiken, *supra* note 2, at 12.

<sup>6</sup> *Id.* at 20-21.

<sup>7</sup> *Id.* at 24-26.

<sup>8</sup> *Id.* at 50. *See id.* at 30-46, 47-63.

<sup>9</sup> *Id.* at 56-59.

<sup>10</sup> O’Leary, *supra* note 2, at 84.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 76-88.

<sup>13</sup> Grose, *supra* note 3, at 111-14.

<sup>14</sup> *Id.* at 114-19.

<sup>15</sup> *Id.* at 123-26.

*Voicing Differences: Practicing Public Dialogue*

These three articles are important additions to the clinical literature dealing with issues of Difference. A frequent response to diversity within the academy, at least by those who don't actively oppose diversity, has been to celebrate it but without rigorously examining how to respond to the multiple challenges presented by student, staff and faculty groups that differ in varying degrees in values, life experiences, aspirations, desires, and commitments. Responses of bland tolerance have the effect of domesticating the transformational possibilities of diversifying our institutions and of limiting the possibilities of taking oppositional and counterhegemonic stances, both within law schools and the larger society, in alliance with students, staff, and clients. For this reason, I applaud these articles describing the provision of legal services to subordinated and marginalized populations — and all that that implicates—and the opportunities clinical settings offer to teach about power, privilege, and in/justice. While I basically agree with these papers, I would like to add a dimension to their analytical perspectives.

Voicing differences with others in public, however, is not something that comes easily to me. Like most Latinas, I was socialized as a child by my family to value harmony, to avoid conflict, and to overlook points of disagreement—especially in public discourse. Being asked to produce a scholarly Comment on others' writing is a boundary-crossing exercise for me. Culturally, it would be much easier not to accept an invitation for a public dialogue on an issue such as Difference. However, my family (like many others, I would guess) did not experience real harmony nor allow for the expression of individual authenticity and, ultimately, we failed to develop the ability to talk about our differences.<sup>16</sup> Perhaps I am mistaken, but I think that these familial and social tasks are related: Developing mutually respectful techniques for talking about differences is a personal imperative just as talking about Difference is a collective one.

In articulating my trepidation, I hope to emphasize that I write this Comment not to chill the type of analysis in which these three clinicians have engaged, but rather to address their ideas with seriousness and with the goal of deepening our mutual understanding. Progressive clinicians, like the three who wrote the articles that appear in this issue of the *Review*, are struggling to give voice to experiences situated within the insider boundaries of White-ness and the outsider boundaries of Female-ness or Lesbian-ness. This pedagogical and dis-

---

<sup>16</sup> See generally MAGGIE SCARF, *INTIMATE WORLDS: HOW FAMILIES THRIVE AND WHY THEY FAIL* (1995).

cursive struggle is related to the analyses of theorists, some cited by Professor Aiken,<sup>17</sup> currently inventing the field of critical White studies.

In responding to Michael Omi's article about the "messiness" of racial categories, John Calmore, an African American race crit, writes:

In *Killers of the Dream*, Lillian Smith recounts her discussion with a white female about the period of legal segregation:

White [respondent]: I wonder how the Negroes felt. I've never thought about it. But the children, how did it make them feel? I guess it is strange that I've never tried to imagine how they felt.

Smith: I suppose there is no way you can feel it, truly, unless you live through it. We whites have a color glaze on our imaginations that makes it hard to feel with the people we have segregated ourselves from.

I wonder if whites can remove such "a color glaze" and develop empathic connection with people of color.<sup>18</sup>

Professor Calmore opines that, in the past, he assumed that white theorists held what he calls "the wrong end of the experiential stick . . . lack[ing] the anti-subordination perspective that is derived from living under the weight of white supremacy."<sup>19</sup> Like Professor Calmore, I, too, have been skeptical about whether whites could or would engage seriously in an exploration of white-ness or embark on a process of dismantling the overlapping privileges that attach to skin color.<sup>20</sup> I, too, have begun re-considering my skepticism in light of the innovative work that has been undertaken by political lawyers and clinicians<sup>21</sup>—such as the articles that appear in this issue—on behalf of disenfranchised and under-served client populations and in alliance

<sup>17</sup> Aiken, *supra* note 2, at 12-22, citing the work of Barbara Flagg, Ruth Frankenberg, Amy Kastely, Peggy McIntosh, and Martha Mahoney who have all written about Whiteness and privilege.

<sup>18</sup> John O. Calmore, *Our Private Obsession, Our Public Sin: Exploring Michael Omi's "Messy" Real World of Race: An Essay for "Naked People Longing to Swim Free,"* 15 *LAW & INEQ. J.* 25, 74 (1997).

<sup>19</sup> *Id.* at 77.

<sup>20</sup> Professor Calmore admits to re-thinking his skepticism in light of the work being produced by journals such as *RACE TRAITOR* (Noel Ignatiev & John Garvey, eds.) and by other white criticalists. Calmore, *supra* note 18, at 77.

<sup>21</sup> I am thinking also about the kind of work that has been pioneered by Professors Gary Bellow and Gerald López (see *Symposium: Political Lawyering: Conversations on Progressive Social Change*, 31 *HARV. C.R.-C.L. L. REV.* 285 (1996)), as well as the collaborative efforts among lawyers, academics, client groups, social service providers and other professionals of the types that are slated for discussion at an upcoming AALS Workshop called "New Strategies for Inner Cities: Academics, Professionals and Communities in Partnership." The workshop has been organized by Professors Lucie White of Harvard Law School and Fran Ansley of the University of Tennessee College of Law.

with clinical students. This work can be said to be focusing on both ends of the stick of experience—on those who are subordinated and those who are privileged, drawing insights that can benefit both but with the purpose of attenuating the subordination.

As Professor Aiken notes, the stick of experience can be accorded varying degrees of importance, with little notice of who holds either end of the stick:

One of my sad realizations when teaching about race as a white woman is that my opinion about race is given more credence by white people than opinions about race offered by fellow black teachers. This is due to skin privilege and the assumption that I do not have an ax to grind or the faulty assumption that I do not have a vested interest.<sup>22</sup>

But one does not have to be engaged in critical white studies to acknowledge the importance of lived experience. In this context it can be risky, if one does not have the “right” end of the stick of experience, to undertake this type of scholarship. I imagine that progressive White scholars who decide to write about race, color and ethnicity may feel some trepidation about being critiqued from this perspective by scholars of color, some of whom hold the “right” end—or the subordination end—of the stick.<sup>23</sup> Similarly, straight professors who write about issues of sexual identity may feel in jeopardy of being critiqued by gays, lesbians and bisexuals. This tension implicitly underlies outsider/insider relations.

Non-traditional scholarship, including clinical scholarship about race, gender, sexual identity and other hierarchy-producing characteristics, is risky for all of us, although for different reasons. Difference-based scholarship, especially that involving autobiographical narrative, by people of color has often been dismissed as overly solipsistic, metonymic, non-rigorous or, heaven forbid, unverifiable. Excluding the work of the “stars” of color, *e.g.*, Derrick Bell, Richard Delgado, and Patricia Williams, scholarship by people of color is largely not read by, nor known to, our White colleagues, even those who are dedicated to teaching about Difference. The yearly AALS panels by the Minority Section and the annual People of Color Legal Scholarship meetings held around the country in the various regions are poorly attended by White professors.

Having made this observation, it is important to point out that

---

<sup>22</sup> Aiken, *supra* note 2, at 22.

<sup>23</sup> Because of the “messiness” of racial categories, I say “some” scholars of color because living under the weight of white supremacy is a variegated experience. “Some” scholars of color enjoy skin privilege. Moreover, some skin tones are inscribed as “lighter” or “darker” in different settings. Skin privilege is, after all, situational, fluid, and relational.

progressive gays and lesbians have been leveling the same charge against straight race crits.<sup>24</sup> Those of us who are straight and who write and teach about issues of race and ethnicity are often deaf to issues of sexual identity. Too often we neither read gay/lesbian scholarship nor expose ourselves to fictional work with themes about sexual identities. Allow me to provide a recent personal example of my own deafness. Some time ago I wrote a review of *RETHINKING THE BORDERLANDS: BETWEEN CHICANO CULTURE AND LEGAL DISCOURSE*, a book by the Chicano literary critic Carl Gutiérrez-Jones.<sup>25</sup> In the review I discussed the author's use of the borderlands metaphor to define the spheres of cultural conflict not only between the dominant socio-legal narratives of the Anglo culture and the oppositional narratives of Chicana/o artists but also the patriarchal conflict between Chicanos and Chicanas. I was attuned to Gutiérrez-Jones' race-based and gender-based critiques, but it wasn't until I read Deena González' review of the same book<sup>26</sup> that I realized that I had missed the use of the borderlands metaphor to refer also to the cultural conflict between straights (heterosexuals generally as well as straight Chicanas) and lesbian Chicanas. I failed to give equal emphasis to the conflict around hetero/homosexual identity and narratives.

Engaging in public dialogue about Difference—about race, class, sexual identities—requires practice because we so often can, and do, get things wrong. We learn vocabularies and realize we must re-learn more accurate ones. We grapple with complex theories, only to find they have been replaced by emerging ones. We employ provisional pedagogical and interactive strategies because we are constantly in a learning mode.

### *Voicing Difference: Re-Mapping Learning Environments*

By viewing schooling as a form of cultural politics, radical educators can bring the concepts of culture, voice, and difference together to create a borderland where multiple subjectivities and identities exist

---

<sup>24</sup> My colleague Ann Scales has recently noted the pace with which one new school of progressive scholarship supplants the next. She argues that the edge—the anger—of radical feminism is in jeopardy partly because of being pitted against critical race feminism. See Ann Scales, *Disappearing Medusa: The Fate of Feminist Legal Theory?*, 20 HARV. WOMEN'S L.J. 34, 37-38 (1997).

<sup>25</sup> Margaret E. Montoya, *Book Review of CARL GUTIÉRREZ-JONES, RETHINKING THE BORDERLANDS: BETWEEN CHICANO CULTURE AND LEGAL DISCOURSE (1995)*, in 5:3 SOCIAL AND LEGAL STUDIES 435 (1996).

<sup>26</sup> Deena J. González, *Straddling Borders: New Ways of Doing Chicano(a) Studies*, THE LATINO REVIEW OF BOOKS 20 (Spring 1996).

as part of a pedagogical practice that provides the potential to expand the politics of democratic community and solidarity.

Henry Giroux<sup>27</sup>

Using different approaches, each of the articles on Difference that appears in this issue of the *Review* recognizes the role that law clinics play in social justice lawyering and the need to teach law students about the material realities of the lives of marginalized and subordinated populations. The articles analyze the tension between the un/availability of appropriate legal claims and remedies and the actual needs of clients. This incomensurability between Law and life at the margin is demonstrated by each of these articles: by Jane Aiken's script of a conversation between a clinician and a heterosexual student<sup>28</sup> about gay AIDS patients' lack of access to end-of-life procedures, such as powers of attorney; by Kim O'Leary's analysis of the mechanisms used within traditional lawyering to limit the views taken into account in resolving legal problems, *i.e.*, "skills" inventories such as those in the MacCrate Report, the ethical rules and standing doctrines; and by Carolyn Grose's narrative about the child custody "rights" of the non-biological lesbian "mother."

The three authors are aware of the complexity of the identities and the material realities of the *clients* served by law clinics. It seemed to me, however, that the diversity among their *students* was too often overlooked. For example, Professor Aiken writes:

The law students in the ASU clinic were varied in age, ethnicity, and gender and represented a wide spectrum of academic class rank. Each semester, I supervised approximately ten students, generally in their twenties. Approximately 20-25 percent were people of color: Latino, African American, and Native American. Eighty percent or greater were middle to upper-middle class. There were equal numbers of men and women. None of the students identified themselves as gay or bisexual.<sup>29</sup>

Yet, at other places, Professor Aiken comments that "Our students . . . are coming from backgrounds in which most are completely unaware of the needs of the poor."<sup>30</sup> I found myself wanting to know more about those who *are* aware of the needs of the poor. "Law students typically come from backgrounds far more privileged than those of

---

<sup>27</sup> Henry A. Giroux, *Resisting Difference: Cultural Studies and the Discourse of Critical Pedagogy*, in *CULTURAL STUDIES* 206 (Lawrence Grossberg, *et al.* eds., 1992).

<sup>28</sup> I resist the notion that a gay, lesbian or bisexual student would necessarily have responded differently than a heterosexual student. Given the uni-dimensionality of traditional legal analysis, claiming an outsider identity, by itself, cannot ensure that students will have the analytical, communicative, or discursive tools to operationalize their commitments—or even to identify such commitments as having legal dimensions.

<sup>29</sup> Aiken, *supra* note 2, at 33.

<sup>30</sup> *Id.* at 7 n.11.



their clients.”<sup>31</sup> What about those whose backgrounds are *similar* to those of the clients? “We must exhort our students to identify their own privileges that have allowed them to be oblivious to the experience of the poor. They must understand their own role in racism and class domination.”<sup>32</sup> Professor Aiken can’t mean that all students are oblivious to poverty, racism and classism. What about those who *do* understand? “Law students are generally remarkably unaware of what it means to be poor.”<sup>33</sup> What about the students who *are* aware?

Carolyn Grose also homogenizes the experiences of students when she writes: “This task [of listening to, hearing and re-telling clients’ stories] is complicated by the fact that the students—who are for the most part white and middle class, and by definition college educated—inhabit a world vastly different from—indeed some might say diametrically opposed to—the world inhabited by the clinic’s client population, which generally tends to be poor people with a limited education, and for the most part people of color.”<sup>34</sup> “How do we challenge the ‘common sense’ of the students—who are ‘insiders’—so they can be effective advocates for their clients—who are outsiders?”<sup>35</sup> “In a clinic, students come face to face with their privilege and their client’s lack thereof.”<sup>36</sup> Again, I wonder about the “*outsider*” students.

Professor O’Leary writes about lawyers, professors, and students without particularizing their racial, sexual, or other identities. For example, she writes:

the student’s own perspective often clouds his or her ability to understand other perspectives. Clinic professors can use a variety of techniques to teach students how to understand their own perspective. Many law students have an extremely limited understanding of how their own experiences and backgrounds have shaped their intuition and “common sense” approach to problem-solving. Thus, to effectively teach students how to understand other perspectives, students must be taught to understand their *own* perspective.<sup>37</sup>

Given the salience of characteristics such as race or sexual identity to the formation of perspectives and the importance of positioned analysis when doing political lawyering, categories such as “students” and “clinic professors” are overly broad. Indeed, one of the consequences of living under the weight of white supremacy, to use Professor

---

<sup>31</sup> *Id.* at 25.

<sup>32</sup> *Id.* at 26-27 n.91.

<sup>33</sup> *Id.* at 30.

<sup>34</sup> Grose, *supra* note 3, at 109.

<sup>35</sup> *Id.* at 122.

<sup>36</sup> *Id.*

<sup>37</sup> O’Leary, *supra* note 2, at 84-85.

Calmore's words, is being able to see the world from the perspective of the majoritarian culture and from the perspective of the subordinated culture, a phenomenon Professor Mari Matsuda has called "multiple consciousness."<sup>38</sup>

The social justice methodologies described in the three articles address themselves to this acknowledged majority of privileged students. Similarly, the articles talk about—and to—professors without much regard for the fact that some of us are of color, formerly poor,<sup>39</sup> and frequently experience life in a flip-flop way that moves vertiginously from the core to the margin and back again.

Accordingly, I would ask: How do we expand these methodologies to involve the significant minority of students who *do* share the outsider characteristics of clients? How do we conduct classroom discussions that begin from the understanding that identities are fluid, multiple, and unstable and in continuous re/construction? How do we counteract the silencing of the students' voices about their lived experiences that is a consequence of their prior education, including most particularly a direct and intended effect of traditional legal pedagogy, especially on outsider students? How do we tap into the diversity of experiences about issues of language loss, class-jumping and diasporic displacements that form the origin stories of the families of many White, middle-class and heterosexual students? How do we link our students' abilities to decode the stereophonic and stereographic messages in popular culture, such as those imbedded in hip-hop, rap, and mass advertising, with the need to decode and re/code the multiple messages in clients' and witnesses' stories?<sup>40</sup>

By means of this device of posing questions, I am making two points about the complexity of power and privilege dynamics among students: First, a small number of clinical students is placed in the situation of representing clients whom they likely see as "similar" to themselves in terms of their own lack of privilege, primarily because of how race/ethnicity and gender interpenetrate with poverty. Some students would describe themselves as coming from the same communities as their clients, even when those communities are geographi-

---

<sup>38</sup> Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989). Multiple consciousness is described by Professor Matsuda as "bifurcated thinking, . . . [a] shifting back and forth between . . . consciousness as a Third World person and the white consciousness required for survival in elite educational institutions." *Id.* at 8.

<sup>39</sup> I agree with the student in Professor Aiken's story that in some ways, we can't escape poverty and will always be poor. Aiken, *supra* note 2, at 50-51.

<sup>40</sup> My co-author Melissa Harrison and I have written at length about such cultural "readings" in *Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 COLUM. J. GENDER & L. 387 (1996).

cally different. A different but related aspect of identity discourses is that, as clinical and stand-up teachers, we participate in the re/construction of our students' identities: by reinforcing (or attenuating) their marginality; by providing (or not providing) them with theoretical, narrational, and performative strategies to become more volitional about the re/construction of their identities; by making manifest (or not) how the Law constructs both client and attorney identities through the re/presentational process. To quote Henry Giroux, "pedagogy [is] a form of cultural production rather than . . . the transmission of a particular skill, body of knowledge or set of values. In this context, critical pedagogy is understood as a cultural practice engaged in the production of knowledge, identities, and desires."<sup>41</sup>

The foregoing rhetorical questions that focus on issues of voice can be re-articulated as the following statement of principle: We must overcome the silencing effects of the students' prior schooling so they are able to bring their own sense of justice to bear on the legal problems of their clients. Again quoting Giroux:

There is a long tradition in the United States of viewing schools as relatively neutral institutions whose language and social relations mirror the principles of equal opportunity. . . . For radical educators, schools are sites where knowledge and power enter into relations that articulate with conflicts being fought out in the wider society. Central to this thesis is the assumption that the language of schooling is implicated in forms of racism that attempt to silence the voices of subordinate groups whose primary language is not English and whose cultural capital is either marginalized or denigrated by the dominant culture of schooling.<sup>42</sup>

Consequently, the pedagogical challenge of bringing students to voice is, in my opinion, greater with respect to students from subordinated racial groups because one of the ways in which unconscious racism operates is through the societal marginalization (including through classroom discourses) of certain cultural capital, *i.e.*, their/our/my narratives about justice. Implicit in this pronomial juxtaposition (the "their/our/my") is the flip-flopping from center to margin that happens to the professor of color who identifies with student narratives of marginalization even as she understands and experiences her own privilege.

A second challenge in bringing students to voice is finding ways to link insider and outsider narratives for all students. By encouraging "insider" students (White and upper/middle class) to talk about and reflect on their own family origin stories, thereby tapping into such

---

<sup>41</sup> Giroux, *supra* note 27, at 202.

<sup>42</sup> *Id.* at 203.

collective experiences as language loss or geographic displacements, we can help create a bridge to the class-jumping experiences that “outsider” students (of color and/or poor) associate with law school. Finally, bringing students to voice instantiates the re-envisioning of a society with expansive notions of citizenship and democracy. Henry Giroux writes:

At issue [is] the question of how educators address the relationship between difference and democracy, the creation of social and political spaces that speak to the needs of a broader popular culture. This . . . points to a politics of social and cultural forms in which new possibilities open up for naming in concrete terms what struggles are worth taking up, what alliances are to be formed as a result of these struggles, and how a discourse of difference can deepen the political and pedagogical struggle for justice, equality, and freedom.<sup>43</sup>

Political struggles, alliances, and discourses are at the heart of our clinical work. Their linkages to Difference are subtle and complicated, with power circulating from center to margin along multiple axes.

I posit that our task as educators is to re-map learning environments to make power and privilege visible and “voicable.” The diversity of the various participants in our work—professors, students, clinical staff, clients and other persons with whom we interact—must be understood in the full heterogeneity of race, ethnicity, gender, sexual identities, class, language and other pertinent characteristics with their multiple intersections. This re-mapping of classrooms and clinics, of courtrooms and communities—of all learning spaces and places—focuses our attention and that of our students on our categorizing practices. We tune into whom we mean when we talk about “students” or “professors” and work to refine the categories we are using.

*Voicing Difference: Finding the “Center” When Outsiders Outnumber “Insiders”*

The observations that I am making about the three articles are admittedly from a perspective that grows out of the unique geographic and institutional context within which I live and work. New Mexico is not typical of other states, either in its racial demographics (the last census declared New Mexico a majority-minority state) or in its history of political pluralism. The work of governing New Mexico and administering its educational institutions has always been complicated by the significant economic and political clout of Hispanos/as and, to a

---

<sup>43</sup> *Id.*

lesser extent, that of Native peoples.<sup>44</sup> None of this, of course, denies the history of colonization and continuing discrimination against Outsiders—people of color, gays and lesbians, women, the dis/abled.

New Mexico is, nonetheless, an environment in which multiculturalism is highly integrated into public services and public discourses. There is widespread (albeit controversial) acceptance of polylingualism (*e.g.*, Spanish and native languages are often heard in public places). Varied racial, ethnic, tribal, regional (*e.g.*, “cowboy”) and sexual identities have found voice in the state. The strong religious influences (mainly Hispano-Catholicism) structure public observances, and religious art is ubiquitous. As a result of heated public debates about Indian sovereignty and land/water rights, centuries-old displacements and conquests have current political repercussions. The current chic of Santa Fe and Taos re-enliven historic dialogues about cultural appropriations and the commodification of Indian and Hispana/o art and folklore. The “culture” in multiculturalism is alive and real in New Mexico.<sup>45</sup>

This geographic uniqueness helps to explain why the Law School at the University of New Mexico is also atypical. For years, our student body has been about 40% students of color and often has been majority female. The average age of students at the time of matriculation is about 29. We have many students who are the first in their families to go to college; many students come from “poor”<sup>46</sup> families.

Teaching and writing in what I consider a remarkably diverse educational environment makes it easier to recognize and to occupy the margins and the borders. As a woman of color with a broad experience with white institutions, I have lived my life moving back and

---

<sup>44</sup> My colleague, Kenneth Bobroff, admonishes me (in the spirit of voicing differences) that this history is considerably more complex. He notes that until the past decade, very little power accrued to Native peoples as a result of economic or political clout; rather, any power came from legal claims on land/water, on federal power, and, as late as the early days of this century, the use and threat of violence. In fact, the voting rights of Indians living on reservations located in New Mexico weren't clarified until 1962.

<sup>45</sup> In making this observation I am taking issue with K. Anthony Appiah who argues that “America” is characterized by its broad cultural homogeneity rather than its much-vaunted variety. He asserts that “the loss of Spanish [as confirmed by linguists studying language patterns in California and Florida] confirms that ‘Hispanic,’ as a category, is thinning out culturally in the way that ‘white’ ethnicity has already done.” See K. Anthony Appiah, *The Multiculturalist Misunderstanding*, XLIV:15 THE NEW YORK REVIEW OF BOOKS 30, 32 (October 9, 1997). Professor Appiah, I posit, has not lived in New Mexico.

<sup>46</sup> I have had difficulty with this adjective for quite a while. Having come from a “poor” family, at least through my middle school years, when my father was struggling through graduate school, I have some understanding of what it means not to have much money. Being poor, however, is a complex experience; lives often have an abundance of other resources that are overlooked when making a fiscal judgment. *Is* one poor if one has an abundance of love, hope, laughter, friends, community?

forth between the center and the margin. I recognize that I am both Insider and Outsider. The six years of my law teaching have all been in New Mexico and I cannot, therefore, easily imagine the constraints of teaching in a culturally homogeneous setting. Therefore, I cannot say whether my observations are valid for environments that are less diverse than the one in which I currently work.

The clinical programs at UNM Law School offer students traditional skills-based clinics providing criminal defense and criminal prosecutorial settings as well as representation in general civil matters. Under Professor J. Michael Norwood's leadership, community lawyering clinics have been developed to provide services to individual clients within community settings and in collaboration with other disciplines.

Semester in Practice (S.I.P.) and its predecessor, the Institute for Access to Justice, were the law clinics in which I taught during the period from 1992 to 1996.<sup>47</sup> Under the aegis of S.I.P., community sites were developed throughout the state to provide student representation to low-income clients who were primarily persons of color, such as un/documented persons at *colonias* near Las Cruces; miners with black lung disease in Raton, a town on the northern border of the state; female inmates of the county jail; and clients in a variety of multi-service centers, including mental health clinics, senior citizen centers, and a multidimensional program pioneered by the pediatrics department of the UNM medical school which serves infants and toddlers born to mothers with substance-abuse problems.

In addition, we provided services for small businesses and non-profit organizations. One of the more innovative programs begun by one of my collaborators<sup>48</sup>—Alfred Mathewson, an African American professor who teaches business courses and sports law—made presentations to coaches and counselors about NCAA eligibility rules, thereby benefiting recipients of athletic scholarships.

Within this community lawyering context, the students are re-

---

<sup>47</sup> The description that follows is adapted from an article of mine that will appear in a symposium volume on LatCrit Theory and Practice called *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, 2 HARV. LATINO L. REV. (forthcoming 1997).

<sup>48</sup> In addition to three tenure-track faculty members, the students were also supervised by three clinical fellows, Andrea Seielstad, Nancy Simmons, and Barbara Creel, who participated in all aspects of the clinical experience, integrating their research interests and practice experiences into the classroom component. This clinic was partially funded by a Department of Education grant. The configuration of faculty changed each semester and the emphasis given to different aspects of the projects varied depending on who was teaching. In very important ways this clinic was not a fixed program that we the faculty adapted to; rather, this 12-credit clinic adapted to the faculty group. Consequently, the experience for the students each semester was quite different depending on who was teaching.

quired to undertake individual representation of clients in a variety of matters—usually involving public benefit programs, family law, wills, but occasionally even such areas as land-use planning. The students are also required to participate in collaborative projects examining issues systemically and developing transdisciplinary approaches with and for the affected communities.

This clinic is a highly collaborative one in which the faculty have created spaces for bringing our individual theoretical interests into clinical teaching. Thus, Professor Alfred Mathewson has been developing the notion of clinician as coach, reframing sports metaphors to emphasize aspects of participation that are collaborative and affiliative. Another colleague, Professor Christine Zuni-Cruz, a Pueblo woman from Isleta, emphasized for us the centrality of culture and the delicacy and potentiality of working within indigenous communities: potentiality not only in the sense of work as yet undone but also in the sense of experiencing indigenous cultures as presenting areas, topics, and techniques, some of which must be respected and not breached by outsiders and others which are more fluid and more penetrable by outside influences.

My own emphasis has been on the relation between narrative and identity formation on the one hand and such legal skills as problem solving, interviewing, and counseling on the other. I have sought to refine the existing scholarship that deploys translation practices and ethnography as metaphors for cross-cultural lawyering. My clinical teaching has permitted me to reflect on why it is crucial for us as law professors and lawyers to re-territorialize the spaces that have been colonized linguistically, architecturally, and spiritually.

Within the clinic we work with the students on story gathering, a process of learning both individual and collective narratives, the individual “problem-story” of the client as well as the collective stories of the community/ies with which the client identifies. We endeavor to identify core information that is necessary to understand, decode and recode the client’s narratives into acceptable legal approaches responsive to the client’s needs. For example, after discussing the scholarship on lawyer as translator or ethnographer, Professor Zuni-Cruz invited Esther Yazzie, a federally certified Navajo translator, to describe and enact the skills necessary to work successfully with language interpreters. Ms. Yazzie’s presentation debunked for all of us the idea that languages are transparent or that representations of reality somehow exist apart from language. One of several examples cited by Ms. Yazzie involved different conceptualizations of time: “February” translated into Navajo as “the time when the baby eagles are born.” Certainly this is a temporal concept more connected to nature

and to place than a word such as “February” and, as such, is a different construct.

Simply put, we struggle to understand the legal implications of the fact that communities live within differently conceived realities, and we grapple with the notion that our attempts to fashion legal options can require us to work within realities of which we are unaware. Therefore, we must be mindful of our potential for harming our clients’ larger interests, even when we prevail in our lawyering efforts.

We have been using transdisciplinary, multicultural and polylingual concepts and practices to introduce new vocabularies, techniques, and approaches to the students, and to provide them with different schemas or frames for understanding and interpreting information and experience. Such practices and concepts help us as well as our students re-position our/them/selves with respect to how we listen and interact with clients and respond to the multiple issues that clients bring.

Most students find the work exhilarating, complex, and engaging, but some leave with feelings of anguish, ambivalence and sometimes cynicism because of the ambiguity of justice. These feelings are caused at one level by the fact that even when we work very hard for our clients, for the most part we don’t substantially improve the material conditions of their lives. Rarely are our clients pulled out of poverty or their cyclical involvement with the criminal justice system. We rarely, if ever, are able to eliminate the degradation our clients suffer at the hands of the multiple bureaucracies, including the legal system, that control their lives. When we do prevail in our cases, it is an important improvement in the lives of clients—I don’t mean to minimize the clients’ need for the divorces, or the guardianships, or the criminal defense that the clinic and the Law provide—but such improvements are usually not enduring nor sufficiently life-altering.

Feelings of anguish, ambivalence, and cynicism about social justice are also provoked by the limitations of traditional legal discourse. Legal rights, claims, defenses, and remedies can circumscribe and curtail our ability to collaborate with our clients to alter the realities of their lives and ours.

The activism or praxis in my own teaching comes in helping students listen to clients, assisting them to address problems and develop un/conventional options and remedies in conjunction with their clients, and then utilizing reflection to tolerate—tolerate in its etymological sense of enduring—the ambiguities implicit in legal processes and outcomes. To paraphrase Henry Giroux,<sup>49</sup> teaching and pedagogy be-

---

<sup>49</sup> “Pedagogy is, in part, a technology of power, language, and practice that produces and legitimates forms of moral and political regulation, that construct and offer human



come critical when we recognize their potential for producing il/legitimate forms of moral and political regulation. In collaboration with my colleagues, I/we work within a pedagogy that tries to be sensitive to the fluidity of power relations and to recognize the constitutive nature of legal practices. I/We seek to create synergy between learning and teaching, between theorizing and praxis, between the personal and the professional in order to transform legal processes. I/We endeavor to actualize Difference by reclaiming the multiple voices of Outsiders and Insiders even as we struggle to understand that those categories are inter-penetrating.

Because I believe that the observations I have made about the three articles that appear in this issue of the *Review* grow out of the institutional and geo-social contexts in which I work and live, I have described some of our clinical work at the UNM Law School from the recent past. An important dynamic which characterizes highly diverse environments is that power hierarchies are somewhat destabilized; the "center" doesn't hold as well when "Outsiders" outnumber "Insiders." While it is true that the predominant culture remains white, male, and heterosexual, I think it is also true that diversity creates fissures and ruptures in that cultural panorama. Differences can be voiced and heard more easily when the numbers shift in favor of "Outsiders," but the phenomenon of changing demographics requires us to problematize terms such as "Outsiders," acknowledging the term's fluidity even as we recognize the persistence of feelings of being marginalized and silenced which undergird such a concept.

Because voicing Difference can be difficult, perhaps we can help ourselves and our students by searching for new metaphors and images and by permitting ourselves and others to get it wrong within a commitment of trying again. As Dorotea Reyna tells us in the poem I quoted at the beginning of this piece, finding our voice(s) of Difference involves the whimsy of female sport: "wondering how to bounce" and "catch it [them]."<sup>50</sup> Finding our voice(s) also involves the ego-altering artistry of women's work: "sewing" our voice(s) to our "skin so it/[they] can't stray."<sup>51</sup>

---

beings particular views of themselves and the world. Such views are never innocent and are always implicated in the discourse and relations of ethics and power. To invoke the importance of pedagogy is to raise questions not simply about how students learn but also how educators (in the broad sense of the term) construct the ideological and political positions from which they speak." HENRY GIROUX, *BORDER CROSSINGS: CULTURAL WORKERS AND THE POLITICS OF EDUCATION* 81 (1992).

<sup>50</sup> Reyna, *supra* note 1.

<sup>51</sup> *Id.*