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On Margaret Montoya & Jerome Culp: An Appreciation

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Because I, a mestiza,
continually walk out of one culture
and into another,
because I am in all cultures at the same time,
alma entre dos mundos, tres, cuatro,
me zumba la cabeza con lo contradictorio,
Estoy norteada par todas las voces que me hablan
simultaneamente.

Because I, a mestiza,
continually walk out of one culture
and into another,
because I am in all cultures at the same time,
a soul between two worlds, three, four,
my head buzzes with the contradictory,
I am disoriented by all the voices that talk to me
simultaneously.¹

¹ Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185, 216 (1994) [hereinafter *Máscaras*] (translating GLORIA ANZALDÚA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* 77 (1987)).

I. INTRODUCTION

Buenas noches, y lo siento mucho mi español peor. I'm incredibly honored by this award, and by the invitation to speak to you about two pillars of critical race theory: Margaret Montoya and Jerome Culp. In the spirit of Margaret's most famous essay,² I will braid together my reflections on Margaret and Jerome. Despite the differences between a gay black man from coal country and a Latina from New Mexico, there are so many rhymes, rhythms, and harmonies between them.

The first and foremost commonality is their central role in the development of LatCrit.³ Paul Kahn has written about the problem of time in the constitution of institutions.⁴ If an institution is to survive beyond a human lifespan, its founders' generation must somehow transmit its fundamentals to the next generation, and this transmission must include not just practices and principles, but also the institution's heart and soul. Jerome and Margaret are people with outsized hearts and souls who generously pour their energy into all the spaces in which they move, and LatCrit benefited at a crucial moment from their critical and loving presence. Through my remarks, I hope that their formative influence will become clear.

Their second commonality is that both are tellers of personal, autobiographical stories.⁵ In the best spirit of feminism, they recognize the power of stories to document the ways in which the personal is political, and to build bridges across differences of many kinds. And neither one of them has ever been capable of telling a simplistic story. Jerome and Margaret: nos dan cuentos greñudos. They give us messy stories, complicated stories,

² See *id.*

³ See generally Berta E. Hernandez-Truyol, Angela Harris, and Francisco Valdes, *Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 17 BERKELEY LA RAZA L.J. 169 (2006) (describing LatCrit's history and themes).

⁴ See PAUL W. KAHN, *LEGITIMACY AND HISTORY* (1992).

⁵ See, e.g., Montoya, *Máscaras*, *supra* note 1; Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539 (1991).

stories that are self-reflective and self-critical, recognizing complication and imperfection; stories that recognize the many conflicting strands of history experience, memory, belief, and emotion that constitute and sustain us.

Finally, there are substantive themes that connect Jerome's and Margaret's work. In this essay, I will detail three: (1) the concept of racialized space; (2) a commitment to feminist method; and (3) a commitment not just to tearing down the old, but building the new. These themes speak to the question this conference has asked: "What's next?"

One short note before I explore these three substantive themes in more detail. In this Introduction, I have used the present tense to describe Jerome. I count critical theorists as creative people—people who are trying to dream the future into being. As creative people, we have the chance for the things we make to live on beyond our physical bodies. Jerome's articles and essays have a lively, supple quality that makes the past tense inappropriate.

Even more broadly, all of us who live in human bodies have an afterlife. Everything that we say and do lives on in the lives of those who come after us, whether we are aware of our influence or not. From both these perspectives, Jerome is very much alive.

II. JEROME, MARGARET, AND RACIAL SPACE

The sociologist Elijah Anderson writes:

The Civil Rights Movement is long past, yet segregation persists. The wider society is still replete with overwhelmingly white neighborhoods, restaurants, schools, universities, workplaces, churches and other associations, courthouses, and cemeteries, a situation that reinforces a normative sensibility in settings in which black people are typically absent, not expected, or marginalized when present. In turn, blacks often refer to such settings colloquially as "the white space"—a perceptual category—and they typically approach that space with care. When present in the white space, blacks reflexively note the proportion of whites to blacks, or may look around for other blacks with whom to commune if not bond, and then may adjust their comfort level accordingly; when judging

a setting as too white, they can feel uneasy and consider it to be informally “off limits.” For whites, however, the same settings are generally regarded as unremarkable, or as normal, taken-for-granted reflections of civil society. * * *

While white people usually avoid black space, black people are required to navigate the white space as a condition of their existence.⁶

The first substantive theme that connects Jerome’s work with Margaret’s work is analysis of the politics, ethics, psychology, sociology, and law of racialized space. Both scholars have been courageous in their willingness to call out the presence of white space—not only in society generally, but in their own institutions. This theme has resonated deeply with readers. One of the reasons I believe *Máscaras*⁷ has had such a powerful and lasting impact, for example, is the essay’s careful and nuanced exploration of the law school classroom as white space. Moreover, Margaret recognizes that “white space” involves more than demographics. In an essay reflecting on *Máscaras* twenty years later, she notes that the browning of the University of New Mexico, and her own shift from vulnerable 1L to powerful tenured professor, did not change her law school’s social designation as white.⁸ The silence and furrowed brows of students when she speaks in Spanish continues—as has the reluctance of her colleagues, at the same time, to speak about race.⁹

Jerome writes similarly about the predicament of a black law professor in the white space of the legal academy. He describes his classroom ritual of

⁶ Elijah Anderson, *The White Space*, 1 SOC. OF RACE & ETHNICITY 10, 10-11 (2015); see also Peter Goodrich & Linda Mills, *The Law of White Spaces: Race, Culture, and Legal Education*, 51 J. LEGAL EDUC. 15, 16 (2001).

⁷ See Montoya, *Máscaras*, *supra* note 1.

⁸ See Margaret E. Montoya, *Máscaras y Trenzas: Reflexiones un Proyecto de Identidad y Análisis a través de Veinte Años*, CHICANO/A-LATINO/A L. REV. 7 (2014) (hereafter *Máscaras y Trenzas*); See also Margaret E. Montoya and Christine Zuni Cruz, *Narrative Braids: Performing Racial Literacy* (hereafter *Narrative Braids*), 33 AM. INDIAN L. REV. 153, 171-175 (discussing contemporary law schools as white space).

⁹ See Montoya, *Máscaras y Trenzas*, *supra* note 8, at 11 (describing students’ reactions when she greets them in the classroom with “Buenos días”); Montoya, *Máscaras y Trenzas*, *supra* note 8, at 22 (describing her colleagues’ reluctance to recognize the school as white space).

introducing himself as the son of a poor coal miner, and explains it thus: “I am saying to my black students that they too can engage in the struggle to reach a position of power and influence, and to my white students that black people have to struggle. In the strange times in which we live it is not possible for a black law professor to claim a history without creating disbelief among students.”¹⁰ Moreover, Jerome explores the institutional policies that initially marked American law school classrooms as white spaces. For example, in *Water Buffalo and Diversity: Naming Names and Reclaiming the Racial Discourse*,¹¹ he unearths the racial history of his own institution, revealing that Duke Law School was once white space not by accident or even only by custom, but by explicit policy.¹²

¹⁰ See Culp, *supra* note 5, at 539.

¹¹ Jerome McCristal Culp, Jr., *Water Buffalo and Diversity: Naming Names and Reclaiming the Racial Discourse*, 26 CONN. L. REV. 209 (1993) (hereafter *Water Buffalo*).

¹² This history is still little-recognized, and thus worthy of being reproduced at some length:

In 1960 Duke Law School maintained a policy that excluded black students and faculty from the law school. This policy was part of a system of exclusion that in some ways was more extensive in the South, but extended to the North as well. It was part of a system of oppression of black Americans that has had, and still has, a profound impact on the way the world is constructed. All white people participated and benefitted from this exclusion in big and little ways. Before looking at the exclusions and the discriminatory patterns that still exist in America, it is important to understand that race has mattered in the very fibre of our being. All of us stand where we are today as heirs of this racial system of exclusion.

Law schools and the law have played a role in this system. In 1960, Duke Law School did not stand alone among law school members of the American Association of Law Schools (AALS) in either its policies of exclusion or its participation in the oppression of black Americans. Many other schools had similar autobiographies. Black Americans—despite the promise of *Brown v. Board of Education*—could not be educated at their publicly supported state institutions of law in many parts of the South in 1960. Of the 132 law schools that were members of the AALS in 1960, at least thirteen law schools had a policy that excluded black students from being educated and black faculty from teaching in their law schools. There are still a number of schools that existed in 1960 that do not have black faculty today.

Jerome applies the concept of white space to scholarship as well as the classroom, arguing in *Toward a Black Legal Scholarship* that “Legal scholarship remains one of the last vestiges of white supremacy in civilized intellectual circles.”¹³ Margaret observes that the explosion of critical race theory, following on the publication of *Máscaras*, has changed the conversation. Her attempt at “challenging the epistemological and ideological constraints of traditional legal discourse” has created a new, flourishing conversation that breaks the silence on race characteristic of white space.¹⁴

Of course, although Elijah Anderson’s account of racialized space is a useful starting point, from the perspective of feminist and LatCrit theory, it needs to be complicated. Both Margaret and Jerome help us do that. One example is the disruption of the conventional “black-white paradigm,” which was central to the emergence of LatCrit as community and as literature. In *Máscaras*, published in 1994, Margaret introduced “brown space” as a way to think about racial identity.¹⁵ The following year saw the first meeting of what would become LatCrit in San Juan, Puerto Rico, as part of a Hispanic

When my student assistants queried the 132 American law schools that existed in 1960 and were members of the AALS, they received a number of interesting replies. Many of the law schools seemed nervous about the question and, perhaps as importantly, nervous about their answers to these queries. Some law schools that historically maintained policies that explicitly excluded black students and faculty denied the existence of such policies, while others seemed both unaware of and unconcerned with this history. This policy of forgetting and denying our past is part of the claim of innocence that is at the heart of the system of racial exclusion in American law schools. We are innocent of the racism that exists in the world.

Culp, *supra* note 11, at 246-47.

¹³ Jerome McCristal Culp, Jr., *Toward a Black Legal Scholarship: Race and Original Understandings*, 1991 DUKE L.J. 39, 41.

¹⁴ Montoya, *Máscaras y Trenzas*, *supra* note 8, at 18.

¹⁵ See *id.* at 7-8 (“The article begins in ‘Brown space’—that is, the location, the perspective, the idioms, and the cultural references are intentionally racially and ethnically ‘Brown,’ with skin color and phenotype serving as a synecdoche for the Latina/o racial category”).

National Bar Association law professors meeting,¹⁶ *Máscaras*, and LatCrit, showed how brown space—as opposed to black space—is marked off not only by skin color but also by language. Margaret describes the strategic use of language to create brown space:

Spanish and other strategic racial stances (such as autobiographical narrative) can be used to wrestle Brown space into White space, where “wrestle” refers to the intentionality and the affective aspects of this struggle—namely, the personal and collective engagement with and discomfort from race that is required to confront the invisibility, silence, and salience of Whiteness.¹⁷

This intervention would prove central to LatCrit, which as an organization and a scholarly endeavor has always sought to interrogate race beyond black and white.¹⁸ Similarly, Margaret’s book chapter “Latinos and the Law”¹⁹ explains how the fraught relationship between the United States and people racialized as Latinx shaped the United States and its jurisprudence. She takes us back to the Treaty of Guadalupe Hidalgo following the Spanish-American War – to show how colonialism and race shaped our law of citizenship, and, conversely, how citizenship, as well as language, is a dimension of race.

Jerome complicates our understanding of the black-white paradigm from within blackness itself. In *Seventh Aspect of Self-Hatred*,²⁰ he grapples with his seemingly inappropriate adoption of “LatCrit” as a personal identity. In other writings, Jerome cites and engages with the work of black conservatives

¹⁶ See Berta Hernández-Truyol, Angela Harris, and Francisco Valdes, *Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 17 BERKELEY LA RAZA L.J. 169, 183 (2006).

¹⁷ Montoya, *Máscaras y Trenzas*, *supra* note 8, at 8.

¹⁸ See Hernández-Truyol et al., *supra* note 16, at 187-189 (describing LatCrit’s engagement with many dimensions of diversity beyond black and white).

¹⁹ Margaret E. Montoya, *Latinos and the Law*, in AMERICAN LATINOS AND THE MAKING OF THE UNITED STATES: A THEME STUDY (2013).

²⁰ Jerome McCristal Culp, Jr., *Seventh Aspect of Self-Hatred: Race, LatCrit, and Fighting the Status Quo*, 55 FLA. L. REV. 425, 426 (2003).

such as Thomas Sowell and Clarence Thomas.²¹ He disagrees energetically with them, but he also treats them with respect, recognizing that the black intellectual tradition is not a monolith and that “race men” and “race women” can be found at many points on the traditional political spectrum. Finally, Jerome’s scholarship names and engages with working-class black people who offer varied responses to racism.²² Jerome thus understands “blackness” neither as an abstract proxy for nonwhiteness, nor as a homogenous ideological position on race and racism, but as an ethnic term, naming the lived and subjective experience of those who are descended from American slaves and embrace a wide range of social and political positions.

Building on this recognition of intra-racial plurality, Jerome makes a distinction in *Toward a Black Legal Scholarship* between “black jurisprudence” and “black legal scholarship.” He writes, “The primary objective of Black Jurisprudence has been to persuade the courts that legal rules ought to govern the relationship between blacks and whites. The history of Black Jurisprudence is the struggle to enlarge the arena in which legal rules apply.”²³ For Jerome, *Brown v. Board of Education*²⁴ exemplifies black jurisprudence: the effort to be seen as equal to white people. Black legal scholarship is up to something different. Anticipating the argument of Charles Mills in *The Racial Contract*,²⁵ Jerome argues that the fact that black people had no voice in creating the Constitution—that is, that they were excluded from the social contract that created the United States—should be

²¹ See, e.g., Culp, *Toward a Black Legal Scholarship*, *supra* note 13, at 91, 96; Jerome McCristal Culp, Jr., *Telling a Black Legal Story: Privilege, Authenticity, “Blunders,” and Transformation in Outsider Narratives*, 82 VA. L. REV. 69, 71-72 (1996).

²² See, e.g., Jerome McCristal Culp, Jr., *You Can Take Them to Water But You Can’t Make Them Drink: Black Legal Scholarship and White Legal Scholars*, 1992 U. ILL. L. REV. 1021, 1027-29 (1992).

²³ Culp, *Toward a Black Legal Scholarship*, *supra* note 13, at 49.

²⁴ See Culp, *Toward a Black Legal Scholarship*, *supra* note 13, at 55 (The case that best summarizes Black Jurisprudence is, of course, *Brown v. Board of Education*).

²⁵ Montoya, *Máscaras*, *supra* note 1.

the starting point for black legal scholarship.²⁶ For Jerome, for example, this central omission dooms originalism as a legitimate method of constitutional interpretation.²⁷ In his view, the task of black legal scholarship is to remake American law from the ground up. In a sense, although he does not use the term, *Toward a Black Legal Scholarship* marks American law itself as “white space.” This is a position that has proved too radical for most legal scholars.²⁸

III. JEROME, MARGARET, AND FEMINIST METHOD

Feminism, as we know, comes in waves, and until the disruptions of #MeToo Americans seemed to be in a deeply assimilationist wave of feminism.²⁹ Women were being encouraged to “lean in.”³⁰ to figure out how to negotiate the double binds of sexism so that we can become part of the establishment, get more privilege, succeed as a “brand,” and finally consider ourselves equal on men’s terms. But the radical feminism of the second wave encouraged women to seek liberation rather than equality. In this Part, I want to call attention to three radical feminist moves that Jerome and Margaret adopt.

²⁶ See Culp, *Toward a Black Legal Scholarship*, *supra* note 13, at 68-75 (arguing that the omission of black voices from the debate over the original Constitution warps the doctrine of “originalist” interpretation).

²⁷ *Id.* at 75 (“Almost all notions of originalism are subject to the criticism that they ask black concerns to defer to white concerns.”).

²⁸ Jerome’s position carries echoes of Derrick Bell’s “racial realism,” according to which Bell positioned anti-black racism as a fundamental and permanent element of American society. See Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363 (1992).

²⁹ See Catherine Rottenberg, *The Neoliberal Feminist Subject*, L.A. REV. BOOKS, (Jan. 7, 2018), <https://lareviewofbooks.org/article/the-neoliberal-feminist-subject/> [<https://perma.cc/5KXD-5Z6K>]; For doubts about to what extent the sudden visibility of sexual harassment claims against powerful men in high-profile industries will enable structural and institutional change, see Sarah Benet-Weiser, *Popular Feminism: #metoo*, L.A. REV. OF BOOKS, (Jan. 27, 2018), <https://lareviewofbooks.org/article/popular-feminism-metoo/> [<https://perma.cc/T2S9-83AJ>].

³⁰ See generally SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* (2013); IVANKA TRUMP, *WOMEN WHO WORK: REWRITING THE RULES FOR SUCCESS* (2017); IVANKA TRUMP, *THE TRUMP CARD: PLAYING TO WIN IN WORK AND LIFE* (2010).

First is the famous credo, “The personal is political.” As Margaret puts it, “One of the central issues of feminism is the cultural construction of subjectivity.”³¹ Jerome and Margaret are justly famous for using autobiography as intellectual method. But, as the radical feminists envisioned, they do so in a rigorously self-reflective and self-critical way. Their personal stories are intricate, complex, and multilayered. They are willing to be vulnerable, to own up to mistakes, to cop to the messiness and the awkwardness of trying to be ethical in a world shot through with subordination.

For example, in her 1997 article on “reframing clinical teaching,”³² Margaret speaks in multiple voices—placing English against Spanish and first-person comments against third-person comments, calling for radical theorizing and practice while interrogating her own assimilationist and bourgeois desires. She reminds herself and us:

[A]s LatCrit theorists and practitioners, as academics and intellectuals, we must be aware of our role in the reproduction of hegemony, aware that our work operates within complex dynamics of interwoven force of liberation and oppression, of resistance and dominance. One aspect of this self-critique is to question where we do our work. LatCrit discussions might be different if they were conducted in a colonia along the border rather than in beach cafes.³³

And then, she immediately interrupts herself:

Ay, what am I saying? I’m seduced by nice hotels, posh restaurants, and chic boutiques more easily than others. More worried than most about my masks and disguises, I have capped off earnest scholarly discussions about subordination in its many forms

³¹ Montoya, *Máscaras*, *supra* note 1, at 212.

³² Margaret E. Montoya, *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, 2 HARV. LATINO L. REV. 349 (1997).

³³ *Id.* at 369.

by searching out local shopping venues. My life is replete with such contradictions.³⁴

Even more painfully and movingly, Margaret discusses in an article not only an obscene graffito about her scrawled on a law school bathroom wall, but also her humiliated, tearful initial responses, which emerged from shame and silence.³⁵ Reflecting on the incident, she writes:

Were it to happen again, I tell myself that I would react very differently. I would insist on taking a picture of the offending words, blowing it up poster-size or bigger, and even hanging the toilet stall door in the forum, in the center of the law school, for all to see. I truly do believe that hate speech must be seen, heard, experienced, and, most importantly, responded to. My instincts were correct that unhappy night when I wrote my open letter.

We can be socialized into silence even when we have been trained to deal with ugly incidents involving race and genitalia and sex. We can be deluded into a sense of false propriety by hate speech.³⁶

Jerome, similarly, never hesitates to turn his searching critical gaze upon himself. Using his own experience as a jumping-off point, he examines the “seventh aspect of self-hatred.”³⁷ In that essay, he wrestles with his own reluctance to identify as a person with a disability, despite growing recognition of the chronic kidney disease that would ultimately take his life:

I initially resisted getting a placard for my automobile because I did not want to be seen as weak, or as not able to take care of myself, but I discovered that some days after dialysis I have trouble walking even short distances. I feel weak sometimes for no reason and I am

³⁴ *Id.*

³⁵ Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 33 U. MICH. J.L. REF. 263, 321-24 (2000).

³⁶ *Id.* at 324.

³⁷ Culp, *Seventh Aspect of Self-Hatred*, *supra* note 20. Jerome, mischievously, never names the first six aspects in his article. He confessed to me in a personal conversation that he hadn’t even identified them all, but was sure that self-hatred had to have at least seven layers.

not always sure when that will happen. Some days I feel stronger than I have in years and on those days I feel as if I could do whatever I wanted, as I could in the past. * * * I engage in the seventh aspect of self-hatred when I fail to put my disabled placard on my rearview mirror because I fear that someone I may meet and hopefully date might assume that I have AIDS.* * * My fear of being seen as carrying that disease is a form of the self-hatred of my disabled identity.³⁸

Like good radical feminists, Jerome and Margaret pursued the habit of critical self-reflection in their community work and their personal life as well as in their scholarship. Throughout the early 2000s, for instance, Jerome, Frank Valdes, and I had many conversations in which we struggled to figure out how to be family to one another, especially as we grew older. In one of those long conversations in Frank's Miami Beach kitchen, Frank talked about critical race theorists' need to "decolonize" ourselves personally—to let go of the desire to be respected by the white dudes in the academy, the desire to be famous and special that sometimes keeps us in thrall to toxic institutions. Jerome and I were deeply affected by that conversation. But a couple of days later, as we were talking on the phone, Jerome admitted sheepishly, "I think I'm still colonized." I said, "Me, too."

Feminist ethics, for me, requires an honesty and a vulnerability in the way you show up in interpersonal relations and institutional relations alike. Margaret and Jerome exemplify these qualities, living their lives in a way that inspires.

A second hallmark of feminist method that Jerome and Margaret have always exhibited is the willingness to make space for emotion. Let me tell you a personal (and political) Margaret story. The second annual LatCrit conference was held in San Antonio, Texas, at St. Mary's University. I remember it as a very difficult moment for the community. We were grappling, among other things, with the deep tension between Catholicism

³⁸ *Id.* at 430.

and LGBT identity. Some people felt their Catholic faith to be an ineradicable part of their Latinx identity. Other people expressed that they could never feel at home in a LatCrit community that refused to reject Christianity. In the tense interchange that erupted, it suddenly felt as if the very survival of LatCrit were at stake. I don't remember Margaret's words anymore. What I do remember is that she broke out of the program and called us together for a discussion, right then and there, about what was happening.

And I remember her tears. Margaret's tears seemed to erupt directly from her heart, showing us the pain that she was in. There are ways of crying – as in “white fragility”³⁹—that shut down conversation, because they mean, “Now I'm going to cry so that you have to take care of my emotional needs, instead of having a discussion that makes me feel uncomfortable.” But Margaret's tears in that moment had the opposite effect. Through her willingness to show how deeply she was committed to people on both sides of the conflict, how physically painful the resulting tension was, and how much keeping the community together meant to her, she was challenging all of us to be real, to sit in the fire with one another.⁴⁰ Over a decade later . . . we're still here.

Jerome also wove emotions in and through his public and private work. His writings, for instance, demonstrate the eloquence of his outrage. Jerome was never afraid to speak directly and publicly to those he disagreed with – whether the recipient of his criticism was a critic of critical race theory,⁴¹ an

³⁹ Robin DiAngelo, *White Fragility*, 3 INT'L J. OF CRITICAL PEDAGOGY 54 (2011).

⁴⁰ Margaret E. Montoya, *Religious Rituals and LatCrit Theorizing*, 19 CHICANA/O-LATINA/O L. REV. 417 (1998). Margaret reflects on the implications of this moment for LatCrit scholarship in her article.

⁴¹ See, e.g., Jerome McCristal Culp, Jr., *Telling a Black Legal Story: Privilege, Authenticity, “Blunders,” and Transformation in Outsider Narratives*, 82 VA. L. REV. 69 (1996) (criticizing Professor Anne Coughlin); Jerome McCristal Culp, Jr., *To the Bone: Race and White Privilege*, 83 MINN. L. REV. 1637 (1999) (criticizing Professors Daniel Farber and Suzanna Sherry).

influential appellate judge,⁴² a Supreme Court Justice,⁴³ or his own faculty colleague.⁴⁴ But what these writings don't convey is how incredibly witty he was. When Jerome Culp went on a rant—and he ranted often and at length—he could be so funny that people listening (me, for example) might literally laugh until they cried. His delight in making people laugh, even about the darkest, most horrible things, suggests to me that his passion ultimately came from compassion—a desire for justice fueled by love rather than hate.⁴⁵

Finally, a third feminist method that Jerome and Margaret adopted is making space for embodied relationship: attending to the sexed, gendered, vulnerable body and its interdependence with others in families and friendships. In *Máscaras y Trenzas*, for example, Margaret describes her family of origin and the family she built with her husband Charles, describing her family members' physiognomies, their accomplishments, and their engagement with her scholarship in the context of New Mexican racial history and geography.⁴⁶ In *Unbraiding Stories About Law, Sexuality, and Morality*,⁴⁷ she calls upon Latinas to break silence about their sexuality:

⁴² See, e.g., Jerome McCristal Culp, Jr., *Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy*, 41 DUKE L. J. 1095 (1992) (criticizing Judge Richard Posner of the Seventh Circuit Court of Appeals).

⁴³ See, e.g., Jerome McCristal Culp, Jr., *An Open Letter from One Black Scholar to Justice Ruth Bader Ginsburg: Or, How Not To Become Justice Sandra Day O'Connor*, 1 DUKE J. GENDER L. & POL'Y 21 (1994) (criticizing the jurisprudence of Justice O'Connor); Jerome McCristal Culp, Jr., *Understanding the Racial Discourse of Justice Rehnquist*, 25 RUTGERS L.J. 597 (1994) (criticizing the jurisprudence of Justice Rehnquist).

⁴⁴ See, e.g., *Water Buffalo*, *supra* note 11 (criticizing Duke Law School professor Paul Carrington).

⁴⁵ A personal anecdote supports this point about Jerome's lack of personal hatred: when I and other friends expressed concern about his calling Supreme Court Justice Rehnquist a white supremacist, Jerome's response was genuine puzzlement. In his mind, he hadn't attacked the man at all, but merely objectively interrogated his thought. He added, "I didn't call him a white supremacist; I said he was 'arguably' a white supremacist!" See Culp, *Understanding the Racial Discourse of Justice Rehnquist*, *supra* note 43 ("I will describe what is arguably [Justice Rehnquist's] white supremacist viewpoint").

⁴⁶ Montoya, *Máscaras y Trenzas*, *supra* note 8, at 29-30.

⁴⁷ Margaret E. Montoya, *Unbraiding Stories About Law, Sexuality, and Morality*, 24 CHICANA/O-LATINA/O L. REV. 1 (2003).

We should initiate an ad campaign that identifies those of us who have had abortions, those of us who have survived sexual abuse or sexual assaults, those of us who love other women. This ad campaign should emphasize that our responses to sexuality are moral ones. Good and moral women have abortions, good and moral women experience and sometimes overcome sexual exploitation, good and moral women use contraception, good and moral women enjoy sex with other women. In the past, we have surrendered this debate about good and evil to the organized Church and we must reclaim it.⁴⁸

Margaret writes movingly about the experience of having her hair combed and braided by her mother, and about later combing her own daughters' hair.⁴⁹ When she describes the criminal law case of Josephine Chavez, sitting on the toilet and feeling a baby come—a baby that she would let die without telling her mother, a baby that she wrapped in a newspaper and hid under the bathtub, for which she would later be charged with homicide—what comes to her is the desire for *Mothertalk* and *Latina Daughtertalk*, languages of the body. She writes:

Mothertalk is about the blood and mess of menstruation, about the every month-ness of periods or about the fear in the pit of the stomach and the ache in the heart when there is no period. Mothertalk is about the blood and mess of pregnancy, about placentas, umbilical cords and stitches. Mothertalk is about sex and its effects. Mothertalk helps make sense of our questions: How does one give birth in darkness and in silence? How does one clean oneself after giving birth? How does one heal oneself? Where does one hide from oneself after seeing one's dead baby in a toilet?⁵⁰

Finally, Margaret is aware of the power of the public body. For example, in January 1998, Margaret and Professor Sumi Cho of DePaul University spearheaded the organizing of a march in San Francisco in support of

⁴⁸ *Id.* at 10-11.

⁴⁹ Montoya, *Narrative Braids*, *supra* note 8, at 177.

⁵⁰ Montoya, *Máscaras*, *supra* note 1, at 204-05.

affirmative action. A group of law professors who were in town for the Association of American Law Schools (AALS) annual meeting put on our academic robes and took to the streets, literally putting our bodies on display in a rowdy protest.⁵¹

Jerome was also fluent in the language of the body, although not so much in public. One of the ways in which he came into his sexuality was through commercial sex, and I remember our conversations about those encounters – how graphic, funny, and sensual his descriptions were, and how shocked and joyful he was at his own response. Indeed, one of the things that struck me about Jerome was the love he carried for his own body. Jerome was a large black man, overweight for much of the time that I knew him, and he ultimately understood himself as gay. The world holds little love for people in such bodies and identities. Yet, one day when I tentatively raised the question of whether he ever felt shame, he told me that his internal sense of himself was as a lean, gorgeous, beautiful, desirable man, and that was the self he acted from.

Jerome was also deeply interested in the project of building family outside the traditional conventions of birth and marriage. (This project used to be called “queer family,” but the availability of same-sex marriage has led many LGBT people to embrace the traditional nuclear family.)⁵² As we became self-consciously family to one another, we played with ways of denoting ourselves. We used the Swedish word *farfar* to describe his relationship to my daughter; he left money in his will for her to go to college or start a life (dreaming that she might someday go to Duke University). We talked about living together and where and how we could do it, and we talked with other

⁵¹ Montoya, *Máscaras y Trenzas*, *supra* note 8, at 23. Although her article places the event in January 1999, I know that is incorrect, because I was marching in my academic robes while nine months pregnant with my daughter, who was born on January 17, 1998 (two deeply embodied memories!).

⁵² See generally Fenton Johnson, *The Future of Queer: A Manifesto*, HARPER'S MAG. 27-34 (Jan. 2018), [<https://perma.cc/J2HU-78AX>] for a recent expression of this position in the popular press.

friends about creating practices and institutions through which we could support one another outside the sexual family.

These were private conversations, but as he began to die from the kidney disease that afflicted him, Jerome began to talk publicly about the way that racism is written on black bodies.⁵³ Like diabetes, kidney disease afflicts black people at disproportionate rates.⁵⁴ This is a way in which our bodies and fates are not our own. We also talked about the unlikely physical intimacy he and I shared. Although we are not related (as far as I know), it turned out that my tissue was an immunological match for his, and after many long and difficult conversations I gave him one of my kidneys. Throughout the process of blood testing, surgery, complications, and slow recovery, we talked about the varied forms of our non-kin kinship, including this commingling of our bodies. It was not *Mothertalk*, but a kind of materialization of our queer family.

Legal education, legal scholarship, and legal practice are resistant to things that happen below the neck. In the face of this bodiless, emotionless culture, in private and in public, Jerome and Margaret have repeatedly used body-talk and emotion-talk as feminist method: to disrupt the practices of shame and denial that keep hierarchies in place, and to build new communities based on the awareness of how fragile and interdependent we are.

IV. JEROME AND MARGARET: BUILDING THE NEW

In the article on white space quoted earlier in this essay, Elijah Anderson makes offhand reference to a space that is neither black nor white. He calls this rare but valuable mixed space “the cosmopolitan canopy,” “a diverse island of civility located in a virtual sea of racial segregation.”⁵⁵ It has been

⁵³ See *Seventh Aspect of Self-Hatred*, *supra* note 20, at 430.

⁵⁴ See *African Americans and Kidney Disease*, NAT'L KIDNEY FOUND., <https://www.kidney.org/atoz/content/AfricanAmericans-KD> [https://perma.cc/2FY3-7C5D] (last visited Mar. 26, 2018) (noting that African Americans are three to four times more likely to have kidney disease than white Americans).

⁵⁵ Anderson, *supra* note 6, at 11, 19.

Jerome's and Margaret's project not only to deconstruct white space and to champion black and brown spaces, but to build cosmopolitan spaces where all people can bring all of themselves, and learn from one another's differences in an atmosphere of mutual respect.

Margaret describes her desire for such spaces in the early part of her career:

I yearned to see the diversity among students and faculty at UNM transform our relationships and academic decision-making. I yearned to see race, culture, gender, tribe, and other identity characteristics as a source of knowledge and ingredients of legal analysis, consistent with what Professor [Scott] Page has described as contributing to cognitive diversity. I was enthusiastic, perhaps dogmatic, about wanting to create a variegated law school environment in which we inhabit different identity-marked spaces that abut and overlap in a crazy quilt kind of way and inform our legal discourse and institutional decision-making.⁵⁶

Margaret's most deeply influential and lasting work has been in gathering and applying the expertise necessary to realize these desires. She has become a feminist architect of cosmopolitan space.

One way she has done this is through her law school teaching. For example, she writes with Puebla professor Christine Zuni Cruz and African American professor Alfred Mathewson about telling and listening to stories as a means of getting students to recognize their personal, family, and cultural histories, as well as those of their clients.⁵⁷ Margaret argues for using wills as a structure through which family and community stories can be passed on.⁵⁸ Another pedagogical technique she has developed is the use of "name

⁵⁶ Montoya, *Máscaras y Trenzas*, *supra* note 8, at 25.

⁵⁷ Montoya, *Academic Mestizaje*, *supra* note 32, at 358-365 (describing the possible uses of wills in Latinx communities—as a way of preserving personal property, as a means of autobiography, and as public "mourning ritual").

⁵⁸ *Id.*

narratives” in the classroom as a way of uncovering individual and family stories of identity and culture.⁵⁹

Expanding this work, Margaret has developed a pedagogy of what she calls “cultural and racial literacy”—a concept that depends on and in turn is called into being by mixed racial space. She describes racial literacy in this way:

The toolkit that lawyers carry is primarily a toolkit of communication strategies and analytical strategies. * * * But that is not enough. You need other tools—how to understand racial categories, their history, the way these categories are maintained, changed, expanded, transformed through cultural practices including legal decisions, discourse, and hierarchies.⁶⁰

Margaret has brought these tools into her work with the Society of American Law Teachers (SALT) and AALS.⁶¹

She has also brought racial literacy into the health sciences. In her meditation on *Máscaras* twenty years later, she notes,

[At the UNM Health Sciences Center] I have continued to work on such issues as implementing a refined cultural competence curriculum and creating a diverse faculty. For several years, I served as co-chair of the HSC Faculty Workforce Diversity Committee with Dr. Valerie Romero-Leggott, developing a series of programs to retain and cultivate the faculty of color in the health professions, including a comprehensive mentoring program, a series of videos featuring the personal narratives of faculty of color, and a Visiting Diversity Scholar program.⁶²

This work has been warmly received and hailed as institutionally transformative.⁶³

⁵⁹ Margaret E. Montoya, *Name Narratives: A Tool for Examining and Cultivating Identity*, 32 CHICANA/O-LATINA/O L. REV. 113 (2014).

⁶⁰ Montoya, *Narrative Braids*, *supra* note 8, at 195.

⁶¹ Montoya, *Máscaras y Trenzas*, *supra* note 8, at 23.

⁶² *Id.* at 24.

⁶³ A report sponsored by the University of New Mexico Health Sciences Center’s Office of the Chancellor and its Office for Diversity presents the results of a pilot project called AIME, short for “advancing institutional mentoring excellence.” See ADVANCING

Margaret has exercised her ability to transform institutions into cosmopolitan space not only in law and health sciences, but also in the field of education. For example, working with Marcos Pizarro, a professor of Chicana/o Studies at San Jose State University in California, she has brought her anti-subordinationist pedagogy to K-12 teachers involved with Latinx youth in California, Arizona, and New Mexico.⁶⁴ Within the state of New Mexico, her goal is to increase the numbers of Latinx, Native American, and African American professionals; “to prepare those professionals to practice in communities where the people speak Spanish or indigenous languages and often do not share the cultural background of their service providers;” and to “to find ways to inject the core ideas and values of [critical race feminism] into various aspects of educational reform from the earliest years to the doctoral level.”⁶⁵ In 2013, in recognition of her distinguished achievements,

INSTITUTIONAL MENTORING EXCELLENT FINAL REPORT (hereinafter “AIME Report”) (draft on file with author). The project, co-directed by Margaret and by Professor Valerie Romero-Leggott, identified the goal of creating “a climate that fosters belonging, respect, and value for all and encourages engagement and connection throughout the institution and community,” AIME Report at 4, and sought to achieve this goal by creating institutional spaces of trust and connection within which students and faculty members in the health sciences could have difficult, complex conversations about difference and power. As the co-directors note in their introduction, the pilot project was successful. They quote one participant as writing: “The facilitated conversations with mentors and mentees created some of the most honest conversations about race and academic life that I have ever experienced. It was truly invigorating to know that the institution was willing to have the difficult conversations necessary to create an inclusive and empowering environment for faculty of color.” AIME Report at 4. Margaret and her co-author conclude: “AIME points the way toward having such robust conversations and then taking purposeful decisions to engender inclusion by strengthening mentoring so that more faculty of color and other under-represented faculty groups—women, LGBT, and those who are differently abled—feel that they belong and are fully respected and valued. The lessons from AIME can enhance the professional development of mentees and mentors and support the conclusion that cognitive diversity that emerges from teams with different identities, backgrounds, and perspectives constitutes institutional capital, indispensable to the future success of the HSC and New Mexico.” Id.

⁶⁴ See Margaret E. Montoya, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENVER U. L. REV. 467, 501 (2001).

⁶⁵ Margaret E. Montoya, *Defending the Future Voices of Critical Race Feminism*, 39 U.C. DAVIS L. REV. 1305, 1319 (2006).

she received the Derrick Bell Legacy Award for outstanding work in critical race theory from the Critical Race Studies in Education Association.⁶⁶

Finally, Margaret's stage performances with Professor Christine Zuni Cruz use images, dialogue, silence, and ritual, bringing the creation of cosmopolitan space into the realm of art. Margaret describes those performances this way:

The two of us enact a series of narratives that embody conversations between a Mestiza and an Indigenous Pueblo woman about such issues as un/masking and un/braiding of hair, stories, and analyses in different settings. This includes collective racial narratives such as the Santa Fe fiestas, which have celebrated the "bloodless re-conquest" of the Pueblo Indians by Hispanas/os in New Mexico every year going back to 1712, and motherhood stories that recount racial incidents involving my daughter Diana and Professor Zuni Cruz's son Immanuel.⁶⁷

Jerome's work in building mixed space was less institutional and more interpersonal. Despite the combativeness of his writing, in person he was always willing to reach out and connect. The summer that my daughter and I lived with him, I was struck by how wherever he went, Jerome had friends: in white and black space, in student and faculty spaces, among service workers and among his elite Harvard alumni friends. He loved Duke Basketball and made many unlikely friends through his staunch loyalty to the team. As my daughter and I trailed along in his wake, Jerome stopped everywhere to talk: to law school staff, to small business owners and restaurant workers. Above all, he loved his students, welcoming them into his family regardless of background, viewpoint, or experience. His white students introduced him to Eminem and Nickelback, and he proudly dropped contemporary song titles into his lectures. His life's work involved not only

⁶⁶ See *Derrick A. Bell Ethical Ambition: Living a Life of Meaning and Worth*, CRITICAL RACE STUD. IN EDUC. ASS'N, <http://www.crsea.org/derrick-bell-legacyr/> [<https://perma.cc/5YU9-ZFXE>] (last visited Mar. 26, 2018).

⁶⁷ Montoya, *Máscaras y Trenzas*, *supra* note 8, at 15.

making space for himself in white institutions, but engaging with “those who are not us,” in LatCrit and elsewhere, in order to create a space in which we all can live.

V. CONCLUSION

The political theorist Danielle Allen argues that the true index of democracy in a society is not how many people vote, or what a nation’s Gini coefficient is. Rather, a truly democratic society is one that enables us to “talk to strangers.”⁶⁸ One final way to articulate the contributions of Jerome and Margaret is to say that they have spent their lives talking to, and listening to, strangers.

I have learned from Margaret in so many ways—from her courageous scholarship, from her humility, from her leadership, from her vulnerability, from her gorgeous sense of style. I am so grateful for the chance to participate in bestowing this honor upon her from an organization that she did so much to create and to maintain.

Jerome McCristal Culp, Jr., Professor of Law at Duke University and founding member of LatCrit, died in Durham, North Carolina on February 5, 2004, aged 53, of complications associated with kidney failure.⁶⁹ In an introduction to a symposium dedicated to his work, I wrote:

Jerome always looked for the honorable path, not the easy path. But his love, his empathy, his anger and his ethical ambition were always rooted in an awareness of how deeply fallible humans are. Jerome recognized the fact that we are all under construction. In the time I was privileged to spend with him, he and I discussed our self-

⁶⁸ DANIELLE S. ALLEN, TALKING TO STRANGERS: ANXIETIES OF CITIZENSHIP SINCE BROWN V. BOARD OF EDUCATION xiii (2004). (“At its best, democracy is full of contention and fluid disagreement but free of settled patterns of mutual disdain. Democracy depends on trustful talk among strangers and, properly conducted, should dissolve any divisions that block it.”).

⁶⁹ *Duke Law Professor Jerome Culp Dies at Age 53*, DUKE TODAY (Feb. 6, 2004), https://today.duke.edu/2004/02/culp_0204.html [<https://perma.cc/9SRG-JVCV>] (last visited March 26, 2018).

hatred as well as our aspirations, our inability to meet the standards we set for ourselves, our moments of vanity, delusion, and self-importance, and we laughed at them and at us. The imperfect parts, the unfinished parts, the things we could not articulate, the things we tried and failed at: Jerome had a laugh that encompassed disaster, that was bigger than catastrophe.

I will miss his laughter most of all.⁷⁰

⁷⁰ Angela P. Harris, *Under Construction*, 50 VILL. L. REV. 775 (2005).