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Coffeehouse Musings on Post-Grutter Ironies; Promoting Diversity to Ensure Globalization.

Elvia R. Arriola

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ESSAY

COFFEEHOUSE MUSINGS ON POST-GRUTTER IRONIES: PROMOTING DIVERSITY TO ENSURE GLOBALIZATION

BY ELVIA R. ARRIOLA*

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As I sat recently in a trendy café—one that epitomizes so much of the global economy today—I thought about racial and gendered diversity and equality, post-*Grutter*.¹ I focused on a phrase in Justice Sandra Day O'Connor's majority opinion that upheld affirmative action because of its role in promoting diversity. Diversity is important, she said, “as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas and viewpoints.”²

O'Connor's statement compelled me to revisit what former Justice Lewis Powell might have meant by the term “diversity” when he used it to justify the constitutional use of race in admissions policies at public

* Associate Professor of Law, Northern Illinois University.

I am grateful to the organizers of the 2004 AALS Mid-Year Workshop on Racial Justice for the opportunity to reflect on the ideas in this paper and at the conference. I am also indebted to the Northern Illinois University College of Law for the support that made it possible for me to attend the workshop and to write this essay.

1. *Grutter v. Bollinger*, 539 U.S. 306 (2003) (ruling on the constitutionality of affirmative action policies at the University of Michigan Law School).

2. *Id.* at 330 (citing amici briefs of 3M et al. and General Motors Corp.).

institutions of higher education.³ I wondered what it meant in the eyes of the multinational corporations (MNC) that filed *amicus* briefs in support of the University of Michigan's policies,⁴ as opposed to its meaning in the words expressed by Justice O'Connor.

As I sat in this Austin, Texas café—which in décor, design, and service is identical whether in Chicago, Los Angeles, Washington, D.C., or dozens of European cities—I thought a little more about diversity and local economies and began to examine the café's customers. As usual, most were White. I was the only Latina. Two tables away, a group of young Asian men and women enjoyed conversation and laughter as they sipped fancy cold and hot coffee drinks. They could have been graduate students or tourists, but resembled so many of the groups of people I've seen in such cafés and popular shopping neighborhoods throughout the country. Certainly one aspect of the global economy is that these espresso cafés have expanded their reach into the lives of consumers throughout the world.⁵ Regardless of location, the ambience has homogenized the experience of relaxation, consumption, and a sense of identity for the

3. *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 314 (1978) (Powell, J., plurality opinion) (striking down the medical school's affirmative action plan, but asserting that "the interest of diversity is compelling in the context of a university admissions program" and that race may be one of many factors in an applicant's profile).

4. General Motors and a coalition of MNCs argued that diversity in the student body is essential to the success of major participants in the global marketplace. Specifically, they stated:

The experience of the amici businesses demonstrates the vital need for the cross-cultural education that a diverse educational institution provides, as well as the talented diverse graduates it produces. Among other things, the changing face of America is reflected in the marketplace, as both the workplace and the purchasers of products and services become increasingly diverse. The individuals who run and staff the amici businesses must be able to understand, learn from, collaborate with and design products and services for clientele and associates from diverse racial, ethnic and cultural backgrounds. American multinational businesses, including amici, are especially attuned to this concern because they serve not only the increasingly diverse population of the United States, but also racially and ethnically diverse populations around the world.

Brief of Amici Curiae 3M et al. at 9-10, *Grutter v. Bollinger*, 288 F.3d 732 (6th Cir. 2002) (No. 01-1447) [hereinafter 3M].

5. In April 2003, Starbucks, the world's leading coffee distributor, purchased Seattle's Best Coffee Stores from its Atlanta-based owner, AFC Enterprises. At the time, Starbucks had 4,952 company-operated and licensed locations in North America, 5,600 food service accounts and coffee wholesale sales in more than 18,000 grocery stores in the United States. After the deal, Starbucks acquired 12,000 more grocery distribution locations that had contracts with Seattle's Best. AFC Enterprises was to retain control of its internationally based store locations. See Christine Frey, *Starbucks to Buy Seattle's Best Coffee*, SEATTLE POST-INTELLIGENCER, Apr. 16, 2003, available at http://seattlepi.nwsource.com/business/117808_starbucksww16.shtml (last visited Oct. 21, 2004). Subsequently, net revenues increased 23.9% to \$4.1 billion in sales. STARBUCKS CORP., 2003

middle class. Though the diversity of the consumer might change slightly by gender, race or ethnicity, the details of the experience produced by the café's MNC owner is a mark on a balance sheet, a goal of uniformity that has been carefully orchestrated. The coffee roast of the day? Something from the latest shipment delivered by a regional roaster owned by the parent company.⁶ The coffee beans themselves? Purchased in the free-trade economy,⁷ in a part of the market largely controlled today by Starbucks, which also owns the North American coffee stores of competitor Seattle's Best Coffee.⁸

The most ironic aspect of this *localized* type of business is that it isn't local at all.⁹ Whether it is the goods or services offered, or the terms and conditions for the staff, this is big business that doesn't necessarily have a

Annual Report 17 (2004), http://www.starbucks.com/aboutus/Annual_Report_2003_part2.pdf (last visited Oct. 8, 2004).

6. See Brian Ward, *The Coffee Crisis* (Fall 2003) (unpublished manuscript, on file with author).

7. Globalization envisions a global economic system that values investment and abhors barriers to trade. Much of the global development in the past decade has been met with volatile protests from labor, environmental, and feminist groups decrying the damage to people, the environment, and the quality of life in the more impoverished countries whose human and natural resources are used. The North American Free Trade Agreement has been severely criticized for its gender and racial oppressive impact. See generally Elvia Arriola, *Voices from the Barbed Wires of Despair: Women in the Maquiladoras*, *Latina Critical Legal Theory and Gender at the U.S.-Mexico Border*, 49 DEPAUL L. REV. 729 (2000) (using feminist theory and narratives to illustrate the oppressive intersection of immigration law and trade policy from a gendered human rights standpoint). Efforts to extend the North American Free Trade Agreement to countries in the entire Western Hemisphere were stalled by ongoing protests. See MAUDE BARLOW, *THE INT'L FORUM ON GLOBALIZATION, THE FREE TRADE AREA OF THE AMERICAS: THE THREAT TO SOCIAL PROGRAMS, ENVIRONMENTAL SUSTAINABILITY AND SOCIAL JUSTICE* (2001) (summarizing the varied negative aspects of the proposed agreement for 34 countries). Most recently, the criticism has been directed at the Central American Free Trade Agreement, the smaller regional pact signed in December 2003 between the United States and the Central American countries of Guatemala, Honduras, El Salvador, and Nicaragua. See Mark Engler, *The Trouble with CAFTA*, *THE NATION*, Feb. 2, 2004, at <http://www.thenation.com/doc.mhtml?i=20040202&s=engler> (last visited Oct. 7, 2004).

8. Frey, *supra* note 5.

9. The global economy is obviously a local experience. To those who travel extensively, it is quite visible. Some might consider it comforting. Others, like me, see it as boredom and a tragic erasure of local uniqueness in American towns and cities. There are many ways to capture the local side of globalization. In the marketing world, the agenda is quite explicit: develop a strategy for global management, *i.e.*, *glocalization*. The term has been defined as:

A strategy of global management for creating a marketing and technology template that can easily be implemented around the world. At the same time, the strategy must democratize the decision-making process. For example, offices in the local markets of a worldwide company could adapt a model given to them by headquarters but also could share their best ideas across the company as a whole.

vested interest in the communities involved or the local economies displaced. Some of these companies express a public commitment to the economic improvement of local communities, but their ideals often exceed reality. For example, Starbucks, known for its racial diversity, fails to display diversity in its management staff at its thousands of coffee stores.¹⁰ It has also been criticized for using suppliers that provide neither living wages nor adequate working conditions.¹¹ Of course, global companies don't have to do anything to preserve the diversity that is taken away when another multinational café or department store opens and displays its increasing growth and presence locally and worldwide.

All of this has convinced me that the casual association of diversity and affirmative action with success in the global marketplace for MNCs means, at best, support of a lofty public relations campaign that serves corporate America rather than American communities, workers, and families. Therefore, I want to explore the ironies I see in the part of the *Grutter* majority opinion that associates the benefits of an unelaborated concept of diversity deemed essential to the successful economic actions of global companies.

Grutter's promise of either reviving or killing affirmative action in higher education¹² invited widespread attention from supporters and op-

Netlingo: Dictionary of Internet Terms, at <http://www.netlingo.com/right.cfm?term=glocalization> (last visited Oct. 21, 2004); see also GRUPPO CERFE, GLOBAL METRO CITY – THE GLOCAL FORUM, ACTION RESEARCH ON GLOCALIZATION: SUMMARY OF THE EXECUTIVE DESIGN 2-3 (January 2003), at <http://www.gruppo-cerfe.org/glocalization> (last visited Oct. 21, 2004). Another definition of glocalization is taking the best of the global economy's offerings to one's society or culture and modifying it to one's norms or cultural expectations. Interview by Terry Gross with Thomas Friedman, Foreign Affairs Columnist, New York Times, Philadelphia, Pa. (June 3, 2004), at http://freshair.npr.org/day_fa.jhtml?display=day&todayDate=06/03/2004 (last visited Oct. 21, 2004).

10. Kim Fellner, *The Starbucks Paradox*, COLORLINES, Spring 2004, at 2, available at <http://www.alternet.org/story/18499> (last visited Oct. 21, 2004).

11. *Id.*

12. *Grutter* ended one of the most recent battles of the movement to destroy affirmative action under any legal or constitutional theory. The *Bakke* case—a plurality decision—set the stage for a renewed battle over affirmative action that would have to be resolved in the Supreme Court. 438 U.S. 265 (1978). Since only Justice Powell made the “diversity is a compelling interest” argument, race could be nothing more than a factor in the application process. *Id.* at 314. Proponents of affirmative action characterized the anti-affirmative action developments that followed *Bakke*, represented by *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), Proposition 209 in California (abolishing affirmative action in public education, contracting and employment) and Proposition I-200 in Washington (accomplishing the same objectives as Proposition 209) as a post-civil rights backlash. See Margaret Montoya, *A Brief History of Chicana/o School Segregation: One Rationale for Affirmative Action*, 12 BERKELEY LA RAZA L.J. 159, 162 (2001) (contending that “integration is a compelling state interest”). For an excellent summary of the litigation developments regarding affirmative action in higher education, see generally William C. Kidder,

ponents of the view that equality is promoted by assuring a racially and ethnically diverse student body. University of Michigan officials enjoyed the support of numerous *amici*, many of them major corporations that identified the goal of diversity as critical to their success in the global marketplace. I am neither questioning the validity of the Court's ruling on affirmative action in *Grutter*, nor doubting that diversity in education is a compelling state interest. However, I am curious about an implicit message that has emerged from the holding that diversity is a compelling governmental interest that serves a separate public policy. Supporting companies that assert diversity in their workforces—and the ability to recruit minority candidates from top schools such as the University of Michigan—will ensure their success in the global marketplace. I question the meaning of diversity that the corporate *amici* imply and expose other aspects of diversity in the corporate *amici*'s workforces which contradict the positive gloss it was given in the corporate briefs, and ask: Is promoting diversity in an increasingly global marketplace inherently a good thing?

In this essay, I will examine the costs in rallying corporate players to further expand the global marketplace, and whether diversity, as presented so optimistically in the *amici*'s briefs, is meaningful or merely a convenient public relations tool. Toward the goal of exploring whether we should ensure diversity to promote global economic success, I have organized this essay as follows: Part I examines the Court's implicit support for globalization and the ironies in that unquestioned view that more globalization is good for the nation. Part II analyzes the close relationship between gender, race, and class oppression and the continued expansion of the global economy. Part III raises questions for legal educators who uncritically accept that diversity is the *sine qua non* of globalization.

I. WHAT THE COURT ENDORSED WITH THE UNCRITICAL SUPPORT OF GLOBALIZATION

Imagine yourself walking into one of these multinational café *experiences*¹³ in any part of the world. It all looks rather good, even pleasant. You'll see men and women behind the counter, a moderate amount of racial and gender diversity, and an undoubtedly "feel good" environment

Affirmative Action in Higher Education: Recent Developments in Litigation, Admissions and Diversity Research, 12 BERKELEY LA RAZA L.J. 173 (2001).

13. The global coffeehouses in particular are viewed as being in the business of selling an experience of comfort, leisure, and connection to those who can afford it. See Fellner, *supra* note 10.

designed to be globally identical. However, “WTO protesters”¹⁴ have targeted many of these global companies, complaining that MNC growth drives out local business while presenting a positive image of bringing benefits to the community. In the overall struggle for racial and gender equality, shouldn’t we be concerned with whether some global companies, such as Starbucks¹⁵, are as aggressive as other known human-rights violators, such as Wal-Mart, in the campaign for expansion?¹⁶ Might this be important, given how much publicity these companies enjoy by creating the image of balancing profits with benevolence—such as jobs that provide living wages, health benefits, and racial and cultural diversity?

For U.S. citizens, globalization can also mean a drastic loss of jobs to those who can least afford it, along with the prospects of new service sector jobs that don’t adequately support a family. Recently, the mostly Black and Hispanic citizens of Inglewood, California defeated the opening of a Wal-Mart Supercenter following a grassroots public education campaign that revealed the company’s failure to produce jobs with living

14. “WTO Protestors” is a shorthand phrase for identifying the anti-globalization movement that targets the policies and practices of the World Bank, the World Trade Organization (WTO), the International Monetary Fund (IMF), and other institutions that play a role in the financial reorganization of creditor and debtor relationships between wealthy and poor countries. Many may recall the 1999 protests against the WTO meeting in Seattle that caught city police officers off guard. See David Postman et al., *Clashes, Protests Wrack WTO: Police Try to Break Up Protesters; Clash Delays Opening Event*, SEATTLE-TIMES, Nov. 30, 1999 at A1. Additionally, local community activists hold events marking the WTO protests. See Seattle Community Network, *Seattle Area Events 2003 – 4th Anniversary of Seattle WTO Mtgs*, at www.scn.org/wtocal/ (last visited Oct. 21, 2004). Some transcripts of independent radio reporting of the three days of protests are available online. See, e.g., Packet Gnomes, *WTO Protests, Seattle, Washington, USA, 1999*, at www.packetgnomes.org/~chris/wto (last visited Oct. 21, 2004).

Subsequent meetings of finance ministers and business leaders seeking to carve out new regions for trade and investment also have been met with protest but with more organized police forces. Anti-globalization advocates question whether protesting, and nothing more, is a good strategy for challenging corporate global growth and the devastating effects it may produce at the local level. As one writer puts it, “Success is not just getting beat up by cops who keep the toys when the event is over.” Stephanie Guilloud, *An Open Letter to Anti-Globalization Protesters Or: Why I Didn’t Go to Miami*. AS THE SOUTH GOES. . . , Spring 2004, at 9 (reflecting on the current state of the anti-globalization movement). Of course, globalization economics has its strong advocates. See, e.g., THE WORLD BANK, *POVERTY IN AN AGE OF GLOBALIZATION* (2000), at <http://www.worldbank.org/html/extdr/pb/globalization/povertyglobalization.pdf> (last visited Oct. 10, 2004) (indicating the beneficial effects of globalization on the facets of society).

15. Fellner, *supra* note 10.

16. Wal-Mart’s record of human rights violations is notorious. Its products come from countries – such as Bangladesh and Honduras – where the average pay is less than \$1 a day. See Transnationale.org, *Wal-Mart Stores* (on file with author).

wages or real benefits to the community.¹⁷ In the international trade or foreign policy context, globalization and the trade agreements produced in its name are often touted as a mutual benefit to signatory nations.¹⁸ However, another picture casts an image of increasing numbers of White European nations and their business leaders exercising their economic power through talk of *free trade*. Large pools of people of color in developing nations work under sweatshop conditions. These profitable ventures might be part of an unavoidable Structural Adjustment Program,¹⁹ given the developing country's indebtedness to richer nations. That tragic White-non-White global image may as well make *globalization* a new term for an old problem.²⁰

Yet consider how optimistically Justice O'Connor phrases the issue of globalization in *Grutter*: "[W]e must affirm diversity in education because of the skills needed for today's increasingly global marketplace . . . through exposure to widely diverse people, cultures, ideas and viewpoints. . . ."²¹ How curious that the educational institution is viewed as a crucial link to the phenomenon of consumption and the marketplace. How easy it is then to conjure up the image of the benevolent global company looking for the best workers here and abroad. We can then see our academic institution diversifying for this promising goal to provide new corporate recruits for the maintenance of consumption and global

17. Christopher Parkes, *California Residents Spurn Wal-Mart Store*, FIN. TIMES (LONDON), Apr. 8, 2004, at 9, available at <http://www.laane.org/pressroom/stories/walmart/040408FinancialTimesLondon.html> (last visited Oct. 21, 2004). Wal-Mart conducted \$256 billion in business in 2003. In 2002, it employed 1.2 million people worldwide, many of whom earned less than \$1 per day; in Bangladesh, workers earned sixty-seven cents a day. It is not surprising that Wal-Mart—with operations in Bangladesh, China, Honduras, the Cayman Islands, and Puerto Rico—has been found in repeated violation of international labor norms, the most typical being child labor law violations, forced and unpaid overtime, and wage discrimination. See Corporate Profile and Brands of Wal-Mart Stores, at www.transnationale.org (on file with author).

18. See Arriola, *supra* note 7 at 752-799 (criticizing NAFTA's impact on women and the working poor).

19. Structural Adjustment Programs (SAPS) are development schemes forced upon poor countries by international financial organizations such as the IMF and the World Bank. The countries are often in debt for loans made many years ago. One common move to eliminate the debt is to encourage the country to spend less on public programs or to privatize some services, such as health care. SAPS are not generally a boon to the economy of the debtor country. See generally Jason Morgan-Foster, *The Relationship of IMF Structural Adjustment Programs to Economic, Social, and Cultural Rights: The Argentine Case Revisited*, 24 MICH. J.INT'L.L. 577 (2003).

20. See WOMEN & THE ECONOMY: AN INTRODUCTION TO WOMEN AND GLOBALIZATION (2003), at <http://unpac.ca/economy/introglob.html> (last visited Oct. 21, 2004). Cf. FRANZ FANON, *THE WRETCHED OF THE EARTH* (1965) (discussing oppressive consequences of European colonialism in Africa).

21. *Grutter*, 539 U.S. at 330.

marketing. Students presumably will be prepared by sitting in a not-too-racially-diverse classroom talking about torts, contracts, and property law. Then imagine some of these law students a few years down the road working as counsel for major corporations or as associates in law firms with satellite offices in France, England, Italy, and Taiwan. These offices might serve the clients who have headquarters in Pittsburgh, but, as the *amici* noted, might also have 20,000-plus or even one million-plus workforces²² globally generating billions of dollars in sales annually. Now see these law students advising the directors or owners and operators of subsidiary operations of these large MNC clients who prepare to open new factories on a regular basis.²³ These foreign-based factories will generally employ mostly non-White female workers in Mexico, India, China, Honduras—maybe someday in Iraq—at sometimes less than \$1 per day²⁴ to produce or assemble consumer goods for distribution in the United States, Canada, or European Union-member countries.

The irony in this picture is that the argument that diversity aids globalization should translate into the implicit good in the expansion of the global economy through the activities of companies such as General Motors, or the dozens of other corporations that filed *amicus* briefs in *Grutter*. But is this inherently good for the nation?²⁵ As defined by the corporate *amici*, diversity and globalization merely stand for economic challenges that must be met to make sales and profits by distribution in new markets throughout the world.²⁶ This bland and neutral purpose cloaks huge divisions based on gender, race, and poverty developing all around the world through the expanding global marketplace—ironically with the help of new recruits from the nation's best institutions, hired to shape the law and policy support that will ensure globalization.

22. 3M, *supra* note 4, at A-12 (listing the financial and work force status of various corporations). In fact, GM has an employee base of 388,000 workers worldwide, more than half of them foreign-based. Brief of Amicus Curiae General Motors Corp. 1, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241) [hereinafter GM]; *Gratz v. Bollinger*, 539 U.S. 244 (2003) (No. 02-516).

23. See *infra* Part III (commenting on the implications for legal education).

24. See Corporate Profile and Brands of Wal-Mart Stores, *supra* note 17.

25. Michael Moore's documentaries have chronicled corporate outsourcing's social and economic impact on the country's working-class citizens. See *ROGER AND ME* (Warner Home Videos 1989) (depicting the impact of General Motor's departure from Moore's hometown of Flint, Mich). Filmmaker Anne Lewis has done the same for Tennessee. See *THE MORRISTOWN LETTERS* (Appalshop Films 2004) (on file with author) (documenting interviews of White workers who lost their jobs to television and sound system assembly factories relocated to Mexico and interviews with the replacement Mexican workers who describe their job and working conditions).

26. See 3M, *supra* note 4; GM, *supra* note 21.

The result of this line of thinking is an unquestioned assumption that unregulated economic expansion is good for all. In fact, critics of globalization are either viewed as simplistic or unwilling to face the fact that globalization is here to stay.²⁷ But what if we began to question the real meaning of success in this global marketplace, and for whom? Is it in record profits for shareholders? Is it in the CEOs' salaries?²⁸ In having a diverse domestic staff? What makes the idea of an expanding global economy so inherently good when, for example, it translates into buying coffee from a company that controls 99% of the unregulated market, makes profits for management and shareholders, but won't guarantee the coffee bean farmer in countries such as Brazil, Ethiopia, Uganda, and Guatemala enough money to support a family?²⁹ Is the nation's labor economy better off because MNCs and the economic theories that support their activities allow them to reorganize their labor and production forces to outsource jobs and import lower-paid foreign labor³⁰ as a matter of "good business?"³¹ And what about the consequences of outsourcing in the United States? Are the majority of citizens who depend one way or another on that company better off as they face fewer opportunities for stable employment or the choice between minimum-wage work, homelessness, poverty, and welfare?³²

27. See, e.g., Paul Krugman, *Moore's Public Service: Fahrenheit 9/11 Does the Job that the Media Didn't*, N.Y. TIMES, July 2, 2004, at A19 (praising the impact of Fahrenheit 9/11 but criticizing Moore for the "simplistic" critique of globalization in his documentaries that examine the impact of globalization and outsourcing on working-class families in America).

28. The salaries of chief executive officers have been scrutinized because of the scandals of companies such as Enron, whose officers were linked to the outrageous rise (as high as 250%) in salaries when they increased electricity rates in California just after George W. Bush's election to the White House. Later, as the company failed, officials assured themselves protective payouts before announcing the devastating losses to their shareholders. See CYNTHIA GREEN, LRA ONLINE, EXECUTIVE 'FEUDALISM' POST-ENRON: NO SHAME WHEN IT COMES TO CEO PAY (2003), at <http://www.laborresearch.org/story.php?id=298> (last visited Oct. 21, 2004). For the most extensive study on CEOs' salaries, see generally ARIANNA HUFFINGTON, PIGS AT THE TROUGH (2000) (criticizing the personal spending practices of top leaders of major MNCs).

29. Ward, *supra* note 6.

30. See generally Robyn Iredale, *The Internationalization of Professionals and the Assessment of Skills: Australia, Canada and the U.S.*, 16 GEO. IMMIGR. L.J. 797 (2002) (reporting the "expansionist-liberal" approach of the U.S. to skilled migration as the means of acquiring highly skilled workers at a low cost).

31. See generally WILLIAM GREIDER, THE SOUL OF CAPITALISM (2003) (questioning the goal of profit as the legitimization of capitalism).

32. See generally William Norman Grigg, *Exporting U.S. Jobs*, THE NEW AMERICAN, Sept. 22, 2003, at http://www.thenewamerican.com/tna/2003/09-22-2003/vol19no19_exporting.htm (last visited Oct. 21, 2004); see also Mark Ritchie, *International Forum on Globalization: Globalization vs. Globalism*, at <http://www.itcilo.it/actrav/actrav-english/telearn/>

This implicit idea that an expanding global economy is inherently good can say so much and yet provide so little real information about its effects—about who really profits and the promises and dangers of globe-trotting MNCs in pursuit of lowered production costs, increased profits, and large pools of diverse, non-White workers and consumers of the corporation's goods and services. I admit I am a critic of unregulated global expansion, but not for simplistic reasons such as the CEOs' salaries, although that is certainly a valid inquiry.

My concern of whether “diversity is good because globalization is good” boils down to realistic problems that accompany the social and economic phenomenon. There are issues of race, class, and gender, often in interlocking forms that raise important considerations for the social justice advocate who is a lawyer and a professor of the law. I am troubled by the image of the MNC—and the notion that everyone is better off because a few competitive jobs were offered to some Blacks, Asians, and Latinos in the United States. Who really is part of this “diverse workforce,” and how well is it doing?³³ A closer examination reveals a workforce with a small, well-paid, often White staff in the administrative posts and a largely offshore, non-White, poor, and often female-subordinated workforce.³⁴ As I have shown in an earlier study on the Mexican *maquiladoras*, the transnationalization of labor is often a venue for exporting the worst aspects of American-style racist, sexist, and classist attitudes.³⁵

Is this corporate meaning of diversity different? Certainly it's about new markets; but what about the make-up of the 20,000 or 100,000-plus global workforces proudly cited in the *amici* briefs?³⁶ This is not a U.S. workforce at all. This is not about companies that carry a “Proudly Made in the U.S.A.” label. What we have in this casual statement in *Grutter* is support for a concept of affirmative action based on a meaning of diversity that wants us to believe in that comforting facade in the trendy café: “Everything is OK. We're all happy.” It doesn't seem to matter that this café is one of dozens of MNCs erasing all local flavor from American communities—selling a range of consumer goods and services made possible by the labor of people of color in developing countries, while Amer-

global/ilo/globe/kirsh.htm (last visited Oct. 21, 2004) (commenting on why we need to understand that unbridled globalization is not necessarily a good thing).

33. It is ironic that lawyers crafted this argument of the benefits of diversity for their corporate clients, given how non-diverse the legal profession remains to this day. See generally ELIZABETH CHAMBLISS, MILES TO GO 2000: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION (2000).

34. See WOMEN & THE ECONOMY, *supra* note 20.

35. Arriola, *supra* note 7.

36. 3M, *supra* note 4, at A-12.

ican and European stockholders register the success of their investments on the New York Stock Exchange.

II. GLOBALIZATION'S LINKS TO GLOBAL VIOLENCE AND FEMICIDE

Since early 2003, intensive organizing by feminists, labor, and human rights activists in Texas, New Mexico and Ciudad Juárez, Mexico, have generated international awareness of one of the more tragic effects of rampant globalization.³⁷ The rise in the unsolved murders of young women in Ciudad Juárez has been tied to Mexico's expanding role in the global economy since the signing of the North American Free Trade Agreement (NAFTA) in 1994.³⁸ In 2003, three-hundred and seventy murders were reported. At least seventy-five people are still missing.³⁹ Tragically, a number of these young women who were abducted, raped, and murdered—their bodies dumped in the desert—worked in the *maquiladoras*,⁴⁰ assembly factories bearing the names of companies such as TRW,⁴¹ and other well known American companies.

The link between globalization and the Ciudad Juárez murders is not an easy one to make. How does one proclaim that globalization creates jobs, reduces poverty, and yet produces horrendous misogynistic violence? At a recent conference intended to raise international awareness, we sought answers to the government's resistance to help the families of the victims whose common characteristics are poverty and powerlessness. A few of us sought to place the murders into the larger context of globalization's impact on the Mexican border. But it is a focus that is often lost. It is more tempting to come up with conspiracy theories or suggestions that the killings are connected to drug cartels or millionaire Mexican men

37. Organizing around this issue has been largely unsuccessful in the past 10 years. A major international focus was brought to the Ciudad Juárez murders by a conference held at the University of California in Los Angeles in November 2003. See UCLA Chicano Studies Research Center & Amnesty International, *The Maquiladora Murders, or, Who is Killing the Women of Juárez?*, at http://www.sscnet.ucla.edu/chavez/maqui_murders/more.htm (last visited Oct. 21, 2004).

38. See *Intolerable Killings: Ten Years of Abductions and Murders in Ciudad Juárez and Chihuahua* (2003) (on file with author).

39. *Id.*

40. See Julia Monárrez Fragoso, *Serial Sexual Femicide in Ciudad Juárez: 1993-2001*, DEBATE FEMINISTA, Apr. 2002, at 279-305, at http://www.womenontheborder.org/sex_serial_english.pdf (last visited Sept. 8, 2004) (containing one of the most thorough analyses of the data on the victims of Ciudad Juárez); see also Debbie Nathan, *Missing the Story*, TEXAS OBSERVER, Aug. 30, 2002, at http://www.womenontheborder.org/Articles/Senorita_Text.pdf (last visited Sept. 8, 2004) (a film review of the documentary SENORITA EXTRAVIADA which broke the story of government incompetence and resistance to investigating the murders in Ciudad Juárez).

41. TRW joined an *amicus* brief in *Grutter*. 3M, *supra* note 4.

with wild sex fantasies.⁴² A gendered globalization focus on the Ciudad Juárez murders may ask how the rapid onset of industrialization produces an environment of tension and change, and ruptures the social fabric. Family structures are affected and traditional gender roles are challenged as the foreign investor now seeks to have a successful enterprise by introducing social conditions in the workplace at odds with the local culture and traditional attitudes about every aspect of life—family, gender roles, intimacy, recreation, and money.⁴³ Domestic violence is a natural outlet for the frustrations that may accompany these changes, especially when the new employers prefer to hire the young, female, and vulnerable. It may not take much for such violence to cross a boundary into more extreme examples of misogynistic violence.⁴⁴

Globalization today is a blatantly gendered phenomenon. Women comprise 70% of the world population that lives in poverty and make up about 45% of the world's workforce.⁴⁵ Hence, when a company outsources to reduce profits, it can beat other corporations in the race to the bottom of the wage scale by employing women.⁴⁶ Sometimes these assembly factories operate day and night to meet large production orders and stock the shelves of favorite American consumption sites such as Target, Wal-Mart or Bed, Bath and Beyond.⁴⁷ The work culture is blatantly

42. Eightheadz, *I'm Juxtaposing: 400 Corpses 400 Unsolved Murders in the 'City of the Dead Girls'*, 8BM.COM (2004), at <http://www.eightballmagazine.com/diatribes/volume02/diatribes011/diatribes210-230/diatribes222.htm> (last visited Oct. 21, 2004) (addressing the theories about the connections between multimillionaire Mexican men with sex fantasies and the murders, as argued by journalist Diana Washington Valdez). *See generally* Diana Washington Valdez, *F.B.I. Aid Asked in Juárez Killings*, EL PASO TIMES, Sept. 6, 2002, available at <http://www.elpasotimes.com/borderdeath/>; *see also* DIANA WASHINGTON VALDEZ, *HARVEST OF WOMEN: A MEXICAN SAFARI* (2004) (containing a collection of investigative writings which assert her own theories about the connections to wealthy men); CHARLES BOWDEN, *THE LABORATORY OF OUR FUTURE* (1998) (capturing the dark side of globalization and its effects on the city, industries and murders in Ciudad Juárez).

43. Jean L. Pyle, Keynote address at the Third International Congress on Women, Work & Health, (June 2, 2002) (transcript on file with author).

44. *See* Fragoso, *supra* note 40.

45. *WOMEN & THE ECONOMY, WHAT ARE THE CAUSES OF WOMEN'S ECONOMIC EQUALITY?* (2003), at <http://www.unpac.ca/economy/whatcauses.html> (last visited Oct. 21, 2004).

46. *Id.*

47. *See generally* Arriola, *supra* note 7; ELVIA ARRIOLA, *FRONTERA NORTE SUR, BECOMING LEADERS: THE WOMEN IN THE MAQUILADORAS OF PIEDRAS NEGRA, COAHUILA* (October 2000), at http://www.womenontheborder.org/becoming_leaders.htm (discussing the hardships of women in the Mexican workforce and their struggle to survive); ELVIA ARRIOLA, *FRONTERA NORTE SUR, LOOKING OUT FROM A CARDBOARD BOX: WORKERS, THEIR FAMILIES AND THE MAQUILADORA INDUSTRY IN CIUDAD ACUÑA, COAHUILA* (December 2000 – January 2001), at http://www.womenontheborder.org/Articles/looking_out_from_a_cardboard_box.htm (discussing the industrial and financial environment of Ciudad

hierarchical and sexist, and disciplinary measures that would send a girl home for being a few minutes late to work—forced to walk alone in the dark—are not unusual.⁴⁸

How wonderful would globalization look if it became possible to theorize forms of liability against the operators of factories that employ women in places and at times that invite or foster a criminal environment?⁴⁹ The Ciudad Juárez murders are an extreme example of what can happen when a country is poor, in debt, and must agree to free-trade deals that generate new social and economic arrangements that are often ill-fitted to the city's social infrastructure. The cause of such extreme violence against women can be found in the venture, design, and cultural settings that accompany globalization. We need to see the role that gender, race, and class attitudes play, consciously and unconsciously, in the presumed benefit of a free-trade agreement between the investors of a rich versus a poor country. Global expansion brings with it gendered transitions.⁵⁰ It can as easily liberate women who have never worked outside the household as feed gendered frustrations of men—jealous or angry that their traditional role of head-of-household has been disturbed. Globalization and its presumed benefits must therefore be examined from all sides. It might be useful to understand what we promote from this post-Grutter meaning of diversity that presumably benefits the people of this and other nations.

Today a war in the Middle East continues⁵¹—war that has been promoted for liberating the people of Iraq from tyranny and oppression; one

Acuña); ELVIA ARRIOLA, FRONTERA NORTE-SUR, OF WOMEN BORN: COURAGE & STRENGTH TO SURVIVE IN THE MAQUILADORAS OF REYNOSA AND RIO BRAVO, TAMAULIPAS (April 2001), at http://www.womenontheborder.org/Articles/of_woman_born.htm (discussing the battle of Mexican women to receive benefits and fair wages from American Corporations).

48. *Intolerable Killings*, *supra* note 38 (reporting death of Claudia Ivette Gonzalez Banda).

49. From my observations of globalization in at least three Mexican cities, one pattern that repeats itself is the placement of large factories in isolated and poorly lit areas while operating shifts at all hours, requiring workers to arrive and leave before daylight and late at night. Is it surprising that so many of the missing young women have been *maquiladora* workers? The idea of holding the corporations that own such factories accountable is a challenging one. See Arriola, *Justice in the Maquiladoras: Making Corporations Accountable for Offshore Torts and Crimes*, at www.womenontheborder.org (examining the rules of procedure applicable to claims brought by foreign-based employees of U.S.-based MNCs).

50. See generally PIERRETTE HONGADNEU-SOTELO, GENDERED TRANSITIONS (1994) (providing an examination of the impact of migration which regularly accompanies globalization).

51. At the time of this writing, the official withdrawal of U.S. governance had not occurred. Despite the turnover of power to a group of individuals committed to peace and relationships with the U.S. and allies, resistance continues in the form of bombings, mili-

that has created war profiteers⁵²; and that has promoted a meaning of democracy defined by global economics—the future prospects of multinational enterprises in downtown Baghdad in peacetime. Following this war, MNCs will have new opportunities to exploit the working poor and to benefit a few economic leaders of what is left of Iraq.

Critical race and gender theorists *must* begin to grapple with the significance of globalization in their intellectual work. Whether by laws or through policy, corporations need to be made more accountable to the social realities based on gender, race, and class that accompany free trade. Currently, few question the fact that many new trade agreements are forced upon poor countries because of policies dictated by the World Bank, WTO, and the International Monetary Fund (IMF), policies that generate superficial benefits while cutting deeply into traditional values and culture. We also know that, globally, these operations profit from the labor of children and women. What is less known are the costs of unchecked violence against the most vulnerable members of the working population. Though Ciudad Juárez stands out because of the murders, it is no different from other border towns where workers have experienced the dark side of the global economy—non-living wages; toxic environments, pollution, chronic illness for workers, sex discrimination and harassment, disregard for basic health and safety of workers, and blacklisting of workers who try to organize.⁵³

Just the other day I responded to the inquiry of a sociologist who has found amazing parallels between the women I have met in the *maquiladoras* to the treatment of female workers in Sri Lanka. Yet this view of globalization is hardly the kind we find in the words of the *Grutter* majority. If there is any view of globalization in the Justices' opinion, it is at best a naïve one, or one indifferent to the plight of humanity and of the role played by U.S. MNCs in producing conditions of feminized poverty, violence, and oppression throughout the world. The image of globalization in *Grutter* is so devoid of social context that it can only be appropriated for a blatantly biased purpose: to support a range of multinational economic actions that can be cast into a public relations image of “we’re all working together,” while covering up a range of tragic social and economic realities for workers in the United States and abroad.

tary engagement leading to the death of soldiers and civilians, and abductions accompanied by death threats to pressure the withdrawal of all U.S. and allied forces from Iraq. Such ongoing conflict makes it difficult to conclude that this concocted war is over.

52. A number of corporate profiteers have been identified since early on, such as the Halliburton company, which is associated with Vice-President Dick Cheney. But the capital venture is ironically captured in the critical views of the 2004 documentary by Michael Moore's *FAHRENHEIT 9/11* (Columbia Tristar 2004).

53. Arriola, *supra* note 7; see also Arriola, *Justice in the Maquiladeras*, *supra* note 49.

Another irony about the Mexican global economy and the Ciudad Juárez murders exists. It appears that owners and managers of the factories are given a break from having to answer questions about murder victims who might have worked for them, *even if a murder victim was last seen going to her job or leaving it*—the unspoken agreement is that the owners of the factories will not be bothered.⁵⁴ That's because these factories are deemed too important to the Mexican national and local economy, so the owners and managers are immune from the official investigative process. It's outrageous that it is deemed risky for the local economy if a factory owner is *bothered* with questions about one of his workers abducted right outside the factory door, just after a supervisor sent her home—alone in the dark—because she was two minutes late to work.⁵⁵ It's even more outrageous and tragic that her body is later found in the desert bearing signs of burns, rape, and other forms of torture too awful to imagine, and that the last person to see her may have been a co-worker, guard, or the driver of a company-owned bus.

I wonder about the unspoken agreements that accompany the explicit financial arrangement leading to factories in places such as Mexico, China, Honduras, or Bangladesh. Free trade certainly means no trade barriers in the form of tariffs. But these days, globalization appears also to mean freedom from accountability for all the damage that might arise from the foreign economic venture.

III. IMPLICATIONS FOR LEGAL EDUCATION IN THE COURT'S SUPPORT OF GLOBALIZATION

As I criticize the socially irresponsible aspects of globalization, I also wonder about our role as legal educators and how we prepare young law students to become corporate counsel to some of the largest companies in the world. If the consequences of globalization in Ciudad Juárez are an extreme example—but nonetheless part of a worldwide pattern⁵⁶—then is this the kind of global venture we want our law students to seek and be proud of as they aid companies to expand their operations into new regions where similar consequences of rapid industrialization may befall young girls and women? Is the example of the mysterious rise in murders in Ciudad Juárez an inevitable consequence of the expanding global economy? And if so, what is the responsibility of our next generation of law students to know that this could happen and that they could play a

54. This understanding is mentioned repeatedly by activists in the documentary *SENORITA EXTRAVIADA* (Xochitl Productions 2001).

55. *Id.*

56. *WOMEN & THE ECONOMY*, *supra* note 20.

role, if not in preventing the problem, at least in making their clients accountable where they must?

Are these the questions that will arise from a reading of that casual phrase in the *Grutter* opinion that merely associates diversity with some inevitable and uncritically examined “increasingly global marketplace?”⁵⁷ Who will raise those questions? How often are students asked to think of ways that their legal education might be seen as critical to the shrinking of the globe through free-trade zones, but not globalizing standards for human rights, health, safety, medical care, and shelter?

Until several years ago, I never would have made it as important to teach my students that they are global citizens or that globalization is something they need to be conscious of no matter what area of the law they practice. The division was often very simple. If you were thinking of doing anything involving foreign law, you could focus on international law programs. Alternatively, you might tell a student that another door into cross-border issues or international conflicts of law would be immigration law. Since I graduated from law school, however, the face of the American labor economy has dramatically changed. Unions aren't what they used to be. Since the 1990s, with the Clinton administration's support of NAFTA, we have seen a dramatic loss of domestic jobs to Mexico and to other third-world countries. In the name of free trade, our politicians are allowing corporations to carve up the globe into economic regions, and forcing corporations to consider national boundaries only when they stand in the way of accomplishing new free-trade areas. Thus, when recent opposition by labor and feminist groups to the Free Trade Area of the Americas (FTAA)⁵⁸ interrupted the extension of NAFTA into thirty-four Western-hemispheric countries, we simply got a smaller version in the Central American Free Trade Agreement (CAFTA).⁵⁹

What does this mean for legal education? Almost no area of the law is untouched by the phenomenon of globalization. An obvious example is labor law. Suppose a student becomes a lawyer on the workers' side and faces difficult negotiations that involve the need for retraining options. What will happen if it becomes known that the workers' jobs traveled just a few hundred miles away to a factory where there are even fewer rights?

57. *Grutter*, 539 U.S. at 330.

58. The FTAA sought expansion of NAFTA provisions throughout the Western Hemisphere. See Josefina Castillo, *Free Trade Reality Tour*, AFSC NEWSLETTER, AM. FRIENDS SERV. COMM. – TEX., ARK. & OKLA. (Apr. 2004), available at <http://womenontheborder.org/FREE%20TRADE%20REALITY%20TOUR.pdf> (last visited Sept. 12, 2004).

59. See Josefina Castillo, *NAFTA, CAFTA, What Comes AFTA?*, AFSC NEWSLETTER, AM. FRIENDS SERV. COMM. – TEX., ARK. & OKLA. (May 2004), available at http://womenontheborder.org/NAFTA%20AND%20CAFTA_article.pdf (last visited Sept. 12, 2004).

What role can that lawyer play in cross-border organizing? And should we not sensitize students to the possibility of these cross-border alliances? What if students are on the employers' side? Shouldn't we sensitize them to diversity in the form of advising employers who hire multilingual workers to expect demands similar to other workers, such as the need and human right to a living wage? And what if, as they advise the creators of the new corporate ventures, they confront the tempting loopholes available in new trade agreements, and are asked to draft agreements with the political leaders of foreign countries and their most powerful economic leaders? They may do so without any concern about the needs or rights of the workers and their families because they didn't appreciate the full meaning of globalization.

Should the lawyers who advise these corporations be expected to consider the more human aspects that accompany free-trade policy? Is the concern for sensitizing the lawyer to those realities a question for good business law or good legal ethics? What if we know that lawyers are getting into the business of advising a company how to enter a newly identified economic region—that lawyers are advising employers how far they can go before having to be accountable for labor, health, and safety violations, and that lawyers may have to defend companies that are slowly being made accountable by activist shareholders who care not just about profits, but also about social responsibility?⁶⁰

We have to make our students aware that they may have their moral standards challenged by the prospect of advising clients who have a record of violating human rights and international labor norms. Though they may be far from understanding what it is like to work long hours for wages that won't feed a family, their indifference to the consequences of their clients' conduct is a cost to society and to the image of the profession. I hope that we can still produce lawyers who actually fulfill the lofty ideas they so often express in their applications to law school—of wanting to do good in the world and help people. Maybe some of our naïve and inexperienced students have to be shocked into the realities of how lawyers can become part of the evil when they facilitate the economic activities that promote profit and greed on the backs of poor, non-White, extremely young and uneducated people. They need to learn that they can become part of the problem or the solution. Maybe they can be stirred to speak out to create new standards and policies—forms of man-

60. Ami Domini describes the impact of shareholder activism in her book *SOCIALLY RESPONSIBLE INVESTING*. AMI DOMINI, *SOCIALLY RESPONSIBLE INVESTING: MAKING A DIFFERENCE AND MAKING MONEY* (Jack Kiburz ed. 2001). Whether done by individuals or groups (e.g., pension funds), it is a way of taking back control of one's own money which is being used irresponsibly by corporations to create pollution and injure workers or the environment. See *id.*; see also GREIDER, *supra* note 31, at 116-120.

agement that prevent poor girls and women working in the global factories to experience less sexual harassment and discrimination, less damage to their health from exposure to toxic chemicals and more safety from sexual violence and homicide.

Since globalization is here to stay, maybe legal educators have a responsibility to counsel the next generation of law students who will be advising these major corporate players, some of whom downsize and outsource as much and with as little accountability as possible under free-trade policy. An expanding global economy certainly promises this: more and more outsourcing, which means continued factory closings and a loss of union wages and jobs on United States soil. When 900, mostly immigrant, women who worked for Levi Jeans in San Antonio, Texas suddenly lost their jobs in an early 1990s NAFTA-closure, it became clear that the ones hardest hit in the decision to outsource are often those without a voice because of their gender, race, ethnicity, citizenship status, or class.⁶¹ These and other examples abound throughout the country. This is why I question the characterization of diversity at the service of the increasingly global marketplace. Is the meaning of diversity a promise to improve the integration into corporate headquarters? Or, is it instead a way of justifying the replacement of United States workers with lower-paid professionals from or in India⁶² and the relocation of assembly factories to Central America, where women will be paid less than \$1 per hour and work an average of twelve to fourteen hours per day?⁶³

Finally, another way our students may learn about globalization is in their own families and the experiences of their parents, who might be the victims of corporate downsizing and outsourcing. Some argue that the outsourcing trend will eliminate the middle class and, with that, the strength of American democracy.⁶⁴ If we cannot ensure an expansion of the global economy that does not damage the interests of workers, families, women, and children—here or anywhere—what have we accomplished by saving affirmative action from the jaws of destruction? Maybe the decision in *Grutter* represents the start of a twenty-five-year holding

61. Many of those women had worked for the company for more than twenty years. Many sought justice by forming the organization *Fuerza Unida*, which still exists. To read about their ongoing efforts to speak out on the injustice of the global economy, see La Fuerza Unida, at www.womenontheborder.org (last visited Oct. 12, 2004).

62. See Siddhart Srivastava, *NRI Worldwide, NRIs: A Saga of Success in America*, at <http://www.nri-worldwide.com/cgi-local/ts.pl?actionfetch&areaproudtobeindian> (last visited Oct. 21, 2004) (discussing the increase of Indians in domestic employment and leadership positions).

63. See Corporate Profile and Brands of Wal-Mart Stores, *supra* note 17.

64. George J. Bryjak, *Outsourcing the American Dream*, Z MAGAZINE, Apr. 2004, at <http://www.zmagazine.org/Apr2004/Apr04TOC.html> (last visited Sept. 9, 2004).

pattern?⁶⁵ Little may change for the better—whether in the workplace, housing, or education—but much may change for the worse, locally and globally, for those searching for the good life promised by globalization advocates.

65. The opinion suggested that any problems addressed by affirmative action and the conscious use of race (or gender) would undoubtedly be over in another generation or about 25 years. *Grutter*, 539 U.S. at 343.