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COUGHLIN'S COMPLAINT: HOW TO DISPARAGE OUTSIDER WRITING, ONE YEAR LATER

*Richard Delgado**

INTRODUCTION

AUTOBIOGRAPHY can be engrossing, sobering, poignant, even inspiring. Professor Derrick Bell's recent *Confronting Authority*,¹ for example, is all of these. Autobiography can also be edifying—recent scholarship teaches that “one cannot begin to understand the situation of others until one also understands one's differences from them and how this difference affects one's ways of seeing the world.”² In particular, reading the autobiographies of contemporary African-Americans and other writers of color can provide unique insights into the way racism works and can enable the reader to see the world through another's eyes.³

In *Regulating the Self: Autobiographical Performances in Outsider Scholarship*,⁴ Professor Anne Coughlin finds little good to say about this genre of legal writing. Her article is almost wholly negative. Whenever a generous or ungenerous interpretation is equally possible, she unfailingly chooses the latter, often rearranging the evidence to suit her dire conclusion. Reasoning largely on the basis of literary theory, specifically the notion that autobiography cannot afford the writer the opportunity to escape the sway of cultural bonds, she looks for, and professes to find, evidence of that failure in the writing of three critical race scholars and one well-known white feminist. Each of these writers attempts to transcend liberal

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¹ Derrick Bell, *Confronting Authority: Reflections of an Ardent Protester* (1994) (recounting author's career as first tenured black professor at Harvard Law School).

² J.M. Balkin, *Populism and Progressivism as Constitutional Categories*, 104 *Yale L.J.* 1935, 1952 (1995) (reviewing Cass R. Sunstein, *Democracy and the Problem of Free Speech* (1993)).

³ See, e.g., Symposium, *Legal Storytelling*, 87 *Mich. L. Rev.* 2073 (1989) (containing articles by Toni M. Massaro, Patricia Williams, Steven L. Winter, Milner S. Ball, Mari J. Matsuda, Derrick Bell, Richard Delgado, and others).

⁴ Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 *Va. L. Rev.* 1229 (1995).

individualism, but instead, according to Coughlin, ends up replaying banal plots: one is a scarlet lady;⁵ another a self-important Horatio Alger;⁶ a third rearranges his past to appear more heroic than he is;⁷ and a fourth is a borrower of metaphors and manipulator who violates a sacred covenant with her readers.⁸

Coughlin's article lacks self-suspicion, balance, and humility. Unlike critics such as Professors Dan Farber⁹ or Ed Rubin,¹⁰ who acknowledge the benefits of critical race scholarship and research, Coughlin presents a picture of disingenuous scholars who lie, play to the crowd, pretend to be radicals, and make money at the expense of scholarly ideals such as the Truth. In this reply article, I first examine the interplay between Professor Coughlin's theory of autobiography and her conclusions with respect to outsider scholarship in general. I then examine her treatment of my writing in particular. Finally, I offer a few words of caution and advice for white feminists who study writers of color.

I. AUTOBIOGRAPHY'S AILMENTS: ON THE DANGERS OF REASONING FROM THEORY

Anne Coughlin puts forward the pessimistic view that narrative scholarship (which she generally equates with autobiography) is doomed to be deeply conventional.¹¹ Even when attempting to challenge orthodoxy and open new vistas into racial and sexual justice, the new narrativists unintentionally and ineluctably end up replicating current social arrangements and reinscribing existing meanings and plots.¹² The writer's self is a construct, the product of his or her interaction with society, a reflection of the ideas, mean-

⁵ Id. at 1322-38 (analyzing the writing of Robin West).

⁶ Id. at 1292-1302 (analyzing the writing of Jerome Culp).

⁷ Id. at 1312-21 (analyzing the writing of this author).

⁸ Id. at 1302-12 (analyzing the writing of Patricia Williams).

⁹ Compare Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 *Stan. L. Rev.* 807 (1993) (criticizing critical race theory) with Daniel A. Farber, *The Outmoded Debate Over Affirmative Action*, 82 *Cal. L. Rev.* 893 (1994) (praising critical race theory).

¹⁰ Edward L. Rubin, *On Beyond Truth: A Theory for Evaluating Legal Scholarship*, 80 *Cal. L. Rev.* 889 (1992).

¹¹ E.g., Coughlin, *supra* note 4, at 1232, 1241, 1251, 1252-84, 1285, 1334-35. We should, however, be magnanimous enough to accept her scathing, and often personal, attack in good grace. See *id.* at 1233.

¹² E.g., *id.* at 1232, 1252, 1284-85, 1321.

ings, and range of possibilities he or she finds there.¹³ Autobiographers, moreover, focus on this very self, further limiting the possibilities for transformative breakthroughs.¹⁴ Any type of improvement in the condition of women and minorities of color will require collective action, while autobiography, by its very nature, causes the writer to become mired in liberal individualism, which exalts and celebrates the self and its solitary struggles.¹⁵

Reasoning a priori and citing mainly literary theorists who write, by and large, about white writers,¹⁶ Coughlin concludes that autobiography is a poor vehicle for insurrectionist scholarship. In doing so Professor Coughlin (i) fails to ask whether there might be something different about outsider scholarship that renders her theory inaccurate when applied to it, (ii) fails to search carefully for evidence that might refute her theory as applied to this body of writing, and (iii) fails to ask the "compared-to-what" question about the scholarship she ends up giving such low ratings. Consider the latter question first. Autobiographers, like all writers, must use words. Words, such as "woman," "African-American," "equal," and "reform," come fraught with pre-established meanings.¹⁷ English sentences have a structure, including, in most cases, a subject and a predicate, thereby reinforcing a certain view of reality and social relations.¹⁸ Finally, all texts end up being interpreted by a reader, who will bring to them a background of pre-existing stories, experiences, meanings, and plots that he or she recognizes and has learned to apply.¹⁹

All this makes telling a transformative story of any sort—whether about the self or anything else—difficult. Yet narrative, first-person

¹³ Id. at 1235, 1253-54, 1284-87, 1292-94.

¹⁴ Id. at 1284-1335 (on the autobiographical self).

¹⁵ Id. at 1232, 1247, 1284, 1292, 1320 (autobiography exalts self and its stories or petty misfortunes).

¹⁶ E.g., id. at 1242 n. 37; 1254-56 nn. 84-90, 93-94; 1261 nn. 115-17; 1269-75 nn. 145-148, 150-151, 156-159, 164, 172; 1282 n. 197; 1285 nn. 209-210 (citing Hayden White, Albert E. Stone, and Philippe Lejeune).

¹⁷ See Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 *Cornell L. Rev.* 1258 (1992) (addressing the difficulty of using speech to challenge deep-seated stereotypes and stories).

¹⁸ Viz., that the world consists of events that happen to things; that society consists of separate individuals who act on each other.

¹⁹ See Delgado & Stefancic, *supra* note 17, at 1261, 1280-82 (coining term "empathic fallacy" to describe belief that this background can be easily transcended).

writing has, at times, challenged authority directly and effectively. Consider, for example, the Declaration of Independence ("We hold these truths to be self-evident . . .")²⁰ or the Bible ("Verily I say unto thee . . .").²¹ To be sure, autobiography has also served scoundrels and crooked politicians, who use it to defend themselves and their sorry records. Autobiography can be used for good or ill. A better question for Professor Coughlin to have asked, then, would have been what other mode of discourse would better suit the radical objectives of the critical race scholars.

This, in turn, raises two additional questions: Why *do* we use autobiography? And why does Coughlin dislike it so much when we do? In response to the second question, she offers hints: Autobiography is remunerative.²² But that is hardly the answer to the first—autobiography is much less remunerative than litigation, for example, or Hollywood script-writing. My *Imperial Scholar* article almost certainly cost me many more professional opportunities than it brought.²³ Critical race scholars employ narrative and first-person storytelling because it provides an outlet for double consciousness²⁴—the ability many outsiders have of seeing everything in two ways at once—and through that, social criticism. This double-sightedness inclines us toward a postmodern view that embraces tension and duality.²⁵ The bearer of a stigma, such as a black, gay, or latino, becomes accustomed to seeing himself as others see him—that is, as despised and an object of scorn or pity.

²⁰ The Declaration of Independence para. 1 (U.S. 1776).

²¹ See, e.g., Matthew 5:26 (King James). Sometimes the familiar "verily" passages of the King James Bible are reported speech: A narrator, usually Matthew, Mark, Luke, or John, is telling Jesus' story. The first person is also used in the Epistles and John's Revelation. See, e.g., Hebrews 2:12; Revelation 3: 13-14.

²² E.g., Coughlin, *supra* note 4, at 1232, 1282-83.

²³ The article, Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. Pa. L. Rev. 561 (1984), criticizes mainstream civil rights scholars for ignoring minority writing. Although some may have responded constructively, I suspect others took offense, perhaps retaliating against me at key points in my career.

²⁴ On double consciousness, see W.E.B. DuBois, *The Souls of Black Folks* 1-12 (Johnson Reprint Corp. 1968) (1903); Ralph Ellison, *The Invisible Man* 1-14 (Random House 1992) (1947).

²⁵ For the view that this perspective affords the outsider scholar an advantage in Critical Race writing and analysis, see Richard Delgado, *Rodrigo's Chronicle*, 101 Yale L.J. 1357 (1992). Earlier, it permitted slaves to talk or sing in a sort of code, so that the masters (if they overheard) would hear one thing, while fellow slaves heard something different. Is it possible that Coughlin misses this dual-meaning element of some outsider writing?

At the same time, he sees himself as normal.²⁶ Autobiography is a consummate vehicle for portraying this form of double experience; it lends outsider writing the edge that many have found instructive and fascinating. And it assists the cause of social transformation because it helps majority-race readers understand how they are both different from us and the same. It helps them acquire the sort of multiple consciousness that comes to us all too easily—and which is the necessary precondition of any form of social healing.

But convinced that there is no excuse for all the autobiography that is going on, Coughlin deploys a massive and highly condemnatory theory, a huge edifice resting on slender facts and even slenderer sins, to find outsider narratives trite and unhelpful. As always, the devil is in the details. Her plausible-sounding theory can be made to seem true only by selective reporting and highly strained (and invariably unflattering) interpretations of her evidence. In Professor Robin West's case, for example, Coughlin combs a very large body of writing to find a single article in which the writer describes, with considerable restraint, her own sexual experience.²⁷ Coughlin then concludes that autobiographical writing predisposes one toward self-display.²⁸ Indeed, Professor West's delicacy and sense of tact are used against her; since all the action takes place offstage, the reader is left to guess at the details. Thus, through Coughlin's manipulation, the author emerges as a tease.²⁹ Professor Culp tells how he often begins his classes by explaining to his students his social origins: He is the son of a poor coal miner.³⁰ Culp may employ this technique for a variety of reasons, including a desire to inform his students who he is; the wish to let them know that poor, black people are not unintelligent or devoid of ambition; or simply to let them know in advance what his perspective in teaching the materials will be. So far as I have been able to tell, this brief reference to his social origins is one of the few times in his impressive body of

²⁶ See DuBois, *supra* note 24; Ellison, *supra* note 24.

²⁷ Coughlin discusses Robin West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 *Wis. Women's L.J.* 81 (1987). See Coughlin, *supra* note 4, at 1322.

²⁸ See, e.g., Coughlin, *supra* note 4, at 1232 (celebrates the self, makes suffering a market commodity); *id.* at 1247 (exaggerated claims "cause for wonder"); *id.* at 1284 (tends to the "heroic"); *id.* at 1320 (misdirected heroism).

²⁹ See *id.* at 1322-38.

³⁰ See Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 *Va. L. Rev.* 539, 539 (1991).

writing that Culp says much about his early life. Yet, Coughlin seizes upon this passage to label Culp a boasting "Horatio Alger" type—and generalizes to find self-glorification an inherent danger in the autobiographical mode for outsider scholars.³¹

It is as though a zoologist from another planet, wanting to determine whether birds can fly, looked for times when they were nesting, feeding on the ground, or sleeping, and pronounced them non-flyers. At times, Coughlin does not even have evidence of the sort she needs on hand, so she straightforwardly makes it up, as I shall discuss later in my own case. The fact is, we have outsider scholars to thank for a host of ideas and perspectives. The reader is invited to consult my recent annotated bibliographies of critical race theory writing³² for a sample, including the critique of neutrality and color-blindness in the law;³³ whiteness as a property interest;³⁴

³¹ See Coughlin, *supra* note 4, at 1292 (finding that Culp's story "duplicate[s] . . . the rags-to-riches stories popularized by Horatio Alger"). In another case, Professor Coughlin simply *changes the author's text* to make it come out the way she wants. Consider her attempt to establish that I, like Culp, engage in the autobiographer's sin of self-importance—of demanding inexcusably (like Horatio Alger) to be accepted where one is not welcome or has earned the right to entry. *Id.* at 1258 & n.106. In my second *Imperial Scholar* article, I asked a *question* as a way of framing the ensuing discussion:

What happens when a group of insurgent scholars gains admission, gets inside the door . . . ? *Are these new scholars promptly granted equal standing, integrated fully into the conversations, colloquies, footnotes, and exchanges that constitute legal-academic discourse on issues of race and equality?* Or, are they still marginalized, muffled, and kept in limbo—to be seen, perhaps, but not heard?

Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 U. Pa. L. Rev. 1349, 1350 (1992) (emphasis added).

Scarcely a strident passage—especially when one considers that my answer to the question turns out to be no. See *id.* at 1372 (concluding that new scholars are "not being integrated fully or easily into the colloquies, exchanges, and dialogues of legal scholarship").

In her note, however, Coughlin *changes* the underlined passage by dropping the question mark and adding the words "should be." The passage is converted into a provocative piece of self-assertion: Delgado says minority scholars "*should 'promptly [be] granted equal standing' and 'integrated fully into' activities pursued by mainstream scholars[.]*" Coughlin, *supra* note 4, at 1258 n.106 (emphasis added).

Coughlin's critique is full of liberties taken, like this one, to make the author look demanding or self-important.

³² Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 Va. L. Rev. 461 (1993); Richard Delgado & Jean Stefancic, *Critical Race Theory, An Annotated Bibliography: 1993: A Year of Transition*, 66 U. Colo. L. Rev. 159 (1995). See also *Critical Race Theory: The Cutting Edge* (Richard Delgado ed., 1995) (collecting essays in CRT corpus).

³³ See Neil Gotanda, *A Critique of "Our Constitution Is Color-Blind,"* 44 Stan L. Rev. 1 (1991).

³⁴ See Cheryl I. Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1707 (1993).

Western ideology and its role in the conquest of Indian lands;³⁵ reasoning from the bottom;³⁶ the development of anti-hate speech doctrine;³⁷ the critique of intent in antidiscrimination law and the role of unconscious racism;³⁸ the notion of intersectionality and anti-essentialism;³⁹ the social construction of race (including the white race);⁴⁰ the notion of civil rights as a homeostatic, interest-serving device;⁴¹ the Constitution as an instrument of white supremacy;⁴² and many other themes. Coughlin gives us credit for none of these, even though many derive from legal storytelling or narrative analysis—what she calls “autobiography.” She is too busy proving that birds can’t fly to look around for evidence to the contrary.

And what are the principal sins of Coughlin’s condemned? We sometimes earn royalties and speaker’s fees.⁴³ Robin West once wrote about sex.⁴⁴ Patricia Williams wrote irritably to some editors who wanted proof of racist intent in a slight the author suffered at a clothing store.⁴⁵ (But, of course, her point was that if she had written that the United States is the best, fairest country in the world with untold opportunities for minorities, the editors would have allowed the passage to slip through unfootnoted.) Autobiography silences dissent and criticism, for no one can attack it without seeming to put the writer’s life and personhood on the line.⁴⁶ (But

³⁵ See Robert A. Williams, Jr., Documents of Barbarism: The Contemporary Legacy of European Racism and Colonialism in the Narrative Traditions of Federal Indian Law, 31 *Ariz. L. Rev.* 237 (1989).

³⁶ See Mari J. Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 *Harv. C.R.-C.L. L. Rev.* 323 (1987).

³⁷ See Mari J. Matsuda, Charles R. Lawrence, III, Richard Delgado, & Kimberle Williams Crenshaw, Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment (1993).

³⁸ See Charles R. Lawrence, III, The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 *Stan. L. Rev.* 317 (1987).

³⁹ See Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 *Stan. L. Rev.* 581 (1990).

⁴⁰ See Ian F. Haney Lopez, The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice, 29 *Harv. C.R.-C.L. L. Rev.* 1 (1994).

⁴¹ See Derrick A. Bell, Jr., *Brown v. Board of Education* and the Interest-Convergence Dilemma, 93 *Harv. L. Rev.* 518 (1980).

⁴² See Derrick A. Bell, Jr., *Race, Racism, and American Law* 1-52 (3d ed. 1993).

⁴³ Coughlin, *supra* note 4, at 1232, 1282-84, 1287.

⁴⁴ See *id.* at 1322-88, analyzing West, *supra* note 27.

⁴⁵ See Coughlin, *supra* note 4, at 1273-74, 1282.

⁴⁶ See *id.* at 1234, 1281-82.

this certainly has not stopped Coughlin, nor Mark Tushnet,⁴⁷ nor Daniel Farber and Suzanna Sherry⁴⁸). First-person narratives incline one toward plagiarism (or at least the sin of unacknowledged borrowing), since the writer, being caught up in her own experiences, say with a sausage-making machine metaphor for legal process,⁴⁹ can ignore that Bismarck or Disraeli also wrote about sausage-makers a century or more ago.⁵⁰ (Of course, Williams' point was not to reiterate Disraeli's; he was not writing about jury dynamics at all but using the metaphor for quite another purpose.) Finally, first-person writing predisposes the author to ignore group history, with its suffering and poverty, in favor of preoccupation with the middle-class self and its laments.⁵¹ (But see *any* critical race theory writer or article for evidence to the contrary).

II. MY OWN CASE: DELGADO, THE AUTOBIOGRAPHER

Coughlin's treatment of me illustrates her theory-driven approach and inattention to actual evidence. Consider her characterization of me as an autobiographer at all,⁵² and then her treatment of the "wiser counsel" incident described in my first *Imperial Scholar* article.⁵³

A. *Who Me? Autobiographer? (Compared to What?)*

First, one who is familiar with my scholarship might ask, "why is Delgado considered an autobiographer at all?" Evidently, when Coughlin presented her paper at faculty workshops, this point created consternation—Delgado a writer of autobiography? Several listeners challenged the characterization, as well they should. The word "I" appears infrequently in my writing, mainly in the mandatory "maps" most law review editors want to see (e.g., "In the first section of this article, I . . ."). Even the most diligent reader of my more than 100 law review articles does NOT learn the answers to ANY of the

⁴⁷ Mark Tushnet, *The Degradation of Constitutional Discourse*, 81 *Geo. L.J.* 251 (1992).

⁴⁸ Farber & Sherry, *supra* note 9.

⁴⁹ Coughlin, *supra* note 4, at 1287-88.

⁵⁰ *Id.* at 1288-90 (questioning Professor William's failure to credit these earlier authors—but also neglecting to cite liberal novelist Upton Sinclair's work on the meat-packing industry).

⁵¹ See *id.* at 1283-87, 1291-92.

⁵² See *id.* at 1313 ("[t]he autobiographical essays authored by Richard Delgado"); *id.* at 1315 ("Delgado's autobiographical narrative").

⁵³ Delgado, *supra* note 23.

common questions one finds addressed in autobiography. For example, the reader might test himself or herself: Does he or she know where I was born? Who my parents are? How many siblings I have? Where I grew up? My height, weight, or age? My ethnicity? Appearance? Sexual orientation? Marital status? Whether I have children, and if so, how many? What I did before going to law school? Who my professors or role models were? What law school classes I teach? Where I live? With whom? Whether I have any disabilities? Grew up rich or poor? Speak any foreign languages? Whether I have had any adventures or great loves? Travelled in any foreign countries? Have any hobbies, pets, avocations, or play a musical instrument? Whether I practiced law, and if so, what kind and what I thought of it? In short, the reader does not learn, from my writing, anything significant about me as a person. Yet Coughlin seizes upon a single anecdote from one work and proclaims me an autobiographer.

I do tell stories, however. I am the author of an earlier piece (which Coughlin cites) on storytelling in the law, in which I recount five versions of the same event.⁵⁴ I am also the author of a series, entitled *The Rodrigo Chronicles*,⁵⁵ including one that appeared in this law review.⁵⁶ But Rodrigo and his interlocutor are completely fictional characters. The *Chronicles* dissect various vices and shortcomings of American culture and justice. They focus not on my own life as author, nor even very much on fictional characters, like "Giannina" or Rodrigo's faculty advisor. They are about events and characters (such as judges) in the real world. The *Chronicles* are the antithesis of autobiography.

It is essential that Professor Coughlin find that I am an autobiographer, however, for otherwise her theory would not hold true. An early misstep (as she considers it) could not be laid at the doorstep of autobiography, nor operate together with her critique of Williams,

⁵⁴ Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 Mich. L. Rev. 2411, 2418-35 (1989).

⁵⁵ See Richard Delgado, *The Rodrigo Chronicles* (1995) (collecting eight earlier chronicles, featuring an older professor and his alter ego Rodrigo Crenshaw, which appeared in various law reviews); Richard Delgado, *Rodrigo's Ninth Chronicle: Race, Legal Instrumentalism, and the Rule of Law*, 143 U. Pa. L. Rev. 379 (1994); Richard Delgado, *Rodrigo's Tenth Chronicle: Merit and Affirmative Action*, 83 Geo. L.J. 1711 (1995).

⁵⁶ Richard Delgado, *Rodrigo's Eighth Chronicle: Black Crime, White Fears—On the Social Construction of Threat*, 80 Va. L. Rev. 503 (1994).

Culp, and West to support a theory of autobiography's pitfalls and shortcomings. Let us see, then, what she makes of the passage she focuses on from *The Imperial Scholar*.

B. The Imperial Scholar and the "Wiser Counsel" Incident as Constructed by Professor Coughlin's Imagination

On the first page of my 1984 article, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, I mention that certain senior colleagues had warned me, early in my career, against writing in the field of civil rights.⁵⁷ I described this incident, which in different variations many women and scholars of color likewise report, in order to explain how I happened to be reading a great deal of civil rights literature all at once, several years into my teaching career. The article, written a short time after I received tenure, analyzes citation practices in the field of civil rights.

Rather than investigate what happened—I would have been glad to cooperate—Professor Coughlin concludes that it could not have happened the way I described it.⁵⁸ And what is her reason for believing I fabricated the "wiser counsel" incident?: the existence of two law review articles, published during my first year of teaching and cited in *The Imperial Scholar* itself,⁵⁹ the first dealing with whether Mexican-Americans can be a legally cognizable class,⁶⁰ and the second on legal education of minority students.⁶¹

Professor Coughlin seizes on these two articles, proclaims them civil rights pieces, and uses them to discredit my statement about having been warned away from civil rights writing early in my career. The result is that I acted disreputably no matter when I wrote the articles. If I had already written about civil rights, I could not have been warned away from the subject; or, if the warning was successful, my acquiescence showed cowardice and a willingness to

⁵⁷ See Delgado, *supra* note 23, at 561.

⁵⁸ Coughlin, *supra* note 4, at 1319-20. To her credit, Professor Coughlin did send me a copy of her article. But this occurred on the eve of its publication and long after she had presented it at workshops at many law schools—in short, after much of the harm was done.

⁵⁹ Delgado, *supra* note 23, at 572 n.60, 574 n.65.

⁶⁰ Richard Delgado & Vicky Palacios, *Mexican-Americans as a Legally Cognizable Class Under Rule 23 and the Equal Protection Clause*, 50 *Notre Dame Law.* 393 (1975).

⁶¹ Leo M. Romero, Richard Delgado, & Cruz Reynoso, *The Legal Education of Chicano Students: A Study in Mutual Accommodation and Cultural Conflict*, 5 *N.M. L. Rev.* 177 (1975).

put career above social concerns. All this is designed to show that the autobiographical vehicle inclines the author to fabricate facts about his or her career to make himself appear more heroic or victimized than he really was.⁶²

But do the two articles really establish what Coughlin thinks they do? Not at all. I wrote the two articles in question, as Professor Coughlin could easily have ascertained, during a Council on Legal Education Opportunity summer institute for minority law school applicants held at the University of New Mexico the summer following my graduation from Boalt Hall and just before I entered full-time law teaching at Arizona State University in August, 1974. My teaching duties at the institute turned out to be relatively light, and finding myself with some time on my hands and surrounded by a number of minority colleagues, I proposed that we start two articles. That is how I happened to write the piece with Leo Romero and Cruz Reynoso,⁶³ both of whom were professors at New Mexico. It is also how I happened to start the second article, co-authored with Vicky Palacios,⁶⁴ now a law professor but then a teaching assistant at the same institute.

At the end of the summer, I showed up at my first duty station, Arizona State, and a little later arrived at my second, the University of Washington, where I received essentially the same warnings from well-meaning senior professors: Go easy on the ethnic stuff, Delgado, until after you have tenure. I then produced a steady stream—*thirteen* articles in a row—on non-civil rights subjects, specifically, law and medicine.⁶⁵ All of this is a matter of public record. Anyone, including Anne Coughlin, with an interest in my early publication history can walk into a library and look up the entries for “Delgado” in the Index to Legal Periodicals for the years in question. (Indeed, to make the reader’s, and Professor Coughlin’s, task a little easier, I have attached the first page of the list of publications from my curriculum vitae, with nothing omitted, in Appendix I of this reply article.) The “wiser counsel” incident happened just as I said it did, the sequence being something Professor Coughlin could easily have checked before labeling me a

⁶² See Coughlin, *supra* note 4, at 91, 1320-21.

⁶³ Romero et al., *supra* note 61.

⁶⁴ Delgado & Palacios, *supra* note 60.

⁶⁵ See Appendix I, *infra*.

fabricator and a liar. As to her charge of cowardice in my acceding to the wiser counsel warning, I can only conclude that she must be woefully ignorant of the conditions under which minority scholars labored in the mid-1970s and still often do today. Her accusation that I then turned this warning around on my counselors, telling them to get out and stay out of civil rights, is a black and white reading of a gray proposition. Rather, I politely asked that they not make careers out of the field; occasional proposals or articles are still quite welcome.⁶⁶ The cure for the ignorance Coughlin betrays is exactly the sort of reading (autobiography) she condemns so sweepingly.

Why does an intelligent scholar like Coughlin commit the blunders she does? I believe the reason is simply her antipathy to the substance of critical race scholarship and radical feminism. Conservative scholar Stephen Carter, for example, is much more autobiographical than I. He writes about his upbringing,⁶⁷ his professor father,⁶⁸ his achievement test scores,⁶⁹ his experiences with high school cliques,⁷⁰ and his early years in law.⁷¹ He also committed a misrepresentation so serious regarding a conflict with the National Merit Scholarship Corporation that he later felt compelled to issue a retraction.⁷² Would not the mistakes and dangers of autobiographical writing be more readily explored in the body of work of a conservative scholar such as Carter? Or, take Clarence Thomas, who portrayed in great detail his Horatio Alger upbringing, relations with his sister, and efforts to achieve success and dignity in the legal world.⁷³ Would not his own stories vis-à-vis his sister and his employee, Anita Hill, have supplied even more intriguing grist for analysis than those of Culp, Williams, West, and myself?

⁶⁶ See Delgado, *supra* note 23, at 577. ("But while no one could object if sensitive white scholars contribute occasional articles and useful proposals . . . must [they] make a career of it?").

⁶⁷ See Stephen L. Carter, *Reflections of an Affirmative Action Baby* 73, 76-77, 78-79 (1991).

⁶⁸ *Id.* at 47.

⁶⁹ *Id.* at 48.

⁷⁰ *Id.* at 47-48.

⁷¹ *Id.* at 58-59.

⁷² Stephen L. Carter, 'Best Black' Syndrome: My Bitter Memory; Somehow, for 20 Years, I Was Haunted by a Slight That Never Happened, *Wash. Post*, Oct. 13, 1991, at C5.

⁷³ For descriptions and analyses of the proceedings that led to Thomas's confirmation, see Symposium, *Gender, Race, and the Politics of Supreme Court Appointments: The Import of the Anita Hill/Clarence Thomas Hearings*, 65 *S. Cal. L. Rev.* 1279 (1992); Jane Mayer & Jill Abramson, *Strange Justice: The Selling of Clarence Thomas* 31-61 (1994).

Coughlin's critique is a patchwork of uncharitable characterizations, imputations of motive, and outright misrepresentations of fact. A group of scholars intent only on working for racial and sexual justice in a world that sadly lacks it deserves better. Toward the end of her article, Professor Coughlin says the four of us would do better to address the plight of society's poor and dispossessed.⁷⁴ But, as a member of the "tough-love" school, there is little in her own writing to suggest she would approve of this writing if she saw or could even recognize it. Her most recent work criticizes the battered woman syndrome defense for depicting women as irrational and lacking self-control.⁷⁵ Coughlin is the opposite of an autobiographer. She is a scold, who writes in finger-wagging fashion in the voice of the social "we": moralistic, high-handed, and full of vague suggestions that "you could do better."

In *Beloved*, one of the slave owners writes a ruthlessly reductive "scientific" account of the behavior of his slaves. According to Sethe, the novel's central character, "this book about us" was one of the worst atrocities committed against the slaves on her plantation. It now seems to me that any white scholar writing about a work by a black writer may come perilously close to this same offense. We take a powerful and brilliantly rich text set within a history of racial oppression that implicates us all, and we organize it, master it, impose upon it a language and perspective utterly foreign to the culture from which it issued. No matter how good our intentions, how knowledgeable we may be about African-American literary theory, I do not believe it is possible for white critics simply to leave their perspective, growing out of their white privilege, at the door when entering these texts.⁷⁶

Despite her professed intentions only to help, Professor Coughlin strikes me as coming close to replicating the sin of the slave master described so starkly above in her mistaken analysis of the autobiographical efforts of critical race scholars.

⁷⁴ See Coughlin, *supra* note 4, at 1340.

⁷⁵ See Anne M. Coughlin, *Excusing Women*, 82 Cal. L. Rev. 1 (1994).

⁷⁶ Katherine J. Mayberry, *White Feminists Who Study Black Writers*, *Chron. Higher Educ.*, Oct. 12, 1994, at A48.

APPENDIX I:
RICHARD DELGADO'S POST-LAW SCHOOL PUBLICATION
RECORD, 1975-82
(ARTICLES ONLY)

Mexican-Americans as a Legally Cognizable Class under Rule 23 and the Equal Protection Clause, 50 Notre Dame Law. 393 (1975) (principal co-author).

The Legal Education of Chicano Students: A Study in Mutual Accommodation and Cultural Conflict, 5 N.M. L. Rev. 177 (1975) (co-author).

Euthanasia Reconsidered—The Choice of Death as an Aspect of the Right of Privacy, 17 Ariz. L. Rev. 474 (1975).

Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment, 51 S. Cal. L. Rev. 1 (1977) [*reprinted in* the L.A. Daily J., Dec. 1, 1978, at 1].

Organically Induced Behavioral Change in Correctional Institutions: Release Decisions and the "New Man" Phenomenon, 50 S. Cal. L. Rev. 215 (1977) [*reprinted in* Biological and Behavioral Technologies and the Law (M. Shapiro, ed. 1982)].

God, Galileo, and Government: Toward Constitutional Protection for Scientific Inquiry, 53 Wash. L. Rev. 349 (1978) (principal co-author).

Ascription of Criminal States of Mind: Toward a Defense Theory for the Coercively Persuaded ("Brainwashed") Defendant, 63 Minn. L. Rev. 1 (1978) [*reprinted in* P. Zimbardo, Readings in Social Influence, Indoctrination and Mind Control (1983)].

A Response to Professor Dressler, 63 Minn. L. Rev. 361 (1979).

To Tell the Truth: Physicians' Duty to Disclose Medical Mistakes, 28 UCLA L. Rev. 52 (1980) (co-author).

Active Rationality in Judicial Review, 64 Minn. L. Rev. 467 (1980).

Religious Totalism as Slavery, 9 N.Y.U. Rev. L. & Soc. Change 51 (1980) [*reprinted in Perspectives on the Contemporary Cult Experience* (J. Brock, ed. 1982)].

Death: Multiple Definitions or a Single Standard? 54 S. Cal. L. Rev. 1323 (1981) (co-author).

The Moralist as Expert Witness, 62 B.U. L. Rev. 869 (1982).

Cults and Conversion: The Case for Informed Consent, 16 Ga. L. Rev. 533 (1982) [*reprinted in Cults, Culture and the Law: Perspectives on New Religious Movements* (T. Robbins, W. Shepherd & J. Richardson, eds., 1985)].

“Concurrence” in Quotes: A Critical Assessment of Chief Justice Burger’s Objections to a Right to Treatment for the Involuntarily Confined Mentally Ill, 15 U.C. Davis L. Rev. 527 (1982) (principal co-author).

