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# Wise Latina/os Reflect on Role Models, Acting Affirmatively, and Structures of Discrimination: In Honor of Richard Delgado

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## Wise Latina/os Reflect on Role Models, Acting Affirmatively, and Structures of Discrimination: In Honor of Richard Delgado

Stephanie M. Wildman† with Lucy Gaines‡‡

Richard Delgado and I [Stephanie] have never lived in the same place or taught on the same faculty. I'm a provincial Californian, having spent my entire teaching career at Bay area law schools; Richard is an internationally recognized scholar who has taught at many different places. I am a White Jewish woman; he is a Latino man. In some ways it was unlikely that we would cross paths, yet he has had a greater impact on my professional life than anyone in the legal academy, and we have become friends to boot. So I am very honored to be part of this celebration of Richard's life and scholarship.

For this occasion, I was trying to remember when I first heard of Richard Delgado. I think it may have been from Chuck Lawrence, my then-colleague at the University of San Francisco (USF), dating from 1974 when Chuck, David Garcia, and I were hired as the "affirmative action" professors.<sup>1</sup> I make this statement proudly because it reflects a time when a small window opened to change the all-White nature of legal academia.<sup>2</sup> I made

†. © 2015 Stephanie M. Wildman. Stephanie M. Wildman is the John A. and Elizabeth H. Sutro Professor of Law at Santa Clara University School of Law. Thanks to Ellen Platt, research librarian extraordinaire, for superb library support. My special thanks to Lucy Gaines for giving this piece the benefit of her outstanding research skills and incisive creativity. Thanks also to Ida Bostian, Angela Harris, and especially Margaret Russell for providing helpful comments in praise of Richard Delgado, and to Margalynne Armstrong and Catharine Wells for comments and collegial support.

‡‡. © 2015 Lucy Gaines. Lucy Gaines received a Bachelor of Arts in English and Mathematics from Tufts University in 2009 and a Juris Doctor from Santa Clara University School of Law in 2015.

1. Stephanie M. Wildman, *Gender Integration of the Legal Academy: The Role of the AALS Section on Women in Legal Education*, 80 *UMKC L. REV.* 801, 801 (2012) (detailing Stephanie Wildman's teaching appointment at the University of San Francisco School of Law as an affirmative action hire).

2. For a fictionalized account of this period, see Stephanie M. Wildman, *Integration in the 1980s: The Dream of Diversity and the Cycle of Exclusion*, 64 *TUL. L. REV.* 1625, 1634 (1990) [hereinafter Wildman, *Dream of Diversity*] (describing the predominance of White professors in legal academia). *See also*

the same comment once to a Dean's wife, and she looked at me and said, "But you were qualified." I smiled and nodded, hoping she got the point. Affirmative action was contested then, and it remains so now.

Chuck was writing an important article in this early era on *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*.<sup>3</sup> In that article he argued that the Supreme Court's interpretation of the Equal Protection Clause to include an intent requirement was, and still is, seriously misguided because the notion of intent to discriminate ignores much of what social scientists understand about the brain, categorization, and bias.<sup>4</sup> When I read that article, I was very excited, because Chuck was among the first scholars to explain that systemic factors or forces, not necessarily the bad intentions of white-hooded, evil White men, created and sustained ongoing and systemic racial inequality.<sup>5</sup> The article spoke to the issues that acting affirmatively also tried to address.<sup>6</sup> The footnotes in this article were pristine, and I asked Chuck, "How is it that these footnotes are all so perfect?" Chuck's simple answer was: "Richard Delgado. He read the paper, and he just fixed them all." I was all ears. Chuck continued, speaking about Richard, "He writes so much; he's like a machine; he knows this stuff cold. He's like a human Bluebook," or words to that effect.

How do I remember that story? Well, there weren't so many Latino law professors then (not that there are so many now).<sup>7</sup> They comprised a quite small group in those days—small enough to have dinner at a restaurant during Association of American Law Schools (AALS) and sit around a table of maybe a dozen or so.<sup>8</sup> And I was jealous about those perfect footnotes.

Richard Delgado reappeared in my consciousness in 1989 when the Society of American Law Teachers (SALT) honored the

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STEPHANIE M. WILDMAN WITH CONTRIBUTIONS BY MARGALYNNE ARMSTRONG, ADRIENNE D. DAVIS, & TRINA GRILLO, *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* (1996) [hereinafter WILDMAN, *PRIVILEGE REVEALED*].

3. Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 *STAN. L. REV.* 317 (1987) (arguing that the intent requirement ignores the effect systematic and cultural notions of race have on consciousness).

4. *Id.* at 323.

5. *Id.* at 350.

6. *Id.* at 325.

7. Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 *U. PA. L. REV.* 537, 537–69 (1988).

8. *Id.* at 537.

University of Wisconsin Law School with the SALT annual teaching award.<sup>9</sup> The award usually went to an individual law professor, but SALT chose to honor Wisconsin—the school itself—“because its ‘minority faculty recruitment efforts [went] beyond tokenism.’”<sup>10</sup> Wisconsin had hired the “outrageously” high number of four faculty of color at one time—including one Richard Delgado.<sup>11</sup> Wisconsin’s bloc hiring created quite a national splash in an era of mostly White elite schools and the still swirling debate about affirmative action.<sup>12</sup>

The splash raised issues about combating ongoing systemic racial inequality, moving beyond tokenism, and the role of minority faculty in predominantly White institutions.<sup>13</sup> These themes underlie much of Delgado’s classic scholarship, and mine, too, which is another part of the story of how Richard and I have come to be friends. I am not sure when we actually met; it might have been when my other USF colleague Jean Stefancic suggested that the school invite Richard to speak on campus. And the rest of that story is history, as they say, or “herstory,” as Richard and Jean found in each other a life and work partnership that is beautiful to behold.

So I am telling you these recollections to provide some background for how little actual contact I had with Richard in those early years until 1994 when he told me I should write a book about White privilege. I had written several articles on that topic, but it was Richard who saw that the themes in my work could become a book. I had never written a book, so my blank stare must have come across the telephone line (yes, we had lines then) because he went on to explain how to do it. He said that I needed to submit a book proposal, including an outline of chapters and also a sample chapter. He was confident that, if I followed this advice, a publisher would be interested. So he took the time to extend his hand to me—someone he barely knew—and say, “Here, let me help you up this step.” For that gesture, I will always be grateful. And I know if he was helping me up that step, he had helped and continues to help myriad others. “King of the Mentors”

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9. *Id.* at 546.

10. Edward Reisner, *News Flashes (Relatively Speaking)*, GARGOYLE (University of Wisconsin Law School Forum) Spring 1989, at 2 (quoting the Society of American Law Teachers (SALT) President, Charles Lawrence, regarding the University of Wisconsin Law School’s efforts to hire minority faculty).

11. *Id.*

12. *Id.*

13. *Id.*

might be his title. Here is what one of his former students, Ida Bostian, wrote me in an email, sending her greetings:

Richard Delgado has probably influenced my thinking on race, equality and justice more than any other person I've ever known (or even read). Since the first day in his Civ[il] Pro[cedure] class, through the years as his research assistant, colleague, and friend, my life has been richer, more challenging, and more honest than I ever could have anticipated—or even hoped for—if I hadn't met him. "Thank You" doesn't quite cut it, but it's still the best I can do—so Thank You, truly, for everything.<sup>14</sup>

I think Ida speaks for many of us, at this symposium and around the globe. So, Richard, thank you for all you do in that role as King of the Mentors; I treasure you as a friend and colleague.

Now, shall I tell these folks the story of how you sent me page proofs on the Wednesday before Thanksgiving to turn around by Friday of that weekend when I had twenty people coming to Thanksgiving dinner on Thursday? Maybe not, because I cooked the dinner and turned the pages around on deadline, being, you see, as crazy as you are. But honestly, Richard, I've always wanted to tell you most people would have *at least* said it would be okay to wait until the Monday after . . . .

I [Lucy] encountered Rodrigo's *Chronicles* for the first time this past summer.<sup>15</sup> Through my reading of the *Chronicles*, I felt like I was getting acquainted with a real person. Some of the articles felt invigorating, reinforcing theories I had learned elsewhere. Others of the *Chronicles* were more challenging to me; I would sit with Rodrigo's words for a while pulling them apart, often flipping to the footnotes to find more sources to explore. Rodrigo created a lens through which I interacted with not only my studies, but also with the world around me (particularly with the tragic events unfolding in Ferguson this year).<sup>16</sup> This lens

14. E-mail from Ida Bostian, to author (Sept. 30, 2014, 19:48 PST) (on file with author).

15. For a compilation of Rodrigo's *Chronicles*, see RICHARD DELGADO, *THE RODRIGO CHRONICLES: CONVERSATIONS ABOUT AMERICA AND RACE* (1996) [hereinafter DELGADO, *THE RODRIGO CHRONICLES*]. The *Rodrigo Chronicles* by Richard Delgado discuss the history of Rodrigo's alter ego, his journey in life, his companion, and his struggles in becoming a law professor. A central theme in the book is Critical Race Theory, and the reader learns about racial justice and economic fairness through two intellectuals of color who converse with each other.

16. For two particularly poignant accounts of the events in Ferguson, see Justin Hansford, *I Went to Ferguson to Protect the Protesters. I Got Arrested Instead*, VOX (Oct. 24, 2014), <http://www.vox.com/2014/10/24/7033567/ferguson-protest-arrested-michael-brown> (recounting Justin Hansford's account of his arrest as a legal observer); Kimberly Norwood, *Why I Fear for My Sons*, CNN (Aug. 25, 2014, 5:04 P.M.), <http://www.cnn.com/2014/08/25/opinion/norwood-ferguson-sons->

encouraged me to practice Rodrigo's manner of challenging the boundaries of theory. I am extremely grateful for the chance to have learned from him.

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Some of Richard's classic work includes the *Rodrigo Chronicles* in twenty-eight articles and several books (by last count).<sup>17</sup> These *Chronicles* relate the history of Rodrigo Crenshaw,

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brown-police (presenting Kimberly Norwood's perspective on the events in Ferguson as a mother).

17. See Richard Delgado, *Rodrigo's Chronicle*, 101 YALE L.J. 1357 (1992) [hereinafter Delgado, *Rodrigo's Chronicle*] (introducing Rodrigo and the Professor); Richard Delgado, *Rodrigo's Second Chronicle: The Economics and Politics of Race*, 91 MICH. L. REV. 1183 (1993) [hereinafter Delgado, *Rodrigo's Second Chronicle*] (discussing law and economics); Richard Delgado, *Rodrigo's Third Chronicle: Care, Competition, and the Redemptive Tragedy of Race*, 81 CALIF. L. REV. 387 (1993) (theorizing on love and the ethic of care); Richard Delgado, *Rodrigo's Fourth Chronicle: Neutrality and Stasis in Antidiscrimination Law*, 45 STAN. L. REV. 1133 (1993) [hereinafter Delgado, *Rodrigo's Fourth Chronicle*] (discussing legal rules); Richard Delgado, *Rodrigo's Fifth Chronicle: Civitas, Civil Wrongs, and the Politics of Denial*, 45 STAN. L. REV. 1581 (1993) [hereinafter Delgado, *Rodrigo's Fifth Chronicle*] (introducing Rodrigo's critique of normativity); Richard Delgado, *Rodrigo's Sixth Chronicle: Intersections, Essences, and the Dilemma of Social Reform*, 68 N.Y.U. L. REV. 639 (1993) (exploring intersectionality and the relationships between men and women); Richard Delgado, *Rodrigo's Seventh Chronicle: Race, Democracy, and the State*, 41 UCLA L. REV. 721 (1994) [hereinafter Delgado, *Rodrigo's Seventh Chronicle*] (discussing enlightenment and political theory); Richard Delgado, *Rodrigo's Eighth Chronicle: Black Crime, White Fears—On the Social Construction of Threat*, 80 VA. L. REV. 503 (1994) [hereinafter Delgado, *Rodrigo's Eighth Chronicle*] (describing perceptions of Black crime); Richard Delgado, *Rodrigo's Ninth Chronicle: Race, Legal Instrumentalism, and the Rule of Law*, 143 U. PA. L. REV. 379 (1994) [hereinafter Delgado, *Rodrigo's Ninth Chronicle*] (exploring Rodrigo's theory of legal instrumentalism and the rule of law); Richard Delgado, *Rodrigo's Final Chronicle: Cultural Power, the Law Reviews, and the Attack on Narrative Jurisprudence*, 68 S. CAL. L. REV. 545 (1995) [hereinafter Delgado, *Rodrigo's Final Chronicle*] (discussing the use of narrative jurisprudence in legal writing); Richard Delgado, *Rodrigo's Tenth Chronicle: Merit and Affirmative Action*, 83 GEO. L.J. 1711 (1995) [hereinafter Delgado, *Rodrigo's Tenth Chronicle*] (detailing the problems with affirmative action systems); Richard Delgado, *Rodrigo's Eleventh Chronicle: Empathy and False Empathy*, 84 CALIF. L. REV. 61 (1996) [hereinafter Delgado, *Rodrigo's Eleventh Chronicle*] (detailing the problem with false empathy in clinical theory); Richard Delgado, *Rodrigo's Twelfth Chronicle: The Problem of the Shanty*, 85 GEO. L.J. 667 (1997) (discussing the problem of desperately poor border settlements); Richard Delgado, *Rodrigo's Thirteenth Chronicle: Legal Formalism and Law's Discontents*, 95 MICH. L. REV. 1105 (1997) (describing increasing discontent within the legal field); Richard Delgado, *Rodrigo's Fourteenth Chronicle: American Apocalypse*, 32 HARV. C.R.-C.L. L. REV. 275 (1997) [hereinafter Delgado, *Rodrigo's Fourteenth Chronicle*] (describing race wars and the role of Latinos in the conservative backlash); Richard Delgado, *Alternative Dispute Resolution Conflict as Pathology: An Essay for Trina Grillo*, 81 MINN. L. REV. 1391 (1997) (considering the inherent problems of alternative dispute resolution); Richard Delgado, *Rodrigo's Book of Manners: How*

the brother of famed U.S. civil rights lawyer, Geneva Crenshaw, who first graced the pages of the Harvard Law Review courtesy of her creator Derrick Bell.<sup>18</sup> Richard uses the narrative of Rodrigo's story—as Rodrigo meets his mentor, “the Professor,”<sup>19</sup> gets an L.L.M. and becomes a law professor himself,<sup>20</sup> marries, and has children,<sup>21</sup>—to teach and talk about a wide range of legal issues, from anti-discrimination law<sup>22</sup> to the rule of law,<sup>23</sup> from

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*to Conduct a Conversation on Race—Standing, Imperial Scholarship, and Beyond*, 86 GEO. L.J. 1051 (1998) (introducing rules of etiquette when engaging in conversations about race); Richard Delgado, *Rodrigo's Roadmap: Is the Marketplace Theory for Eradicating Discrimination a Blind Alley*, 93 NW. U. L. REV. 215 (1998) (describing why the free market theory cannot cure racism); Richard Delgado, *Rodrigo's Committee Assignment: A Skeptical Look at Judicial Independence*, 72 S. CAL. L. REV. 425 (1999) [hereinafter Delgado, *Rodrigo's Committee Assignment*] (critiquing the theory of judicial independence); Richard Delgado, *Rodrigo's Remonstrance: Love and Despair in an Age of Indifference—Should Humans Have Standing?*, 88 GEO. L.J. 263 (2000) [hereinafter Delgado, *Rodrigo's Remonstrance*] (considering alternative approaches to protecting minorities); Richard Delgado, *White Interests and Civil Rights Realism: Rodrigo's Bittersweet Epiphany*, 101 MICH. L. REV. 1201 (2003) [hereinafter Delgado, *Rodrigo's Bittersweet Epiphany*] (discussing the flaws in the current civil rights laws); Richard Delgado, *Rodrigo's Roundelay: Hernandez v. Texas and the Interest Convergence Dilemma*, 41 HARV. C.R.-C.L. L. REV. 23 (2006) (critiquing celebratory jurisprudence); Richard Delgado, *Rodrigo's Riposte: The Mismatch Theory of Law School Admissions*, 57 SYRACUSE L. REV. 637 (2007) [hereinafter Delgado, *Rodrigo's Riposte*] (critiquing the mismatch theory of affirmative action admissions); Richard Delgado, *Rodrigo's Corrido: Race, Postcolonial Theory, and U.S. Civil Rights*, 60 VAND. L. REV. 1691 (2007) [hereinafter Delgado, *Rodrigo's Corrido*] (using postcolonial thought to further the rights of Latinos in the United States); Richard Delgado, *Rodrigo's Homily: Storytelling, Elite Self-Interest, and Legal Change*, 87 OR. L. REV. 1259 (2008) (discussing the use of storytelling to enact social change); Richard Delgado, *Rodrigo's Portent: California and the Coming Neocolonial Order*, 87 WASH. U. L. REV. 1293 (2010) (analogizing California to a neocolonial state); Richard Delgado, *Rodrigo's Reconsideration: Intersectionality and the Future of Critical Race Theory*, 96 IOWA L. REV. 1247 (2011) [hereinafter Delgado, *Rodrigo's Reconsideration*] (critiquing theories of intersectionality); Richard Delgado, *Rodrigo's Equation: Race, Capitalism, and the Search for Reform*, 49 WAKE FOREST L. REV. 87 (2014) [hereinafter Delgado, *Rodrigo's Equation*] (discussing the similarities between capitalism and legal reform). For a compilation of Rodrigo's *Chronicles*, see DELGADO, *THE RODRIGO CHRONICLES*, *supra* note 15.

18. Derrick Bell, *The Civil Rights Chronicles*, 99 HARV. L. REV. 4 (1985) (introducing Rodrigo's half-sister and famed civil rights lawyer, Geneva Crenshaw); see also DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987) (detailing more about Geneva Crenshaw).

19. Delgado, *Rodrigo's Chronicle*, *supra* note 17.

20. Delgado, *Rodrigo's Seventh Chronicle*, *supra* note 17. Rodrigo accepts a teaching position at a law school in the Midwest.

21. Delgado, *Rodrigo's Remonstrance*, *supra* note 17 (depicting Rodrigo and Giannina expecting their first child); see also Delgado, *Rodrigo's Bittersweet Epiphany*, *supra* note 17 (depicting that Rodrigo and Giannina name their first child Gustavo, after the Professor).

22. Delgado, *Rodrigo's Fourth Chronicle*, *supra* note 17.

enlightenment political theory<sup>24</sup> to the social construction of threat and crime.<sup>25</sup> Of course these characters weigh in on merit,<sup>26</sup> affirmative action,<sup>27</sup> the role of Latinos,<sup>28</sup> racial profiling,<sup>29</sup> intersectionality,<sup>30</sup> and White privilege<sup>31</sup> as well as many, many other topics.

The *Chronicles* also talk about the use of narrative in law reviews and the attacks made against that form of scholarship.<sup>32</sup> Rodrigo emphasizes the usefulness of storytelling to Critical Race theorists, explaining how that art form has allowed scholars of color to explore and challenge the dominant mindset.<sup>33</sup> In one particularly provocative *Chronicle*, Rodrigo discusses the difficulty of enacting social change through the use of narrative jurisprudence.<sup>34</sup> The Professor warns Rodrigo that he is a character in a narrative and that to denounce the narrative analysis would render him nonexistent.<sup>35</sup> At that moment, the lights flicker, and Rodrigo disappears, stifled by the resistance to legal storytelling.<sup>36</sup>

In my [Stephanie's] own work, I have introduced Teresa Vallero, a Black Latina who became a law professor, and her colleague and friend Jessica Kearny, a senior White professor.<sup>37</sup> Jessica had told Teresa about the unwritten rules that surrounded faculty hiring decisions and the institutional struggle that had

23. Delgado, *Rodrigo's Ninth Chronicle*, *supra* note 17.

24. Delgado, *Rodrigo's Seventh Chronicle*, *supra* note 17.

25. Delgado, *Rodrigo's Eighth Chronicle*, *supra* note 17.

26. Delgado, *Rodrigo's Tenth Chronicle*, *supra* note 17 (weighing the costs of a merit system instead of affirmative action).

27. Delgado, *Rodrigo's Riposte*, *supra* note 17 (critiquing the mismatch theory of law school admissions).

28. Delgado, *Rodrigo's Fourteenth Chronicle*, *supra* note 17 (discussing potential race wars and the role of Latinos); *see also* Delgado, *Rodrigo's Corrido*, *supra* note 17 (depicting Rodrigo likening the Latino community to a colony within the United States).

29. Delgado, *Rodrigo's Equation*, *supra* note 17 (discussing the system of capitalism and its effect on legal reform).

30. Delgado, *Rodrigo's Reconsideration*, *supra* note 17 (discussing the problem of White privilege and critiquing intersectionality).

31. Delgado, *Rodrigo's Fifth Chronicle*, *supra* note 17 (describing the rise of the neo-Republican movement).

32. Delgado, *Rodrigo's Final Chronicle*, *supra* note 17 (discussing the use of narrative jurisprudence).

33. *Id.* at 549.

34. *Id.* at 558–59.

35. *Id.* at 573.

36. *Id.* at 574.

37. Wildman, *Dream of Diversity*, *supra* note 2, at 1644; *see also* WILDMAN, *PRIVILEGE REVEALED*, *supra* note 2, at 103.

occurred to enable Teresa's hiring at Holmes Law School.<sup>38</sup> They further appear in an essay about White privilege and working together across racial lines.<sup>39</sup> Teresa and Jessica are flying to Minnesota for a conference honoring one of their heroes, Richard Delgado.<sup>40</sup> Jessica hopes she will meet Rodrigo who is listed as a co-panelist. Teresa has met Rodrigo in that small circle of Latino law professors, but she has not spoken with him in a while. Let's listen in:

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Jessica sighed as she buckled her seat belt. Teresa glanced over at her friend and said, "You really still don't like flying, do you?"

Jessica just shook her head, "But I know it is part of the job. I appreciate your flying with me and we all want to honor Richard. But I'm actually excited for the chance to meet Rodrigo Crenshaw. You know him, don't you?"

Teresa nodded, "We go back to a time when there were so few Black and Latino professors that we all knew each other. And there still are not so many of us."<sup>41</sup>

Jessica, who is White, agreed and pointed to the "fasten seat belt" sign which showed just a belt buckled. "Do you remember that first flight we took together, when the seat belt sign had White hands holding the belt?"

Teresa nodded, "I do remember; I was surprised you had noticed. So I guess someone with power to change it noticed, too. Though the people on the lavatory sign are still White," she smiled and added, "Well, maybe more yellow," they laughed. "But it's a yellow that means White. But seriously, that's what this conference is about—how to be more inclusive—how to make these White institutions notice the harm and inequality they perpetuate."

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38. Wildman, *Dream of Diversity*, *supra* note 2, at 1668–69; *see also* WILDMAN, *PRIVILEGE REVEALED*, *supra* note 2, at 106–10.

39. Margalynne J. Armstrong & Stephanie M. Wildman, *Working Across Racial Lines in a Not-so-Post-Racial World*, in *PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 224* (Gutierrez y Muhs et al. eds., 2012).

40. *Id.* (explaining "color insight" and employing storytelling).

41. ASS'N OF AM. LAW SCH., *THE RACIAL GAP IN THE PROMOTION TO TENURE OF LAW PROFESSORS: REPORT OF THE COMMITTEE ON THE RECRUITMENT AND RETENTION OF MINORITY LAW TEACHERS 1, 1* (2005), *available at* <http://www.aals.org/documents/racialgap.pdf>.

Jessica smiled, “I know you don’t do crosswords, but the New York Times puzzle had a clue today for an eleven letter word—the clue said ‘make racially diverse.’ And can you guess the answer?”

It was Teresa’s turn to smile, and she said ruefully, “In eleven letters?”

Jessica told her, “The word was ‘desegregate!’”

Teresa’s eyes got big, and Jessica said, “I know—wouldn’t it be nice if that was all it took? We haven’t really even desegregated yet as a country—racial patterns persist in housing and therefore in schools, and also in many workplaces. You can still eat in restaurants with all White diners and waiters, but the cleaning staffs are all people of color. Yet even in the face of persistent remaining segregation, we need to start the work of being more inclusive. Merely desegregating just doesn’t cut it.”

Teresa observed, “Even in our bailiwick—the academy—we have seen some change, but then look at *Presumed Incompetent* and the phenomenon surrounding it.<sup>42</sup> The book has a Facebook page and already two symposia commenting and enlarging the scholarship in the book. Women of color are telling their stories, and yet the editors had trouble finding a publisher. But the book sold out on Amazon almost instantly, and I just read that Amazon has sold it out for a second time. The Times puzzle and much of the legal system view ‘desegregation’ as the meaning for ‘making more racially diverse,’ without an acknowledgment or understanding of all the issues untouched by law—like the ones *Presumed Incompetent* addresses.”

“That’s what my talk is about,” answered Jessica, “the structures of discrimination that keep racial hierarchy intact like White privilege, microaggressions, racial profiling, hate speech, and the ambivalence about racial diversity. Law plays a role in each of these arenas, but no unified analysis of the structures of

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42. PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutierrez y Muhs et al. eds., 2012) (exploring the intersecting roles of race, gender, and class in the academic world and uncovering serious detrimental consequences for women of color faculty). See Symposium, *Presumed Incompetent: Continuing the Conversation (Part I)*, 29 BERKELEY J. GENDER L. & JUST. 183, 336 (2014); Symposium, *Presumed Incompetent: Continuing the Conversation (Part II)*, 12 SEATTLE J. FOR SOC. JUST. 285, 518 (2014); Presumed Incompetent, FACEBOOK.COM, <http://www.facebook.com/PresumedIncompetent> (last visited Mar. 27, 2015). See also Montré D. Carodine, *Presumed Incompetent Too: A Review of the New Must-Have Manual for Women of Color in the Academy*, 2 IND. J. L. & SOC. EQUALITY 286 (2014), available at <http://www.repository.law.indiana.edu/ijlse/vol2/iss2/3>.

discrimination exists, and therefore no one has identified a unified role for law either, even though the world we live in is racially diverse.”

“Well, not all worlds, when you look at circles of friends and institutions. Many White people can see people of color at the mall but only interact with them when they are functioning in subservient positions,” mused Teresa. “And that ambivalence you mention still plays out in the still ongoing debates about affirmative action.”

Jessica said, “You know Richard Delgado has written about all of these topics, but I remember he wrote an early essay about affirmative action, explaining how it really serves as a tool for majoritarian interests.”

“I know that essay,” said Teresa enthusiastically. “He wrote it right before I was hired at Holmes. It has been like the canon of my life. How is it that we have never talked about it?”

Jessica replied, “Well, like so much of his brilliant work, it gets put on a library shelf or in a computer database. I hope the next generations are discovering it, because, as I remember, that piece is still highly relevant. I know it gave me pause, as a White person, as to whether the battle to get you hired was playing into the hands of those against social change . . . the forces opposed to racial diversity . . . . But I decided the only way forward was through. I didn’t see how keeping a mostly all-White faculty could be better. But I know that placing you into this role exacts a tremendous cost on you. That’s what *Presumed Incompetent* is about and so is Richard’s article.”

Teresa gave her friend a serious look as she nodded. “And I know you know . . . .”

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In his article, *Affirmative Action as a Majoritarian Device: Or, Do You Really Want to Be a Role Model?*,<sup>43</sup> Richard Delgado comments on the prevalent role that affirmative action plays in public discourse, both from progressives who tout it and from

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43. Richard Delgado, *Affirmative Action As a Majoritarian Device: Or, Do You Really Want to Be a Role Model?*, 89 MICH. L. REV. 1222 (1991) [hereinafter Delgado, *Role Model*].

conservatives who attack it.<sup>44</sup> The doctrine occupies this center stage role “far out of proportion to its effects in the real world.”<sup>45</sup>

Richard first considers reasons to doubt the utility of affirmative action and then zeroes in on the role model argument, illustrating the pitfalls it causes for those drafted into the role.<sup>46</sup> Concerning affirmative action generally, Richard observes: “Minorities are hired or promoted not because we have been unfairly treated, denied jobs, deprived of our lands, or beaten and brought here in chains.”<sup>47</sup> “Affirmative action neatly diverts our attention from all those disagreeable details and calls for a fresh start.”<sup>48</sup> Richard criticizes affirmative actions’ goals as “always forward looking . . . . The concept is neither backward-looking nor rooted in history . . . .”<sup>49</sup> And even worse, as those with power control the use of affirmative action, the doctrine “enables members of the dominant group to ask, ‘Is it fair to hire a less-qualified Chicano or [B]lack over a more-qualified [W]hite?’”<sup>50</sup> And, of course, asking the question ignores the existing affirmative action program for White males, otherwise known as American society.<sup>51</sup> As Richard closes:

By labeling problematic, troublesome, and ethically agonizing a paltry system that helps a few of us get ahead, critics neatly take our eyes off the system of arrangements that brought and maintained them in power, and enabled them to develop the rules and standards of quality and merit that now exclude us, make us appear unworthy, dependent (naturally) on affirmative action.<sup>52</sup>

He concludes this first part of the essay by asserting that affirmative action is a program created by those in power to serve their own needs, not the aspirations and concerns of people of color and that people of color should not support it.<sup>53</sup>

In the second portion of the paper, Richard addresses the role model argument that liberals use in support of affirmative action.<sup>54</sup> He summarizes the argument as follows:

A [W]hite-dominated institution hires you not because you are

44. *Id.* at 1222.

45. *Id.*

46. *Id.* at 1223.

47. *Id.* at 1223–24.

48. *Id.* at 1224.

49. *Id.* at 1223.

50. *Id.* at 1224.

51. *Id.* See WILDMAN, PRIVILEGE REVEALED, *supra* note 2.

52. Delgado, *Role Model*, *supra* note 43, at 1225.

53. *Id.*

54. *Id.* at 1226.

entitled to or deserve the job. Nor is the institution seeking to set things straight because your ancestors and others of your heritage were systematically excluded from such jobs. Not at all. You're hired (if you speak politely, have a neat haircut, and, above all, can be trusted) not because of your accomplishments, but because of what others think you will do for them. If they hire you now and you are a good role model, things will be better in the next generation.<sup>55</sup>

He explains five reasons why a scholar of color should not apply for the role model job: (1) it's heavy lifting, lifting up a whole people;<sup>56</sup> (2) the workplace views you as there to serve others, to satisfy their needs;<sup>57</sup> (3) the expectation of the role model is to do all the work that everyone does, plus all the extra counseling and representing the community of color on every institutional issue without any recognition of that extra role or explanation about how to balance all the demands;<sup>58</sup> (4) good role models are "assimilationists"<sup>59</sup> (As Richard observes: "Our [W]hite friends always want us to model behavior that will encourage our students and protégés to adopt majoritarian social mores.");<sup>60</sup> and finally, (5) "the role model job requires that you lie."<sup>61</sup> Explaining this last argument, Richard expounds that the role model is expected to tell youngsters that if they study hard they will beat the odds and become law professors.<sup>62</sup> But statistics about the fate of young minority students belie the optimism embedded in this lie.<sup>63</sup> Thus, concludes Richard, the role model argument sets scholars of color up to lie, to be exploited, and to be overworked.<sup>64</sup> So he urges scholars of color to be mentors, socially committed, and always honorable and authentic.<sup>65</sup>

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"Richard has been an amazing mentor to so many people," Jessica said thoughtfully. "You know I'm bringing him greetings

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55. *Id.*

56. *Id.*

57. *Id.* at 1227.

58. *Id.*

59. *Id.*

60. *Id.* at 1228.

61. *Id.*

62. *Id.*

63. *Id.* at 1229.

64. *Id.* at 1230.

65. *Id.*

from Margaret Russell who couldn't be here. Let me tell you what she said:

Richard's witty, incisive writing spoke volumes to me as a law student, and it still resonates with me decades later as a law professor. Many days, his article *Do You Really Want to Be a Role Model?* has kept me on an even keel (and privately smiling) through mounds of institutional meetings. *Words That Wound* continues to be a touchstone in the way I think, teach, and write about freedom of speech. Most of all, I deeply appreciate the door he opened in scholarship for so many new and formerly excluded voices. Richard helped to establish not only his own career and voice, but a chorus of diverse and vibrant writers who will affect public discourse for years to come.<sup>66</sup>

Teresa nodded, "The heavy lifting we do as people of color in these institutions takes a literal toll on our bodies."<sup>67</sup> Playing this role can erode our spirit, and the atmosphere really does get toxic.<sup>68</sup> Richard really did foresee those challenges related to the role model job. And he foresaw the kind of testifying we read in *Presumed Incompetent*, too. He is right that we need to be asking what kind of person we want to be, and that inquiry includes answering the question about how to treat ourselves."

Jessica replied, "I have often thought about Richard's essay and whether the people of color who desegregated the academy believe the cost was worth it."

"And yet it's not over," answered Teresa, "Battles over affirmative action continue even today. Just look at last term's U.S. Supreme Court decision in the *Schuette* case involving Michigan voters . . . ."<sup>69</sup>

The captain's announcement that they were hitting some rough air interrupted their conversation. Teresa patted Jessica's

66. E-mail from Margaret Russell, to author (Oct. 1, 2014, 8:51 PST) (on file with author).

67. David R. Williams, *Race, Socioeconomic Status, and Health: The Added Effects of Racism and Discrimination*, 896 ANNALS N.Y. ACAD. SCI. 173, 173–88 (1999); see also Elvia R. Arriola, *It's Not Over: Empowering the Different Voice in Legal Academia*, 29 BERKELEY J. GENDER L. & JUST. 320, 329 (2014) (describing how stress and unhealthy coping methods led the author to become diabetic).

68. See, e.g., Cam Inman, *Deion Sanders, Trent Dilfer Question 49ers Players' Faith in Jim Harbaugh*, MERCURY NEWS (Sept. 29, 2014), <http://blogs.mercurynews.com/49ers/2014/09/29/deion-sanders-trent-dilfer-question-49ers-players-faith-in-jim-harbaugh/> (discussing how the toxic nature of workplaces affects both the worker personally as well as the capacity of the workplace to be productive in the context of professional sports).

69. *Schuette v. Coal. to Defend Affirmative Action, Integration & Immigrant Rights & Fight for Equal. by Any Means Necessary (Schuette)*, 134 S. Ct. 1623 (2014).

arm, "Let's talk when we land. I want to discuss these issues with Rodrigo, too."

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"There he is!" Jessica grabbed Teresa's arm, and Teresa followed Jessica's excited gaze. Across the hotel lobby she saw Richard Delgado—tall, thin, surrounded by admirers—with a bemused look on his face. "Come on," Teresa urged. "We'll get a chance to talk with him later. And we're meeting Rodrigo in the coffee shop. Rodrigo loves his caffeine fix."<sup>70</sup>

They entered the hotel coffee shop and spied Rodrigo already nursing a cappuccino in a corner booth. He rose to embrace Teresa who hugged him back and said, "¿Cómo estás amigo?"<sup>71</sup> Rodrigo beamed at her and looked at Jessica, who said, "Entiendo mas que puedo hablar."<sup>72</sup> "Ah, bueno," replied Rodrigo.

"He is more comfortable in Italian," needled Teresa.

"I am fine speaking Spanish," Rodrigo drew himself up, but he was grinning. "But your amiga," he gestured at Jessica.

"Well I appreciate having the conversation in English," said Jessica, "and I am so happy to finally meet you Rodrigo. I am a big fan of your work."

Rodrigo blushed. Teresa said, "Don't swell his head unnecessarily." She turned to him as they got comfortable. "We have work to do Rodrigo. We need to co-ordinate our panel for tomorrow's session. I wanted to talk with you about my paper, and Jessica will tell you about hers. And we don't know what you are writing about."

"Please begin Teresa; I was intrigued by your title. I assume the "Wise Latina/os" is a reference to the speech then-Judge Sonia Sotomayor gave at the Latino/a Judge's conference before she was nominated for the Supreme Court."<sup>73</sup> She was speaking at a conference not unlike this one. Were you there?"

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70. See Delgado, *Rodrigo's Second Chronicle*, *supra* note 17, at 1184 (Rodrigo confesses his addiction to coffee); Delgado, *Rodrigo's Fourth Chronicle*, *supra* note 17, at 1140 (Rodrigo and the Professor enjoy a strong cup of coffee); Delgado, *Rodrigo's Eighth Chronicle*, *supra* note 17, at 524 (Rodrigo confesses his love of coffee); Delgado, *Rodrigo's Eleventh Chronicle*, *supra* note 17 (Rodrigo never refuses another cup of coffee).

71. [translated roughly] "How are you doing, my friend?"

72. [translated roughly] "I understand more than I can speak."

73. For a written report of the Honorable Mario G. Olmos Law & Cultural Diversity Memorial Lecture in October 2001, delivered at the University of California, Berkeley, School of Law, see Sonia Sotomayor, *A Latina Judge's Voice*,

“I was,” said Teresa. “She said, ‘I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a [W]hite male who hasn’t lived that life.’<sup>74</sup> She was speaking to a friendly audience, and was trying to explain her view that all of our lived experiences, including the experience of having a race, form our vision of the world.”

“I remember her being skewered in the confirmation hearings for that comment. Senator Graham in particular asked her something like: ‘I need to be reassured that you understand the world as it pretty much really is’—meaning his White male reality equated with all reality.<sup>75</sup> She gave him a piercing look and kept writing her notes. Later, she explained what she had been trying to say: ‘Our life experiences do permit us to see some facts and to understand them more easily than others.’<sup>76</sup> I felt so bad for her that she had to put up with that whole line of questioning.”

“Well, you can’t feel too bad for her,” said Rodrigo, “after all, she did get appointed to the Supreme Court.”

“Well, yes,” said Teresa, “and we all are glad she is there. But is she just serving the role model role that Richard described? Might we call her the Latina role model of the century? I’m speaking at the conference about her role in the *Schuette* case, dissenting.”<sup>77</sup>

“Tell me what about her dissent and what about that case makes you say that,” inquired Rodrigo.

“Well the case, as you know, was the last in a series of decisions in which the U.S. Supreme Court addressed affirmative action, in *Schuette* in the context of the struggles in Michigan,” began Teresa. “In case you don’t remember the facts, Michigan amended its state constitution by electoral vote.<sup>78</sup> This voting majority created Article I, section 26, which stated that public universities cannot not discriminate against or grant preferential treatment to any individual or group on the basis of race, sex,

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13 BERKELEY LA RAZA L.J. 87 (2002).

74. *Id.* See also Catharine P. Wells, *Improving One’s Situation: Some Pragmatic Reflections on the Art of Judging*, 49 WASH. & LEE L. REV. 323, 323–38 (1992) (discussing how every legal judgment comes from a particular perspective).

75. *Confirmation Hearing on the Nomination of Hon. Sonia Sotomayor, To Be an Associate Justice of the Supreme Court of the United States Before the S. Comm. on the Judiciary*, 111th Cong. 111–503 (2009) (statement of Sen. Lindsey Graham of S.C.).

76. *Id.*

77. *Schuette*, 134 S. Ct. 1623, 1651 (2014).

78. *Id.* at 1653 (Sotomayor, J., dissenting).

color, ethnicity, or national origin.<sup>79</sup> As a result, the only way to enact a race-sensitive admissions policy would be by means of the difficult task of amending the state constitution.<sup>80</sup> The Supreme Court majority found that the U.S. Constitution grants freedom of self-government, and so the citizens of Michigan could exercise that privilege to resolve the debate over race-sensitive admissions.<sup>81</sup> The majority felt it was not the Court's place to step in and deny the citizens of Michigan that right.<sup>82</sup> The majority approved removing decision-making to the hands of the voters, as opposed to keeping admissions policy in the hands of an unelected body, like university administrators."<sup>83</sup>

Rodrigo nodded, as he listened. "I do remember that this major affirmative action case didn't purport to be about the merits of affirmative action at all, but rather couched the whole debate in more procedural terms. And it ignored the long history of minorities being denied access to the political process that the Court touted as providing democratic decision-making."

Jessica chimed in, "Justice Sotomayor makes that point in her dissent."<sup>84</sup>

Teresa nodded. "I have the quote: 'Race matters. Race matters in part because of the long history of racial minorities being denied access to the political process.'"<sup>85</sup>

"I have said that a multitude of unfair laws still in effect in the United States adversely impact minorities. I have suggested naming the United States as a violator of human rights laws on the international stage, calling out this nation's treatment of minority groups.<sup>86</sup> So of course race matters," responded Rodrigo.

"Well, we all see that," said Jessica, "but all this talk about a post-racial society suggests a lot of people want to wish the issue away."

"That's why I am encouraged by the use of social media in changing attitudes," replied Teresa. "It seems the younger generation is having a voice that may change some attitudes. And

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79. *Id.*

80. *Id.*

81. *Id.* at 1654.

82. *Id.* at 1636 (majority opinion).

83. *See id.* at 1638.

84. *Id.* at 1651 (Sotomayor, J., dissenting).

85. *Id.* at 1655.

86. *See Delgado, Rodrigo's Remonstrance, supra* note 17, at 278; *see also* Connie de la Vega, *Using International Human Rights Law in Legal Services Cases*, 22 CLEARINGHOUSE REV. 1242 (2008).

Justice Sotomayor says, “The political process is the channel of change.”<sup>87</sup>

“I wish I could share your optimism,” said Rodrigo. “I like social media as much as the next online addict, but I think Justice Sotomayor’s faith in the political process is misplaced, especially to the extent she places it in the legal system. She and many others rely too much on courts for social change. And my friend, the Professor, believes that many share a growing sense that the legal system’s structure remains biased against racial reform.”<sup>88</sup>

“I am a racial realist, too, Rodrigo, but you must be glad to see someone in a Supreme Court opinion speak some truths about race,” returned Teresa. “Justice Sotomayor quotes Justice Scalia who said, equal protection ‘protects *persons*, not *groups*.’<sup>89</sup> This criticism ignores the obvious: discrimination against an individual occurs because of that individual’s membership in a particular group. Yes, equal protection is a personal right, but . . . no equal protection violation [occurs] unless the injured individual is a member of a protected group or class of individuals. It is [the] membership in the group—here the racial minority—that gives rise to an equal protection violation.”<sup>90</sup>

“And I remember she also says, ‘[W]hile the enduring hope is that race should not matter, the reality is that too often it does,’”<sup>91</sup> added Jessica. “I remember reading it because I’ve said that so often myself. Role model issues or not, I was still happy to read it in a Supreme Court decision, since they often say quite the opposite—remember Scalia’s ‘we are just one race here. It is American?’”<sup>92</sup>

Teresa made a face upon hearing Justice Scalia’s quote, and Rodrigo said, “Of course I don’t disagree that discrimination addresses groups and not just individuals or that race matters. It’s just as I’ve said in conversation with the Professor: that formal equality—treating Blacks and Whites exactly the same—does not produce actual equality. Neutral laws against discrimination cannot undermine the thick roots of American

87. *Schuetz*, 134 S. Ct. at 1667 (Sotomayor, J., dissenting).

88. See Delgado, *Rodrigo’s Seventh Chronicle*, *supra* note 17, at 744–45.

89. *Schuetz*, 134 S. Ct. at 1672 (quoting *Adarand Constructors Inc. v. Peña*, 515 U.S. 200, 227 (1995)).

90. *Id.* See also Stephanie M. Wildman, *Privilege, Gender, and the Fourteenth Amendment: Reclaiming Equal Protection of the Laws*, 13 TEMP. POL. & CIV. RTS. L. REV. 707 (2004).

91. *Schuetz*, 134 S. Ct. at 1675 (quoting *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 788 (2007)).

92. *Adarand*, 515 U.S. at 239.

prejudice. Neutrality looks only at present factors, instead of looking at the long-range future impact or the history preceding it. White people not only see fewer incidences of racism, they also fail to see the harm racism causes because they equate instances of racism and discrimination with their own sorts of misfortunes, like being cursed at by another driver on the road.”<sup>93</sup>

“I don’t know if you’re right about Whites seeing fewer incidences of racism. I see more references to White privilege in everyday Facebook postings just in the last year or so—and I’m not all that tuned in to social media,” said Jessica.

Teresa looked at her friend with surprise, “I didn’t even know you were on Facebook.”

“Well, I’m not really. I only go on it to stalk my children.” Jessica smiled. “They balked at first at having me as a ‘friend,’ but I told them, ‘If you are putting anything up there that you don’t want me to see then you had better think twice before you post it.’ But just in the last few months I’ve seen a story by an ex-baseball player, who is Black, about being racially profiled in his own driveway;<sup>94</sup> an article about ten simple ways White people can fight everyday racism;<sup>95</sup> a guide to determining if your team’s mascot is racist;<sup>96</sup> and an essay about what bike riding taught the author about White privilege.<sup>97</sup> And I’m not online or looking particularly for these stories. When I started writing about privilege, a search of that word would only bring up ‘evidentiary privileges’ or the ‘privilege against self-incrimination.’ Now a lot more information is out there.”

93. See Delgado, *Rodrigo’s Fourth Chronicle*, *supra* note 17, at 1155 (arguing that when equality of opportunity is informal, the majority group is able to rely on cultural understandings, norms, and practices that benefit them).

94. See Doug Glanville, *I Was Racially Profiled in My Own Driveway*, ATLANTIC MONTHLY (Apr. 14, 2014), <http://www.theatlantic.com/national/archive/2014/04/i-was-racially-profiled-in-my-own-driveway/360615/> (recounting Doug Glanville’s experience of being racially profiled in his driveway in Hartford, Connecticut).

95. See Derrick Clifton, *10 Easy Ways White People Can Step Up to Fight Everyday Racism*, EVERYDAY FEMINISM (Sept. 27, 2014), <http://everydayfeminism.com/2014/09/non-racist-white-person/> (describing ways for White people to challenge racism).

96. See Neil Irwin, *A Super-Simple, Step-by-Step Guide to Determine if Your Team Mascot is Racist*, N.Y. TIMES (Sept. 22, 2014), [http://www.nytimes.com/2014/09/23/upshot/a-super-simple-step-by-step-guide-to-determine-if-your-team-mascot-is-offensive.html?\\_r=0&abt=0002&abg=1](http://www.nytimes.com/2014/09/23/upshot/a-super-simple-step-by-step-guide-to-determine-if-your-team-mascot-is-offensive.html?_r=0&abt=0002&abg=1) (discussing the inherent racism in many team mascots for professional sports teams).

97. See Jeremy Dowsett, *What Riding My Bike Has Taught Me About White Privilege*, QUARTZ (Aug. 29, 2014), <http://qz.com/257474/what-riding-my-bike-has-taught-me-about-white-privilege/> (analogizing being a bicyclist in an automobile world to minorities living in a White privileged world).

“But is anyone paying attention?” asked Teresa.

“That’s hard to gauge, of course,” answered Jessica. “I’m on Twitter . . .”

“What!” exclaimed Teresa.

“I’m on Twitter,” Jessica continued, ignoring the interruption, “because of Mari Matsuda. She wrote to all her contacts and urged them to ‘follow her’ on Twitter. She said that we who care about social change should be taking Twitter seriously because the younger generation does. And they use it to organize.”

Rodrigo looked interested, but Teresa rolled her eyes.

“Well, I still didn’t do it,” Jessica continued, “but then I was speaking at the University of Hawai‘i and I saw Mari and she asked me, ‘Are you following me on Twitter?’ So I said, ‘For you, Mari,’ and I signed up. It hasn’t gotten me to a demonstration yet, but I learn a lot from Black Twitter and other postings. I’m not posting myself yet. I’m still trying to get a feel for how to use it.”

“Before we get off on cyberspace, come back to Justice Sotomayor,” urged Rodrigo. “Are you saying she is a token on the Court or is she playing a meaningful role? And don’t tell me she’s a role model.”

“I understand your issues with the role model label, but I conclude that having her there is better than not having her there, whether we call her a role model or not,” answered Teresa.

“Is it better? What can she truly accomplish, now that she’s there? After all, the entire legal system is structured so that there is no true judicial independence, from *stare decisis* to judicial ethics and demographics,” said Rodrigo, with a far-away look.<sup>98</sup>

Teresa explained her point, saying, “Everything Richard says about role models is true; why would anyone want the job? If someone had asked us back in the Seventies, ‘Do you want a job integrating the legal academy as to race and gender?’ we would have said, ‘You can’t pay us enough.’ But that has been the job! So I do not envy Justice Sotomayor for her position or her role. *But* it is better for social justice and social change that she sits on that Court because sometimes the token person of color who snuck through that door of White dominance when it opened just a crack may change someone’s mind or make them see the world differently, even if we won’t be around to see the changes that happen. None of us would be law professors today if it weren’t for

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98. Rodrigo may have been thinking about his own reflections about judges and judging. See Delgado, *Rodrigo’s Committee Assignment*, *supra* note 17, at 442 (commenting on the problems of judicial independence).

affirmative action, even if we are qualified and have had to prove it over and over again. I like to think we are impacting lives and helping our students see aspects of law they might not have otherwise discovered, particularly relating to social justice. Albie Sachs<sup>99</sup> once said: ‘we have to look at how much worse things would be if we hadn’t done what we did.’”<sup>100</sup>

Jessica smiled. “And Jackson Browne sings: ‘somewhere between the time you arrive and the time you go may lie a reason you were alive, but you’ll never know.’<sup>101</sup> But I wonder what Richard Delgado would say about Justice Sotomayor’s role. We are all impatient when it comes to wanting the arc that bends toward justice to move a little faster.<sup>102</sup> But I’m guessing he’s glad she’s there, acting with integrity, just as he urged us all to do in his article when he said to be mentors: socially committed, honorable, and authentic.<sup>103</sup> He acts that way himself, whether he wants to be called a role model or not.”

“Well,” replied Rodrigo, “At least he will be at this conference, and we can ask him. Which reminds me, I got an email earlier today from Angela Harris. She wanted me to make sure Richard heard her sentiment, since she couldn’t be at this conference. She wrote:

I recall sitting in my faculty office at Boalt—it must have been in the early Nineties—and getting a call from Richard. I was quite intimidated by him, especially because at the first Critical Race Theory summer workshop he challenged my “essentialism” thesis<sup>104</sup> and argued that essentialism is crucial for political solidarity. But in his phone call, Richard wanted to suggest that I write a book for his Critical America series. He had an outline and a thesis ready to go, and he urged me to

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99. Albie Sachs is a world-renowned human rights activist and former judge on the Constitutional Court of South Africa. For more on his imprisonment and exile for involvement in the freedom movement and his dedication to social justice, see ALBIE SACHS, *THE SOFT VENGEANCE OF A FREEDOM FIGHTER* (1990).

100. See Mari Matsuda, TWITTER (Oct. 4, 2014, 5:47 PM), [http://www.twitter.com/mari\\_matsuda/status/518563007895334912](http://www.twitter.com/mari_matsuda/status/518563007895334912).

101. JACKSON BROWNE, *For a Dancer, on LATE FOR THE SKY* (Asylum Records 1974).

102. Jessica alludes to Dr. Martin Luther King, Jr.’s quotation: “[t]he arc of the moral universe is long, but it bends towards justice.” For a discussion of the origins of this quotation, see Garson O’Toole, *The Arc of the Moral Universe Is Long but it Bends Toward Justice*, QUOTE INVESTIGATOR (Nov. 15, 2012), <http://quoteinvestigator.com/2012/11/15/arc-of-universe/#note-4794-8> (discussing that this quotation is often attributed to Dr. King but was used previously by religious theoreticians).

103. Delgado, *Role Model*, *supra* note 43, at 1230–31.

104. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (describing the inherent problems of essentialism in feminist legal theory for women of color).

consider it. At one point, I remember, he described me as an iconoclast—just like himself.

Although I didn't end up writing the book, that phone call represented an important moment. First, it was a moment of validation for me—still a junior scholar, still unsure of myself. Second, it was a light bulb moment about how to be a mentor. Richard had reached out to me despite the fact that I was on the faculty of a different school. With his stature and voice, he created an opportunity in his book series that really helped those who were still trying to establish themselves.

Third, and maybe most importantly, Richard in that phone call modeled intellectual integrity. He showed me respect and kindness despite our disagreement. It wasn't about who was right: it was about having something valuable to add to the conversation.<sup>105</sup>

With that Teresa raised her coffee cup, and Jessica and Rodrigo joined her. Clinking cups they said, "To Richard."

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105. E-mail from Angela Harris, to author (Oct. 3, 2014, 9:43 PST) (on file with author).

