

# YOU CAN TAKE THEM TO WATER BUT YOU CAN'T MAKE THEM DRINK: BLACK LEGAL SCHOLARSHIP AND WHITE LEGAL SCHOLARS

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## I. INTRODUCTION

We stand at a critical crossroads. The growth in the total number of scholars of color and in the number of places that are beginning to have a critical mass of scholars of color has begun to reap dividends in terms of a scholarship that is centered on the concerns of people of color. These black scholars have given voice to the interests of people who were always at the margin of the central legal discourse, even when their interests and rights were at the heart of the debate taking place in courts and legal scholarship. Is it possible to make this scholarship that has been written partially to other scholars of color accessible to majority scholars? Can we make white scholars hear the stories that black scholars are telling? My answer to this question is a definite "maybe." White scholars may listen to what scholars of color are saying, but what they hear is not always what scholars of color speak. In order for white scholars to hear, they must change what they do.

## II. THE NATURE OF STORIES

Not all stories are born equal, or put differently, stories that are written for the wrong audience will not be understood. We recently heard a version of this problem in the programming for Saturday morning children's TV. It turns out that little girls will watch TV programs with boys as heroes, but that little boys refuse to watch TV programs

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with girls as heroes.<sup>1</sup> Accordingly, much of Saturday morning TV is full of male stories, and there are few heroines. Like the little boys of the American viewing public, majority scholars often refuse to hear the stories that are being told in the scholarship of legal scholars of color. There are three reasons for this failure to hear that are similar to the problems of boys and TV. First, majority scholars<sup>2</sup> refuse to read the works of scholars of color, particularly if the works deviate from the pattern of scholarship that majority scholars have undertaken.<sup>3</sup> Second, even when they read the works of scholars of color—primarily when it is most traditional in form and content—majority scholars often misstate the premises and the objectives of that scholarship. Third, majority scholars often hear the story told by scholars of color as a kind of shrill craziness that does not meet the standards of any “reasonable” scholarship. All three of these reasons are deeply embedded in the structure of legal scholarship and all ultimately are a product of the reaction of majority scholars to the story told by scholars of color.

I will first describe the stories told by scholars of color that majority scholars will listen to, and explain why those stories have resonance. I will then explain why other stories told by black scholars have such a difficult hearing and why white scholars often do not read or pay attention to the work of scholars of color.

### III. THREE DIFFERENT STORIES: AUTOBIOGRAPHY AND RACE AND CULTURE

For many in legal education, two recent books, by Stephen Carter and Patricia Williams, are polar opposites.<sup>4</sup> I believe, however, that it is important to understand the extent to which these two books are in fact mirror images of each other. At their hearts, they are both autobiographical descriptions of experiences in the legal academy. In their use of autobiography, we can see the similarities and differences between two approaches to the interaction of race with legal education and why some

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1. Charles Solomon, *'Mermaid' Dives Into Saturday Morning*, L.A. TIMES, Sept. 10, 1992, at F1, F8 (“Girl characters regularly appear on shows that focus on groups of kids, but they’re usually relegated to secondary roles. Saturday morning cartoons have remained a boy’s club because studies have shown that little girls will watch shows about male characters, but little boys won’t watch programs about females.”); Byron Reeves & M. Mark Miller, *A Multidimensional Measure of Children’s Identification with Television Characters*, J. BROADCASTING, Winter 1978, at 71. I do not mean to suggest that such views need to predominate. Some have found that there has been a change in these views over time. See, e.g., LISA A. LEWIS, GENDER, POLITICS, AND MTV: VOICING THE DIFFERENCE 200-24 (1990) (describing how women rock singers have used cable television to subvert perspectives on women and what women want).

2. I will use the term “majority scholars” as a way of capturing the essentially white male professorate of American law schools. In that sense, it is a political grouping and not simply a description of genetic phenotypes.

3. See Richard Delgado, *Imperial Scholar Revisited: How to Marginalize Outside Writing*, *Ten Years Later*, 139 U. PA. L. REV. 1349 (1992).

4. See STEPHEN L. CARTER, REFLECTIONS OF AN AFFIRMATIVE ACTION BABY (1991); PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS (1991).

find the story of one more easy to accept than the other. Perhaps most importantly, these efforts to use autobiography to reconfigure and reconstruct American consciousness stand within the foremost part of the literary contribution of African-Americans to American culture.<sup>5</sup>

Susanna Egan has suggested that there are four primary patterns used by authors in writing autobiography that correspond roughly to various stages of the life of the autobiographer or the age that the autobiographer is describing.<sup>6</sup> The first pattern, "paradise," appears in the work of autobiographers who write about their youth, typically hypothesizing some Edenic sanctuary that the youth is forced by age and experience to leave.<sup>7</sup> The second pattern is the "journey" or quest for self-knowledge or lost time.<sup>8</sup> The third pattern is the "conversion," a trial in some difficult place through which the quester is able to gain special knowledge and eventual redemption.<sup>9</sup> The final pattern of autobiography, "confession," is a mature form of autobiography, often done at the very end of life, that does not follow the others in form or seem to have as its basis a simplistic formula.<sup>10</sup>

Professor Egan's descriptions of autobiography are helpful in talking and thinking about how to approach these two books, because one used extensively the first three patterns of autobiography that Egan outlined and the other did not. Professor Carter's autobiography is almost a textbook example of the patterns that Professor Egan described as traditional in autobiography. Professor Carter recounted an Edenic childhood spent as a "fac-brat" that racism occasionally interrupted.<sup>11</sup> This

5. See, e.g., William L. Andrews, *Introduction*, in *AFRICAN AMERICAN AUTOBIOGRAPHY: A COLLECTION OF CRITICAL ESSAYS 1* (William L. Andrews ed., 1992).

Autobiography holds a position of priority, indeed many would say preeminence, among the narrative traditions of black America. . . .

[Since] the eighteenth-century slave narrator who first sang into print the "long black song[.]" . . . African American autobiography has testified to the ceaseless commitment of people of color to realize the promise of their American birthright and to articulate their achievements as individuals and as persons of African descent. Perhaps more than any other literary form in black American letters, autobiography has been recognized and celebrated since its inception as a powerful means of addressing and altering sociopolitical as well as cultural realities in the United States.

*Id.* For a recent compilation of such stories, see *BEARING WITNESS: SELECTIONS FROM AFRICAN-AMERICAN AUTOBIOGRAPHY IN THE TWENTIETH CENTURY* (Henry L. Gates ed., 1991).

6. See SUSANNA EGAN, *PATTERNS OF EXPERIENCE IN AUTOBIOGRAPHY* 3-13 (1984).

7. *Id.* at 3-4.

8. *Id.* at 4.

9. *Id.*

10. *Id.* at 8-9.

11. See, e.g., Stephen L. Carter, *The Best Black, and Other Tales*, *RECONSTRUCTION*, 1990, at 6. Professor Carter recalls:

My father taught at Cornell, which made me a Cornell kid, a "fac-brat," and I hung out with many of the other Cornell kids in a private little world where we competed fiercely (but only with one another—no one else mattered!) for grades and test scores and solutions to brain teasers.

. . . And when I decided that I wanted to attend Stanford University, I was told by [a] guidance counselor that I would surely be admitted because I was black and I was smart. Not because I was smart alone, not even because I was smart and black, but because I was black and smart: always, the skin color preceding any other observation.

description, at its heart, fits within the pattern of youthful descriptions of life found in most autobiographies. In Professor Williams's description of her childhood, we see the reality of her life, not as a past Eden, but rather in places as a bleak and dreary past of hardship and racial oppression.

Much of Professor Carter's book is a description of his journey from student to faculty member. In that journey we see the struggle in which he has engaged, but we also see clearly the theme of the goodness of society that such descriptions ultimately validate.<sup>12</sup> What many take from Professor Carter's journey is the notion that if he can make the trip, why not other blacks?<sup>13</sup> Many also hear his description of his past as the most important indictment of affirmative action and race conscious policies. Professor Carter tried to obliquely reject that interpretation in his book, but he ultimately failed to do so, precisely because his story resonates with the image of the privileged black person who has benefited from unfair advantage and now has been converted to the truth and power of the color-blind society.

This view of the story told by Professor Carter is consistent with what David Howard-Pitney has called the Afro-American Jeremiad.<sup>14</sup> This jeremiad is a variant on the American jeremiad that sees Americans as a chosen people who will use the problems of today to spur them on to a greater destiny. Part of the Afro-American tradition has been to turn this American story into one about Afro-Americans that sees them as chosen among the chosen. The story that many colleagues hear Professor Carter tell is consistent with that aspect of the story of Afro-Americans. It is like Martin Luther King's "I have a Dream" speech and Thurgood Marshall's reminder, upon the two-hundredth anniversary of the Constitution, that the Civil War amendments transformed the original document by bringing blacks within the phrase "We the people."<sup>15</sup>

Professor Carter engaged in a conversion—from naive student radical to hard-edged and practical meritocratic professor of law. Other black Americans have been confused by their stories and the impact of race, but Professor Carter recognized the power of society, if it tries, to become better and fairer. Nevertheless, the reason that Senator Spector raised Professor Carter's book on national television during the Clarence

*Id.*

12. A number of people have told me that they have interpreted my article on autobiography in this light. See Jerome M. Culp, Jr., *Autobiography, and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539 (1991). I did not intend it that way, but since I do use some of Professor Egan's patterns in that work I understand why some hear it that way.

13. I do not believe that this is how Professor Carter would like to have his message interpreted, but I believe that this is implicit in the way he describes the situation and presents his life as an example.

14. DAVID HOWARD-PITNEY, *THE AFRO-AMERICAN JEREMIAD: APPEALS FOR JUSTICE IN AMERICA* 3-34 (1990).

15. Justice Thurgood Marshall, *Celebrating the Constitution: A Dissent*, HARPER'S MAG., July 1987, at 17, 17-18; see also HOWARD-PITNEY, *supra* note 14, at 138-51.

Thomas hearings is that many who read the book conclude that Professor Carter's conversion was to the current system and its values. In our society, if one is to be converted and thus understood, it had better be to some version of the status quo.

*Alchemy of Race and Rights* is different because it fits the pattern of much of the recent work of women and people of color in its opposition to the current system. Professor Williams's book is much more a form of confession. This is clear from the subtitle, *Diary of a Law Professor*. Diaries and confessions do not fit as easily into the traditional framework of stories. Her story is more of a challenge to the reader to appreciate not the form but the substance of life. It is to this appreciation and deconstruction of traditional categories of writing that much of the work of black authors, particularly black women authors, is directed.<sup>16</sup> Professor Williams's work is accordingly much less under the control of the traditional approaches of white scholars to the stories of black people.

It should not surprise us that Professor Carter's book has found a much warmer response among the popular organs of traditional media power and has been promoted by the academic powers that be. Professor Carter's message was first printed as an "op. ed." piece in the *Wall Street Journal*<sup>17</sup> and then as an article in *Reconstruction*.<sup>18</sup> After publication, the *New York Times Book Review* devoted its cover review in its first fall issue to the book<sup>19</sup> and the *New York Times* published an excerpt as an "op. ed." piece.<sup>20</sup> Professor Williams's book has ultimately won wide acclaim across a number of disciplines, but it has been critically reviewed in the main in law reviews rather than the important papers of the status

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16. Black writers are constantly trying to change how people are represented.

But militancy is an alternative to madness. And many of us are daily entering the realm of the insane.

... Clare [heroine of Nella Larson's *Passing*] boldly declares that she would rather live for the rest of her life as a poor black woman in Harlem than as a rich white matron downtown. I asked the class to consider the possibility that to love blackness is dangerous in a white supremacist culture—so threatening, so serious a breach in the fabric of the social order, that death is the punishment.

BELL HOOKS, *BLACK LOOKS: RACE AND REPRESENTATION* 6, 9 (1992).

We who have been oppressed and silenced—especially those of us who suffer from the "traumata of insignificance" . . . because we belong to insular "minorities" from some of the smallest countries of our planet—will never be tempted by the illusions of leadership, will never be deluded into thinking that we can represent anyone but ourselves.

FRANCOISE LIONNET, *AUTOBIOGRAPHICAL VOICES: RACE, GENDER, SELF-PORTRAITURE* 6 (1989); see also WILLIAM L. ANDREWS, *TO TELL A FREE STORY: THE FIRST CENTURY OF AFRO-AMERICAN AUTOBIOGRAPHY, 1760-1865* (Illini Books 1988) (detailing how black slaves used autobiography to debate and question their status); HOUSTON A. BAKER, JR., *WORKINGS OF THE SPIRIT: THE POETICS OF AFRO-AMERICAN WOMEN'S WRITING* (1991) (discussing how Afro-American women have altered the terms of the debate by reconfiguring the notions of power, gender, and race).

17. Stephen L. Carter, *Racial Preferences? So What?*, WALL ST. J., Sept. 13, 1989, at A20.

18. Carter, *supra* note 11, at 6.

19. David J. Garrow, *Is There a Correct Way To Be Black?*, N.Y. TIMES, Sept. 1, 1991, § 7 (Book Review), at 1.

20. Stephen L. Carter, *I Am An Affirmative Action Baby*, N.Y. TIMES, Aug. 5, 1991, at A13.

quo.<sup>21</sup>

The best example I have encountered of the inability of people to understand Patricia Williams's story was the reaction of a white liberal colleague whom I induced to read her book. This is a person of much goodwill and good humor. He told me that he found the book irritating and ultimately unpersuasive. He compared her work to some of mine and found hers much less persuasive. It is clear that Professor Williams deserves the high praise and favor that she has garnered in parts of the legal community, praise and honor that I do not ever expect to obtain, but many colleagues have told me of their similarly negative reaction to her work.<sup>22</sup> They simply cannot hear the story she is telling. It is too black, too feminist, and too full of the power of the story of black woman. It requires readers to understand the possibility of powerlessness and to be able to put themselves in the position of the disadvantaged, but that is something that majority scholars often are unable to do. It is not that they cannot read the words, but that they cannot hear a cognizable story. What this colleague convinced me of is that my story is easier on the ears of white scholars precisely because it comes across as unthreatening and therefore as understandable. This is ultimately discouraging because it says that precisely when we are most able to evoke truth within our stories as people of color it will be difficult for people to hear them.

As part of the bicentennial celebration of the Constitution several springs ago, I had the opportunity to give a speech at East Carolina Uni-

21. *Alchemy of Race and Rights* was not reviewed for several months after publication and then was negatively reviewed in the *New York Times*. See Wendy Kaminer, *Citizens of the Supermarket State*, N.Y. TIMES, May 26, 1991, § 7 (Book Review), at 10. The law review criticism similarly has been somewhat less than laudatory. See, e.g., Jean B. Elshtain, *Alchemy and the Law: Why This Marriage Can't Be Saved*, 25 U.C. DAVIS L. REV. 1171 (1992) (book review).

This is, perhaps, the most labile text I have ever encountered.

. . . Williams's alchemical science works in reverse, transforming something precious—the rule of law and the equality of political standing that is the law's *raison d'être*—into something common. Williams's hotch-potch of particularistic meanderings privilege one voice: her own. *Id.* at 1171-72. But see Robin West, *Lives in the Law: Murdering the Spirit: Racism, Rights, and Commerce*, 90 MICH. L. REV. 1771, 1771 (1992) ("This is a book that we should celebrate: it reminds us that books are occasionally very, very important, that reading can be transformative, and that writing sometimes can be and should always strive to be a moral act of the highest order."); Linda Greene, "Breaking Form", 44 STAN. L. REV. 909, 909, 924 (1992) ("In the dry desert of legal scholarship, *The Alchemy of Race and Rights* is an oasis of colorful and thought provoking work. . . . After *Alchemy*, can we teach the law without acknowledging the charades of legal objectivity? I think not."). Even some of the reviews by black women have been less than laudatory or, in my view, understanding of the difficult issues Williams raises and treats. See, e.g., Maria O'Brien Hylton, *Personal Narratives and Racial Distinctiveness in the Legal Academy*, 41 DEPAUL L. REV. 1407 (1992).

22. I was recently struck by the power of Professor Williams's voice when, at a conference at the Friday Center at the University of North Carolina, Chapel Hill, she spoke at the plenary session of the tenth anniversary session of the Women's Center at Duke and UNC. She addressed a vast, overflowing room of eminent female and male scholars from all over the country, including scholars of history, literature, sociology, and women's studies. She clearly is a person whose message transcends the legal academy. Her talk was the basis of much that followed in the remarks of other eminent speakers and in the discussion groups.

versity. As my contribution to this celebratory moment, I debated the question of affirmative action. In the period leading up to my speech, I had become more and more convinced that black legal scholarship was something that had an important potential to change the legal academy. I called my talk *The Myth of the Free Negro: Affirmative Action in the Age of Dan Quayle and Robert Bork*, and I hoped to have a transformative impact on the lives of the white and black people of eastern North Carolina. I delivered this talk with all of the fervor that I have inherited from my baptist minister forbears and all of the style that elite education can sometimes provide. In short, this was a talk both cogent and moving, emotional and informative, and a talk that I thought would transform my audience. The more sophisticated among you can already anticipate the failure of these goals, but how it failed has stuck with me as a repository of the potential responses of black people to calls for transformative action.

There were three black responses to my speech. The first was from a young black man, who said something like, "We wouldn't need to be race conscious if we could simply become blind to racial difference." He went on to add, "I do not look at race and I treat all people alike and if we simply convince others of the efficacy of this, truth and justice will reign in the land." (The last part may be a slight exaggeration; I may be confusing the end of my speech with his response.) The second response was from a black woman who spoke for a very long time. She told a tale of woe associated with being a black person at East Carolina, which is located in an area of North Carolina near the beach with few native black people. This young woman, who came to East Carolina from New York, encountered an environment filled with implicit and explicit racism that robbed her first of dignity and eventually of sanity. She had found herself after being lost in this insanity. She was going to tell her tale of woe on the Oprah Winfrey Show and help the other obviously still insane black people to achieve the same level of peace that she had only recently discovered through her experiences. The third response was from a slightly older black man at the back of the room near the end of the ninety-minute question and answer period. He said, "All of these responses were okay but we will never be really free until and unless we find God. If you have found God, then you know that nothing that white people do to black people can hurt them."

In these three responses we can see the stories and transformative reaction of black people to racial oppression. Some black people react like the first respondent and assume that if they can somehow find the color-blind solution then race as an issue will go away. This is the response of the black middle class. We insist that we made it without the benefit of color. Somehow Colin Powell became the first black head of the Joint Chiefs without being black. Steven Carter is just a Yale Law

Professor, not a black professor of law.<sup>23</sup> This is the safest response. Yet, it is a response that requires of black people the almost superhuman feat of being seen by others as black, and consumed by their racial animus, and seen by themselves as colorless.<sup>24</sup> The black assistant prosecutor who was one of two active prosecutors in the prosecution of the police officers who beat Rodney King adopted this view when he argued that he was willing to try the case anywhere, including predominately white Simi Valley.<sup>25</sup> Stephen Carter's book has at its heart this story, and it has a powerful call on the ears of the majority professorate. They can understand his claim that black people are forced by race-conscious efforts to be seen as black as the ultimate trump that renders all race-conscious efforts somehow suspect. The third response has also been typical of the American black intelligentsia. Black people have often used religion as a way of coping with an inhospitable world.<sup>26</sup> The respectable

23. See *supra* note 11; see also THOMAS SOWELL, *BLACK EDUCATION: MYTHS AND TRAGEDIES* (1969); SHELBY STEELE, *CONTENT OF OUR CHARACTER* (1990).

24. One of the most moving passages in *The Alchemy of Race and Rights* is the discussion of how to deal with a white acquaintance who tells you they do not see you as black. See WILLIAMS, *supra* note 4, at 9-11.

25. This may have been less a reflection of the prosecutor's naivete than of his understanding that he had to assert that kind of naivete. See Henry Weinstein, *White Says Jury Was the Worst Possible*, L.A. TIMES, May 8, 1992, at A3.

White [the black prosecutor on the case] acknowledged saying publicly that the prosecution could get a fair trial in Ventura County after [Judge] Weisberg announced that the case would be moved there. But he said it would have been impolitic to say anything else and the statement belied private worries.

White said that he and six other members of the district attorney's staff agonized over which potential jurors they wanted. They reviewed responses submitted by 264 potential jurors and rated them on a "1-to-5 scale, with 1 being best and 5 being worst," he said.

"There were only 27 '1s' and '2s' on the entire list, and none of them got on the jury," White said. He said he never before tried a case where he did not get any of his preferred choices on the jury.

In fact, he said that there were so many "5s" on his list that he wound up elevating some of them to "4s" because he had to differentiate between potentially bad and truly undesirable jurors.

*Id.* at A4.

26. Religion's power to free slaves goes back to the very beginning of European settlement in North America. At common law, it was illegal to enslave a Christian and to prevent the freeing of slaves, so slave owners first excluded Christian missionaries from slaves and eventually persuaded missionaries that slavery was a better protection than freedom for blacks. FORREST G. WOOD, *THE ARROGANCE OF FAITH* 116, 125 (1990). I want to emphasize that I am not contending that religious faith has never had nor that it never can have a powerful positive impact. Certainly, black churches have played a crucial role as educators and supporters of change, but it is also clearly true that religion has been used by society as a means of controlling black people's anger and distrust of the current system. One commentator wrote:

White preachers . . . held authority partly by virtue of being white and often partly by virtue of a slaveholder's permission to preach a nonrevolutionary version of the gospel believed to improve slaves' productivity. . . . For blacks, black preachers were "black like me," giving them a unique religious power base which the successful God-made Moses protected from the very likely danger of becoming too identified with Pharaoh's interests. Such men continually affirmed, in joint and clandestine settings, their identification with the liberating black Christian community.

Katharine L. Dvorak, *After Apocalypse, Moses, in MASTERS & SLAVES IN THE HOUSE OF THE LORD: RACE AND RELIGION IN THE AMERICAN SOUTH, 1740-1870*, at 173, 174-75 (John B. Boles ed., 1988).



response is to find a different kind of religion in the natural processes of the world. This too has occurred in intellectual discourse.<sup>27</sup>

Majority scholars can hear those versions of the stories that black people tell. Many majority scholars have bought Stephen Carter's book on affirmative action (not all have read it, but even those with unread copies assume they know what it says). The notion of a society that is able to get beyond race in meaningful ways is a powerful story to tell to majority scholars, because it does not require any change from them. Similarly, the story of religious faith in the natural processes of our culture is also a story that majority scholars find powerful and enlightening. If natural processes have produced goodness, then any current evil will ultimately be eliminated by these natural processes. I think this is how majority scholars hear the claims of black scholars even when the claims of black scholars are more nuanced and sophisticated than what is heard. Black people are permitted both of these responses; indeed, those in the academy who adopt them are likely to find substantial support from the white community. These responses are united by their failure to threaten the status quo directly. They are meant to be transformative, but in some distant nirvana. These responses are also joined by their lack of any empirical or theoretical basis. The theory that ignoring race will lead us to racial justice is never supported by empirical evidence that it has done so for blacks, or any other group for that matter, or by a real theoretical model that would support such a claim. These responses are, in different ways, leaps of political and moral faith in the current system. These faiths inhabit our models of the world with little contradiction and no protest that they are unscientific.

The second response is different. It attempts to use the observation of one black life to change the way we look at the world. It was the least persuasive response to my talk at East Carolina because it was both unwise and lacking in style,<sup>28</sup> but, as pure science, it was a better model of potential transformative power than either religion or the color-blind myth. This response possessed both information and an effort to test her one experience against the world. This response is also common. We often require of black people supportive narratives of the way in which it is possible to overcome hardship in the world. The story told in Patricia Williams's book has turned this second transformative potential into a

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27. See, e.g., Stephen L. Carter, *Academic Tenure and "White Male" Standards: Some Lessons from the Patent Law*, 100 YALE L.J. 2065 (1991) (suggesting that a neutral standard similar to the one used to approve patents can permit faculties to evaluate potential colleagues and allow for inclusion of blacks and other excluded groups); THOMAS SOWELL, *MARKETS AND MINORITIES* (1981). Dr. Sowell is black and an economist. He argues that the market will protect the interests of black people and naturally permit them to progress as other ethnic groups have. See *id.*

28. "Is it by chance that hysteria (significantly derived, as is well known, from the Greek word for 'uterus') was originally conceived as an exclusively female complaint, as the lot and prerogative of women?" Shoshana Felman, *Women and Madness: The Critical Phallacy*, in THE FEMINIST READER 133, 133 (Catherine Belsey & Jane Moore eds., 1989). It may be that I have not completely shed my patriarchal prejudices and thus perceived the black woman speaker as odd when she was simply responding to racism at Eastern Carolina in ways I did not appreciate.

reality that—if we are willing to listen—can alter the way we see the world. She is the madwoman telling her story. Professor Williams's story will not permit us to misunderstand the power of the black experience, and, in so doing, it changes the reality that exists. After reading this book, we who do law cannot see the easy platitudes of Supreme Court justices about justice or equality in the same way. Her work has helped to free me to speak about the madness in the law and the legal academy. But her story has also left many of my majority colleagues at sea in her madness. Professor Williams reinforces this notion of madness through her description of her dreams and fear. She confesses to being "out of sync" with the status quo. It is that fact of being oppositional that makes her work so challenging to understand. As the reaction to the works of Stephen Carter and others suggests, however, work that appropriates the traditional forms of scholarship also runs the risk of being misunderstood.

#### IV. WHITE SCHOLARS' CONFUSION WITH *ALCHEMY OF RACE AND RIGHTS*

##### A. *The Know Question*

*Arthur*: . . . It is good not to be guided by experience and experiment alone!

*Jack*: But what will guide us? Faith?

*Arthur*: No—we are scientists, so we shall try to use arguments. Now the arguments we need will take observations into account but will not give them final authority.<sup>29</sup>

How do we decide that we know something? This is an old philosophical question and an important issue. In *Alchemy of Race and Rights*, Professor Williams challenged our most basic assumptions about that question. She offered the following example:

C. ordered a hamburger and a glass of milk. The milk was sour, and C. asked for another. The waitress ignored her. C. asked twice more and was ignored each time. When the waitress finally brought the bill, C. had been charged for the milk and refused to pay for it. The waitress started to shout at her, and a highway patrolman walked over from where he had been sitting and asked what was going on. C. explained that the milk was sour and that she didn't want to pay for it. The highway patrolman ordered her to pay and get out. When C. said he was out of his jurisdiction, the patrolman pulled out his gun and pointed it at her.

("Don't you think" asks C. when I show her this much of my telling of her story, "that it would help your readers to know that the restaurant was all white and that I'm black?" "Oh, yeah," I say. "And six feet tall.")

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29. PAUL K. FEYERABEND, THREE DIALOGUES ON KNOWLEDGE 7-8 (1991).

Now C. is not easily intimidated and, just to prove it, she put her hand on her hip and invited the police officer to go ahead and shoot her, but before he did so *he* should try to drink the damn glass of milk, and so forth and so on for a few more descriptive rounds. . . .

[After being surrounded by eight SWAT team members] C. says she doesn't remember how she got out of there alive or why they finally let her go; she supposes that the black man paid for her. . . . "[t]he damndest thing about it," C. said, "was that no one was interested in whether or not I was telling the truth. The glass was sitting there in the middle of all this, with the curdle hanging on the sides, but nobody would taste it because a black woman's lips had touched it."

I think of C. a lot when I write, and of her truth-telling glass of sour, separated milk. The curd clinging to the sides; her words curdled in the air. The police with guns drawn, battlelines drawn, the contest over her contestation; the proof of the milk in the glass inadmissible, unaccounted for, unseen.<sup>30</sup>

It is the object of Professor Williams's book to make the real evidence in the lives of black people cognizable and admissible in legal settings. She shows how law and legal scholarship continually ignore the real experiences of black people in the world. Her most famous example is how the *University of Miami Law Review* attempted to ignore much of what she said about her exclusion from a clothing store (Benetton). Professor Williams wrote about the ignominy associated with the use of the infamous buzzer system<sup>31</sup> by the young white store clerk to exclude her. Her pain was only heightened by the review editors' insistence that the review had a policy against the publication of a person's physiognomy:

"I realize," wrote one editor, "that this was a very personal experience, but any reader will know what you must have looked like when standing at that window." . . . "It's irrelevant," another editor explained in a voice gummy with soothing and patience; "It's nice and poetic," but it doesn't "advance the discussion of any principle . . . This is a law review, after all." . . .

Ultimately I did convince the editors that mention of my race

30. WILLIAMS, *supra* note 4, at 56-57.

31. The buzzer system has been most famous as used at urban jewelry stores. An article in the *Washington Post Magazine* by Richard Cohen defending the buzzer system and the people who use it, Richard Cohen, *Closing the Door on Crime*, WASH. POST, Sept. 7, 1986, (Magazine), at 13, produced a storm of protest. This included a minisymposium on the issue in *The New Republic* with a number of authors supporting it (Walter E. Williams, a black economist who found the buzzer system an efficient use of information; Rhonda Schoem, a presumably white woman who wrote in the voice of her father, a jewelry store owner; Roger Starr, a *New York Times* editorial writer who identified several "categories of suspicion," including male sex and black skin) and a few who were opposed. See *The Jeweler's Dilemma: How Would You Respond?*, THE NEW REPUBLIC, Nov. 10, 1986, at 18-22. But, as the editorial appended to this colloquy pointed out, "Among our contributors, . . . [all] fail[] to note that it's illegal. A jewelry store, as a public accommodation, is forbidden to discriminate on the basis of race under the Civil Rights Act." *Id.* at 21-22.

was central to the whole sense of the subsequent text; that my story became one of extreme paranoia without the information that I am black; or that it became one in which the reader had to fill in the gap by assumption, presumption, prejudice, or prejudice. What was most interesting to me in this experience was how the blind application of principles of neutrality, through the device of omission, acted either to make me look crazy or to make the reader participate in old habits of cultural bias.<sup>32</sup>

The question that is posed by Professor Williams's story is why it cannot be believed. The first time she published this story the *Miami Law Review* editors refused her offer to provide an affidavit of her experience, and removed her reference to Benetton out of fear of a lawsuit.<sup>33</sup> This episode poses difficult questions about how we create facts. Her affidavit was rejected but, as she points out, an inaccurate story about her experience published by a newspaper would be authoritative. She is involved and therefore untrustworthy, but, as she notes, perhaps a neutral white bystander would be sufficient. These and other stories point out how much the configuration of what counts as important, true, and real is a product of assumptions of power over the stories that people tell. We disempower people without power or people with stories that are discomfiting to the majority. Professor Williams makes us face the limitations associated with those choices. She helps us to see her brown face pushed up against a store window and the white curdle of milk, sights that exist only in the unappreciated minds of black and poor people, and finally to relate those images to some of the notions about equality and equal opportunity that are part of the legal discourse. Of course it is not possible to tell all possible stories; the power of this book is how much it demonstrates that black people have stories that would change how we see the world and legal questions.

I am reminded of the need for such knowledge from the reaction of my colleagues to the Benetton story. One colleague said that Professor Williams's response was not "lawyer-like":

No lawyer I know would have assumed that the actions of a seventeen year old store clerk were reflective of the actual policies of Benetton. She should have gone to the store clerk's supervisor, written to the company headquarters, or sued, but she should not have responded by putting up a poster board and writing about it in her diary. These are not the responses of a lawyer.

I take it my colleague means that the responses are not real or important or effective. What my colleague does not acknowledge is that the lawyer story that she favors rests on a lot of assumptions. My colleague

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32. WILLIAMS, *supra* note 4, at 47-48 (second omission in original).

33. In the unapproved version published in the *Miami Law Review*, Benetton is not mentioned. See Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127 (1987). Professor Williams described this failure in a private conversation with me.

is assuming that complaints carefully carried out in appropriate order will change the world. The truth is that this is often not true of issues involving race. What my colleague wants Professor Williams to do as a lawyer is act like my colleague, a white privileged law professor, would have acted. Professor Williams's point is that in her reality such actions are often not effective. Indeed, a lot more people know about this incident than would have known about it if she had simply been "lawyer-like."<sup>34</sup> The unstated premise of this comment is that Professor Williams was not fair to Benetton. Assume that Benetton is fair, my colleague unconsciously requires of Professor Williams. This assumption—that most white people are fair—is often made by the law,<sup>35</sup> but it is wrong and unscientific. If my colleagues in the legal academy are to increase their knowledge of the racial experience of black litigants and citizens, they must begin to listen to people like Professor Williams on knowledge.

### B. *The Power of the Word*<sup>36</sup>

Professor Williams's prolific scholarship stands among the most important new works in the legal academy. It gets much of its power from the way that her words give meaning to the ordinary and animate the unobvious. Her ears hear a different decibel level and her eyes see into the nooks and crannies of our everyday experience. Her book suggests that it must be difficult to be Patricia Williams; she sees and knows more than most of us are willing to appreciate (but I am sure that Professor

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34. Indeed, the posting of the board on the window may have been a wonderful act of legal gamesmanship. In order to respond, the store must either sue Professor Williams for libel, or it must disclaim the actions of the store clerk. Either way, the response is likely to be more chilling of this type of activity because of the cost of responding. At the heart of my colleague's reaction is a view that appropriate behavior for a lawyer is about professional responsibility rather than commitment to the fairness of everyday life. See Culp, *supra* note 12 (white colleagues often require black faculty to adhere to a view of the academy that ignores black reality and requires allegiance to the system). Professor Williams and lots of black people and women do not agree with that view and they are not mad.

35. In *City of Richmond v. J. A. Croson*, 488 U.S. 469 (1989), the majority made lots of assumptions about what it knew about discrimination. The Court said the set-aside of subcontracting dollars seemed to rest largely on "the unsupported assumption that white prime contractors simply will not hire minority firms." *Id.* at 502. The Court found it "clear that the factual predicate offered in support of the Richmond Plan suffers from the same two defects identified as fatal in *Wygant*. . . . None of these 'findings,' singly or together, provide the city of Richmond with a 'strong basis in evidence for its conclusion that remedial action was necessary.'" *Id.* at 498-500 (quoting *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 277 (1986) (plurality opinion)). The problem with the Court's view is that it assumed there was no discrimination in the contracting business, an assumption that conflicts with most historical and practical understanding of contracting practices. The Court knew that in fact no one contested that there was little substantive participation of blacks in the city's contracting business. *Id.* at 503. It repeatedly noted the reality of discrimination against blacks, but held the city could not try to remedy discrimination against blacks without more proof of discrimination. *Id.* at 505. We often make assumptions about what we know without dealing with the racial perspective out of which those assumptions grow.

36. The notion of the "word" is an old and powerful concept in the black community. To speak the word means to bring truth and learning and the power associated with those concepts to the conversation. See Charles R. Lawrence, III, *The Word and the River: Pedagogy As Scholarship As Struggle*, 65 S. CAL. L. REV. 2231 (1992).

Williams would respond that it must be difficult not to be Patricia Williams and to therefore be blind and deaf to much of the racial comedy played out in our society). Her power is not just in the knowing—many black people know as much as she does about the world. Her power is in her ability to reshape the images of the present into more powerful experiences. My colleague Walter Dellinger also is a great story teller. He has been described as a person who can tell a story so powerful that you wished you had been there, and at the end you realize you were. Similarly, Professor Williams is able to teach powerfully about the mundane and the profane experiences of black people in everyday America and to make those experiences pertinent to our legal scholarship.

Professor Williams's ability to craft the word is the reason her work has been so influential and important. There is no better writer in American legal education than Patricia Williams. Some who read her work are persuaded that it is simply about style. She recently has begun to acknowledge her own discomfort with a particular element of almost pornographic interest in the beauty of her work.<sup>37</sup> Yet stories without appropriate craft cannot be heard any more than a difficult diagram can be deciphered or an obtuse article can be understood.

In order to flesh out these issues, I want to discuss a couple of examples from her book. She wrote:

Some time ago, Peter Gabel and I taught a contracts class together. . . . Both recent transplants from California to New York, each of us hunted for apartments in between preparing for class. Inevitably, I suppose, we got into a discussion of trust and distrust as factors in bargain relations. It turned out that Peter had handed over a \$900 deposit in cash, with no lease, no exchange of keys, and no receipt, to strangers with whom he had no ties other than a few moments of pleasant conversation. . . .

I, meanwhile, had friends who found me an apartment in a building they owned. In my rush to show good faith and trustworthiness, I signed a detailed, lengthily negotiated, finely printed lease firmly establishing me as the ideal arm's-length transactor.

. . . .  
 . . . [A]s a black, I have been given by this society a strong sense of myself as already too familiar, personal, subordinate to white people. . . .

. . . .  
 In addition to our different word usage, Peter and I had qualitatively different experiences of rights. For me to understand fully the color my sister saw when she looked at a road involved more than my simply knowing that her "purple" meant my "black." It required as well a certain slippage of perception that came from my finally experiencing how much her purple felt like my black . . . .

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37. Patricia J. Williams, *The Jogger Trial*, Talk Given to Duke Faculty (Nov. 30, 1992).

In Peter's and my case, such a complete transliteration of each other's experience is considerably harder to achieve. If it took years for me to understand my own sister, probably the best that Peter and I can do—as friends and colleagues, but very different people—is to listen intently to each other so that maybe our children can bridge the experiential distance. Bridging such gaps requires listening at a very deep level, to the uncensored voices of others.<sup>38</sup>

Many things have been said about passages like this in her work.<sup>39</sup> The most important negative comment is that this is not law. In recent years, however, professors have increasingly recognized the interrelationship between law and other academic disciplines, and between law and the broader experiences of life. If law professors choose to teach about these interdisciplinary concerns, they begin to become law. As judges and lawyers decide to respond to these concerns, they become an integral part of legal discourse. There is, however, a deeper level at which the understanding of how the law treats marginal people is important for all of us as lawyers to listen to and to understand. The voices that she spoke about in that last line—*bridging such gaps requires listening at a very deep level, to the uncensored voices of others*—are often black, female, or both, and they often are not included in the legal discourse. Professor Williams's voice is unique in that many people are able to understand the nonincluded issues that she raised. One of my white male students described his response to one of Patricia Williams's articles this way:

This seems to me to be what black legal scholarship is about. The article shows considerable literary style while combining an attention to legal detail with the experiential exigencies of modern black life. She brings to bear a psychology which illuminates the law without reducing it to triviality. *Perhaps more importantly, however, she caused me to think about things I had not considered before.*<sup>40</sup>

This response is typical of the response that I get from my students, black and white, about the nature of law and race. All of us seek to have our students think about heretofore unconsidered arguments. Some, like myself, often push our students to consider the economic constraints that exist in the world. Others help our students understand the tax code's beauty and symmetry or the ways in which contract and corporate law fit together. All of these things are important, but that does not mean that

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38. WILLIAMS, *supra* note 4, at 146-50.

39. Among the least responsive and ultimately silly reactions to this discussion of contract by one of my colleagues was the claim that Peter Gabel is crazy. This reaction missed the point of the discussion. Professor Williams is reacting to the tendency of some white critics to see informality and the lack of rules as universally positive. It is not fair to simply dismiss this metaphor for critical legal scholarship without understanding its metaphorical quality.

40. An example of how important the source of a voice can be comes from my use of a white male student to provide support for the transformative potential of Professor Williams's book. He implicitly refutes the argument that only blacks or women will be concerned about what she has written. It is equivalent to black people being asked to testify about situations where someone else fears being charged with racism. It is, in short, a trick we often play to protect ourselves when we are not sure that the audience will believe our own "biased" voice.

we can be satisfied that they alone are sufficient to provide our students with the edification that they need.

To see the power of the word in the hands of Professor Williams, compare the following quotation from George Fletcher's influential book on the Goetz trial, *A Crime of Self-Defense*,<sup>41</sup> with a passage by Professor Williams. Professor Fletcher argued:

Ironically, as Goetz was engaged in systematically flouting the law suppressing guns in New York City, he thought that his would-be muggers would be deterred from violating the same law. He did not fear that they, as professional petty thieves, would be armed. He knew that they would ply their lawless trade without incurring the high costs of state prison. In his revealing testimony at the trial, Troy Canty confirmed the capacity that he and his friends had for engaging in rational calculation about the penal costs of particular crimes. If petty thieves are deterred and Goetz was sufficiently street-wise to realize this, why was he not deterred on December 22, 1984, and the innumerable occasions prior to that date that he left his apartment with a loaded gun in his quick-draw holster? The simple answer is that Goetz thought he was right. The four youths knew they were engaged in an illegal enterprise, and they saw no reason to take unnecessary risks. But Goetz believed firmly that the law as applied to him was wrong. The issue for him was not arming himself with an instrument of illegal gain, but equipping himself with a necessary means of self-protection.<sup>42</sup>

Much of Professor Fletcher's book is moving and increases the understanding of the deep racism that existed beneath the disposition of Bernhard Goetz's case. In the ultimate chapter entitled *Mixed Messages*,<sup>43</sup> however, Fletcher could not separate himself from the white occasional victims of black youths. He saw the rights and wrongs only from that perspective. The black youths who engage in crime become caricatures of real people. Professor Fletcher allowed Bernhard Goetz to assume a position of right in comparison to these black victims of his violence, a position that is not warranted by what they say or how they describe themselves. Black youths who are discriminated against in the world feel that taking change from white strangers is as fair as carrying around a loaded gun and using that gun to shoot people. By saying this, I am not saying they are right any more than Bernhard Goetz was right, but that the objective and subjective realities of both groups must be understood. The anger of some of these black victims about the outcome, like their decision not to carry a weapon, is not inchoate or unformed, but rather a realistic vision of a world in which black youths are much more likely than whites to be sent to prison for any given offense.

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41. GEORGE P. FLETCHER, *A CRIME OF SELF DEFENSE* (1988).

42. *Id.* at 214-15.

43. *Id.* at 199-217.



Listen to Professor Williams's concern with a different aspect of this issue. She argued:

One of the reasons I fear what I call spirit murder—disregard for others whose lives qualitatively depend on our regard—is that it produces a system of formalized distortions of thought. It produces social structures centered on fear and hate, a tumorous outlet for feelings elsewhere unexpressed. When Bernhard Goetz shot four black teenagers in a New York subway, J., an acquaintance of mine, said she could “understand his fear because it’s a fact that blacks commit most of the crimes.” Actually U.S. Bureau of Justice Statistics for 1986 show that whites were arrested for 71.7 percent of all crimes; blacks and all others (including American Indian, Alaskan Native, Asian, and Pacific Islander) account for the remaining 28 percent. Furthermore, there is evidence that “whites commit more crimes, and that white offenders have consistently lower probabilities of arrest, than do either blacks or Mexican-Americans. This is particularly striking for armed robbery and burglary.” But, “Controlling for the factors most likely to influence sentencing and parole decisions, the analysis still found that blacks and Hispanics are less likely to be given probation, more likely to receive prison sentences, more likely to receive longer sentences, and more likely to serve longer time.” What impressed me, beyond the factual inaccuracy of J.’s statement, was the reduction of Goetz’s crime to “his fear,” which I translate to mean *her* fear; the four teenage victims became all blacks everywhere; and “most of the crimes” clearly meant, in order for the sentence to make sense, that most blacks commit crimes. (Some have taken issue with my interpretation of J.’s remarks. They point out that what she must have meant was that young black men are arrested and convicted for a disproportionate number of the muggings committed in the New York subway system. Looking past the fact that this is not what she said, and that it is precisely the unframed nature of what she *did* say that is the source of my concern, I am left wondering what the real point of such a criticism is: should the assumed specificity of reference therefore give white subway riders a license to kill based on the empiricism of “statistical fear”?)

What struck me, further, was that the general white population seems, in the process of devaluing its image of black people, to have blinded itself to the horrors inflicted by white people. One of the clearest examples of this socialized blindness is the degree to which Goetz’s victims were relentlessly bestialized by the public and by the media in New York: images of the urban jungle, with young black men filling the role of “wild animals,” were favorite journalistic constructions; young white urban professionals were mythologized, usually wrapped in the linguistic apparel of lambs or sheep, as the tender, toothsome prey. . . .

. . . Some do not even recognize white criminality when it does

happen; they apologize for the assailant, think it must have been their fault; they misperceived the other's intent. . . .

. . . [I]n the famous videotape Bernhard Goetz described to police in New Hampshire his intention to inflict as much harm as he could. He detailed his wish to see his victims dead; said if he had it to do over again, he'd do the same or worse; and expressed a retrospective desire to have gouged their eyes out. Yet in finding him not guilty [of the major non-gun crimes] the jury discounted this confession entirely: "We felt he said a lot of things he was unsure about. He had nine days of thinking about what happened and reading newspapers, and combined with the guilt, we felt that he may have gotten confused. His own confusion coupled with his feelings of guilt might have forced him to make statements that were not accurate."<sup>44</sup>

Professor Williams addressed a very different question from the issues that animate the heart of Professor Fletcher's book-length discussion of the Goetz case. Some contend that she missed the important point, addressed at great length in Fletcher's book, that the "strange" law of New York forced the jury to look at the subjective intent of Bernhard Goetz and provided an opportunity for the jury (one has to read, free of "undue" racial prejudice) to find that he lacked the necessary legal intent. Professor Williams's point was that this is the wrong question. It is not that the jury deliberated about the lack of intent free of the notions of race inherent in making the four unarmed youths predators and Bernhard Goetz innocent. Professor Williams asked us to require the jury to insist Bernhard Goetz leave the bullets in his gun at his apartment where they could do no harm or to leave them in the gun rather than scattered among the bodies of the four black victims. Professor Williams wanted us to understand that the "real" issue is not irrelevant, but that it is not the only place from which the legal discussion can begin. Professor Fletcher told how traditional doctrinal categories cramped the jury's deliberations. Professor Williams argued that the traditional doctrinal position is not sufficient to understand the place of race in the Goetz trial or in law in general. This is about law because it is directed at the most important issues in these cases. If the judges are going to deal effectively with the racism in the courts, they have to ask the question posed by Professor Williams as well as the one that drives Professor Fletcher.

A more important question that can be raised is whether this approach of including extensive discussion of media sources and autobiographical reaction is important or scholarly. It is clear that in literary studies this is an important issue.<sup>45</sup> Professor Williams has become an important player in this intellectual discourse. Her work touches impor-

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44. WILLIAMS, *supra* note 4, at 73-76 (footnotes omitted).

45. See, e.g., WILLIAM RAY, *STORY AND HISTORY* (1990) (discussion of the rise of the use of authority and narratives as political and literary tools in history and literature).

tantly on feminism, literary criticism, and race and the law.<sup>46</sup> The heart of what she has done is to create a genre of inclusion that permits the author to demand attention from those in authority who often ignore the pleas at the margin. Her use of the power of autobiography is consistent with the descriptions of the use of that genre in literary studies.<sup>47</sup> One of the reasons why this technique resonates so deeply in black intellectual discourse is that black Americans have been required to use that technique to obtain attention.<sup>48</sup> Her work is clearly imaginative and important, in a number of disciplines. It is also important to remember that, at times in the past, the courts have paid more attention to these kinds of alternative sources. The power of the word has been a consistently important issue throughout the legal history of America. The definition of what counts is always contextual and dependent on the issues that are being raised by decisionmakers. Professor Williams translated her experiences into words of beauty and power. It is this beauty that sometimes seduces without transforming, but without the beauty there can be no change.

Some are likely to conclude that this book is too self-indulgent. "Professor Williams tells us the experiences of the black middle class and this book becomes simply the rumblings of someone who ought to be psychoanalyzed and not listened to," they say.<sup>49</sup> Such arguments miss the real power of her voice. Professor Williams is as questioning of her own motivations as she is of those of any of the other people who appear in her stories. She questions everything from her own ability to deal with student complaints as a professor to her response to antisemitism by black acquaintances. Professor Williams sometimes will not let a white friend off the hook for a casual comment, but she is just as unrelenting on her black friends and herself. The power of the word in this book is not a

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46. See, e.g., *BLACK WOMEN IN AMERICA* (Micheline R. Malson et al. eds., 1990) (collection of women writers on black women featuring one of Professor Williams's articles); *CONSEQUENCES OF THEORY* (Jonathan Arac & Barbara Johnson eds., 1991) (collection of articles in literature, philosophy, religion and law addressing the practical uses of theory by specialists in African-American, American, English, feminist and postcolonial studies, including an article by Professor Williams); *RACE-ING JUSTICE, EN-GENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY* (Toni Morrison ed., 1992) (collection of essays by eminent intellectuals, including Professor Williams, about the impact of the Thomas nomination and hearings on the black community).

47. See, e.g., *PHILIPPE LEJEUNE, ON AUTOBIOGRAPHY* (1989).

48. See *THE SLAVE'S NARRATIVE* (Charles T. Davis & Henry L. Gates eds., 1985) (collection of essays and reviews describing the use of largely autobiographical materials by African-American people from slavery through the early New Deal); Henry L. Gates, *Introduction to BEARING WITNESS: SELECTIONS FROM AFRICAN-AMERICAN AUTOBIOGRAPHY IN THE TWENTIETH CENTURY* at i (Henry L. Gates ed., 1991) (autobiography has been one of the major contributions of blacks to literary discourse and this effort has been long lasting and important).

49. For a similar prescription and the value of such advice offered to a fictional character, see the interesting review of DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987) by Richard Delgado in the *Yale Law Journal*. Richard Delgado, *Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved?*, 97 *YALE L.J.* 923 (1988) (book review).

collection of self-serving pats on the back, but a forceful demand for response, reflection, and—ultimately—change in the legal academy.

Professor Williams's voice makes us think about the issue of the interaction of race and the law in ways that most of us do not confront. It is challenging, difficult, and sometimes raises issues that many of us would rather not deal with, but these are real issues faced by real clients in the real world of the law. It may have been appropriate to avoid such an education thirty years ago when law schools had few women and black students and no women or black faculty, but it is time to alter "some" of what we do. Some of my colleagues in the academy hear this statement and substitute "all" for "some." Others seem to believe that if we have some people doing this it must mean that they will have to stop writing about torts, antitrust, property, or corporations in the ways that they have. Nothing in Professor Williams's work requires that law professors stop doing what they are doing. Those who listen to the real Professor Williams will hear someone who also believes that traditional teaching has a place in the legal academy.

Why does her writing, particularly the autobiographical aspects of her writing, have such poignancy? The answer is that autobiography is always present in our work. We often assume something about an author's history, including race, culture, and background, without dealing with the consequences of that assumption.<sup>50</sup> Professor Williams makes us deal with those consequences without requiring that we stand in her shoes. This quality of requiring us to hear the deep voice of others without suppressing the voices that already are present is the most important part of her work.

There is an old Talmudic story about four rabbis who go into an orchard. "One fell gravely ill and died, one became a heretic, one went mad and one, Rabbi Akiba, emerged whole."<sup>51</sup> As in all stories, there are several possible interpretations, but what Professor Williams's book teaches us is that there were possibly two survivors. Rabbi Akiba, who was converted to the truth, supports traditional patterns of story and understanding. If we are armed with and understand the truth, then no power can defeat us. The mad rabbi may have been someone who would not accept the assumptions of the world from which they all came and, in not accepting that world, may still speak a truth if we can understand the madness. So *The Alchemy of Race and Rights* has transformed madness into knowledge and knowledge into a different way of looking at law, and that is what legal scholarship must be about—but seldom is. If white scholars are to understand some of what black scholars and people are saying, they must begin to appreciate stories that are unconventional.

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50. See generally Culp, *supra* note 12.

51. ARI L. GOLDMAN, *THE SEARCH FOR GOD AT HARVARD* 3 (1991).

Only in the madness of the unconventional is it possible for truth to be found—at least a truth that includes the lives and experiences of black people.

