



TOURO UNIVERSITY
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

Touro Law Review

Volume 15 | Number 2

Article 14

1999

Thirteen Stories

Anthony Paul Farley

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Civil Rights and Discrimination Commons](#)

Recommended Citation

Farley, Anthony Paul (1999) "Thirteen Stories," *Touro Law Review*: Vol. 15: No. 2, Article 14.
Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol15/iss2/14>

This The Salience of Race: Race in America is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

Farley: Thirteen Stories
THIRTEEN STORIES^o

ANTHONY PAUL FARLEY*

TABLE OF CONTENTS

INTRODUCTION	544
1 ST STORY: WARGASM	550
2 ND STORY: CASABLANCA	565
3 RD STORY: AMERICA UNVEILED	570
4 TH STORY THIS TIMELESS BURNING	573
5 TH STORY: COLORLINES	578
6 TH STORY: A CRITIQUE OF CRITICAL RACE THEORY	586
7 TH STORY: WHAT DO BLACK PEOPLE WANT?.....	589
8 TH STORY: ILLNESS AND ITS INTERLOCUTORS	594
9 TH STORY: VOMIT	625
10 TH STORY: THE BEAUTIFUL RAINBOW OF NIGHT.....	630
11 TH STORY: THE DANGEROUS BODY	633
12 TH STORY: MEMORIES THAT SMELL LIKE GASOLINE	640
13 TH STORY: WHAT THEN MUST WE DO?	645
CONCLUSION	655

© Copyright 1998 Anthony Paul Farley. All rights reserved.

* Assistant Professor Boston College Law School, B.A. University of Virginia 1984, J.D. Harvard Law School 1987. I thank Deborah Waire Post for her enthusiasm. I thank the organizers of *The Salience of Race: 3rd Annual Northeast People of Color Conference* for such creative thinking. I thank Elbert Gates, Chris Iijima, Jenny Rivera and Reginald Robinson, my companions at the round-table, for sharing their insights regarding *The Way We Talk About Race*. I thank Dan Subotnik for causing such a stir. I thank Keith Aoki, Phyllis Goldfarb, Gretchen Hunt, Judy Jou and Carol L. Kline for being so helpful. I thank Esther Schonfeld, Editor in Chief of the *Touro Law Review* and her co-editors for asking me to turn my thoughts into an article. I thank Derrick Bell and Regina Austin for their contribution to this special symposium issue of the *Touro Law Review* and to progressive legal scholarship in general. Finally, I thank all of the students of Touro College's Jacob D. Fuchsberg Law Center for being such warm hosts and for asking so many wonderfully difficult questions.

INTRODUCTION

*In dreams it sometimes happens that we first read a story and then are ourselves participants in it. And after waking up after a dream it is sometimes as if we had stepped back out of the dream and now see it before us as an alien picture. And it also means something to speak of "living in the pages of a book."*¹

-Ludwig Wittgenstein

Rules cannot determine the circumstances of their own application. We apply rules of law to the world as we find it. Sometimes there are conflicts. Sometimes our worlds collide. On such occasions, we lawyers tell stories. Our stories represent such collisions as problems of legal interpretation. We tell stories about the rule of law. We lawyers tell stories all the time. Our stories are neither true nor false. Our stories are creation stories.

What is legal interpretation? Is "separate but equal" really equal?² How fast is deliberate speed?³ How soon is now? The answers to such questions are not to be found in the rules themselves but in our stars. The constellations we dream around these otherwise cold and distant rules allow them to make sense for us. We draw bright lines – the stories we tell – that allow us to connect otherwise unconnected points of law. The bright lines of our imagination are the alpha and omega of legal interpretation. In law, these bright lines take the form of stories. We are often captured by these stories:

Can I think away the impression of familiarity where it exists; and think it into a situation where it does not? And what does that mean? I see e.g. the face of a friend and ask myself: What does this face look like if I see it as a strange face (as if I were seeing it now for the first time)? What remains, as it were, of

¹ LUDWIG WITTGENSTEIN, ZETTEL 42e (G.E.M. Anscombe ed. & trans. & G.H. von Wright ed., 1970).

² Plessy v. Ferguson, 163 U.S. 537 (1896).

³ Brown v. Board of Education, 349 U.S. 294 (1955).

the look of this face, if I think away, subtract, the impression of familiarity from it?⁴

Once we become familiar with a story it is difficult, if not impossible, to “subtract the impression of familiarity from it.” We interpret the law and then forget that the law is but our interpretation and, as such, always open to reinterpretation. We dream of certainty in law and then forget that “the subject of the dream is the dreamer.”⁵ Our habit of telling stories, that is, our habit of telling others that legal interpretation is akin to science, is very telling. It speaks volumes of our need for certainty in an uncertain world. And is that not always and everywhere the purpose of myth?⁶

We need a story – a myth – to make sense of legal rules.⁷ “Separate but equal” sounded equal to the legal authorities of the

⁴ WITTGENSTEIN, *supra* note 1, at 36e.

⁵ TONI MORRISON, *PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION* 17 (1993).

⁶ Even the scientists are not so certain as we lawyers seem to be. In a chapter called, “The Basic Myth,” Jerome Frank observes:

The physicists, indeed, have just announced the Principle of Uncertainty or Indeterminacy. If there can be nothing like complete definiteness in the natural sciences, it is surely absurd to expect or even approximate certainty and predictability in law, dealing as it does with the vagaries of complicated human adjustments. Since legal tentativeness is inevitable and often socially desirable, it should not be considered an avoidable evil. But the public learns little or nothing of this desirability of legal tentativeness from the learned gentlemen of the law. Why this concealment? Have the lawyers a sinister purpose in concealing the inherent uncertainty of the law? Why, it may fairly be asked, do they keep alive the popular belief that legal rules can be made predictable? If lawyers are not responsible for legal indefiniteness, are they not guilty, at any rate, of duping the public as to the essential character of law? Are they not a profession of clever hypocrites?

JEROME FRANK, *LAW AND THE MODERN MIND* 7-8 (1963) (1930).

⁷ David Dante Trout writes:

Exactly who we are or what we are remembering changes across cases, personalities, doctrines and history. Whatever

form it takes, however, retrieval always concerns experience. Experience is the first human element forgotten in the translation of life into law.

DAVID DANTE TROUT, *THE MONKEY SUIT AND OTHER SHORT FICTION ON AFRICAN AMERICANS AND JUSTICE* 1 (1998). Trout's stories start from this omission of experience and imagine the characters that inhabit the bottom of the well in a set of cases from 1833 to the present. His introduction begins with capital letters, "FIRST, WE MUST NEVER FORGET." His stories recognize that the objects of judicial decisions have narratives that their legal narrators may never know. It is important to remember that the cases, their cases, are themselves stories – they are the stories our masters tell themselves about the world and its rightness. And its whiteness. *Our* stories unmake *theirs*. This too we must never forget. Martha Minow writes:

We need to exercise the capacity to be outraged, the ability to sort out the inevitable from what could be different – to rework the inevitable from what could be different – and not to thirst for too much justice. We need the practice of telling and hearing stories. Try on the sensibilities of other acute observers of injustice, discern what moves you, and why.

Martha Minow, *Introduction* to *OUTSIDE THE LAW: NARRATIVES ON JUSTICE IN AMERICA* 13 (Susan Richards Shreve & Porter Shreve eds., 1998). "Too much justice" leaves us rule-bound and unable to free ourselves to see that life can always be changed. "Outrage," however, can shed new light on old stories. In a passage that looks back with rage and with longing, Audre Lorde writes:

DeLois lived up the block on 142nd Street and never had her hair done, and all the neighborhood women sucked their teeth as she walked by. Her crispy hair twinkled in the summer sun as her big proud stomach moved her on down the block while I watched, not caring whether or not she was a poem. Even though I tied my shoes and tried to peep under her blouse as she passed by, I never spoke to DeLois because my mother didn't. But I loved her, because she moved like she felt she was somebody special, like she was somebody I'd like to know someday. She moved like how I thought god's mother must have moved, and my mother, once upon a time, and someday maybe me. Hot noon threw a ring of sunlight like a halo on the top of DeLois' stomach, like a spotlight, making me sorry that I was so flat and could only feel the sun on my head and shoulders.... I loved DeLois because she was big and Black and special and seemed to laugh all over. I was scared of DeLois for those very same reasons. One day I watched DeLois step off the curb of 142nd Street against the light, slow and deliberate. A

high yaller dude in a white Cadillac passed by and yelled at her, "Hurry up, you flat-footed, nappy-headed, funny-looking bitch!" The car almost knocking her down. DeLois kept right on about her leisurely business and never so much as looked around.

AUDRE LORDE, *ZAMI: A NEW SPELLING OF MY NAME* 4 (1998). We can see in Lorde's "biomythography" that if you change the frame then you can change the name. From the child's viewpoint, we see DeLois moving as "god's mother must have moved, and my mother, once upon a time, and someday maybe me." All of the women are connected by something divine in the starry eyes of this loving child. From the white Cadillac, however, we see DeLois as a "flat-footed, nappy-headed, funny-looking bitch" who is moving too slowly. We can see that our choice of story determines our conclusions about the kind of bodies that we occupy. And as we think through the body of the law we see that:

Our bodies are the medium through which power functions. By virtue of their location within power, our bodies are also effective sites of resistance to power's capillary alignments. Since law is an effect of a stasis of power-relations, the structural co-implication of power and the body in the securing of legal obligation and obedience is the source for persistent and hopefully thorough-going legal transformation.

Pheng Cheah et al., *Introduction* to *THINKING THROUGH THE BODY OF THE LAW* 19-20 (Pheng Cheah et al. eds, 1996). Every story can be turned against its meaning. We can turn our bodies against the system ("I loved DeLois because she was big and Black and seemed to laugh all over. I was scared of DeLois for those very same reasons.") Our bodies are stories and our stories show the form of our commitments ("Hot noon threw a ring of sunlight like a halo on the top of DeLois' stomach..."). In the "ring of sunlight" all of the people in Lorde's universe were, together, a beloved community. In the "white Cadillac," on the other side of heaven, colorism and patriarchy divided each against the other. In the words of Robert Cover:

A legal world is built only to the extent that there are commitments that place bodies on the line. The torture of the martyr is an extreme and repulsive form of the organized violence of institutions. It reminds us that the interpretive commitments of officials are realized, indeed, in the flesh. As long as that is so, the interpretive commitments of a community which resists official law must also be realized in the flesh, even if it be flesh of its own adherents.

Quoted in Id. at 9-10. The stories I offer in this article are illustrations of the world as I found it. I have tried to write as though my body were my own. And by so doing to show the body as an "effective [site] of resistance to power's capillary alignments." The capillary alignments that form the thematic

recent past because it was accompanied by stories that made the black places at the bottom of the well seem foreordained by the very nature of things. "Deliberate speed" seemed fast enough because it was outpaced by stories that made anything faster than Zeno's arrow appear reckless. Today's motionless moment seems like heaven to those not forced to live in the hell of post-equality America.

The civil rights narrative was the great dream of modern legal culture. That story of progress up from slavery is told and retold every Martin Luther King Day. Indeed, it is always Martin Luther King Day in post-equality America. We are told – over and over – by our masters and our overseers that we have already arrived at the Promised Land. And yet white-over-black is still the rule, the law, and the hidden term in any discussion of the rule of law. Our masters, the post-equality storytellers, still believe, in the wake of *Brown v. Board of Education*, that law is important.⁸ Larry Catá Backer writes:

Since the early part of this century, Americans in particular, have viewed the courts, and more generally this thing summarized as law, as the place where societal changes can be made most effectively. Law, and more generally, political institutions as the wielders of law, are viewed as the site from out of which will emerge social and cultural transformation of the most fundamental sort. Hence, it seems that the endless project of legal élites in the late twentieth century has been to perpetuate the myth of the power of law and its transformative potential. Law, it is argued, is a god who can be manipulated to impose a sort of endlessly paradisiacal state on humankind, or at least the white European world. We still yearn for the appearance of the Messiah.⁹

structure – the target – of these thirteen deconstructions are those of post-equality America.

⁸ *Brown v. Board of Education*, 347 U.S. 483 (1954); *Brown v. Board of Education*, 349 U.S. 294 (1955).

⁹ Larry Catá Backer, *Queering Theory: An Essay on the Conceit of Revolution in Law*, IN *LEGAL QUEERIES: LESBIAN, GAY AND TRANSGENDER LEGAL STUDIES* 185, 185 (Leslie J. Moran et al. eds., 1998).

I never believed in the civil rights gospel. I never sang of Overcoming. The laws that were to have set me free have served only to bind my fetters more tightly.¹⁰ And I am not alone. We have all been betrayed by America's false promises. What happens next? Apostasy may set us free.

The stories that follow – and I might have called them essays – are written in flight from the American progress narrative. Slavery and its laws required a certain mood – that mood was set by story after story of white-over-black. Segregation and its laws required a certain mood – that mood was set by story after story of white-over-black. Neo-segregation and its laws require a certain mood – that mood has been set by story after story of white-over-black. Nobel laureate Toni Morrison describes these stories as “race talk”:

The explicit insertion into everyday life of racial signs and symbols that have no meaning other than pressing African Americans into the lowest level of the racial hierarchy.¹¹

There are no boards over the well. We are falling. We have been falling. We are the fallen. It never ends.

I do not have a project. I do not want anymore American Progress – white over black to white over black to white over black. I am not going to fall for any more up-from-slavery stories. I want to shatter the Dream. I want to play with the fragments of the narrative. You may find yourself and me by the thirteenth story. Perhaps we will, together, escape the Promised Land.

¹⁰ See DERRICK BELL, *AFROLANTICA LEGACIES* (1998); DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987); DERRICK BELL, *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER* (1994); DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992); DERRICK BELL, *GOSPEL CHOIRS: PSALMS OF SURVIVAL IN AN ALIEN LAND CALLED HOME* (1996).

¹¹ *Quoted in* BELL HOOKS, *KILLING RAGE* 23 (1995).

1ST STORY: WARGASM

*To kill one another like this! Human beings whose parents brought them into the world and carefully raised them with overflowing love despite so many difficulties, these human beings would die from a single blast as explosions burst, lying still without moving again at all. And who then thinks of the blood, flesh, sweat, and strength of their parents, and who will have charity and pity for them? And then what about the splitting up of families to different parts of the country which was caused by the war? Who will pity them? In reality, whatever happens, it is only the innocent who suffer. And as for others, do they know all the unimaginable things happening in this war? Do they? Or is it rather that this war is something which benefits us and thus need not be stopped?*¹²

-Nang, a woman of the Plain of Jars, Laos

*Try arguing with an orgasm sometime.*¹³

-Catharine A. MacKinnon

¹² Nang, an anonymous "thirty year old woman" of Xieng Kouang, a village of the Plain of Jars in Laos, *quoted in* VOICES FROM THE PLAIN OF JARS: LIFE UNDER AN AIR WAR 43 (compiled and with an introduction and preface by Fred Branfman, 1972). The region of Laos known as the Plain of Jars no longer exists. Its seven centuries of recorded history were burned to ashes by the United States in an illegal and undeclared air war. Fred Branfman writes:

Over 25,000 attack sorties were flown against the Plain of Jars from May, 1964, through September, 1969; over 75,000 tons of bombs were dropped on it; over 50,000 airmen at distant bases were involved; below, on the ground, thousands were killed and wounded, tens of thousands driven underground, and the entire above-ground society leveled. And yet, for five and a half years, this massive war was unknown to the world beyond. The ground battles raging elsewhere in Laos were reported on fairly regularly during those years. But one searches in vain through the newspapers and magazines of the western world for a single word about the bombing of the Plain.

Id.

¹³ CATHARINE A. MACKINNON, ONLY WORDS 17 (1996).

My fingers tremble against the keys of my laptop computer and await the latest from the masters of the universe. I look into the pixel-light to see the Oval Office & the cigar, the old man & the young intern, the prosecutor & the prosecuted, the President and the body politic, the law & its other. I peer into the high-tech well of loneliness for something, something that might justify my gaze.¹⁴

It is, once again, about the sex. I thought that the American public would relax about the Monica Lewinsky affair after President William Jefferson Clinton was so kind as to let us all participate in a collective affair of state.¹⁵ You must remember this: the collective wargasm that occurred when “We the people” bombed the mysterious Osama bin Laden in Afghanistan and also

¹⁴ For an examination of the gaze and its justification see MADONNA: JUSTIFY MY LOVE, video single (Warner-Paramount 1990).

¹⁵ Every white man is, in a sense, the “President.” First, only white men have ever been President. Second, to be President is to represent the *real* citizens of the United States, and to be a *real* citizen is to be represented by the white male figure of the present President and all the Presidents past. No non-white, non-male actor can portray any of the people who have really been President. In the final analysis, as in the final reel, a real President can only be played by a white man and only white men, therefore, are really citizens. Others have only paper citizenship.

Citizenship must be distinguished from its documents. Citizenship is not the passbook, rather, it is the ability to *demand* the passbook. This executive power is reserved for white men. Merely *documented* citizens live in back of the real. The documents we all have – those of us who are citizens and who pledge allegiance to the flag and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all – are all we have. Documents are nothing. The real, that is, the representation that we Others live behind, is the white man. The Lone Ranger & Tonto, Batman & Robin (AKA millionaire playboy Bruce Wayne & his young ward Dick Grayson), Green Hornet & Cato, Crockett & Tubbs – even in fantasy, the white man, every white man, may say of himself, of his flesh, of the dance of legislation that surrounds the Washington Monument’s obscene obviousness, *le état, c’est moi*. The indivisible oneness – the reality – the thing for which it stands, is the white man. Citizenship is represented by the *phallus*, the white numeral one, the ivory-colored tower piercing the sky in the name of the first President. The white man is the corporate body – Leviathan or Moby-Dick – and its whiteness made flesh. See also ALLEN GINSBERG, *In Back of the Real*, in *HOWL AND OTHER POEMS* 56 (1956).

bombed a “chemical weapons plant” in Khartoum, Sudan’s largest city, seemed for a time to satisfy the citizenry. Time for a smoke, time for a cigarette or a cigar, time to curl up with each other under warm blankets and watch the CNN-ization of the *real* event. The Warholian repetition, the hypnotic sameness, the endless looping back on itself, is terrifyingly comforting. The same old story told all day each day every fifteen minutes until the representation supersedes the reality, until the map begets the territory.¹⁶ We *see* in the last gleam of twilight, in the last gleam of the rockets’ red glare and the bombs bursting in air, proof through the nightly burning of alien flesh that our flag flies yet there, here and everywhere. In this virtual war we recline and view the Other as through a glass, darkly. The dark – their darkness – is illuminated with the beautiful light of our weapons. From the perspective of our “smart” bombs there is no distance between The Front and the foyer or the home and the world because the war is, for us, its representation. Perfect one-dimensionality seems to have been achieved.¹⁷ The system

¹⁶ See JEAN BAUDRILLARD, *The Precession of Simulacra*, in SIMULACRA AND SIMULATION 1 (Sheila Faria Glaser trans., 1994).

¹⁷ Marcuse argues:

The distinguishing feature of advanced industrial society is its effective suffocation of those needs which demand liberation – liberation also from that which is tolerable and rewarding and comfortable – while it sustains and absolves the destructive power and repressive function of the affluent society. Here, the social controls exact the overwhelming need for the production and consumption of waste; the need for modes of relaxation which soothe and prolong this stupefaction; the need for maintaining such deceptive liberties as free competition at administered prices, a free press which censors itself, free choice between brands and gadgets. Under the rule of a repressive whole, liberty can be made into a powerful instrument of domination. The range of choice open to the individual is not the decisive factor in determining the degree of human freedom, but what can be chosen and what is chosen by the individuals. The criterion for free choice can never be an absolute one but neither is it entirely relative. Free election of masters does not abolish the masters or the slaves.

produces the desires that lead “the people” to choose the status quo. Our Military-Industrial-Light-&Magic-Complexity eliminates the guesswork.

We travel down chimneys, doors and open windows with prosecutorial precision and hit only *guilty* targets. It is so easy to keep the home fires burning when you have cable. We have religious faith in computer-animation. We have become computer-animists. OK, so the weapons plant in downtown Khartoum was really making pharmaceuticals – the whole point was to allow us all to participate in the ritual.¹⁸ Seduction,

HERBERT MARCUSE, *ONE-DIMENSIONAL MAN: STUDIES IN THE IDEOLOGY OF ADVANCED INDUSTRIAL SOCIETY* 7 (1964). The need for the wargasm and other forms of race-pleasure are, I argue, repressive needs.

¹⁸ On August 20, 1998, President Clinton personally ordered the bombing of the Al-Shifa pharmaceutical plant in Khartoum, Sudan. At the same time, U.S. forces sent a flight of cruise missiles into Afghanistan and Pakistan to destroy “Osama bin Laden,” a man alleged to be a terrorist. This was done on the eve of Monica Lewinsky’s return to the grand jury. Christopher Hitchens writes:

The Administration said that no medical or commercial products were made at Al-Shifa. It added that the factory was directly related to bin Laden’s occult commercial empire. It further said that traces of the chemical compound Empta had been found in the soil outside the plant. Within days, there was an amazingly swift climb down from all these claims By the first week in September, Defense Secretary William Cohen admitted that he should have known that Al-Shifa made medical and agricultural products Secretary Cohen also admitted in the same statement that he should have known that there was no longer any direct financial connection to be asserted between bin Laden and the plant

Christopher Hitchens, *Close But No Cigar*, NATION, Oct. 5, 1998, at 9. Hitchens also observes that the “presence of Empta (O-ethylmethyl phosphonothic acid)” proves nothing on its own as it is a product used for dealing with agricultural pests and many other tasks not related to the production of “VX gas.” *Id.* Now that the ashes of the pharmaceutical plant have settled and the fires of public opinion have cooled, we have turned our attention away from the damage done. We may never know how many diseases will flourish because the plant producing needed pharmaceuticals was wasted by our wargasm.

complicity, pleasure & forgetting: *Vichy über Alles*. Ahistoricism is the struggle of forgetting over memory.

Clinton could get off the hook by allowing us all to get off on illicit pleasure. In *his* case the illicit pleasure was some kind of erotic encounter with an intern half his age. He broke the laws of intimacy in the intimacy of his own home and our public office.

We are familiar with flesh-in-flames, much as we try to de-familiarize ourselves with the reasons for our passionate devotion to the Wargasm spectacle, it always comes back to haunt us in the form of misty water colored memories of the way we were. Consider the gasoline lynching of J.P. "Jim" Ivy. "She was not sure, but thought he looked like the one who attacked her," read the *Memphis News-Scimitar*. The news was enough to send white Mississippians after the black man about whom she was not sure:

I watched a Negro burned at the stake at Rocky Ford, Miss., Sunday afternoon. I watched an angry mob chain him to an iron stake. I watched them pile wood around his helpless body. I watched them pour gasoline on this wood. And I watched three men set this wood on fire.

I stood in a crowd of 600 people as the flames gradually crept nearer and nearer to the helpless Negro. I watched the blaze climb higher and higher encircling him without mercy. I heard his cry of agony as the flames reached him and set his clothing on fire.

"Oh, God; Oh, God!" he shouted. "I didn't do it! Have mercy!" The blaze leaped higher. The Negro struggled. He kicked the chain loose from his ankles but it held his waist and neck against the iron post that was becoming red with the intense heat.

"Have mercy, I didn't do it! I didn't do it!" he shouted again.

...Nowhere was there a sign of mercy among the members of the mob, nor did they seem to regret the horrible thing they had done. The Negro had supposedly sinned against their race, and he died a death of torture.

Soon he became quiet. There was no doubt that he was dead. The flames jumped and leaped over his head. An odour of burning flesh reached my nostrils. Through the leaping blaze I could see the Negro sagging and supported by the chains....

...The mob walked away. In the vanguard of the mob I noticed a woman. She seemed to be rather young, yet it is hard to tell about women of her type; strong and healthy, apparently a woman of the country. She walked with a firm, even stride. She was beautiful in a way....

"I'm hungry," someone complained. "Let's get something to eat."¹⁹

In Clinton's case, the illicit pleasure may have been a series of afternoon trysts – in violation of the anti-sex statutes of our nation's capital. In *our* case the illicit pleasure was some kind of erotic encounter with brown and black bodies burned to bits half a world away. *We* consumed *them* for our pleasure.

It all looked to me a bit like an Old South lynching: white sexual indiscretion purged by fire, mutilation, pain and black bodies swinging from Southern trees. Strange Edenic fruit for some – remember. Remember that President Ronald Reagan laid a wreath at a memorial to members of the SS.²⁰ Remember that candidate Ronald Reagan began his first successful campaign for the Presidency in Philadelphia, Mississippi – a city known only for brotherly love in the form of the law enforcement sponsored mutilations of civil rights workers Michael Schwerner, Andrew Goodman and James Chaney.²¹ Remember that candidate Ronald

¹⁹ J.L. Roulhac, MEMPHIS NEWS-SCIMITAR, Sept. 1925, *quoted in* WALTER WHITE, ROPE AND FAGGOT 25-26 (1969).

²⁰ Bernard Weinraub, *Reagan Joins Kohl In Brief Memorial At Bitburg Graves*, N.Y. TIMES, May 6, 1985, at A1. On May 5, 1985, President Ronald Reagan presided over a wreath laying ceremony at a graveyard containing 2,000 German soldiers and also 49 SS troopers. Reagan announced, "We who were enemies are now friends," to about 5,000 U.S. military personnel, friends, and local German residents at the Bitburg Air Base, less than one mile from the military cemetery. German Rabbis refused to attend Reagan's visit to the Bergen-Belsen concentration camp, where 50,000 Holocaust victims were buried in mass graves. *Id.*

²¹ Douglas E. Kneeland, *Reagan Campaigns at Mississippi Fair*, N.Y. TIMES, Aug. 3, 1980, at A11. "In his speech before a crowd made up almost entirely of whites, Mr. Reagan said, 'I believe in states' rights; I believe in people doing as much as they can at the private level.' He said that if he was elected, he would reorder priorities and 'restore to states and local governments the power that properly belongs to them.'" *Id.* Schwerner,

Reagan prefaced his speech on states' rights in Philadelphia, Mississippi by rejecting an invitation to address the NAACP at its annual meeting.²² Remember also that virtually all black voters voted against Reagan/Bush/Dole.²³ Remember that President Ronald Reagan was popular.

Perhaps a kind of "second-sight" allowed black voters to see something that remained invisible to white voters or perhaps the veil prevented black voters from seeing what white voters saw in Reagan, Bush and Dole or in the memories of Schwerner, Goodman and Chaney. It is a mystery. It is history. W.E.B. Du Bois writes of the ability to unveil historical mysteries:

After the Egyptian and the Indian, the Greek and the Roman, the Teuton and Mongolian, the Negro is a sort of seventh son, born with a veil and gifted with second-sight in this American world, - a world which yields him no true self-consciousness, but only lets him see himself through the revelation of the other world. It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity.²⁴

The mysteries of history are, in the end, to be found on the list of things one is forbidden to say. The forbidden and the undiscovered describe the same country. There is, of course, a penalty for seeing the dark continent of the

Goodman and Chaney were lynched in Philadelphia, Mississippi on June 16, 1964. See FLORENCE MARS, WITNESS IN PHILADELPHIA 235 (1997). They were lynched in the name of states' rights.

²² Kneeland, *supra* note 21, at A11.

²³ In 1980, 85% of black voters chose Carter over Reagan. In 1984, 89% of black voters chose Mondale over Reagan. In 1988, 86% of black voters chose Dukakis over Bush. N.Y. TIMES, Nov. 10, 1988. In 1992, 92% of black voters chose Clinton over Bush. Statistical Abstract of the United States 1997. In 1996, 84% of black voters chose Clinton over Dole. Richard Benedetto, *How Voters Picked the President*, USA TODAY, Nov. 6, 1996, at 10A. That only white men have been elected to this position is a reflection of a deep and profound national system of white preferences for white men.

²⁴ W.E.B. DU BOIS, THE SOULS OF BLACK FOLK 2-3 (1989) (1903).

forbidden/undiscovered. There is a terrible price to pay for having a body that is forbidden and/or undiscovered.

The pleasure of the lynching was not just the sweetness of the strange fruit or the smoke from their bodies. It was also the absence of certainty regarding the guilt of the victims ("She was not sure, but thought he looked like the one who attacked her."). The screaming black voices that rang rapturously through so many Southern nights were, as often as not, innocent voices ("Oh, God; Oh, God!" he shouted. "I didn't do it! Have mercy!"). As with vestal virgins, the possibility of innocence was the source of the erotic fascination ("She was not sure....") When we turned on our TV sets to see the truth in the cathode rays, we knew that those other Others were – as likely as not – innocent and that the innocence was the turn-on.

It seemed to be a masterstroke by Clinton. However, it turns out that the show is not over. Kenneth W. Starr, the Special Prosecutor, not to be outdone, has opened the bedroom (or Oval Office) door to us all, "Look! an adulterer." Remember, of course, that the look is always returned. To paraphrase a familiar dark angel, Friedrich Nietzsche, "if you gaze too long into Ken Starr, Ken Starr gazes back into you." Today, gazing deep into Ken Starr's eyes we will see Clinton as Starr sees Clinton. We will see the Kama Sutra'ed Clinton. A Clinton for whom a cigar is not just a cigar. Where there is smoke there is fire, and we are all on fire (burning with desire) to see Bill Clinton unveiled (burned by his own desires). It's hot, hot, hot.

I was an undergraduate in the South where the summers are very hot. It was a mostly white-on-white world of 1980s Izod shirts, khaki shorts, well-worn yachting shoes, and gently perspiring exposed flesh. One or two syllable names (Biff, Buffy, Skip, Ken and Missy) called out to each other in an orgy of "Man, we got so wasted last night!" "What happened to that chick you were with?" "Ooohh, so he asked you to go to the islands with him?" Greek-letters-on-T-shirts strangeness. As a black-guy-not-from-the-South I spent a lot of time outside looking in. Something I saw then reminded me of what I expect to see in this afternoon's Starr Report.

One hot summer day when I was an undergraduate, another undergraduate decided to start stealing women's clogs. He would wait until he saw a woman in clogs walk along a grassy area, tackle her from behind and dash away with her clogs. We other undergraduates all found this very strange. And we endlessly discussed this strangeness. We gathered together in the grassy open spaces of that hot summer to take pleasure in discussing the strangeness of the clog-thief's secret pleasure in the taking of clogs. What did he do with the clogs? That was the urgent question, the question on our lips, the question with which we caressed one another's ears, the question that had no answer other than itself, other than its function as a libidinal band linking us all with each other and with the clog-thief and with his secret. His search for clogs, his splendor in the grass, his mad dashes to some secret place, some room of his own, and his secret, strange pleasure-in-clogs were, in the end as in the beginning, our own.

In discussing this secret undergraduate whose secret pleasures were so very, very strange, were we not all secretly linked together by the strange pleasure of discussing the truth of pleasure? Were we not all for one long hot summer *clog thieves*?²⁵

Eventually the clog thief was apprehended. The clogs were in his closet. I do not recall how the clogs were discovered. Perhaps the clog thief left the door ajar. Perhaps the clog thief did not have a room of his own. Perhaps the clog thief had a

²⁵ In remembering that summer now fifteen years past, am I not very strange? And in reading my memories about that summer of the clog-thief are you not also very strange? Why did you accept the invitation to read? What captured your attention? Why did you wrap yourself in these words? Rapt attention must have some reason. Does the heart have reasons that reason cannot know? Am I taking liberties without license in assuming that your attention is a form of desire? Am I being licentious in characterizing the desire to *know* as a *desire* to know? What did you get out of submitting yourself to this narrative? Did you want to know the author? Did you assume that the veiled dance would, in the end, lay bare the author's intentions? Did you assume the existence of a person behind the curtain? Or did you assume instead that the play's the thing and read onward for the chance to take the stage, and stealthily gather together all of the discarded veils – veiled memories – to put them together in some new *ensemble*?

roommate. Perhaps the clog thief's roommate was curious when he saw the opening. Who can resist an opening? The secret desire, the secret of desire, is the secret itself, is it not? With desire there is a veil and another veil and there is always an/other veil and because of that other veil there is always a desire to pierce the veil and see that which is obscured. What is sexier than chiaroscuro? What is more exciting than the play of shadows and light in black-and-white? What captures our eyes more securely than the closet? What consumes us more than the open secret?²⁶ And now we are back to the colorline:

²⁶ I recall the season that I decided to interview for a law teaching position. It was about seven years after the summer of the clog-thief. The question at each law school was always the same. "What do you think of Derrick Bell?" My interlocutors were white, separate and more than equal. They wanted me. They wanted me to give them the right answer. They led me down the garden path of Wechslerian desire. They asked me leading questions, "Bell's too pessimistic, isn't he?" They took the lead in this colorlined dance. Derrick Bell was too dark for their MLK-dreams. Bell had broken their liberal hearts by saying racism is an integral, permanent, and indestructible component of this society. See generally DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* *supra* note 10. They loved *this* society. They felt it was the best of all possible worlds. Bell began his first book by quoting the lamentation of Jeremiah in 8:20, "The summer is past, the harvest is ended and we are not saved." DERRICK BELL, *AND WE ARE NOT SAVED*, *supra* note 10. We are not saved but *they* are doing quite well. Absolution would complete the picture of their success. "Absolve us of our sins and yours too will be washed as white as snow." Remember that we are their sins remembered. "We want you . . . We want you to . . . We want you if . . . We want you to tell us that Derrick Bell is too dark. See *Matthew* 4:8-11 (King James). We want you if you will tell us that Derrick Bell is too dark."

I masked my darkness by being clever. "I do not think that Bell is pessimistic enough." A pregnant pause would follow. My smile and easy-going demeanor filled the otherwise unforgiving minute. I gave the wrong answer but I delivered it in the right way. Ambiguity created a bit of an opening between the surrender of my livelihood (I wanted to be a professor) and the surrender of my life (I was not willing to prostitute myself for a position). This little tale does not reveal the complete picture of that season but it does unveil something about the White Overmind: I was subjected to the Derrick Bell litmus test at every law school where I interviewed. This, as much as anything else, revealed the open secret of the Ivory Tower's colorlined desires. In the end, perhaps, I was dark *and* comely.

Between me and the other world there is ever an unasked question: unasked by some through feelings of delicacy; by others through the difficulty of rightly framing it. All, nevertheless, flutter round it. They approach me in a half-hesitant sort of way, eye me curiously or compassionately, and then, instead of saying directly, How does it feel to be a problem? They say, I know an excellent colored man in my town; or I fought at Mechanicsville; or, Do not these Southern outrages make your blood boil? At these I smile, or am interested, or reduce the boiling to a simmer, as the occasion may require. To the real question, How does it feel to be a problem? I answer seldom a word.²⁷

The veil is woven out of the colorline. The experience of being “a problem” is veiled because people in colorlined societies prefer fantasy to vision. Du Bois hoped to see America unveiled:

If somewhere in this whirl and chaos of things there dwells
Eternal Good, pitiful yet masterful, then anon in His good time
America shall rend the Veil and the prisoned shall go free.²⁸

In making this argument plain, Du Bois outed himself as a race-man. To be openly black, that is, to oppose the colorline has a cost. The process of unveiling a defiantly uncolorlined identity never ends:

Even at an individual level, there are remarkably few of even the most openly [black] people who are not deliberately in the closet with someone personally or economically or institutionally important to them. Furthermore, the deadly elasticity of [caucasianist] presumption means that, like Wendy in Peter Pan, people find new walls springing up around them even as they drowse: every encounter with a new classful of students, to say nothing of a new boss, social worker, loan officer, landlord, doctor, erects new closets whose fraught and characteristic laws of optics and physics exact from at least [black] people new surveys, new calculations, new draughts and requisitions of

²⁷ DU BOIS, *supra* note 24, at 1-2.

²⁸ *Id.* at 187.

secrecy or disclosure. Even an out [black] person deals daily with interlocutors about whom she doesn't know whether they know or not, it is equally difficult to guess for any given interlocutor whether they know or not; it is equally difficult to guess for any given interlocutor whether, if they did know, the knowledge would seem very important. Nor – at the most basic level – is it unaccountable that someone who wanted a job, custody or visiting rights, insurance, protection from violence, from “therapy,” from distorting stereotype, from insulting scrutiny, from simple insult, from forcible interpretation of their bodily product, could deliberately choose to remain in or to reenter the closet in some or all segments of their life. The [black] closet is a feature not only of the lives of [black] people. But for many [black] people it is still the fundamental feature of social life; and there can be few [black] people, however courageous and forthright by habit, however fortunate in the support of their immediate communities, in whose lives the closet is not still a shaping presence.²⁹

It is an open secret that we are still prisoners of the veil.³⁰

What do we know? We know that every day we make such war on the hopes and dreams of the Third World that we are called the “Great Satan” and can no longer travel the world without fear of the hate that hate created. We know that every day our hallucinogenic war on drugs destroys the Third World

²⁹ EVE KOSOFSKY SEDGWICK, *EPISTEMOLOGY OF THE CLOSET* 67-68 (1990). I have appropriated this passage for another use by substituting the word “black” for “gay” and the word “caucasianist” for “heterosexist.” I have not done so in order to *bury* Sedgwick’s argument under my own concerns regarding the colorline. Rather, I have done so in order to *praise* her argument with the most sincere form of flattery – imitation.

³⁰ Bell argues:

Today, because bias is masked in unofficial practices and “neutral” standards, we must wrestle with the question of whether race or some individual failing has cost us the job, denied us the promotion, or prompted our being rejected as tenants for an apartment. Either conclusion breeds frustration and alienation – and a rage we dare not show others or admit to ourselves.

BELL, *FACES AT THE BOTTOM OF THE WELL*, *supra* note 10, at 6. In his argument we see that we blacks are, indeed, still prisoners of the veil.

lives it claims to be saving and the unlucky Thirteenth Amendment's mootness is written on black flesh with steel chains. Every day we cover the truth of our pleasure-in-lynching with a veil of ignorance. This western veil of ignorance is called "news." The news is exciting. The news veils our closeted, sadistic attraction to the black body in pain.

Every day the news, the thing that excites us even more than the Pope or Fidel Castro, is the public tryst in the form of a fight over the public trust between Ken Starr and Bill Clinton.³¹ In my undergraduate days at the University of Virginia when we saw such public spectacles rolling around together on Mister Jefferson's beautiful green Lawn, a sophomoric chant would arise, "get a room!"

Look away, look away, look away, Dixieland.³² Too late, I have been captured by my own gaze. I cannot help but make myself see those two white men – Clinton/Starr – wrapped around each other in war of words that seems to deconstruct that thin line between love and hate. A Gorgon-with-two-backs before whom anyone daring to look would be transformed into stone. Transformed, that is, into a Washington monument and doomed to eternally return the white-into-white Starr/Clinton gaze. I looked at the spectacle and the spectacle looked back... and I am not alone, am I?

When the Starr Report opens the window on the Oval Office, is there anyone who will draw her blinds? Will you draw your blinds? And if you do draw your blinds, will you not wonder

³¹ When Monica Lewinsky was first unveiled, Ted Koppel and many other news reporters flew immediately to Washington, D.C. from Cuba, where the Pope was meeting with Cuban President Fidel Castro. See Howard Kurtz, *Clinton Scoop So Hot It Melted*, WASH. POST, Jan. 22, 1998, at C1.

³² Imagine, if you will, the author in his suburban sixth grade music class. The class is all-white but for a black girl who was bussed in from the city under a special program and the author, a resident of the suburb. The Teacher has instructed us to sing "Dixie." The class sings happily. My lips are closed tight. See *Matthew 15:11* (King James). The teacher's mouth, in contrast to the author's, is wide-open as she plays the piano and sings with her obedient fellow-whites. It is a moment of white-fellowship – a church of poisoned minds and colorlines. The Teacher looks at me – her eyes bright with race-pleasure.

what we will think you are hiding? Will we not all talk about the strangeness of presidential pleasures? Was the cigar wrapper on or was it off? Why a cigar? Who has the cigars now? Were they Cuban cigars?³³ How long was Arafat waiting? Was he waiting in the Rose Garden? Did Clinton ever promise Monica a Rose Garden? These are thorny questions. Did they light a match to the cigar? Did they inhale? Will we?

Will we draw a breathy breath of relief and then sigh (seductively or with satisfaction) when it is all laid bare, revealed, open, exposed, unveiled and dancing through our open windows? We will see them having sex in the text called "The Starr Report." What will we do with these new porn-Starrs? Will every thousand words equal a picture? Will every picture tell a story? Will it last a thousand days or a thousand and one nights? Will we be able to tell when we are reading the story and when we are being read by the story? Every story is about a writer and a reader getting together between the two covers of a book (see *If On A Winter's Night A Traveler* or *Fear of Flying* or picture Italo Calvino and Erica Jong reading each other together) or between folded sheets of newsprint. And every story is never-ending because it is never completely written or read.

There is always room for play between the black of the print and the white of the page. The problem of interpretation is important. The pleasure of interpretation is important. British folk musician Billy Bragg sings:

The most important decisions in life
are made between two people in bed.³⁴

³³ My United States passport informs me that, "As of November 1993, the purchase or importation of Cuban, North Korean, Vietnamese, Libyan, Iraqi, or Yugoslav (Serbian and Montenegrin) goods or services are generally prohibited."

³⁴ BILLY BRAGG, *Must I Paint You A Picture*, on WORKERS PLAYTIME (Elektra Records 1988). Bragg's album cover contains a line from Antonio Gramsci:

How many times have I wondered if it is really possible to forge links with a mass of people when one has never had strong feelings for anyone, not even one's own parent; if it is possible to have a collectivity when one has not been deeply

Herman Melville writes:

How it is I know not; but there is no place like a bed for confidential disclosures between friends. Man and wife, they say, there open the very bottom of their souls to each other; and some old couples often lie and chat over old times till nearly morning. Thus, then, in our hearts' honeymoon, lay I and Queequeg – a cosy, loving pair.³⁵

In Patricia Duncker's novel, *Hallucinating Foucault*, we learn about love and reading from a conversation between two lovers, both Cambridge University graduate students in Romance Languages. He is writing about Paul Michel and she is writing about Friedrich von Schiller:

"Every writer has a Muse," said the Germanist slowly, "no matter how anti-Romantic they are. For the irredeemably boring, the Muse is a woman they've cooked up in their heads, propped up like a voodoo doll on a pedestal and then persecuted with illusions, obsessions and fantasies. Paul Michel wasn't like that. He wanted someone real; someone who challenged him, but whose passions were the same. He fell in love with Foucault. It is absolutely essential to fall in love with your Muse. For most writers the beloved reader and the Muse are the same person. They should be."³⁶

We will always have Paris and Casablanca and other never-ending stories but now I am tired (of writing). It is time to go home, put on my pajamas and hmmm...read?

loved oneself by individual human creatures. Hasn't this had some effect on my life as a militant – has it not tended to make me sterile and reduce my quality as a revolutionary by making everything a matter of pure intellect, of pure mathematical calculation.

Id. Law cannot be reduced to a mathematical calculation.

³⁵ HERMAN MELVILLE, *MOBY-DICK* 148 (introduction and commentary by Harold Beaver, 1986) (1851).

³⁶ PATRICIA DUNCKER, *HALLUCINATING FOUCAULT* 35-36 (1996).

Final paragraph, final reel or final veil: maybe the whole thing is a white-on-whites-only thing? Remember the black Bart Simpson T-shirts which read, "it's a black thing, you wouldn't understand?" Perhaps this is a white thing. Maybe our time on the cross has given us a different perspective. I have yet to hear a black person talk about impeachment.³⁷

Oops, gotta run! It is almost time!

2ND STORY: CASABLANCA

And today fierce hatred is still authorized and naturalized as human. "Me, me, me, me me me," says hatred. Or rather: mememe ... so how could it ever get in a "you?" Most humans but not all, most books, except for a few. For there are "the happy few," a small number, the miracles, a handful of charming grains of sand in the desert of millennia. The secret guardians of the inestimable richness in being two different yet equal beings in terms of strengths and differences. Both, as much one as the other, equally mysterious. All those who love and who think, who think and who think about loving, know that there exist during every period a few clandestine beings, born to watch over the little double flame, that it doesn't go out. Sparks in the darkness. So do you keep watch, while the human tribe sleeps across the earth, indifferent to misfortunes, to wars, to joys, to massacres? Asks the watcher. There has to be someone, Kafka answers. Watchers, prophets of the present, agents for the most arduous, most dangerous cause there is: to love the other, even before being loved. Without waiting, without counting. The cause of "you."³⁸

-Hélène Cixous

Superiority? Inferiority? Why not the quite simple attempt to touch the other, to feel the other, to explain the other to myself?

³⁷ One week after the Starr Report 60% of whites approved of Clinton's job performance and 87% of blacks approved. Richard Benedetto, *Opinions Fall Clearly Along Party, Race Lines*, USA TODAY, Sept. 18, 1998, at 3A.

³⁸ HÉLÈNE CIXOUS, *Unmasked!*, in STIGMATA: ESCAPING TEXTS 131, 134 (Keith Cohen trans., 1998).

*Was my freedom not given to me then in order to build the world of You?*³⁹

-Frantz Fanon

The White House for me evokes the image of *Casablanca*, that classic tale of white love and politics and war.⁴⁰ In *Casablanca*, the specter of the black haunts the entire affair:

As a writer reading, I came to realize the obvious: the subject of the dream is the dreamer. The fabrication of an Africanist persona is reflexive; an extraordinary meditation on the self; a powerful exploration of the fears and desires that reside in the writerly conscious. It is an astonishing revelation of longing, of terror, of perplexity, of shame, of magnanimity. It requires hard work *not* to see this. It is as if I had been looking at a fishbowl – the glide and flick of the golden scales, the green tip, the bolt of white careening back from the gills; the castles at the bottom, surrounded by pebbles and tiny, intricate fronds of green; the barely disturbed water, the flecks of waste and food, the tranquil bubbles traveling to the surface – and suddenly I saw the bowl, the structure that transparently (and invisibly) permits the ordered life it contains to exist in the larger world. In other words, I began to rely on my knowledge of how books get written, how language arrives; my sense of how and why writers abandon or take on certain aspects of their project. I began to rely on my understanding of what the linguistic struggle requires of writers and what they make of the surprise that is the inevitable concomitant of the act of creation. What became transparent were the self-evident ways that Americans choose to talk about themselves through and within a sometimes allegorical, sometimes metaphorical, but always choked representation of an Africanist presence.⁴¹

³⁹ FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 231-32 (Charles Lam Markmann trans., 1967).

⁴⁰ *CASABLANCA* (Metro-Goldwyn-Mayer 1942). All quotes in this story are from the film, unless otherwise noted. I do not think that *Casablanca* reminds me of the White House merely because that is its translation from Spanish.

⁴¹ MORRISON, *supra* note 5, at 17.

The specter of the Africanist presence in *Casablanca* is first summoned by an act of non-recognition, "That *boy* who is playing the piano, somewhere I've seen him." So speaks Ilsa Lund (Ingrid Bergman) to Captain Louis Renault (Claude Rains), Chief of Police in *Casablanca*, on seeing Sam (Dooley Wilson), a black man seemingly many years her senior, playing the piano in *Rick's Café Americain*. We learn that "everybody comes to Rick's." We also learn that the "boy" on the piano had been the musical catalyst for Ilsa and Rick Blaine (Humphrey Bogart) during their original war-crossed affair just before the fall of Paris. *Casablanca* is the moment and place, for whites Ilsa and Rick, of love reunited in exile. Sam is the "invisible man," the "structure that transparently... permits the ordered life it contains to exist in the larger world."⁴²

The site of Rick and Ilsa's reignited love is the Dark Continent, the place that must display itself as the antithesis of values in picture after picture and text after text. We learn that *Casablanca* is a place of ill repute on a continent of ill repute. In a famous line from the film, the cynical Renault feigns surprise to show us the lawless and fallen nature of the place, "I'm shocked, shocked to find there's gambling going on in here." He then collects his winnings. Welcome to *Casablanca*. As the film begins, we see a line on a map of the world. The line represents a "torturous roundabout refugee trial" from "Paris to Marseilles, across the Mediterranean to Oran" and then "across the desert to *Casablanca*." We see a man on a tower. We see the sky and water in the background before descending with the camera to the street. We see a man juggling. We see a man walking with parrots on a stick. We see two men arguing and also two monkeys. One of the men, a black man, pats the first monkey on

⁴² *Id.* Indeed, an interview with Murray Burnett, the co-author of the play upon which *Casablanca* was based, confirms Morrison's thesis:

When I was in the South of France my friend said "Let's go out to a nightclub..." and we went...to a nightclub. There was a black man on the piano and I said to my first wife, "What a setting for a play." YOU MUST REMEMBER THIS (MGM Home Entertainment 1998). The figure of the black was literally "the setting" for the literary project that eventually became the most-loved white-on-white love story ever filmed.

its back. A woman in a veil, facing away from the lens, shakes the second monkey's hand. Casablanca, we are told, is the place where European refugees wait to get to Lisbon and from Lisbon to the "New World." In Casablanca they "wait and wait and wait."

Rick and Ilsa had a love both forged in and consumed by the heat of the second war to end all wars. Their love is the classic story of white-on-white romance in wartime, Sam sings, "It's still the same old story, a fight for love and glory, a case of do or die, as time goes by." In the flashback scene, Sam is again on the piano playing "As Time Goes By." Rick and Ilsa embrace in a window and we hear the explosions in the background. Ilsa speaks, "Is that cannon-fire or is it my heart pounding?" The situation is not possible without the unrecognized familiar on the piano, the man who must display himself as a "boy" in film after film – "that boy on the piano" – over and over, to infinity. Sam sings "It Had To Be You" with the exaggerated grin of the minstrel, "'cause my hair is curly, 'cause my teeth are pearly...." Rick makes Sam sing also. "You played it for her, you can play it for me," says the white man to the black boy. "Yes, Boss," is Sam's meek reply. Sam is their Sambo.

What would happen should Sam ever gain a political consciousness? Sam functions as a necessary catalyst for white-on-white love. Without the figure of the black the figures in white have no way of finding each other. Sam is "the fishbowl" that structures the lives of the white characters. Sam is the black body. Sam is the rhythm and music that give meaning to the white-to-white alliance between Rick and Ilsa, Ilsa and her husband, Rick and Renault, and between all the various white tribes gathered together in *Rick's Café Americain*.

What if Sam refused this function? What if Sam wanted his own life and love and adventure? Would Sam suddenly become a social disease of sorts? Sam's independent existence and the independent existence of the many thousands gone before and after him would *hinder* social intercourse between whites like a disease. Black independence appears like a disease. It appears, to colonial eyes, as something that hinders white society and

white sociability. Should Sam one day find his own voice, things *would* fall apart. Sam's own song might sound like Joshua's.

Perhaps Ilsa, too, has been silenced. Perhaps her silence, like Sam's, has been eroticized. Consider the following conversation:

Ilsa: I can't fight it anymore. I ran away from you once. I can't do it again. Oh, I don't know what's right any longer. You'll have to think for both of us, for all of us.

Rick: Alright, I will. Here's looking at you kid.

Ilsa: I wish I didn't love you so much.

The film is about the fantasy of submission. Sam submits to Rick. Ilsa submits to Rick. Rick thinks for Sam. Ilsa asks Rick to "think for both of us, for all of us." Rick is the Commander-in-Chief. Rick is not an everyman so much as he is an "American" everywhiteman. As such, submission to his moral leadership is regarded as the highest form of romantic love. And his moral leadership is presented as so self-sacrificing that one is apt to forget that dictatorship, benevolent or not, is dictatorship. His is the white man's burden. The triumph of the white/male will represented by the film is in the way its anti-democratic message ("You'll have to think for both of us, for all of us") is hidden in a message about the importance of democracy. But what if Ilsa found a voice of her own?

Politics and sexuality are, in this most popular of "romance" films, each immanent in the other. One love ends – and yet is carried on *in* the war. Rick tells Ilsa, "We'll always have Paris," and says goodbye:

I've got a job to do too and where I'm going you can't follow, what I've got to do, you can't be any part of....I'm not any good at being noble but it doesn't take much to see that the problems of three little people don't amount to a hill of beans in this crazy world.

One love endures – and the imperatives of the war alone *keep* it alive. Ilsa must stay with her husband Victor Laszlo (Paul Henreid) because, as Rick says:

Inside of us we both know you belong with Victor, you're a part of his work [coordinating the resistance], the thing that keeps him going. If that plane leaves the ground and you're not with him you'll regret it. Maybe not today, maybe not tomorrow but soon and for the rest of your life.

One love begins – and is consummated *through* war. Rick kills Major Strasser, of the Third Reich, to ease the escape of Ilsa and Victor. Renault must choose between resistance and complicity, between Vichy and Rick. Renault symbolically throws away a bottle of Vichy water and begins to help Rick to veil his act of resistance. Their relationship begins by closeting itself. The film ends as the two men walk together into the morning fog and the fight against the Third Reich. Rick says, "Louis, this looks like the beginning of a beautiful friendship."

3RD STORY: AMERICA UNVEILED

*Maybe the sun's light will be dim
and it won't matter anyhow.
If morning's echo says we've sinned,
well, it was what I wanted now.
And if we're the victims of the night,
I won't be blinded by the light.
Just call me angel of the morning. Angel.
Just kiss my cheek before you leave.*⁴³
-Merrilee Rush

The Starr Report was all that we could have imagined and more than we could admit wanting to imagine.⁴⁴ All of our erotic

⁴³ *Angel of the Morning*, words and music by Chip Taylor. The song was a Billboard #7 hit for Merrilee Rush and the Turnabouts in 1968.

⁴⁴ The Office of the Independent Counsel, Referral to the United States House of Representatives pursuant to Title 28, United States Code § 595(c) (Sept. 9, 1998).

feelings about power and its exercise, about discretion and prosecutorial indiscretion, about Leviathan and our collective longing for a beautiful body politic were expressed in the language of constitutional crisis.

Kenneth W. Starr, the Independent Counsel, became the most successful pornographer of our time with the Starr Report. Consider his narrative of the Clinton/Lewinsky affair:

On Sunday, February 4, according to Ms. Lewinsky, she and the President had their sixth sexual encounter and their first lengthy personal conversation. The President was in the Oval Office from 3:36 to 7:05 p.m. He had no telephone calls in the Oval Office before 4:45 p.m. Records do not show Ms. Lewinsky's entry or exit. According to Ms. Lewinsky the President telephoned her desk and they planned their rendezvous. At her suggestion, they bumped into each other in the hallway, "because when it happened accidentally, that seemed to work really well," then walked together to the area of the private study. There, according to Ms. Lewinsky, they kissed. She was wearing a long dress that buttoned from the neck to the ankles. "And he unbuttoned my dress and he unhooked my bra, and sort of took the dress off my shoulders and...moved the bra...[H]e was looking at me and touching me and telling me how beautiful I was." He touched her breasts with his hands and his mouth, and touched her genitals, first through underwear and then directly. She performed oral sex on him. After their sexual encounter, the President and Ms. Lewinsky sat and talked in the Oval Office for about 45 minutes. Ms. Lewinsky thought the President might be responding to her suggestion during their previous meeting about "trying to get to know me." It was during that conversation on February 4, according to Ms. Lewinsky, that their friendship started to blossom. When she prepared to depart, according to Ms. Lewinsky, the President "kissed my arm and told me he'd call me, and then I said, yeah, well, what's my phone number? And so he recited both my home phone number and my office number off the top of his head." The President called her at her desk later that afternoon and said he had enjoyed their time together.⁴⁵

⁴⁵ *Id.*

The strange repetition of the phrase “according to Ms. Lewinsky” seems to be an attempt to give the pornographic retelling of this tawdry office romance the imprimature of objectivity and respectability. The detail amazes. Did we need to know that “she was wearing a long dress that buttoned from the neck to the ankles” in order to understand that this was an Oval Office affair? Did we need to know that he “unbuttoned” her dress? Did we want to know? What needs did our knowing fulfill?

In the passage above we see the Oval Office as a peculiar undefined space. At one moment we see the lovers as lovers, “[H]e was looking at me and touching me and telling me how beautiful I was.” And in the next moment we see them in the two-dimensional projection of the pornographer, “He touched her breasts with his hands and mouth, and touched her genitals, first through underwear and then directly. She performed oral sex on him.” Those words, “she performed oral sex on him,” are repeated throughout the Starr report. As are details of “unbuttoning” and “unhooking.” Did anyone ask the Office of the Independent Counsel to share this intimate performance, this performance of intimacy, with the entire world?

Starr writes, “All Americans, including the President, are entitled to enjoy a private family life, free from the public or governmental scrutiny.” That was not the case, however, in this case. Perhaps the focus for Starr was on the word “family.” Everyone is entitled to a private *family* life, not a private life. Even the cigar incident is revealed to have occurred “while Mrs. Clinton was in Ireland.” That “encounter,” retold in graphic detail in the Starr Report, ended with roses. We read that “[Clinton] then put the cigar in his mouth” and said:

“It tastes good.” After they were finished, Ms. Lewinsky left the Oval Office and walked through the Rose Garden.⁴⁶

⁴⁶ Betty Currie, the President’s secretary, who happens to be black, seems to have been given the role of “intermediary” according to the Starr Report.

These open secrets could have remained secret.

4TH STORY: THIS TIMELESS BURNING

The road, jam-packed with wreckage, stretched for some sixty miles. Sixty miles of gnarled steel, skeleton cars, and dead bodies, tens of thousands of dead bodies, Iraqi soldiers, Palestinian refugees, men, women, children. On February 25, 1991, at 2:00 a.m. local time, Baghdad radio announced that Iraq's foreign minister had accepted a Soviet-brokered cease fire and that Iraqi troops were to be withdrawn from Kuwait and would reoccupy the positions they held before the invasion. The Gulf War should have been over right there. But it wasn't. President Bush released a statement: "Iraqi units are continuing to fight. We continue to prosecute the war."

But the Iraqi withdrawal, according to Kuwaiti eyewitnesses, was already underway. Iraqi vehicles and

Like Sam in the film *Casablanca*, she seems to be the catalyst for the affair. If the Starr Report is to be believed:

Secret Service officers and agents took note of Ms. Currie's role. Officer Steven Pape once observed Ms. Currie come to the White House for the duration of Ms. Lewinsky's visit, then leave. When calling to alert the officer at the West Wing lobby that Ms. Lewinsky was en route, Ms. Currie would sometimes say, "[Y]ou know who it is."

She finds her voice, or rather, we find her voice deployed in the Starr Report to suggest that something was amiss:

In her words: "[H]e was spending a lot of time with a 24-year-old young lady. I know he has said that young people keep him involved in what's happening in the world, so I know that was one reason, but there was a concern of mine that she was spending more time than most."

Currie presents herself, or is presented, as the obedient black body around whom the rest of the narrative is structured. In a section entitled, "Role of Betty Currie," we see subsections entitled, "Arranging Meetings," "Intermediary for Gifts," and "Secrecy." In the final lines of the section we are told, "In Ms. Lewinsky's evaluation, many White House staff members tried to regulate the President's behavior, but Ms. Currie generally did as he wished." Perhaps Starr, in presenting Currie as a latter-day Sam/bo, means to suggest that it is also her fault that the President fell so far from Grace. Currie seems trapped in the pornography of a racial as well as a sexual fantasy: a fantasy played out on a national stage between Clinton and Starr.

Palestinian refugees were streaming down the road, the Highway of Death, heading out of Kuwait and into Iraq.

At about midnight, the U.S. bombing of retreating troops began. The American planes attacked both ends of the Iraqi convoy, trapping everything in between. Drivers and passengers began to abandon their vehicles, but there was nowhere to go. The air was so thick with attacking planes that they were having trouble finding a place in the sky. One U.S. pilot would later say it was like "shooting fish in a barrel."

And here were Sojourner and I, walking along the Highway of Death. The air stank with the stench of burning gas and rotting, flame-roasted human flesh. Whole busses had been pounded into the ground, as if by giant hammers. A tank lay on its side, spurting flames. A car had been ripped open like a sardine can, a half dozen bodies scattered nearby. The horror was so extensive, so incredible, it was impossible to catalogue. It was a vehicular and human holocaust, extending from the spot where we were walking, past where we could see. We saw miles and miles of blackened bodies, shattered limbs, melted windshields, stinking burning tires, smashed skulls, splattered flesh, a child cut in two by a sharp piece of metal, a woman whitened by fire, her skull stripped of flesh by tongues of flame, her jaw open, caught in some sort of awful scream or laugh.

...The last thing I saw on the road was the corpse of a child with a yellow flower sprouting from its forehead.⁴⁷

-Christopher John Farley

*brittle black stem and
corolla of yellowish dirty
spikes like Jesus' inchlong
crown...
with the form of the great yellow
Rose in your brain!
This is the flower of the World.⁴⁸
-Allen Ginsberg*

One day not long ago, I happened upon a discussion of Adolf Eichmann. The discussion revolved around the tired axis of

⁴⁷ CHRISTOPHER JOHN FARLEY, MY FAVORITE WAR 212-13 (1996).

⁴⁸ GINSBERG, *supra* note 15, at 56.

whether it was bad/good to compare this/that to Eichmann. Of course the conversation was about the spectacle that is denoted as Eichmann and not about any historical figure by that name. The Eichmann-spectacle is that of bureaucratic-terror, of banality, and of hyperconformist evil. The banality of evil is, of course, intimately connected to the project of legal interpretation and legal education. All too often ours has been a project of convincing the multitudes that cruelty is just, efficient, or dictated by the weight of history. "Thinking like a lawyer" is another phrase for this peculiar transubstantiation of cruelty into inevitability and of life's passion into the play of dead texts.

In a macabre imitation of life, the rules fetishist insists that she is only following orders. The orders may come from the text, from the Framers, from the dismal science, from policy, from precedent, from anywhere at all. What is important to the rules fetishist is to keep hidden the creative aspect inevitably involved in the choice to search *this* source of rules over *that* source of rules or to read the rules as saying *this* and not *that*.

The discussion of Eichmann reminded me of something that happened to me in the fifth grade. It was an Upstate New York fall after a summer spent in Berkeley, California. I can only recount the event in the form of a parable.

In 1972, Mr. McCauley, my fifth grade teacher, decided to teach us an action-oriented civics class. We were instructed to study the two presidential candidates and prepare for a mock campaign and election. We all set to work preparing speeches and drawing campaign posters.

I was the only McGovern supporter ("Come home America").⁴⁹ All of the Nixon supporters were white. It was a suburban scene.

⁴⁹ For a vision of what might have been, see generally, AN AMERICAN JOURNEY: THE PRESIDENTIAL CAMPAIGN SPEECHES OF GEORGE MCGOVERN (1974). In a speech at Wheaton College, McGovern stated:

While we know that the Kingdom of God will not come from a party's political platform, we also know that if someone is hungry we should give him food; if he is thirsty, we should give him drink; if he is a stranger we should take him in; if he is naked we should clothe him; if he is sick we should care for him; and if he is in prison we should visit him.

"For inasmuch as you have done it to the least of these my brethren, you have done it onto me."
That is what the scripture says. None of us can be content until all of us are made whole.

George McGovern, *The Sources of Our Strength*, Speech at Wheaton College (Oct. 11, 1972), in *AN AMERICAN JOURNEY: THE PRESIDENTIAL CAMPAIGN SPEECHES OF GEORGE MCGOVERN* 205, 208-209 (1974). McGovern spoke eloquently against our illegal, undeclared and immoral air war against Laos:

We seem to have counted bodies so long that somehow they just don't seem to count anymore. Perhaps we need to hear how this war seems to the people who are on the receiving end. Listen to this young father in Laos:

"My son is six years old. We are from Ban Qui. In July 1969 we were all sitting in our little shelter out in the forest when the planes came. Two people with us - a man aged sixty and a little girl aged seven - were killed lying in their beds. My little son's hand was hit, and his fingers flew up, imbedding themselves in the roof of our shelter."

The air strikes come with new weapons and new techniques, and these weapons have a very special purpose. They cannot blow up a bridge. They cannot destroy a structure. They do not stop a truck or even penetrate a rubber tire. Many of them have only one purpose, and that is to kill and maim human beings. We have the innocuous sounding "pineapple" with 250 steel pellets in the casing of each one. A single aircraft carries 1,000 of these "pineapples," or 250,000 pellets, and it can saturate an area the size of four football fields. And it just hits people. We have developed a way to explode those weapons above the ground, so that they can even reach people who hide in ditches or holes. We have steel fleshettes that penetrate the skin and cannot be removed. *We have napalm -jellied gasoline that sticks to the skin as it burns.* We have white phosphorus that cannot be extinguished until it burns itself out. Now, these are some of the weapons that produced that picture we saw in the press not too long ago of the little girl, Kim, running away from a school that had been hit by American napalm. She was naked, her clothing had been inflamed, her flesh was burned, and she was running directly into the lens of a camera man nearby. And I want to say to my fellow Americans that that picture ought to break the heart of the people of America.

George McGovern, *They, Too, Are Created in the Image of God*, Speech given in Los Angeles, California (Sept. 26, 1972), in *AN AMERICAN JOURNEY: THE PRESIDENTIAL CAMPAIGN SPEECHES OF GEORGE MCGOVERN* 119, 124-25

I drew a Nixon poster in the form of a Stop sign. "STOP NIXON." I also substituted a swastika for the "X" in Nixon's name. I thought that I had produced a cutting-edge bit of elementary school AgitProp. I tried (and failed) to convince my fifth grade classmates that Commander-in-Chief Richard Nixon's approval of napalm as a weapon of war made him a "Nazi." Recall that I was in fifth grade at the time. Even now, I'll confess, I think that it was a pretty good effort for a child. Napalm is a form of jellied gasoline that sticks to flesh as it burns.

Mr. McCauley was not amused. He was a veteran of the clash of segregated armies known as World War II and this, reasoned my fifth grade mind, may have been part of his difficulty. I remained happy with my AgitProp. My quiet happiness drove him to distraction and to shouting.

We were not allowed any free time that day. Instead, Mr. McCauley gave a long speech to the class about my bad behavior. He carefully explained that my bad behavior was the reason why he was taking away everyone's free time. Imagine, no free time in the fifth grade. And the teacher says it is your fault. It was the perfect civics lesson.

My classmates and I were instructed to sit in the dark for forty minutes with our heads on our desks so we could "think" about what I had done and what Mr. McCauley had said about it.⁵⁰ Mr. McCauley said nothing about napalm and neither did my classmates. Napalm, it seemed, was not the evil. I was the evil. My fifth grade derision of napalm was the evil (equating Nixon with national socialism was, apparently, worse than napalming children).

Burning with anger over my objection to burning the flesh off of the bodies of those other children, Mr. McCauley's eyes met mine in the burning darkness. That look was not a look between two human beings. His eyes met mine across an aquarium of

(1974). (emphasis added). McGovern ended that speech, and others, saying, "Come with me, and we will bring America home to the great and good and decent land our people want it to be." *Id.*

⁵⁰ In fifth grade, forty minutes feels like forty days and forty nights.

difference. An aquarium of tears that smell like gasoline.⁵¹ Tears that burn. Fire always defies our strategies of separation and containment. Predictably, the other children – Brownshirts all – beat me up the very next day. The irony was lost on them. But not me. I took a subversive happiness in it all. And I was happy to let my light shine all over my highly flammable fifth grade situation.

That is the end of the parable/flashback and most of what I remember from fifth grade. Eichmann is not dead. Bureaucracy, terror, control and denial are not dead. So long as “rules” are used to deny that the choices we make are choices, so long as those choices take place in the field of pain and death, so long as we live in the burning darkness, Eichmann is not dead. So long as there are memories that smell like gasoline, Eichmann is not dead.

5TH STORY: COLORLINES

We are born into a preinvented existence within a tribal nation of zombies and in that illusion of a one-tribe nation there are real tribes. Some of the tribes are in the business of sucker punching people's psyches in the form of maintaining the day-to-day job of government – they sell the masses a pile of greentainted meat; i.e. a corrupted and false history as well as a corrupted and false future....There are other tribes that experience the X ray of Civilization everytime they leave the house or turn on the radio or pick up a newspaper or when they suddenly realize their legs have automatically come to a halt before a changing traffic light. A civil war and a national trial for the “leaders” of this country...is the soundtrack that plays and replays in the heads of that tribe. Some members of the tribe understand the meaning of language. They also understand what freedom truly is and if the

⁵¹ I have appropriated this metaphor from DAVID WOJNAROWICZ, MEMORIES THAT SMELL LIKE GASOLINE (1992). In this fifth grade misadventure of mine, I was the fishbowl. My body became “the structure that transparently (and invisibly) permit[ed] the ordered life it contain[ed] to exist in the wider world.” MORRISON, *supra* note 5, at 17. At least, I was until I refused the role. When I refused the role, the walls of glass shattered and gasoline wet the floor beneath our desks.

*other tribes want to hand them the illusion of hope in the form of the leash – in the form of language – like all stray dogs with intelligence from experience, they know how to turn the leash into a rope to exit the jail windows or how to turn the leash into a noose to hang the jailers.*⁵²

-David Wojnarowicz

I had been asked to participate in *The Salience of Race: 3rd Annual Northeast People of Color Conference* at Touro College's Jacob D. Fuchsberg Law Center on March 27, 1998. I had been asked to speak on a panel entitled *The Way We Talk About Race*.⁵³

I want to share two events with readers who may have been unable to attend. First, the luncheon honoring seven people of color who began teaching twenty-five years ago (the year after my fifth grade civics lesson) was truly inspired. The men honored were:

John Baker (Albany Law School)
 Derrick Bell (New York University)
 John Britain (University of Connecticut)
 John Gregory (Hofstra University)
 Kellis Parker (Columbia University)
 Larry Palmer (Cornell University)
 Surya Prakash Sinha (Pace University)

Second, Derrick Bell's Sunday morning performance, *Psalms of Survival in an Alien Land Called Home*, was a thing of beauty. Bell read from his book, *Gospel Choirs*, while accompanied by the Lafayette Inspirational Ensemble, a gospel choir.⁵⁴

The men's-only nature of the group honorees and the fact that they were only seven in number reflected the brute fact that in the hiring ceremonies of white academia a quarter-century ago,

⁵² DAVID WOJNAROWICZ, *CLOSE TO THE KNIVES: A MEMOIR OF DISINTEGRATION* 37-38 (1991).

⁵³ It was a great success thanks to conference organizers Len Baynes, Nancy Ota, Pamela Smith, Cheryl Wade, Robert Ward and especially to Deborah Waire Post.

⁵⁴ BELL, *GOSPEL CHOIRS*, *supra* note 10.

sexism was racism's handmaid.⁵⁵ And they remain one flesh today, as we can see in Derrick Bell's discussion of breaking the gender line at Harvard Law School:

It was not until that same year, 1972, that Harvard Law School hired its first woman for a full-time faculty position. Women students had pushed for someone with expertise in women's law issues. A few women were invited as visitors but were not offered permanent positions. At one faculty meeting a person for whom I have great respect responded to one woman's resume by saying: "When you tell me she graduated first in her class at Georgetown, I want to know whether she was the best person who finished at that school in the last five years. And, when you tell me she clerked for Court of Appeals Judge J. Skelly Wright, and then for Supreme Court Justice Thurgood Marshall, I come away unimpressed." Georgetown was not deemed a top-tier law school by those teaching at a school ranked at the top. Both Judge Wright and Justice Marshall, notwithstanding their considerable accomplishments on the bench, were regarded by the academic elite as bleeding-heart liberals and, thus, intellectually unimpressive. The candidate then, whatever her individual merits, was penalized for attending the wrong law school and accepting clerkships from the wrong judges.⁵⁶

Bell breaks the rules in the above passage by unveiling the identities of the players in the above hiring drama. Bell also breaks the rules by connecting the candidate to her connections and connecting the candidate's connections to the colorline – Justice Marshall, the lone black Justice, and Judge Wright, a fellow "bleeding-heart." Her connections, if we are to listen to Bell, were the wrong connections. Finally, Bell breaks the rules by connecting the gender line to the colorline – neither race nor gender can alone explain the situation faced by the candidate –

⁵⁵ I have chosen the word "handmaid" deliberately. I want to draw attention to Margaret Atwood's disturbing dystopia, in which white male power in the form of triumphalist Moral Majoritarianism arrives on the scene as inexorably as a change in weather and yet as unexpectedly as a bolt from the blue. MARGARET ATWOOD, *A HANDMAID'S TALE* (1986).

⁵⁶ BELL, *CONFRONTING AUTHORITY*, *supra* note 10, at 36.

her situation lies at the intersection of race and gender.⁵⁷ Bell broke the rules by obtaining a position on the Harvard Law School faculty and continued breaking rules until he was forced to leave.⁵⁸

Taking Bellsian rule-breaking as the theme, I played my part in the roundtable on *The Way We Talk About Race* by talking about the way we talk about cases:

Five Justices of the United States Supreme Court have never hired a Latino/a Clerk... four have never hired a black Clerk, two have never hired an Asian Pacific American Clerk. The Chief Justice of the United States Supreme Court, William Rehnquist... when it comes to selecting Clerks, has a seventy-nine and zero record against blacks. That is, he's hired seventy-

⁵⁷ Kimberlé W. Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139-67. When we contemplate the spectacle of at least one form of lynching, we can see that race is always attached to gender. When white men and women banded together as whites to unsex the black bodies they selected for their mutilation rituals they turned whiteness into a gender. Whiteness opposes blackness like a gender. This gender called white is the one with the *phallus*. Consider the lynching of Claude Neal in this regard:

After taking the nigger to the woods about four miles from Greenwood, they cut off his penis. He was made to eat it. Then they cut off his testicles and made him eat them and say he liked it.

JAMES R. MCGOVERN, *ANATOMY OF A LYNCHING: THE KILLING OF CLAUDE NEAL* 80 (1982). In psychoanalytic terms, the bearer of the *phallus* is the one in charge. Whites, as bearers of the *phallus*, make themselves a common gender *vis a vis* blacks. Blacks are made into a lack. Blacks are made into an opening. Blacks are made into an opening for whites to enter. And who can resist an opening? The *phallus* is, for whites in colorlined societies, both the symbol of their rightful place above blacks and the instrument of their pleasure-in-being-white. White-over-black is a form of ecstasy. The *phallus* is the key to this pleasure. The whites in the classic lynching of Claude Neal, made their victim open his mouth to their now-white *phallus* and "say he liked it." *Id.* Whites, male and female alike, become as one flesh in this ritual and blacks become the Other flesh. Whiteness is the one and blackness is its Other. The Other is the one with the lack. The Other is the one who is made black. The Other is the one with the wound, psychoanalytically speaking.

⁵⁸ BELL, *CONFRONTING AUTHORITY*, *supra* note 10, at 93-100.

nine Clerks and zero black Clerks. If he were a boxer, he'd be better than Rocky.⁵⁹

This was not, precisely speaking, an invitation to dialogue. Rather, it was recognition of the fact that this inexorable zero marks the conversation-horizon of the world of the colorline. Rehnquist's zero is the limit of what can be discussed. It marks what *cannot* be said within the acceptable bounds of conversation. The zero also marks the problem of "the way we talk about race." The Justices of the United States Supreme Court are as colorlined as the system of which they are a part and yet any mention of this is strictly forbidden. How to talk about race without speaking of zero is a question we need to stop asking. We need to talk about the zero. We need to demand that the vast, empty spaces be filled with the same wonderful things that fill white lives and that fuel white lifestyles. *He is not selling any alibis as you stare into the vacuum of his eyes. You're invisible now, you've got no secrets to conceal.*⁶⁰

I turned my attention to the thoughts of Amilcar Cabral, "Tell no lies, claim no easy victories."⁶¹ Critical Race Theory, I argued, has not gone far enough. It is still wedded to the notion of dialogue:

CRT has become a literature of telling lies and claiming easy victories. That is, we go through a pseudo-dialogue – we speak to people who do not care to hear anything we have to tell them.⁶²

⁵⁹ Anthony Paul Farley, *quoted in* Transcript of *The Way We Talk About Race* 9 (on file with the Touro Law Review) [hereinafter Transcript]. The figures are from *Special Report: The Hidden Power of Supreme Court Clerks*, USA TODAY, Mar. 13, 1998, at 13A.

⁶⁰ BOB DYLAN, *Like A Rolling Stone*, On BOB DYLAN LIVE 1966, THE BOOTLEG SERIES, VOL. 4, THE ROYAL ALBERT HALL CONCERT (Sony Music Entertainment, Inc. 1998).

⁶¹ AMILCAR CABRAL, *Tell No Lies, Claim No Easy Victories: Extracts from the Party Directive 1965*, in *REVOLUTION IN GUINEA: SELECTED TEXTS* 86 (Richard Handyside trans. & ed., 1969).

⁶² Anthony Paul Farley, *quoted in* Transcript, *supra* note 58, at 19.

Indeed, those of us who have been identified as “people of color” exist in our offices on a kind of zoological display, not unlike Ota Benga, the “pygmy” in the zoo.⁶³ All the Critical Race Theory talk of race has amounted to so much sound and fury, signifying nothing in a system filled with inexorable zeros:

Where has all the dialogue taken us? All the markers of inequality that were in existence before cases like *Brown v. Board of Education* or *Loving v. Virginia*, take your pick, are still with us today.⁶⁴

The problem of dialogue is a subtle one, I argued:

Take the film *The Bridge on the River Kwai*... remember Alec Guinness? British soldiers are captured and told to build a bridge for their captors... and eventually bridge-building becomes an imperative of its own. The beauty of the bridge-building process overwhelms Alec Guinness. We know he’s brave... he’s willing to risk death to build the bridge the right way. As a means to maintain his dignity as an officer and a gentleman. So it’s not a matter of cowardice or complicity, it is something deeper, something even more profound. He gets carried away with this bridge, and in the end he’s forgotten all about the war that he is in... he forgets the reason why he was made to build the bridge [and] who actually owns it.... The bridge is a deeply seductive image, because that image is what we all want, as oppressed people, an image of our master finally loving us and recognizing our humanity. It’s what keeps prostitutes with their pimps, it’s what keeps the colonized with their colonizers, it’s what keeps battered women with their batterers.⁶⁵

⁶³ PHILLIPS VERNER BRADFORD, *OTA: THE PYGMY IN THE ZOO* (1992).

⁶⁴ Anthony Paul Farley, *quoted in* Transcript, *supra* note 58, at 22.

⁶⁵ Anthony Paul Farley, *quoted in* Transcript, *supra* note 58, at 44-46. *THE BRIDGE ON THE RIVER KWAI* (Columbia Pictures 1957), Producer Sam Spiegel and Director David Lean. Adapted from the novel by Pierre Boulle. Boulle was also given credit for the screenplay even though he spoke no English because the real authors of the screenplay, Carl (HIGH NOON) Foreman and Michael (A PLACE IN THE SUN) Wilson, had been blacklisted. The film won seven Academy Awards in 1957, including Best Picture, Best Actor (Alec Guinness) and Best Director.

Consider, in light of the above, the following dialogue among the celluloid prisoners of war regarding law and order:

Colonel Nicholson (Alec Guinness)
Commander Shears (William Holden)

Colonel Nicholson: Escape? Where? Into this jungle? That fellow Saito [the commander of the prison camp] is right. No need for barbed wire here. One chance in a hundred of survival. I'm sure a man of Commander Shears' experience will back me up on that point.

Commander Shears: Oh, I'd say the odds against a successful escape are about 100:1. But may I add another point, Colonel?

Colonel Nicholson: Yes.

Commander Shears: The odds against survival in this camp are even worse. You've seen the graveyard. There are your real odds. To give up hope of escape, to even stop thinking about it is like accepting a death sentence.

Colonel Nicholson: Why haven't you tried to escape Commander?

Commander Shears: Oh, I've been biding my time, waiting for the right moment and the right company.

Colonel Nicholson: Oh, I understand how you feel. Of course, normally it would be the duty of a captured soldier to attempt escape but my men and I are involved in a curious legal point of which you are unaware. In Singapore we were ordered to surrender by Command Headquarters. Ordered, mind you. Therefore, in our case, escape might be an infraction of military law. Interesting?

Unnamed Officer: Yes, interesting point.

Commander Shears: I'm sorry Sir, I didn't quite follow you. You mean you intend to uphold the letter of the law, no matter what it costs?

Colonel Nicholson: Without law, Commander, there is no civilization.

Commander Shears: That's just my point, here there is no civilization.

Colonel Nicholson: Then we have the opportunity to introduce it. I suggest we drop the subject of escape.⁶⁶

Colonel Nicholson: Our men must always feel they are still commanded by us and not by [our captors]. So long as they have that idea to cling to they will remain soldiers and not slaves. Are you with me there Commander?

Commander Shears: Well, I hope they can remain soldiers Commander. As for me, I'm just a slave, a living slave.⁶⁷

It is important to acknowledge one's situation:

People get used to anything. The less you think about your oppression, the more your tolerance for it grows. After a while, people just think oppression is the normal state of things. But to become free, you have to be acutely aware of being a slave.⁶⁸

⁶⁶ This, of course, is the moment of capture, the moment of liberalism, the moment the subaltern accepts a vision of law that separates her from her freedom and dignity.

⁶⁷ *THE BRIDGE ON THE RIVER KWAI* (Columbia Pictures 1957).

⁶⁸ ASSATA SHAKUR, *ASSATA: AN AUTOBIOGRAPHY* 262 (1987).

6TH STORY: A CRITIQUE OF CRITICAL RACE THEORY.

The principal role of the legal system within these societies is to create a political culture that can persuade people to accept both the legitimacy and the apparent inevitability of the existing hierarchical arrangement. The need for this legitimation arises because people will not accede to the subjugation of their souls through the deployment of force alone. They must be persuaded, even if it is only a "pseudo-persuasion," that the existing order is both just fair, and that they themselves desire it. In particular, there must be a way of managing the intense interpersonal and intrapsychic conflict that a social order founded upon alienation and collective powerlessness produces. "Democratic consent" to an inhumane social order can be fashioned only by finding ways to keep people in state of passive compliance with the status quo, and this requires both the pacification of conflict and the provision of fantasy images of community that can compensate for the lack of real community that people experience in their everyday lives.⁶⁹

-Peter Gabel & Paul Harris

Civil rights will not create the raceless society. Until the distribution of goods – material and spiritual – no longer tracks the colorline, we will have race. And there is no race without suffering and humiliation.

To qualify as the special favorite of the laws, one must present one's self as a history of group oppression. If you keep your eyes on the prize you may win the day and be granted some form of equal rights. Equality, under liberalism, turns out to be not much of a prize at all. Equality, under liberalism, means only a series of bans against particular acts of discrimination. These bans are known as "rights." Under liberalism there are rules against violating the rights of others.

Equality is not automatic. After the system of rights is in place, one must invest in learning the system. One must become adept at using the rules. One must learn the peculiar alchemy of

⁶⁹ Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, XI REV. L. & SOC. CHANGE 369, 372 (1982-83).

race and rights.⁷⁰ To achieve equality one must first identify a bad act. Second, one must identify a bad actor. Third, one must identify a particular harm suffered as a result of the bad actor's bad act. Fourth, one must show that the act and the actor were bad, that is, they were animated by animosity towards you because of your group membership. This is usually impossible.

The entire system of equal rights is designed to fail. The system fails because the actors who turn the wheel of the liberal equality machine do not like their subaltern castes. Critical Race Theory has often failed to face this blunt fact. Audre Lorde writes, "The master's tools will never dismantle the master's house. They may allow us to temporarily beat him at his own game, but they will never enable us to bring about genuine change."⁷¹ Critical Race Theory will never dismantle the master's house so long as it remains wedded to the notion of "rights."

Equal rights ideology fails to save the subaltern classes from oppression because it assumes that oppression does not take place. This assumption is tragically false. There are always gaps, conflicts and ambiguities in the rules.⁷² People who do not like you will tend to resolve any gaps, conflicts and ambiguities in the rules against you. That is the nature of the oppressed condition. Oppression is what happens when others resolve gaps, conflicts and ambiguities against you. If you are oppressed, that is, if powerful people in your society look down upon you and your group, then all the rights talk in the world will not save you. Equal rights will not save you because the gaps, conflicts and ambiguities inherent in any system of rights will tend to be resolved against your best interests and those of your group. Oppression, therefore, is immanent in equal rights, albeit as a term that dare not speak its name. "Equal rights," then, is the persistent and enduring fantasy that oppression does not exist.

⁷⁰ See generally PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991).

⁷¹ AUDRE LORDE, *The Master's Tools Will Never Dismantle the Master's House*, in *SISTER OUTSIDER* 110, 112 (1984).

⁷² See generally DUNCAN KENNEDY, *A CRITIQUE OF ADJUDICATION {FIN DE SIÈCLE}* (1998); FRANK, *supra* note 6.

The ideology of equal rights is a way of masking the desperate nature of one's situation. The achievement of formal equality leaves the subaltern struggle for equality in the very same position it occupied prior to beginning the struggle. Absolute inequality can be enforced through a system of rules mandating formal equality just as easily as through a system of rules mandating formal inequality. Put another way, apartheid can be achieved through a system of segregation or a system of integration. The rallying cry of "equal rights" should not be mistaken for the goal.

Patricia Williams argues:

For blacks the prospect of attaining full rights under law has been a fiercely motivational, almost religious source of hope ever since arrival on these shores.⁷³

Rights, however, are not equality, as Williams realizes.⁷⁴ It is important not to make a fetish of these rights. They are tools only. And tools do not have an inherent politics, purpose or

⁷³ WILLIAMS, *supra* note 69, at 154.

⁷⁴ Williams writes:

In many mythologies, the mask of the sorcerer is also the source of power. To unmask the sorcerer is to depower. So CLS's unmasking of rights mythology in liberal America is to reveal the source of much powerlessness masquerading as strength; it reveals a universalism of need and oppression among whites as well as blacks. In those ancient mythologies, however, unmasking the sorcerer was only part of the job. It was impossible to destroy the mask without destroying the balance of things, without destroying empowerment itself. The mask had to be donned by the acquiring shaman and put to good ends.

Id. at 164. Williams argues that instead of discarding rights altogether, "society must give them away." *Id.* at 165. To her argument I add the observation that just as Critical Legal Studies has erred in fetishizing its critique of rights, Critical Race Theory must be wary of fetishizing its critique of the critique. Rights, whether "discarded" or "given away," are tools only and should not be imbued with magical politics, purposes or meanings beyond the uses to which they have been or may be put.

meaning. The meaning of a tool is its use. Sometimes “rights” can be used to oppress and sometimes they can be used liberate.

7TH STORY: WHAT DO BLACK PEOPLE WANT?

There is no Negro mission; there is no white burden. I find myself suddenly in a world in which things do evil; a world in which it is always a question of annihilation or triumph. I find myself – I, a man – in a world where words wrap themselves in silence; in a world where the other endlessly hardens himself. No, I do not have the right to go and cry out my hatred at the white man. I do not have the duty to murmur my gratitude to the white man. My life is caught in the lasso of existence. My freedom turns me back upon myself. No, I do not have the right to be a Negro. I do not have the duty to be this or that.... If the white man challenges my humanity, I will impose my weight as a man on his life and show him that I am not that “sho’ good eatin’” that he persists in imagining. I find myself suddenly in the world and I recognize that I have one right alone: that of demanding human behavior from the other. One duty alone: that of not renouncing my freedom through my choices.⁷⁵

–Frantz Fanon

I was asked to stand and deliver:

This is my reason for hesitating, because the answer to the question [What is to be done?...] is the one I just gave. We need to look at what we’ve been doing to maintain our oppressors in power. We need to think about the little things we can do – and we do see moments of this occurring [from time to time]. We need to help people to understand that the colorline is a battering relationship. [The oppressor] does not love you, the Man is not going to change. He needs your pain. That is what makes him your oppressor. Any dialogue, any presentation of a coherent face to the system, is futile. We need to invent bizarre things that cannot be comprehended by our oppressors as they are currently organized.⁷⁶

⁷⁵ FANON, *supra* note 39, at 228-29.

⁷⁶ Anthony Paul Farley, *quoted in* Transcript, *supra* note 58, at 57.

Revolutionary protest is anti-disciplinary. It is confusing:

In *Revolution for the Hell of It*, Abbie Hoffman comprehensively details the features of an anti-disciplinary approach to protest while paradoxically rejecting elucidation as having a valid purpose in radical politics. Clarity, "alas, is not one of our aims," he writes. "Confusion is mightier than the sword." The aim of "revolutionary action" was therefore not to generate understanding.

JULIE STEPHENS, *ANTI-DISCIPLINARY PROTEST: SIXTIES RADICALISM AND POSTMODERNISM* 31 (1998). Similarly, Jerry Rubin shows us the place where language breaks down:

A dying culture destroys everything it touches.
 Language is one of the first things to go.
 Nobody really communicates with words any more. Words
 have
 lost their ability to shock and make love.
 Language *prevents* communication.
 CARS LOVE SHELL
 How can I say
 "I love you"
 after hearing:
 CARS LOVE SHELL
 Does anyone understand what I *mean*.

Quoted in Id. Norman Mailer – a liberal – describes the indescribable aspect of genuine subaltern uprisings:

The comedy of the New Left, its Achilles' heel, black as tar, was now being displayed. Ella Collins [sister of Malcolm X] still talked to whites as if one could conceive of a society where they might all parade down the same street, but most of the Blacks in this roped off section [of the march on the Pentagon] had moved into the future, into that Black Twenty-first Century when Black Power had succeeded in rendering the white man invisible at will for the black; so these blacks moved among the eager ingratiating smiles of young New Leftists or the wounded silence of the older ones with an excellent disdain which left the Whites next to invisible, washed out – it had been (until the recognition of such continued black disdain) a happier day on this occasion than back on those same steps in August 1963. On that day all Negroes and Whites had been polite to each other. A well-controlled but slightly hysterical propensity to laugh too much had hung over every dialogue between Negro liberals and White, there had been a discomfort in the air, a bleak air of oppression back of all good humor as if the sun of a bright

One intervention of mine that I felt compelled to discuss was an Alternative Probation Program that I have participated in for the last five years:

I have a reading group of guys on probation. They have all been sentenced for various crimes in the Dorchester, Massachusetts District Court. It is an alternative to traditional probation. The

summer day were racing unseen clouds over the horizon to get to evening before the storm, discipline had lain like a net over the audience in the meadow and around the pool. Everyone had celebrated the day as happy – it had at best succeeded as not being morose – it was like a grand fiftieth wedding anniversary in which fifty years of family feuds were swept under those grave formal manners whose real content is depression. Now there was no room for the sore beneath the skin. A new sore, Vietnam, had pushed the old sore into the light. What a sore! The best of the Whites recoiled in horror from what was now seen, for the evil they had visited on the Blacks was either indescribably worse than they had ever conceived, or the Blacks had made a Faustian pact with Mephisto, and the Devil was now here to collect.

NORMAN MAILER, *ARMIES OF THE NIGHT* 116-17 (1968). Mailer – a self-described white man – is unable to look directly upon these “new Deep Purple Blacks.” And yet he is able, somehow, to see that his blindness has hidden an important transition. *Id.* at 128. He discusses the white longing for “the old Civil Rights Negroes” even as he is dazzled by their replacements. “Was a mad genius buried in every Negro?” he wonders as he observes one of the “Deep Purple Blacks” balancing on a railing fifteen feet above the marchers. *Id.* at 131. The “mad genius” is carrying a sign, “NO VIETNAMESE EVER CALLED ME A NIGGER.” *Id.* Julie Stephens describes similar moments as “anti-disciplinary politics”:

[A] language of protest which rejected hierarchy and leadership, strategy and planning, bureaucratic organization and political parties and was distinguished from the New Left by its ridiculing of political commitment, sacrifice, seriousness and coherence. The concept of an anti-disciplinary politics refuses many of the problematic distinctions which shape the familiar paradigms of the sixties, most notably the boundary between so-called political radicalism and cultural radicalism, between the activist and the hippie.

STEPHENS, *supra* at 4.

judges love it because it sounds like they are trying to do something. And so it is a way you can insinuate yourself into the criminal justice system, especially if you are, like me, a former prosecutor. So we read all these little subversive books. It is much more constructive than urinating in a cup for a probation officer every week.⁷⁷

We read the literature of the abyss as a means of examining the texts of our own lives. The course I developed has included the following works from year to year:

Narrative of the Life of Frederick Douglass, Written by Himself
 Harriet Jacobs, *Incidents in the Life of a Slave Girl*
 W.E.B. Du Bois, *The Souls of Black Folk*
 Booker T. Washington, *Up From Slavery*
 Frank McCuckin, *Memoirs of a Wobbly*
 Dorothy Day, *From Union Square to Rome*
 Richard Wright, *Black Boy*
 Primo Levi, *Survival in Auschwitz*
 Elie Weisel, *Night*
 Jean Wakatsuki-Houston, *Farewell to Manzanar*
 James Baldwin, *Notes of a Native Son*
The Autobiography of Malcolm X

⁷⁷ Anthony Paul Farley, *quoted in* Transcript, *supra* note 58, at 57. Barbara Deming's reflections during her time spent in prison during the civil rights movement in Albany, Georgia are instructive here:

I think of all the men and women cast, for a time, into this damnation [prison], and marked by it. I think of their troublesome return to society. I think of the senseless attempt to build heaven more securely by creating hell. The one region can never be shut off from the other. I remember Deb's statement: "While there is a criminal element, I am of it; while there is a soul in prison, I am not free" – not a sentimental statement but a simple statement of fact. I think: The only way to build anything resembling Heaven, the only way to build the "beloved community," is to seek again and again not how to cast out but how to gather, to attempt to imitate Jesus' action.

BARBARA DEMING, PRISON NOTES 24 (1964).

Zapatista Army of National Liberation, *The Southeast in Two Winds*⁷⁸

⁷⁸ Prior to joining the faculty of Boston College Law School, I was an Assistant United States Attorney for the Office of the United States Attorney for the District of Columbia. The war on drugs that we waged in the District of Columbia was a terrible crime. It was nothing more than a war of colonialism—a white supremacist war on blacks. I am glad to have left that office and that life behind. My prior life among the colonizers usually comes as a surprise to the participants in the reading group. One day several years ago, I received a number of calls from a reporter regarding the program. I did not answer. I did not want to alter the balance of personalities and texts by adding a reporter to the group. The reporter appeared, uninvited and undaunted, at our discussion of Malcolm X. He went on to write a flattering story about the program. The story began:

The men carrying dog-eared paperback editions of “The Autobiography of Malcolm X,” quietly gather in Room 616. While dusk turns to darkness outside, Professor Anthony Farley is turning on the lights of understanding inside. The men in the University of Massachusetts classroom are all on probation, all repeat offenders balancing uneasily between the threat of prison and the maze of the real world. For most of the hour and a half, a lively discussion of Malcolm X ebbs and flows. Welcome to “Changing Lives Through Literature” a course where hope can be the payoff instead of prison.

David Holmstrom, *Staying Out of Jail With Books’ Help*, CHRISTIAN SCI. MONITOR, May 30, 1995, at 30.

The University of Massachusetts at Boston has been kind enough to allow us to use their facility as a meeting place. My colleague, Taylor Stoehr, Professor Emeritus at the University of Massachusetts, and I have been the co-producers of the group each semester. We have conducted the class on an open university model. Thus far, the continued life of the group owes its existence to heroic interventions by three fantastic probation officers: John Owens, Bobby Spencer and John Christopher.

In reading the classics and arguing about them with each other and with judges, probation officers, friends and alumni of the program and with me, the participants all discover new capacities of self. Most of the participants on probation tell me that the class was the first time they ever read a book from cover to cover. Most of the participants on probation also tell me that they never before realized that school could be enjoyable. I hope that the program expands to other states. I consider the program a means to reform the judges, probation officers, lawyers and other people with power over the lives of the condemned. I hope that it changes the way people look at each other’s lives.

I described the group:

We have done it for four years. We have a graduation exercise in the courtroom. We get the judges to attend the reading group meetings. The probationers argue with the Judges over the meaning of the books and *vice versa*. It is a fun little spectacle. If it convinces [the participants] that they can master books then it is a good thing. And if it actually convinces them that it is the system that is *diseased* and not them it is a great thing.⁷⁹

My *disease* metaphor would turn out to be aptly chosen.

8TH STORY: ILLNESS & ITS INTERLOCUTORS

*For a time it looked as though racism had disappeared. This soul-soothing, unreal impression was simply the consequence of the evolution of forms of exploitation. Psychologists spoke of a prejudice having become unconscious. The truth is that the rigor of the system made the daily affirmation of a superiority superfluous.*⁸⁰

-Frantz Fanon

*Right now our dis-ease must be identified as capitalist man and his monstrous machine, a machine with the senseless and callused ability to inflict these wounds programmed into its very cycle. I was born with terminal cancer, a suppurating, malignant sore that attacked me in the region just behind the eyes and moves outward to destroy my peace. It has robbed me of these twenty-eight years. It has robbed us all for nearly half a millennium. The greatest bandit of all time, you'll stop him now.*⁸¹

-George Jackson

⁷⁹ Transcript, *supra* note 58, at 57-60.

⁸⁰ FRANTZ FANON, *Racism and Culture*, Speech Before the First Congress of Negro Writers and Artists in Paris (Sept. 1956), in TOWARD THE AFRICAN REVOLUTION 31, 37 (Haakon Chevalier trans., 1988)

⁸¹ GEORGE JACKSON, SOLEDAD BROTHER: THE PRISON LETTERS OF GEORGE JACKSON 186 (1970).

The very first question in the panel on *The Way We Talk About Race* was asked by Professor X, a white male colleague of the conference organizer, Deborah Waire Post:

Prof. X: Reggie [Robinson], I think maybe we have got to open this up.

Prof. Robinson: Please, jump in.

Prof. X: We've got to open this up.

Prof. Robinson: Jump in.

Prof. X: I've got a couple of things to say. Number one, many of you, or a number of you, have complained about diversity and not wanting and not having people respond to what you have to say. Let me tell you that ... I've written an article called "What's Wrong with Critical Race Theory?" that's going to be published in a couple of months. Prof. Post, my dear colleague, knows about this article.

Prof. Post: I've never read it.

Prof. Gates: Who are you, so we know?

Prof. X: My name is Professor X and I teach here.

Prof. Robinson: Just for the record, I haven't read his speech either.

Prof. X: And here was a chance for Deborah Post and the organizing committee to say we have somebody at Touro who is prepared to speak about the ills of Critical Race Theory. I personally think Critical Race Theory is a *disease*. And this is going to be written up, it's a hundred-page article and it's going to come out. Now, this was a chance to hear a contrary view, but Deborah Post and the rest of the

crowd – and I haven’t really talked to Deborah about this – did not choose to hear a message that went against the grain. So when you say that you’re interested in dialogue, I don’t believe a word of it.

Prof. Farley: Now wait–

Prof. Iijima: Prosecution rests.

Prof. Gates: Let me respond to that, I have to respond to that.

Prof. Rivera: Yes.

Prof. Gates: And the reason I have to respond is this: dialogue is a difficult exercise for everybody.... I don’t know Deborah [Post] very well and I met her, she seems like a charming person to me, you seem like a very pleasant fellow as well, but we’re all adults, and even if you don’t think Deborah [Post] is interested in dialogue... ultimately, you have a measure of human responsibility, too.

Prof. X: That’s why I’m speaking.

Prof. Gates: You’re speaking today at the conference. You know where Deborah’s office is, you could have walked down, you could have handed her the article, you could have said “Deborah, I understand you’re doing a Salience of Race Conference, would you like to look at this, maybe I have a perspective that might be interesting or useful to you there?” Maybe you could have sparked something.

Prof. X: I didn’t want to impose myself. Deborah Post knew exactly what I was – Deborah Post knew exactly what I was doing.

- Prof. Post: Let's not put "Deborah Post" in the middle of all this, alright. [laughter]
- Prof. Gates: I mean, I don't understand why any party to a dialogue has more responsibility for initiating the dialogue than the other party?
- Prof. X: And I'm telling you the answer is I thought I would be imposing. I was waiting for Deborah Post to talk to me, and I would have been happy to speak.
- Prof. Robinson: But isn't that exactly –
- Prof. Farley: Does anyone else have a question?⁸²

You see, this was precisely the type of conversation that I had argued should be avoided. A white man – Professor X – had spoken and ours was but to listen. As a white person he was the center and we, as non-whites or fellow travelers with non-whites, were the periphery. We, as alleged "Critical Race Theorists," were the "disease" and he was the cure.⁸³ In his own words, "Critical Race Theory is a disease." Mistaking skin for jurisprudence, he had read even my *criticism of Critical Race*

⁸² Transcript, *supra* note 58, at 66-70.

⁸³ Professor X sounded a bit like Sylvester Stallone in the film *COBRA* (Warner Brothers 1986). In the beginning of the film Stallone, a Police Detective, confronts a heavily-armed psychotic criminal in a supermarket. When the psychotic identifies himself as a "hero for the new world," Stallone replies, "you're a disease and I'm the cure," before plunging his dagger into his opponent's thigh, shooting him, and then yelling, "drop it." The scene is toxic with testosterone: Stallone thrusts his (unsheathed) dagger into his opponent's thigh (violently opening his opponent's thighs), shoots his bullets (venom or semen) and makes his opponent give up his gun (phallus). In *COBRA*, Stallone's masculine insertion of himself into the body of his opponent re-produces the healthy situation. It re-produces the clean, normal, healthy, suburban order that had been interrupted by the dangerous body of the "hero for the new world." Moments later we see Stallone batter a reporter who dares to ask him the effeminate question of whether he used "excessive force." To question the suburban order of things is to open oneself to the disease diagnosis.

Theory as an *embodiment* of Critical Race Theory. And how was this Critical Race Theory pre-scripted onto my flesh? I had come to the conference, not to praise Critical Race Theory, but to bury it. And yet I found *myself* entombed. As a black person talking about “race” I was, like other people of color and fellow-travelers, viewed *as* a Critical Race Theorist despite the fact that my remarks had been critical *of* Critical Race Theory. I had not said anything that would leave me open to the charge of being a “Critical Race Theorist.” Perhaps something about my appearance, something about my skin, spoke to him of Critical Race Theory.

Perhaps it would be best to begin by examining the basic tenets of this so-called “Critical Race Theory” that I had so inadvertently epidermalized. Richard Delgado, a Critical Race Theorist, describes its major themes as:

- (1) an insistence on “naming our own reality”; (2) the belief that knowledge and ideas are powerful; (3) a readiness to question the basic premises of moderate/incremental civil rights law; (4) the borrowing of insights from social science on race and racism; (5) critical examination of the myths and stories powerful groups use to justify racial subordination; (6) a more contextualized treatment of doctrine; (7) criticism of liberal legalisms; and (8) an interest in structural determinism – the ways in which legal tools and thought-structures can impede law reform.⁸⁴

To speak with patience as patient to doctor or as penitent to priest is not to have a dialogue, it is to engage in a ritual of submission. I had spoken against Critical Race Theory because it was *too* interested in dialogue. Because dialogue, in a colorlined society, is a kind of submission – the patient presents himself as sick and the doctor bids the sickness cease. It is an old story:

Take up the White Man’s burden –
 The savage wars of peace –
 Fill full the mouth of Famine

⁸⁴ Richard Delgado, *When a Story is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95, 95 n.1 (1990).

And bid the sickness cease;
 And when your goal is nearest
 The end for others sought,
 Watch Sloth and heathen Folly
 Bring all your hope to naught.⁸⁵

In diagnosing Critical Race Theory as a “disease,” and by extension those of us on the panel as *diseased*, my white interlocutor had spoken as a physician to his patients. In his attempt to “bid the sickness cease” he had spoken as a colonizer, repeating the eight lines above from the poet laureate of colonialism, Rudyard Kipling.

How had I, a critic of Critical Race Theory, been diagnosed as a proponent of Critical Race Theory? Perhaps the fact of blackness overwhelmed all else in our discussion of *The Way We Talk About Race*. In Fanon’s words:

I am the slave not of the idea that others have of me but of my own appearance. I move slowly in the world, accustomed now to seek no longer for upheaval. I progress by crawling. And already I am being dissected under white eyes, the only real eyes. I am fixed. Having adjusted their microtomes, they objectively cut away slices of my reality. I am laid bare. I feel, I see in those white faces that it is not a new man who has come in, but a new kind of man, a new genus. Why it’s a Negro!⁸⁶

The black body, the subaltern body that had to be opened up like a book or like a corpse, cannot speak: “I tell you, I was walled in: No exception was made for my refined manners, or my knowledge of literature, or my understanding of the quantum theory.”⁸⁷ Perhaps I am making too much of Professor X’s diagnosis. Perhaps I am just having a postmodern mood swing. Perhaps I should not resist constructive engagement.

⁸⁵ RUDYARD KIPLING, *The White Man’s Burden*, in GUNGA DIN AND OTHER FAVORITE POEMS 52 (1990).

⁸⁶ FANON, *supra* note 39, at 116.

⁸⁷ *Id.* at 117.

We people of color are engaged in dialogue all the time. It is a dialogue that positions us as an illness. We make ourselves *sick* in order to enter the conversation – in order to build bridges. It is a sick conversation. I intervened in the dialogue to talk about the political effects of the way we talk about race:

We are engaged in dialogue all the time. When I return home to my apartment, if the police, as they did last night, see my face, they do a U-turn and follow me home. That is a kind of dialogue. That is a kind of “encounter with the other argument” right? The “other” argument says that black people are losers.... When I bought my airline ticket, I bought it with valid currency, currency with pictures of slavemasters smiling back at me to let me know that to survive in America I have to actually display and circulate the iconography of nobodiness. And actually understand myself to be a nobody at every moment. We [people of color] are always in a Guernica-type dialogue.⁸⁸

There are some dialogues that are merely scripts read *en route* to pre-determined conclusions. This is what we talk about when we talk about race. One person says you belong in a zoo, or beneath the sociologist’s pathologizing gaze, or in the back of the bus, or in prison, or in the ghetto. Why? Because you are inferior. Either you are inferior because of your biology or because of your culture or because you are bio-culturally inferior. What “dialogue” ought I to have with someone who sees me as nothing? What dialogue ought I to have with someone who sees me as a disease? All of his Socratic prescriptions taste like hemlock. I choose not to swallow such a poisonous cure.

Would a conversation with the police officers who followed me home the other night be a conversation or a performance? Where would such a performance lead? Why provide them with the pleasure of my words? Unless I am somehow also trapped by the colorline, wedded to words that pass each other meaninglessly in the night. Remember the theme song to *Bridge on the River Kwai*? Then, as now and as ever, unrequited love is unrequited love. And it is a thin line between desire and abjection, between

⁸⁸ Anthony Paul Farley, *quoted in* Transcript, *supra* note 58, at 75-76.

love and hate, between warm milk and the cool air that turns its motionless surface into scum. Imagine a different conversation:

Europeans, you must open this book and enter into it. After a few steps in the darkness you will see strangers gathered around a fire; come close, and listen, for they are talking of the destiny they will mete out to your trading centers and to the hired soldiers who defend them. They will see you, perhaps, but will go on talking among themselves, without even lowering their voices. This indifference strikes home: their fathers, shadowy creatures, your creatures, were but dead souls; you it was who allowed them glimpses of light, to you only did they dare speak, and you did not bother to reply to such zombies. Their sons ignore you; a fire warms them and sheds light around them, and you have not lit it. Now at a respectful distance, it is you who will feel furtive, nightbound, and perished with cold. *Turn and turn about*; in these shadows from whence a new dawn will break, it is you who are the zombies.⁸⁹

The zombie is the person whose will is not his own. The zombie must obey another. The zombie is socially dead. The zombie is dead. To live under colonialism or segregation is to live as a zombie. The colorline is death. The passage above is from Sartre's introduction to Fanon's *The Wretched of the Earth*. "Turn and turn about." Sartre shows us the new world by reminding us of the old world of Jim Crow:

Weel a-bout and turn a-bout
And do just so
Every time I weel a-bout
I jump Jim Crow⁹⁰

⁸⁹ Jean Paul Sartre, *Preface to FRANTZ FANON, THE WRETCHED OF THE EARTH* 13 (Constance Farrington trans., 1963). Originally published in France as *LES DAMNÉS DE LA TERRE* (1961).

⁹⁰ Harold Beaver, *Commentary to HERMAN MELVILLE, MOBY-DICK* 885 (1986). This rhyme, so important to so many whites, is quoted in many places. I have cited to *Moby-Dick* because Fanon and Sarte remind me of Ishmael and Queequeg. Each found his best self reflected in The Other. Please note that it is Fanon that I am calling "Ishmael."

"Nightbound" whites will feel themselves blackened by the shadows cast by these fires of the near future. "Perished with cold," the white "zombies" will have nothing to do but wait for dawn. Sartre writes of the dawn of a critical practice that will change the order of things. In the conversation that will herald a new order, the end of the old is presumed and not debated. In that conversation-to-come neither the colonizer nor his collaborators have any place. The warmth of the fire feels healthy, "burn, baby, burn."

But what would a conversation sound like with "a person of color" who *agreed* with Professor X that "Critical Race Theory is a *disease*?" That is, what would it be like to be a person of color and yet to *reject* the eight aspects of Critical Race Theory noted by Richard Delgado and *concur* with the Professor X diagnosis? Perhaps we should look to the writings of Gary Fisher, a subaltern. Fisher writes of his life as a "shadowy creature":

12/11/90 Wednesday (by an hour and a few seconds)

I've thought about the philosophical foundation for my activity, my vocation and duty. The simplicity of it all astounds me and yet I have no words for it, just an image, at once holy and profane, of the nigger on his knees Their wickedness is transferred to the nigger, lost in him; he gobbles up their sin as he consumes their waste and their wasted tablespoons of life The nigger takes his hot sacrament from the...men who know where a nigger should be, why he should be, how he should be and find pleasure in reaffirming that I AM PROUD TO BE A NIGGER.⁹¹

Fisher is writing of his own masochistic fascination with submitting to the colorlined fantasies of angry, anonymous white men. The political fantasies to which Fisher was drawn were often sexual. Images and memories of sperm, blood, urine, milk, salt and internalized nobodiness abound in Fisher's work. Fisher

⁹¹ GARY FISHER, GARY IN YOUR POCKET: STORIES AND NOTEBOOKS OF GARY FISHER 238-39 (Eve Kosofsky Sedgwick ed., 1996).

seems to have given himself over to the erotic re-staging of his pre-invented subaltern world. He acted as if, perhaps, by learning to love his situation he might, given love's seemingly endless possibilities, find in this world a way and reason to love himself.

Fisher seemed to think of his subaltern condition as "healthy" and thus chose to revel in it. The sadomasochistic scene may seem far removed from the Socratic dialogue taken to be central to the body of work known as legal academia. The scene, as we will see, is seminal. Listen to the voice of Socrates to young Phaedrus, as recorded for us in writing by Plato, as quoted by Jacques Derrida:

And are we to maintain that he who has knowledge of what is just, honorable, and good has less sense than the farmer in dealing with his seeds? ... Then it won't be with serious intent that he will "write them in water" or in that black fluid we call ink, using his pen to sow words that can't either speak in their own support or teach the truth adequately.⁹²

Plato, it seems, is writing of Socrates' dialogue in order to privilege speech over writing. Derrida is writing to deconstruct the margin between writing and speech. This deconstructed margin traces the entire body of Western philosophy. I invoke this margin – and the metaphysics of presence – to suggest that Fisher's marginal musings on his misadventures in public parks, no less than Socrates' walk with Phaedrus outside the too-hot city walls of Athens, is central to understanding how we come to know what we know and how we come to be what we are. Lessons are learned in many ways not yet dreamt of in legal academia. There are many ways to plant seeds of nobodiness. There are many ways to cultivate bodies that will grow into the "sprawled out" forms assigned those on the wrong side of the colorline. Encounters with texts, like encounters with bodies,

⁹² Plato, *Phaedrus*, quoted in JACQUES DERRIDA, *Plato's Pharmacy*, in *DISSEMINATION* 150-51 (Barbara Johnson trans., 1981).

can engender nobodiness. Consider Fanon's encounter with a live body:

"Look at the nigger! . . . Mama, a Negro! . . . Hell, he's getting mad Take no notice, sir, he does not know that you are as civilized as we" My body was given back to me sprawled out, distorted, recolored, clad in mourning in that white winter day. The Negro is an animal, the Negro bad, the Negro is mean, the Negro is ugly; look, a nigger, it's cold, the nigger is shivering, the nigger is shivering because he is cold, the little boy is trembling because he is afraid of the nigger, the nigger is shivering with cold, that cold that goes through your bones, the handsome little boy is trembling because he thinks that the nigger is quivering with rage, the little boy throws himself into his mother's arm: Mama, the nigger's going to eat me up.⁹³

Fanon's encounter with the cool embrace of the colorline in the form of a dialogue with a colonizer is no less and no more than a textual encounter with the colorline.

Consider the subaltern who submits to the "sprawled out, distorted, recolored" form desired by the colonizer and his mother in the above passage. Consider also the subaltern who submits to the "sprawled out, distorted, recolored" form desired by white writers such as Arthur R. Jensen. And consider the fact that Jensen held a position as professor of educational psychology at the University of California at Berkeley when he published his long 1969 article called "How Much Can We Boost IQ and Scholastic Achievement?"⁹⁴ Jensen was embraced by academia (holding a valued position with one of the nation's most prominent public universities) when he stretched forth his literary

⁹³ FANON, *supra* note 39, at 113-14.

⁹⁴ Arthur R. Jensen, *How Much Can We Boost IQ and Scholastic Achievement?*, in DOCUMENTS OF AMERICAN PREJUDICE: AN ANTHOLOGY OF WRITINGS ON RACE FROM THOMAS JEFFERSON TO DAVID DUKE 85 (S.T. Joshi ed., 1999). Jensen argues that blacks are genetically inferior to whites and that black inferiority is reflected in IQ and scholastic achievement. What is significant about Jensen is the fact that he had a career. His writings were viewed as properly professorial. This speaks volumes about the way the Ivory Tower regards its Others.

arms to plant his seeds of nobodiness in the unwilling bodies of the excluded Others. It makes no difference whether one embraces one's own denigration in the form of a text or whether one embraces one's own denigration in the form of sex, like Fisher. Either embrace will result in "mourning." The anonymous white men of Fisher's private encounters in public parks, the colonizer and his mother, Jensen and the academics who did not expel him from teaching, all want the same thing: a subaltern body that performs its own subalternation. Jacques Derrida writes:

Sperm, water, ink, paint, perfumed dye: the *pharmakon* always penetrates like a liquid; it is absorbed, drunk, induced into the inside, which it first marks with the hardness of the type, soon to invade it and inundate it with its medicine, its brew, its drink, its potion, its poison. In liquid, opposites are more easily mixed. Liquid is the element of the *pharmakon*. And water, pure liquidity, is most easily and dangerously penetrated then corrupted by the *pharmakon*, with which it mixes and immediately unites.⁹⁵

It is important to both recognize how one is being read and also to resist that reading. It is also important to recognize that just as we can become what we read of ourselves so too can we become that which we are read as being. One need look no further than the smile deployed by Justice Clarence Thomas as he was embraced by arch-segregationist Senator Strom Thurmond to see Fisher's fall. And yet, Thomas was embraced as a healthy example for black youth to follow. To follow into public parks or to follow his Supreme Court opinions or to follow on walks outside of Athens or to follow his master's voice – it all seems to end with denigration. But one person's poison is another person's cure. It may all depend on which side of the colorline one chooses to embrace. The figure of the black body, "sprawled out, distorted, recolored, clad in mourning" is an attractive figure to those who desire the colorline. To those

⁹⁵ JACQUES DERRIDA, *Plato's Pharmacy*, in *DISSEMINATION* 152 (Barbara Johnson trans., 1981).

whose needs require the colorline, the black body that resists their embrace appears to be diseased.

Fisher seems to defy the logic of separation and containment immanent in Professor X's "disease" metaphor. The "disease" that Professor X locates in Critical Race Theory may be seen more clearly through the lens of Gary Fisher's body. Subalternation was the quality that made Fisher the object of desire – the desired body – that was able to present itself to the American body politic in form of all those anonymous angry white men in public parks. It is an old conversation – similar in form to an article that ran in the *New York Times* on Monday, September 10, 1906, under the headline: *Man and Monkey Show Disapproved by Clergy – The Rev. Dr. Macarthur Thinks the Exhibition Degrading – Colored Ministers to Act – The Pygmy Has An Orang-Outang as a Companion Now and Their Antics Delight the Bronx Crowds*:

Several thousand persons took the Subway, the elevated, and the surface cars to the New York Zoological Park, in the Bronx yesterday and watched Ota Benga, the Bushman, who has been put by the management on exhibition there in the monkey cage. Few expressed audible objection to the sight of a human being in a cage with monkeys as companions, and there could be no doubt that to the majority the joint man-and-monkey exhibition was the most interesting sight in the Bronx Park.⁹⁶

It is the old conversation between master and slave or, in other words, between observer and observed:

When you examine at close quarters the colonial context, it is evident that what parcels out the world is to begin with the fact of belonging to a given race, a given species. In the colonies the economic substructure is also a superstructure. The cause is the consequence; you are rich because you are white, you are white because you are rich.⁹⁷

⁹⁶ N.Y. TIMES, Sept. 10, 1906. See BRADFORD, *supra* note 62.

⁹⁷ FRANTZ FANON, *THE WRETCHED OF THE EARTH* 40 (Constance Farrington trans., 1968).

The superstructure is a message:

The projects of Harlem are hated. They are hated almost as much as the policeman, and this is saying a great deal. They are hated for the same reason: both reveal, unbearably, the real attitude of the white world, no matter how many civil rights commissions are set up. The projects are hideous, of course, there being a law, apparently respected throughout the world, that popular housing shall be as cheerless as the prison. They are lumped all over Harlem, colorless, bleak, high, and revolting. The wide windows look out on Harlem's invincible and indescribable squalor: the Park Avenue railroad tracks, around which, about forty years ago, the present dark community began; the unrehabilitated houses, bowed down, it would seem, under the great weight of frustration and bitterness they contain; the dark, the ominous schoolhouses from which the child may emerge maimed, blinded, hooked, or enraged for life; and the churches, churches, block after block of churches, niched in the walls like cannon in the walls of the fortress.⁹⁸

The superstructure is a message that is inscribed on the flesh of those it imprisons as black and those it enshrines as white. It is a world of white observers and black objects. The superstructure is the colorline. The ghetto walls surround us like a "fortress" and its "invincible and indescribable squalor" seems to work itself into our very bodies. We become the tangled ruins of our surroundings. We are created, born-again, to sing its praises in our anti-social acting out of the torturous stage directions we have been given. The system seems to create us to sing its praises. *A mighty fortress is our God* sing we all to the ghetto image of our own making. The tangle of pathologies seems inevitable, even healthy, in the looking glass of the surrounding walls. Like beasts – hunted and penned – we seem unable to imaginatively transform the landscape of possibilities. The colorline turns the world into a bestiary:

⁹⁸ James Baldwin, *Harlem Projects*, in *THE SLUMS* 90-91 (Gerald Leinwand ed., 1970).

The African Pigmy, "Ota Benga." Age
23 years. Height, 4 feet 11 inches.
Weight, 103 pounds. Bought from the
Kasai River, Congo Free State, South
Central Africa by Dr. Samuel P.
Verner, Exhibited each afternoon
during September⁹⁹

The Rev. Dr. Macarthur said, "It is too bad that there is not some society like that for the Prevention of Cruelty to Children. We send our missionaries to Africa to Christianize the people, and then we bring one here to brutalize him." Had the good Reverend Doctor been able to listen to "the Bushman" or to anyone from the "Kasai River," he might have understood colonialism – Christian or otherwise – as the process of reducing entire nations of people to brutes. He did try, at least, to figure it out. "Our Christian missionary societies must take this matter up at once, I shall communicate with Dr. Gilbert of the Mt. Olivet Baptist Church and other pastors of colored congregations, that we may *work together* in this matter. They will have my active assistance."¹⁰⁰

The *New York Times* story notes, curiously, that:

Perhaps as a concession to the fact that it was Sunday, a pair of canvas shoes had been given to the Bushman to wear. He was barefooted on Saturday. He seemed to like the shoes very much. Over and over again the crowd laughed at him as he sat in mute admiration of them on his stool in the monkey cage. But he didn't mind that. He has grown used to the crowd laughing, has discovered they laugh at everything he does. If he wonders why, he does not show it.¹⁰¹

What if Ota Benga *chose* his abjection? Would it be healthy for him to adjust his inner life to his outer world? Like a stripper he

⁹⁹ N.Y. TIMES, Sept. 10, 1906. BRADFORD, *supra* note 62.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

was on display for the crowd. They gazed upon his body and intoxicated themselves with the fantasy of racial superiority. What if Ota Benga had learned to enjoy providing his masters with this fantasy? If the subaltern condition is healthy, then Fisher's method of adjustment to it is also healthy, Eve Kosofsky Sedgwick writes:

The fierce beam of history that propelled Gary Fisher's sexual imagination was evidently less that of individual trauma than of a more collective violence and loss. All the more was it a trauma that he couldn't otherwise make present to himself, a violence that his culture offered him the most impoverished means for realizing and hence for mourning. Like others gone before him, he forged a concrete, robust bodily desire in the image of historical dispossession, humiliation, compulsion, and denigration, among other things.¹⁰²

Fisher's health was produced by his interactions with his physicians, the white master-caste to whose ministrations he so eagerly submitted himself. Fisher's *dialogue* was the one I had

¹⁰² Eve Kosofsky Sedgwick in GARY FISHER, GARY IN YOUR POCKET: STORIES AND NOTEBOOKS OF GARY FISHER 283-84 (Eve Kosofsky Sedgwick ed., 1996). Sedgwick continues:

Probably any sexuality is a matter of sorting, displacing, reassigning singleness or plurality, literality or figurativeness to a very limited number of sites and signifiers. Tenderness (here brief, contingent, illuminating); holding, guiding, forcing; "your" pleasure and "my," different and often nonsynchronous, pleasure; infinite specificities of flavor, shape, and smell; the galvanized, the paralyzed; the hungry, impartial, desiring regard in which ugliness may be held as intimately as beauty, and age as youth: these are among the elements splayed throughout the crystal of anonymity. And while for another person, or at another place or time, it might have been true that fatality played no very necessary role among these elements of sexuality, for this person at this time it too was central, the need to give a face – or many faces – to a fate.

Id. What Sedgwick writes of sexuality is also applicable to the colorline. See Anthony Paul Farley, *The Black Body As Fetish Object*, 76 OR. L. REV. 457 (1997).

rejected and the one Professor X accused the discourse of Critical Race Theory of rejecting. According to Professor X, Critical Race Theory is a “disease” because it rejects such dialogue.

Not all people of color display the eight symptoms of the Critical Race Theory “disease.” The “healthy” subaltern body, like Gary Fisher’s, is very much an object of desire to the American body politic. Witness Aunt Jemima on boxes of pancake mix and Uncle Ben on bags of converted rice – as I just did in a strange display that someone decided to place in the cafeteria of the law school where I am employed as a professor. Bearing witness:

My body was given back to me sprawled out, distorted, recolored, clad in morning in that white winter day...the little white boy throws himself into his mother’s arms: Mama *the nigger’s going to eat me up*. All round me the white man, above the sky tears at its navel, the earth rasps at my feet, and there is a white song, a white song. All this whiteness that burns me . . .¹⁰³

They eat and drink and dream of mastery and of slavery. Two scenes flash to mind as I contemplate Aunt Jemima, Uncle Ben and the many thousands gone. The first is of Sethe, the protagonist of Toni Morrison’s *Beloved*, held fast in white men’s arms against her will as they drink the milk from her breasts – raping her and her child in one motion.¹⁰⁴ The second is of a painting that decorated the “Luther P. Jackson House” at the University of Virginia. The painting, in the waiting area of a building dedicated to the Dean of Minority Affairs, was of Aunt Jemima, with huge muscles and vengeful visage, breaking out of her box at last. These images gave me much to consider as I moved back to my office.

Consider also, or instead, Supreme Court Justice Clarence Thomas and the way in which his body became the object of conversation and of desire:

¹⁰³ FANON, *supra* note 39, at 113-14 .

¹⁰⁴ *BELOVED* (Touchstone Pictures 1998). See also TONI MORRISON, *BELOVED* 16-19 (1997). Seeing this film gave me fewer avenues of escape than reading the novel. I prefer the novel.

Senator Danforth: He is his own person. That is my first point. Second, he laughs. To some, this may seem a trivial matter. To me, it's important because *laughter is the antidote to that dread disease, federalitis*. The obvious strategy of interest groups trying to defeat a Supreme Court nominee is to suggest that there is something weird about the individual. I concede that there is something weird about Clarence Thomas. It's his laugh. It is the loudest laugh I have ever heard. It comes from deep inside, and *shakes* his body. And here is something at least as weird in this most up-tight of cities: the object of his laughter is most often himself.¹⁰⁵

The curious relationship between the white Right and their man, Justice Clarence Thomas, brings to mind other relationships built on the master-slave model:

Iceberg Slim: A pimp is happy when his whores giggle. He knows they are still asleep.¹⁰⁶

What would it mean to be black and to consider “federalitis” a “dread disease?” Such a black might appear healthy to Professor X. Such a black might appear to be a zombie or a sleepwalker to a more critical observer. Without the “dread disease, federalitis” the meager advances made since slavery would not have been made:

¹⁰⁵ Quoted in Toni Morrison, *Friday on the Potomac*, in Introduction to RACE-ING JUSTICE, EN-GENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY xiii (Toni Morrison ed., 1992) (emphasis added).

¹⁰⁶ ICEBERG SLIM (AKA Robert Beck), PIMP: THE STORY OF MY LIFE (1996).

I write this letter as a public record so that this generation can understand the challenges you will face as an Associate Justice to the Supreme Court, and the next can evaluate the choices you have made or will make. The Supreme Court can be a lonely and insular environment. Eight of the present Justices' lives would not have been very different if the *Brown* case had never been decided as it was. Four attended Harvard Law School, which did not accept women law students until 1950. Two attended Stanford Law School prior to the time when the first Black matriculated there. None has been called a "nigger" or suffered the acute deprivations of poverty By elevating you to the Supreme Court, President Bush has suddenly vested in you the option to preserve or dilute the gains this country has made in the struggle for equality. This is a grave responsibility indeed. In order to discharge it you will need to recognize what James Baldwin called the "force of history" within you.¹⁰⁷

Higginbotham, reflecting on Thomas' statement that civil rights groups were to be criticized because all they did was "bitch, bitch, bitch, moan and moan, whine and whine," tried to show Thomas some of the ghosts that inhabit Thomas' body when it is not laughing:

I suggest, Justice Thomas, that you should ask yourself every day what would have happened to you if there had never been a Charles Hamilton Houston, a William Henry Hastie, a Thurgood Marshall, and that small cadre of other lawyers associated with them, who laid the groundwork for success in the twentieth century civil rights cases? Couldn't they have been similarly charged with, as you phrased it, bitching and moaning and whining when they challenged the racism in the administrations of prior presidents, governors, and public officials? If there had never been an effective NAACP, isn't it highly probable that you might still be in Pin Point, Georgia, working as a laborer as some of your relatives did for decades?¹⁰⁸

¹⁰⁷ A. Leon Higginbotham, Jr., *An Open Letter to Justice Clarence Thomas from a Federal Judicial Colleague*, in RACE-ING JUSTICE, EN-GENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY 1, 4-5 (Toni Morrison ed., 1992).

¹⁰⁸ *Id.* at 13.

To consider “federalitis,” like Critical Race Theory, to be a disease might be the very sort of rejection of self that – when exhibited by loud laughter that “comes from deep inside” and “shakes” one’s body – gives one an attractive appearance to the American body politic. Whites who wish to remain white find this *shaking* to be deeply erotic.¹⁰⁹

The hygienic subaltern body that sets all at ease is the body shaking with laughter (or with fear), cured of “federalitis,” and ready to aim its laughter at itself.¹¹⁰ Iceberg Slim, however,

¹⁰⁹ Those who make a lifestyle out of such performances often find themselves shattered by regret. Consider the case of Larry D. Mungin, a black man who filed a discrimination suit against Katten Muchin & Zavis, the law firm where he had worked as an associate:

Mungin felt doubly burned at Katten Muchin. He had defined himself largely in terms of professional success. The law firm crushed that self-image by making him feel like a failure. Worse, he walked away feeling foolish that for his whole life he had “gone the extra mile to show people – whites and blacks, but mostly whites – that I wasn’t one of *those* blacks, one of the complainers, the ones demanding special treatment.” Mungin had assumed that to get ahead, he needed to distinguish himself from the negative stereotypes of inner-city African-American men. By the time of his lawsuit, he was no longer proud of all the time and energy he spent reassuring whites. “To be honest,” he confessed, with a self-deprecating bite to his words, “I wanted to show that I was like white people: ‘Don’t be afraid. I’m one of the *good* blacks.’” But it hadn’t been enough.

PAUL M. BARRET, *THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA* 6 (1999). See *Mungin v. Katten Muchin & Zavis*, 941 F. Supp. 153 (D.D.C. June 24, 1996) (“The \$1.5 million dollar amount of the punitive damage award cannot be said to be unrelated to the jury’s compensatory award of \$1 million....”), *rev’d*, 116 F.3d 1549 (D.C. Cir. July 8, 1997).

¹¹⁰ Patricia Williams writes of Tawana Brawley in a manner that illustrates this point:

Tawana attended a comedy show at the Apollo Theater in Harlem. One of the comedians called attention to her presence in the audience and in a parody of the federal antisex and antidrug campaigns, advised her to “just say no next time.” As the audience roared with merriment and the

shows us the spectacle of Clarence Thomas cloaked in the dark robes of the Supreme Court or of Gary Fisher cloaked in the dark shadows of public parks in a different light. It is a light that reminds one of the hot stage lights at a strip show in which subaltern bodies – female – are made to perform their subalternation for their purchasers. The black body is a performance and all the colorlined world is a stage.

Gary Fisher died of AIDS in 1993. Eve Kosofsky Sedgwick writes of her experience of Gary Fisher by quoting the psychoanalyst Christopher Bollas:

Being a character, then, means bringing along with one's articulating idiom those inner presences – or spirits – that we all contain, now and then transferring them to a receptive place in the other.... [I]n the ordinary to-and-fro of life, as we pass back and forth the spirits of life, we hardly know quite whom we are holding for the other, however briefly, although we will know that we are being inhabited.¹¹¹

The evidence of things not seen is not easy to describe:

Although it is difficult to witness how one person “moves through” the other, like a ghost moving through the internal objects in the room of the other's mind, we know it is of profound significance, even though exceptionally difficult to describe.¹¹²

spotlight played on her, Tawana threw back her head and laughed along with the crowd. She opened her mouth and laughed, in false witness of this cruel joke. It is the only image I have of Tawana with her mouth open – caught in a position of compromise, of satisfying the pleasure and expectations of others, trapped in the pornography of living out other people's fantasy.

WILLIAMS, *supra* note 69, at 177. Those who learn to enjoy their subaltern position – like Sam in *Casablanca* – are trapped by the colorline. They are “trapped in the pornography of living out other people's fantasy.” *Id.*

¹¹¹ CHRISTOPHER BOLLAS, BEING A CHARACTER: PSYCHOANALYSIS AND SELF EXPERIENCE, 62 (1992), *quoted in* GARY IN YOUR POCKET: STORIES AND NOTEBOOKS OF GARY FISHER 290-91 (Eve Kosofsky Sedgwick ed., 1996).

¹¹² *Id.* at 291.

Perhaps I have been looking at my own ghosts. Morrison writes that all blacks understand Thomas' "weird" laugh:

Weird? Not at all. Neither the laugh nor Danforth's reference to it. Every black person understood. How necessary, how reassuring were both the grin and its being summoned for display. It is the laughter, the chuckle, that invites and precedes any discussion of association with a black person. For whites who require it, it is the gesture of accommodation and obedience needed to open discussion with a black person and certainly to continue it. The ethnic joke is one formulation – the obligatory recognition of race and possible equanimity in the face of it. But in the more polite halls of the Senate, the laugh will do, the willingness to laugh; its power as a sign will take the place of the high sign of perfect understanding.¹¹³

The laugh moves through those who desire it like a ghost. The laugh leaps from one body to the next and setting them both at ease with each other and the colorlined situation. The laugh is textualized as the jurisprudence of the colorline.

Gary Fisher, a man who understood the laugh, was able still somehow to see his own abjection, and ours, as he lay dying:

5.19.93

Dear Eve,

I sit in front of my old Smith Corona with the opening lines of "Proud Blood" (another hammer horror story) in head and on newsprint, in that swirl, that valley of swirls where revisions get revisions in the same nanosecond they were created (and I'm talking about *within* the nanosecond, not on the non-funky fringe, the suburban ridges, but inner-innersecond revisions, in immediate and constant danger of [4] deadly carjacking, [8] child abandonment, [9] teller-machine hold-ups, [15] police brutality, [17] child-on-child brutality, [20] rat bites & mouse droppings, [21] buildings collapsing, [34] bus killings, [35] bus births, [37] dull graffiti, [40] drive-by shootings, [45] deadly aggressive pan-handling, [49] lynchings, [50] anti-abortion violence, [67] sexual

¹¹³ Morrison, *supra* note 104, at xiii.

harassment, [70] war, [73] greedy, genocidal civic leadership – in danger of collapse like an old star. There are no white suburbs or designer malls around the dusky coronas of black holes, not anymore – just shitloads of nothing, nada, nix – welcome to nowheresville). Indeed, I was already blasting away at those first lines, fast as thoughts could take shape, when I looked up into the mighty absence of D's and d's, and n's and 3's. My computer's gone, the typewriter's going and I'm relating this days later (worried about tense) from a hospital bed with a wonderful, guiling view of the Clairmont hotel. [...] Scars to the left of it, scars to the right, an eyesore above it like hell itself had been turvied or some sad, sore ghetto clinging to its ghettoness throughout the city's rigorous gentrification and scourge plans, had crawled out from God-knows-where to sleep even here at the summit of wealth and comfort. No, it didn't trickle up; it didn't even look up in fear, so petty and innocuous is poverty on the hill, so comedic, so topsy-turvy.

....

Right now, I hate my doctor for my crazy symptoms. I imagine coming down off crack might feel better. And yet I've accumulated so much love and respect (maybe a little lust too) for this man that I will take his next prescription unquestioned – same way I used to have sex. I love the doctor for trying the outrageous. The outrageous is harder for me to question – something in my mix of pessimism (that spelling must be wrong, but I'm a black man in a hospital bed without a dictionary. Let's try pessimississippism in partial celebration of the flag flying over the white limousine) and sense of wonder (also read: non-, dis-, or unbelief) call for the outrageous, the unorthodox and unacceptable – the same way I had sex, I guess.¹¹⁴

The colorlined architecture of white American desire was seen by Gary Fisher as the neosegregationist arrangements just outside his window, as the surface and interior of his body, and as the thematic structure of his identity. In naming the colorline and charting its paths he was committing an act of counter-violence and in so doing was he not himself a specter haunting the American body politic? In the end, he became a body that called

¹¹⁴ FISHER, *supra* note 90, at 256-58.

the most basic American arrangements into question. In the end, perhaps Fisher was also haunted by a person with whom we are also all familiar: Fanon. Frantz Fanon died of leukemia in 1961, at age thirty-six, having written his final epitaph in the first book of his youth, "O my body, make of me always a man who questions."¹¹⁵

Professor X labeled Critical Race Theory a "disease." This year, this day, this second is the time of AIDS. We must understand the AIDS-object in order to think about the disease known as Critical Race Theory. In a chapter entitled "Not Even a God Can Save Us Now" William Haver writes:

AIDS is global... there is no "outside" of AIDS, "it" is a phenomenon of mass death (which is not a death-in-general: no one has ever died "in general"). Now the fact that there is no "outside" of AIDS, the globality of AIDS does not necessarily mean that everyone will eventually succumb to AIDS-related causes. But it does mean that AIDS defies the logic of separation and containment. Here, "globality" signifies nothing but a certain *material* impossibility of separation and containment. The Human Immunodeficiency Virus is the first true cosmopolitan, respecting neither geographic, cultural, sexual, class, nor racial boundaries; the only boundaries the virus respects are those of skin, bleach, latex and nonoxynol-9. Yet the institutional, political, economic, and cultural histories of the pandemic are histories of truly abject failure to contain AIDS effectively within what are often taken to be virtually natural, indeed ontological, and above all *practical* separations.¹¹⁶

"The logic of separation and containment" that accompanies Professor X's "disease" metaphor undoes itself in the above passage as it does in the below passage:

The moral code is chameleonic in nature. Its design changes and twists on whim by those who wield it. In this country the elected representative has only to attach one of these symbols from the

¹¹⁵ FANON, *supra* note 39, at 116.

¹¹⁶ WILLIAM HAVER, *THE BODY OF THIS DEATH: HISTORICITY AND SOCIALITY IN THE TIME OF AIDS* 6 (1996).

moral code to any social problem and people who are not immediately affected by that problem feel safe and distanced. If there is homelessness on our streets it is the fault of those who have no homes – they chose to live that way. If there is a disease such as AIDS it is somehow the fault of those who contract the disease – they chose to have that disease. If three black men are shot by a white man on a subway train – somehow they chose to be shot by that man. And life goes on and on. Most people tend to accept, at least outwardly, this system of the moral code and thus feel quite safe from any terrible event or problem such as homelessness or AIDS or nonexistent medical care or rampant crime or hunger or unemployment or racism or sexism simply because they go to sleep every night in a house or apartment or dormitory whose clean rooms or smooth walls or regular structures or repeated daily routines provide them with a feeling of safety that never gets intruded upon by the events outside. There are scores of the population who either feel safe for the same reasons or else are too exhausted from trying to survive in this society by working dehumanizing jobs to keep a roof over their heads. Or else they feel safe because they are part of the structure that keeps the moral code intact. Or they feel safe only because once in a great while they can enter the illusion of the ONE-TRIBE-NATION by stepping into a tiny curtained cubicle and pulling a metal lever that elects a twelve-inch-tall man or woman they saw for a short time transmitted across the boundaries of space into the antennae of their television screens.¹¹⁷

The great white dream of separation from and containment of its unruly, unclean, “diseased” others can be seen in the twilight space of the erotic as undermining itself. To be white is to produce the very unruliness and uncleanness in those Others whose non-whiteness is the source of the form of being known as “white.” Whiteness reproduces itself by both labeling those Others as “unclean” and by making them “unclean” in some sense which all will take to be objective. Oppression comes to manifest itself in the form of actual disease. These diseases, born of and borne by impoverishment and hate, are then used as

¹¹⁷ DAVID WOJNAROWICZ, *supra* note 51, at 150-51.

evidence that the impoverished and hated subaltern castes deserve their inglorious spots. And yet Dr. Frankenstein's monster always finds his way home.

Can it be said that the liberalism that Critical Race Theorists challenge is like a horror film? Can it be said in the same paragraph that speaks of AIDS that "disease" is a stage direction in the theatrics of white power? Perhaps the horror of the drama is, as Leonard Harris argues, nothing in comparison to the horrors of a philosophical tradition – here I speak of the ideology of liberalism. Harris writes:

One reason philosophies are not like horror movies, although both can be understood as performances enlivened by texts, is that philosophies have been coconspirators in, or help make possible, general terrors. Roughly, terror is distinguished from horror by the extent to which the acts depicted are or can be considered real; acts that are considered unreal or at best a singular aberration of normal possibility can be considered horror. A horror, such as the instant death and maiming of millions, once considered an impossible feat except by divine intervention, can become an actual terror (Nagasaki and Hiroshima), but not the other way round. Horror movies have yet to be substantively implicated as a cause of or deep contributor to reigns of terror; no horror movie has ever been used as the definitive text to legitimate dominion into perpetuity; nor have any horror movies helped form the theoretical basis for revolutions to overthrow exploitation, exclusion and tyranny.¹¹⁸

¹¹⁸ Leonard Harris, *The Horror of Tradition or How to Burn Babylon and Build Benin While Reading A Preface to a Twenty-Volume Suicide Note*, in *AFRICAN AMERICAN PERSPECTIVES AND PHILOSOPHICAL TRADITIONS* 94, 101 (John P. Pittman ed., 1997). I felt trapped in a film at the Conference when the discussion turned to how we, as law professors, might "make an impact":

We're actually losing to white supremacy so badly that it's a form of bad faith to even talk about making an impact. When we talk about incarceration -- I sometimes feel like I'm the guy in the science fiction movie, you know, the aliens are all around but no one else recognizes them because they're all hypnotized but there's one person, me, who keeps babbling on about the aliens. At some point some well-meaning person always knocks that guy out with a

The logic of separation and containment – the logic of liberal legalism – contains the “closely allied structures of fascination and disavowal – a classic fascism.”¹¹⁹

Liberalism will not acknowledge, and yet is perpetually fascinated by, its creations. Liberalism makes a fetish of its abstract equalities and pays no attention to the material inequalities that give *them* the power to make their fantasies about *us* a reality. With liberals, material inequalities between high caste and low caste are displaced from their hearts and minds onto the architecture of everyday life – the architecture of law and the architecture of the city. In disease, we can see this artifice clearly. Haver uses discussions of race to illuminate discussions of disease in the same way that I use discussions of disease to illuminate discussions of race:

[W]e live in a situation in which very few people indeed will identify themselves as racists. If such people themselves constituted the problem of racism, the problem (given a well-armed thought police) would soon be eradicated: we live, however, in a racist world without racists (in other words, racism is not in the first instance a psychological problem). My argument is that racism, misogyny, heteronormativity, ‘and so forth’ are expressed nowhere but in structural determinations -- for example of AIDS policies. Conversely, and for purposes of the present argument more important, AIDS, by virtue of the originary multiplicity of the AIDS-object, cannot be considered apart from questions of racism, misogyny, heteronormativity, “and so forth.” This is not to say that they are somehow all the same thing; it is to say, however, that despite their quite heterogeneous genealogies, by virtue of their originary mutual

tranquilizer. Before the tranquilizer comes, I want to note that we will all reach a day, if present trends continue, when the primary contribution of blacks to the GNP of this nation will be made through prison labor. And we talk and get together as though this is not a total war situation that we are in today.

Anthony Paul Farley, *quoted in* Transcript, *supra* note 58, at 87-88.

¹¹⁹ Harris, *supra* note 117, at 101.

imbrication in the present conjuncture, they structure and reinforce each other: in this sense the AIDS-object is not accidental.¹²⁰

The “AIDS-object” is not accidental. The colorline is not accidental. There are no accidents:

I am thinking (for example: the list is by no means exhaustive) of U.S. immigration policies (particularly with regard to Haiti), of enforced quarantine of HIV positives (as proposed in the United States and apparently enforced in Cuba), of the refusal of New York State to countenance a needle-exchange program, of proposals for tattooing, sterilization, and castration of HIV positives, of prison policies, of calls for mandatory testing, and of a blind refusal to even acknowledge that the problem exists.¹²¹

There is no *outside* of the colorline. It is written in the walls of the city. We sometimes, however, pretend to believe otherwise:

Everybody, at some level believes in it, it's a deeply seductive image. The image that we all want, as oppressed people, is an image of our masters finally loving us and recognizing our humanity. It is this image that keeps prostitutes with their pimps, the colonized with their colonizers and battered women with their batterers. Everybody dreams of one day being safe. *The Great Gatsby* is the Great American Novel for a reason. Gatsby believed in the green light and that was his undoing – rich girls don't marry poor boys, “Gatsby believed in the green light, the orgastic future that year by year recedes before us. It eluded us then, but no matter – tomorrow we will run faster, stretch out our arms farther.... And one fine morning – So we beat on, boats against the current, borne back ceaselessly into the past.” Well that's what we do, we're borne back ceaselessly into the past. Gatsby doesn't get it... [and neither do] we, the intellectuals. We actually produce the seductive literature of the green light.¹²²

¹²⁰ HAVER, *supra* note 116, at 5.

¹²¹ *Id.* at 8-9.

¹²² Anthony Paul Farley, *quoted in* Transcript, *supra* note 58, at 47-48.

The discourse of accidentalism – otherwise known as liberalism – is a way of averting one's eyes to the externalized, indeed embodied, form of one's own hate. To *look* at the ghetto, and I use the word “ghetto” to conjure both the factories of the Holocaust and the plantations of the Peculiar Institution, is to *see* all one's sins remembered. Our sins are remembered in the form of myriad institutional practices. And these institutional arrangements are remembered in the reflexes, affects, differences and indifferences of everyday life.

Hatred, therefore, must seduce its objects into complicity and silence. It is an erotic moment to bring another body into a *sanctifying* relationship with one's own.¹²³ This *sanctification* is achieved, in colorlined societies, by making one's Others speak with *one's own* voice: as with Gary Fisher. Slaves who shake and pray and sing their masters' praises are, to their masters, healthy slaves. How to do jurisprudence in a counter-revolutionary situation?¹²⁴ *We* are *their* bread and wine. This bread is our body, this wine our blood:

It is in these politics and practices, as well as in the logics of separation and containment that sustain such policies and practices, that the AIDS pandemic is in effect genocidal. For what these practices and logics openly acknowledge is that the

¹²³ Consider this:

As a society we had to endure the media spectacle surrounding the polyps in [President] Ronald Reagan's [rectum] found during a routine examination and subsequently removed, and yet for the eight years during his presidency, he was completely silent about the AIDS epidemic. In those eight years we were denied access to any real information concerning our own bodies in the midst of this crisis.

WOJNAROWICZ, *supra* note 51, at 144-45.

¹²⁴ For a discussion of the perils of working amidst the forces of revolution see generally JOSE MIGUEZ BONINO, *DOING THEOLOGY IN A REVOLUTIONARY SITUATION* (1975). Things are different now that revolution is no longer written in the stars of our immediate future. And yet we still have a world to win and nothing to lose but our chains.

(entirely fantasmic) clean and proper body politic is maintained only in the processes of exclusion of an expendable social surplus comprised of people and peoples of color, sex workers, IV drug users, and queers; the exclusion, that is to say, of all those of us whose bodies are encoded as excessively and preternaturally erotic, all those of us who are said to be excessively devoted to the practices of pleasure; all those of us who are held to be therefore incapable of distinguishing with any eroto-epistemological surety between self and other. Our very corporeality is taken to be at once the locus of immoderate pleasures and therefore that of contagion, impurity, and death.¹²⁵

Put another way, “Critical Race Theory is a disease.”¹²⁶ Put yet another way:

Q: Why did the monkey fall out of the tree?

A: Because it was dead.¹²⁷

Perhaps the Critical Race Theory moment constitutes a *little death* in the eyes of its observers.

Disease is a serious thing. When Professor X called Critical Race Theory a disease I wondered whether he would write of Derrick Bell, the patient zero of radical legal analysis. I wondered whether he would write that “the band played on” as Critical Race Theory infected the hearts and minds of youth. Would he write that the gatekeepers of legal academia should have acted earlier to stop the spread of this disease throughout the Ivory Tower? Would he write with sadness of the loss of the student body to this terrible thing called Critical Race Theory? I am not recirculating Professor X’s metaphor lightheartedly. He was, I believe, deadly serious in characterizing Critical Race Theory as a disease and in diagnosing us all as Critical Race Theorists.

¹²⁵ HAVER *supra* note 116.

¹²⁶ Professor X argues that “critical race theory is a disease.” Transcript, *supra* note 58, at 66-70.

¹²⁷ WOJNAROWICZ, *supra* note 51, at 199.

According to several students, Professor X had demanded a meeting with the Touro Black Law Students Association earlier in the semester in order to present them with his diagnosis of their existential condition. Imagine their surprise at being advised by their professor that they were *diseased* to the extent they felt Critical Race Theory stirrings. Now that some time has passed and I have had a chance to consult The American Heritage Dictionary ("the single source for people who need to be right"), I have decided that Professor X was right about Critical Race Theory. It is a disease:

DISEASE n. 1. an abnormal condition of an organism or part, esp. as a consequence of infection, inherent weakness, or environmental stress, that impairs normal physiological functioning. 2. a condition or tendency, as of society, regarded as abnormal and harmful. 3. lack of ease.

Perhaps the profligacy of the ruling caste has resulted in too many disaffected former slaves cropping up all over the body politic. Perhaps Critical Race Theories and Theorists are like lesions on their libraries, journals, classrooms, newspapers, news programs, legislatures, conversations, lectures, magazines and other organs of colorlined-knowledge production.

Picture Frederick Douglass at the typewriter/writing desk/computer table.¹²⁸ Picture him after his escape from the belly of the beast. Now picture "Mr. Covey" remember the

¹²⁸ Douglass writes of the transformation in the personality of his master's wife after he successfully mastered her lessons in reading:

Nothing seemed to make her more angry than to see me with a newspaper. She seemed to think that here lay the danger. I have had her rush at me with a newspaper. She seemed to think that here lay the danger. I have had her rush at me with a face made up of fury, and snatch from me a newspaper, in a manner that fully revealed her apprehension. She was an apt woman; and a little experience soon demonstrated, to her satisfaction, that education and slavery were incompatible with each other.

NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, WRITTEN BY HIMSELF 53 (1968) (1845).

professional slave-breaker?¹²⁹ Picture Covey looking at Douglass at the typewriter. The look is “not the look between two men.”¹³⁰ It is the look that one directs at the most sickening thing one can imagine – Frederick Douglass at the typewriter or the shadow of Nat Turner across one’s body. It is nausea itself. It sees Critical Race Theory as a disease.

9TH STORY: VOMIT

I have always thought that everyone lives with hope, that is, he believes that something he has undertaken or that concerns him, or the social group to which he belongs, is in the process of

¹²⁹ Douglass writes of Covey:

This battle with Mr. Covey was the turning-point in my career as a slave. It rekindled the few expiring embers of freedom, and revived within me a sense of my own manhood. It recalled the departed self-confidence, and inspired me again with a determination to be free. The gratification afforded by the triumph was a full compensation for whatever else might follow, even death itself.

Id. at 82-83.

¹³⁰ Primo Levi writes of such a moment:

Pannwitz is tall, thin, blond; he has eyes, hair, and nose as all Germans ought to have them, and sits formidably behind a complicated writing table. I, Häftling 174517, stand in his office, which is a real office, shining, clean and ordered, and I feel that I would leave a dirty stain on whatever I touched. When he finished writing, he raised his eyes and looked at me. From that day I have thought about Doktor Pannwitz many times and in many ways. I have asked myself how he really functioned as a man; how he filled his time, outside the Polymerization and the Indo-Germanic conscience; above all when I was once more a free man, I wanted to meet him again, not from a spirit of revenge, but merely from a personal curiosity about the human soul. Because that look was not one between two men; and if I had known how completely to explain the nature of that look, which came as if across the glass window of an aquarium between two beings who live in different worlds, I would also have explained the essence of the great insanity of the third Germany.

PRIMO LEVI, SURVIVAL IN AUSCHWITZ 96 (Stuart Woolf trans., 1961).

*being achieved, will be achieved, and will be propitious for him as well as for the people who constitute his community. I think hope is part of man. Human action is transcendent – it always aims at a future object from the present in which we conceive of the action and try to realize it. It situates its end, its realization, in the future, and hope is in the way man acts, in the very fact of positing an end as having to be realized.*¹³¹

-Jean-Paul Sartre

*Much like the storytellers of cultures based on oral traditions, like a mythical Homer, our judges preserve stories through the medium of 'facts' which are digested and preserved in written opinions. So preserved, these stories are passed into the popular culture (thus reflecting that culture as well). These stories create our foundation, the background narrative within which the facts of every new case are read and understood. We understand this notion by its commonly used terms; traditional original intent or the like.*¹³²

-Larry Catá Backer

Perhaps all this toxic criticism is making some whites sick, sick with worry, sick with a queasiness-onto-death, at the prospect of some future transformative disgorgement of their ill-gotten gains.¹³³ Perhaps, for the un-Critical, it is the moment and place just before the vomiting starts. Perhaps it is the place of pathetic regrets and denials. Perhaps it is the movement over the cusp. Perhaps it is the first movement of the inevitable – when suffering appears in the form of a slow-motion pre-play (fore-play?) of things to come. It is the moment – and it is a place as well as a

¹³¹ Jean-Paul Sartre, *quoted in* JEAN-PAUL SARTRE & BENNY LÉVY, *HOPE NOW: THE 1980 INTERVIEWS* 53 (Adrian van den Hoven trans., 1996).

¹³² Larry Catá Backer, *Tweaking Facts, Speaking Judgment: Judicial Transmogrification of Case Narrative as Jurisprudence in the United States and Britain*, 6 S. CAL. INTERDISC. L.J. 611, 622 (1998).

¹³³ Jesus said unto him, If thou wilt be perfect, go and sell what thou hast, and give to the poor, and thou shalt have treasure in heaven: and come and follow me.

But when the young man heard that saying, he went away sorrowful: for he had great possessions. *Matthew* 19:21-22 (King James). *See also Matthew* 25:34-40 (King James).

time – when one knows which way the wind is blowing without a Weatherman.

What do the souls of black folk look like after you have been digesting them for 500 years? Can you blame the ruling caste and their fellow-sufferers for neither wanting to feel nor to witness the spectacle of all those “many thousands gone” being vomited back onto their auction blocks? That’s what forty acres & a mule – a transformative disgorgement – looks like to those who love the colorline. The revolt of those whose flesh they formerly consumed must look like vomit and that is why they resist. The spectacle of revolt, for masters, is revolting.

Critical Race Theory shows them what they have been masticating for the last half millennium. Like vomit, Critical Race Theory cannot be ignored. One is lured by objects of loathing. Julia Kristeva writes:

Loathing an item of food, a piece of filth, waste, or dung. The spasms and vomiting that protect me. The repugnance, the retching that thrusts me to the side and turns me away from the defilement, sewage, and muck. The shame of compromise, of being in the middle of treachery. The fascinated start that leads me toward and separates me from them.¹³⁴

Revolt, like vomit, cannot be ignored. If Critical Race Theory is a disease, it is a disease suffered by its accusers.

Ray Bradbury, in a short story called *Fever Dream*, writes of illness in a way that may be helpful in examining Critical Race Theory and its interlocutors. What if a person became a disease? That is the subject of Bradbury’s story – “‘Well?’ asked the doctor. ‘I’ve been thinking,’ said Charles after a time. ‘Do germs ever get big?’”¹³⁵ Charles, a sick young boy, is frightened:

“What would happen, oh just pretend, please pretend, that just like in the old days, a lot of microbes got together and wanted to

¹³⁴ JULIA KRISTEVA, *POWERS OF HORROR: AN ESSAY ON ABJECTION 2* (Leon S. Roudiez trans., 1982).

¹³⁵ RAY BRADBURY, *Fever Dream*, in *THE VINTAGE BRADBURY* 289, 292 (1990).

make a bunch, and reproduced and made *more* And they decided to take over a person!" "Take over a person?" "Yes, become a person. Me, my hands, my feet! What if a disease somehow knew how to kill a person and yet live after him?" He screamed.¹³⁶

He screams because he understands the transformation:

He felt the walls of his body change, the organs shift, the lungs catch fire like burning bellows of pink alcohol. The room was lighted up as with the flickerings of a hearth. Now he had no body. It was all gone. It was as if a guillotine had neatly lopped off his head, and his head lay shining on a midnight pillow while the body, below, still alive, belonged to somebody else. The disease had eaten his body and from the eating had reproduced itself in feverish duplicate.¹³⁷

Later, the disease takes over Charles' brain:

He tried to scream and he was able to scream loud and high and sharply in the room, just as his brain flooded down, his right eye and right ear were cut out, he was blind and deaf, all fire, all terror, all panic, all death.¹³⁸

Afterwards the disease looks forward to social intercourse:

I like school. All the kids. I want to play with them and wrestle with them, and spit on them and play with the girls' pigtails and shake the teacher's hand, and rub my hands on all the cloaks in the cloakroom, and I want to grow up and travel and shake hands with people all over the world, and be married and have lots of children, and go to libraries and handle books and – all of that I want to!¹³⁹

¹³⁶ *Id.*

¹³⁷ *Id.* at 293.

¹³⁸ *Id.* at 294.

¹³⁹ *Id.* at 295.

Perhaps Critical Race Theory is contagious?¹⁴⁰ Perhaps, like Socrates, we are corrupting the youth? Perhaps Professor X sees

¹⁴⁰ For a good example of contagious criticism see generally Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241 (1993); Jerome McCristol Culp, Jr., *Toward a Black Legal Scholarship: Race and Original Understandings*, 1991 DUKE L.J. 39. In these two works, one can see the Critical Race Theory multiplying itself and spreading throughout the academy. The first article was written by a former student of the author of the second article. And so it goes. Consider, in this vein, the medical gaze of one legal scholar:

My thesis is that the use of postmodern theory in contemporary legal scholarship has accomplished very little. At best, postmodern ideology has served as a sort of *fetish* to engage the creative energies of a relatively small group of scholars in the legal academy. At worst, scholarship in this area has been a *pollutant* at many levels, creating a mass of confusion and contributing to the *erosion* of reasoned principles among today's generation of law students. In this light, the proliferation of postmodern theory among legal scholars is *symptomatic* of what others label an overall *contamination* in higher education. My particular criticism is aimed at one segment of postmodern ideology that has *crept* into legal quarters: poststructuralist deconstruction or, in layman's terms, the use of certain branches of philosophy and literary theory to "strip away" legal text. The fact that this practice has been largely confined to radical intellectuals in order to *subvert* mainstream liberalism is not so important. Rather, it is the *integrity* of the practice itself that warrants clarification. That is, can the ideas of one discipline, such as poststructuralist literary theory, easily be transferred to the study of law? How well do they match, and what is the common source, if any, of their kinship?

Jay P. Moran, *Poststructuralism's Misguided Place in Legal Scholarship: Chaos Theory, Deconstruction, and Some Insights from Thomas Pynchott's Fiction*, 6 S. CAL. INTERDISC. L. J. 155, 157 (1997) (emphasis added). Moran, like Professor X, deploys the disease metaphor to scholars from outside of the traditional "kinship" groups. His use of the terms "fetish," "pollutant," "erosion," "symptomatic," "contamination," "crept," "confined," "subvert," all serve to conjure the image of the Ivory Tower as a once-healthy city now plagued by disease-ridden outsider-scholarship. Some strategy of separation and containment must be found to halt this "erosion" of "reasoned principles." The moral panic of the author can be seen in his need to search for a "match," "a common source," and "kinship" before what he

something of “Charles” in Critical Race Theory? Perhaps that is what Professor X meant when he said, “Critical Race Theory is a disease.”

10TH STORY: THE BEAUTIFUL RAINBOW OF NIGHT

*Who in the rainbow can draw the line where the violet tint ends and the orange tint begins? Distinctly we see the difference in colors, but where exactly does the one first blendingly enter into the other?*¹⁴¹

-Herman Melville

There was a question about whether Critical Race Theory is racially exclusive. The question was raised, ironically, by a white professor at a white-majority law school as he interrogated a panel consisting of two black men, one Latina, and one Asian Pacific American man. The question was raised by a professor who had asked all of the questions for what seemed to me to be an interminable time:

Prof. X: I want to say why – in response to Deborah [Post], why didn't I go to Deborah and ask to participate as a speaker, and the answer is there's a lot -- there's a substantial *strain* in critical race theory that says that whites are not qualified to speak on racial issues, so I was not comfortable doing that.... Now the question: What would you do if you were the dean of your respective law schools that is different from what is being done now? What would you do?

calls “postmodern theory” can be integrated. Indeed, we learn that if such integration is not “easy” it should not be done. Here one might do well to recall President John F. Kennedy's statement that “We do these things not because they are easy, but because they are hard.” Kennedy, as we well remember, was certainly a “mainstream liberal.”

¹⁴¹ HERMAN MELVILLE, *Billy Budd, Sailor*, in BILLY BUDD, SAILOR AND OTHER STORIES 52 (1984).

- Prof. Farley: Well, I would call on the woman in the back who has been waiting to ask a question.
- Prof. Iijima: I would do a lot of things differently.
- Prof. Farley: No, I mean that's my answer to his question. I would ask the woman in the back row who has had her hand raised for a long time to ask her question. Look, the woman in the back who is wearing yellow and has silver glasses.
- Prof. X: I think that's rude. I think that's rude.
- Prof. Farley: Yes, I know.¹⁴²

The term "strain" seemed to me to be a possible continuation of his "disease" metaphor. What kind of conversation could I have with someone who began the conversation by labeling me a disease? In this context, his query seemed to invite the speech of penitent to priest, patient to physician or student to teacher. I wanted to invite everyone to listen to a different conversation. In the back row stood a student who had had her hand raised for the entire thirty-odd minutes we had spent in debating the disease issue.

Socratic dialogue has love as its object. Conversations that begin with the imputation of disease are about loathing and abjection. The student in the back with her patient hands seemed to evoke the beloved community and so I thought we should let the last be first.

Love, it is said, is a "many-splendored thing." So is blackness. There are many ways of qualifying for the black mark. Professor X claimed that "there's a substantial *strain* in critical race theory that says that whites are not qualified to speak on racial issues." This is not true. In fact, the critique of the colorline that is made in Critical Race Theory has been made by all manner of authors from many points along the colorline.

Consider the following South African affirmation of the many faces of the rainbow:

¹⁴² Transcript, *supra* note 58, at 109-110.

At the very top of the social ladder in South Africa we have the white South Africans. They have everything: all the economic, social, and political privileges. They vote and have a very high standard of living. Next there are the colored South Africans: the Asians, the Indians, and so on. This is a clear, politically recognized category in South Africa, whether one is "colored," or "Cape colored," or "other colored." At the very bottom of the social ladder is what the government calls the Bantu, the African people.

Black consciousness makes black people look at the situation. What is a "colored"? The law says that a colored person is one obviously not white and obviously not Bantu. This means we do not know what we are. We are people of mixed blood. My mother had a white skin but my father was very, very dark with very clear African ancestry. For white South Africans that is the most terrible thing to be, of mixed blood. To be a "colored" is therefore not only a political category. It is an economic and a psychological category.

Those at the bottom of the social ladder have almost nothing in South Africa, no property rights, no rights to live with their families or children. They have to carry passbooks. But the "colored" because they have some white blood, share white people's culture to a large extent and speak their language, either Afrikaans or English. We listen to their music and we share their religious concepts. We are therefore more civilized and have more rights to more things than the Africans. I may own property in South Africa, but an African cannot. I may live with my wife and my children, but an African cannot. This special situation has been a creation of the white people, who tell us who we are and where we belong. They call us the "Brown" people. Black consciousness says this is nonsense.

As *Christians* we identify with the least in our society. Therefore we are black South Africans and do not speak of "coloreds." We tell the government time and again that we

refuse to accept privileges that they are willing to give to us but not to the rest of the black community.¹⁴³

Identification with “the least in our society,” for Boesak, was the key to entering the beloved community. I was thinking of Boesak’s words when I attempted to adopt an ethic of pastoral care in my reply to Professor X’s question. I wanted the last to be first and so called on a patient student (who happened to be black and who happened to be a woman) to express her concerns. I wanted her to be able to join the discussion.

11TH STORY: THE DANGEROUS BODY

*These are strange and dangerous times. Some of us are born with the cross hairs of a rifle scope printed on our backs or skulls. Sometimes it’s a matter of thought, sometimes activity, and most times it’s color.*¹⁴⁴

-David Wojnarowicz

A. IZOD NATION

Three years ago I ran into a friend of mine as we were both preparing to board the same international flight from London to Boston. Rick B. was and is a graduate student at the MIT MediaLab.¹⁴⁵ He was carrying a large cardboard box full of strange electronic equipment – complete with wires and blinking lights – real Unabomber-looking stuff.

Rick, who happens to be white, was able to walk onto the plane without incident. The security people ignored Rick’s package even though it looked just like a bomb and focused instead on the guy behind us who, in their eyes, looked like a bomber.

The would-be passenger behind us appeared to *my* eyes to be a typical “preppie” college student – a typical “American” wearing

¹⁴³ Allan Boesak, *Liberation Theology in South Africa*, in *THIRD WORLD LIBERATION THEOLOGIES: A READER* 268 (Deane William Fenn ed., 1986).

¹⁴⁴ WOJNAROWICZ, *supra* note 51, at 58.

¹⁴⁵ For information on Rick Borovoy and the MediaLab, see Joshua Quittner, *Boy Meets Badge*, *TIME*, Oct. 28, 1996, at 87.

a short-sleeve cotton shirt with a small animal sewn onto the front – I call him “Izod-guy” for the remainder of this tale. The airport guardians no doubt noticed that Izod-guy “looked” Middle-Eastern or possibly Pakistani/Indian. I am not great at the racial identification game and so I cannot say precisely what they “saw.”

I saw that Izod-guy was dressed in tennis shoes, tennis shorts, tennis shirt and an Izod tennis vest. He was also carrying a tennis racket. I also saw that he was treated like a terrorist who happened to be wearing Dan Quayle-“Tennis anyone?”-drag. I use the word “drag” because the airport anti-terror squad clearly saw him as a middle-easterner/terrorist who was trying to cross-dress as an American preppie.

They held Izod-guy up in line for at least five to ten minutes while they “examined” his tennis racquet! He complained, “This is a tennis racquet, what are you talking about?” but to no avail. All of this was done while my friend Rick and I commented on the irony of allowing a white man (Rick) to carry any kind of suspicious stuff onto a plane while the “suspicious man” (Izod-guy) was not allowed to go on board with a tennis racquet. Neither of us did anything to intervene. This is not a profiles-in-courage story.

The funny thing was, I think that he (Izod-guy) was really so mainstreamed that he had no idea why they were stopping him at the airport. Just as they had confused him with Yasser Arafat, he may have confused himself with Dan Quayle. But that may be too much speculation on my part.

B. UP AGAINST THE WALL

I should talk about myself before speculating about other Others. I too have played the part of the suspected terrorist. I too have been confused, not with Dan Quayle, but with Nat Turner.

I was once made to miss a domestic flight at Boston’s Logan Airport back in 1993 because they thought I might be a terrorist. Why? I was carrying a childhood heirloom that belonged to a friend. The airport security forces at Logan told me, in full view

of a lot of people, that they could not allow me to carry the item on board because it might be a bomb. The item was a “Chatty Cathy” doll made by Mattel, Inc. The doll had belonged to my friend since she was a little girl, so I was not about to entrust its safe delivery to the United States Postal Service or to Federal Express or the airport baggage handlers. Who would have thought that “Chatty Cathy” would look so much like a “radio-controlled explosive device” through the colorlined gaze of the airport security forces? I began this weary drama as Mister Nice-Guy and even did the “Can’t we all get along?” Step & Fetchit routine that whites-with-power can love so much. You know, that Civil-Rights Negro, quiet-dignity, Sydney Poitier voice modulation that was ever so popular in the 1950s & early 1960s. Well, times must have changed because I did not Overcome anything:

Q: Where are you going?

A: Winston-Salem, North Carolina.

Q: Where do you work?

A: I’m a law professor at Boston College Law School. Here’s my school-identification, my driver’s license and my business card. I’ll write down the general number and the Dean’s number for you so you can call to verify.

Q: Who was your previous employer?

A: The United States Attorney’s Office for the District of Columbia, I was an Assistant United States Attorney. Would you like that number also? (I half-expected them to ask me what I thought of Derrick Bell.)

Q: What is your birthdate?

A: It is on my driver’s license and my passport. I wanted to say, “the same day Kafka was born.” Instead, I gave them the date and, in so doing, the race-pleasure, they desired.

So much for Quiet Dignity. At some point I dropped the mask of humility and the pretense of gentle patience. Suffice it to say that I wanted everyone in the area to hear what was going on. It looked bad – black guy stopped in an airport usually means “drug dealer” to passers-by. Oh, the semioticity of it all.

My eyes looked to the firearms of my interlocutors. I really did not want this minstrel show to continue. My mind's eye drifted to the holster of the cop closest to me and measured the time it would take to unclasp the holster and liberate his weapon. I started to experience that hyper-awareness that comes with real time – “the time just before the match is lit to the fuse” – I wanted to become the terrorist they wanted me to be. I started thinking:

If you don't know which way the wind is blowing....

You better ask somebody....

Maybe a weatherman....¹⁴⁶

The revolution will not be caught on your security cameras....

Top of the world, Ma! Top of the world!¹⁴⁷

Everything took on a hot, humid, prom-night intensity (OK, I have never actually been to a prom, but I imagine that proms are hot, humid and intense). Back to my tale of terror and terrorism: somewhere, it seemed I could hear the music of the *Drifters*:

This magic moment, so different and so new...¹⁴⁸

Or perhaps it was *Frankie Goes to Hollywood*:

¹⁴⁶ My reference here is to the organization that would later become the “Weather Underground.” I thought of their first incarnation as the “Weatherman Organization” in my moment in the spotlight and that is why the term “Weatherman” and not “Weatherperson” appears in the above text. For a discussion of gender, theory and the practice of revolution *see generally* Anthony Paul Farley, *Stormy Weather*, IOWA J. GEN., RACE & JUST. (forthcoming 1999).

¹⁴⁷ *WHITE HEAT* (Metro-Goldwyn-Mayer 1949), starring James Cagney as a psychotic gangster with a plan to rob a chemical plant. Cagney utters the line, “Top of the world, Ma!” as the film reaches to its explosive end.

¹⁴⁸ *THE DRIFTERS*, *This Magic Moment*, written by Doc Pomus and Mort Shuman. The song was #16 on the Billboard charts in 1960.

Relax, don't do it.
When you want to go to it.¹⁴⁹

Either way, the music was sweet and tempting and I got hot, humid and intense thinking about giving them what they wanted.

I repressed the urge to become the terrorist they wanted me to be. It was too late... or too soon... and so instead of giving them the terror/ist they desired. I gave them my birthdate.¹⁵⁰ You must remember this . . .

I was humiliated by my own compliance. I felt like Winston Smith in Room 101, except without the rats.¹⁵¹ Was I screaming "Do it to Julia! Do it to Julia!" by my act of complicity? By my counter-revolutionary acceptance of the subaltern role they asked me to play? What would Assata Shakur have done?¹⁵² What would Frantz Fanon have done? What is to be done?

Compliance never works and so things began to get uglier. They wanted to take the "Chatty Cathy" doll away to "examine it further." I refused to let the doll out of my sight and I also refused to leave the public area unless they arrested me and carried me out. I imagined the headline:

UPPITY NEGRO REFUSED TO SURRENDER DOLL

To make this long story short, it turns out that "Mister Charlie" (my pet name for Big Brother) cannot tell the difference between a tennis racquet and a bomb nor can he tell the difference between a very popular children's toy and a bomb. Through their colorlined looking-glass, each is the other: bombs become toys and toys become bombs.

They seem to be very good, however, at examining "race." The idea seems to be that there is a "race"-linked gene for

¹⁴⁹ FRANKIE GOES TO HOLLYWOOD, *Relax*, on WELCOME TO THE PLEASUREDOME (Uni/Universal Records/ZTT 1982).

¹⁵⁰ FANON, *supra* note 39.

¹⁵¹ GEORGE ORWELL, NINETEEN EIGHTY-FOUR (1949).

¹⁵² See generally SHAKUR, *supra* note 68.

terrorism.¹⁵³ Or maybe blacks belong to a “culture of hijacking.”¹⁵⁴ I wonder if professor Lino Graglia or any of his many white-liberal defenders has written anything on the cultural logic of airport security? Would that be pre- or post-modern? In any event, the airline folks are convinced that race matters. Oddly, they only seem to be good at examining “race.” And all is not as it seems.

C. THE EXPLODING PLASTIC INEVITABLE¹⁵⁵

Here's the story of why I was stopped on suspicion of terrorism. It turns out that the day before my flight, an Ethiopian hijacker had captured a plane in some other part of the world. I happen to look like all those East African distance runners that Bostonians are used to seeing in the marathon every year. People from Tanzania to the Sudan have mistaken me for a fellow-national for as long as I can remember. Also, I was a distance runner for my university track team. So... the racial logic was:

- 1--An Ethiopian hijacked a plane.
- 2--Ethiopian = marathon runner and Ethiopian = terrorist.
- 3--Marathon runners are skinny and, if Ethiopian, black.
- 4--Farley is skinny, Ethiopian-looking and black.
- 5--Farley is a terrorist! Q.E.D.

Ethiopians were transformed into terrorists. I was transformed into a Terrorist/Ethiopian and “Chatty Cathy” was transformed into a radio-controlled bomb. I was a dangerous body. I was a

¹⁵³ Arguments that blacks are *biologically* inferior to whites have once again gained currency within the Ivory Tower. One leading example of such work is CHARLES MURRAY & RICHARD J. HERNNSTEIN, *THE BELL CURVE* (1995).

¹⁵⁴ Arguments that blacks are *culturally* inferior to whites have once again gained currency within the Ivory Tower. One leading example of such work is DINESH D'SOUZA, *THE END OF RACISM* (1995).

¹⁵⁵ The “Exploding Plastic Inevitable” was a show created by Andy Warhol to introduce the Velvet Underground & Nico. See *THE VELVET UNDERGROUND & NICO* (Polydor 1996).

disease in the body politic and they were the cure. And, of course, I didn't get a seat on the plane:

somatype = citizenship

What can you do with that logic of race/space/place?¹⁵⁶

Perhaps there is nothing to be done. Perhaps the entire thing was about miscegenation. The "Chatty Cathy" doll's skin was as white as Shirley Temple's. Hmmmm... perhaps I should have identified myself as Mr. Bojangles before trying to board a plane with a plastic white girl.

¹⁵⁶ See Keith Aoki, *Race, Space and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699 (1993); John O. Calmore, *Racialized Space and the Culture of Segregation: "Hewing a Stone of Hope from a Mountain of Despair,"* 143 U. PA. L. REV. 1233 (1995); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1843 (1994); Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047 (1996).

12TH STORY: MEMORIES THAT SMELL LIKE GASOLINE¹⁵⁷

*To have its sins forgiven mankind has only to declare them to be what they really are.*¹⁵⁸

-Karl Marx

*And her slim body, white as the ash of black flesh after flame.*¹⁵⁹

-Jean Toomer

I open the multicolored pages of *USA Today* to a story titled, "Witness Too Drunk To Recall Beheading."¹⁶⁰ This looks terrifying. I enter the terror and read the following passage:

The state's star witness, who blames his drinking companion for dousing a black man with gasoline and burning him to death, could not explain Tuesday why he also had gasoline on his clothing.¹⁶¹

I go on:

Louis Ceparano testified during cross-examination in the capital murder trial of Emmett Cressell Jr. that his memory of the night

¹⁵⁷ I have taken this line from DAVID WOJNAROWICZ, *MEMORIES THAT SMELL LIKE GASOLINE* (1992).

¹⁵⁸ Karl Marx, *For a Ruthless Criticism of Everything Existing*, in *THE MARX-ENGELS READER* 15 (Robert C. Tucker ed., 2d ed. 1978). The young Marx argued:

But if the designing of the future and the proclamation of ready-made solutions for all time is not our affair, then we realize all the more clearly what we have to accomplish in the present - I am speaking of a ruthless criticism of everything existing, ruthless in two senses: The criticism must not be afraid of its own conclusions, nor of conflict with the powers that be.

Id. at 13. I offer these stories in the same romantic spirit.

¹⁵⁹ JEAN TOOMER, *Portrait in Georgia*, in *CANE* 27 (1975) (1923).

¹⁶⁰ David Reed, *Witness Too Drunk To Recall Beheading*, *USA TODAY*, Nov. 4, 1998, at 21A.

¹⁶¹ *Id.*

Garnett P. Johnson Jr. died is clouded because he had been drinking large amounts of moonshine.¹⁶²

The story is from Independence, Virginia.¹⁶³ It takes me back to the beginning. I recall my undergraduate days at the University of Virginia in Charlottesville. During those halcyon days, this terror was always there, just above my head. I used to go camping with my friends during spring reading period. It was a way of escaping the examination-hell of the dormitory. To get to the mountains we had to drive. I refused to get out of the car at any of the rural stations where we stopped for gasoline and chocolate bars. As I looked out through my wire-rimmed lenses at the locals, I had a sense that I was combustible and consumable in the moonshine of their eyes. Paranoia strikes deep. Into my heart it did creep. As an intellectual matter, I knew that I was being paranoid. Life, of course, is not an intellectual matter, and so I stayed in the car. My friends, who happened to be white and women, got out to stretch their pretty bodies in the sun as they purchased gasoline and chocolate. Free, white and almost twenty-one.

According to Ceparano, who pleaded guilty to first-degree murder in May of 1998, Emmett Cressell, Jr., was upset with Garnett P. Johnson, Jr. because he had passed out at their party.¹⁶⁴ Ceparano testified that before Johnson was dragged into the woods and killed, Cressell had suggested, "Let's take him outside [the trailer-home] and tie him up to a tree and let the wild animals get to him."¹⁶⁵ Ceparano helped for awhile but soon returned inside to mix a drink and smoke a cigarette.¹⁶⁶ Ceparano could not remember any other details after his drink and his smoke.¹⁶⁷

Hazel Louise Anderson remembered more. She testified that Cressell used a "racial epithet" as he pulled Johnson off a couch

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Reed, *supra* note 160.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

by his shirt collar.¹⁶⁸ Anderson remembered Cressell's words. "There was a white cross; they were going to take him out and burn him on it."¹⁶⁹ Anderson remembered that as the white men dragged him outside, Johnson said, "Why don't you go ahead and shoot me and get it over with?"¹⁷⁰ Johnson understood Critical Race Theory – he knew that he was going to die. Need we ask for whom the Bell tolls? They treated Johnson as if he were a disease to be purified by fire and the cross of Jesus. Onward Christian Soldiers? Anderson remembered seeing a fire outside the window and Cressell and Ceparano kneeling near the flames.¹⁷¹ Finally, Anderson remembered that when Cressell returned, he smelled like gasoline.¹⁷²

When the sheriff arrived on the scene, Johnson's body was still smoldering and his severed head lay in a freshly dug hole.¹⁷³ Ceparano said it was possible that he buried the severed head but denied the severing.¹⁷⁴ I am glad that I chose to stay in the car during all those camping trips. Of course, the logic of separation and containment in my collegiate protection strategy may be suspect. Johnson, after all, was lynched in the woods. I do not recall whether I ever went camping in the woods of Independence, Virginia, during my time at "Mr. Jefferson's University,"¹⁷⁵ to use my classmates' favorite term of endearment for the slavemaster/President who founded the University of Virginia and drafted the Declaration of Independence.

The story, however, was less jarring to me than the layout of the page on which it was printed. After the headline, my attention was drawn to the photograph of the gaunt, scowling,

¹⁶⁸ *Id.*

¹⁶⁹ Reed, *supra* note 160.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Reed, *supra* note 160.

¹⁷⁵ "Mr. Jefferson's University," was one of my classmates' favorite terms of endearment for the University of Virginia. Our alma mater, the University of Virginia, had been founded by Thomas Jefferson, a President and a slavemaster.

dark-suited figure of Emmett Cressell, Jr. We see him from the waist up.¹⁷⁶ We see that he is handcuffed and that his bound hands are held low, just below his waist. The picture ends there, but if we allow our eyes to travel down the length of his body we see an advertisement for Viagra, right below his waist. If we draw a straight line from a point between Cressell's eyes we can follow it down along his tie and between his cuffed hands before we leave the bottom edge of the photograph. As we continue to draw, we see our line continue to the place where Cressell's zipper would be, were this a full-body photograph. Our line ends just as it meets the opening provided by the letter "V" in the Viagra advertisement below the picture. The Viagra advertisement says:

VIAGRA
PRESCRIBED Low-Cost MAILED
Private
M.D. By Phone
1-800-414-1243

The Viagra advertisement is literally embedded into the story of the lynching, as if to consummate the story. What more can be said of the erotic nature of this crime?

There is always more. That is the nature of a fetish. Let us begin again. First, we see a story about two poor whites who had dinner and then decided to burn a black man to death with gasoline, sever his head from his still-smoldering body, and bury it in a hole. Second, we see an advertisement for Viagra. The Viagra advertisement seems strategically placed like a fig leaf. A strange emblem with which to cover the lyncher's shame. Third, we see a Citibank advertisement for the "Diners Club International" credit card and for gasoline. The advertisement lets us know that "making the Diners Club Card part of our everyday life can reward you with something extraordinary." We see the symbols of not one but seven different gasoline stations where the card is accepted.

¹⁷⁶ Reed, *supra* note 160.

We see the symbols of seven gasoline stations where the Diners Club Card is accepted below a news story about a black man who was beheaded and burned to death with gasoline by two white men who probably would not qualify for a credit card with Citibank or any bank. If we look more closely at the Citibank advertisement we see the *phallic* image of a gasoline pump entering an open automobile gasoline tank. The photograph is a close-up, so we see only a hand guiding the nozzle into the tank. It is not too difficult, although it is too perverse, to imagine a voice saying, "fill 'er up!" The hand in the photograph of the gasoline pump is the same size as are the hands in the photograph of Emmett Cressell, the gasoline-lynching defendant. That is, the photographs are the exact same scale. And perhaps they refer to the same system of white satisfaction through the ritualized torture of bodies made black. We can, without imagination leap from one to the other. It is almost as though the photographs are openings in the page. Openings to a real world of willful cruelty of which the printed word is mere representation

That is all there is on one full page of *USA Today*. There is no outside of the colorline. Mutilation is just the way the words are made flesh. What were Cressell and Ceparano doing but their perverse duty in a world made perverse by a colorline? The same insanity that by chance or design put all these notions together on page 21A of the November 4, 1998 issue of *USA Today* moved into the bodies of Cressell and Ceparano to guide them in their quest to make themselves white with the ashes of Johnson's beheaded body. The same insanity moved into Jefferson's body and allowed him to write so elegantly of freedom in the Declaration of Independence despite the shrieks of his slaves. And the endless shrieks of the many thousands gone. Gone the way of auction blocks, public housing, burning crosses, surrender, and prison cells. The same insanity. Changing itself for changed circumstances. Timeless, everywhere, and multiplying like a virus.¹⁷⁷

¹⁷⁷ It may be that I am seeing things. If I am hallucinating, as though lost in some illness, it makes my argument here that much stronger. That the colorline fills the world with these images of black subalternation and the

13TH STORY: WHAT THEN MUST WE DO?

*I'm that sick. I could die that soon. Why does my hope seem so long and so broad, a great big room full of possibilities, future light, and death is a broken bulb there in the center of it. A conundrum! Does the dark of the bulb matter to the room? Are there windows and is it daylight? Can a room full of this light rejuvenate the bulb, fix it, change it? How much light does it take to change a light bulb? 40 million people will have it by the end of the decade. I'm in good company. I'm in plenty of company. I'm less afraid. It's a big room and it's full of everybody's hope I'm sure.*¹⁷⁸

-Gary Fisher

*I would venture that there are no healthy brothers of this generation, none at all.*¹⁷⁹

-George Jackson

We live in a time of plague. Perhaps it is a test of our capacity to act up on behalf of the "least" among us. Perhaps the plague will provide us with the keys to the Kingdom. Perhaps the plague will show us that we are all a part of each other and that all strategies of separation and containment are doomed before they begin. Perhaps when we finally realize that an injury to one

impulse to view them, compulsively perhaps, as part of a pattern, speaks volumes about its hold on our heads and our hearts. I also see on the page that I described the possibility of a sin of commission. Perhaps the advertisers and USA TODAY did this on purpose. Advertisers often request that their advertisements be placed so as to achieve maximum impact. I also see on the page that I described the possibility of a sin of omission. It should have occurred to someone that it was insane to place advertisements for Viagra, gasoline and credit cards along with a story about a gasoline-lynching perpetrated against a black man by two racially, financially, and possibly sexually-frustrated white men. I see all this on the page and more. And my vision of things committed and things omitted is only possible because the colorline exists.

¹⁷⁸ FISHER, *supra* note 91, at 272.

¹⁷⁹ JACKSON, *supra* note 81, at 180.

is an injury to all, the plague will end. Today, however, we live amidst a plague of cruelty.

It is Friday, March 27, 1998, and I am flying to New York City from Boston. I find my seat and open the *New York Times* to a curious photograph.¹⁸⁰ I am on my way to Touro Law Center on Long Island. In the photograph I see a young man with black shoulder-length hair being led away in handcuffs.¹⁸¹ He is wearing a T-shirt that says, "Normal is Boring."¹⁸² Three policemen, each in a different uniform, surround him and I wonder why it takes so many divisions of police to lead him away.¹⁸³ The young man in handcuffs appears to be Asian Pacific.¹⁸⁴ Perhaps he is American, too. He is joining the new untouchables: the prisoners. The policemen are all white.¹⁸⁵

The young man in handcuffs is Youri Cheng and the caption below his photograph says that he has been charged with "43 counts of cruelty to animals in connection with the release of pet guinea pigs in Central Park."¹⁸⁶ This is the lead-in for Cheng's story:

In a city that has had envious success in solving its serious crimes, this one was one of the more benign: Several South American guinea pigs had been illegally released in Central Park, a strange land where they would surely meet their death. Yesterday, the police said they had found the culprit, and perhaps more importantly, parks workers had rescued most of the guinea pigs.¹⁸⁷

The rodents are regarded as "strangers in a strange land." The rodents are alone, afraid, and in need of a rescue operation. The touching concern for rodents ("parks workers... *rescued* most of

¹⁸⁰ Douglas Martin, *Eviction in Chelsea Apparently Led to Guinea Pigs on the Run*, N.Y. TIMES, Mar. 27, 1998, at A20. Chang W. Lee, Photographer.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Martin, *supra* note 180.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

the guinea pigs”), coupled with the blithe disregard for colored flesh in chains (“a city that has had envious success in solving its serious crime problems”), reminds me that I am flying to the city that once displayed a black man in a zoo.¹⁸⁸ I am flying to a city that regards rodents as worthy of “rescue.” I am flying to a city that regards people of color as “crime problems.” I think of rodents carrying the Black Plague across Europe. I think of rodents making a mockery of all the strategies of separation and containment deployed against the plague. I think now of the rodents as a sign that we have grown to love the plague. Certainly we have grown to love plaguing those we imagine to be separated and contained by the colorline.

I continue to read:

The suspect, Youri Cheng, could face two years in prison for each guinea pig that he releases, the police said. “That’s 86 years, although such a stiff sentence is considered unlikely.”¹⁸⁹

Things become even more bizarre. The thirty-three surviving “victims” are being offered for “adoption.”¹⁹⁰ I learn that the hope of “rescue” is “dwindling” for the rest of the rodents.¹⁹¹

I think about the thousands and thousands of homeless people in New York City. I think about the hundreds of homeless people who sleep in the city’s public parks. And I think about the statement by Marilyn Haggerty Blohm, director of the New York City Center for Animal Care and Control:

It is an opportunity to show the public that animal cruelty has serious costs. We see a lot of atrocities done to animals and in very few instances are we able to find the person to charge with cruelty.¹⁹²

¹⁸⁸ BRADFORD, *supra* note 63.

¹⁸⁹ Martin, *supra* note 180.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

The panic over the rodents' welfare, relative to the city's human residents, would be more pathetic than monstrous were it not shared by the entire city. According to Parks Commissioner Henry J. Stern, Cheng was being evicted from his apartment and was apparently acting in the belief that he was helping his pets by liberating them in the park. "It appears the action of this individual was more pathetic than it was monstrous," said Commissioner Stern.¹⁹³ No one, it seems, was worried about Cheng's welfare.

How did Cheng become so "pathetic" as to leave his pet rodents in the park and how did the city become so monstrous as to place a person in chains over the fate of a few rodents? The answer may be found in our own wickedness. Cheng was facing the possibility of eviction from his apartment and may have felt that as a soon-to-be homeless man, he could no longer take proper care of his pets.

According to Hilly Gross, a spokesperson for the New York City Housing Authority, Cheng's possible eviction stemmed from his brother's arrest in November 1996 on charges of cocaine possession.¹⁹⁴ Under stiffer new housing rules, the whole family

¹⁹³ *Id.*

¹⁹⁴ See, e.g., Memorandum on the "One Strike and You're Out" Guidelines, 32 WEEKLY COMP. PRES. DOC. 584, 585 (Mar. 28, 1996) (directing the dissemination of Guidelines on "One Strike and You're Out" to the nation's public housing agencies); Exchange with Reporters at a Chicago Housing Authority Police Substation, 30 WEEKLY COMP. PRES. DOC. 1295, 1295-96 (June 17, 1994) (supporting the policy of police sweeps in Chicago public housing because "people have a right to live in a place without being subjected to [guns and crime]"); Office of the Vice President, The White House, Vice President Gore Announces New Four-Part Strategy to Fight Crime and Drugs in Public Housing, June 5, 1997, *available in* 1997 WL 306594 (announcing increases in law enforcement in targeted cities, and funding of other projects); Charisse L. Grant, *Public Housing Police Squad Cracks Down on Crime*, MIAMI HERALD, Jan. 7, 1989, at 1D; Matt Neufeld & Brian Reilly, *Anti-Crime Plan Targets Public Housing*, WASH. TIMES, Dec. 7, 1993, at C6, *available in* 1993 WL 6456005; Stewart Powell, *Clinton Aims for Safer Public Housing*, TIMES UNION (Albany), Mar. 29, 1996, at A9, *available in* 1996 WL 9536386; Walt Yost, *Deputies, Agency Aim to Clean Up Complexes: Drug, Crime Woes in Public Housing are targets*, ATLANTA J. CONST., Feb. 5, 1994, at A5, *available in* 1994 WL 4484500. Policymakers have long been

faced eviction as a result.¹⁹⁵ In February 1998, the board of the New York City Housing Authority ordered the eviction.¹⁹⁶

The entire city seemed organized like Bentham's panopticon:

Investigators from the Parks Department and the American Society for the Prevention of Cruelty to Animals said the suspect was found with the help of an informant, who had apparently helped Mr. Cheng take the cage full of animals to a taxi.¹⁹⁷

The police did not need their "informer" because park personnel actually *saw* Cheng release the rodents and immediately rescued eighteen of them.¹⁹⁸ Cheng's "crime" "shocked the city over the

worried about crime in public housing. See, e.g., W. Victor Rouse & Herb Rubenstein, U.S. DEP'T OF HOUS. & URBAN DEV., A REPORT: CRIME IN PUBLIC HOUSING: A REVIEW OF MAJOR ISSUES AND SELECTED CRIME REDUCTION STRATEGIES (1978) (analyzing crime in public housing and reviewing suggested alternatives for crime prevention). For a description of anti-crime efforts in public housing in the 1970s and 1980s, see LANGLEY C. KEYES, STRATEGIES AND SAINTS: FIGHTING DRUGS IN SUBSIDIZED HOUSING 19-52 (1992).

¹⁹⁵ President Clinton brought us this nationwide policy. See Remarks Announcing the "One Strike and You're Out" Initiative in Public Housing, 32 WEEKLY COMP. PRES. DOC. 582, 582-85 (Mar. 27, 1996). President Clinton first proposed the policy in his 1996 State of the Union Address. See Address Before a Joint Session of the Congress on the State of the Union, 32 WEEKLY COMP. PRES. DOC. 90, 94 (Jan. 23, 1996) ("I challenge local housing authorities and tenant associations: Criminal gang members and drug dealers are destroying the lives of decent tenants. From now on, the rule for residents who commit crimes and peddle drugs should be one strike and you're out.").

¹⁹⁶ Such evictions are on the increase:

Private and public housing landlords have sought to evict tenants for criminal activity conducted by others on grounds of nondesirability, sometimes by invoking RPAPL 711(5), RPAPL 715 or 52(d) of the New York City Rent, Eviction and Rehabilitation Regulations. RPAPL 711(5) enables the landlord to bring a special proceeding against a tenant where the premises are used "for any illegal trade or manufacture, or other illegal business."

Court Upholds Eviction of Tenant Whose Son Committed Assault, 12 No. 2 NYLRELR 7 (1997).

¹⁹⁷ Martin, *supra* note 180.

¹⁹⁸ *Id.*

weekend” and “people worried about [the rodents’] fate, and mused about the culprit’s motive.”¹⁹⁹ The news was even covered by the British Broadcasting Corporation.²⁰⁰ The sin of caring more about homeless rodents than homeless people was repeated over and over again as the city of sinners sought to unveil the “culprit’s” true motive. I imagine, miles above the city about which I am reading, that I hear the voices of these hollow men and women as, *wind in a dry glass, or rat’s feet over broken glass*.²⁰¹

“The captured animals have been tested for disease and have been declared safe for adoption,” said Director Blohm.²⁰² I wonder about the homeless people sharing the open sky with the ten rodents still awaiting rescue. Who will adopt them? To what medical facility will they go to be tested for diseases? When will we care about their safety? The *New York Times* story includes a line of concern about the rodents:

The decision to offer the animals for adoption reverses an initial plan to send them to a preserve in Upstate New York. People wanting to adopt one or two – but no more – can call the center at (212) 722-3620.²⁰³

The colorline prevents a similar line of concern for Youri Cheng’s welfare. Indeed, welfare is what drove him to liberate his pets. As I hang suspended in air, I wonder whether Cheng is sleeping in a cell or on the ground or in a condemned building with others of the condemned. As I read of the “preserve in Upstate New York” I am flooded by memories that smell like gasoline. And I feel a small flame start to flicker within me.²⁰⁴

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ T.S. ELIOT, *THE HOLLOW MEN*, IN *SELECTED POEMS* 75 (Centenary Ed. 1988).

²⁰² Martin, *supra* note 180.

²⁰³ *Id.*

²⁰⁴ In the storm and thunder of the jet engines I heard the voice of some old civil rights singer, “this little light of mine, I’m gonna let it shine,” and I thought about making changes. I thought about the stories that somehow made “separate but equal” seem constitutional. I thought about the stories that made

As I read about Youri Cheng, I remember the rat killed by Bigger Thomas in the opening pages of Richard Wright's *Native Son* and the rats that killed the spirit of Winston Smith in the final pages of George Orwell's *Nineteen Eighty-Four* and it occurs to me that each protagonist faced the same horror. The plague of cruelty governing Orwell's Oceania and ours is carried by its rats. Orwell's protagonist is tortured into fealty to the regime by the horror of rats:

"I have pressed the first lever," said O'Brien. "You understand the construction of this cage. The mask will fit over your head, leaving no exit. When I press this other lever, the door of the cage will slide up. These starving brutes will shoot out of it like bullets. *Have you ever seen a rat leap through the air?*"²⁰⁵

Wright's protagonist is a black person in a colorlined city. He lives in a cage. He lives in rat-infested public housing:

A huge black rat squealed and leaped at Bigger's trouser-leg and snagged it in his teeth. "Goddamn!" Bigger whispered fiercely, whirling and kicking out his leg with all the strength of his body. *The force of his movement shook the rat loose and it sailed through the air and struck a wall.*²⁰⁶

I think of these horrible airborne rodents during my flight to New York City. I think of Youri Cheng on the ground. I wondered whether he was behind bars or permanently out of doors. I think that I see the plague from Bigger's vantage point:

the constitutional promise of "all deliberate speed" seem like it would ever get anyone to the Promised Land. We know now, as we must have known then, that the song will remain the same. I thought about what happens after all the promises have been broken and all the tomorrows look like yesterday and the whirlwind starts to speak your name. And I thought I would tell different stories. I thought I would share a few postmodern stories. I thought about the book of Job and its multiple authors. And I thought about stories that ended with "and I only am escaped alone to tell thee." And I thought about sharing these stories at Touro.

²⁰⁵ ORWELL, *supra* note 151, at 235.

²⁰⁶ RICHARD WRIGHT, *NATIVE SON* 9 (1992) (1940).

A plane was writing high up in the air. "Look!" Bigger said. "What?" "That plane writing up there," Bigger said, pointing. "Oh!" They squinted at a tiny ribbon of unfolding vapor that spelled out the word: USE ... The plane was so far away that at times the strong glare of the sun blanked it from sight. "You can hardly see it," Gus said. "Looks like a little bird," Bigger breathed with childlike wonder. "Them white boys sure can fly," Gus said. "Yeah," Bigger said, wistfully. "They get a chance to do everything." Noiselessly, the tiny plane looped and veered vanishing and appearing, leaving behind it a long trail of white plumage, like coils of fluffy paste being squeezed from a tube; a plume-coil that grew and swelled and slowly began to fade into the air at the edges. The plane wrote another word: SPEED ... "It's funny how the white folks treat us, ain't it?" "It better be funny," Gus said. "Maybe they right in not wanting us to fly," Bigger said. "Cause if I took a plane up I'd take a couple of bombs along and drop em sure as hell...." They laughed again, still looking upward. The plane sailed and dipped and spread another word against the sky: GASOLINE....²⁰⁷

From Bigger's subaltern position, the rat-borne plague is the colorline. The colorline appears as a totalitarian order of things. It appears as a fever-dream made real by concrete, policemen, low prospects and rat-infested apartments. But one never knows when the sleeper will awaken ("I'd take a couple of bombs along and drop 'em sure as hell") and put the entire arrangement to the torch. It is the Amerikan Dream:

The plague stricken-town, traversed throughout with hierarchy, surveillance, observation, writing; the town immobilized by the functioning of an extensive power that bears in a distinct way over all individual bodies – this is the utopia of the perfectly governed city. The plague (envisaged as a possibility at least) is the trial in the course of which one may define ideally the exercise of disciplinary power. In order to make rights function according to pure theory, the jurists place themselves in imagination in the state of nature; in order to see perfect disciplines functioning, rulers dreamt of the state of plague.

²⁰⁷ *Id.* at 19-20.

Underlying disciplinary projects the image of the plague stands for all forms of confusion and disorder; just as the leper, cut off from all human contact, underlies projects of exclusion.²⁰⁸

Why create such a condition? Why weave the colorline? Because it is a form of pleasure for those who imagine they will never be haunted by their victims. They create the plague-conditions and watch from afar as their victims perform their subalternation.

The plague-city is a perverse theater. It is a theater of the perverse. Antonin Artaud writes, "Once the plague is established in a city, the regular forms collapse."²⁰⁹ Artaud tells us of a theater that emerges from physical dissolution:

The dregs of the population, apparently immunized by their frenzied greed, enter the open houses and pillage riches they know will serve no purpose of profit. And at that moment the theater is born. The theater, i.e., an immediate gratuitousness provoking acts without use or profit. The last of the living are in a frenzy: the obedient and virtuous son kills his father; the chaste man performs sodomy upon his neighbors. The lecher becomes pure. The miser throws his gold in handfuls out the window. The warrior hero sets fire to the city he once risked his life to save. The dandy decks himself out in his finest clothes and promenades before the charnel houses. Neither the idea of an absence of sanctions nor that of imminent death suffices to motivate acts so gratuitously absurd on the part of men who did not believe death could end anything. And how to explain the surge of erotic fever among the recovered victims who, instead of fleeing the city, remain where they are, trying to wrench a criminal pleasure from the dying or even the dead, half crushed under the pile of corpses where chance has lodged them.²¹⁰

Without the cruelty of the plague there could be no theater:

²⁰⁸ MICHEL FOUCAULT, *DISCIPLINE & PUNISH: THE BIRTH OF THE PRISON* 198 (Alan Sheridan trans. 1979).

²⁰⁹ ANTONIN ARTAUD, *The Theater and the Plague*, in *THE THEATER AND ITS DOUBLE* 15, 23 (Mary Caroline Richards trans., 1958).

²¹⁰ *Id.* at 15, 24.

Between the victim of the plague who runs in shrieking pursuit of his visions and the actor in pursuit of his feelings; between the man who invents for himself personages he could never have imagined without the plague, creating them in the midst of an audience of corpses and delirious lunatics and the poet who invents characters, entrusting them to a public equally inert or delirious, there are other analogies which confirm the only truths that count and locate the action of the theater like that of the plague on the level of a veritable epidemic.²¹¹

Those who believe themselves to be spectators like to watch. They like to create the conditions for the plague – to set the stage – and watch from a safe distance as Others act out their fantasies. Our plague cities are entertainment centers for those not forced to live in them. The spectator society revels in the behaviors it is able to cultivate in its victims. They watch the news to see what new pathology has been invented. They speak, read, and write endlessly about the inferiority and unsuitability of their subaltern castes. It makes them feel good in and about their bodies to diagnose the Other bodies as pathological. It makes them feel good to see the Other bodies perform the role of pathological subaltern. They love the tangle of pathology. The play is the thing.

The spectator society revels in its fantasies of containment and separation. The plague must be contained and the spectators believe it can be. The plague victims must be separated and the spectators believe they can be. As with the plague of the Middle Ages, all strategies of separation and containment will fail. The rats will multiply behind the boarded-up doors and windows. The rats will defy the barriers and the cruelty will be everywhere all at once and no longer amusing to those who formerly thought themselves safe.

I think about my postmodern condition. I think about my dis-ease. I think that I am not. I think about Fanon, “the negro is not. Any more than the whiteman,” and I imagine that I must

²¹¹ *Id.* at 15, 24-25.

be someone.²¹² I imagine eyes filled with gasoline. I imagine teardrops exploding like dreams deferred. I imagine fragments of metal and blood and bone that were once this plane and its passengers falling, like the quality of mercy, upon those who have and those who have not. I imagine the gentle rain from heaven.

CONCLUSION

*When interpreters have finished their work, they frequently leave behind victims whose lives have been torn apart by these organized, social practices of violence. Neither legal interpretation nor the violence it occasions may be properly understood apart from one another. This much is obvious, though the growing literature that argues for the centrality of interpretive practices in law blithely ignores it.*²¹³

-Robert Cover

*What happens is not that this symbol cannot be further interpreted, but: I do no interpreting. I do not interpret because I feel at home in the present picture. When I interpret, I step from one level of thought to another.*²¹⁴

-Ludwig Wittgenstein

*In decolonization, there is therefore the need of a complete calling in question of the colonial situation. If we wish to describe it precisely, we might find it in the well-known words: "The last shall be first and the first last." Decolonization is the putting in to practice of this sentence.*²¹⁵

-Frantz Fanon

²¹² FRANK FANON, *BLACK SKIN, WHITE MASKS* 231 (Charles Lam Markman Trans., 1967).

²¹³ Robert Cover, *Violence and the Word* in *NARRATIVE, VIOLENCE, AND THE LAW: THE ESSAYS OF ROBERT COVER* 203, 203 (Martha Minow, et. al. eds., 1992).

²¹⁴ WITTGENSTEIN, *supra* note 1, at 43e.

²¹⁵ FANON, *supra* note 96, at 37.

These thirteen stories are all burnt offerings to the God who speaks in the voice of things falling apart. These thirteen stories are a prayer that somewhere, in the spaces where the center does not hold, there may be possibilities not now imaginable. These thirteen stories are meditations on gasoline memories – mine and yours – that may one day lead us to those shining paths not taken. These thirteen stories are a hope that on that day, perhaps, this sentence can be put into practice: “The last shall be first and the first last.” And now we are back to the beginning.²¹⁶ How soon is now?²¹⁷

²¹⁶ Phyllis Goldfarb writes, “Understanding is only possible when we give up claims to having achieved it,” Phyllis Goldfarb, *From the Worlds of “Others”: Minority and Feminist Responses to Critical Legal Studies*, 26 N.E. L. REV. 683, 710 (1992).

²¹⁷ I have appropriated this line from THE SMITHS:

When you say it’s going to happen “now.”
Well, when exactly do you mean?
See I’ve already waited too long.
And all my hope is gone.

You shut your mouth.
How can you say.
I go about things the wrong way?
I am human and I need to be loved.
Just like everybody else does.

THE SMITHS, *How Soon is Now?* on MEAT IS MURDER, words by Morrissey, music by Johnny Marr (Sire Records 1985). The line, “How Soon Is Now?” does not appear on the cover of the recording. What does appear is a four-part Warholian repetition of a photograph of a young combat soldier. The soldier’s helmet is adorned with the words “Meat is murder.” And so it goes.