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# Rascuache Lawyering

Alfredo Mirandé

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# Rascuache Lawyer: A Paradigm of Ordinary Litigation\*

ALFREDO MIRANDÉ

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## I. INTRODUCTION

Although the theme of the Fifteenth Annual LatCrit meeting was “The Color of the Economic Crisis: Exploring the Downturn From the Bottom Up,” there was surprisingly little emphasis during the conference on the implications of the economic downturn for progressive lawyers and their clients. This paper focuses on rebellious lawyering, an important topic that has been relatively neglected by LatCrit scholars and critical race theorists, and proposes a new theory of rascuache lawyering that is a bottom-up view of progressive practice.

A distinguishing characteristic of critical race theory (CRT) is that it has sought to incorporate the voices and narratives of previously excluded groups into law. Following in the tradition of CRT, since its

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inception, Latino critical race theory (“LatCrit”) has similarly challenged liberal legal theory and practice by incorporating the experiences and voices of Latinos into law and legal scholarship and also articulating an anti-subordination theory and praxis.<sup>1</sup>

Derrick Bell and Richard Delgado have been two of the pioneers in the use of narrative and storytelling techniques to advance legal scholarship. Bell blazed the trail in his classic *Civil Rights Chronicles* where he first introduced a fictional figure, Geneva Crenshaw, the heroine of his book.<sup>2</sup> A brilliant civil rights litigator, Geneva, was participating in a voter registration drive in 1964 when she was severely injured after her car was run off the road in an attempted murder. Emerging from a coma after some 20 years, Geneva presents Bell’s alter ego, a law professor, with the *Civil Rights Chronicles*, a fresh and innovative look at race and law in contemporary society.<sup>3</sup> Bell pioneered the use of fictional stories, fables, parables, and tales in the law. Kimberle Crenshaw notes:

Allegory offers a method of discourse that allows us to critique legal norms in an ironically contextualized way. Through the allegory, we can discuss legal doctrine in a way that does not replicate the abstractions of legal discourse. It provides therefore a more rich, engaging, and suggestive way of reaching the truth.<sup>4</sup>

A decade later, Richard Delgado introduced Geneva’s half-brother, Rodrigo Crenshaw, a brilliant young law student turned law professor. Born in the United States and raised in Italy, Rodrigo attempts to return to help his native country deal with its current racial crisis, engaging the law professor, Delgado’s alter ego, in a series of chronicles focusing on topics such as law, racism, civil rights, and

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1. Francisco Valdes, *Legal Reform and Social Justice: An Introduction to LatCrit Theory, Praxis, and Community*, 14 GRIFFITH L. REV. 148 (2005) available at <http://daytona.law.miami.edu:2088/HOL/Page?handle=hein:journals/griffith14&id=1&size=2&collection=fijournals&index=journals/griffith>; Elizabeth M. Iglesias & Francisco Valdes, *LatCrit At Five: Institutionalizing a Postsubordination Future*, 78 DENV. U. L. REV. 1249 (2001); Francisco Valdes, *Foreword: Poised At The Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997).

2. DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1989).

3. BELL, *supra* note 2, at 20.

4. BELL, *supra* note 2, at 6-7.

affirmative action.<sup>5</sup> Rodrigo's father was in the military and stationed in Italy, so Rodrigo was raised in Italy and graduated from the University of Bologna, one of the oldest law schools in the world. In his first chronicle, Rodrigo seeks out the professor for advice on how to pursue a career in law teaching.

Despite the significance and impact of the works of Bell, Delgado, and others, in the end CRT and LatCrit have done little to advance our understanding of law practice. This article seeks to continue the narrative tradition and style introduced by Bell, Delgado, Patricia Williams and other members of the legal storytelling movement by using storytelling as a technique to address current issues not only in critical race theory and LatCrit, but also in law practice.

## II. RASCUACHE LAWYERING: TOWARD A THEORY OF ORDINARY LITIGATION

In this section, I want to lay out the preliminary framework for a theory of ordinary litigation, or what I call rascuache (also spelled "rasquache") Lawyering. I must admit that I was reluctant to write this section because I realized that setting out a theory of ordinary litigation is an ambitious undertaking and that it may be premature to propose a full-blown theory at this time. I am also aware that my career as a practitioner is far from ideal or exemplary because the truth is that I have only been a part-time lawyer with limited resources and practice experience.

I want to clarify at the outset that what I am proposing is not really a carefully developed or fully articulated theory but rather a set of tentative guidelines, basic tenets, or a paradigm, for carrying out litigation for and on behalf of subordinated people. Perhaps, the best way to see this is not as a formal theory, but as a set of preliminary guidelines or a paradigm based on my admittedly limited experience; guidelines which are flexible and can be freely modified and or altered at a future date.

I should first explain the concept of rascuache lawyering because rascuache is a vernacular term with uniquely *Mexicano* meanings and connotations. The Collins Spanish Dictionary defines rascuache<sup>6</sup> as: "1 (=pobre) poor, penniless; 2 (=desgraciado) wretched; 3 (=ridículo)

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5. RICHARD DELGADO, *THE RODRIGO CHRONICLES: CONVERSATIONS ABOUT AMERICA AND RACE* (1995).

6. COLLINS SPANISH DICTIONARY 828 (7th ed. 2003).

ridiculous, in bad taste; 4 (=grosero) coarse, vulgar; and 5 (=tacaño) mean, tightfisted.<sup>7</sup>

Ilan Stavans notes that “rascuache is a Mexican colloquialism” ignored by the venerated *Diccionario de la Real Academia Española*, which has no English cognate and “is used in Mexico to describe a cultural item of inferior quality and proletarian origin,” such as “[t]he Pachuco fashion style in Los Angeles,”<sup>8</sup> or Cantinflas’ uniquely Mexican and proletariat comedic style and dress.

According to the website of the Hispanic Research Center at Arizona State University, rasquache sensibility has become a critical component of Chicano art and its most prevalent use is negative, slapdash, and shallow. Tomás Ybarra Frausto notes that “[o]ne is never rasquache, it is always someone else, someone of a lower status, who is judged to be outside the demarcators of approved taste and decorum.”<sup>9</sup> However, like other terms and concepts, which traditionally had a negative sense, such as the word Chicano, rasquache has been turned on its head. “Chicano art that is rasquache usually reflects an underdog, have-not sensibility that is also resourceful and adaptable and makes use of simple materials, including found ones such as Luján’s cardboard, glue, and loose sand.”<sup>10</sup>

Ybarra-Frausto notes that rasquachismo is linked to Chicano structures of thinking, feeling, and aesthetic choices.<sup>11</sup> He states that “Rasquachismo is a sensibility that is not elevated and serious, but playful and elemental. It finds delight and refinement in what many consider banal and projects an alternative aesthetic—a sort of good taste of bad taste.”<sup>12</sup>

A random listing of Rasquachismos would include the Mexican comedian Cantinflas, the Royal Chicano Air Force, velvet paintings, the early actors of *El Teatro Campesino*, the *calaveras* (skulls) of José Guadalupe Posada, the movie “*Born in East LA*,” and the comedians Cheech and Chong.<sup>13</sup>

7. Mean or tight-fisted, is an usage that I was not familiar with.

8. ILAN STAVANS, *THE ESSENTIAL ILAN STAVANS* (2000).

9. Tomás Ybarra-Frausto, *Rasquachismo: A Chicano Sensibility*, in *CHICANO ART: RESISTENCE AND AFFIRMATION* 155, 155 (Richard Griswold Del Castillo, Teresa Mckenna, and Yvonne Yarbrow-Bejarno eds., 1991).

10. *Id.*

11. Ybarra-Frausto, *supra* note 9.

12. *Id.*

13. *Id.*

Rasquaschismo is an underdog perspective that presupposes the worldview of the have-nots but it is also a quality found in objects and places such as a rasquache car or restaurant and in social comportment, as in a person who acts rasquache.<sup>14</sup> “To be rasquache is to be down but not out.”<sup>15</sup> Responding to the material level of subsistence and existence is what instills a rasquache attitude of survival and inventiveness.<sup>16</sup> According to Ybarra-Frausto, “[a]s a way of being in the world, rasquaschismo assumes a vantage point from the bottom up. It proclaims itself from the margins and borders of the culture.”<sup>17</sup>

The theory of rascuache lawyering that I propose then—like the work of Richard Delgado, Derrick Bell, and other critical race theorists and rebellious practitioners like Gerald López, Lucie White, and Bill Ong Hing—is a “bottom up” view of law, lawyering, and law practice. It is a conception of law and lawyering, in other words, for and on behalf of *los de abajo*, people either at the bottom of the social hierarchy or on the margins of society and outside the parameters of the legal establishment. Perhaps, what is needed is the development not of a singular theory but of a tentative paradigm of ordinary rascuache law practice that would incorporate critical race theory, LatCrit theory and the rebellious idea of law practice first articulated by Gerald López and developed by others.

In seeking to develop a paradigm of rascuache lawyering I turn to work on theory construction in the social sciences. Sociologist George Ritzer maintains that paradigms are, “the broadest units of consensus”<sup>18</sup> within a field, noting, for example, that within sociology we can identify three distinct paradigms: Durkheim’s Social Facts; Weber’s Social Definition, *verstehen*, or sympathetic understanding; and Skinner’s Social Behavior.<sup>19</sup> A paradigm, therefore, “subsumes, defines, and interrelates the exemplars, theories, methods, and instruments that exist within it.”<sup>20</sup>

Gerald López and Oscar Zeta Acosta are obviously key practitioners and theorists of rascuache lawyering theory but perhaps

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14. *Id.* at 156.

15. *Id.*

16. *Id.*

17. *Id.* at 160.

18. George Ritzer, *Sociology: A Multiple Paradigm Theory*, 10 AM. SOCIOLOGIST (1975).

19. *Id.*

20. *Id.* at 157.

the most prominent and improbable exemplar of the proposed paradigm of everyday law, ironically is the distinguished jurist and Supreme Court Justice, Oliver Wendell Holmes. It was Holmes who first endorsed one of the founding principles of rascuache law practice that the life of the law has not been logic but experience. In an often-quoted section of *The Common Law*, Holmes declared that:

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.<sup>21</sup>

Borrowing from Holmes, a second tenet of rascuache lawyering is that the theory of practice is also ultimately inductively derived from experience. The proposed paradigm of rascuache lawyering differs from Holmes, however, in that it is a bottom up view of law and law practice based on experience.

The third tenet of rascuache law practice rejects the assumptions that law and law practice are objective, value free and universal but proposes instead that they are subjective, personal and value committed, and particularistic. Many years ago, I proposed a paradigm for a Chicano social science<sup>22</sup> that rejected the basic tenets of scientism and challenged the idea that social science can or should seek to be objective, value neutral, and universal. As in anthropology and sociology, all too often academic accounts of law and lawyering are presented as detached, objective, neutral and impersonal, universal descriptions of reality, devoid of feeling and emotion.

This is a decidedly personal account of law and law practice. My observations and conclusions are not presented as being universally true, objective, or value free. They are instead, personal, passionate accounts of my cases, clients, and, most importantly of my response to the issues, questions, problems, and dilemmas that arose. . . During the course of my practice I was not a detached, impersonal observer who neutrally recorded my experiences and observations but an active, imperfect participant who responded and reacted to the things I observed and experienced. A third tenet of rascuache law practice then,

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21. OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 1 (1881).

22. ALFREDO MIRANDÉ, *THE CHICANO EXPERIENCE* (1985).

is that it is personal, subjective, and particularistic.

A fourth tenet of rascuache lawyering is that it seeks to incorporate the voices of people at the bottom or on the margins of society. As noted, rascuache lawyering necessarily draws from the rich narratives found in the fictionalized accounts of critical race theorists like Derrick Bell and Richard Delgado, as well as the creative scenarios described by rebellious lawyer and theorist, Gerald López. Despite the significance and creative genius of these works, they share an important limitation in that the works are fictional accounts with made-up people, cases, and issues. Despite the power of fiction to transcend ordinary reality and present an emancipatory vision of society and law, one of the problems with fictional accounts of law and law practice is that because they are idealized views of reality the characters are often depicted as ideal types, rather than as real people with human foibles, imperfections, contradictions, and limitations.

For Example, in *Civil Rights Chronicles*, Bell describes Geneva Crenshaw as a brilliant litigator who has been in a coma for twenty years after her car was driven off an isolated rural Mississippi road by a pick-up truck in the summer of 1964. Geneva, “Strikingly tall, well over six feet, as I soon learned, was able to display an impressive intelligence honed by hard work.”<sup>23</sup> Prior to the tragic incident, Geneva had been a civil rights attorney in the South and was about to embark on what undoubtedly would have been a distinguished legal teaching career at Howard Law School. In the Introduction, Bell notes, that “in order to appraise the contradictions and inconsistencies that pervade the all too real world of racial oppression, I have chosen in this book the tools not only of reason but also of unreason, of fantasy.”<sup>24</sup>

In the book, Bell uses fairy tale and science fiction in the form of ten metaphorical tales or chronicles that, as Professor Linda Green notes, follow the ancient tradition “in using fantasy and dialogue to uncover enduring truths.”<sup>25</sup>

Delgado, in turn, borrowed Geneva’s persona from Bell and further developed her “family tree” by creating her fictional half-brother, Rodrigo,<sup>26</sup> who was born in the United States and raised in Italy, and like his African American super lawyer sister, seeks to come

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23. BELL, *supra* note 2, at 18.

24. *Id.* at 5.

25. Linda Green, *A Short Commentary on the Chronicles*, 3 HARV. BLACKLETTER L.J. 60 (1986).

26. DELGADO, *supra* note 5



to the United States to pursue a career teaching law. In the Introduction to his book, *Rodrigo Chronicles*, Delgado acknowledges and thanks Bell and notes that:

Bell's book and this one are parts of the legal storytelling movement which sprang up a few years ago and which, in turn, builds on a legacy of storytelling by outsiders going back to the slave narratives and even before. These early tellers of tales used stories to test and challenge reality . . . to reconstruct the dominant tale of narrative . . . .<sup>27</sup>

Delgado's alter ego, Rodrigo, like his brilliant sister, is ultimately a superhero of gigantic proportions who is described as a "tall, rangy man" and "of indeterminate age—somewhere between 20 and 40— and for that matter, ethnicity," so that "[h]is tightly curled hair and olive complexion suggested that he might be African-American. But he could also be Latino, perhaps Mexican, Puerto Rican, or any of one of the many Central American nationalities. . . ."<sup>28</sup>

Raised in Italy, Rodrigo graduated from one of the oldest law schools in the world, did well on the LSAT which he found "easier than expected,"<sup>29</sup> displayed technical virtuosity on the computer, and has returned to his native country to help it deal with its many contradictions and crises. Although born in the United States, he was subjected to "denaturalization" after the immigration authorities learned that he had spent six months in the Italian Army in order to comply with his military service and repay his adopted country.<sup>30</sup>

### III. REBELLIOUS LAWYERING AND RASCUACHE LAWYERING

Gerald ("Jerry") P. López is undoubtedly the most notable scholar writing about community law practice. Through his book *Rebellious Lawyering*,<sup>31</sup> his dozens of law review articles, and his countless speeches, López has sought to articulate an alternative vision of progressive law work that challenges the traditional "regnant" conception of law and law practice and seeks to develop a theory of practice grounded in the everyday experiences and world views of

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27. *Id.* at xviii.

28. *Id.* at 1.

29. *Id.* at 17.

30. *Id.*

31. GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

subordinated groups.

López rejects the prevailing hierarchical approach to law and lawyering, which sees the lawyer as all-powerful and all-knowing and the client as subordinate, passive, and dependent. Instead, he proposes a rebellious, client-centered approach that aims to bring about community empowerment and uses lay-lawyering and teaching self-help to organize and empower clients. As noted, this is a vision of law practice that sees lawyers as working not only “on behalf of” but also “with” and in solidarity with subordinated communities in the struggle for social justice and social change. The aim of this vision is to teach self-help, so that clients can continue the struggle on their own. Kevin R. Johnson notes that “political, as opposed to strictly legal, strategies are the most likely to bear fruit”<sup>32</sup> for Latino communities. Drawing on López and other progressive advocates, Johnson adds that lawyers need to collaborate with subordinated communities and concludes that “strategies which allow Latinos to control their lives when the lawyers are gone are the ones most likely to result in social change.”<sup>33</sup>

Bill Ong Hing, a noted progressive law practitioner and successful immigration lawyer, similarly rejects the top-down, hierarchical, and condescending conception of law and law practice, and reminds us of the mutual benefits of progressive work:

Those of us who engage in progressive legal work need to be constantly reminded that we do not know everything—that we are not knights in shining armor swooping in to save subordinated communities. We should be collaborating: working *with* rather than simply *on behalf of* clients and allies from whom we have much to learn. Though lawyering for social change is arduous work, there is much to gain in these battles against subordination, not simply from the potential outcome but from the collaborative process itself: as our clients gain strength and confidence, we too are renewed.<sup>34</sup>

Hing describes the organizing work of Y.C. James Yen,<sup>35</sup> a remarkable man largely unknown to lawyers, who carried out a literacy campaign

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32. Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in The Twenty-First Century*, 8 LA RAZA L.J. 42 (1995).

33. *Id.* at 50.

34. Bill O. Hing, *Coolies, James Yen, and Rebellious Advocacy*, 14 ASIAN AM. L.J. 1 (2007).

35. *Id.* at 3.

with Chinese coolies working in France during World War I and helped to empower them by teaching the home-sick workers how to read and write by specifically having them write letters home. Hing contends that although Yen was not a lawyer, his approach is consistent with the progressive lawyering theoretical frameworks proposed by Jerry López, Lucie White, Ascanio Pomelli,<sup>36</sup> and other scholars whose work is grounded in a “bottom-up” approach” to organizing and who champion “a collaborative approach that respects clients’ decision-making capacities, seeks allies in the pursuit of social justice, and is open to learning from clients and community partners.”<sup>37</sup>

The rascuache theory of lawyering proposed here seeks to incorporate and expand on the vision of progressive law practice advanced by López and others. It too seeks to work “with” and not just “on behalf” of subordinated people. Although the names have been changed to protect the anonymity of the parties, the people and the cases described are not ideal types or fictional tales. The people, the cases, and the issues that are included here are not only incredibly real but like the author also flawed and imperfect.

In law school I was immersed in the community law clinic and public interest law. I participated in numerous clinics and workshops and was fortunate to have been exposed to many of the writings and theories of progressive lawyers like Gerald López, Lucie White, and Bill Hing. It was also in law school that I was first exposed to the rich and compelling narratives of CRT scholars like Derrick Bell, Patricia Williams, Angela Harris, Harold Dalton, Mari Matsuda, Chuck Lawrence, Richard Delgado, and Margaret Montoya.<sup>38</sup> One of the questions that has intrigued me since my law school days is why, despite obvious points of commonality between CRT and LatCrit and progressive law practice, a huge gap exists between critical race

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36. *Id.* at 4.

37. *Id.* at 3.

38. Bell, *supra* note 2; Patricia Williams, *Alchemical Notes: Reconstructing Idea From Deconstructed Rights*, 22 HARV. C.R.-C.L. REV. 401 (1987); Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA.L. REV. 561 (1987); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Mari Matsuda, *Looking at the Bottom: Critical Legal Studies and Reparations*, 42 HARV. C.R.-C.L. REV. 323 (1987); Charles R. Lawrence, III, *Race and Affirmation*, in THE POLITICS OF LAW 312 (David Kairys ed., 1998); Margaret E. Montoya, Mascaras, *Trenzas y Greñas: Unmasking the Self While Unbraiding Latina Stories and Legal Discourse*, 15 CHICANO-LATINO L. REV. 1 (1994).

theorists and progressive lawyers.

In a classic commentary and critique of Critical Legal Studies (CLS), a movement led largely by progressive White men teaching at the elite law schools,<sup>39</sup> Bob Gordon commented on the split between theorists and practitioners who attend CLS conferences. While theorists generally eschew and devalue practice, practitioners hunger for theory. Gordon notes that despite differences among members of the CLS movement, an amazing amount of convergence characterizes their work, as the prototypical CRIT was a progressive who first started thinking about law as a student in the late 1960s, or was a progressive lawyer who tried to use the system against the system. Gordon notes that lawyers who participated in CLS came from diverse but converging backgrounds, as

[S]ome of us were law teachers with humanist intellectual concerns and left-liberal (civil rights and anti-Vietnam war) political involvement . . . others radical activists who identified with neo-Marxist versions of socialism or feminism or both; still others primarily practitioners . . . who work in collective law practices, legal services offices, law school clinics, or a variety of other progressive jobs.<sup>40</sup>

Harold Dalton adds that people of Color<sup>41</sup> hold the potential for breaking the schism between theorists and practitioners because they are “practitioners” almost by definition in the sense that the consequences of racism have direct, practical, inescapable, and immediate relevance for them.<sup>42</sup> In other words, even if we are not “practitioners” in the technical sense of the word, we cannot simply “walk away” from race issues the way White progressives can. Dalton relates the example of an exchange that he had with Morty Hortwitz, a prominent legal historian and noted CLS theorist, to illustrate the difference between the prototypical CRIT and the prototypical critical race theorist:

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39. Roberto Mangabeira Unger, *The Critical Legal Studies Movement*, in *CRITICAL LEGAL STUDIES* 323, 323 (Allan C. Hutchinson ed., 1989); Peter Gabel & Jay Feinman, *Contract Law as Ideology*, in *KAIRYS*, *supra* note 38, at 497; Robert W. Gordon, *Some Critical Theories of Law and Their Critics*, in *KAIRYS*, *supra* note 38, at 641.

40. Gordon, *supra* note 38, at 641.

41. I have opted to capitalize “Color” in people of Color because it is referring to groups of people and not to color per se.

42. Harold Dalton, *The Clouded Prism*, 22 *HARV. C.R.-C.L. L. REV.* 435, 435 (1987).

It was, in fact, a quite pleasant encounter, during the course of which Morty quite gently asked me, in essence, whether, I, in my earlier incarnation as a public interest lawyer, minded serving to legitimate “The System” and providing a palliative for the underclass . . . . Eventually I got up the courage to ask Morty whether he truly believed that ‘the revolution’ would begin at Harvard Law School . . . he said, ‘I guess I really do, but the truth is that I was a four-eyed kid who read books and that was about all that I could do.’<sup>43</sup>

Dalton would thus add to the biographical description of the prototypical CRIT that he was a “four-eyed” kid, or nerd,<sup>44</sup> alienated and distanced from his immediate environment, and concludes by noting that these differences in biography and experience may help us to understand why the CRIT leadership has not developed a positive program, whereas people of Color tend to hunger for praxis.

I propose that the current gap between CRT and LatCrit, on the one hand, and rebellious lawyering on the other, calls into question Dalton’s basic assertion that people of Color and law scholars of Color are practitioners by virtue of their pigmentation, whereas White progressives are not. The people who were in law school in the late 1960s were predominantly White men, according to Dalton, not only because of their pigmentation and chromosomal structure, but because they were part of the privileged race for “whose benefit patriarchy exists.”<sup>45</sup>

Despite the current schism, the two movements exhibit inevitable parallels and points of overlap. Both movements espouse an anti-subordination ideology that challenges traditional conceptions of law and lawyering.<sup>46</sup> Both movements reject the ideology of “race blindness” and the belief that it will eliminate racism.<sup>47</sup> Both challenge the belief that race is a matter of individual prejudice, rather than of

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43. Dalton, *supra* note 42, at 438.

44. See also Alfredo Mirandé, “Revenge of the Nerds,” or Postmodern “Colored Folk?” *Critical Race Theory and The Chronicles of Rodrigo*, 4 HARV. LATINO L. REV. 153 (2000).

45. Dalton, *supra* note 42, at 437.

46. Francisco Valdes, Jerome McCristal Culp & Angela P. Harris, *Battles Waged, Won and Lost: Critical Race Theory at the Turn of the Millenium*, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY, 1, 2 (2002).

47. *Id.* at 1.

systemic racism and the prevailing belief that one can fight racism, while ignoring sexism, homophobia, class exploitation, and other forms of oppression.<sup>48</sup>

An additional goal of the CRT, LatCrit, and rebellious law practice movements is that all use storytelling and narrative to incorporate the voices and stories of previously excluded groups into law. In the Foreword to Delgado's *The Rodrigo Chronicles*, American Indian legal historian Robert A. Williams describes Delgado as a great indigenous American storyteller and points to the importance of stories for indigenous peoples. In the Native American tradition, being a storyteller is a heavy responsibility:

To be a Storyteller, then, is to assume the awesome burden of remembrance for a people, and to perform this paramount role with laughter and tears, joy and sadness, melancholy and passion, as the occasion demands . . . . The Storyteller is the one who sacrifices everything in the tellings and retellings of the stories belonging to the tribe.<sup>49</sup>

However, the great storyteller never tells people what they expect to hear and, “[a] Storyteller, in this sense, is always a prophet.”<sup>50</sup>

While not focusing on the role of the storyteller per se, Gerald P. López also sees storytelling as a generally unstated, useful problem-solving technique used by people to address and resolve everyday problems.<sup>51</sup> López observes, for example, that lawyers working with subordinated groups are inevitably “bicultural” and “bilingual” in the sense that to represent well, they must know and be able to think like an insider in both the lay and legal worlds and to simultaneously translate, interpret, and make sense of both.

A professional lawyer's practical knowledge of the legal culture demands a studied appreciation for the uses and limits of the story/argument strategies available in that culture . . . . Lawyers . . . must translate in two directions, creating both a meaning for the legal culture out of the situations that people are living and a meaning for peoples practices out of the legal culture.<sup>52</sup>

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48. *Id.* at 2.

49. Williams, R.A. *Forward*. Delgado, *supra* note 5, at xi.

50. Williams, *supra* note 5, at xii.

51. López, *supra* note 30, at 41.

52. *Id.* at 43.

#### IV. THE BROWN BUFFALO AND RASCUACHE LAWYERING

Unfortunately, the writings of one of the most colorful figures in the Chicano movement, Oscar “Zeta” Acosta, a self-described “Brown Buffalo” have been largely ignored both by critical LatCrit theorists and by rebellious lawyers. Acosta is undoubtedly better known as a creative writer and prominent Chicano movement figure than as a lawyer, but he was unquestionably an influential Chicano lawyer whose work has important, yet largely unexplored, implications for rascuache lawyering. One of the only legal scholars to seriously consider Acosta’s work as a lawyer independent of his political activism was Ian Haney López.<sup>53</sup> Acosta was born in El Paso in 1935 and because his parents could not make a living during the Depression they moved to California to work as migrant farm laborers.<sup>54</sup> He grew up in Riverbank, an agricultural town in the Modesto area, which he described as being composed of three groups “–Mexicans, Okies, and middle-class Americans—and nothing else; no Jews, no blacks.”<sup>55</sup>

An accomplished jazz musician, clarinet player, and a mathematics major, Acosta abandoned the Catholic Church and became a charismatic Baptist Evangelist preacher in Panama. Although best known for his two fictionalized autobiographical novels, *The Autobiography of a Brown Buffalo* and *The Revolt of the Cockroach People*,<sup>56</sup> after working as a copy boy for the *San Francisco Examiner* he went to night school to study law, graduating from San Francisco Law School. He was also part of the San Francisco drug scene of the 1960s. Acosta served as a legal aid lawyer in Oakland for a year and “hated it with a passion” because, “all we’d do was sit and listen to complaints. We didn’t have direction, skills, or tools.”<sup>57</sup>

Acosta was uncompromisingly irreverent toward the legal and judicial system, describing himself as, “[t]he only Chicano lawyer here. By that I mean I am the only one who has taken on a militant posture,

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53. IAN HANEY LOPEZ, *RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE* 4-5 (2003).

54. OSCAR ZETA ACOSTA, *OSCAR “ZETA” ACOSTA: THE UNCOLLECTED WORKS*, 5 (Ian Stavans ed. 1996).

55. *Id.*

56. OSCAR ZETA ACOSTA, *THE AUTOBIOGRAPHY OF A BROWN BUFFALO* (1972); OSCAR ZETA ACOSTA, *THE REVOLT OF THE COCKROACH PEOPLE* (1973).

57. Acosta, *supra* note 53, at 7.

to my knowledge in the whole country.”<sup>58</sup> He saw the courtroom as an organizing tool, noting that he took no case, “unless it was or could become a “Chicano Movement case.”<sup>59</sup> Although unorthodox, Acosta was a rebellious lawyer who worked not only on behalf of but with Chicano clients; he certainly had a bottom up view of law and worked with people on the margins of society and was an exemplar of rascuache lawyering.

After moving to Los Angeles and representing the defendants involved in the Chicano School Walkouts and the Chicano movement, Acosta decided that he “wasn’t going to become anything legal” because lawyers “are basically peddlers of flesh. They live off people’s misery.”<sup>60</sup> He made the decision that, “I would never charge a client a penny. As a matter of fact, I ended up supporting some of my clients.”<sup>61</sup>

My ultimate goal in this paper is perhaps ambitious. The goal is to link Delgado’s rich *Rodrigo Chronicles*, Acosta’s autobiographical Chicano movement narratives, and Lopez’s fictional vision of progressive law practice. In pursuing this goal, I draw on my own experiences as a pro bono attorney in southern California and briefly discuss case studies based on actual cases and real people. A related goal is to inform our understanding of critical race and LatCrit theory and law practice.

Although Lopez’s focuses on practice on behalf of and in solidarity with subordinated groups, like Geneva’s *Civil Rights Chronicles* and *The Rodrigo Chronicles*, the characters and stories in *Rebellious Lawyering* too are fictional. López remarked that some observers might question the wisdom of creating fictional case studies but points to the value of using ideal types or prototypes that enable us to manipulate reality. Although obviously drawing from his own observations and experience, he is not limited by them:

*Everything* I describe is fictional. But I do draw on my observations of and my work with a wide range of people, groups, and institutions . . . . Yet I don’t limit myself only to what I have seen and heard. Instead, by using imagined characters and storylines, I try to extend the boundaries of, nearly as much as I try to report, all

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58. *Id.* at 14.

59. *Id.*

60. *Id.*

61. *Id.*



that I so much admire. I'd like to believe what I have to say challenges even the best activists about what they do and don't do in practice.<sup>62</sup>

Like the American Indian storyteller then, López does not tell us what we expect to hear but rather, what we need to hear. In this sense he is not only a brilliant and creative law theorist and storyteller like Delgado but also a prophet, who reports on and at the same time seeks to extend the boundaries of progressive law practice. Many of our oral traditions as organizers and activist lawyers are seldom recognized or reported because these accounts rarely report activist work as well as they should. "Most such stories seldom circulate outside small, local circles. And when they do, they either lose detail and spirit along the way or gain so much that they get treated as make-believe."<sup>63</sup>

### V. A PARADIGM OF RASCUACHE LAWYERING

Although the rascuache law paradigm I propose has been influenced by Gerald López's idea of rebellious lawyering, it differs in several important respects. An important difference is that it is not fictional. Over the years I have developed a small, largely pro bono law practice. Many of my clients are Spanish speaking persons and recent immigrants to the United States or persons who are largely on the margins of society, such as a homeless African man. One of the unique features of my practice is that I generally either charge clients a nominal fee or engage in exchange relationships with them where the client would provide services such as fixing one of my automobiles, painting my house, doing landscaping, or some sort of carpentry or handyman work in exchange for my services. Unfortunately, I spend much more on my practice than I take in and like the Brown Buffalo I have even lent or given money to some clients. Although I generally have not charged for my services, it would be a mistake to call my practice experience pro bono, since paid and pro bono legal services are part of a binary system that are mutually exclusive. To say that you do some work pro bono implies that most of your legal work is for profit.

The paradigm I propose differs in that it is based on real people and real cases from my law practice; a practice that has been anything but traditional, since I do not have a law office, a business phone, a

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62. López, *supra* note 30, at 8.

63. *Id.*

paralegal or clerical support staff. I also separate my teaching from my law practice and work largely out of my home or on the streets. I meet with clients at coffee shops, taco stands, or restaurants. My telephone number is unlisted and I have never advertised or sought out clients. Yet clients always seem to have a way of finding me. I do not make any money in my practice. My clients are not all poor but most are low-income persons, or what sociologists call the “working poor,” who lack access to law or to lawyers. One of the major obstacles in my practice has been that I lack the vital resources that facilitate carrying out effective law work. For example, rather than subscribing to electronic legal services like Westlaw or Lexis Nexis, I spend a lot of my weekends and spare hours at the local Riverside County Law Library doing legal research. I also do not have the resources to hire private investigators or expert witnesses. On the other hand, because I do not bill my clients, I am able to devote much more time and energy to my cases than I could if I was billing them for my services, much more time than traditional lawyers devote.

As a part-time practitioner, my practice has been limited but it has been broad and what I lacked in experience I tried to make up for through dedication, perseverance, and hard work. In law school, I remember interviewing for a job as a public defender and closely identifying with the slogan used by one of the legal services offices that interviewed me, which characterized the legal services provided by their office as, “The best representation that money *can't* buy.” I am not a fancy lawyer but I would like to think that I have been able to provide the kind of legal representation that money literally could not buy, not necessarily because of my unique skills, talents, or experience but because of the time, effort, and care that I put into my practice.

Although the names of the parties and identifying information have been changed to protect the innocent and the privacy of my clients, the examples I discuss are based on real people and actual cases. Most works about law and law practice have focused on high profile cases brought by fancy lawyers representing celebrity cases, or highly publicized crimes such as the O.J. Simpson, Robert Blake, and Phil Spector trials. Much has been written about celebrity defendants and sensationalized crimes such as those carried out by serial killers but very little work describes the experiences of ordinary people and ordinary cases and problems.<sup>64</sup> My focus is not on celebrity crimes or

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64. Some works have looked at ordinary cases that are written by non-lawyers, such as Steve Bogira. Bogira, a journalist, focused on the cases coming before one judge in

high-profile cases but on regular people with ordinary problems and routine cases. It is about the gardener, mechanic, secretary, student, cafeteria worker, friend, neighbor, or relative who encountered a problem or problems with the law.

I label my practice as rascuache lawyering because it is a bottom-up view of law and lawyering. I also wish to take being a rascuache lawyer and turn it on its head by making it into a positive quality because as a rascuache lawyer I was able to provide the type of legal services that money literally could not buy. The fact that I was a part-time pro bono attorney undoubtedly shaped the nature of my practice and experience. I provided legal representation for many people like homeless persons who were on the margins of society and normally would not have had access to law or to lawyers, people who would not have been represented by a lawyer.

I found that one of the problems that I experienced in my pro bono practice, ironically, is time management. The fact that I did not charge an hourly rate for my services or require a retainer before working on a case, meant unfortunately, that there was literally no limit on the amount of time that I could spend on a case. Normally, the limit would have been set by the client's ability to pay or, in the case of a public defender, by the size of the caseload. For most private attorneys, the more time you spend on a case the more money you make. In my case, however, there was no relationship between how much a client paid and the number of hours that I put into a case. This meant that I probably ended up spending much more time on my cases than I needed to spend. The problem was exacerbated by the fact that I already had a full-time job. As I developed a client base, I found myself putting more and more time into my cases and less and less time into my regular job, which revolved around teaching and research. The only way to justify this was to recognize that in the end, my law practice was also my research and that what I learned in my practice made me a far better and more effective scholar and teacher. However, as my caseload grew out of control early on in my practice, I eventually had to step back and start to severely limit the number of cases I would take.

A second problem that I encountered in my practice is that I was literally available to my clients 24/7, because I used my home

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Chicago's Cook County's Criminal Courthouse, the busiest courthouse in the country. See STEVE BOGRIA, *COURTROOM 302: A YEAR BEHIND THE SCENES IN AN AMERICAN CRIMINAL COURTHOUSE* (2005).

telephone number as my office phone and my home address as a business address. Thus, clients and opposing counsel could and did contact me at all hours of the day or night, including weekends and holidays. The only way to control this was by screening my calls and selectively responding to clients as needed. Ironically, because I could not afford to hire a paralegal, clerical staff, or a receptionist, unlike most lawyers, I did not have an intermediary who could shield me and protect me from clients.

Another problem with being a rascuache lawyer sadly, is that clients are more likely to devalue or to take one's services for granted because they are not paying for them. In retrospect, I believe it would have been good for me to charge people a nominal fee, even if it was \$15 or \$20 per consultation. I think that if I had charged a nominal fee there would have been some "cost" to the client for undertaking the various legal maneuvers and strategies.

In a sense then, being a rascuache attorney made it more difficult for me to practice rebellious or non-regnant lawyering, which ultimately seeks to empower clients and to end the dependent and hierarchical relationship that typically exists between lawyers and their clients. I found, ironically, that pro bono practice sometimes makes clients more dependent rather than less dependent on the attorney, although you could certainly require that clients be involved in certain aspects of their own defense in order to empower them and demystify law practice.

On a positive note, as I look back on my practice experience, one of the things that stands out and that I take a lot of pride in are the personal bonds that I developed with clients. I did not have a traditional attorney/client relationship with them. Although, it is hard to describe or to explain the unique nature of my relationship with my clients, in most cases I was successful in engendering relationships that were characterized by mutual admiration and respect. I sought to treat my clients with dignity and honorably and they generally reciprocated. In fact, some of them began to call me "Don," as a sign of appreciation and honor not deference. But my relationship with my clients extended well beyond the attorney/client relationship and I was successful in developing and maintaining not only reciprocal exchange relationships but also close friendships with many if not most clients.

I established a reciprocal relationship with two of my clients, Xavier and Rodrigo, for example, who were painters by trade and agreed to paint the inside and outside of my house in exchange for my

legal services. Another client, Manuel, whom I defended on a domestic violence charge, paid me by installing a back door at my home and doing some odd jobs around my house. One of my first clients, Juan Diego was a local mechanic. Over time, I developed a friendship with Juan Diego. Once he learned that I was a professor and a lawyer, he started turning to me for assistance with a variety of legal and extra-legal problems that involved his neighbors, work, family and himself. I, in turn, began to use Juan Diego more and more as my personal mechanic. Rather than bringing my cars to the shop, however, Juan Diego started coming to my home and working on them on weekends and evenings. He was the only mechanic in a two-person shop and the owner was paying him not much over minimum wage and providing no benefits.

Even though I paid Juan Diego for his services, I paid a lot less than I would have paid if I had taken the car to an auto shop. What mattered is that he was making more money by dealing with me directly without a middleman and I was spending less money on car repairs. It was also comforting to know that I always had a mechanic at my disposal. He, in turn always knew that he had a lawyer at his disposal. In the end, I ended up representing Juan Diego and his immediate family in at least a half a dozen criminal and civil cases, including his divorce from his wife.

I had a similar experience with Chico Mendez, a Puerto Rican client that I represented in a wrongful termination and disability discrimination lawsuit. Ironically, I first met Chico after Juan Diego had left my Fiat sports car in various states of disarray in my driveway. Chico was recommended by one of my Puerto Rican students and he came out to my house to take a look at the car. I soon learned that he was a very intelligent man with a 7<sup>th</sup> grade education and a very strong work ethic who worked as a manufacturing technician and was being harassed in the work place by his supervisor. As a result, I began writing demand letters to his employer on his behalf. Chico had an inexplicable illness and excruciating headaches and was suffering from work-related stress and hypertension.

After Chico was terminated for excessive absences, I filed a U.S. Title 7 Disability and Race Discrimination Law Suit on his behalf against the company. I also represented him in an unlawful detainer and wrongful eviction case after he and his family were unlawfully evicted by his landlord who had refused to make critical repairs on the house such as a leaky roof and mold in the bathroom. We subsequently

became friends. I have developed a genuine, close relationship with Chico that I have maintained and even though I am no longer his lawyer, he is still my mechanic and friend.

## VI. CONCLUSION

In this paper I have sought to integrate not only critical race and LatCrit theory but also a substantial body of work focusing on community law practice and grass roots community organizing and empowerment among the poor. Much of this work challenges the traditional hierarchical view of law, lawyers, and lawyering and attempts to develop a theoretical framework and a vision of lawyers as working for social justice and social change with and on behalf of subordinated communities.

The tentative paradigm and theory of rascuache lawyering I propose has important implications for the development of critical theories of law and law practice. Although Critical Race Theory and LatCrit both seek to incorporate the voices of people at the bottom and on the margins of society into law, there have been few attempts to link the work of CRT and LatCit scholars to law practice.

The findings and conclusions presented here are especially relevant given the economic downturn and the emerging global economic crisis. As people at the bottom and at the margins of society become increasingly less able to afford lawyers and traditional legal services, there will be an increased need to develop different and innovative alternatives to traditional lawyering and law practice.

The vision of rascuache lawyering presented here has important policy implications. One implication is the need to distinguish rascuache lawyering from pro bono legal services. The concept of pro bono is ultimately based on the distinction between paid and free legal services. Because I essentially did not charge for my legal services, the work that I undertook as a rascuache lawyer was not pro bono. The idea of pro bono legal services thus makes sense only in a world in which an attorney normally charges for the bulk of his/her services and carries out a limited amount of part-time pro bono work.

Also important is the distinction between rebellious and rascuache lawyering. While rebellious lawyers seeks to end the hierarchical and dependent relationship which has traditional existed between lawyers and clients, rascuache lawyering aims to equalize these relationship by establishing a reciprocal exchange of services between lawyers and clients and valuing the contribution of each to the

relationship. While rascuache lawyers are able to provide valuable legal services for clients, many clients can in turn provide reciprocal services that are needed by lawyers.

One of the important distinctions to be gleaned from the study is that providing pro bono legal services for poor and indigent clients may work to increase rather than the decrease the dependency of client on lawyers. Charging clients a minimal fee will ensure that they are actively involved in their own defense, invested in the process, do not become overly dependent on lawyers, and do not devalue the services provided by the lawyer.

I conclude by proposing a tentative paradigm or framework for rascuache lawyering which is based on the twelve tenets listed below.

#### **RASCUACHE LAWYERING:**

1. Draws on the narrative and storytelling tradition of Critical Race and LatCrit theories. Is a conception of law and lawyering for and on behalf of *los de abajo*; people either at the bottom of the social hierarchy or on the margins of society and outside the parameters of the legal establishment.
2. Is an underdog, have-not sensibility that is also resourceful, adaptable, makes use of simple materials and resources (including social/human capital) that are readily available.
3. Is client-centered and rejects the traditional regnant hierarchical view of lawyers and clients.
4. Works not only for, but with subordinated people.
5. Seeks to develop exchange services and synergetic relationships with clients.
6. Engenders long-term reciprocal relationships and friendships with clients.
7. Challenges liberal law theory by incorporating the voices and narratives of Latinos and other subordinated groups into law.
8. Assumes that the life of the law has not been logic but experience and that the theory of practice, too, is ultimately inductively derived from experience.
9. Is based on common cases and ordinary people and is personal, subjective, and particularistic.
10. Sees Gerald López and Oscar “Zeta” Acosta as exemplars of rascuache lawyering and the rascuache approach to law practice.
11. Has important implications for law and law practice.