This Volume of

New York University Annual Survey of American Law

is respectfully dedicated in memoriam to

DERRICK BELL

VISITING PROFESSOR,
NEW YORK UNIVERSITY SCHOOL OF LAW
Professor Derrick Bell
IN MEMORIAM: DERRICK BELL (1930–2011)

Derrick Bell was a full-time visiting professor at N.Y.U. School of Law from 1990 until he passed away on October 5, 2011. For more than fifty years, Professor Bell profoundly shaped the legal community with his unwavering passion for civil rights and community justice, and through his leadership as a scholar, teacher, and activist. As a devoted professor of constitutional law, Professor Bell instilled in his students a deep sense of professional and ethical responsibility and encouraged them to confront complex issues about race and difference.

Professor Bell received his undergraduate degree from Duquesne University and served as a lieutenant in the U.S. Air Force before entering law school. After graduating from the University of Pittsburgh School of Law, Professor Bell worked at the Civil Rights Division of the U.S. Department of Justice, as the only African American among thousands of lawyers. When the government asked him to resign his membership in the NAACP, Professor Bell left the Justice Department and became the first assistant counsel at the NAACP Legal Defense and Education Fund under Thurgood Marshall, supervising more than 300 school desegregation cases in Mississippi.

As a teacher and scholar, Professor Bell championed the cause of civil rights inside the classroom and the legal academy. He leveraged his positions as the first tenured African American professor at Harvard Law School and the first African American dean of the University of Oregon School of Law to challenge law schools around the country to embrace diversity in their hiring practices. He encouraged his students to actively engage with their education and was well-known for his “participatory learning” method, which emphasized community-based learning and asked students to grapple with current, controversial issues in order to prepare them for real-world legal practice.

Professor Bell wrote extensively about the progress of racial reform in the United States across many genres, from fiction to legal analysis to autobiography. He contributed key writings that helped form the critical race theory movement, and his casebook, Race, Racism and American Law, is used widely in law schools across the country. Since 1995, the annual Derrick Bell Lecture on Race in American Society at N.Y.U School of Law has invited many prominent scholars to discuss important topics on race and the law, ranging from racially tinged economics to post-racial challenges in the Obama era.

Above all, Professor Bell was a beloved member of the N.Y.U. community who inspired countless scholars and faculty to stand up for their principles. He will be deeply missed.
DEDICATEES
OF
NYU ANNUAL SURVEY OF AMERICAN LAW

1942    Harry Woodburn Chase  1977    Charles D. Breitel
1943    Frank H. Sommer       1978    Henry J. Friendly
1944    Manley O. Hudson      1979    David L. Bazelon
1945    Carl McFarland       1980    Edward Weinfeld
       Robert M. LaFollette, Jr.  1982    Shirley M. Hufstedler
1946    A.S. Mike Monroney   1983    Thurgood Marshall
1947    Roscoe Pound          1984    Hans A. Linde
1948    Arthur T. Vanderbilt  1985    J. Skelly Wright
1949    Herbert Hoover       1986    William Wayne Justice
1950    Bernard Baruch        1987    Frank M. Johnson, Jr.
1951    Robert P. Patterson*  1988    Bernard Schwartz
1952    Phanor J. Eder       1989    Barbara Jordan
1953    Edward S. Corwin      1990    Harry A. Blackmun
1954    Arthur Lehman Goodhart  1991    Martin Lipton
1955    John Johnston Parker  1992/93    John Paul Stevens
1957    Herbert F. Goodrich  1995    Hillary Rodham Clinton
1958    Harold H. Burton     1996    Sandra Day O’Connor
1959    Charles E. Clark     1997    Ruth Bader Ginsburg
1960    Whitney North Seymour  1998    Janet Reno
1961    Austin Wakeman Scott 1999    Alexander L. Boraine
1962    Fred H. Blume        1999    Desmond M. Tutu
1963    Laurence P. Simpson  2000    George Mitchell
1964    Edmond Cahn*         2001    Norman Dorsen
1965    Charles S. Desmond   2002    Laurence H. Tribe
1966    Tom C. Clark         2003    John Sexton
1968/69 Russell D. Niles   2005    Antonin Scalia
1969/70 Jack L. Kroner*    2006    Ronald Dworkin
1970/71 Frank Rowe Kenison  2007    Stephen G. Breyer
1971/72 Robert A. Leflar    2008    Anthony G. Amsterdam
1972/73 Justine Wise Polier  2009    Patricia Wald
1973/74 Walter J. Derenberg  2010    Arthur R. Miller
1974/75 Robert B. McKay     2011    Cass R. Sunstein
1976    Herbert Peterfreund

* In memoriam
TRIBUTE TO DERRICK BELL

JOHN SEXTON

Ricky brought a great affliction into my life when he gave an interview to a magazine about fifteen years ago and revealed something that I didn’t know which was that colleagues when they would come to meetings with me expected a hug when they entered the room and that they would judge when they left a room how well the meeting had gone by whether they got a hug on the way out and this has called all kinds of game theory principles to mind and I have inadvertently insulted people by not giving them hugs or by giving them hugs.

But it is wonderful to be in this room and I appreciate the feeling of this place and I appreciate very much that whatever I did in telling the story of this place and my colleagues and the wonderful people that made up the community here while I was here that Ricky has surpassed anything that I have ever dreamt for the school and that the place keeps getting better and better and you can feel it when you return and you can see it in the glow of people’s faces.

It’s a privilege to talk about Derrick, it’s appropriate that we honor him with the dedication of the Annual Survey, which is given of course for extraordinary eminence in the profession of law, but Derrick was extraordinarily eminent in the profession of law because Derrick was an extraordinarily eminent person. He was first and foremost a human being and an extraordinary human being. Anyone that knew him, had the privilege of knowing him, understood first and foremost that it was the deepness of his soul that gave him the deepness of all that he did in life. And the spectacular thing about Derrick was that Derrick manifested that deepness and fundamental spirituality in such an extraordinary way that it was impossible to miss. It is also appropriate that we honor him through the vehicle of the Annual Survey of American Law because Derrick did love students most.

He loved causes, he loved ideas, but he loved students most, and that’s—again—because, if you push through his love for students, he loved people most. He was, most of all, an extraordinary person who cared about people. And the fewer people that someone had caring about him or her, the more Derrick cared about that person. And that gave him his purpose.

Now, perhaps uniquely in the room—I mean, there are folks who have known Derrick much longer even than I—but I think that
I probably moved in orbit around the magnificent sun of Derrick in more ways than anyone else. I first met Derrick in 1976 and, as with many things in my life, I met him because of my wife. Lisa despised Harvard Law School. At the end of our first year at Harvard Law School, she announced that it was a racist, sexist place, and that she would not ever set foot on the Harvard Law School campus again. I think in part she married me because I was a good note taker. And she said to me, “You just register me for the courses that you take and take good notes.” And she arranged to have her exams taken at the Commander Hotel, across the street from the Harvard Law School campus. And she never set foot on the Harvard Law School campus again. She frequently embarrassed me by getting better grades than me. She graduated cum laude. And very rarely did she insist, in this portfolio of courses that I was taking both for myself and for her, that I take a particular course. But she said, “The one course you have to take second year is Derrick Bell’s course, Racism in American Law.” And that was how I ended up in the back of Derrick’s classroom.

I was the oldest person in our class by a considerable margin. At that time I was thirty-five. And I used to wear flannel shirts, they’ d hang out, and I would carry, since I would come down from our house for the day, because I had to do our classes and then do some work on campus, I’d come with a big thick, a big, tall thermos of coffee. And I would sit there in the back, Derrick made fun of this years later, I’d sit there in the back, because I never spoke—I know this is hard for you to believe here—but I never spoke—and I would sit there in the back of Derrick’s class. And the way he told it, and Janet will remember this because we would laugh about this—he and Janet and Lisa and I—years later, “You know this bearded guy with this flannel shirt, kind of looking like a truck driver, sitting in the back row, with this mug of coffee, I didn’t have any idea whether he was a street person,” but the important thing is, he didn’t care. You know, I was obviously taking notes—I had to take notes, right?—and he would claim I took notes and was doing Law Review galleys at the same time.

And you know Derrick would never call on anybody in class. And I never volunteered in class. And he was never quite sure I was in the class. And then, of course, the way they did it, the exams were anonymous. And the results came out and I think Lisa got the highest grade in the class and I wasn’t too far behind.
But Derrick called her at home and said, “You got the highest grade in the class and I don’t remember you being there.” And Lisa said, and she wasn’t embarrassed about this, she just said, “Well, I wasn’t ever there, but my husband was taking notes in the class.” “Really? What’s his name?”

He said, “Oh, well, he got a pretty good grade too. But I don’t remember him being there either. What’s he look like?” And then she described me, and he said, “oh my god.” And he said, “Well, will the two of you come to see me?” And she said, “No. But I’ll send him. I don’t go on to the Harvard Law School campus.”

And that was the first time I met him just the two of us, in his office. And it was the beginning of a love affair. And you know, Derrick, even the way he teaches, we all know, I mean, he wasn’t teaching that way then. There were no charts then or whatever. He was locked in the Harvard system, although he had the capacity that the really, really great teachers have to make you think about something completely differently from the way you thought about it before you began to work with him.

Now, look, I start off, you know, as a very, very, you know kind of a straight, white, fifties Catholic male, so there’s a lot Derrick had to teach me. But I think all of his students, no matter whence they came, had that experience, that he was capable of getting you to think in a completely different way.

But, you know, the remarkable thing about Derrick, was that he and Jewel, the first of his two great loves, and this was something else about the man, that he was blessed with not one, but with two great loves, both of them models for anybody that’s ever been in love. But he and Jewel, even though we were students, took us in as a couple of friends. We became couple friends of his and got to know the boys. I remember when I used to tutor this man, [Derrick’s son]. And we went through Jewel’s death with him and then I remember the magnificent Janet and how she arrived in his life.

I remember when he first told me about it. One of the indelible memories in our family is your great, great wedding, right over on Broadway, with that little girl, Katie, running around on that balcony, with the wrought iron. It’s an image that I’ll never forget because, again, the accepting quality, to let a little girl come, to let her run around, even as the wedding was going on. To not be bothered by the noise. But it was just so typical of the two of them. And Derrick formed in some ways—I’m not sure I’d be here today if it hadn’t been for his pushing me as a scholar.

You know, I was a reach. I was an older person. I had been a Ph.D. in religion. I wasn’t an orthodox appointment for a great law
school like this law school. Burt chaired the personnel committee and struggled to make me credible. But one of the ways in which I was because Derrick wouldn’t let me rest on my first piece for the Law Review. So when Bakke came out and everybody thought the world was ending, Derrick called me in and said, “You’re going to do something that’s important.”

And he guided me to write a piece for the Harvard Education Review as a lawyer and former teacher that had worked with high school kids that were on their way up, about how Bakke wasn’t the end of the world. Even though he didn’t agree with the Powell opinion. He said you can write a piece that will show how the Powell opinion might be a guide. And sure enough it’s been a guide—hopefully it will continue to be a guide even after this Supreme Court term. God forbid it not be.

But you know Derrick helped me build my portfolio, and then I remember I was the Supreme Court Editor of the Review. And he came to me and said, “So they asked me to do the foreword, do you think they’ll take this piece?” That was Chronicles, nothing ever like had been . . . and I said well I think they will take the piece because that’s my issue. And we managed to work Chronicle through that stodgy old process.

And he guided me right through my years here. He was one of the ones that encouraged me to take on the responsibility of being a Dean. He said, “I think there is something you can do.”

And then of course—and I will just close with this because Janet likes me to tell it. This is like the Passover Seder: this story has to be told every time I talk about Derrick. And I apologize, about three-quarters of you have probably heard this now a dozen times. But the great stories, the Iliad, the Odyssey, and this story of Derrick Bell deserve to be repeated.

So then there was the hunger strike, and Derrick is not going to eat is the way I remember it. Tree told it a little bit different at the memorial service but I think I remember this right. Tree has never been good on the facts. I called him up and I said, “You know, you’re right. But you got the wrong diagnosis here. Walk out on them. Come to NYU. We love you here.” And he came down as a visiting faculty member that year and we had a great year together. And it was the end of the year. And where Babbo is now used to be a restaurant called the Commanders’. We were having dinner in there and over lobster bisque, he said to me, “you know I have never been happier at a law school.” And I said, “That is a pretty low bar.” I said, “You didn’t get along with the Dean at Oregon when you were at Oregon.” He said, “I was the Dean at Oregon.” And I
Sexton Tribute

said, “I know and you still did not get along with the Dean.” So I said, “But you know why it is you are happy here. Because you are a visitor. And you don’t have to take responsibility for our sins. You can just stay on the affirmative side of the agenda. You don’t have to take the culpability for the sins.” So he said, “Maybe that’s right.”

And I said, “Okay, have you ever heard of Walter Alston.” Now tonight I will teach my course “Baseball Is a Road to God.” But even though baseball is a road to God, probably most of you don’t remember Walter Alston. Walter Alston managed the Dodgers for 20 years, on twenty-one-year contracts. Walter Alston would never take more than a year contract. And I said, “Derrick I want you to be the Walter Alston of legal education.” I said, “We will appoint you as a visitor every year, and we have to hit 20 years.” And it’s just a great, great thing that this was his 20th year.

And he is still here and he is still here in all of us. This great man, who loved students because he loved people. And just wanted to make the world a better place. Who knew that there was a reward for that coming, and who is waiting for all of us to join him.

John Sexton
President, New York University
Dean Emeritus and Benjamin F. Butler Professor of Law
New York University School of Law
NYU ANNUAL SURVEY OF AMERICAN LAW [Vol. 69:1
TRIBUTE TO DERRICK BELL

PATRICIA WILLIAMS

Thank you, it’s a tremendous pleasure to be here. John said that he thought he would not be here if it hadn’t been for Derrick Bell and I know very, very well that I would not be here if it hadn’t been for Derrick Bell, there is absolutely no question. And to the degree I’m associated with critical race theory, even though my basics subjects are contracts and the Uniform Commercial Code, nobody ever associates me with that because critical race theory is what I think I’m mostly associated with and it’s not a single philosophy or unique methodology and sometimes I think it is used very carelessly to describe anybody who writes about race. But I think I’m a critical race theory scholar because of Derrick Bell. And when you understand Derrick Bell as the core of critical race theory, then you understand why it is so diverse, why to some degree it’s hard in legal terms, in methodological terms, in ideological terms to describe exactly what it is. It’s because, as John described, the core of it is Derrick Bell and Derrick Bell was heart and spirit and the law probably has no language for that.

But let me try to give some sense of why I love being in that interdisciplinary, warm embrace of his legacy. At the Association of American Law Schools Convention just last month there was a memorial to him and it was held in a room that seated maybe close to five hundred people; it was full and the people there were from everywhere. All of them were law professors and they were of all races and nationalities. That event actually rocketed me back to my first double-ALS meeting back in 1980 when they were virtually no people of color in law teaching at all and the minority law section was actually a room of maybe seven white men, good hardworking men who were trying to diversify the profession. It was a very small group of dedicated men, for again they were only men in those days, who wanted to hold open doors. And Derrick was there of course and he was working that room for all it was worth.

How I came to that room at all by 1980 was because of Derrick, of course. I graduated from law school in 1975 and I have gotten to know since Derrick’s passing that there is an enormous sibling rivalry among those of us who felt close to him as students and then as professionals. I was shocked at his Memorial how many people stood up and said father Derrick. And I said no no no, that’s my father you’re talking about. And there is some sort of little pinge of
competition that I may have known him longer than John. I met him when I was nineteen as an undergraduate. A friend of mine dragged me to his constitutional law class and it was sort of like fly paper, anybody who came within Derrick’s reach suddenly became a law student and a lawyer and sooner or later they’ve probably just destined to become a law professor, whether they liked it or enjoyed it or not. So when I graduated from law school in 1975, it was about the same time as The Paper Chase came out, which highlighted the harsh questioning of the Socratic method, which then reigned supreme in most of legal academia. And I cowered with my classmates in fear of what often felt like mockery or derision. And in addition, as I said, there were virtually no women in those days, we were only eight percent of the class. I was not called on by Arthur Miller in class because he still was practicing lady’s day actually in those days and so they would call on women one day a month and sort of give them the powder puff questions. We actually had a term for it, the powder puff questions and sexism were only beginning to be addressed as just possibly immedicable to the educational process. And I should apologize for that because actually Arthur Miller, those were the times, he actually turned out to be a great teacher actually.

I expected to love law school with all my heart when I came and instead I really wanted to leave within the first ten minutes and Derrick was the only reason I didn’t leave. And as he had in my very first class with him, he made ideas come alive, he made the dry pages of treatises vivid, he never let us forget the human stories behind every track, every suit, repeal. He imbued legal education with a sense of purpose, responsibility and we weren’t there for ourselves alone, but to live up to a calling and to be of service. And he helped me reframe the sense of isolation and intimidation I felt as precisely the reason there was an obligation to stay the course. And until Professor Bell, people like me, females, African Americans, students who weren’t wealthy, who aren’t legacies were pretty much left to our own devices to try to penetrate the old boys’ network. We had to discover that secret societies even existed before we could try to break down their doors and we had to comprehend how many deals were made in eating clubs before we could understand why invitations to those high tables were not merely about the potatoes au gratin. There was every manner or institutional insularity in those days calculated to shut out most of the world.

In contrast Professor Bell’s door was always open, his mind was always open, he made other doors open too. He supported disability, elderly, gay rights long before any of that was part of the na-
tional conversation. He worked to get more women on the faculty when few others thought that there was an issue. Over time these efforts changed the way all law schools treated students and he spoke truth to power in a way that removed that notion from mere cliché and he created family in the unlikely setting of the law school. Derrick connected me and so many of us to a practice of being.

And a few years after I graduated from law school, Professor Bell urged me to think about teaching. And again, this was not the career path I would ever have considered otherwise and this was at a time when they were virtually no women in law teaching to say nothing of women of color, to be precise there were six of us in the entire United States. And I believe Paulette Caldwell was one of them and there were four African American women, one Asian American woman, and one Latina. That includes the historically black colleges. Derrick said that he just saw me as teaching and so it was.

It would be too easy to say he was visionary like that, but the truth is he made things happen, in my case he dragged me kicking and screaming. He believed in a broadly inclusive mandate for equality that was boundless and prescient and he pushed and he pulled and he checked in on his students and he made friends with them for life. He was a mentor before we had a word for that. And in not just mentioning us, but pushing us into places we didn’t even see for ourselves, he brought a diversity of voices to the profession. Unorthodox, interesting voices of many pitches, keys, beliefs, and styles and critical race theory thus began with his urging.

And so in January of 2012 the room of double-ALS was packed to the rafters. In January of 2012 that room was integrated, and integrated not just with blacks and whites and men and women but with Haitians, and Japanese Americans, and Jamaican Americans, Trinadadian Americans, Native Americans, Chicanos, Cuban Americans, gay Americans, Jewish and Muslim Americans, and I think probably some Jewish Muslim Americans, and just a host of viewpoint Americans, and multiple identity Americans, and they were all law professors. It was a remarkable sight and still I could hear Derrick’s voice inside me saying, “And we can do better yet.”

Professor Bell unsettled by making intimate what was distant, he made strange what we thought we knew, and therefore invited us to explore it more. He played with figures of speech in his writing so that ideas became animated, personified, vivified. He inverted the subjectivity of living agents and danced with objects that otherwise would not have had the legal status of a doorstop and
appreciating this I thought of it as largesse. I know he loved gospel but I thought he made jazz, if one may call it. It did require a sense of play.

The great legal realist Felix Cohen once wrote that when the vivid fictions and metaphors of traditional jurisprudence are thought of as reasons for decisions, rather than poetical or mnemonic devices for formulating decisions reached on other grounds, then the author, as well as the reader, of the opinion or argument, is apt to forget the social forces which mold the law and the social ideals by which the law is to be judged.1

I think Derrick went even further than just observing that poetics exist in legal discourse he actually created a counter-poetical, fictional world to bring home the point. And so when Derrick Bell wrote his parable some years ago entitled The Space Traders,2 one of my favorites, in which United States trades its entire population of African Americans in exchange for an extensive cache of gold proffered by some visiting space aliens, it was an obvious allegory for Bell’s pessimism about the promises of the civil rights movement and his fear that too many citizens just want the problem of inequality to be magically whisked into clouds and disappear. Yet, it was startling to see how many in the legal academy did not see it as that kind of allegory, but raged in some quarters about the stories being “untestable.” And there is actually on YouTube, I found recently, an actual law professor, whom I will not name, at a school I will not point out, accusing Derrick Bell of being “untestable” or The Space Traders story being “untestable” and then following it up with a denouncement of it as an unanalytical fanaticism and mere storytelling. Now again I think it helps to have a sense of deludic in all of this. But one reason I loved The Space Traders, despite its pessimistic bottom line, was that Bell used the device of science fiction to throw a great big monkey wrench into the inner workings of what Felix Cohen called the dialectic-hydraulic interpretation press, which could press an indefinite number of meanings out of any text or statute.

And so when Bell and all of us so-called critical race theorists who followed in his wayward path tinker with fictive devices and poetic figurations, he and we do so for very specific, nonimaginary ends. And the purpose is to make the dry pages of treatises vivid, to

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push the disenfranchised into the spotlight as he did so well. To burn memory into hearts and minds, to give flesh to the unseen, to rattle the bones in the closets’ history, to be of service by any means necessary as Derrick Bell always was. For Derrick Bell touched more people than most of us mere mortals could ever dream, he was a great man precisely because there were no conditions upon his energies. He had a huge capacity for love, justice, and for justice as a form of love. Like all the greatest teachers, his influence remains eternally generative.

PATRICIA WILLIAMS
James L. Dohr Professor of Law
Columbia Law School
TRIBUTE TO DERRICK BELL

GABRIELLE PRISCO

Thanks to President Sexton, to Dean Revesz, and to the Annual Survey. I was really struck by Ben and the other students on the journal; I remember being in law school and barely having time to sleep, let alone to take care of the intricate details for a day like today, so many thanks. And it is also always an honor to be with Janet, and to speak on a panel with Professors Dorsen and Williams.

In October of 2003 Ken Bain, who was then director of the NYU Center for Teaching Excellence, wrote a letter to Professor Bell about what he observed during his time interacting with Professor Bell’s class. Mr. Bain wrote:

Dear Professor Bell,

I write to provide feedback on your class in constitutional law. As you know I have had an opportunity to observe your class several times, to review all of the available printed material for the class, to observe the products of student work, and to talk with some of your students about learning in the class. On that basis, I offer the following feedback.

I must tell you that working with your class has been a marvelous experience because it comes closer to the ideal learning environment described in the research literature than does any other class I have observed at this university. Your class contains a number of elements that are well-supported by the research literature on university learning and teaching and that most likely account for the high level and deep nature of the learning that is taking place in the class.

Mr. Bain went on to describe what he saw as the several key ingredients to the successful learning environment Derrick created in his classroom. The first was, in Mr. Bain’s words, “you have given students a strong sense of control over their own education, and you have done so with both large and small elements of the class.”

In my own words, it went like this: when I arrived here at N.Y.U. Law, I anticipated a deep engagement with critical issues, legal issues, intellectual issues. Law school was for me as it is for many students: many of us come here seeking the desire to be part of the quest for social justice, to use the law as a way to think about how society can be better, how it can be fairer. I had many smart and hardworking professors and classmates, but I was quickly disap-
pointed by how little space there was, how little intentional space there was, for critical engagement of the law and issues of social justice, particularly in the first-year curriculum.

So I met Derrick Bell because I got found out. I was crying in the bathroom of this building, upstairs—and John spoke about the sort of stories we all have, this is my story—I was crying because I didn’t want to be here. I didn’t feel that my spirit and my self, my brain, the way I thought, had a place in this school, and I wasn’t really sure what to do about it. (And it was very expensive.) A teaching assistant from my Civil Procedure class accidentally came upon me sobbing in the bathroom and the class that she was the teaching assistant for was taught by John Sexton, who was then Dean of the school. And she, without telling me, spoke to him, and I later got a call from Dean Sexton’s office saying that I was requested at his office for an appointment. So I showed up. I remember what I was wearing, and I remember being totally terrified. John was kind and gracious—he definitely gave me a hug—and said, “tell me what’s going on,” and I said that I didn’t believe that the environment was a positive one. Actually, when I was writing this I struggled with if I should say what I really said, which was I said that it was “pathological.” And I decided I was not going to say it, and now that I’m here, I should be honest, that’s what I said. I said I thought it was pathological, and I asked him if I could get my tuition back if I left. It was the first semester of my first year.

And Dean Sexton—then-Dean Sexton—was gracious and kind and thoughtful, and he spoke to me about his experiences at Harvard. He didn’t tell me about the option of taking your classes from home and taking the tests at a hotel—I might have signed up for that—but he was wonderful and what he ultimately said was, “I want you to meet someone,” and in walked Janet and Derrick Bell. And I said, “well, I know, I mean I’ve signed this form, I’ve asked for Derrick Bell to be my mentor, I know he’s really busy, I know he’s really famous, I know his work.” And John said, “well I want you to meet him.” And Janet and Derrick were, as they always are, gracious and graceful.

There are stories that you tell time and time again and they take on kind of a mythological or maybe a magical proportion, and this story for me is one of those stories. It’s like a totem. This is a story of how I came to be here and how I found my home, and my place here, and it’s a story that grounds me in the work that I do now. And I wonder sometimes: Does the magic come from the retelling, or are those stories magical? And do they push you to tell
them, and to keep telling them, and the more you tell them their power grows? This is a story for me; Derrick was magical for me.

What Derrick did was invite me to sit in on one of his con law classes, and later he invited me to one of the dinners with the spreadsheet—I probably wasn’t on it, I was like the added guest, so I might not have been on the spreadsheet about how much it would cost, but I was allowed to eat and maybe even get an appetizer. Derrick’s class relied on students teaching one another. That’s how it worked. There were a series of hypotheticals, and if anyone wants the long explanation, myself and many of the former Bell Fellows, and students, and TAs in the room will, I’m sure, even reenact for you how the class went, but students taught one another the materials and Derrick facilitated a conversation and an engagement, but he didn’t lecture. Then he would take the students who had presented that day’s work out for dinner and they would continue the conversation and the debate and the analysis at dinner at Ennio & Michael’s—a restaurant that later, when it closed, Derrick took up the cause of trying to keep open, and I got involved in that as did my family and many loved ones because Derrick made you do that.

In that class I saw that a different way was possible; Derrick’s teaching and his spirit that first year—just being in the classroom—were like beacons. I saw that I could engage the law in a way that resonated with my soul. This was another place when I was writing where I paused and I thought, “soul.” That’s kind of a funny word to write, speaking in a law school. Can I write that? This was my brain going, “can I write that? I’ll delete it, I’ll delete it” and I deleted it and then I put it back. I said, “I’m going to write it, that’s the right word, the word is ‘soul.’ ”

I thought about it, and I thought, “can you say ‘soul’ in a speech in a law school that will maybe wind up in a law journal?” And I said, “well, if you’re writing about Derrick Bell, I think you have to say the word ‘soul.’ ” Because Derrick was a gentle soul, and a fierce soul. He was a fierce, gentle warrior, a humble warrior, and he was defined by his soul and he spoke to our souls. And he speaks to our souls today, and he guides our souls as well as our minds, and our hearts, and our voices, and he sees, he saw, he helps us see the way those things are interconnected. That’s what gospel choirs do, that’s what the concert is about. It’s not about music getting your brains to do something, it’s about the interconnection between our souls, and our hearts, and our voices, and our brains, and our spirits, and each other.
The second thing that Ken Bain said in his letter was, “you, Derrick Bell, have created a collaborative environment in which the students are more likely to learn from each other.” In a con law midterm evaluation, one of Professor Bell’s students wrote about this himself. He hadn’t read Ken Bain’s letter because while Derrick did put it in a memo to Ricky (or then, John), he didn’t actually tell all his students “I’m an excellent teacher, and have been called the best teacher, you know, ever,” he just did his thing. But the student wrote the same exact thing. This is what the student said (I was a Bell Fellow at this time, so I had the evaluations):

I think that this class represents one of the highlights of my legal education at N.Y.U. The diversity of voices in the classroom brings a clarity and reality to discussions which is often lacking in other classes. I have learned an immeasurable amount from students representing otherwise marginalized perspectives. I truly think that this class has enabled me to engage with the material and legal precedent on a much more critical level, demonstrating the structural inequalities of our system.

End quote.

Here’s another story that’s persisted in my memory. When I was a first-year student here I organized a panel on “Voice and Silence in the Law School Classroom.” Professor Caldwell and others were there. We focused on the voices of women, on what gets heard, and what doesn’t get heard in the law school classroom, and it was actually fairly upsetting for me to hear Professor Williams speak today, not because she wasn’t beautiful and touching, but because some of what she was speaking about I experienced many, many years later when you would think that more would’ve changed, but it hadn’t. So I publicized, and others publicized, this event and I got an outpouring of e-mail in response. Many women e-mailed me and said that they had made a decision not to speak in class anymore. Some talked about the point at which they decided to silence themselves, and that’s actually how they spoke about it, “this is the point at which I decided to stop speaking.” Other students e-mailed me to tell me why the panel was not needed. One student in my section wrote that he and two classmates had been using a timer in our classes, and they reported on the amount of minutes that women spoke in each class versus men; they were happy to report that women had spoken an average of x amount of minutes more than men in our classroom. (I was wondering if maybe I was, say, nine of those ten minutes, but I didn’t say that.) They said, “this is not necessary, we did the timed experiment dur-
ing a sampling of classes.” Another student wrote that the existence of a large number of women on the bench, including the federal bench, made clear that issues of sexism are obsolete. So, that was one experience.

And then I got to Derrick’s class as a student—as a student, a TA, later as a Bell Fellow—and the bitter impact of that experience was lessened, and I found and claimed more of my own voice, and I learned how to ground my thoughts on justice and on fairness in the framework of the Constitution and in legal thinking. I learned that from Derrick, but I also learned it from my colleagues in the classroom.

The third thing that Mr. Bain said—don’t worry, there aren’t that many—was, “you have helped students learn by getting them involved in trying to solve problems, constitutional issues, that they have come to regard as important.” Another student in that 2004 class, again, without knowing it, illustrated this concept by saying, “linking con law to the politically charged issues of our day forces us to think about the consequences of our legal reasoning. You show us who will suffer from our decisions. No longer can we pretend that we cannot see the world from our Ivory Towers.” Derrick reminds us—and I’m going to use the word in the present tense—that the work we do in the world matters, that we are the problem solvers of this time and place. We are the problem solvers of this time and place, and that much rests in our hands and in what we do with that.

In one of the most recent memorials for Derrick, Lisa Marie Boykin showed a film that she’d made that interspersed interviews with Derrick with historical footage and recollections of people who knew and loved him. There’s this one scene in it that has really haunted me: there’s a very frightening and brutal photo of police officers and they’re unleashing attack dogs (they seem to be German Shepherds) that have bared teeth on civil rights protesters, and a voice offscreen asks Derrick, who was recalling his school desegregation work in the deep south, “weren’t you afraid?” And Derrick, and I want you to take a minute, if you can think of Derrick’s voice, his soft, gentle, humble voice, and just think about him saying it, he said, “well, you just really couldn’t think about that.”

The fourth thing that Mr. Bain said was, “you have created an environment in which students believe that their work will be considered fairly and honestly.” The fifth was, “you have provided an opportunity for students to try, to come up short, to get feedback on their efforts, and to try again, in advance of summative judgments about their efforts.” I would add that Derrick was interested
and engaged in our lives, our interests, our passions, and our loves. He often encouraged us to think about finding suitable life partners and he often talked about the joys of marriage and about his love, Janet.

His willingness to allow us to try, to come up short, to course-correct, to try again, extended beyond the classroom and into our growing up. Derrick often spoke about, as Professor Williams said, his students as adopted children and grandchildren, and he embodied one of the most amazing and essential aspects of parenthood and grandparenthood, which is unconditional love and a willingness to allow your children to make mistakes, to change, to grow, to mature, to course-correct. Derrick allowed us to do that and he encouraged us to do that.

Finally, Derrick reminds us that the fight for social justice, the fight that he was so engaged in, is a fight best fought not only with intellect, reason, and determination, but with love, and song, and food, and even joy. He reminds us to take care of ourselves. I recently was reading an e-mail he sent me. I’d told him I had gotten an interview for a job I wanted, it’s the job I now have, and he was a reference and I said he should expect a call. He and Janet wrote back, and said, quote: “as your adopted parents, we want you to do good when you get the job but not kill your damn self. And that is serious.” End quote.

At the very end of “Participatory Learning: A Detailed Exposition,” which is one of the detailed expositions of his method that he had written for the law school to explain his course, this is what Derrick wrote, and I’m going to end here:

When asked about retirement I respond that, health permitting, I intend to keep teaching until I get it right. In setting up my permanent visitor scheme back in 1992, then-Law School-Dean John Sexton dubbed me the “Walter Alston of Legal Academe.” Alston managed the Brooklyn and Los Angeles Dodgers baseball team for twenty years on a string of one-year contracts. Equaling the Alston record would mean not only that I survive to age eighty two, but that I have done so doing work that I love, and I hope served some worthwhile purpose.

As many of you know, Derrick died shortly before his eighty-first birthday. While he may not have equaled the Alston record in years, or made eighty-two, there is no doubt that his work and his life served a deeply worthwhile purpose. And there is no doubt that he got it right. And there is also no doubt that all he taught guides
us—me and each of us—towards lives of meaning and worth. Thank you.

GABRIELLE PRISCO
Direction of Juvenile Justice Project
Correctional Association of New York
TRIBUTE TO DERRICK BELL

NORMAN DORSEN

You have just heard Gabrielle Prisco’s tribute to Derrick Bell. As Dean Revesz said in passing, Gabrielle was a Hays Civil Liberties Fellow in 2002–2003, working with Professor Sylvia Law, Professor Helen Hershkoff, and me. You can imagine what a vital force Gabrielle was . . . and is. I can’t recall another Hays Fellow who did more to assist with the countless administrative tasks that an active program requires while simultaneously fulfilling her civil liberties responsibilities with distinction. We are proud of her achievements since she graduated from law school.

Gabrielle put much emphasis on how Derrick tended to the souls of students as well as their minds and hearts. Someone who was especially pleased with these words was President John Sexton. For many years he has said publicly that one of his main missions in life was to save my soul. I have always been grateful for John’s solicitude, but regrettably he probably won’t succeed because it is unlikely that there is such a thing as a soul.

Professor Williams made a good point about the sibling rivalry that has erupted among Derrick Bell’s students and mentees. I hope this is not an example of the genre, but I entered Harvard Law School in 1950, in the first class that admitted women. I do not claim special insight or virtue, but years later I realized how marginalized the thirteen or fourteen women in our class were, and how even more marginalized the three or four African Americans were. While so much remains to be done to achieve a just society, at least we have progressed—again, as Professor Williams has said—beyond those days.

My first interaction with Derrick was in the late 1960s when he was a staff lawyer at the Legal Defense Fund. I had come to NYU to head the Arthur Garfield Hays Civil Liberties Program, and Derrick and I worked together on one or two matters. But the incident that fixed my sense of Derrick occurred after he left LDF to become the first African American professor at Harvard Law School.

It was late 1971, and President Richard Nixon had already made four appointments to the Supreme Court, permanently ending the liberal majority in which so many of us rejoiced and which, I suspect, we naively thought would be a permanent condition. But we lived and learned, and the civil rights community had to adjust to the new reality. One pressing need was to develop vigorous and
sophisticated litigators to work with the lawyers at the ACLU, LDF, NAACP, and other front-line organizations. A promising source of talent was the increasing number of young, activist law professors, who were reared on the milk of the Warren Court and some of whom were already in the struggle.

Aryeh Neier, then-executive director of the ACLU, proposed to me the idea of creating an organization of law professors that would be at the center of this effort. I invited about ten liberal academics to discuss the idea and it was received with enthusiasm. We expanded the group and, with the aid of Stephen Gillers, then in practice and our first executive director, we drafted by-laws and solicited every law professor in the country. Hundreds joined. Thus was born the Society of American Law Teachers, known as SALT. The board of governors elected me president and it also selected four vice presidents.

The board chose as vice presidents Anthony Amsterdam, then of Stanford Law School and now an NYU colleague, Gary Bellow of Harvard, and Tom Emerson and Ralph Brown of Yale. All were civil liberties stalwarts, and I was not the only board member who noticed that we did not have a person of color in the group even though much of SALT’S agenda was interwoven with racial issues. There were few African American or other minority law teachers at the time. Derrick had only recently become an academic, but several of us knew of his excellent work at LDF. We elected him, and I telephoned to extend the invitation.

Derrick did not accept at once. He wanted to know more about SALT, what the organization would do, and what he would do. Moreover, as a new law professor, he was busy learning the craft, as we all had to, and he had special responsibilities, about which more below. We discussed all this.

Happily, Derrick called a few days later saying that, however busy he was, SALT’s goals reflected his values, and he would be proud to serve as a vice president. Moreover, he said, his wife told him to accept.

I might add that even as progressive a group as the SALT board did not, to the best of my recollection, discuss the possibility of selecting a woman or, an even more remote idea, a gay person as a vice president. Once again, there were few women and possibly no “out” gay law professors, but that also was a sign of the times. I am pleased to say that over the decades SALT has become an enormously diverse organization that can serve as a model for other groups.
Several things struck me about my conversations with Derrick. His sole concern was what he might do to help civil rights and civil liberties while fulfilling his duties at Harvard. There wasn’t a whisper of what it would mean for his career to be associated with the luminaries already selected as vice presidents. Nor was there the slightest suggestion that we were approaching him latterly, only after the four white vice presidents were chosen; he downplayed the issue, saying that “of course” he understood—there were only a few black law professors. Further, Derrick asked probing questions about SALT and its newly created mission. He raised issues that twenty law professors over four or five meetings had overlooked. All this made us more eager for Derrick to join us.

Derrick not only wisely advised SALT over the years, but he emerged as a superb scholar and admired teacher. Among many other publications, he wrote the leading law review article on an important and vexing issue for public interest organizations: How should lawyers at LDF, the ACLU, and the others, serve “two masters”—the policy goals of the organization they worked for and the best interests of the individual clients, which sometimes conflicted. I recall being bowled over by how accurately, at least based on my experience, Derrick described the tensions and offered possible solutions that were intellectually creative and institutionally sound on a subject that had hardly been explored.

Derrick’s even more lasting contribution will be the remarkably creative “dialogues” or “fables” that presented past and current issues facing people of color and clarified the moral dilemmas of men and women during centuries of racial discrimination and struggle. It is impossible to read these essays without acquiring a deeper understanding and empathy.

But all was not quiet at home base. Derrick had begun to speak publicly on the inadequate representation of African Americans and other racial minorities on law faculties, including Harvard. Many of Derrick’s colleagues, I assume in good faith, responded by saying that X or Y did not meet its academic or intellectual standards. While that may have been true in many cases, it was also true about many white candidates. And what counted ultimately were matters of judgment, the feeling of necessity, and the willingness to take risks, as is often done with faculty appointments.

Derrick left Harvard amidst controversy. He continued his stellar career at Stanford and at Oregon Law School, as dean. In both places he took similar, aggressive stances on the need for law schools to expand their hiring horizons. In both places he created controversy. He couldn’t help it. He knew himself and knew where
he stood. As someone said at Derrick’s memorial service at the Riverside Church, he was born a grown-up.

He returned to Harvard but once again departed, this time to N.Y.U., where he added so much to our Law School over two decades. In time, he took the Vanderbilt Hall office next to mine and we soon deepened our relationship. I often was reminded of the Derrick Bell of 1971. Soft-spoken, modest, substantive, and committed. Moreover, he listened as well as spoke, as I hope I did.

At Derrick’s memorial the most striking compliments were from former students at N.Y.U., Harvard, and other places where he had taught. In his position he felt a special urgency about mentoring African Americans and other students who were seeking a way through the maze of legal education. These students often came from families that had not previously sent a son or daughter to college. He considered his relations with students to be a deeply important responsibility and opportunity. There was remarkable love for Derrick from those who spoke at the memorial, which didn’t surprise me one bit as I thought back over the decades to our earliest encounters.

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