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## On Derrick Bell as Pioneer and Teacher: Teaching Us How to Have the Nerve

*Angela Onwuachi-Willig\**

In a March 5, 1943, letter, Zora Neale Hurston, author of the critically acclaimed *Their Eyes Were Watching God*,<sup>1</sup> wrote a letter that discussed racism, segregation, the hypocrisy of white liberals, and what she viewed as the flawed strategies of black civil rights leaders to her friend, Countee Cullen, a prominent black poet during the Harlem Renaissance era.<sup>2</sup> Near the end of her letter to Cullen, Hurston penned these powerful words: “You are right in assuming that I am indifferent to the pattern of things. I am. I have never liked stale phrases and bodiless courage. I have the nerve to walk my own way, however hard, in my search for reality, rather than climb upon the rattling wagon of wishful illusions.”<sup>3</sup>

It is difficult to read these words by Hurston without also thinking of the late Professor Derrick Bell. After all, these short few lines by Hurston seem to describe the essence of Professor Bell. He was indifferent to following patterns—that is, unless one wants to call his repeated challenges to racism and intersectional racism and sexism a pattern. Yet, even then, he was not following a pattern, but rather blazing and creating a pattern of resistance in academia for professors of the next generations

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1. See ZORA NEALE HURSTON, *THEIR EYES WERE WATCHING GOD* (1937) (presenting the story of a young black woman from the rural South named Janie Crawford and the road that she takes to understanding and expressing her identity).

2. See Zora Neale Hurston, *Jump at the Sun*, AMERICAN MASTERS, PBS (Aug. 26, 2008), <http://www.pbs.org/wnet/americanmasters/episodes/zora-neale-hurston/jump-at-the-sun/93/> (reprinting Hurston’s March 5, 1943, Letter to Cullen from the Amistad Research Center at Tulane University).

3. *Id.*

to follow.<sup>4</sup> Always the pioneer, Professor Bell broke with conventional patterns that white male lawyers and law professors had long established for reading and interpreting cases and statutes. Instead, he posed and considered previously excluded and important questions concerning race and social justice. In fact, Professor Bell was the first academic in law to develop a casebook that explored and examined law's influence on shaping race and racism, and race and racism's impact on the development of the law—a casebook called *Race, Racism, and American Law*.<sup>5</sup> This casebook helped to provide legitimacy to a field that, at the time, was not considered to be pertinent to legal studies, but has since then become a central part of the study of law at law schools across the nation.<sup>6</sup>

Keeping in line with his “pattern” of challenging authorities that explicitly and implicitly excluded voices of color, Professor Bell also resisted group impulses that revered, perhaps without enough critical examination, proud moments in legal history<sup>7</sup> like *Brown v. Board of*

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4. See generally DERRICK A. BELL, *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER* (1994) (narrating the story of his action in taking a leave of absence from his position as a tenured professor at Harvard Law School because the school failed to hire black female tenure-track professors); see also Meera E. Deo, *Separate, Unequal, and Seeking Support*, 28 HARV. J. ON RACIAL & ETHNIC JUST. 9, 45–48 (2012) (drawing from Derrick Bell's lessons in *CONFRONTING AUTHORITY* to speak “directly to law school administrators and others who have the power to make change on their campuses, such that we can attempt to meet the goals of both masters: integration and equality”); Mario L. Barnes, *Reflection on a Dream World: Race, Post-Race and the Question of Making It Over*, 11 BERKELEY J. AFR.-AM. L. & POL'Y 6, 7 (2009) (asserting that *CONFRONTING AUTHORITY* was “about how to respond in a principled and ‘soul-saving’ manner when majority-white institutions practice racial tokenism and otherwise only lightly value minority faculty members . . . [and] about taking a principled stand against the subtle but deeply entrenched forms of racist exceptionalism practiced within elite, majority-white institutions and American society”).

5. See DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW* (6th ed. 2008); see also Richard Delgado, *Centennial Reflections on the California Law Review's Scholarship on Race: The Structure of Civil Rights Thought*, 100 CAL. L. REV. 431, 448 (2012) (acknowledging the importance of the casebook and Derrick Bell's work, but critiquing the casebook because it was “unabashedly Afrocentric (although less so in the later editions, which devote brief treatment to the problems of Chinese, Japanese, Mexicans, and Muslims after September 11)” and critiquing two particular articles by Professor Bell because they “describe America's racial troubles in explicitly black-white terms, as though ‘race’ were equivalent to ‘black’”).

6. Ralph Richard Banks, *Beyond Colorblindness: Neo-Racialism and the Future of Race and Law Scholarship*, 25 HARV. BLACKLETTER L.J. 41, 42–43 (2009) (referring to the casebook as “groundbreaking,” and stating that Professor “Bell has influenced the field of race and law scholarship to an extent that is difficult to overstate”).

7. See, e.g., Angela Onwuachi-Willig, *For Whom Does the Bell Toll The Bell Tolls for Brown?*, 103 MICH. L. REV. 1507, 1510, 1520, 1523–32, 1535 (2005) (disagreeing with Professor Bell's conclusion that court enforcement of the ‘separate but equal’ doctrine would have proved more effective than the strategy that civil rights lawyers employed in arriving at *Brown* and, in fact, offering a “far more pessimistic [view] about whether [such racial equality in education] even would have been possible,” but at the same time, contending that “*Brown* gave society a goal to strive for and set the stage for a movement that created racial change[, that] *Brown* was more than a legal decision[, and that] it was ‘a statement about the fundamental moral basis of democracy’”).

*Education*.<sup>8</sup> For example, in the seminal and groundbreaking article *Brown v. Board of Education and the Interest-Convergence Dilemma*, Professor Bell argued that the Supreme Court's 1954 decision did not come to be simply because of a moral or cultural shift in United States citizens' attitudes, views, and ethical understandings about race and integration. Instead, Professor Bell argued, *Brown* occurred because of the convergence of interests between Blacks<sup>9</sup> who wanted to break down Jim Crow laws and racial segregation in all aspects of life, particularly education, and the white elite, who were worried that the United States might lose its fight against emerging Communist superpowers and might receive more condemnation from other countries if it did not alter its treatment of black citizens.<sup>10</sup>

Similarly, never one for stale phrases, Professor Bell exhibited courage that extended and continues to extend far beyond his body. Writ-

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8. 347 U.S. 483 (1954); see Leland Ware, *Brown at 50: School Desegregation from Reconstruction to Resegregation*, 16 U. FLA. J.L. & PUB. POL'Y 267, 294 (2005) (citing DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* (2004)) (pointing out that Bell argued that civil rights lawyers in *Brown* pursued the wrong strategy, racial integration in public schools and that black "students would have fared better had the U.S. Supreme Court reaffirmed *Plessy* in *Brown* and ordered the states to equalize the black and white schools").

9. Throughout this Essay, I capitalize the words "Black" and "White" when I use them as nouns to describe a racialized group; however, I do not capitalize these terms when I use them as adjectives. Additionally, I find that "[i]t is more convenient to invoke the terminological differentiation between black and white than say, between *African-American* and *Northern European-American*, which would be necessary to maintain semantic symmetry between the two typologies." Alex M. Johnson, Jr., *Defending the Use of Quotas in Affirmative Action: Attacking Racism in the Nineties*, 1992 U. ILL. L. REV. 1043, 1044 n.4. Professor Kimberlé Crenshaw, one of the founders of Critical Race Theory, has explained that "Black" deserves capitalization because "Blacks, like Asians [and] Latinos, . . . constitute a specific cultural group and, as such, require denotation as a proper noun." Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988). Also, I generally prefer to use the term "Blacks" to the term "African Americans" because "Blacks" is more inclusive. For example, while the term "Blacks" encompasses black permanent residents or other black noncitizens in the United States, the term "African Americans" includes only those who are formally Americans, whether by birth or naturalization.

10. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 524–28 (1980). In fact, Zora Neale Hurston may have agreed with Professor Bell's arguments, as she "was highly critical of *Brown*." Michael deHaven Newsom, *Clarence Thomas, Victim? Perhaps, and Victorizer? Yes—A Study in Social and Racial Alienation from African-Americans*, 48 ST. LOUIS. U. L.J. 327, 372 n.285 (2004); see also Neil G. Williams, *Brown v. Board of Education Fifty Years Later: What Makes for Greatness in a Legal Opinion?*, 36 LOY. U. CHI. L.J. 177, 183 (2004) (noting that Hurston "took offense at what she perceived to be *Brown*'s assumption that black institutions are inherently inferior" and that "[s]he viewed the *Brown* decision itself as stigmatizing and insulting to those who taught at and ran black schools"); Carmen M. Butler, *Victimhood to Agency: A Constructionist Comparison of Sexual Orientation to Religious Orientation*, 4 SEATTLE J. FOR SOC. JUST. 147, 153 n.38 (2005) (quoting Hurston as indicating that "freedom was 'something internal. . . . The man himself must make his own emancipation'" (quoting Henry Louise Gates, Jr., *Epilogue to ZORA NEALE HURSTON, SERAPH ON THE SUWANEE* 357 (Henry Louis Gates, Jr. ed., Harper Perennial 1991) (1948)).

ing with Hurston's same zeal in crafting stories such as the famous "Space Traders"<sup>11</sup> and "The Electric Slide Protest,"<sup>12</sup> Professor Bell moved beyond the traditional formulas for composing legal scholarship to employ more creative and accessible forms of writing, such as personal narratives and storytelling. Communicating in such forms took more than a body full of courage to do, as Hurston's words to Cullen suggest. Indeed, at the beginning of her letter to Cullen, Hurston confessed to the great poet, "[Y]ou are my favorite poet now as always since you began to write. I have always shared your approach to art. *That is, you have written from within rather than to catch the eye of those who were making the loudest noise for the moment.*"<sup>13</sup> For many of us in academia, Professor Bell was our favorite scholar precisely because of the styles in which he wrote, as well as the way in which he wrote from within to inspire and create change, rather than to earn the eyes and praise of those deemed to be the most prestigious voices in the academy.

Finally, Professor Bell had the nerve to walk his own way. During a treasured conversation with Professor Bell's widow, Janet Dewart Bell, I learned from her that the late professor once stated that he "had a lot of nerve to think that he could be the first tenured black professor at Harvard—that it took a lot of nerve for him to think that."<sup>14</sup> I immediately smiled and chuckled upon hearing this story. It sounded odd to think of Professor Bell as having to "have the nerve" in any context. After all, "to have the nerve" suggests that he did not "belong" at Harvard in the first place, and Professor Bell certainly belonged there. Indeed, to those of us on the outside, he seemed to make himself "belong" in the most difficult of circumstances, entering on his own terms and also leaving on his own terms. Yet, as I thought more deeply about this phrase, "having the nerve," and its meaning, I began to see how the phrase contained just the right words to describe how Professor Bell moved within the world of legal academia. After all, Professor Bell taught us, the many professors of color who followed him, how to have the nerve to think that we, too, could become tenure-track law professors, then tenured professors, then Chairs, and even Deans at our own institutions. In fact, I have highlighted elsewhere the role that Professor Bell's scholarship, particularly his story "Space Traders," had on convincing me of my own place in the legal field during law school. I explained:

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11. Derrick Bell, *Space Traders*, in *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992).

12. Derrick Bell, *The Electric Slide Protest*, in *GOSPEL CHOIRS: PSALMS OF SURVIVAL FOR AN ALIEN LAND CALLED HOME* (1996).

13. *See supra* note 2 (emphasis added).

14. Conversation with Janet Dewart Bell, Association of American Law Schools Annual Conference, New Orleans, Louisiana (Jan. 7, 2013).

For me, CRT [Critical Race Theory] was a lifeline in law school. In fact, but for CRT, I may have never become a lawyer. . . . During my first few days of law school, I felt so alienated, alone, and, according to some, too preoccupied with justice and change that I began to wonder if there was a place for me in the law. It was not until I met a group of 2Ls who were part of a CRT Reading Group that I truly began to see law as a potential professional home for me. It was these 2Ls who introduced me to Professor Derrick Bell's *The Space Traders*, a fictional tale about the government's decision to accept an offer from aliens to trade all Blacks in return for . . . "gold, to bail out the almost bankrupt federal, state, and local governments; special chemicals capable of unpolluting the environment . . . and a totally safe nuclear engine and fuel, to relieve the nation's all-but-depleted supply of fossil fuel." *The Space Traders* spoke to my experience as a black woman in the United States, and it helped fill a void of silence about race that seemed to be never-ending during my time in law school. The reading group's discussion of *The Space Traders* nourished my soul, and I began to think, "There just may be a place for me in the law yet."<sup>15</sup>

In the end, Professor Bell taught us—meaning the many professors of color who followed him into the academy—how “to have the nerve” to both survive and thrive in our institutions as teachers, scholars, and citizens, and he did so with just his deep belief in our true belonging in academia. Over and over in his career, he displayed that belief by walking away from privilege, power, and prestige in academia when other law professors failed to hold his same strong belief in our belonging on law school faculties and instead refused to extend to candidates of color any offers for tenure-track or tenured employment. For instance, in 1986, Professor Bell resigned in protest from his powerful and prestigious leadership position as the Dean of the University of Oregon School of Law when its faculty failed to extend an offer of employment to a qualified Asian American female law faculty candidate. Similarly, in 1990, after returning from Oregon to Harvard and after years of pushing for the hiring and promotion of qualified women of color on the Harvard Law School faculty, Professor Bell gave up his coveted, high-status position as a tenured law professor at Harvard Law School in protest of the law school's failure to hire one of several black female law faculty candidates. He made these and other sacrifices in putting his theory into practice despite the personal costs to himself. By so doing, Professor Bell, the

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15. Angela Onwuachi-Willig, *Critical Race Theory Speaker Series CRT 20: Honoring Our Past, Charting Our Future: Introduction—Celebrating Critical Race Theory at 20*, 94 IOWA L. REV. 1497, 1499–1500 (2009).

“intellectual father figure” of Critical Race Theory,<sup>16</sup> and a man of great principle, helped to usher in and mentor two generations of students, scholars, and civil rights lawyers and activists, all of whom have continued to ask the types of questions about race and the law that Professor Bell routinely posed throughout his career, and many of whom have brought new perspectives and understandings to both practical and theoretical analyses of race, law, and social justice.

Among many other comments, Zora Neale Hurston is quoted as once saying, “It’s a funny thing, the less people have to live for, the less nerve they have to risk losing nothing.”<sup>17</sup> Unlike the quote that I began this law review tribute with, this statement by Hurston does not describe the late Professor Derrick Bell in the least. Professor Bell had much to live for. In fact, as his rich life suggests, he had so much to live for that he possessed enough nerve to risk losing anything and everything throughout his career, and even to share that nerve with the generations of professors, of all races, sexes, socioeconomic backgrounds, sexual orientations, ages, and abilities, who have worked so hard and continue to work very hard to emulate his model of brilliance, spirit, action, and just plain goodness in their own professional homes.

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16. RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 5 (2d ed. 2012).

17. *Zora Neale Hurston Quotes*, BRAINY QUOTE, [http://www.brainyquote.com/quotes/authors/z/zora\\_neale\\_hurston.html](http://www.brainyquote.com/quotes/authors/z/zora_neale_hurston.html) (last visited Mar. 22, 2013).