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Derrick Bell's Experience Sparks Change at Stanford

In fall 1986, the SALT Equalizer published an essay authored by Harvard Law Professor Derrick Bell in which he described the pain and embarrassment that he experienced during his visit to Stanford earlier that year. On November 20, 1987, Stanford Law School hosted a discussion of racism, sexism, and homophobia in the law school, moderated by Stanford Professor and now SALT President Charles Lawrence. Stanford Dean Paul Brest began the discussion by apologizing to Derrick Bell, who was then visiting as a guest lecturer, and by outlining the institution's commitment to promoting diversity in the law school faculty:

Statement of Paul Brest

In the Spring of 1986, Derrick Bell was a visitor at Stanford Law School, where he taught an introductory course in Constitutional Law. Professor Bell was the former dean of the University of Oregon Law School, and he teaches at Harvard Law School. He is a prominent legal scholar. He is also Black.

Students in Professor Bell's class criticized his teaching and complained that they were unable to learn the subject from him. Many began auditing other instructors' constitutional law classes. These events ultimately led to the idea of a series of public lectures in basic constitutional law to be given by various faculty members. Although these lectures would be open to the student body as a whole, their unstated purpose was to offer Professor Bell's students a supplement to his course.

The series was called off after members of the Black Law Students Association protested the first lecture on the ground that both the students' dissatisfaction and the unprecedented lecture series were tainted by racism. That, in a nutshell, is what happened in the Spring of 1986.

Whatever its motivation, the supplemental lecture series was an affront to Professor Bell; and I join my predecessor, John Ely, in deeply regretting and sincerely apologizing that it happened. Yet, without trying in any way to justify the insult and injury, I want to suggest that the incident may have led to something positive -- at least for those who were and are willing to learn from it.

When incidents like this happen somewhere else, the usual reaction is to breathe a quiet sigh of relief

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that it didn't happen here, announce that "it couldn't happen here," and righteously condemn the institution where it did happen for its insensitivity and outrageous behavior. The price of this hypocrisy is that it denies you the opportunity to learn something from the experience.

But when it happens at home, you don't have this easy out. Even then, many people's first reaction is to distance themselves from the event: it wasn't me; it wasn't "Stanford"; rather, it was student X's or professor Y's fault. That's a natural defense mechanism, and I think that's how many of us at the Law School reacted at first.

But then at some point the truth set in--that it was a matter for institutional responsibility, shared by students, administrators, and faculty alike. It is only from this realization that a community can reflect on itself and change. So, again, although I, together with the rest of this community, sincerely regret that it happened at all, the incident gave us a unique opportunity for introspection.

At the time, Stanford was not much different from most other law schools in its sensitivity and openness to minorities. Indeed, to be accurate and fair to ourselves, we were, and still are, more progressive than most comparable institutions in minority admissions, faculty hiring, and other respects as well.

Since then, however, we have continued to move--albeit not always smoothly--with heightened awareness and understanding. I should say that much of this has been aided by student initiatives: the panels on faculty hiring and "silence" in the classroom last spring, and the outcry this fall over the absence of a mechanism for enforcing the Career Services Office's Non-Discrimination Policy. Women, minority, gay, and lesbian students are now speaking through the Multicultural Council with a voice that is listened to with care.

So where do we go from here? Let me begin by talking about our policies and commitments in some specific areas.

As you know, we have had a long-standing policy of actively encouraging minority students to come to Stanford. You may also be aware that the number of black students in this year's first-year class is lower than in the last several years--a matter of serious concern to us all. What you may not know is that John Kaplan, who is chair of the Admissions Committee, and Peggy Russell, have been devoting extraordinary energy and resources to remedying this problem. We are out on the road recruiting more energetically than in any recent year. We are optimistic; but we won't know for sure until the spring.

Last year, the Multicultural Council requested that the Law School sponsor a lecture series devoted to speakers from underrepresented groups. After discussion with the Council, we decided instead to have a single series, featuring distinguished lecturers from all groups. It is this Faculty Lecture Series that brought Jennifer Hochschild to the Law School two weeks ago, that brings Derrick Bell to the Law School today, and that will bring Patricia Williams, Ronald Dworkin, and Frank Easterbrook, among others, over the coming months. I believe that including women and minority speakers in a single lecture series, rather than having a separate series, sends the correct message--that women and minority scholars are significant contributors to the mainstream of legal scholarship.

As you know, I have formed a task force on the Quality of Intellectual Life at Stanford Law School, composed of student and faculty members. Among the issues we intend to explore is the experience of "silencing" that was the subject of a student-initiated panel last year. For it is indeed a serious problem if minority,

women, gay, lesbian, or any other students feel excluded from the Law School's intellectual community. Over the next several months, the Task Force will meet with individuals, organizations, and perhaps the student body as a whole, to understand this and other problems more fully and to consider remedies for them.

I have little to add to the recent public discussions about the Career Services Office's Non-Discrimination Policy. The Placement Committee is actively at work designing an enforcement mechanism. Among the procedures it is considering is one submitted by the Multicultural Council. Within several weeks, a draft of a proposed policy should be available to the Law School community for review and comments. We will have an enforcement mechanism in place by the end of February, when first-year interviews begin.

I do want to add that even as the Policy now stands, without a formal enforcement mechanism, it has not been ineffective. The "guidelines for a nondiscriminatory interview" appended to the Policy appear to have had a significant educational effect on law firms and to have resulted in interviewers asking fewer offensive and improper questions than they might have otherwise. There have been few complaints, especially considering the many thousands of interviews conducted each year. For the individual who encounters discrimination, however, any reason for complaint is one too many. I therefore fully agree that we should put teeth in the policy, as we are now about to do.

It is appropriate to say a word here about the Law School's commitment to the student-initiated East Palo Alto Community Law Project. The Law Project assists a desperately poor minority community and has become a central part of the curriculum for students who hope to pursue careers working

with disadvantaged clients and communities. The Law School shall continue to provide substantial resources to the Law Project and to support faculty who are working to strengthen our curriculum in law for disadvantaged groups.

Let me turn to the question of faculty appointments, which I know has been the subject of much contention. While individuals may differ about particular cases, the Law School clearly is committed to affirmative action. To the extent that numbers matter--and although they're only a part of the picture, they do matter--we have reason neither for great shame nor for great pride. Our regular faculty has five women, two Blacks, two Latinos, and we have an Asian-American visiting professor--a higher proportion than most law schools comparable to Stanford. Although I do not believe in quotas, I agree that we have farther to go.

The Law School is unequivocally committed to the affirmative action search. This has been central to the Appointments Committee's agenda for many years, and is something that the Committee--which itself is a broadly representative group--is pursuing with extraordinary vigor this year. Because of our society's long histories of discrimination, the numbers of women, and especially of minority, law teachers are not large--though fortunately they are growing. In looking for visitors as well as new permanent faculty, the Committee is searching widely for qualified minority and women candidates.

Faculty members do differ in their views of what counts as "qualified" and how much risk the School should take in hiring individuals who do not meet the "standard" qualifications (for example, who have not graduated high in their classes at a major law school or published significant works of scholarship). These differences within a diverse faculty should not

be surprising when there is lack of consensus throughout American society and when the Supreme Court itself has not been able to agree on the legality of certain forms of affirmative action. My own view, expressed in the forum on hiring last year, is that we should be open to examining our assumptions about what counts as "qualifications," and in particular to understanding the qualities that the members of under-represented groups may contribute to the institution. But I should say that I would be cautious in departing very far from conventional standards of excellence.

Be that as it may, all the faculty we have hired to date do meet conventional standards of excellence--and then some. There are other members of minority groups and women out there who do as well, and we're actively seeking them. Though it is highly likely that we will add more women and minorities to the faculty during the next several years, I can only commit to an imaginative, aggressive, and good faith search process, and not to particular results. One reason for this is that we have some particular curricular needs to fill--most desperately in corporate law, tax, commercial law, and bankruptcy. These fields have not attracted minority and women law teachers to nearly the same extent as certain other areas where our needs are not as strong, but we are actively searching.

The Multicultural Council has proposed that, through a combination of regular faculty members and visitors, we afford every first-year student the opportunity to be taught by both a woman and the member of a minority group. I concur with what I understand to be the purpose underlying this proposal: A Stanford lawyer's education should include viewing the law and legal system from a variety of perspectives, as well as learning to interact with professionals who are of different sexes and races from their own.

While individual women and minority group members certainly differ widely in their views, the Multicultural Council's proposal is likely to expand the range of perspectives to which our students are exposed.

As matters now stand, all Stanford law students have the opportunity to be taught by both minority and women faculty during the course of their legal educations. Nonetheless, there is much to be said for focusing on the first year, which is the most formative year of legal education. I and the Associate Dean have made this a serious goal. We were over half way toward meeting it this year, and there is a good chance that we will come much closer in 1988-89. But it is literally impossible to guarantee that we can achieve it fully in any given year. For example, it depends on which faculty members are on leave and on the availability of visitors in a particular year.

Faculty hiring is a subject on which we need to have more discussion within the Law School community. A good place to begin would be an open meeting in which some members of the faculty and administration describe the process and standards by which we consider potential visitors and permanent faculty members.

Finally, I want to mention an innovative step the Law School is considering to increase the numbers of well-prepared minority scholars in law teaching. The Committee on Graduate Studies has recommended that we begin a small graduate fellowship program designed for students who plan to go into law teaching, and especially for members of minorities and other groups that have traditionally been underrepresented in the legal academy. Not only would the graduate fellowships provide a career boost for participants in the program; but, because we expect each fellow to offer a small course or

seminar at the Law School, they would give more of our students the opportunity to learn from teachers of different races and ethnic origins.

What next, then? I hope that there is a consensus about the general goals and approaches I have outlined, but I expect some disagreements over particulars and over the speed with which more progress must occur. We are fortunate that the Multicultural Council is actively monitoring the Law School's achievements and reminding us of perceived inadequacies. An institution needs this sort of pressure to keep it from becoming smug and inertial, and I welcome a continuing dialogue with the Council and other concerned students.

Let me close by repeating my apology and expression of gratitude to Derrick Bell. I sincerely apologize for the way we treated you, Professor Bell, when you were our guest during the Spring of 1986. And, though I deeply regret that it came at your expense, I appreciate the opportunity this experience gave us to learn more about ourselves and to work toward becoming a place that truly belongs to all of our students, faculty, and staff--whatever their backgrounds, beliefs, or ways of being.

Dean Brest's statement refers to a proposal of the law school's Multicultural Council. In a statement delivered by Stanford law student Laura Allen, the Multicultural Council criticized the legal education establishment for failing to recognize the value of minority and feminist scholarship, and it called for hiring goals that exceeded Dean Brest's statement of institutional commitment to diversity:

Statement of the Multicultural Council

Standards

When we--women, people of color, lesbians, and gays--read And We Are Not Saved, Derrick Bell's latest book, we recognize brilliance. We see in it an integration of legal analysis and social insight. We see the rupture of hackneyed standards of legal writing, not simply to be different, but to better explain the origins and effects of law.

We see this, and yet too many in the Stanford law community do not. People like Robin West, Patricia Williams, Catherine MacKinnon, and Derrick Bell are viewed by too many on this faculty and throughout legal academia as just not good enough.

Especially strange is that not only conservatives, but also liberals and critical legal studies scholars regularly dismiss genuinely creative and pathbreaking work.

Last year the Coalition for Affirmative Action in Law Faculty Hiring called for the Dean and faculty to produce a discussion paper on standards for hiring. This year the Multicultural Council continues to call not just for panel discussions and trading of positions, but a serious definition by the faculty of the elements of outstanding scholarship.

We continue to insist on this discussion, because we believe, that when reduced to specifics--specific analysis of the elements of successful or unsuccessful work--this discussion can only reveal that this faculty's own limitations in life experience and social vision color its academic judgment.

We do not say that you faculty are expert legal scholars who knowingly discriminate against blacks or women, although in some cases that may be true. Rather we say that

when you read a piece by Bell or West or Williams, the experience which they insist on integrating stylistically and substantively does not resonate with you.

The sensuous relationship between questions of race or sex and law usually do not strike you as particularly relevant or sufficiently complex and important, so you dismiss the work as unsophisticated or trivial.

The law is not just a matrix to manipulate or deconstruct. It is a powerful force in our social experience. The best jurisprudence--particularly the new feminist and black and lesbian and gay jurisprudence--grapples actively with this fact.

The best of this work tries new voices which may speak more clearly to the relationship between intellectuality and emotion, legal structure and social disorder, individuality and community. It is ruthless in its critique not only of normal academic convention but also of typical academic focus; it explores areas outside.

Tenured faculty who dominate hiring standards, like the employers who determine standards for law firm hiring, are nothing if not supremely self confident of their instincts.

A principal goal of ours is to shake that self confidence through ongoing discussion. At the same time, we do not accept dialogue as a replacement for real action. The hiring standards we criticize have resulted in an imbalanced faculty, and this imbalance must be altered immediately.

Proposals for Action, Again

We believe that important elements of the faculty's hiring standards are themselves residual byproducts of societal and institutional racism. We accept the assertions of Dean Brest that the Law

School is committed to the notion of a diverse faculty.

But the problem is one of structural and institutional racism, sexism, and homophobia, and it will be adequately addressed only by a structural and institutional response. Such an institutional response is outlined in the proposal on hiring women and minorities approved by the student organizations composing the Multicultural Council in the spring of 1987 and submitted to the Law School administration at that time.

The centerpiece of the proposal presently before the Law School administration is a formula for ensuring that enough women and minority professors will be hired to guarantee that this institution's faculty is sufficiently representative of these groups.

Under this formula the Law School would agree to comply with certain minimum hiring goals. First, sufficient women and minority faculty would be hired to ensure that all students entering Stanford Law School in the fall of 1988 would be taught during their first year by at least one woman and one minority professor.

Second, of the six current open and funded faculty positions, at least four of the six would be filled by women and minorities (at least two women, two minorities, and one woman of color).

Third, after the current six positions are filled, for every subsequent six openings, two women professors and two minority professors should be appointed.

It is only a formula such as the one outlined above which will guarantee that the composition of the Law School's faculty will no longer reflect the institutional racism which became so painfully apparent during the visit of Professor Bell in 1986.

And a guarantee is what is required. The interests and needs of women, people of color, and gay and

lesbian students at Stanford Law School must not be left to the vagaries of positive intentions and good faith efforts.

Commitments framed in such terms in the past have not provided us with full-fledged membership in the community but have instead produced progress which, while welcome, has been unacceptably slow. We now insist on moving from the realm of good faith intentions to the reality of concrete institutional assurances in the form of hiring goals.

This insistence on concrete institutional assurances extends to the development of enforcement mechanisms for the Law School's anti-discrimination policy with regard to recruiting. We realize that Dean Brest has committed himself to enacting an enforcement policy in time for the spring interviewing season.

We also wish to reiterate that the purpose of this policy is to ensure that firms which do engage in discriminatory activity during interviews will be sanctioned as a means of protecting students from this unacceptable behavior.

The details of this enforcement mechanism, none of which Dean Brest has yet articulated, will be judged by the extent to which they fulfill this goal. The Multicultural Council has already recommended a detailed enforcement procedure which we strongly urge the Law School to accept.

Our Commitment

The work of the Multicultural Council on issues such as those discussed above demonstrates a commitment to build on the gains that have been made at Stanford Law School until we achieve an institution which provides a truly hospitable environment and a truly diverse educational experience for all students.

We are all members of a community working within the structure

of an institution which reflects the subtle and not so subtle racism, sexism, and homophobia of our society as a whole.

We all owe a duty to Derrick Bell to ensure that his painful experience here at Stanford was not in vain and to guarantee that those who follow in his footsteps will not face the same institutional racism and prejudice he confronted.

We have an obligation to the minority law students whom the Law school is attempting to attract to build an institution in which they fully appreciate. Finally, we have a responsibility to each other to fight racism, sexism, and homophobia in all its manifestations at this Law School and in society so that we may work and study together as a community without the taint of prejudice and inequality.

COVER MEMORIAL CONFERENCE

Sixty-four students from 18 law schools across the nation attended SALT's first annual Robert Cover Memorial Public Interest Conference March 4-6 in Peterborough, New Hampshire. A faculty composed of law professors and public interest litigators sparked lively student discussion on topics ranging from capital punishment to law school curriculum and teaching techniques. The next issue of the Equalizer will include a more complete report on the conference from the perspectives of both faculty planners and student participants.

SALT Clearinghouse

As a new feature of the Equalizer, SALT will use this newsletter as a means of exchanging information among SALT members about studies, resources, and general items of concern. In this issue, SALT member Jayne Barnard announces the availability of resources on gender discrimination and sexual harassment. In addition, SALT and the A.A.L.S. Section on Women in Legal Education solicit information on problems of academic freedom and on the climate for women on law faculties.

Resources

The Faculty Womens' Caucus at the College of William and Mary has been assembling legal and related materials concerning gender discrimination in higher education. To receive a description of recent additions to the collection, write to Professor Jayne Barnard, College of William and Mary, Marshall-Wythe School of Law, Williamsburg, Virginia 23185.

Studies

A CHILLY CLIMATE FOR WOMEN LAW FACULTY:

What are the problems, how pervasive are they, and what can be done? Several members of the AALS Section on Women in Legal Education are studying the anecdotal information (as well as what is available statistically) about how women are being treated on law faculties.

We are trying to gather as much anecdotal and other information as possible on the following: experiences in tenure, promotion, and other review; handling of child care issues; attitudes towards women in recruiting; social treatment of women

faculty by colleagues; tolerance of or participation in subtle forms of discrimination such as graffiti, etc. by the institution; attitudes towards feminist teaching and scholarship; special problems of lesbian women; special problems of minority women; sexual harassment; special problems of women administrators; and any other experiences you can relate that reflect the climate for women law faculty.

Please send any anecdotal information or statistical information to: Laura F. Rothstein, Professor of Law, University of Houston Law Center, 4800 Calhoun, Houston, TX 77004 (713) 749-4816. In order to evaluate the information to have a report of the findings in the fall newsletter and for the next annual AALS conference, it would help if the information could be received by July 1, 1988. Other members of the study group are Karen Czapanskiy (Maryland), Lisa Lerman (Catholic), Toni Robinson (Bridgeport), Bari Burke (Montana), Teree Foster (Oklahoma; visiting at Ohio State), Judi Mauti (Oklahoma), Kathy Schwab (Loyola, New Orleans), Natalie Clark (Northern Illinois) and Taunya Banks (Tulsa).

ACADEMIC FREEDOM:

In its December 1987 teaching conference at N.Y.U., SALT examined problems of academic freedom in legal education. At the request of participants at the conference, the SALT Board of Governors is considering the feasibility of preparing a formal study of problems of academic freedom in American law schools. To assist in preparing such a study and in evaluating its feasibility, SALT solicits information about infringements upon academic freedom experienced by faculty members.

Because problems of academic freedom do not normally lend themselves to statistical analysis, SALT is initially seeking anecdotal informa-

tion. It encourages contributors to consider the broad range of problems that may implicate concerns of academic freedom. Beyond the obvious example of tenure denial based on the political content of one's scholarship or teaching, administrators and faculty may more subtly create an environment that discourages the free expression of ideas at faculty meetings or even at faculty social gatherings.

If you have anecdotal information on this topic, please send it to the editor of the Equalizer at the return address of this mailing. SALT asks you to sign your statement and to submit your address and telephone number to the editor. You may, however, request that SALT keep all or part of your submission confidential under several options. If you desire complete confidentiality, SALT Governors and committee members will examine your information for purposes of evaluating the feasibility of its proposed study, but it will not publish even a summary of your information, either in this newsletter or in any report that may result from this project. If you desire partial confidentiality, SALT may publish your information or a summary of it, either in this newsletter or in a separate report or both; however, it will withhold specified identifying information, such as names of faculty and law school, to protect anonymity. If you waive confidentiality, SALT may publish your information without restriction. Naturally, SALT and its readers will benefit most from contributions that do not request confidentiality; however, it understands that the very necessity of this study suggests the need for discretion in some cases.

SALT also solicits any suggestions for proceeding with the study or other expressions of willingness to help. Send your ideas to the editor of this newsletter.



SALT Teaching Awards Banquet for Howard Lesnick

Professor Howard Lesnick receives the SALT 1988 Teaching and Service Award at the January 1988 A.A.L.S. Annual Meeting. Looking on are outgoing SALT President Emma Jordan and new SALT President Charles Lawrence. Excerpts from the evening's sometimes lighthearted, sometimes emotional presentation will appear in the next edition of the Equalizer.

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