

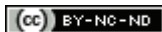
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THE STORY BEHIND A LETTER IN SUPPORT OF PROFESSOR DERRICK BELL

Cheryl Nelson Butler, Sherrilyn Ifill, Suzette Malveaux, Margaret E. Montoya, Natsu Taylor Saito, Nareissa L. Smith and Tanya Washington*

In 1990, a young Barack Obama, then a student at Harvard Law School and president of the Harvard Law Review, publicly and enthusiastically hugged Professor Derrick Bell during a student demonstration in support of Professor Bell.¹ In March 2012, members of the far-right media such as Sean Hannity, *TheBlaze.com*, and *Breitbart.com* touted a video of this hug as “bombshell” news.² These outlets claimed the video would finally subject Obama to the vetting he had

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¹ Andrew Golis, *The Story Behind the Obama Law School Speech Video*, FRONTLINE (Mar. 7, 2012), <http://www.pbs.org/wgbh/pages/frontline/government-elections-politics/the-story-behind-the-obama-law-school-speech-video/>.

² See Ben Shapiro, *OBAMA: ‘Open up Your Hearts and Your Minds’ to Racist Prof*, BREITBART (Mar. 7, 2012), <http://www.breitbart.com/Big-Government/2012/03/07/buzzfeed-selectively-edits-obama-tape> (article stating that video of Bell and Obama would be “damaging” to Obama’s campaign); *Hannity Transcript: Exclusive: Breitbart.com Unveils Unedited Video of Obama and Radical Professor*, FOX NEWS (Mar. 7, 2012), <http://www.foxnews.com/on-air/hannity/2012/03/08/exclusive-breitbartcom-unveils-unedited-video-obama-and-radical-professor> (Sean Hannity noting that the video could be “embarrassing” to Obama); Mytheos Holt, *Revealed: The Radical Racial Ideas of the Prof. Obama Raves About in New Harvard Video*, BLAZE (Mar. 7, 2012), <http://www.theblaze.com/stories/2012/03/07/revealed-the-radical-racial-ideas-of-the-prof-obama-raves-about-in-new-harvard-video/>.

escaped in the previous presidential election and expose his radical roots.³ In response to these attacks, a group of lawyers—all women of color—wrote a letter rebutting the attacks on Professor Bell that ensued after the airing of the video.⁴

We are honored that the letter we co-authored has been selected to appear in a symposium that memorializes and venerates Professor Bell. Our introduction to the letter will explain who Professor Bell is, why Barack Obama hugged him during the protest, what the conservative right said about him after his death, why we wrote the letter, and why more than 300 law professors felt compelled to sign the letter that we drafted in response to those attacks.

WHO IS PROFESSOR BELL?

Professor Derrick A. Bell, Jr. had a long and proud history of disturbing authority. He is widely noted as one of the founders of Critical Race Theory.⁵ His scholarship on race was not only a direct challenge to the traditionally conservative

³ See Madeleine Morgenstern, *First Glimpse of Awaited Obama Harvard Video*, THE BLAZE (Mar. 7, 2012), <http://www.theblaze.com/stories/2012/03/07/want-to-see-new-video-of-barack-obama-from-his-harvard-days/> (blog post includes the Obama-Bell video and explains how it was obtained and broadcast). See also Tom White, *Breitbart Videos on Hannity TONIGHT! The Vetting—Obama Embrases [sic] Radical Professor*, VIRGINIA RIGHT! (Mar. 7, 2012), <http://www.varight.com/news/breitbart-videos-on-hannity-tonight-the-vetting-obama-embrases-radical-professor/> (explaining that at CPAC 2012 (Conservative Political Action Conference, the annual meeting of conservative activists) the late Andrew Breitbart promised to release shocking videos of Obama which exposed his radical beliefs).

⁴ See Jeremy Leaming, *Law Profs and Attorneys Urge Colleagues to Join Them in Supporting and Honoring Work of Derrick Bell*, AMERICAN CONSTITUTION SOCIETY (Oct. 5, 2012), <http://www.acslaw.org/acsblog/all/open-letter>.

⁵ See, e.g., Kimberlé Crenshaw, *Introduction*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT xiii, xx (Kimberlé Crenshaw et al. eds., 1996) (“Bell provided some of the earliest theoretical alternatives to the dominant civil rights vision . . .”); MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 170 (3d ed. 2013) (“An individual often cited as a founder of Critical Race Theory is the late Derrick Bell, an African-American law professor whose career was marked by protest, activism, and innovation in scholarship.”); Richard Delgado, *Introduction*, in CRITICAL RACE THEORY: THE CUTTING EDGE xii, xiii (Richard Delgado ed., 1995) (“Critical Race Theory sprang up in the mid-1970s with the early work of Derrick Bell (an African-American) and Alan Freeman (a white), both of whom were deeply distressed over the slow pace of racial reform in the United States); Fred A. Bernstein, *Derrick Bell, Law Professor and Rights Advocate, Dies at 80*, N.Y. TIMES, Oct. 6, 2011, at A18, available at <http://www.nytimes.com/2011/10/06/us/derrick-bell-pioneering-harvard-law-professor-dies-at-80.html> (noting that Professor Bell was a “pioneer of critical race theory”); Caroline M. McKay, *Derrick Bell, First Tenured Black Professor at HLS, Dies*, HARV. CRIMSON (Oct. 7, 2001), <http://www.thecrimson.com/article/2011/10/7/law-school-bell-black/> (noting that Professor Bell was “credited with developing the Critical Race Theory”).

legal academy, but also to the more liberal bastions within the academy, such as the Critical Legal Studies movement.⁶ His writings about the role of race in American law have made him one of the most prominent legal scholars of a generation.⁷

However, Professor Bell did not merely write about racial injustices. He was willing to take risks to promote racial equality and ideological balance in the legal academy. In 1980, he resigned his deanship at the University of Oregon School of Law after the faculty refused to honor his recommendation that an Asian-American woman, Pat K. Chew, be hired.⁸ In 1987, after returning to Harvard, Professor Bell staged a sit-in to protest the Law School's failure to grant tenure to two white professors, Claire Dalton and David Trubek, whose work was aligned with the Critical Legal Studies movement.⁹

WHEN PRESIDENT OBAMA HUGGED PROFESSOR BELL

In 1990, Professor Bell took an unpaid leave of absence to protest the fact that not a single African-American woman served on the Harvard Law faculty.¹⁰ His protest was sparked, in large part, by Harvard's failure to grant tenure to Regina Austin, an imminently qualified African-American female.¹¹ Simultaneously, the HLS student body had begun to hold demonstrations in support of greater diversity

⁶ See Crenshaw, *supra* note 5, at xviii, xxii (explaining the Critical Legal Studies movement's challenge to traditional legal scholarship, while also noting the failure of many in the movement to include race in their legal critiques).

⁷ Although this statement is the reasoned opinion of the authors of this letter, others agree. In a *New York Times* review of DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* (1992), reviewer Linda Greenhouse referred to Professor Bell as "one of the country's most prominent scholars of race and the law." Linda Greenhouse, *The End of Racism, and Other Fables*, N.Y. TIMES, Sept. 20, 1992, <http://www.nytimes.com/1992/09/20/books/the-end-of-racism-and-other-fables.html>.

⁸ DERRICK A. BELL, *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTOR* 45–46 (1994). Please note that Professor Chew now holds an endowed chair at the University of Pittsburgh School of Law and is an internationally known legal scholar. See *Pat K. Chew*, U. OF PITT. SCH. OF L., <http://www.law.pitt.edu/people/full-time-faculty/pat-k-chew> (last visited Mar. 29, 2014).

⁹ See BELL, *supra* note 8, at 106–08. See also Jennifer A. Kingson, *Harvard Tenure Battle Puts 'Critical Legal Studies' on Trial*, N.Y. TIMES, Aug. 30, 1987, <http://www.nytimes.com/1987/08/30/weekinreview/harvard-tenure-battle-puts-critical-legal-studies-on-trial.html>.

¹⁰ See BELL, *supra* note 8, at 52, 56.

¹¹ See *id.* at 50–54. Professor Austin now holds an endowed chair at the University of Pennsylvania Law School. See *Regina Austin*, U. OF PA. L. SCH., <https://www.law.upenn.edu/cf/faculty/raustin/> (last visited Mar. 29, 2014).

on the faculty.¹² The students supported Professor Bell in his protest and held a rally that year as a show of that support.

At the 1990 demonstration, Barack Obama said the following while introducing Professor Bell:

I remember that the black law students had organized an orientation for the first-year students. And one of the persons who spoke at that orientation was professor Bell. And I remember him sauntering up to the front and not giving us a lecture but engaging us in a conversation and speaking the truth and telling us the [inaudible] to learn at this place that I've carried with me ever since. Now how did this one man do all this? How has he accomplished all this? He hasn't done it simply by his good looks and easy charm. Although he has both in ample measure. He hasn't done it simply because of the excellence of his scholarship, although his scholarship has opened up new vistas and new horizons and changed the standards of what legal writing is about. Open up your hearts and minds to the words of Professor Derrick Bell.¹³

The two men then warmly hugged.¹⁴

WHAT DID THE DETRACTORS SAY?

Twenty-one years later, a video of the interaction between Professor Bell and the future president surfaced in conservative circles. Once the video was released, Professor Bell was viciously attacked in the conservative media as racist and radical. The first line of attack attempted to compare Professor Bell to the Reverend Jeremiah Wright, the allegedly radical minister of Trinity United Church of Christ, the Obama family's Chicago church.¹⁵ Wright became a significant problem for candidate Obama in the 2008 campaign because of allegedly unpatriotic and racially motivated remarks made in several of Wright's sermons.¹⁶ An article on

¹² See BELL, *supra* note 8, at 57, 60.

¹³ Dale W. Eisinger, *Obama Speech: President Praises Diversity Activist Derrick Bell at 1990 Harvard Protest [VIDEO] [TRANSCRIPT]*, INT'L BUS. TIMES (Mar. 7, 2012), <http://www.ibtimes.com/obama-speech-president-praises-diversity-activist-derrick-bell-1990-harvard-protest-video-transcript>.

¹⁴ See *id.* (The video shows the embrace.).

¹⁵ For more information on Rev. Jeremiah Wright, see *Jeremiah Wright*, BILL MOYERS J. (Apr. 25, 2008), <http://www.pbs.org/moyers/journal/04252008/profile.html>.

¹⁶ See, e.g., Alex Mooney, *Controversial Minister off Obama's Campaign*, CNN (Mar. 15, 2008), <http://edition.cnn.com/2008/POLITICS/03/14/obama.minister/index.html>.

TheBlaze.com described Professor Bell as a racial “radical” whose “perspective on the law was eerily similar to Jeremiah Wright’s perspective on God and His relationship to America.”¹⁷ On the March 6, 2012 episode of Fox News’ *Hannity* program, *Breitbart.com*’s editor-in-chief described Professor Bell as the “Jeremiah Wright of academia.”¹⁸ Critics argued that Professor Bell was even worse than Rev. Wright because he had influenced Obama’s intellectual development.¹⁹

The second attempted campaign alleged that Professor Bell was a racist. *Breitbart.com* posted an article stating that Professor Bell “espouse[d] racial ideas deeply at odds with American values” and was a person “who promoted a racially divisive America.”²⁰ On the March 8, 2012 broadcast of the *Hannity* program, former Alaska governor Sarah Palin opined that Professor Bell was a “radical college racist professor [sic].”²¹ Sean Hannity and others also derided Professor Bell as anti-Semitic for defending Louis Farrakhan.²²

While Hannity, Palin, and others did their best to attack Professor Bell, his widow, Janet Dewart Bell, appeared on MSNBC’s *The Ed Show* on March 12, 2012.²³ When asked about the accusations that her husband was a racist, she stated:

¹⁷ Mytheos Holt, *Revealed: The Radical Racial Ideas of the Prof. Obama Raves About in New Harvard Video*, BLAZE (Mar. 7, 2012), <http://www.theblaze.com/stories/2012/03/07/revealed-the-radical-racial-ideas-of-the-prof-obama-raves-about-in-new-harvard-video/>.

¹⁸ *Hannity Transcript: Exclusive: Breitbart.com Unveils Unedited Video of Obama and Radical Professor*, FOX NEWS (Mar. 7, 2012), <http://www.foxnews.com/on-air/hannity/2012/03/08/exclusive-breitbartcom-unveils-unedited-video-obama-and-radical-professor>.

¹⁹ See Ellen, *Hannity Still Using Discredited Derrick Bell Video To Attack Obama As a Racist*, NEWSHOUNDS (Mar. 13, 2012), http://www.newshounds.us/hannity_still_using_discredited_derrick_bell_video_to_attack_obama_as_a_racist_031132012. For an analysis of Barack Obama’s 1994 seminar on race at the University of Chicago, see Stacey Marlies Gahagan & Alfred L. Brophy, *Reading Professor Obama: Race and the American Constitutional Tradition*, 75 U. PITT. L. REV. 495 (Spring 2014). The authors mention the attention given to the Obama-Bell relationship and conclude that Obama’s “readings have no overt endorsement of Derrick Bell, Critical Race Theory (“CRT”), or Bell’s Interest Convergence theory.” *Id.* at 1.

²⁰ J. Christian Adams, *Obama’s Beloved Law Professor: Derrick Bell*, BREITBART (Mar. 8, 2012), <http://www.breitbart.com/Big-Government/2012/03/08/obamas-beloved-law-professor-derrick-bell>.

²¹ *Hannity Transcript: Palin: I Don’t Know How Obama Can Sleep at Night With Maher’s ‘Dirty Money,’* FOX NEWS (Mar. 9, 2012), <http://www.foxnews.com/on-air/hannity/2012/03/09/palin-i-dont-know-how-obama-can-sleep-night-mahers-dirty-money>.

²² *Hannity Transcript: The Words of Derrick Bell*, FOX NEWS (Mar. 13, 2012), <http://nation.foxnews.com/derrick-bell/2012/03/13/words-derrick-bell>.

²³ *The Ed Show for Monday, March 12, 2012*, NBC NEWS (Mar. 12, 2012), http://www.nbcnews.com/id/46720403/ns/msnbc-the_ed_show/t/ed-show-monday-march/.

My husband was a war veteran. And he was a patriot. And what he tried to do is make this country stand up to the ideals that he believed in. He believed it with his whole heart. Derrick thought that the ideals of fair play, social justice, equality, opportunity, those are things that should be shared. Everybody should get a shot at the American dream. That is what Derrick Bell was about.²⁴

Other persons and organizations also spoke in support of Professor Bell at this time.²⁵

WHY DID WE WRITE THE LETTER?

We wrote the letter that follows to give voice to the outrage we felt when Professor Bell was singled out for vicious and spurious attacks. The reasons for the outrage are many, but begin with the fact that the right-wing allegations that Professor Bell was a racist were both completely unfounded and deeply disrespectful.²⁶ To be certain, Professor Bell wrote about racism. But Professor Bell, far from being a racist, did his utmost to dismantle America's remaining institutional, personal, and societal racism and to encourage others to do so. Although he acknowledged that the road would be difficult, and perhaps even impossible given the permanence of racism, he encouraged everyone to continue the struggle.²⁷ Conservatives likely found little comfort in Professor Bell's frank scholarship. It's likely that they would have preferred a more hopeful message.

²⁴ *Id.*

²⁵ Professor Charles Ogletree gave a radio interview on the *Alan Colmes Radio Show* to rebut the rightwing attacks. See *Charles Ogletree Sets the Record Straight on Derrick Bell*, LIBERALAND (Mar. 10, 2012), <http://www.alan.com/2012/03/10/charles-ogletree-sets-the-record-straight-on-derrick-bell/>. (The transcript of this interview is not available.) Benjamin Jealous, then President of the NAACP, also voiced his objections by stating that if Hannity and others had spoken to Professor Bell, they would have seen "somebody of tremendous compassion, of tremendous intelligence and of tremendous patriotism." *NAACP Slams Fox News Attack on Obama for Praising, Hugging Pioneering Black Prof. Derrick Bell*, DEMOCRACY NOW! (Mar. 13, 2012), http://www.democracynow.org/2012/3/13/naacp_slams_fox_news_attack_on. The American Constitution Society's blog noted that Professor Bell was "no radical" and that Obama should be "proud of Bell and his work." Jeremy Leaming, *Conservative Pundits Strive to Tarnish Derrick Bell's Trailblazing Work to Advance Equality*, AMERICAN CONSTITUTION SOCIETY FOR LAW AND POLICY (Mar. 8, 2012), <http://www.acslaw.org/acsblog/conservative-pundits-strive-to-tarnish-derrick-bell-s-trailblazing-work-to-advance-equality>.

²⁶ See, e.g., Ben Shapiro, *Critical Race Theory Explained*, BREITBART (Mar. 11, 2012), <http://www.breitbart.com/Big-Government/2012/03/11/What%20Is%20Critical%20Race%20Theory>.

²⁷ See BELL, *supra* note 8, *passim*.

However, calling a distinguished scholar a “racist” is not a fair response to this disappointment.

Second, our outrage stems from our respect for Professor Bell as a *person*. Those who knew him—even briefly—were able to share his gentle voice, warm chuckle, and genuine kindness. As a person who frequently confronted authority, Professor Bell was more than capable of handling ideological disagreements. However, the criticisms of Professor Bell offered by the right were so devoid of merit as to go beyond critique of the scholar, Professor Derrick A. Bell, Jr., and instead attack Derrick Bell, the husband, father, teacher, colleague, mentor, and friend. While ideological disagreements should always be welcomed, personal attacks should be given no quarter. This maxim is especially true when utterly specious attacks are made after a person has died and can no longer defend himself.

Finally, the conservative protests vilified the best part of Professor’s Bell’s legacy—his confrontation of authority. It is quite ironic that the “bombshell” video produced by the right was a video made during Professor Bell’s protest against Harvard’s refusal to hire any women of color for tenure-track positions. Through his many protests, Professor Bell taught us all several things. First, he taught us that the legal academy is inert when people of color, women of color, and critical voices are excluded. Second, he taught us that each of us can choose to confront authority, or we can acquiesce. Sometimes, it will not be enough to notice, complain about, or even write about an injustice. Sometimes, life requires that we take a stand. But finally, and best of all, Professor Bell reminded us that one person’s actions can make a difference.

For these reasons and so many others, we wrote the letter that follows and over 300 professors signed the letter for similar reasons. We hope that the letter is a fitting tribute to one who risked so much—at great personal costs—to knock down barriers blocking the road to justice wherever he found them.

[The following is a republication of the open letter written by Professor Butler et al., in support of Professor Derrick Bell. The full list of signatories, too numerous to include here, can be found at: <http://www.acslaw.org/acsblog/all/open-letter—Eds.>]

An Open Letter from Law Professors and Lawyers in Support of Professor Derrick Bell

As lawyers and law professors whose work and lives have been enriched by the late Professor Derrick A. Bell, Jr., we add our voices to the many who have paid tribute to him since his passing in October 2011.

Professor Bell's contributions as a civil rights attorney, prolific legal scholar, and dedicated teacher have been noted in memorials held across the country. Born in 1930, Derrick Bell was the first in his family to attend college. After serving in the U.S. Air Force, he graduated from the University of Pittsburgh law school, where he was the only African-American student in his class and was elected as an associate editor-in-chief of the Law Review.

Throughout his career, Professor Bell labored to break race and gender barriers that remain pervasive in American society. In the late 1950's, Derrick Bell became one of the few Black attorneys at the Civil Rights Division of the Department of Justice, but was forced out because he refused to give up his membership in the National Association for the Advancement of Colored People (NAACP). He was later hired by Thurgood Marshall and spent six years with the NAACP Legal Defense and Educational Fund, overseeing hundreds of desegregation cases.

In 1969, Derrick Bell was hired by Harvard Law School and in 1971 he became Harvard's first tenured Black law professor. As one of the first Black deans of a U.S. law school, from 1980–1986 he served as Dean of the University of Oregon Law School, a position from which he resigned because the faculty refused to hire an Asian-American woman. Upon returning to Harvard Law School, Professor Bell supported the student protests over the law school's lack of African-American women faculty, eventually leaving Harvard for that reason. His dignified protest and personal sacrifice made the need to integrate legal education a national issue and changed the face of the legal academy and the law school classroom to include people of color. For the next two decades, until his death, he continued to write and teach at New York University School of Law.

Professor Bell was passionate and creative in the classroom, an energetic and devoted teacher and mentor through the last weeks of his life. As New York University School of Law Dean Richard Revesz wrote in his recent tribute, "Derrick instilled in his students a deep sense of professional and ethical responsibility and encouraged them to confront complex issues of race and

difference.” Professor Bell authored *Race, Racism and American Law*, a popular law school textbook now in its sixth edition, and many other groundbreaking books and articles. His unflinching articulation of the intertwining of race and law in American history—as well as his recognition of the importance of incorporating lived experience into legal scholarship—laid the foundation for the now widely taught subject of critical race theory. His creative use of narratives, such as his allegories, created opportunities for the cultivation of dissent through the airing and sharing of differing experiences and views.

Professor Bell was an advocate for women’s rights, gay rights, and disability rights long before these were popular causes. Most notably, perhaps, Professor Bell did all of this with great love. He was a gentle, soft-spoken, deeply spiritual man who showed us that we retain our humanity through our relationships with each other, even those with whom we disagree. He not only stood on principle and spoke the truth as he saw it, but encouraged everyone to speak his or her truth. And he would support and defend those who were attacked for acting with the courage of their convictions. Professor Bell was also a committed family man—a devoted husband and proud father of three sons. He mentored and embraced hundreds of others, from all walks of life.

In his honor, we too act on the courage of our convictions. We invite lawyers and law professors throughout the nation to sign this Open Letter in support of Professor Bell’s legacy as a highly respected colleague, advocate and mentor. We disavow any efforts to discredit Professor Bell, to malign his character, or to mischaracterize his contributions. We recognize Derrick Bell as a great champion of equality for all Americans. We honor his legacy and the example he provided of a life fully and courageously lived.

Our signatures below express solidarity with an eminent scholar who advanced legal thinking, teaching and advocacy. We encourage those who read this letter to continue Professor Bell’s quest for social justice and equality. To learn more about our remarkable colleague, to read additional tributes, and to support his family’s request to endow the Derrick Bell Lecture Series on Race in American Society at New York University School of Law, please visit www.professorderrickbell.com.

Signed by:

Lisa Boykin, Esq.

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Kathleen Neal Cleaver, Emory University School of Law

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