ON *SURVIVING LEGAL DE-EDUCATION*: AN ALLEGORY* FOR A RENAISSANCE** IN LEGAL EDUCATION

* Use of an allegory sits squarely at the intersection of critical race theory and critical feminist jurisprudence. Critical race theory "is characterized by frequent use of the first person, storytelling, narrative, allegory, interdisciplinary treatment of law, and the unapologetic use of creativity." Derrick A. Bell, *Who's Afraid of Critical Race Theory?*, 1995 U. ILL. L. REV. 893, 899 (1995). This technique was used most famously by Professor Derrick Bell, one of the founders of critical race theory, in writings throughout his career. *See, e.g.*, *id.* As Professor Bell explained in the introduction to *And We Are Not Saved*, his seminal collection of the "Chronicles" of a lawyer–heroine dedicated to civil rights and equal justice, there is "an ancient tradition in using fantasy and dialogue to uncover enduring truths." Bell's examples range from Plato, to noted legal philosopher Lon Fuller (who used a series of hypothetical appellate cases in *The Case of the Speluncean Explorers* to examine whether settled legal principles can adequately address situations beyond the imagination of lawmakers), to every other law professor who today engages in Socratic dialogue to "effectively illuminate[] essential principles." DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE 6 (1987) [hereinafter BELL, AND WE ARE NOT SAVED]; *see* Lon L. Fuller, *The Case of the Speluncean Explorers*, 62 HARV. L. REV. 616 (1949). Professor Kimberlé Crenshaw wrote that

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

BELL, AND WE ARE NOT SAVED, *supra*, at 6 (quoting Kimberlé Crenshaw, From Celebration to Tribulation: the Constitution Goes to Trial (unpublished manuscript)). Critical race feminism also relies on "a technique of storytelling and narrative analysis to construct alternative social realities." Adrien K. Wing & Christine A. Willis, *From Theory to Praxis: Black Women, Gangs, and Critical Race Feminism*, 4 AFR.-AM. L. & POL'Y REP. 1, 3 (1999). Critical race feminism "stresses conscious consideration of the intersection of race, class, and gender by placing women of color at the center of the analysis and reveals the discriminatory and oppressive nature of their reality." *Id.* at 4. Several excellent sources that cover the origins of critical race theory include CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995) and CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado & Jean Stefancic eds., 2d ed. 2000). For additional information on critical race feminism, see generally CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 2d ed. 2003).

** In *Surviving Legal De-Education*, Professor Ann Scales deconstructed why law school can be so disorienting and foreign for students who are outsiders—students of color, women, and lesbian, gay, bisexual, and transgender students—and prescribed seven ways that someone who is not a member of the majority in law school can survive an experience that she described as a "white male encounter group." Ann C. Scales, *Surviving Legal De-Education: An Outsider's Guide*, 15 VT. L. REV. 139, 144 (1990). At least, that was what the article did on the surface. In fact, *Surviving Legal De-Education* was more than a rallying cry for outsiders to unite, more than a list of suggestions for ways that outsiders could navigate law school with their identities intact. By the time Professor Scales published her article in 1990, law schools had become much more diverse. As she reported in the article, the proportion of women had risen from 3% to 42%, and the proportion of people of color had risen from less than 2% to 13%. *Id.* at 139. In 2013, twenty-three years after Professor Scales's article, the statistics were these: women were 46.7% of law students, and people of color were 25.8%. AM. BAR ASS'N COMM'N ON WOMEN IN THE PROFESSION, A CURRENT GLANCE AT WOMEN IN THE LAW (Feb. 2013), *available at* http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_feb2013.authcheckdam.pdf; *First Year J.D. and Total J.D. Minority Enrollment for 1971–2012*, A.B.A. SEC. LEGAL EDUC. & ADMISSIONS B., http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_minority.authcheckdam.pdf (last visited Nov. 16, 2013). Her ideas, examined in three dimensions, provided a blueprint for what legal education might look like if, in Professor Scales's words, it was changed from a highly "effective funnel of society's resources into the pockets of the already rich" that was "designed by white men for white men" to a

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They had done it. After three long years, three of the members of the graduating class of 2035 of Denver Law sat together over burgers at Crimson & Gold, the local student hangout that had sustained them through countless hours of studying, memorizing, outlining, and learning. Geneva Johnson[1] could not believe that she had just graduated from law school. Just a few hours earlier, she walked across the stage in the auditorium, shook the Dean's right hand, accepted her diploma in her left, turned her tassel, and walked off the stage. For years after, whenever her mother would crow to anybody who would listen about her daughter's law school graduation, her mother would say, "We were in the nosebleed seats in the stadium, so when Geneva walked across the stage, all we could see were four-inch heels and a huge smile."

All three of the students at the table had jobs. The reforms[2] that had swooped in to save legal education from the crises that threatened to cripple it in the first quarter of the twenty-first century made sure of that.[3] To address the crisis in legal employment, or "The Rock," as it was

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model that successfully accommodated every student, regardless of difference. Scales, *supra*, at 139, 155. With its seven suggestions, *Surviving Legal De-Education* was as subversive a piece as any law professor could publish. The combination of Professor Scales's wit (imagining "a megalomaniacal official deciding on the basis of his level of intoxication, what he had for breakfast, and—oh no—his unfettered *subjectivity*. 'Sure! You can have *five* strikes if you want!'"), pull-no-punches attitude (assailing sports metaphors with "I am sorry, sports fans, but law is just more serious than baseball"), and inimitable voice (describing that by the end of the first year of law school, the outsiders "have the sensation of acid slowly dripping on their souls") made for the apotheosis of persuasion. Scales, *supra*, at 142, 150–51. The article made a radical argument in such an engaging way that even those who might have disagreed listened. Indeed, in this allegory recounting the graduation day conversation between Geneva, John, and Teresa, the results of the reforms stemming from Ann's article are reified. *See id.*

† Assistant Professor of Law, University of Denver Sturm College of Law. Heartfelt thanks to Professor Nancy Ehrenreich and the *Denver University Law Review* for inviting me to participate in this Symposium. I would also like to thank my colleagues at Denver Law and in particular the participants in the Rocky Mountain Collective on Race, Place & Law (RPL). I would like to express special appreciation to Professors Christopher Lasch, Nantiya Ruan, and Lindsey Webb. Kasey Baker and Christopher Linas provided superlative research assistance. Finally, I would like to extend my abiding gratitude to Mickey and Jeannie Klein for their generous support, keen and thoughtful interest, and gracious encouragement.

1. Ms. Johnson was named after Geneva Crenshaw, the brave African-American civil rights attorney whose experiences were most famously chronicled by Professor Derrick Bell in several seminal works of critical race theory, including AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE 7 (1987) [hereinafter BELL, AND WE ARE NOT SAVED], FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM ix (1992), and AFROLANTICA LEGACIES 7 (1998). Moved after reading *And We Are Not Saved*, Ms. Johnson's mother would later name her only daughter Geneva.

2. Many of these reforms were inspired by Professor Ann Scales's *Surviving Legal De-Education: An Outsider's Guide*, 15 VT. L. REV. 139 (1990), first published in the Vermont Law Review in 1990.

3. Starting in 2011, the *New York Times* was only the most high-profile of a host of periodicals to publish a scathing series of articles spotlighting the shortcomings of legal education and, with increasingly foreboding language, sounding the death knell for legal education as it then existed. *See, e.g.*, Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 31, 2013, at A1; Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. TIMES, Feb. 11, 2013, at A11; Adam Cohen, *Just How Bad Off Are Law School Graduates?:*

dubbed in an infamous and scathing July 2017 *New York Times* article titled *Scylla, Charybdis, and the Fall of Legal Education*, schools shifted their focus from preparing students to work in law firms to preparing students to take public interest jobs in under-served areas that would mean substantial loan forgiveness.[4] To slow the skyrocketing costs of legal education, dubbed "The Whirlpool," schools found ways to cut costs and lower tuition.

But these were just the beginning of the improvements. Law schools across the country shifted their focus, so that learning to practice like a lawyer became as important as learning to think like a lawyer. Some schools converted their third-year curriculum into an all-experiential year, so that students could start practicing the day after they were sworn in to the bar.[5] Many more schools redoubled their efforts to make sure their students were prepared to take and pass the bar.[6] Slowly enrollment crept back up, classes filled, and legal education had pulled off one of the best comeback stories of the century.

Each of these three excited students, in his or her own way, was a product of this shift. John was set to move to the Western Slope to work for the Farmworker Alliance. Geneva was going to the Colorado Public Defender's Office. And Teresa, one of the few students in their class

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Faced with a Dismal Job Market, the Legal Profession May Be Undergoing Fundamental Change, TIME (Mar. 11, 2013), http://ideas.time.com/2013/03/11/just-how-bad-off-are-law-school-graduates/; David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1; David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1; Maura Dolan, *A Thin Jobs Docket for Law Grads: As Technology Has Reduced Openings, Some Graduates Have Sued Schools over Employment Claims*, L.A. TIMES, Apr. 2, 2013, at 1; Debra Cassens Weiss, *Judge Allows Suit Against Widener Law School over Job Stats, Cites 'Thread of Plausibility*,' A.B.A. J. (Mar. 25, 2013, 06:30 CDT), http://www.abajournal.com/news/article/judge_allows_suit_claiming_widener_law_school_posted_misleading_job_stats_c/; Jordan Weissmann, *Law School Applications Are Collapsing (as They Should Be)*, ATLANTIC (Jan. 31, 2013, 13:19 EST), http://www.theatlantic.com/business/archive/2013/01/law-school-applications-are-collapsing-as-they-should-be/272729/.

4. In 2013, much of the crisis in legal employment arose not from a lack of demand, but from a lack of lucrative jobs. For example, due to a "chronic undersupply" of lawyers in rural areas, South Dakota passed a law subsidizing lawyers who live and work in rural areas. Ethan Bronner, *No Lawyer for 100 Country Miles, So One Rural State Offers Pay*, N.Y. TIMES, Apr. 9, 2013, at A1. Furthermore, there were "millions of middle class and indigent Americans who need[ed] but c[ould] not afford legal assistance," but crushing student debts financially discouraged lawyers from taking such jobs even when they were available. Chris Fletcher, *A Message to Aspiring Lawyers:* Caveat Emptor, WALL ST. J., Jan. 3, 2013, at A11. In New Jersey, ninety-nine percent of defendants in landlord–tenant disputes were unrepresented in 2012. John J. Farmer, Jr., *To Practice Law, Apprentice First*, N.Y. TIMES, Feb. 18, 2013, at A17.

5. Washington and Lee University's law school adopted such a curriculum beginning with its class of 2010. Daniel de Vise, *Third-Year Law Students Trade Class for Court*, WASH. POST, Dec. 18, 2009, at B1. In addition, in 2013 Denver Law launched its Experiential Advantage Curriculum, which allows Denver Law students to spend a full year of their law school career in real or simulated legal practice. For more information, see http://www.law.du.edu/index.php/experiential-advantage.

6. Michelle Weyenberg, *Diversity Part II: What Law Schools Are Doing*, NAT'L JURIST (July 12, 2010), http://www.nationaljurist.com/content/diversity-part-ii-what-law-schools-are-doing.

going into for-profit work, was headed to Hogan & Hartson on a two-year fellowship meant to encourage students to return to corporate law.

Smiling from ear to ear, Geneva thought back to her first year. "I remember meeting you on the first day of our first year when we sat together." John replied, "I remember, too. It was a Monday, and the class was Jurisprudence." Teresa added, "I remember Mondays and Wednesdays were killer that first semester. We had Jurisprudence, Human Behavior in the Law, and Professional Responsibility Lab on Mondays, Wednesdays, and Fridays, and then on Tuesdays and Thursdays we had Lawyering Process and From Idea to Law." John nodded his head in agreement and said, "I remember Professional Responsibility Lab the most because that class immediately made me realize that being a lawyer meant more than knowing what terms to use in a contract or what case to refer to in an argument. That's where I started to think about the kind of lawyer I want to be—to develop a professional identity." John added, "I also remember Professional Responsibility because it was at the end of the day. Our schedule was just brutal!"

Teresa said, with a mouth full of fries, "Second semester first year wasn't much better. We had Preventive Law and Constitutional Law on Mondays and Wednesdays, Social Justice Lawyering and Lawyering Process on Tuesdays and Thursdays, and Client Counseling Lab on Fridays. I loved Client Counseling Lab. I remember when I first read that it was co-taught by a professor and a former client of the professor's, I was worried, but hearing from a client firsthand about his experiences with the legal system, and having my professor show us—and not just tell us—that we should always be ready to learn from our clients gave me a better understanding of the lawyer–client relationship. I understood on a deeper level that we should work in partnership with a client instead of just thinking that the lawyer's job is to tell the client what to do."

Teresa went on, "Preventive Law was one of my favorite classes. It was so interesting to think of my role as broader than that of a legal adviser who parachutes in once the crisis has happened—a lawyer can also think of ways to head off crises. The readings were so varied. In one assignment we would have a poem like *The Ambulance Down in the Valley*,[7] a report from an advocacy organization about, say, the school-to-

7. The version of this poem read in Teresa's class included the original anonymous poem along with a second part contributed by Joe Galano in 1988. *Tribute to George Albee*, WM. & MARY, http://www.wm.edu/as/psychology/faculty/facultydirectory/galano_retires/poem/index.php (last visited Nov. 16, 2013). This reform, including many different kinds of reading sources, was inspired by the example Professor Scales provided in *Surviving Legal De-Education*, relying on typical sources like law review articles and case law, and other sources as varied as Audre Lorde's *The Master's Tools Will Never Dismantle the Master's House* and a commencement address by Adrienne Rich. Scales, *supra* note 2; Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, *in* SISTER OUTSIDER: ESSAYS AND SPEECHES BY AUDRE LORDE 110 (Nancy K. Bereano ed., 1984); Adrienne Rich, Commencement Address at Smith College: What Women Need to Know (1979).

prison pipeline,[8] a law review article or two,[9] a case about trying to end it,[10] and then a writing assignment encouraging us to come up with our own proposal about how to end it. The topics we talked about in that class—especially whether the lawyer's role is to be proactive or reactive—helped me realize that the lawyer's role is so broad that there is room for me to be the kind of lawyer I'd like to be, instead of being the kind of lawyer people might expect me to be."

John added, "Don't forget—we also had an elective. That Status Regime Modernization seminar was really eye-opening. That class radicalized me!" Geneva laughed, "No kidding. Every time we had that class you came into the classroom ready for a sit-in chanting 'What do we want? JUSTICE! When do we want it? NOW!.'" Laughing as well, John offered, in his defense, "I wasn't the only one. The readings in that class were amazing. What a concept—that social institutions recycle themselves in ever more acceptable forms. This seems to be true across so many areas. We studied status regime modernization in gender relations,[11] in race relations in the criminal justice system,[12] and in race relations in immigration policy.[13] What energized me in that class was learning that status regime modernization has an equal and opposite foe in status regime revolution—that the same way that a status regime sheds its skin to become more socially acceptable, civil rights reform changes shape to meet it. Between that and Lawyer as Hero, I knew I was headed for public service."

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8. *School to Prison Pipeline*, NAACP LEGAL DEF. FUND, http://www.naacpldf.org/case/school-prison-pipeline (last visited Nov. 16, 2013).

9. *See, e.g.*, Katayoon Majd, *Students of the Mass Incarceration Nation*, 54 HOW. L.J. 343, 345 (2011); Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 385 (2013).

10. Harris et al. v. Atlanta Independent School System*: Atlanta Alternative School Case*, ACLU (Dec. 18, 2009), http://www.aclu.org/racial-justice/harris-et-al-v-atlanta-independent-school-system; B.H. et al v. City of New York *(Challenging the NYPD's School Safety Policies and Practices)*, NYCLU, http://www.nyclu.org/case/bh-et-al-v-city-of-new-york-challenging-nypds-school-safety-policies-and-practices (last visited Nov. 16, 2013).

11. Reva B. Siegel, "*The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2179 (1996) (defining status regime modernization as a phenomenon in which "status relationships will be translated from an older, socially contested idiom into a newer, more socially acceptable idiom," and discussing how civil rights reform "modernizes the rules and rhetoric" that reinforce the status hierarchy instead of "abolish[ing] a status regime").

12. MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 14–15 (2010) (drawing parallels from United States chattel slavery to convict leasing, to Jim Crow, and then to mass incarceration to demonstrate "the ways in which systems of racialized social control have managed to morph, evolve, and adapt to changes in the political, social, and legal context over time").

13. *See, e.g.*, Christopher N. Lasch, *Rendition Resistance*, 92 N.C. L. REV. (forthcoming 2014) (drawing the connection between present-day immigration rendition and antebellum fugitive slave rendition); Kevin R. Johnson, *Protecting National Security Through More Liberal Admission of Immigrants*, 2007 U. CHI. LEGAL F. 157, 185 (2007) (linking the United States' undocumented immigrant population to "the days of slavery and Jim Crow in the United States, with a racial caste of workers subject to exploitation and abuse in the secondary labor market").

Geneva said, "Lawyer as Hero was great. We just read biographies, including the biographies of Nelson Mandela,[14] Mahatma Gandhi,[15] Bryan Stevenson,[16] Ann Scales,[17] Catharine MacKinnon,[18] Abraham Lincoln,[19] Sonia Sotomayor,[20] Thurgood Marshall,[21] Barbara Babcock,[22]

14. Before becoming South Africa's first democratically-elected president, Nelson Mandela spent twenty-seven years as a prisoner for his activities as an anti-apartheid revolutionary. *The Life and Times of Nelson Mandela: Biography*, NELSON MANDELA FOUND., http://www.nelsonmandela.org/content/page/biography (last visited Nov. 16, 2013). At his sentencing, and facing possible execution, Mandela declared the following:

> I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die.

Id. (internal quotation marks omitted).

15. Like many new lawyers, Gandhi had difficulty finding employment upon graduation. *Mahatma Gandhi*, HISTORY, http://www.history.co.uk/biographies/mahatma-gandhi (last visited Nov. 16, 2013). He became employed on a short-term contract with an Indian law firm in South Africa. *Id.* Setting the precedent for many members of Geneva's generation, Gandhi proceeded to enter the public interest field. *Id.* He stayed in South Africa for twenty-one years, during which time he founded a political movement known as the Natal Indian Congress. *Id.* Upon returning to India, Gandhi became a leader in the movement to liberate India from British rule, practicing non-violent civil disobedience until he was assassinated in 1948. *Id.*

16. Bryan Stevenson is a New York University School of Law professor, founder of the Equal Justice Initiative, and a lifelong advocate for capital defendants and death row prisoners in the Deep South. *Bryan A. Stevenson*, N.Y.U L., https://its.law.nyu.edu/facultyprofiles/profile.cfm?section=bio&personID=20315 (last visited Nov. 16, 2013).

17. Ann Scales was a founder of the field of feminist legal theory. *Ann C. Scales (1952–2012)*, U. DENV. STURM C.L., http://www.law.du.edu/index.php/profile/ann-scales (last visited Nov. 1, 2013). Her innumerable accomplishments include arguing a "case in which the New Mexico Supreme Court became the first" state high court to recognize an equality right to abortion funding, founding the *Harvard Women's Law Journal*, and inspiring countless students and colleagues. *Id.* She was also an incredible example as an educator, who was known to refer to teaching as a sacrament. Brilliant, funny, irreverent, fearless, and kind, she was loved by her students and colleagues alike.

18. Professor MacKinnon is a pioneer in legal feminism. She was instrumental in developing the legal claim for sexual harassment, and her theories have influenced rulings by the Canadian Supreme Court on equality, pornography, and hate speech. *MacKinnon, Catharine A.*, MICH. L., http://www.law.umich.edu/FacultyBio/Pages/FacultyBio.aspx?FacID=camtwo (last visited Nov. 16, 2013).

19. Posterity remembers Lincoln as among the greatest American presidents and a central figure in the abolition of slavery. Lincoln was also a self-taught lawyer, having learned the law primarily through reading William Blackstone's *Commentaries on the Laws of England*. *Abraham Lincoln*, BIOGRAPHY, http://www.biography.com/people/abraham-lincoln-9382540?page=2 (last visited Nov. 16, 2013).

20. Justice Sotomayor was born in the South Bronx area of New York City to parents of Puerto Rican descent. *Sonia Sotomayor*, BIOGRAPHY, http://www.biography.com/people/sonia-sotomayor-453906?page=1 (last visited Nov. 16, 2013). Although she entered the illustrious Princeton University, she struggled initially and pursued extra help with her English and writing skills. *Id.* Thanks to her hard work, she graduated *summa cum laude* and proceeded to Yale Law School. *Id.* Her pro bono work in private practice caught the attention of U.S. senators, leading to her appointment as a U.S. District Court Judge for the Southern District of New York. *Id.* In 2009, Sonia Sotomayor became the first Latina United States Supreme Court Justice. *Id.*

21. The great-grandson of a slave, Thurgood Marshall worked as legal counsel for the NAACP. *Thurgood Marshall*, BIOGRAPHY, http://www.biography.com/people/thurgood-marshall-9400241?page=1 (last visited Nov. 16, 2013). There, he won many landmark civil rights cases, the most famous of which was *Brown v. Board of Education*. *Id.* In 1967, he was sworn in as the first African-American Supreme Court Justice. *Id.*

22. Barbara Babcock is the first woman appointed to the regular faculty at Stanford Law School. *Barbara Babcock*, STAN. L. SCH., http://www.law.stanford.edu/profile/barbara-babcock (last

Barbara Jordan,[23] and, of course, Geneva Crenshaw.[24] They were all heroes in different ways—politicians, jurists, scholars—but all activists in the sense that they used the law to make the world better for more people. Every class was so inspiring."[25]

Geneva laughed, "Remember Constitutional Law? We started out with *Marbury v. Madison*,[26] and the professor cold-called Julie and asked her the significance of the case. Julie said the significance of the case was that it demarcated the limits of Article III judicial review, and the professor said no, that's the holding. Then Julie said the significance of the case was that the Court decided it could not force Secretary of State Madison to deliver Marbury his commission. The professor said no, that's the ruling. Then the professor explained the significance was that the Court installed judicial review to keep the Court out of the fight over the expansion of slavery between slave states and free states."[27]

Teresa laughed along with her, "That's when I knew law practice was about real issues and real problems." John said, "And the professor stopped at that point to teach us the skill of briefing cases with five sections," and they all said together, "Issue, Facts, Holding, Ruling, Significance!"[28]

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visited Nov. 16, 2013). She served as the first Director of the Public Defender Service of the District of Columbia and Assistant Attorney General for the Civil Division in the Carter Administration. *Id.*

23. Barbara Jordan was a civil rights leader who became the first African-American congresswoman from the Deep South, as the first woman elected to the Texas Senate. *Barbara Jordan*, BIOGRAPHY, http://www.biography.com/people/barbara-jordan-9357991 (last visited Nov. 16, 2013).

24. *See* BELL, AND WE ARE NOT SAVED, *supra* note 1, at 42.

25. "Law school gets characterized as characterless, as impersonal and cold. But I don't think that is right. In fact, legal education tells a very emotional story, over and over again." Scales, *supra* note 2, at 142.

26. 5 U.S. (1 Cranch) 137 (1803). In the years immediately preceding *Marbury*, slavery was a hotly contested issue of national prominence. For more on this topic, see BELL, AND WE ARE NOT SAVED, *supra* note 2, which contains a partially-imagined debate at the Constitutional Convention. Bell's advocate, Geneva Crenshaw, debates the delegates at the Convention, and much of the language in favor of slavery is drawn from the actual debates themselves. *Id.* John Kaminski's *A Necessary Evil?: Slavery and the Debate over the Constitution* is an edited collection of primary materials from the late eighteenth century, documenting not only the Constitutional Convention but also the regional debates about slavery. A NECESSARY EVIL?: SLAVERY AND THE DEBATE OVER THE CONSTITUTION (John P. Kaminski, ed. 1995). Finally, *Marshall Misconstrued: Activist? Partisan? Reactionary?* has additional information that might be helpful. Jean Edward Smith, *Marshall Misconstrued: Activist? Partisan? Reactionary?*, 33 J. MARSHALL L. REV. 1109 (2000).

27. Professor Robin Walker Sterling, a contemporary of Geneva's mother, told Geneva that, when Professor Walker Sterling was lucky enough to take Constitutional Law with Professor Derrick Bell at New York University School of Law, Professor Bell began his Constitutional Law class with this description of the import of *Marbury*.

28. Scales wrote:

> [We substitute] "policy" for "justice" in legal discourse. You know what "policy" is: It is everything that isn't law, and it is amazing how quickly law students can be taught to devalue everything that isn't law.
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> We teach that policy arguments are supplements to legal argument, and often as the last resort. We teach that policy is epistemologically and persuasively *inferior* to law. Consider what that division assumes: that the law *is* necessarily separate from morality and politics, that the law is *better* than morality and politics, that it is largely worthless to en-

John added, "We chased that case with *Brown v. Board of Education*[29] and *Keyes v. School District No. 1*.[30] I'm glad we started with such interesting cases.[31] I particularly liked when we read cases along with the cases they'd overturned. So, when we first read *McCleskey v. Kemp*,[32] and then we read the case that overturned it, *Johnson v. Gleason*,[33] it made me feel very hopeful about how we as lawyers can effect social change."

Geneva added, "My mother told me the first year of law school used to be very different from that—you would take Torts, Property, Contracts, Criminal Law, and Civil Procedure." John said, "That's weird. How do you know how to think critically about any of those subjects unless you've had Jurisprudence? I mean, you need a context for things." Teresa added, "No labs? Why go a whole year before you start working with people? It's a service profession!" John remarked, "That description of law school sounds terrible! Why'd you go?" Geneva answered, "My mother admired a famous civil rights attorney. I guess that's what happens when you have role models who seem happy in their work—you follow in their footsteps."

Wistfully, Geneva said, "I loved my first-year classes so much, I wished we had first-year grades. I understand why we don't,[34] but we

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> gage in the discourse of morality and politics because we can never agree on anything anyway, and that human beings are horrid aggressive creatures who will only be persuaded, ultimately, by coercion.

Scales, *supra* note 2, at 145 (footnote omitted).

29. 347 U.S. 483 (1954).

30. 413 U.S. 189 (1973).

31. According to Scales,

> Studying constitutional law could be engaging and fun. But no. Before students can get to the inherently interesting parts, they have to trudge through McCullough v. Maryland and the interminable implications of the [C]ommerce [C]lause. . . . Why not start law school with Brown v. Board of Education, or Roe v. Wade, or Bowers v. Hardwick? . . . In the conventional format, students learn that the Constitution, or at least the important stuff, is not about rights, or even about people.

Scales, *supra* note 2, at 156 (footnotes omitted).

32. 481 U.S. 279 (1987).

33. In *Johnson v. Gleason*, the Court held that statistical evidence of "racially disproportionate impact" at any of the discretion points in the criminal justice system—including arrest, indictment, plea offers, and sentencing—can win relief for the individual petitioner, even in the absence of a showing of a "racially discriminatory purpose." 685 U.S. 322, 328 (2027) (quoting *McCleskey*, 481 U.S. at 298) (explaining the outcome of this case). The case was brought by a Denver Law alumna who said, in an interview, that she had been looking for the case that would overturn *McCleskey* since she discussed it in a law school seminar where the professor gave the class an assignment. The professor said,

> You have homework. I'll give you about 15 years to complete it. The assignment is to find the case that will convince the Court that the *McCleskey* Court was wrong to give up, because "[a]pparent [racial] disparities in sentencing are" not "an inevitable part of our criminal justice system," and move the Court past eradicating overt, first-generation racism, to addressing covert, second-generation racism, like implicit bias.

Interview with alumna of Denver Law 2018 (quoting one of her law professors at Denver Law (quoting *McCleskey*, 481 U.S. at 312)).

34. According to Scales,

were all so excited to be learning these new things. I can't remember a time when I felt more engaged and empowered as a learner!" Teresa added, "Yeah, first year was great! Man, those were good times. In fact, law school has been great. I have always felt right at home and never doubted that there's a place in the law for me. I've loved law school. I'd do it all over again. I am so happy and excited to start my career. I hope everyone feels this way about law school and about law practice."[35]

Tired of reminiscing, the students picked up their belongings and went off to join their families for the law school's community-service trip in honor of the students' graduation.

> First year grades are stupid, even stupider than other grades, for we do not teach discrete subject matters in law school. Rather, law is a language, a way of thinking, and a culture. It is ridiculous, therefore, to expect that one can have "gotten it" by the end of four or nine months. . . . [F]irst year grades cannot measure anything "learned" in that year. Rather, the grades can discern only who already knows the stuff, and are therefore unfair to the rest of us.

Scales, *supra* note 2, at 141.

35. There is a vast amount of information about law students, lawyers, and how miserable they were before the recent trends in legal education. The most widely cited study analyzed the prevalence of depression in 104 different occupations to find that lawyers were the most depressed occupation when adjusted for socio-demographic factors. *See* William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079, 1080, 1085 tbl.3 (1990). According to this study, lawyers were 3.6 times as likely to be depressed as members of the general population. *See id.* at 1083. An article published in a Yale journal almost twenty years later focused on law students to find that although law students entered school with normal levels of psychological distress, their distress dramatically increased and continued to increase over the three years of law school. *See* Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357, 367 (2009). "One study found that 44% of law students" had "clinically significant levels of psychological distress." *Id.* at 359. The switch to experiential learning had the lucky benefit of making happier law students. A 2023 study that set out to document why the majority of law students were choosing public interest work over private work found that schools' increased focus on experiential learning produced the epiphenomenon of happier law students. Students who were able to be rewarded for learning in new ways, and to be connected each day with the reasons that they went to law school, were ultimately happier in law school and in their careers.