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The Making of a Law Teacher

Odeana R. Nealt†

At a meeting of the Northeast Corridor¹ in October, 1990, Paulette Caldwell² wondered aloud whether black women law teachers might be carrying on a cultural tradition of teaching.³ Her inquiry struck a chord with me that I hadn't heard in a long time. When I was very young, I wanted to be a teacher. I tutored younger children when I was in elementary school and commandeered a math class in junior high school after the teacher challenged me to "get up here and teach the class if you think you can do it better than I can." I thought I could and I still think I did.

In spite of these early experiences, I always laughed when my father mentioned that I should think about teaching, partly because I saw academics as social parasites—people who went to school forever without doing anything to make the world a better place—and partly because I could not imagine myself in the world of the academics who taught me in college—men (all of them) who considered their place in the universe second only to the sun. But I think that I was also having trouble envisioning myself as one of the smart people.

† Assistant Professor, University of Baltimore School of Law. This article is dedicated to the memory of my father, Gary D. Neal, who thought I'd be happy if I were teaching. He was right. I would like to thank Taunya Lovell Banks, Louise Hope Lewis, and Gerald Frug for their comments on an earlier version of this article, as well as Keith B. Churchwell, who never doubted my intelligence, even when I did.

¹ The Northeast Corridor is an organization comprised of African-American women who are law teachers. Although the group began as an effort to bring together women who taught in schools or lived on Amtrak's Northeast Corridor line (from Boston to Washington, D.C.), women from throughout the country now attend meetings regularly.

² Professor, New York University School of Law.

³ Discriminatory laws and economic deprivations in the United States have resulted in African-American career options being severely limited throughout history. For example, in 1940 over half of the African-American population had no more than eight years of education and 62% of those who worked did so in agricultural or menial jobs. See Gerald D. Jaynes and Robin M. Williams, Jr., eds, *A Common Destiny: Blacks and American Society* 164 (National Academy, 1989). Of those who were fortunate enough to be college graduates, preaching and teaching were practically the only professions open to them. *Id.* at 165, 170. (Between 1912 and 1938, 73% of all black college graduates became ministers or teachers. As late as 1980, teaching accounted for over 27% of white-collar occupations filled by African-Americans.) See also Paula Giddings, *When and Where I Enter* 101, 104-05 (Morrow, 1984) (discussing the role of black women teachers after the American Civil War and at the beginning of the twentieth century).

I feel that I have much more in common with the schoolteacher that I originally planned to be than the college and law school professors who taught me. Those schoolteachers were women who stayed after school with their special students, who saw all their students as their children, who worked hard and long to try to have their students both learn the facts and be introspective and thoughtful enough to analyze everything critically. These teachers pushed their students into being something that the students might never have thought possible for themselves.

I believe that my impetus to teach law comes from my basic conviction that most people are capable of learning a great deal, but that their teachers must believe that they are capable of learning in order to teach them properly. Many teachers, especially in law schools, do not expect great intellectual achievement from their students because of their own and American culture's narrow and limiting view of what being smart means and who is worthy of the designation. I now believe that helping others overcome the presumption that they are not smart or that their ideas are not worthy of consideration is the basis of more than one black woman's impulse to teach, especially since we have so often felt and have had to overcome others' presumptions about and low expectations of us.

When I was in high school, a recruiter from the Ivy League college I eventually attended came to the guidance office to speak with prospective students. My best friend and I were the only two people who showed up. The recruiter's disappointment was written all over his face. Here he was, gracing my high school with his presence, and these two black girls were the only ones to greet him. I felt humiliated; perhaps I wasn't good enough to go to that school. It wasn't until the deadline that I gathered the courage to send my application. This man was one of a series of people who seemed determined to thwart my ambition, to keep me in my place, and to let me know that I should not be allowed into the inner sanctum that belonged to somebody who wasn't me.

This same recruiter eventually conducted my alumnus interview for the school. I thought we had a good talk; we discussed a then-popular feminist novel about the school I wanted to attend. But the humiliation returned when he concluded the interview by telling me that I would never be admitted to the school. I was an interesting person, had good grades and good test scores, had held leadership positions in school organizations, and seemed bright enough, but I was no competition for those who attended more elite schools.

When my acceptance letters arrived, from that and another Ivy League college, I didn't want anyone outside my family to know. I thought that it was somehow shameful; I started to believe that there were other more deserving people who had been deprived of their place in the class because of me. Moreover, the possibility of eventual failure terrified me. Against my wishes, my best friend told everyone within

shouting distance about the letters of acceptance. The response was universal: no one could believe it, not even the teachers who had written my recommendations.⁴ One student said, "I didn't know you were like that, Odeana." When I asked what "like that" was, he said, "You know, smart."

This concept of the smart person is one that has intrigued me ever since. When I was growing up, smart was not a word used in my household. My parents believed that learning should be enjoyable and that my siblings and I should do the best we could at whatever we did.⁵ I knew that I performed better academically than many of the children in my all-black elementary and junior high schools, but "smart" in the Neal family dictionary had a broad definition. There were many ways to be smart: academically, musically, artistically, perhaps even in the way one managed to keep a house clean all the time. But by the time we moved to the suburbs, I saw that "smart" was not so broadly defined by the rest of the world.

The smart people didn't look or act like me. They were not black, they were not fat, and their hair was always neat. They never cursed, their grammar was impeccable, and they never questioned authority. They took school quite seriously, made sure that everybody knew they took it seriously, and, most importantly, took themselves quite seriously. They were the ones admitted to elite colleges, not people like me.

My failure to live up to this standard of smartness has haunted me for many years since and, at times, has made me question my own intelligence. While teaching assistants and professors urged the smart people in college to apply for fellowships or scholarships, no one felt that I was worthy of consideration. The law student to whom I was assigned for pre-law advising told me that I should not waste my time or money applying to prestigious law schools: they didn't want someone like me. Although one of my college roommates had lived with me for four years, had, presumably, seen me be fairly conscientious about my coursework, and knew about my being admitted to Harvard Law School, she was surprised to find that I was not anxious about whether I would graduate from college with honors. "I didn't know you had grades like *that*," she said after looking at my college transcript.

Even as a law professor, I know that I am initially viewed with skepticism by many of the people I encounter professionally. I guess I don't look smart. I'm sure that my appearance conjures up more images of a

⁴ In fact, one of my teachers told me before he wrote my recommendation that it would not be flattering. He said he would write that I was abrasive, disrespectful of adults, and immature.

⁵ My mother indelibly marked this idea on my psyche when I ran home from school in the fourth grade with straight A's on my report card. She was working in the garden and I excitedly showed her my grades. She said, "As long as you did the best you could," and went back to her gardening.

“mammy”⁶ than of a law professor. Some law professors will not believe that I’m capable of engaging in intellectually rigorous activities because most of my teaching responsibilities are clinical.⁷ And there will always be those who will assume that since my race and sex were considered (I’m certain) as two of the criteria for my hiring, I couldn’t possibly be as smart as a man or a white woman who might have been hired.⁸

Many of my students are surprised when they realize that I am a hard grader or that I have high expectations of them. But I get much pleasure from those students who I think have been ignoring me all semester—usually white men who sit in the back of the room, look distracted, and never speak—who come to me when classes are over and say that they *learned* something, that I made them think about something that they had never thought about before. And I, hopefully, have made them rethink what it means to be smart. Still, I cannot help but hope that my teaching makes students think more, not only about whatever subject is being discussed in class on a particular day, but also about how they might reenvision their roles in the world. Ideally, I also help them find the courage to try to live what they envision.

I do not believe that my paradigm for teaching is the norm. I work from the presumption that my students are capable of doing anything, and I expect the very best of them. I do not presume, as I think some have with me, that my students’ sex or race, the way they look, or the language they use means that they are not smart.⁹ And I like to believe

⁶ See Donald Bogle, *Toms, Coons, Mulattoes, Mammies, and Bucks: An Interpretive History of Blacks in American Films* 9 (Viking, 1989) (describing the mammy, one of five stock black characters in American film, as “big, fat, and cantankerous”).

⁷ One clinician told me about being introduced at a faculty function. A senior member of the faculty approached her and another young faculty member in order to introduce them to a judge. Turning to the non-clinician, the senior faculty member said, “Now here’s a *real* scholar.” See also Committee On the Future of the In-House Clinic, Section on Clinical Legal Education, Association of American Law Schools, *Executive Summary of the Final Report of the Committee on the Future of the In-House Clinic* 5 (1990) (finding that “[u]nequal faculty status continues to plague clinical teachers, many of whom still function with lesser job titles, lower pay, and a diminished role in the governance of their law schools”); William Pincus, *Prefatory Remarks*, 29 *Cleve St L Rev* 348 (1980) (discussing negative attitudes towards clinical legal education and clinicians).

⁸ People of color are often assumed not to be qualified for their positions in academia and in other professions. Of course, assuming that a person is not qualified for a position because her selection was based at least in part on race ignores the fact that academic hiring often takes into consideration characteristics that do not have anything to do with being qualified for the job. These considerations include a teaching candidate’s having friends in common with those who do the hiring, being an alumnus or having other prior contact with the school, or being found to have scholarly potential based on the completion of a judicial clerkship. See Richard Delgado, *Approach Avoidance in Law School Hiring: Is the Law a Wasp?*, 34 *SLU L Rev* 631, 634-36 (1990) (discussing one school’s hiring procedures, which include obtaining names of potential candidates from other law teachers and discussing the reasons often given for not hiring scholars of color).

⁹ See, for example, Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 *Harv L Rev* 926, 948 & n 108 (1990). In the article, the author, a colleague of mine, lists by qualification a number of people who did not understand text written by a feminist author in order to prove that the text constituted “intellectual quicksand.” The people qualified to judge the text included someone who graduated *magna cum laude* from

that other characteristics that are supposed to create a presumption of intelligence do not privilege some students over others in my mind. I do not assume that a student who is on the law review is any more intelligent than someone who is not, nor do I assume that one student whose grades are better than another's is smarter. I do not assume that the institution from which a student received her undergraduate degree means much of anything except to tell me where she went to college. Likewise, I do not assume that the fact that my students attend the University of Baltimore School of Law means that they aren't capable of being the lawyers that Harvard Law School expects its graduates to be. And to the degree that my students have internalized any of these assumptions, I try to get them to rethink their assumptions about themselves and others.

One of the most difficult presumptions I must strive to overcome, however, is one of the primary presumptions of legal academia: that writing is the most significant act that someone in the profession can undertake, that those who write, and are published, are somehow smarter than those who primarily want to engage in the verbal exchange of ideas, or teaching. It is very rare for law professors to discuss how wonderfully someone teaches, although "Have you read so-and-so's article?" is heard all the time.

The delegitimation of verbal intellectualizing in legal academia begins with the way law school is taught. Students, through reading appellate decisions, are taught broad and abstract principles that they are then expected to apply to concrete situations; if they have difficulty doing this, they are labelled "not smart." The level of abstraction I encountered when I was a law student threw me. I couldn't relate what was happening in my classes to the media images of what lawyers do. Although I had started law school with the expectation that I would be a public defender after graduation, the process of learning through the reading of appellate decisions gave me the impression that being a trial lawyer was for those who were not quite up to grasping abstract principles like those in the appellate decisions I was reading—in other words, trying cases was for those who weren't so smart. The best lawyers were those who would go on to write the briefs that would lead to judicial

Harvard, the author of nine published books, and a Rhodes Scholar. The implication was that if people like *that* did not understand the text, then it *must* be incomprehensible. He never asked me what I thought about the text; perhaps I did not possess the necessary judging qualities. The text made perfect sense to me, however.

Of course, some characteristics make some people take me *more* seriously—make them believe that I'm smarter—than they otherwise would. The fact that I graduated from Harvard Law School gives me legitimacy that I would not otherwise have in some students' and colleagues' eyes; when they realize that I'm a "double-Harvard," I get even more respect. I'm equally sure that each new publication I create—assuming that it is at least somewhat cogent—will make some people pay more attention to me than they otherwise would.

opinions written by the best former lawyers, which would teach future lawyers what kind of lawyers they should strive to be.

I cannot believe in the privilege of the written word, however, for what would that say about the relative importance of things that I hold dearest in my heart, things that were taught to me by unlettered men and women,¹⁰ or whispered by a lover, or giggled about on the phone with a friend? In spite of the notion that writing means creating lasting ideas, there are still so many of our traditions which persist in spite of being unwritten. My friends and I joke about the invisible black mothers' school that all our mothers seem to have attended. They must have attended it because all of them have told us, "You can't learn everything from a book," or "You always keep some money hidden away from your husband in case you have to get up and leave," or stories about oranges (always oranges!) at Christmas.¹¹ Are these stories less legitimate because they're unwritten? Are they less true? They certainly aren't less abiding. And what would be the effect of writing them down? Probably unabated scrutiny and criticism to make us believe, intellectually, that green, in certain circumstances, might be pink, although we will (hopefully) still know in our hearts that green is green.¹²

¹⁰ Many of my relatives have very little formal education. See note 3.

¹¹ Alice Walker recognized the significance and influence of our unlettered foremothers:

They were women then
My mama's generation
Husky of voice—Stout of
Step
With fists as well as
Hands
How they battered down
Doors
And ironed
Starched white
Shirts
How they led
Armies
Headragged Generals
Across mined
Fields
Booby-trapped
Kitchens
To discover books
Desks
A place for us
How they knew what we
Must know
Without knowing a page
Of it
Themselves.

Alice Walker, *In Search of Our Mothers' Gardens* 242-43 (Harcourt Brace Jovanovich, 1983).

¹² Derrick Bell, Mari Matsuda, and Richard Delgado were the targets of an attempt to deny their truths in Randall Kennedy, *Racial Critiques of Legal Academia*, 102 Harv L Rev 1745 (1989). In his article, Kennedy attempts to force empiricism on the lived reality of the three scholars, and would thereby deny them their "deepest and nonrational knowledge." (This phrase comes from Audre Lorde, "Uses of the Erotic: The Erotic as Power" in *Sister Outsider* 53 (Crossing, 1984)).

I suspect that some of the storytelling in the new written legal scholarship produced by people of color is an attempt, however subconscious, to bridge a gap between oral traditions and written traditions.¹³ Still, I wonder why so many scholars of color think only about *how* to write and not about what it means to write at all. I know that people choose academia as a career for all kinds of reasons, but I think that many people of color now entering the profession have chosen this path because we believe that it will have an effect in the *real* world. If this is the goal of our writing, I believe the significance of legal scholarship is exaggerated. Our thoughts are rarely disseminated to the vast majority of people whose lives we seek to change. Instead, law teachers often speak to and about one another in a complicated *ménage*.¹⁴ One scholar has even suggested that we can't talk to one another until we place ourselves within the context of even more abstract literary movements.¹⁵ If scholarship has to include both creation and dissemination to make a difference in the world, why is one so much more privileged than the other? How can our writing in legal journals, sometimes in language that is incomprehensible even to us, be *that* important if it does not journey out into the world? If a tree falls in the forest and no one is there to hear it, does it make a sound? If the journey is important, why does our profession fail to praise the messenger?

I wanted to be a lawyer so that I could help people. At one time I didn't think that could be done except through front-line legal services work. But I think I help people now through my teaching. I help them by pushing them into self-examination they may not have been pushed to engage in before. I teach them how to "think like lawyers" and how

¹³ Legal storytelling plays an important role in new legal theories undergoing creation and often named Critical Race Theory. See Richard Delgado, *When a Story is Just a Story: Does Voice Really Matter*, 76 Va L Rev 95, 95 n1 (1990) for a description of Critical Race Theory. For examples of storytelling in legal scholarship see Patricia Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 Harv CR-CL L Rev 401 (1987); Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Finger Pointing as the Law's Response to Racism*, 42 U Miami L Rev 127 (1987); Derrick Bell, *And We Are Not Saved* (Basic Books, 1984). See also *Symposium on Legal Storytelling*, 87 Mich L Rev 2073 (1989).

¹⁴ For example, in *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, Richard Delgado criticized the "inner circle" of antidiscrimination law scholars which consists of "about a dozen white, male writers who comment on, take polite issue with, extol, criticize, and expand on each other's ideas." 132 U Pa L Rev 561, 563 (1984). Randall Kennedy critiqued Delgado in *Racial Critiques*, 102 Harv L Rev 1745. Delgado responded to Kennedy in *Mindset and Metaphor*, 103 Harv L Rev 1872 (1990) and *When a Story is Just a Story: Does Voice Really Matter*, 76 Va L Rev 95 (1990). Finally others helped complete what Richard Delgado calls the "minuet," *The Imperial Scholar* at 563, in *Colloquy—Responses to Randall Kennedy's Racial Critiques of Legal Academia*, 103 Harv L Rev 1844 (1990).

¹⁵ Such intimation was made by Kendall Thomas at a panel on Critical Race Theory, Association of American Law Schools (Jan 6, 1991) (audiocassette on file with AALS). Thomas stated:

I would hold that a critical theory of race and law cannot avoid engagement with the concepts that are subsumed under the labels post-structuralism and post-modernism. I would say further that a refusal to explore the intersection between the two must be overcome not because of any felt need to stay on top of the latest intellectual fashions but rather and more crucially because current times and realities demand it.

limiting thinking like a lawyer can be. I teach them how law can help transform the way we think about how the world works and how law helps foreclose some options to us. I expend much time and energy thinking about what and how to teach, and I feel that teaching is the most important of the many obligations I have as a law professor.¹⁶ I refuse to believe that this desire to teach, really teach, makes me less smart or less deserving of my place on my faculty, even if I never published a single word.

I may be fooling myself by thinking that my teaching has any more effect in the real world than written scholarship.¹⁷ Still, even when I think that what I have to say in writing is worthwhile, I ask myself whether it is an exercise that is undertaken for my own benefit¹⁸ or whether it is something that will help people. I do not feel that the same kind of helping, the same kind of connection to other people, takes place with writing as takes place with teaching.

I close with one more story. I teach a course in which my students, the majority of whom are black, teach law to high school students. As I was engaged in a performance observation and evaluation, I looked up and suddenly realized that I, the black teacher of two motivated and caring young black men, was watching them motivate, watching them *teach*, a classroom of young black men and women. And I thought, "Thank you, God; it doesn't get any better than this." I don't see how it could.

¹⁶ The University of Baltimore School of Law Faculty Handbook (1990-1991) states: "The criteria for retention, promotion, and tenure determinations are high quality classroom teaching, scholarly production, and service." *Id.* at 1-1.2.

¹⁷ Sonia Sanchez, for example, states that she writes for many of the reasons that I teach: I write because I must. I write because it keeps me going. I probably have not killed anyone in America because I write. I've maintained good controls over myself by writing. I also write because I think one must not only share what one thinks, or the conclusions one has reached, but one must also share to help others reach their conclusions. Writing might help them survive.

Sonia Sanchez, in Claudia Tate, ed, *Black Women Writers at Work* 142 (Continuum, 1983).

¹⁸ In addition to written scholarship being a condition of my employment, see note 16, I must, as must most law professors, produce a certain amount of written legal scholarship in order to receive tenure at my institution. I must admit that a certain feeling of accomplishment accompanies the completion of an article.