

# How Stella Got Her Character<sup>1</sup>

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How do you tell the difference between a dead lawyer in the road and a dead snake in the road?

There are skid marks in front of the snake.

There are so many points to raise about the precipitously dropping diversity<sup>2</sup> of law-school student bodies. But pens more eloquent than mine have written how standardized test scores are a better indicator of family income than academic performance; minds much wiser than mine can expound on how diversity contributes to the intellectual development of students; and feet that have walked more miles than mine can better discuss how diverse lawyers are imperative for serving an increasingly diverse population. I want to write about something a little different, a little more intangible: how diversity yields *character*—even in the lower-than-a-snake lawyer.

[P]rofessionalism [in the law] is not merely adherence to principles of legal ethics or to minimal standards of professional conduct. . . . It means . . . character, and commitment: . . . character in highly principled conduct of professional and civic duty; commitment in service of the client and the

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† M.A. 1994, Stanford University School of Education; J.D. 1997, Boalt Hall School of Law, University of California at Berkeley. Thanks to Professor Marjorie M. Shultz, whose good character inspired me more than she ever realized, and Professor Marina C. Hsieh, whom I did not get to know as well as I would have liked but whose expected departure from Boalt Hall is a loss that will sting just as surely as if I were still a student there. More thanks for the insights from and hope inspired by current Boalt Hall students who have maintained their good character through adversity, especially certain fire-baptized first-year students of the 1997 entering class (one in particular)—you all know who you are. Garner Weng is currently an associate at Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, in San Francisco, California.

1. With apologies to Terry McMillan and her novel, *HOW STELLA GOT HER GROOVE BACK* (1997).  
2. Diversity is a difficult term to define. In this essay, I use it to refer specifically to racial and ethnic diversity, and to a slightly lesser extent to diversity based on gender, sexual orientation, and socio-economic background. I understand that diversity can and does encompass many more facets than these.

public good. It means understanding and honoring the rule of law and embracing the principles of moral responsibility.<sup>3</sup>

Despite this ideal set out by a past president of the American Bar Association, the punch line above it makes it amply clear: good character and lawyers are not equated in the public eye these days. As a result, it is a strange time to be embarking on a career in law, and I think it must be even stranger to be in law school—and perhaps strangest to be at my law school alma mater Boalt Hall.

Almost overnight, Boalt Hall has gone from boasting one of the most diverse law-student bodies in the country to one of the least.<sup>4</sup> Of the 263 students, there are only 1 African American, 14 Chicanos and Latinos, and 0 Native Americans.<sup>5</sup> Worse, these numbers are in some senses exaggerated because the sole African-American and seven of the Chicanos and Latinos were not even admitted for Fall 1997 but had deferred enrollment from 1996. Thus, no African Americans and only seven Chicanos and Latinos who were admitted for Fall 1997 actually enrolled.

These numbers are stark on any scale and are especially so in relation to recent years.<sup>6</sup> Perhaps Garry Trudeau makes the point best in his October 21, 1997 *Doonesbury* strip. In it, his protagonist, Joanie Caucus, returns to Boalt Hall for a law-school reunion. When she checks in, a reunion volunteer tells her, "Well, I think you'll find Boalt Hall is the same fine place you remember. In every respect, practically."

"Practically?" she inquires.

The volunteer responds, "Well, we no longer admit black people. But other than that."<sup>7</sup>

All of this has made me reflect back on my three years at Boalt Hall, during which the diversity of the student body was much greater than it is now,<sup>8</sup> and how that experience shaped me as a lawyer. What my three years at Boalt Hall gave me was character.

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3. Wm. Reece Smith, Jr., *Teaching and Learning Professionalism*, 32 WAKE FOREST L. REV. 613, 615 (1997).
  4. See, e.g., *Post-Affirmative Action Era Begins With One Black in UC Law School*, LEGAL INTELLIGENCER, Aug. 19, 1997, at 4; Michelle Locke, *Lone Black Scholar at Boalt Hall Law: End of Affirmative Action Cuts Minority Students' Ranks*, DAILY RECORD, Aug. 19, 1997, at 13.
  5. Boalt Hall School of Law, 1997 Annual Admissions Report, at tbl.II [hereinafter 1997 Annual Admissions Report] (Minority Admissions, 1987-1997, section for 1997) (unpublished report) (on file with author). I use "traditional" groupings of people of color, although these groupings are often highly problematic. For example, I may refer to Asians and Asian subgroups as one category, although this category encompasses very different racial groups. Unfortunately, these are the ways numbers are typically presented, and for the basis of comparison, it is "simpler" to present numbers in these ways.
  6. For example, just one year earlier, the 1996 entering class (class of 1999) included 20 African Americans, 28 Chicanos and Latinos, and 4 Native Americans. See 1997 Annual Admissions Report, *supra* note 5, at tbl.II (Minority Admissions, 1987-1997, section for 1996).
  7. Garry Trudeau, *Doonesbury*, S.F. CHRON., Oct. 21, 1997, at E6.
  8. The 1994 entering class (Class of 1997) was comprised of 269 students, including 31 African Americans, 35 Chicanos and Latinos, 4 Native Americans, and 37 Asians and Asian subgroups. See 1997 Annual Admissions Report, *supra* note 5, at tbl.II (Minority Admissions, 1987-1997,

I was not born with character. I am not even convinced I came out of college with character. My personal statement in application to law school made no mention of the “public good” or “civic duty,” and I am not sure how much those were in my mind as I wrote. I remember wanting to write well. I do not remember thinking that it was important to convince the reader I was a good person or that part of my future as a lawyer would be to give back to the community or contribute to the “public good.”

As surprising as this may be to many of my former law-school classmates, I was not very political or “public good”-minded during college at all, in fact. I do not think I thought that much about affirmative action through college. I do not even clearly remember what my views of affirmative action were at the time. Perhaps I was just another case of political apathy.

Something happened during my first year of law school though. On December 13, 1994—the first day of my first law-school exams—several students of color received flyers saying, “AFFIRMATIVE ACTION SUCKS!!!! DON’T FLUNK OUT!!!!” on one side, and on the other, a photocopy of an article reporting the resignation of former Surgeon General Jocelyn Elders, next to which was, “CLINTON AND TIEN AGREE: MONKEES BELONG IN THE JUNGLE HASTA LA VISTA SAYONARA SANS BLAGUE RESPONDEZ SIL VOUS PLAIT.”<sup>9</sup>

As the community clamored, new flyers were distributed to a number of students of color on February 11, 1995, right around when first-year grades were first posted.<sup>10</sup> These flyers read:

Rejoice you cry baby Niggers it’s affirmative action month. A town hall meeting will not save you the wetbacks or the chinks. Your failures are hereditary and can’t be corrected by these liberals. Look around Boalt Hall besides the few hand picked affirmative action professors this is a quality law school. Clinton nomination of Foster another unqualified monkey is similar to your existence here at Boalt a failure. When I see you in class it bugs the hell out of me because your taking the seat of someone qualified. You belong at Coolie High Law don’t you forget!<sup>11</sup>

*This* was not about politics or apathy. *This* was not about affirmative action. *This* was about *hate*, pure unadulterated hate. *This* was about wrong and right—and what impressed me was how the Boalt Hall students dealt with it. Some people did not seem to care much. And some people seemed not to see what the problem was. But *some* people—a lot of peo-

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section for 1994). The term “entering class” is more precise than “graduating class” for numbers I present; the latter includes growth from transfer students matriculating and attrition through drop-outs and transfers out of Boalt.

9. *Hate Mail Overview*, BOALT HALL CROSS-EXAMINER, Jan./Feb. 1995, at 1, 8.

10. *See id.* at 1.

11. *Id.* at 8.

ple, even—knew it was wrong, and they stood up and they yelled and yelled and yelled.

I remember when I was little, a classmate ran up to me and turned the outside corners of his eyes up and started ranting, “CHING CHONG CHING CHONG!”—in the middle of a film about the internment of Japanese Americans, the purpose of which was to educate us about racial discrimination. No one seemed to know this was wrong, and certainly no one stood up and yelled about it. Not even me.

I and people like me have grown up surrounded by people who did not know when things were wrong, people who did not stand up and yell. That first year of law school, I suddenly found myself amidst people who *did* know wrong from right and who were not willing to accept the wrong. They stood up and yelled. And I realized that I could stand up and yell, too.

For the rest of law school, my classmates revealed themselves to be truly extraordinary. They were so rich in the cornucopia of racial, ethnic, and other backgrounds and experiences they brought to the table, in the thoughtful views they expressed, and in the *character* they possessed. The law-as-a-second-career Caucasian woman who almost single-handedly resurrected the student organization Coalition for a Diversified Faculty (“CDF”) and brought issues of faculty diversity back to the fore. The openly gay Caucasian man who similarly contributed to CDF, all the while earning such stellar grades as to finish among the top two or three students in the class. The two “ruffians” from Los Angeles, actually from palatable, almost cushy areas of Los Angeles: a tall, lanky African-American man and a soft-speaking Puerto Rican man, both whose hair-styles and state of unshavenness evolved continually over three years. The Mexican woman who was trying to become more fluent in Spanish and taped the Spanish word to every object in her apartment. The Caucasian woman from Iowa who might as well have been from New York, so cosmopolitan were her views. And me.

Together, our diversity added up to something special.

In his 1998 State of the Union Address, President Clinton noted, “Wherever people of all races and backgrounds come together in a shared endeavor and get a fair chance, we do just fine. With shared values and meaningful opportunities and honest communication and citizen service, we can unite a diverse people in freedom and mutual respect.”<sup>12</sup>

Actually, the truth lies one step further. *Only* when people of all races and backgrounds come together can we unite a diverse people in freedom and mutual respect. When people of all races and background came together to form my law-school class, I saw first-hand the results.

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12. President Bill Clinton, State of the Union Address (Jan. 27, 1998) <<http://www.whitehouse.gov/WH/SOTU98/address.html>>.

Unfortunately, those results are in marked contrast to the new circumstances generated by the effects of Regents' Resolution SP-1 and Proposition 209. This is Boalt Hall during the 1997–1998 academic year.<sup>13</sup>

An openly gay student walks through the hallway near some of the large lecture halls. A group of mostly male students is mulling about outside the lecture hall. As he passes them, one of them barks, "FAG"—loudly, with the syllable drawn out into a long, derogatory spittle of acid. The student turns quickly, willing and able to engage the affront with conversation. But the transgression is swallowed into the anonymity of the group. No one turns or acknowledges him. No one even has the tell-tale downcast eyes indicating he, at least, is momentarily embarrassed to be associated with the group. Even in this wide-open, broad-daylight public arena, hate is doled out with impunity.

After a classroom discussion of rape, one student characterizes rape crisis centers as "rape indoctrination centers." The student seems to suggest rape is equally or more the fault of the victim; in fact, victims usually know of their own "responsibility" until convinced otherwise by meddlers like rape counselors! Supposedly, it is then, and only then, they choose to prosecute the crime. It is in this crass and insensitive manner that such misogynistic viewpoints are now expressed.

In the 1994–1995 academic year, incidents of hate mobilized the community, and in the end, the students bonded and grew strong together. In the 1997–1998 academic year, homophobia, sexism, and racism trot themselves right out in the open, with the full privilege and entitlement of a different era. I am not necessarily trying to suggest suppression of speech is in order; rather I point out there is no longer the same civil exchange of ideas and the tolerance thereby generated. The students are not bonding nearly as much, and they segregate and compete rather than growing together.

The diminishing exchange of ideas also manifests itself in extracurricular activities. Boalt Hall was once unique in its number of specialized law journals, each focusing on different scholarly areas of the law, affording a large base of opportunities for Boalt students. But now, the *African-American Law and Policy Report* and the *La Raza Law Journal* can see the writing on the wall, and their days seem to be numbered. Apparently, the 1997 entering class is not only less diverse racially but in thought; suddenly no one is joining those two journals, although each had thrived for many years.

Law school has never been friendly to people of color<sup>14</sup> or their allies. The diverse student bodies engendered hope and perseverance. In-

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13. I gathered anecdotes herein in the course of knowing a number of Boalt Hall law students during the 1997–1998 academic year. Some of the incidents were verified independently by multiple sources. As I did not formally interview any of the "sources," and do not have permission, I decline to state their names.

deed, diversity was one of Boalt Hall's *greatest* strengths, and it is slipping away. As a result, morale is low among students at Boalt Hall these days. Just a few years earlier, faculty diversity was at the top of the progressives' wish list; no one ever dreamed student-body diversity could be taken away. Apparently, no battle is ever permanently won; for every one step forward, there are two steps back.<sup>15</sup>

Student-body diversity may be the straw that breaks the camel's back. There are pockets, still, of the unity, strength, and character that once permeated all of the student body. In October 1997, students banded together to stand up and yell about the Boalt Hall administration's lack of planning and action to ensure diversity in the Boalt Hall student body; they staged a peaceful sit-in in the registrar's office, and more than fifty were arrested.<sup>16</sup> But unlike in the past, these showings have not generated goodwill or support or bonds or even well-intentioned discussion throughout the Boalt community; instead, there has been fragmentation. Large groups of students denounced the protest, although many of them failed to understand the nature of the protest or at what the protest was aimed.

Even a column in the *San Francisco Daily Journal* characterized the protesters as offensive and "self-defeating" although "they're right about diversity."<sup>17</sup> While the "support" is appreciated, the column missed the point. Protests are not simply about achieving an end, although they of course seek an end. Protests are also about standing up and yelling when something is wrong. They are about letting the world know that something is wrong and clamoring for everyone else to stand up and yell. They are about generating the morale necessary for all the other actions which may more directly accomplish the end. They are about principle and character.

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14. See, e.g., LANI GUINIER ET. AL., BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE 51 (1997) (excerpt from two African-American women commenting on the effect of race on their law-school classroom experiences); PATRICIA WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 55 (1991); Margaret Montoya, *Mascaras, Trenzas, Y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185, 208 (1994); Rita Sethi, *Speaking Up! Speaking Out! The Power of Student Speech in Law School Classrooms*, 16 WOMEN'S RIGHTS L. REP. 61, 62 (1994); Garner K. Weng, *Look at the Pretty Colors: Rethinking Promises of Diversity as Legally Binding*, 10 LA RAZA L.J. (forthcoming 1998) (manuscript IV.B., at 43, on file with author).
  15. See generally DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* (1992) (discussing the permanence of racism).
  16. See, e.g., Pamela Burdman, *All-Day Protest of UC Affirmative Action Ban: 54 Arrested in Boalt Hall Demonstration*, S.F. CHRON., Oct. 14, 1997, at A15; Todd Jackson, *Police Arrest 53 Student Protesters*, BOALT HALL CROSS-EXAMINER, Oct. 1997, at 1. Despite the title of the *San Francisco Chronicle* article just cited, the protest did not revolve around the affirmative action ban but around the Boalt Hall administration's failure to take measures to promote diversity even while complying with the ban. See Lloyd Farnham, *Students and Alumni Denounce Administration*, BOALT HALL CROSS-EXAMINER, Oct. 1997, at 1.
  17. Jonathan S. Shapiro, *Nuts and Boalt: UC Protesters May Offend, But They're Right About Diversity*, S.F. DAILY J., Jan. 8, 1998, at 4 (criticizing the protesters for "chant[ing] obscenities, . . . yell[ing] racism, . . . play[ing] smash-mouth politics as a lark . . . and . . . never consider[ing] how their actions turn off their allies . . .").

The student protesters of Boalt Hall are not foolish radicals being arrested for no reason. They are emotional, true, but they are also intelligent, articulate, rational—and under fire. Come tell the woman who is the *first* person in her entire extended family to go to college, let alone law school, that she is likely also to be the *last*. Tell her that although she has excelled in law school and has a bright future—now that she has been given the opportunity—her younger siblings, cousins, and nieces will never get that opportunity. Tell *her* she's just being silly, that there's no urgency, that Regents' Resolution SP-1 and Proposition 209 are not attacks on *her family*.

She is using all she has left in her small, student arsenal—standing up and yelling. Silence is complicity. Instead of criticizing her, you should commend her character.

Her character is hard-won, however, and is taking a toll on her. *Calvin and Hobbes* deftly reveals the common way of building character; Calvin steals his father's eyeglasses and imitates his father by wearing the glasses, standing sternly, hands on his hips, and saying, "Calvin, go do something you hate! Being miserable builds character!"<sup>18</sup>

The camel's back *will* break soon, and we can no longer rely on misery to instill character in the next generation of lawyers. We can no longer force students to bear so much of the burden of their own character building. We must instead move toward *inspiring* character through support and by example. And part of that support and part of that example is to stand up and yell that something is wrong here. Diversity is important to all of us, and we cannot allow our law schools to become enclaves of the complacency engendered by homogenous race and thought.

Regardless of our shortcomings, we lawyers should not be practicing and teaching law at all if we cannot find in our ideals and objectives positive values that deserve commendation and support. It has been said a nation without ideals cannot long survive. Neither can our profession.<sup>19</sup>

If we fail, the punch lines—and the reality at which they hint—will only get worse.

"Well, we no longer admit black people. But other than that."<sup>20</sup>

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18. BILL WATTERSON, *ATTACK OF THE DERANGED MUTANT KILLER MONSTER SNOW GOONS* 74 (1992).

19. See Smith, *supra* note 3, at 618.

20. See Trudeau, *supra* note 7; see also *supra* text accompanying note 7.