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IN MEMORIAM: MARILYN V. YARBROUGH

“SHE WAS A GREAT WOMAN”

CHARLES E. DAYE*

For this task words are feeble. Words cannot manifest. Words cannot make the ineffable palpable. If words had such powers I could paint a portrait of our dearly departed, Marilyn.¹ I would make visual

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1. Marilyn and I go back close to thirty years. I first met Marilyn, that I know of, in 1975, when she was entering the teaching profession. The UNC School of Law, where I had joined the faculty as an assistant professor in the fall of 1972, invited Marilyn to North Carolina as a faculty candidate. She impressed the faculty. But she decided to accept a position as an Associate Professor at Kansas, where she began her career. In the mid-to late-1970s the cadre of African American law teachers was quite small and it was easy to keep in contact. Marilyn and I also stayed in communication for another reason. We learned during her recruitment visit to North Carolina that we had some common bonds. Although she was born in Bowling Green, Kentucky, she grew up in Raleigh, North Carolina. She graduated from Raleigh's Ligon High School in 1962, the same year I graduated from Merrick-Moore High School in Durham County about thirty miles distance in the adjacent county. We speculated that we may have encountered each other at high school-related events but never confirmed it. We certainly had many acquaintances and friends in common from the Durham and Raleigh communities. Marilyn and I also both graduated in 1966 from historically black colleges—she from Virginia State University and I from North Carolina Central University (then North Carolina College)—both schools whose sports teams played each other as members of the venerable CIAA (Central Intercollegiate Athletic Association).

We were also both involved in sections of the Association of American Law Schools and on committees and boards of the Law School Admission Council at overlapping times. My wife and Marilyn became acquainted through LSAC. They shared a special bond when, on occasion, Marilyn's youngest daughter, Carla, accompanied Marilyn to board meetings and my wife, Norma, accompanying me, undertook to go site seeing with Carla. After Marilyn came to UNC in 1991 Marilyn and my wife shared interests in children and in later years, grandchildren, among other matters.

During the last couple of years, Marilyn's office and my office at the law school were next door to each other. So we spoke every day practically. We both taught Torts from the same casebook, and we shared notes about cases and insights. We shared views about many things, including the state of the world, politics, LSAC, legal education, black law students, poor students, women students, the role of Black law professors, leadership in law schools, legal education organizations, sports, role models in and out of the legal profession, law school collegial and “political” issues, cooking, eating, and fine restaurants and hotels (about which Marilyn knew vastly more than I did), to name some topics. There was only one issue that was off limits between Marilyn and me—the role of the

her indomitable spirit, revitalize her incomparable service, physically project her pioneering achievements, give sentience to her love for life, impart tangibility to her devotion to causes grand and worthy, make substance of her genuine devotion to generations of students and colleagues whom she nurtured and for whom she role modeled, bring feeling to her uncontainable mother's pride in her family and in the achievements of her daughters, Carmen and Carla, and show the essence of her unbounded grandmother's joy in her grandson, baby Daniel. Words cannot do these things. I have no power to give sensation to the fullness of her presence that we felt when she was with us. Nor with words can I adequately share the expanse of emptiness and loss we feel now that she has left us. She was at once, and all the time teacher, scholar, servant, advocate, pioneer, leader, and friend—because, as one of her former students so plainly and clearly said it, “She was a great woman.” Indeed.

A GREAT WOMAN'S PIONEERING PROFESSIONAL PATHWAYS

Words cannot explain fully the extent of Marilyn's extraordinary, pioneering accomplishments. I will note that after graduating from Virginia State University in 1966, she started her career as an

NCAA in college athletics. Suffice it to say that Marilyn and I had sharply divergent views on the effect, consequences, impact, and utility of the NCAA. She considered my views uninformed and I considered hers unpersuasive. We tacitly decided, without ever saying so, to put that subject off limits. But that was the only subject. Marilyn was wonderfully broad in her interests and widely appreciative of knowledge on diverse subjects. I always learned something or to appreciate something more fully whenever I talked to her.

When Marilyn experienced a health challenge from time to time, my wife and I took special note, because we all shared one common health challenge. We actually spoke to Marilyn about how much she overworked and overtaxed herself. She would hear nothing of the sort. When she was last in the hospital for major heart surgery, within a day or so she was discussing with me preparing her exam for the end of the semester of Fall 2003. I shared questions I had drafted to help give her some ideas. But quite literally, to stop her from trying to leave the hospital bed to meet a previously scheduled review session with her first-year Torts class, I told her I would meet the class. I did meet the class and purported to conduct the review session. That surgery was successful and she returned to work forthwith. By all appearances, she was up and about in her usual way and attending her extensive activities. That is one of the reasons her death was profoundly shocking and sad. It was so sudden and happened just when, to all appearances, she was doing so well.

Marilyn's dedication to her work, her students, and her interests knew no bounds. When I spoke the eulogy at her funeral, on March 14, 2004, I concluded by saying “Now, she rests, through all Eternity, in the Almighty Arms of God.” Later, at a memorial service at the law school on April 3, 2004, Glenn George, who became a close friend of Marilyn's said she disagreed with my conclusion for she was sure that Marilyn was not “resting” in God's arms but in fairly short order got involved in organizing potluck suppers and meetings. Glenn was so right. It was *not* Marilyn's nature to rest.

engineer and worked as a Systems Engineer in Aerospace and Distribution with IBM Corporation and then as Associate Engineer, Aerospace Engineering, at the Westinghouse Aerospace and Defense Center.

She then decided to enter the legal profession and enrolled in law school at the University of California, Los Angeles from which she earned her Juris Doctor Degree in June 1973. She started her pioneering professional journey in the legal profession, in 1975, as a Teaching Fellow at Boston College Law School. She became one of the very early African-American law professors in the United States holding a tenure track position when, in 1976, she joined the faculty at University of Kansas School of Law.

In 1986 she was elected President of the Law School Admission Council becoming the first African American and, as of this writing, the only woman to hold that position. She continued her pioneering ways when, in 1987, she was named Dean of the University of Tennessee College of Law. At that time she was one of a very small number of women law school deans and she was the first African-American female dean of a major Southern law school. After the Deanship, she held the Visiting William J. Maier, Jr. Chair of Law at West Virginia University before moving to the University of North Carolina School of Law in 1993 where she was a Professor of Law until her untimely death.

A GREAT WOMAN'S INCOMPARABLE INTENSIVE INVOLVEMENT

Recounting all of Marilyn's energetic and intensive service to great and noble causes would simultaneously overtax this memorial and yet inadequately convey the extent, breadth, and meaning of her service. I set forth here a selection of her services as a mere sample of her work. She was a Delegate to the World Peace through Law Conference, Abidjan, Ivory Coast. At various times, Marilyn served as a member of the American Bar Association Journal's Board of Editors; the Public Review Board of the United Auto Workers International; the American Law Institute; the Federal Advisory Committee on Gender Integrated Training and Related Issues in the Military Services; a Hearing Officer of the Appeals Committee of the College Delegate Assembly of the Southern Association for Schools and Colleges; the Pulitzer Prize Board; the Council of ABA Section of Legal Education and Admissions to the Bar; the Kansas Commission on Civil Rights; the National Collegiate Athletic Association Committee on Infractions; the National Selection Panel for ASJMC-NASA Journalist in Space; the Unclassified Women's

Advisory Group Steering Committee of the University of Kansas, Associate Provost of the University of North Carolina at Chapel Hill, director or instructor for several CLEO Institutes, and on Boards of Visitors of at least five different law schools.

What was the impact of Marilyn's service? I note simply that she earned numerous awards celebrating and commending her incomparable service to the profession, to the legal education academy, to her communities, to the nation, and to the people. The awards conclusively demonstrate that wherever she went Marilyn got involved in works; good and grand works. The awards granted by entities and organizations, I think, manifest appreciation for the value and impact of her efforts for the benefit of others. These awards include LL.D. Honorary Degrees from Kenyon College (OH), the University of Puget Sound (now Seattle University) School of Law, and Capital University Law School; the ABA Margaret Brent Women Lawyers of Achievement Award; the Society of American Law Teachers Award for Excellence in Law Teaching; the Knoxville YWCA Tribute to Women Award for Education; the Black Hall of Fame of the University of Tennessee; the University of Kansas Women's Hall of Fame; the Distinguished Alumni Award of Virginia State University; and the Frank D. Reeves Award of the National Conference of Black Lawyers.

A GREAT WOMAN'S SCHOLARSHIP SPEAKS

Marilyn wrote about many things. The unifying theme of her work is "justice," writ large. Her words bespeak her passion for justice for all, with particular attention to women and minorities. On some two-dozen occasions she wrote about fairness, progress, equity—justice—such that in her words she was so bold as to speak "truth to power." I select the following examples. She spoke to the issue of gender discrimination in the compensation of coaches and athletic administrators and decried the decline in modern times of the opportunities for women in athletics-related employment.² In another work she spoke about justice for African-American women who must continue to fight to overcome damaging stereotypes, concluding that "[w]e have a lot of disproving to do."³ Her work also examined and proposed remedies for "[t]he jurisprudential

2. *Pay Equity for Coaches and Administrators in Athletics: An Element of Title IX?* (w/B. Osborne), 34 U. MICH. J.L. REFORM 231, 232 (2001).

3. *Cassandra and the "Sistahs": The Peculiar Treatment of African American Women in the Myth of Women as Liars*, 3 J. OF GENDER RACE & JUST. 625, 657 (2000).

'invisibility' of African-American women, residing as they do at the intersection of two subordinating factors, race and gender."⁴ She explored the impact on law students of "the mixed messages law professors and other members of the legal community unwittingly convey to students regarding plagiarism."⁵ With respect to college sports participation, she called for "the elimination of race and sex discrimination in this aspect of society and the provision of equal educational opportunity for all student athletes."⁶ She explored the continued difficulties of achieving educational equity for African-American children.⁷ She examined the problems of increased borrowing to pay the increasing costs to attain a legal education on minority students whose career options, positions, and earnings were adversely affected by limited professional opportunities, in part due to racial discrimination.⁸ She examined the impact of events on women when their marriages ended due to divorce, death of the spouse, or other events that "displaced" women who had served as homemakers.⁹ She also was concerned about growing "commercialism" in the legal profession.¹⁰

A GREAT WOMAN'S FINAL FAREWELLS FROM FRIENDS

How Marilyn is remembered may be the greatest validation of her work. The affections her life engendered among many in widespread parts of the nation speak volumes about her. Because my words are inadequate to characterize or summarize the outpouring of affection her sudden death occasioned, I offer a small selection as a sample of the dozens upon dozens of commemorative messages sent in her behalf.

These messages tell us that Marilyn embodied inspiration and affirmation, that she walked in dignity and lived courageously, that she was the soul of dreams and giver of hope, and that she was independent of spirit and the essence of life itself.

4. *A Sporting Chance: The Intersection of Race and Gender*, 38 S. TEX. L. REV. 1029, 1033 (1997).

5. *Do As I Say, Not As I Do: Mixed Messages for Law Students*, 100 DICK. L. REV. 677 (1996).

6. "If You Let Me Play Sports," 6 MARQ. SPORTS L.J. 229, 231 (1996).

7. *Still Separate and Still Unequal*, 36 WM. & MARY L. REV. 685 (1995).

8. *Minority Students and Debt: Limiting Limited Career Options*, 39 J. OF LEGAL EDUC. 697 (1989).

9. *Disparate Impact, Disparate Treatment and the Displaced Homemaker*, 49 LAW & CONTEMP. PROBS. 107 (1986).

10. *Is Value Billing the Answer?: A Response to "The Individual Practitioner and Commercialism in the Profession,"* 45 S.C. L. REV. 991 (1994).

I was so sad to hear about the death of Marilyn. [S]he [was] way too young to die. I first saw her as a new law teacher attending a meeting on women in law teaching in New Orleans. She was a Dean then. I admired her so much. I met her again this past summer at another meeting of Women in Law Teaching. She never hesitated to give support and guidance to those who came behind her.¹¹

I was devastated when I [learned of Marilyn's death]. I cannot believe that she is gone, although she will never truly be gone. I so admired Marilyn and found her to be both inspiration and confirmation. . . . [W]henver I [talked with her] I was left with a sense of joy and challenge—joy at knowing someone so real, so smart, so caring and the challenge of trying to live up to her example.¹²

[P]lease convey my deepest sympathies to Marilyn's family and to my many friends on the UNC faculty. She was a great lady, and we all have suffered a tremendous loss.¹³

This is truly sad news to me. I knew Marilyn since the mid-1970s. She was a friend to me when I needed one . . . what sad news, indeed.¹⁴

She was one of the early black pioneers teaching in mainly white schools. We can talk of the contributions of the early ground-breakers like Marilyn, but I am not sure that anyone who was not there or very close to those of us who were there, can really understand the blessings we offered and the burdens we bore. There were, and are, satisfactions in our work, but there is also a toll.¹⁵

She was our common sense, our security blanket, and our daring spirit. . . . A tireless worker for the beloved community, social justice, human dignity, and equality, she walked with Kings and Queens, but never lost the common touch.¹⁶

11. Deborah Post, Professor, Touro University School of Law, New York.

12. Elizabeth "Ginger" Patterson, Professor, Georgetown University School of Law, Washington, D.C.

13. Michael Richmond, Professor, Nova Southeastern University School of Law, Fort Lauderdale, Florida.

14. Margaret Montoya, Professor, University of New Mexico School of Law.

15. Derrick Bell, Professor, New York University, New York.

16. John Calmore, Adrienne Davis, Kevin Haynes, Julius Chambers and Charles Daye—Marilyn's Colleagues, UNC School of Law.

I can't tell you how sad this makes me. We were together in NYC about three weeks ago at a meeting to talk about how to get more women in our LSAC leadership pipeline. She was her usual perceptive, spunky, and upbeat self. She was always so generous to me. I can't believe she's gone. What a loss for legal education.¹⁷

[The] message [of Marilyn's death] brought tears to my eyes. I'm glad that I had an opportunity to see her last fall in Seattle. Marilyn began her law teaching career at Boston College as a legal writing and research instructor in the mid-70s. I've always taken great pride over the years in her many accomplishments.¹⁸

[We] were shocked and saddened to learn of Marilyn's death. I know there is little we can say to ease the pain, but please know that our thoughts are with those who cared for Marilyn and who, now, must live on. None of us will forget her and what she accomplished. And, as my father taught me, that's what immortality is about.¹⁹

A GREAT WOMAN'S MORTAL AND IMMORTAL MEASURES

Human beings are many things. Marilyn was mortal as flesh and blood, as conscious mind and intellect, as physical presence and composition, and as substance and sinew. That is why she left us.

Human beings, indeed, are many things. Marilyn is immortal to the extent that she walked in dignity and lived courageously, immortal as long as her example can inspire us to dream of justice and to believe in hope, immortal when memories of her vital spirit linger with us into the coming years, immortal when the essence of her too-short mortality demands that we treasure and act upon every opportunity we have to serve, and immortal as long as our hearts fill with unremitting joy that we had the privilege to know her and be her friend.

Her life was inimitably remarkable. Yes, she was, a great woman.

17. Richard Geiger, Chair of the Law School Admission Council; Associate Dean, Cornell University School of Law, Ithaca, New York.

18. Ruth-Arlene Howe, Professor, Boston College School of Law.

19. George Dawson, former Chair of the Law School Admission Council; Professor, University of Florida School of Law, Gainesville Florida.

