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## Alan Freeman

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## Alan Freeman

PETER GABEL†

I had expected a less formal gathering, but it's okay—I will just speak to you in this somewhat more formal environment about my dear, darling friend, Alan, whom I loved very much and with whom I had a profound relationship for a very long time. During two periods of my life, each for as long as two or three years, Alan and I spoke on the phone almost every day when we weren't in the same city. We watched B movies together, we drank and smoked a lot of cigarettes together, we grew from young adulthood to adulthood together as more or less symbiotic partners. I think we saw each other in ourselves and we loved each other very, very much. So, I miss him terribly and I'm acutely conscious of his absence in my life. What I have to say today will be as much about me as about Alan—it's about our relationship.

My friendship with Alan began in the Fall of 1973, a year or so after I graduated from law school. I was living in Berkeley and I got an interview at the University of Minnesota and was asked by the Dean what sights I wanted to see when I got there. I think I was being recruited at the time, though I didn't then experience myself that way, and I said, well, the coffee houses or the counterculture scene or something like that. I mean I looked roughly then the way I look now, and Dean Auerbach, who was, you know, a more traditional fellow, decided to send me to Alan as his idea of the only conceivable anchor point for me. I think I stayed in the Ritz something-or-other Hotel, as one did when one interviewed for a job, and Alan took me around to the bars at the Seven Corners, to the Haberdashery, and other places like that in Minneapolis, and we immediately hit it off. He was at that time living with his first wife Iris and his then young daughter Jennifer, and, sensing I felt ill at ease and unsure of myself in the world of law professors, Alan and Iris watched over me during that visit, as they would for the entire following year.

I went to Minnesota because, as alien as I felt then from the concept of being a law professor, I sensed that Alan would be a channel for me into it. And in fact, when I arrived in Minnesota the following year, Alan had arranged for us to have adjoining offices and we spent virtually all of every day together

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as partners in a rather gentle, pre-critical legal studies rebellion against the traditions and roles of the legal academy. The Alan that I knew then, in the mid-70's, may have been somewhat different from the Alan you in Buffalo knew, because at that time Alan was jovial, he was round, he was convivial, he was a liberal not a radical, he was beloved by his students and not engaged in institutional conflict, he was liked equally by the conservative faculty and by the liberal faculty. And he had a quality that I thought was one of the most important qualities that he had as a teacher and that was a lovingness and generosity toward his students that allowed each of them to feel that, no matter how rigorous and challenging his classes, they would never be hurt or embarrassed in his classroom, that their experience would be one of validation and acceptance. Since I was a transplanted hippie and Alan and I were more or less inseparable, we were referred to as "warm-woolies" by the then largely conservative Minnesota faculty, who I think genuinely liked us as something like mascots, but didn't feel—probably correctly at the time—that we posed any challenge to the established order.

So, I would emphasize that innocence that Alan had at that time, an innocence that he later described, after he had partly lost it, as "firmly and naively believ[ing] in the possibility, perhaps the reality, of niceness in the world."<sup>1</sup> In 1974, Alan embodied the notion that you could be an adult and a very smart law professor and that you could be nice, kind, and loving at the same time. And since he was four or five years my senior—a very important age difference then—he became a role model for me, even to the point of my mimicking his gestures. For example, he had big bushy eyebrows and glasses then and, as I said, he was big and round at the time, his eyebrows would move independently of each other, in a fantastic Alice-in-Wonderland way, as he engaged in animated conversations with students. Somehow, I introjected the exact same mannerism, though unfortunately I can't do it anymore. I think I was unconsciously trying to be him as a way of mastering what for me was the cold-steely world of the law professor.

But we also had some important differences in those early days. I was a 60's person, and Alan was essentially a 50's person. He had just left the Department of Defense before he came to Minnesota. He'd served, I believe, in the Army as a lawyer, and arrived at Minnesota believing that legal reform could

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1. Alan D. Freeman, *Racism, Rights and the Quest for Equality of Opportunity: A Critical Legal Essay*, 23 HARV. C.R.-C.L. L. REV. 295, 297-98 (1988).

change the world. When he was in the Defense Department—I don't know if Betty knows this—he wrote a definitive treatise on impossibility of performance as applied to government contracts, which he gave to me as a first-year contracts teacher and which reflected, as I recall, a faith in the enlightened judicial activism advocated by the UCC as a solution to the problem of cost-overruns by defense contractors. He was very moved by the Warren Court, very moved—at that time in his life—by the expansion of civil rights and the creation of justice through law. And, I was much more sex, drugs, rock and roll, revolution, break through the facade of the system to get to immediate connection—I had a very hard time reconciling the formality and stiffness of the legal system and law school roles with the vision of the radical community that I aspired to. I was very different from Alan in that sense, and so I left Minnesota after a year, returning to Berkeley to get a Ph.D. in Psychology, studying Freud and Marx, participating in Berkeley culture, and generally striving to become my own person instead of my father's fantasy of who I should be, while Alan remained a very popular liberal professor, married with a child and a mortgage.

Thus began the second phase of our relationship, which was mainly by phone and which was to become the critical legal studies phase of our relationship, the phase when we became radicals together—he moving left from his liberal stance and me moving from cultural refusal and rebellion to wanting to do something more assertive and serious about opposing the alienation of the system. For Alan, the emergence of the Nixon-Ford-Carter era and the lightweight politics of the 70's and the degeneration of the Warren Court into the Burger Court really destroyed the vision that he had, born mainly out of the civil rights movement, of a nice, humane, just and loving world coming into being through law. And I was talking to him about reading about Heidegger's conceptions of "idle talk" and the "they self" and Laing's idea of the "false self" and Marx's conception of ideology and we often discussed, in a fast intuitive way, how it might all fit together. So, when the first critical legal studies conference was organized in 1977—I had sent Duncan Kennedy a paper on legal thought as alienated interpretation and, amazingly enough, a conference was being planned on just this kind of topic—I wanted Alan to come to see if the excitement of our friendship could again spill over into the excitement of our working together.

I want to stress how much of an impact that conference in Madison in May 1977, had on Alan. In his most autobiographical piece, the one in the *Harvard-Civil-Rights-Civil Liberties*

Law Review, he wrote, "That conference was the most empowering, energizing and magical experience of my professional career. Despite the jargon, there existed in the room a shared sense that reality did not comport with appearance and that what passed for mainstream legal scholarship was no more than self-deluded apologetics. We, or most of us, were willing to declare ourselves radicals and to commit ourselves to fashioning an alternative which I learned to call counter-hegemonic voice."<sup>2</sup> He experienced a sense of thrill and of breaking through resulting from the sense of community that we who were creating critical legal studies felt on that occasion, and the inspiration he felt led him to go back and write his famous civil rights article almost immediately thereafter in just a few frenzied days. In that article he kind of settled his score with the Supreme Court doctrine that he felt had disappointed and even betrayed him, showing how that doctrine had processed societal racism in a way that actually legitimated it. At the end of his life, having become appalled at the demonization of white males that came to characterize the politics of race, he came to feel more ambivalent about this article, perhaps feeling less good about the aspect that purports to righteously unmask "oppression," but still holding to the aspect that shows how law becomes legitimating ideology in a secular, atomistic world.

In the five years following that conference, Alan must have lost 50 to 60 pounds. He became very thin, he began teaching in red t-shirts and shorts, he left his first marriage and moved into an apartment by himself. Although he was still good-natured and bubbling over with ideas and energy, he completely lost his jovial, round innocence. He was respected by his Minnesota colleagues but no longer beloved, and he frequently clashed with them over what he now saw as sharp and serious political divisions. (For example, when Warren Burger was selected to dedicate the new law school building, Alan was so angry that he held a counter-dedication with a group of minority students. It was televised on the evening news, and gave rise to animosities that I don't think ever were healed.) Even his scholarly work shifted from the benign liberal optimism of his early articles (like his rather technical liberal law-and-economics work on reconciling "residential amenities" with efficiency in zoning law) to the more righteous and impatient moralism of "Truth and Bullshit in Legal Scholarship,"<sup>3</sup> which he wrote for a Yale sympo-

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2. *Id.* at 313.

3. At the insistence of the editors, the article was ultimately published as: *Truth and Mystification in Legal Scholarship*, 90 *YALE L.J.* 1229 (1981).

sium on CLS. While he remained a great and popular teacher, for the first time he had to deal with some students who were offended by his views.

Alan's move to a more radical stance brought us even closer, especially because of our immersion in the rise of the CLS network and our participation in the excitement and romance of the CLS summer camps, where Alan and Betty fell in love and where Alan and I got to passionately argue for our existential critique of law against the then more structural views of such venerated elders as Morty Horwitz and David Trubek. (There was one actual such debate during the 1981 summer camp, shortly after Ronald Reagan had fired all the nation's air traffic controllers and had broken their union with little public resistance, on the subject of "Why the Air Traffic Controllers Struck Too Soon." Arguments ranged from the State's perceived role as a neutral mediator of class power—I believe the strike was arguably "illegal"—to a point strongly urged by Alan that the union had underestimated the public's unconscious infantile association of airplanes with giant birds in need of "controllers," though that description doesn't really do his point justice). In any case, we had a lot of fun during these years, we felt we were on a meaningful and liberating track together, and I got some satisfaction from feeling that, during this period, I had become something of a role model for Alan helping him to move beyond an earlier identity that he realized he had felt stuck in. We had become true equals and brothers, and I even returned to teach at Minnesota for one quarter, during which time we lived together and taught together with enough exuberance to win the "Teachers of the Year" award, though I knew perfectly well that in this arena I was riding on Alan's coattails.

Since the other speakers today will speak mainly of Alan's years in Buffalo which began right after I left Minnesota that Spring, I want to jump directly to two painful points for me about Alan's death. I wanted an opportunity to say them in public. The critical legal studies (CLS) movement for all of its utopian aspirations, which I think were genuine, and its experience of community, which I think was also genuine, produced a tremendous amount of vitriolic attack, battles between men and women, battles between whites and blacks and chicanos, the kinds of battles which are commonly associated with the left and that actually leave a tremendous number of scars. Even though he was often pictured as having a sword in his hand battling for justice and breaking down walls and breaking through conventions, Alan Freeman was above all an extremely sensitive, vulnerable, loving man who rightly longed for the generos-

ity and common understanding of community. And I think whatever successes we had in CLS, a failure of our movement was that we did not create a consistent environment of caring, a consistent sense that we occupied the same safe space across our differences. A lot of us were hurt by the hostility and put-downs that came to characterize too much of CLS, and I think that Alan was especially hurt by the criticisms and attacks when he felt he was trying to extend himself and become part of a more humane and loving world. And I think part of the reason that in the latter part of his life he turned to law and religion was his growing sense that a truly radical vision of community or social change required the creation of an environment that nurtured people's sensitivity and deepest aspirations and that couldn't be fought out on a constant battleground of "ideological struggle." What I want to say is that the scars left by the CLS culture were serious scars, they seriously affected the latter part of Alan's life, and we should face their impact, not only upon him but on the rest of us.

The second painful point relates to how Alan experienced his cancer of the pancreas and his sudden confrontation with the reality of death. For reasons that turned out to be unimportant, Alan and I had a falling out a few years before he died, but when he was diagnosed, we immediately put our differences behind us and returned to our often daily telephone calls. From these conversations and one visit to Buffalo I came to realize how poorly prepared we all are for death. Whatever good words we have for him today, we should recognize how hard it was for Alan to not know, at the age of 50, whether he had a future, and how hard it was for him that we had not created a community of compassion in which the reality of death could be a part of a common experience, rather than the strange and isolating experience it was. The fact is that apart from Betty and his family, Alan faced his illness mainly alone, and that more people avoided him than helped him, in an environment of solidarity and connection, to face this fate we all share. So, perhaps our duty to him is to try to help make the reality of our approaching death a more communal experience for the rest of us, something more fully in our consciousness and more affecting of how we conduct ourselves and our relationships to each other in the time remaining.