

A Theory of Employment Discrimination

Brenda Waugh

September 1987

My child is with me—
and I am with child.
Together, we are going to conduct an
experiment.
Experiment with an experience.

Every year, about this time,
all of the BIG law firms come to town
to recruit the cream of the crop.
(The cream of the crap.)
This year, rather than ignore them,
I will
interview.

“Oh.” Sandy said.
“There you’ll be
out to here;
big as a pig—“interviewing.”
“Big as a pig.”

The firms are big as pigs.¹

I am with child, and
my child is with me.

Brenda Waugh is an attorney in Charleston, West Virginia. The author wishes to thank, especially, her son Dashiell, daughter Elexa, and husband Chris Quasebarth for being with her, in various ways, while she worked on this project. She also wishes to thank Marie Ashe and Mary Ellen Griffin for comments and ideas along the way, and Jim Elkins and Patricia Williams for support and comments on earlier drafts.

A comment by Barbara Christian suggests the connection between the title of this article and the narrative that follows: “My fear is that when theory is not rooted in practice, it become prescriptive, exclusive, elitish.” Christian, *infra* note 2, at 74. E. Ann Kaplin speaks of a postmodern feminist text that may be a narrative or an antinarrative or neither: “The efforts in the transgressive sort of text should provide the groundwork for the utopian post-modernist text in leading us through the problems and tangles of binary oppositions toward a glimpse of how the beyond might appear.” E. Ann Kaplin, *Feminism/Oedipus/Postmodernism: The Case of MTV*, in *Postmodernism and Its Discontents* ed. E. Ann Kaplin, 30, 41 (New York, 1988).

1. “I had a vision this afternoon—I saw those who are going to follow me and who are still not completely embodied because pigs like those at the restaurant last night eat too much. There are some who eat too much and others like me who can no longer eat without *spitting*.” Antonin Artaud, Letter to Paule Thévenin, dated February 24, 1948, *reprinted in* Antonin Artaud: *Selected Writings*, ed. Susan Sontag, 584, 585 (Berkeley, Calif., 1976).

Let's go.²

September 26, 1987
Andrews and Ellis³

I knew that I was in trouble
before I even walked into that room.
One man smiled at me—amused—
as he reached past my swollen belly to shake my hand.
 (The custom of hand shaking began between men—
 strangers—
 to assure each other that
 they were not
 armed.
 A coming together between men capable of exerting
 equal force upon each other
 in
 case of conflict.
 Why must I shake this man's hand?
 I do not even know his weapon.)
We walked in the windowless room and sat down at a
 long, cold table.
The men, the two of them, sat
 blocking the door.
One man asked me if I had children.

2. I will comment directly to you as I recount my experience. I will not engage in a discourse in which I alone transmit a scholarly but false analysis of the abstraction of my experience. Rather, I will strive to engage you in a conversation between my words and your memories, as I relay my own. In this dialogue I seek to cultivate a unique theory of a combined reality. See Barbara Christian, *The Race for Theory*, 14 *Feminist Studies* 67, 72 (1988):

The metaphysical language of the New Philosophy, then, I must admit, is repulsive to me and is one reason why I raced from philosophy to literature, because the latter seemed to me to have the possibilities of rendering the world as large and as complicated as I experienced it, as sensual as I knew it was. In literature I sensed the possibility of the integration of feeling/knowledge, rather than the split between the abstract and the emotional in which Western philosophy inevitably indulged.

And, in the dialogue between my experience and your memory, converse with me by thinking of the time you had an interview. Think of whether your experience was like this, but do not be afraid to think that it was not.

A theory is not a mere account but must encompass experiences greater than that upon which it is based. My theory invites your experience. "I just want to reproduce the objects for what they are and not for what they mean. If you give a meaning to certain things in my paintings it may be true, but it was not my idea to give this meaning. What ideas and conclusions you have got I obtained too, but instinctively, unconsciously." Pablo Picasso, in conversation with Jerome Seckler, *Picasso Explains*, New Masses, March 13, 1945, at 4, 6-7.

At last, I do not articulate this theory in abstraction. A snowflake falls from the sky. It is multifaceted. Drifting the shape changes as it is caught and turned by each tiny gust of wind. Falling gently, slowly, it lands on the asphalt pavement and melts. *Do not* claim that by staring at the spot of water on that pavement that you have known the snowflake.

3. This is a lie. This is not the real name of the firm or the men who interviewed me. The story is real, my theory is real, but the firms are false.

"Yes."

"How old?"

"Three."

"Are you married?"⁴

"Yes."

Randolph Owens grabbed up his pen and wrote on his legal pad:

married

THREE-YEAR-OLD CHILD

They looked at my resumé—They asked me about my interests—I said that . . . One of them told me that . . . Oh boy—good old boy—chit chat—Walter Johnson was a University of Virginia alumnus—He was impressed that I too had graduated from that prestigious institution—Institutionalized prestige—I told him that . . . He said . . . I said . . .

Then—they dropped—the bomb.⁵

"Your husband . . . what does he do?"

I thought, "so what?"

I said, "He's in law school too."

Randolph Owens said, "Where is he going to practice?"⁶

I thought, "So what?"

I said, "Right now, I'm not sure what he's going to do."

Owens pressed on. "IS HE PLANNING TO MOVE TO THIS AREA AS WELL?"

I thought, "SO WHAT?"

4. The sharp pain of this sting has swelled into a numb but open wound, oozing my adopted complacency. Through time, we are made weak; accepting the once unthinkable. See also *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324 (1977) (immunizing all bona fide seniority systems against attacks for perpetuating past discrimination).
5. Thoughtless—bombs. J. Robert Oppenheimer was lured by the United States government to organize scientists to create fission. He sought to create a new form of scientific life, a single integrated lab with the free flow of information. "In a way, . . . Los Alamos was a kind of confluence of my highbrow past, my physics, my students, my horses, my ranch, and my slight knowledge of politics." Philip M. Stern, *The Oppenheimer Case: Security on Trial* 36, 72 (New York, 1969). He wanted a worldwide free exchange of ideas. He did not see the political implications. When asked to sign a petition urging President Truman not to use the bomb, Oppenheimer refused, stating "in a polite and convincing way that he thought it improper for a scientist to use his prestige as a platform for political pronouncements." *Id.* at 80. It is a question of intentions. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981) (requiring plaintiff to show that she was the victim of intentional discrimination).
6. Spouse? See *Yuhas v. Libbey-Owens-Ford Co.*, 562 F.2d 496, 499 (7th Cir. 1977), *cert. denied*, 435 U.S. 934 (1978): "The no-spouse rule is predicated on the assumption that it is generally a bad idea to have both partners in a marriage working together. . . . First, the marital relationship often generates intense emotions which would interfere with a worker's job performance. . . . Second, if an employee who works with his or her spouse became involved in a grievance . . . the two spouses might be expected to take the same side in the dispute. . . . Third, if both partners . . . were employed together, and one spouse was promoted to a supervisory position, numerous problems could arise. . . . Finally, a no-spouse rule eliminates the possibility of the already-employed marriage partner intervening in the hiring process."

I said, "Yes, I suppose that if I go he will."

"Wither thou goest, I will go . . ."

Owens couldn't be stopped . . . he was on a roll . . . "WELL, WE DON'T WANT TO RUN INTO A PROBLEM OF CONFLICT OF INTEREST IF WE HIRE YOU AND HE WORKS IN THE SAME AREA . . ."

I thought, "This guy is going off⁷ . . . I'd better . . . lighten things up."

I said, "You know, have you ever seen the Hepburn-Tracy film *Adam's Rib*?"

The one from UVA said "yes."

The other one said "no."

I said "They were married and opposed each other in a criminal case where . . ."

I laughed. The one from UVA laughed.

The aggressive one wouldn't have it. He pressed on.

"THIS IS A REAL PROBLEM!"⁸

I thought . . .⁹

7. On July 16, 1945, at 5:29 A.M. the first atomic bomb was exploded. Trinity. Oppenheimer thought of the words of the Hindu epic, the *Bhagavad-Gita*:

If the radiance of a thousand suns
Were to burst at once into the sky,
That would be like the splendor of the Mighty One. . . .
I am become Death,
The destroyer of worlds.

See Stern, *supra* note 5, at 81.

8. Problem. Question—on hiring a pregnant woman. *Wright v. Olin Corp.*, 697 F.2d 1172 (1982) (holding that business necessity permits exclusion of pregnant women from certain positions which could potentially harm the potential future child). "[O]lin orally warns its male employees about lead exposure at the Pisgah plant, but the warnings are much less formal than the written warnings to women. No actual restrictions are placed on male employees." *Id.* at 1182. How far can this rationale be extended? See Int'l Union, United Auto., Aerospace and Agric. Implement Workers of Am., UAW, et al. v. *Johnson Controls, Inc.*, 886 F.2d 871 (7th Cir. 1989), *appeal pending* (holding that a policy precluding women of childbearing age from working in a high lead exposure position in a battery manufacturing operation did not violate Title VII because such a policy constitutes a bona fide occupational qualification).
9. Silence is a part of speech. When speech is reduced to writing, silence is lost, rendering the communication incomplete. But silences are part of the whole—the negative space. An artist calls the space occupied by the object the positive space and the space around the object the negative space. The sculpture, the drawing, the painting must all have positive and negative space. Speech, too, has negative spaces. We overindulge in the study of the positive, losing the negative space, which is more intricate, more revealing, and more compelling than what is readily seen by the imperceptive thinker. For a discussion of negative space, see Betty Edwards, *Drawing on the Right Side of the Brain* 97 (Los Angeles, 1979). See also Dennis Tedlock, *Learning to Listen: Oral History As Poetry*, in *The Spoken Word and the Work of Interpretation* 107, 115 (Philadelphia, 1983) (explaining that prose does not exist outside of the written page. Prose is inadequate for describing speech: ". . . there is no SILENCE in it.") And see Harold Pinter: "It is in the silence that they are most evident to me. There are two silences. One when no word is spoken. The other when perhaps a torrent of language is being employed. This speech is speaking of a language locked beneath it. That is its continual

I said, "Well, where is the line to be drawn? Someone you date?—How about someone you play golf with every day?—Once a week?"

"THE LINE IS TO BE DRAWN AT THE MARRIAGE CONTRACT, THAT'S WHERE!!!"

I thought . . . I said, "You get the same thing when a son practices in a different firm from his father."

The one from UVA politely interrupted to describe a "married couple" in his town, where the husband and wife both practiced. Then they each related a heartwarming father-son . . . dad-and-lad . . . story.

They didn't ask about my employment experiences.

They didn't ask about my grade point average.

They didn't ask about my club membership.

They didn't ask about law review.

The aggressive one said, "We have to go on."

On-off.¹⁰

September 26, 1987

Sanders and Young

The Wait

There you stand.

All dressed up,

in high heels.

In the hall.

Heels in the hall. Hell in the halls. Heels in hell.

You stand.

You pace.

You stare at the closed door in front on you.

You check your watch.

Finally, the door opens and your classmate exits.¹¹

reference. The speech we hear is an indication of that which we don't hear. It is a necessary avoidance, a violent, sly, anguished or mocking smoke screen which keeps the other in its place. When true silence falls we are still left with echo but are nearer nakedness." Harold Pinter, Introduction: Writing for the Theatre, *in* 1 Complete Works 9, 14 (New York, 1976).

10. On August 6, 1945, at 8:16 A.M., the atomic weapon Little Boy exploded at Hiroshima with a yield of 12,500 tons of TNT. On August 9, 1945, the atomic weapon Fat Man exploded at Nagasaki with a yield of 22 kilotons. Oppenheimer wrote to his friend, "the circumstances are heavy with misgiving, and far, far more difficult than they should be, had we power to remake the world as we think it." Richard Rhodes, *The Making of the Atomic Bomb* 751 (New York, 1986).
11. And what he leaves in the room may or may not be the same thing I will see when I open the door. My theory is not his reality; our perceptions may differ, but neither is real—both are real. There is no object to objectivity. See *Rabidue v. Osceola Refining Co.*, 584 F. Supp. 419 (1984). The plaintiff, Vivienne Rabidue was fired and replaced by a man. Vivienne worked with a Mr. Henry, who was a supervisor. "Mr. Henry was a crude and vulgar man. He habitually used vulgar language. . . . It was not unusual for him to make obscene comments about women, and to use words like 'cunt,' 'pussy,' and 'tits.' On at least one occasion Mr. Henry called plaintiff a 'fat ass.' . . . During the time plaintiff worked for Osceola, the company was aware of Mr. Henry's vulgarity, but

The Interview

A “firm” man stepped forward. “Ms. Waugh?”
I went in.

Two white men from Sanders and Young were seated in two
wing
back
chairs.

I sat down on the sofa.

“So you went to UVA.”

“Yes.” (This again.)

“Did you like Charlottesville?”

“No.”

“Oh.”

“So, what is your GPA? Are you on law review? What was your LSAT score?”

I was sitting there,
composed—composing myself as
a woman ready to graduate law school—a feminist—an artist—a mother—a
writer—a teacher—an activist.

And they wanted to know my LSAT score.¹²

I answer.

I lie. I don’t know that definition.

I cannot find that number—
this object these men are seeking.

We talked about some articles I had worked on and some research I had
done on the First Amendment.

Adam Gibson told me that they did some First Amendment work.

“Oh?”

“Yes, we represent some cigarette manufacturers.”

“Oh.”

“Do you have any questions?”

“What is the most important case that you’ve worked on lately?”

was not successful in curbing it. It also is noted that a number of other Osceola male employees occasionally displayed pictures of nude or partially clad women in their office and work areas.” *Id.* at 423. The court held that this did not create an unpleasant work environment for Vivienne, because it was “not so shocking or severe as to actually affect the psyches of the female employees.” *Id.* at 432. The Court applied an “objective test.” “The complained of conduct is so significant a factor that the average female employee finds that her overall work experience is substantially and adversely affected by the conduct. Under this standard the sex harassment need not be psychologically disabling. On the other hand, trivial and merely annoying vulgarity would not constitute sex harassment.” *Id.* at 433.

12. An insignificant number assigned to me by a New Jersey institute based on circles I colored in on a sheet of white paper while seated at a wooden desk.
Does this define the object whom he seeks to hire?
How can he know the subject?

Adam Gibson answered my question, "Well, if you mean the one with the greatest award . . ."

But Edwin Naughton was a little more perceptive.
He had the RIGHT answer for me.
He had this girl all figured out.

He was the one who was supposed to do that.

He had this contract case . . . It wasn't worth much to THE FIRM, but it was important to the client, an employee . . .

"What"—
I said—
"do you do
if you get assigned to a case that you have a problem,
morally,
with working on?"

Gibson immediately started talking about criminal appointments. . . . "I don't have to take them anymore . . . which is good since I don't like working for those kinds of people."

"We'll let you know . . ."

September 29, 1987

Palmer, Underwood, Davidson, and Mitchell

I felt terrible.

The interviewers were so very charming,
but even more boring.

Charming and boring—yeah—

The elements of a good insurance defense lawyer.

John and Mark.
How quaint.

Neither were wearing jackets:
how laid back—
how charming—
how wild.

One of them was wearing those round-rimmed glasses and a starched,
monogrammed shirt.

Who had pressed and starched this shirt?

His wife?

Another slave girl at the dry cleaner on the corner?

Which woman's sweat had dripped into the seams of this collar?

So, John and Mark read
my
resumé.

One said,
 almost immediately, one asked about my teaching childbirth classes—
 Why do they always ask about that? A movement into the personal in this
 intensely impersonal experience.

Maybe—

John and Mark just want to be free.

So John says that he took the classes.

“Only way to do it.”¹³

What?

Do what?

What do you do?

How do you do?

One of them asked about my GPA.

And then I got a detailed
 description of the interior of
 THE FIRM—big as a pig—

The walls,

the carpet,

the desks.

The slop trough.

I imagine them, their buttons on their starched shirts
 being pulled from the thread by lard—
 lined up at a long shiny wooden conference table
 in a room with plush carpet
 and tasteful wallpaper.

Another invisible woman comes in

and dutifully spreads out the slop.

They grunt as they gnaw away at their victuals.

Ritual victual.¹⁴

13. How do you know?

14. My intention here, is not to moralize about defense firms. Law *for profit* is the same game. No matter which pawn—you queen. It becomes a question of consciousness and of the creation of a reality.

Another True Tale

Once I went to a plaintiff's firm in another city.

I sat down in a big office with a famous partner and associate.

The carpet also plush—the wallpaper also tastefully tacky.

We talked.

I began having trouble breathing—the tubes in my throat constricting
 as I took each breath.

“Well, thank you very much. I'll be going now.”

“No, sit down.”

I obeyed.

I sat there thinking that I've got to get out of here.

I've got to get out of here.

I've got to get out of here.

He continued to talk, vomiting vowels on my head.

I couldn't understand his words, because all I could hear was the scream in my head

“Thank you very much.”

September 30, 1986
Richardson, Wilson, and Lee

I got there early,
and so he had me
early,
get it over with.
8:50 A.M.

Another cool one.
Early thirties
wet hair
cotton suit
blue oxford-cloth shirt.
“Man.” “Oh-man.” “Ayyyyy.”

Instead of starting by telling me about
the carpet
of his
law firm. . . .

He decided to stun me.
Sting me.
He started shooting at me.
Fire away!!!

“Are you plaintiff or defendant oriented?”
“Are you a good witch or a bad witch?”¹⁵

telling me to GET OUT.
Suddenly, I felt a huge hand come across the huge desk.
The hand slid toward me and grabbed at my throat.
It was killing me—choking me—suffocating me.
I broke free.
“Thank you for seeing me, I really appreciate it.”
I ran to the waiting area.
I ran towards the door.
The door was locked.
“How do I get out?”
He was laughing in his mouth. He pushed a button.
I ran down the stairs thinking:
Gala and the Angelus of Millet Immediately Preceding the Arrival of the Conic Anamorphoses.

“Gala and the Angelus of Millet Immediately Preceding the Arrival of the Conic Anamorphoses” is the title of a 1933 painting by Salvador Dali. H. H. Arnason, in *History of Modern Art* 293, 3d ed. (New York, 1986) describes the painting. “In the back of a brilliantly lighted room is Gala, grinning broadly, as though snapped by an amateur photographer; in the front sits an enigmatic male. Over the open doorway is a print of Millet’s *Angelus*, a sexual fetish for Dali. Around the open door a monstrous comic figure emerges from the shadow, wearing a lobster on his head. There is no rational explanation for the juxtaposition of familiar and phantasmagoric, but the nightmare is undeniable.”

15. Why must things be identified as like or unlike another? “It is thus not simply false to say that Mallarmé is a Platonist or a Hegelian. But it is above all not true. And vice versa.” Jacques Derrida, *Dissemination*, trans. Barbara Johnson, 207 (Chicago, 1981). But this is the house that Jack built. “If anything should be blown up, it is the

What is he doing?
 What does he mean?
 Why didn't he dry his hair?

"Are you plaintiff or defendant oriented?"

I felt foolish,
 I knew that if I was to seem interested I
 should have looked up some stuff about the
 firm.
 I hadn't.
 I had just signed up for eight consecutive interviews
 with eight consecutive firms.

Most students do that,
 kind of a potluck for job search.
 Just sign the sheet and
 go
 to
 the interview.

So I told him I was plaintiff oriented in many cases, but that I was sympathetic to the needs of both sides.

"Why, I'm not a witch at all."

"What do you like and not like about law school?"

Does he know that I really loathe him?
 Does he know that I really would rather spend
 the rest of my life as another invisible woman
 than assaulting oppressed people at his direction?

Is he just trying to rattle me?

Am I already beginning to find these interviews so
 unbearable
 that I can't
 even
 pretend?

Or is he just okay?

A victim himself of this system which pushes us into
 this counterfeit
 reality—
 existence of
 deceit.

Did he ever feel remorse?
 Did he ever feel torment?
 Did he ever feel love?

I should have said I loved it all
 I guess,

foundations of most of the habits of modern thinking." Antonin Artaud, *On the Alfred Jarry Theater*, in Sontag, *supra* note 1, at 162.

I can imagine it now: I just tell the truth.

“I find this situation totally oppressive. It is the preparation for a hierarchy where we will, without thought or consideration, parade forward to assault the people, all at the direction of the senior partner, the judge, the justice”

So,

I added a little water:

“I really like the research, but I don’t like the competition.”

QUICK—sack the quarterback.

“Do you think that it is going to get any better in practice?”

Now what.

Do I tell him that competition is part of his idiotic
pinheaded view
of the world.

Do I say it is because you are a macho man with wet
hair
that you so
value

competition?

Do I draw the sabre?

Do I draw the long sword that I have concealed
beneath my maternity dress,

Do I

draw my sword and say

“En garde. Don’t you just love competition!”

NO!¹⁶

16. “Biting her tongue and lowering her eyes, to make sure that food is on the table.” Sweet Honey in the Rock, *Good News* (Flying Fish Records, 1980).

Another True Story About a Woman Who Broke the Silence

Vivienne didn’t like being called a cunt and didn’t like her boss hanging photos of the same all over her office.

The judge evaluated Vivienne:

“[T]he Court concluded that the vulgar language and sex oriented posters did not interfere with plaintiff’s work performance. Plaintiff’s work problems resulted from her temper and her stubbornness. These personal traits are not connected with the language and posters.

Rabidue v. Osceola Refining Co., 584 F. Supp. 419 (1984).

Christine didn’t like being given a wardrobe schedule or a makeup specialist who had only “modest success.”

The judge evaluated Christine:

Plaintiff was an employee of atypical aptitudes and attitudes and defendant merely acted to correct appearance problems which plaintiff was unable or unwilling to take.

“Well, maybe with the development of settlement and arbitration methods, the competitiveness may improve.”

And this guy's hair is still wet,
only it is starting to curl a little at the tips.

“Why should I hire you?”

Oh.¹⁷

I couldn't act like this was anything
but
the theater of the absurd: the theater of cruelty.¹⁸

I dutifully answered.

In part two, I asked him the
questions.

“What do you do
if you get assigned a case that you have a moral problem with?”

“Never happened.

I don't get appointed to rape cases.”

Plus . . . by doing lots of defense work, he says,
they can pick and choose,
plaintiff
cases.

What?

His hair was dry now.

As I left,
he shook my hand:

“It was nice to meet you—you are a very pleasant lady.”¹⁹

Craft v. Metromedia, Inc., 572 F. Supp. 868, 878 (D.C. Mo. 1983), *aff'd in part, rev'd in part*, 766 F.2d 1205 (8th Cir. 1985), *cert. denied*, 475 U.S. 1058 (1986).

17. For a model response to the question, “Why should I hire you?” see John La Fevre, *How You Really Get Hired*, 70 (New York, 1986).
18. Antonin Artaud describes the theater of cruelty. “The spectator who comes to our theatre knows that he is to undergo a real operation in which not only his mind but his senses and his flesh are at stake. Henceforth he will go to the theater the way he goes to the surgeon or the dentist. In the same state of mind—knowing, of course, that he will not die, but that it is a serious thing, and that he will not come out of it unscathed.” Artaud, *supra* note 15, at 156–57.
19. “Lady.” What does this definition prescribe to my employment opportunities? See *Dothard v. Rawlinson*, 433 U.S. 321 (1977) (Being a man is a bona fide occupation qualification for prison guards in security prisons. “A woman's relative ability to maintain order in a male, maximum-security, unclassified penitentiary of the type Alabama now runs could be directly reduced by her womanhood.” *Id.* at 335.) And see *Forts v. Ward*, 621 F.2d 1210 (2d Cir. 1980), in which a group of women prison inmates brought suit to have female guards. The women lost, and the judge addressed the employment arguments even though the guards were not a part of the suit. In the decision, the judge finds “alternatives” to female guards: for showers, “installation of a translucent screen, which permitted only enough visibility to ascertain that the shower

October 3, 1987

Brown, Quinn, Foster, Thornberg, and Crawford

I rushed in after employment discrimination class.
I told them that was where I had been.

Two men, again.

Two men: Peter and Mark.

Two men: a partner and an associate.

I suppose that the prospective associate is supposed to identify with the young, successful associate
and that the prospective associate is supposed to revere the partner.

I wonder how I could be a prospective associate, under this construction.

Mark.

Partner Mark.

Partner Mark gawked at my mighty belly.²⁰

He never said a word.

Maybe he knew better.

For a brief moment, I saw him looking at my hand, perched on the armrest of my chair, without any tell tell signs of being owned.²¹

What is Partner Mark thinking?

I would not presume to know.

Partner Mark noted that I taught childbirth classes,
that's always a good icebreaker.

It almost seems as if I'm at a cocktail party and
I'm there with my husband,

who works with Associate and Partner Mark.

And Partner Mark, always known to be a good
conversationalist, gets stuck in the corner with
the pregnant feminist.

Who is "in trouble" now?

area was occupied"; for privacy during the day to change clothes or to use the bathroom, a curtain will be installed and be closed for fifteen minutes; for privacy while the women inmates sleep, "The privacy interest entitled to protection concerns the involuntary viewing of private parts of the body by members of the opposite sex. Since appropriate sleepwear can sufficiently protect that interest, its use should be preferred to any loss of employment opportunities. We do not agree with the inmates that their privacy interest extends to a protection against being viewed while sleeping by male guards so long as suitable sleepwear is provided." *Id.* at 1216sc6617.

20. See *Levin v. Delta Air Lines Inc.*, 730 F.2d 994, 997 (5th Cir. 1984) (holding that nonpregnancy is a bona fide occupational qualification for flight attendants; removal of ALL—even slightly but still slightly—pregnant flight attendants is justified as a business necessity: "because of Delta's maternity leave policy the risk of severe injury to passengers who survive an accident is greatly reduced").

21. See *Wardlaw v. Austin Indep. School District* (W.D. Tex. 1975) 9 EPD (CCH) ¶ 10222 (holding that the transfer of a teacher to a nonteaching position because she was pregnant and not married did not violate Title VII, because she did not present any evidence that showed that she was treated differently from the way a single male teacher would be treated in the same circumstances).

And he can still find something to talk about!

He said that his wife's birth experiences were great.²²
Does he presume to know?

This became more difficult by the minute.

Then it was their turn.

You see,
the typical interview is structured so that first they find
out all about you,
and then
they tell you what you want to hear about their
firm.

FIRM.

So, Associate told me how wonderful the firm was—
he does employment discrimination.
He represents employers.

Partner Mark explains that Associate does this
because he likes employment law.
Keeping employees happy is really important to Partner Mark.

So,

I asked about refusing cases that you had a moral problem with them.

"NO problem," Associate says. Associate once refused a rape case just for
that reason.

Why do these guys think it is A-OK to represent A. H. Robbins, who raped
millions of women, and Union Carbide, who kills millions of women and
men, but suddenly when a poor person rapes they get all moral about it?
Is it a question of morality or of possession?

My turn to ask another question.

"What's the most important case your firm has handled?"

Partner Mark asks associate to speak.

Associate,
perched upon his hind legs,
tells me about a medical malpractice case and an antitrust
case in which millions were involved.

But Partner Mark is onto me, that's his job.

Partner Mark says that he is really forming,
making,
shaping the law.

22. How do you know? See Elizabeth V. Spelman, *On Treating Persons As Persons*, 88 *Ethics* 150, 161 (1978) "When you presume, you are not treating me as the person I am; when you do not presume, you are treating me as the person I am in a minimal sense; when you recognize and respond to the person I am, you are treating me as the person I am in the maximal sense."

He brought comparative negligence to the state.

The FIRM encourages its associates to engage in legal scholarship, too.

Interview ended.

I wondered if they were getting duller,
or if I was just getting
used to the
same
questions
and answers.

Or if it was getting just too hard
to keep up this masquerade.

Do the people who go work for them strain under the weight of the facade?

I raced out to the car and took my maternity dress off and put on my jeans.

I went back inside, only to find
Partner Mark standing in the entrance hall.

I was embarrassed.
The persona unveiled.

He knew that the stockings and starched linen maternity dress
were my dress-up costume.²³

"I forgot to ask you a question," Partner Mark says;
he seemed a little embarrassed.

"Oh."

"Now that you are appropriately dressed for it. What is your GPA?"

Unmasked—I didn't lie.
"I don't know. I don't get my grades."

"You're brave—Could you have a transcript sent? I was very impressed by you but some of my colleagues may want to see your grades."

"Sure."²⁴

23. See John LaFevre, *supra* note 17, at 56: "The interview is not the time to make a personal statement of nonconformity or disagreement with society's concept of professional image." See also Christine's story, *supra* note 16 (Craft v. Metromedia).

24. Is this the method to insure that prospective associate identifies with successful associate and reverses partner? *Furnco Construction Corp. v. Waters*, 438 U.S. 567 (1978) (finding that it is not necessarily a violation of Title VII for the employer to hire only from a pool of employees that he knows—the Supreme Court gives the green light to the good-old-boy system).

October 5, 1987
Robbins and Watson

I had planned to continue my masquerade—for eight full interviews.

But, this is the interview
in which I just couldn't
do it anymore.

“What do you do if you had a moral problem with a case?”

“It never happens.”

“Sure.”

But Partner admitted that he didn't handle
black lung cases.

“Moral,” to him,
was more than just telling indigent rapists to take a hike.

They haven't
always been
as they are
today.

But then, suddenly, an explosion²⁵—

an argument,
a confrontation,
about the moral responsibility of lawyers.

Associate piped in
and cut it off.

“Thank you very much.”

25. Shortly after the annihilation of Hiroshima and Nagasaki, Oppenheimer left Los Alamos. He said:

It is our hope that in years to come we may look at this scroll and all that it signifies, with pride. Today that pride must be tempered with a profound concern. If atomic bombs are to be added as new weapons to the arsenals of a warring world, or the arsenals of nations preparing for war, then the time will come when mankind will curse the names of Los Alamos and Hiroshima. The peoples of the world must unite, or they will perish. This war, that has ravaged so much of the earth, has written these words. The atomic bomb has spelled them out for all men to understand. Other men have spoken them, in other times, of other wars, of other weapons. They have not prevailed. There are some, misled by a false sense of human history, who hold that they will not prevail today. It is not for us to believe that. By our works we are committed, committed to a world united, before the common peril, in law, and in humanity.

Rhodes, *supra* note 10, at 758.

October 10, 1987
Harris and McDougall

I went in.
The door closed behind me.²⁶
It was just us in the room.

Two men.
Buddle dee de dee
Two men.
Buddle dededed.
Two men.
Buddleeded
and I'm the only wo-man.
Buddleeededede
They like it
Budeeleldededeeeee
I like it
Buddleeededee
This two for one.
I sit in the middle
I'm left and
I'm right.
But there's room on
the bottom
if you
drop in some night.²⁷

They never shut up.
Talking
incessantly
incestuously
about
THE FIRM.

The young one (associate) told me that because they represented only corporations in defense in litigation, they aren't presented with any moral problem.

26. "And when we get behind closed doors, and she lets her hair hang down, and makes me glad that I'm a man . . . For no one knows what goes on behind closed doors." Charlie Rich, *When We Get Behind Closed Doors* (1973). See also *Buddle v. Heublein Inc.*, 613 F.Supp. 491 (D.C. N.Y. 1985) (no finding of employment discrimination based on uncorroborated evidence). In this case the man responsible for training Ms. Buddle, described by the court as "outgoing, gregarious type who tells off-color jokes," allegedly made advances towards Ms. Buddle, who was described as "anxious." *Id.* at 492. Ms. Buddle testified that "on occasion Berger engaged in sexual harassment of her by telling off-color jokes, by touching her knee and shoulder, and by trying . . . to kiss her." *Id.* The court stated: "We do not accept her testimony that he tried to or did kiss her. Berger's conduct [toward plaintiff] was only a reflection of his bumptious personality." *Id.* Ms. Buddle testified that Berger called her "a dyke," that another training supervisor called her "a bitch," and that at a meeting a third male employee, Kagel, introduced her as "Mr. Buddle." Kagel said that if it happened, it was unintentional. The court stated: "We accept his [the MAN'S] testimony." *Id.* at 493-94.

You see, "The corporations only press suits whenever they have been treated wrongly . . . otherwise they never get to litigation."

Another cocktail party,
only they weren't as
apt at making conversation with that woman as
was Partner Mark.

More talk about the carpet and the desks.

Finally, again, I break my silence. I cannot contain my anger over this failure to take responsibility for one's own actions—of the lies that emerge from the self-induced ignorance.

They were disoriented.

I explained my ideas and conceptions of law.

At random
in tandem.

Of oppression, patriarchy, and of a destruction of humanity
that *these* prospective associates celebrate—perpetrate.

They never asked about my GPA.

They never even asked about my attendance at UVA.

They never asked about previous employment.

It wasn't important to them.

They had already decided.

I cancelled my remaining two interviews.

I can only spit.

July 1988

One and half years have passed since I did these interviews.

I am still with child, only now he sits beside me.

These interviews still haunt me.

Polite, kind conversation—
transforming into a . . .
reality of the explosion—
and later—the cool ashes
of
destruction.²⁸

There have been more interviews . . .

28. "The calm, the burn of the holocaust, the annihilation of noon—the calm of the disaster." Maurice Blanchot, *The Writing of the Disaster* 6 (Lincoln, Neb., 1986).

In 1954, eleven years after his creation destroyed the people of Hiroshima and Nagasaki, Oppenheimer was destroyed by his own government. Extensive hearings on the topic of Oppenheimer's loyalty were held. After excessive government lying and prying, Robert Oppenheimer's security clearance was denied by the United States Government. See Stern, *supra* note 5.

What, after all, was destroyed?

not random . . .

now planned . . .

structured . . .

but I always leave with the same question:

“What is behind that curtain?”²⁹

29. Laurie Anderson, *Oh Superman* (Warner Brothers, 1983).

