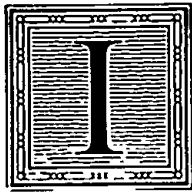


ON THE SIGNIFICANCE OF WOMEN IN LEGAL EDUCATION

by James R. Elkins

ABSTRACT

In the past decade women have entered law schools in significant numbers. The role and impact of women on and in legal education has not been adequately addressed. At present we have no indication whether there are significant differences in the way women and men develop a professional identity and experience their initiation into law. This article presents a general overview into these questions and suggests that a feminist critique is needed to understand how law school fails both women and men.



In this essay I want to explore women's perception and experience of legal education and the impact of these on legal training and the legal profession. At present we know virtually nothing about the distinctive role of women in legal education or how the presence of women may ultimately affect legal education. I start with the premise that law school and law itself has a distinctly masculine orientation. It is now fairly well established that legal education imparts a distinctive world view.¹ Students of law learn to see the world in terms of rights and duties in which human acts become the basis for liability, promises become contracts, injuries become torts and crimes. Social and personal conflict are viewed through the prism of law suits and judicial opinions. There is nothing of which the law does not speak. Life and death become legal issues to be decided by the courts.

The question is whether the legal world view is masculine in orientation. I suggest that it is. The vast majority of law teachers are men, the cases which law students read are written by men judges, law itself is rooted in patriarchal culture.² Moreover, the pedagogical techniques, especially the law school version of the Socratic technique is often aggressive, intrusive, privacy denying, hostile, game playing. The technique is, for the most part, accepted by both women and men as the proper training for lawyering.

Legal education unduly fosters competition instead of cooperation,³ promoting aggression and conflict instead of peace and harmony. We teach adversariness and ignore mediation.⁴ We learn legal rules and legal process ignoring the human experience from which they are derived.⁵ Contracts becomes a body of rules rather than a study of promises made and broken, the fundamental human need for security, and the effort to establish binding webs of mutual interdependence. In torts we learn about negligence as a cause of action and the defenses to negligence, forgiving that torts involve a society's regard for the sanctity of human dignity, autonomy, and integrity and freedom of interference with the realization of these values from others by others. There is no time in torts to study blame and forgiveness. Torts, like contracts, consists of rules and strategy, a process by which the complex human phenomenon which lies just beyond the tort rules is ignored.

Law school is a near perfect realization of a man's world. It is a world in which rules are more important than relationship; logic and reason (a position, a stance, a strategy,

an argument) more compelling than feeling and empathy; where public and private realms of life are consciously compartmentalized;⁶ where hierarchy and power define social order instead of interconnectedness and love. Legal education is a man's world and reflects the traditional array of "masculine virtues."

II

Women now enter law schools in significant numbers. In some schools they outnumber men. What can we make of the simple fact that women comprise over one-third of the present law school enrollment, whereas a decade ago it was less than 10%? What do these figures mean? What do they tell us about legal education? About the legal profession?

Does the presence of women in legal education call into question the fundamental values reflected in traditional legal education?⁷ If so, how? These questions are political questions which go to the heart of the ideology of legal education. To answer these questions we need to understand hierarchy and power in social institutions. To resolve these questions we need an understanding of powerlessness,⁸ detachment, social organization, peer groups, role models, the need to and fear of achievement--an undertaking beyond the scope of this essay.

On one hand, the number of women law students seems to speak for itself. The numbers indeed say something, but what? They suggest fundamental changes in something, but what? The numbers don't tell us whether it is legal education, or women, or something else that is changing. The numbers may tell us something about the professions, about social elites, about women's work and women's place in the world.

Women in law school should be viewed in a social and historical context so as not to mask the very ideology we set out to study. Women have begun to see themselves as a class⁹ with political force to seek social equality by organization and participation in social and political institutions. One possibility is that women seek entrance into the legal profession as a means to accomplish social and political goals of women. While the political aims and organization of the women's movement may have helped create a social milieu in which women can imagine themselves as lawyers, it is unlikely that a significant number of women enter law school for the express purpose of promoting the feminist movement.¹⁰

Women who attempt to explain the phenomena and meaning

of women in legal education offer little help. Ruth Bader Ginsburg, now a Federal judge and a former law teacher, commented on "the place of women in the law schools" in a recent issue of the Journal of Legal Education.¹¹ Her comments are instructive in that they help us see how difficult it is to make sense out of the presence of women in law schools and the legal profession. Although Ginsburg's article is brief, it is instructive. Ginsburg lauds the presence of women in law schools, the increase in women law teachers, the fact that women law teachers now teach "hard" as well as "soft" courses, the demise of sexual harassment in the classroom, and the appearance of women lawyers in positions formerly held only by men. In other words the presence of women in legal education has had an effect. But there is the urge to go on, to say something more, to try to deal with the philosophical question, what does it mean? As Ginsburg puts it:

With women at the bar (and even on the bench) no longer curiosities, bar associations, law schools, law firms, and other organizations are beginning to consider the question, does that development have any ramifications for our operations? Is women's participation in the legal profession in numbers affecting the way law business is conducted?¹²

These questions suggest that the numbers, the facts, the description of the social phenomena of women in legal education and the legal profession do not speak for themselves. The presence of women leads to concerns about legal education and the legal profession. Is it enough to have a legal education where women are free of discrimination and harassment? Do women simply want a legal education which permits them to become members of a profession in which the craft of law is forged in a masculine mold? Is equality enough?

Ginsburg's response is vague and ambivalent. She tells of a conference that she participated in over a decade ago where she heard these questions being raised. She reports the views of various participants who spoke on the subject. One participant said that "business would go on as usual, nothing significant would change." Women who enter the legal profession were, in this person's view, nothing more than "soft men." Another speaker felt that women who enter the legal profession are unlikely to affect "[t]he rough-and-tumble, knock-down-dragout adversary confrontations" which take place at "center stage"

between "hard men." Women lawyers either want to be social workers in which case they don't "figure at all in the real world of legal business," because they "devote themselves to the poor and the oppressed," or content themselves as backstagers who "find congenial work in drafting wills and contracts, and research and brief writing."

Ginsburg does not tell us how she reacted to these stereotyped notions of women in law. We don't know whether she presented a rebuttal or offered her own views. We aren't told whether she was angered by the remarks. She doesn't share her feelings about these descriptions of women. We don't know how the comments affected her own vision for women in the legal profession. We are left wondering what these remarks meant to her.

Given the passage of a decade it is surprising that she remembers these cliched expressions so well, but then, they were her "first encounters" with the question "what will women's participation mean?" Ginsburg even remembers where and when the remarks took place ("the Association of American Law Schools Annual Meeting in 1971"). The remarks still seem to reflect a fundamental truth for Ginsburg about women in law, especially those women who entered the profession before the 1970s. But what of the women who entered the profession in the past decade -- the period of significant women's involvement in legal education? Does the social-worker stereotype continue to have validity? What kinds of roles are graduates of the 1970s and 1980s playing? Do they fit these old stereotypes? How are they changing the profession? Or is the profession changing them?

Ginsburg doesn't address the issues directly and for a reason. She doesn't dismiss the social work stereotype but rather, argues that it applies equally to both women and men. Even if idealism and altruism are "qualities" associated with women and more manifest in women lawyers, this idealism and humanistic orientation must be seen as a result of social expectation. Ginsburg argues "that society [should] not assign to women, simply because they are women, the role of social consciousness." Ginsburg concludes by assuring us that women are going to "continue to do well" and that "they will do so with a certain idealism and humanity, simply because those qualities are expected from them."

The force of Ginsburg's argument comes through clearly even though briefly stated. Women are to become a part of the legal profession, do what lawyers do, adopt the lawyer's world

view, and "continue to do well." Moreover, they are to resist being stereotyped as idealistic and humanitarian, playing "the role of guardian of social consciousness." Women are to disassociate themselves from qualities assigned to them as women by society. They are no longer to act as guardians of idealism and social justice.

Ginsburg's sense of women's place in law now becomes clear. Women's place is no different than men's place. The goal is equality, a world where we share equally all human qualities, especially those which might affect professional work. Given such a vision it is difficult to articulate a coherent meaning for women as women in law.

Women in legal education have more potential for changing the legal landscape than Ginsburg suggests. While women lawyers and the women's movement will always have a special concern for issues of equality and sex-based discrimination it may be time to shift our focus to another set of questions even as we struggle with old ones.

Betty Friedan offers a similar view in The Second Stage.¹³ She argues that the first stage of the present women's movement focused on "full participation, power and voice in the mainstream, inside the party, the political process, the professions, the business world."¹⁴ The issue for women during the first stage was recognition, being heard, and finding a place. Although the work of the first stage, fighting a patriarchal structure defined by polarized and unequal sex roles is by no means over, Friedan argues, that it is time that we move on and find a new set of questions, to imagine a second stage for the women's movement in contemporary culture. We¹⁵ "have to ask new questions, speak the unspeakable again, admit new, uncomfortable realities . . ."¹⁶ The second stage, which Friedan contends we should move toward, is less separatist oriented, involves men, and will involve a restructuring of institutions with the goal of transforming the nature of power rather than fighting against it.¹⁷ Friedan's conception of a second stage in the women's movement suggests that it is time to look at women's experiences, their hopes, fears, and conflicts, as they make their way into a male-dominated world and male dominated professions like law.

In the rush to insure equality, centuries late as it is, there is a preoccupation with getting women into public life which pays little attention to the way women actually experience their move into public and professional life. The first stage of the contemporary women's movement is now a reality and it is time

to take stock. Friedan contends that the first stage involved a denial of certain questions and concerns. She asks:

Do we deny certain painful feelings, certain yearnings, certain simple needs -- for fear we will drown in them, be trapped again in the weakness, the helplessness, the terrible dependence that was women's lot before?¹⁸

My hope is that Friedan's willingness to ask questions about women's experience of independence, power, and "success" signal an opening in which the feminist perspective will provide the critical social awareness that we need to bring about a more humanistic perspective in law and legal education.

III

If women enter law school for the same reasons that men do, undergo the same "rites of passage" as men, accept the lawyering roles that evolved historically when men dominated the practice of law, and view themselves as having no distinctive qualities as women, their influence on law and jurisprudence will be negligible.

Motivations for entering law school are inexorably tied to the goals we seek to achieve through the practice of law--the story we envision ourselves living. Many women (and men) do not have a clear sense of what they want to achieve with the skills acquired during legal education.²¹ The danger for women who have no sense of why they are in law school is that they will simply conform to expectations created by men.

Before the current era of non-discriminatory practices in the admission of women to law school, legal educators gave special attention to women's motivation for seeking admission to law school. The general thinking was "that women are motivated by their desires to be social workers, to help the poor and oppressed. This makes them less able to represent corporations and profit-motivated businesses. Women are traditionally thought to be too idealistic and fragile to survive in the rugged and competitive legal business world."²²

In a recent survey Georgina LaRussa studied the relationship of women's motivations for entering law school and career satisfaction.²³ She identified the following eight categories of motivations that women have for entering law school:

Realistic motives: responses that emphasize utilitarian, materialistic, or practical advantages of a law career. Examples of responses in this category are: "It's a skill you can put to use." "It's a flexible degree; there are tremendous options open to you." "I wanted financial security." "It's a marketable skill."

Altruistic motives: responses that emphasized the respondent's desire to serve society or help others. Examples of altruistic responses are: "Helping the underdog." "Law has social significance; problems of society can be changed." "It gives you the power to help people."

Self-enhancement motives: responses which indicated that the respondent's personal image would be enhanced by becoming a lawyer. Examples of self-enhancement responses are: "Lawyers have a dynamic image." "People listen to you when you tell them you're a lawyer."

Stimulation motives: responses that emphasized the stimulation or challenge of a law career. Examples of responses with this emphasis are: "It's challenging, difficult," "It seemed exciting." "Intellectually demanding."

Self-fulfilling motives: responses that indicated a career in law would help the respondent develop talents she already possessed or help her fulfill a personal goal. Examples of responses that emphasized self-fulfillment are: "I love to talk and debate." "I knew I needed to keep active to be happy." "I thought I'd be good at it."

Professional-identification motives: responses that indicated the respondent had chosen a law career because she wanted to be identified as a member of a profession or be recognized as being like other lawyers whom she admired. Examples of such responses are: "I wanted a profession, not a job." "I wanted to be like the lawyers I saw." "The people I was (associated) with were all lawyers."

Theoretical-interest motives: responses that indicated the respondent was drawn to the study of law for its own sake; that is, because of an appreciation of the philosophy or nature of law as a scholarly discipline. Examples of responses categorized as having this motive-theme are: "The involvement in philosophy and legal theory." "I was always interested in the technical points of law." "It seemed interesting to study for its own sake."

Action-oriented motives: responses that emphasized the respondent's interest in the tangible results of her law work. Examples of responses with an action-oriented theme are: "You do things; you have practical impact." "You get something done; you can see what you do." "It's action-oriented; you do things."

No single response theme was cited unanimously, but two areas were mentioned by over 50% of the women: the realistic and the altruistic. Self-enhancement and stimulation responses were of secondary import; self-fulfillment, professional-identification, and action-oriented responses cluster loosely into third place; and the theoretical-interest category was least frequently cited.

If we look more closely at the stories of women in legal education I think we will find fundamental differences in the way women and men experience the initiation rites of legal education. The stories that women tell about the decision to enter law school will reflect different values than the stories of men. The belief that women and men have the same motivation in entering the legal profession denies the distinctive voice and story of women. The denial of women's experience and the stories they tell is the silence that men impose on women.

By focusing on women's stories we find "that the way people talk about their lives is of significance, that the language they use and the connections they make reveal the world that they see and in which they act."²⁴ Looking closely at these stories we find that they offer women "a representation of their thought that enables them to see better its integrity and validity, to recognize the experience their thinking refracts . . ."²⁵ A second purpose is to suggest that male and female stories reflect different modes of thought with radically

different perspectives on everyday reality.

What are we to make of the experience of Ann Bloomdahl at Columbia Law School.

[T]he process of creating young lawyers turned out to be antithetical to all the softer qualities I had vowed to preserve as humane and worthy.

So, while I deeply appreciated some wonderful people here (both faculty and students, but more in spite of the circumstances than because of a nurturing environment), and never particularly dislike the law (which I surveyed rather dispassionately from a distance), I just plain hated almost everything basically associated with legal education itself.

What I Hated

Hated working so much for so little during first year, while scrambling vainly to maintain some normalcy in my social life and feeling insecure and incompetent about my performance in both realms. Later, after more successfully shutting out the outside influences altogether and doing better at the law routine, hated my own arrogance at success as much as the depression of early failures. Hated being called on in class when my mind went blank (always) and hated more my own fear at this outwardly simple task; later, hated hiding in back rows or scribbling my name illegibly on seating charts as avoidance tactics (but at least, began breathing easily and concentrating on the subject matter that way).

Hated moot court and the opponent who commandeered my glass of water so that laryngitis claimed two-thirds of my crafted arguments (already in such short supply). Hated the incomprehensible library system and dizzy ramblings through the stacks like some glaze-eyed first grader missing mother's hand, avoiding the glance of more frantic fellows or those few who seemed to operate by divine guidance.

Hated the time sense, the merciless imposition of an internal schedule on every thought and move: the intrusive suggestion at the back of my mind, during a lull in an otherwise productive (day that I

should) rather be tackling the next part of a synthesis that I knew was sitting at home waiting like a jealous spouse.

Hated the palpable absence of the artistic me, pushed into the background so often that she seemed to have faded away entirely, with some corporate vision risen like a Phoenix from those ashes. In my tailored suit, striding past the rest of the working world, hated most my overgrown sense of self-importance, some instilled notion of what a lawyer was which carried with it a creeping sense of contempt for less highly-charged lives--and feared that the experience of professional education offered the worst of trainings for dealing with real persons and problems in a sensitive manner.²⁶

We can read Bloomdahl's description of law school in several different ways. On first impression we might dismiss her comments as the reactions of a spoiled adolescent. In psychological terms, we might speculate that her narcissistic personality prevents her from making realistic assessments about law schools and the real world of lawyering. Bloomdahl's soft, feeling, artistic orientation (William James' "tender thinking") is simply inappropriate and poorly equips her to deal either with law school or lawyering.

This interpretation of Bloomdahl's story is possible only if we look at it in isolation, out of the context of the stories that other women tell about law school. We can go back a decade and listen to the story of another woman at Columbia, Helen Schwartz, as she describes law school. Schwartz, unlike Bloomdahl, drifted into law school "because she couldn't think of anything better to do."²⁷ Bloomdahl had a vision of law as "a potentially rewarding future" which would allow her to help others and herself. Columbia Law School failed both Schwartz and Bloomdahl, although for different reasons.

Schwartz describes Columbia Law School as "foreign to everything I had known and loved. I resented compulsory attendance at classes, mandatory jackets and ties for men, and dresses, stockings, and heels for women. I objected to being told what classes to take . . . I found it difficult to pay attention, let alone learn in classes held in huge lecture halls, with hundreds of despirited students stumped in uncomfortable seats."²⁸

Whether a woman drifts into law school or enters with

avowed altruistic goals, the experience is much the same.²⁹ It is described as foreign,³⁰ alien, shocking,³¹ frightening, hateful,³² awful,³³ narrowing,³⁴ constraining.³⁵

The experience can be even more painful for those who enter law school with a sense that lawyers help people solve problems or that lawyers can help change things. Marcia Eisenberg, for example, notes: "I was very excited at the prospect of gaining skills that would enable me to help others and myself . . ."³⁶ But holding on to this "possibility of power" which Eisenberg describes as "[p]ower to be able to do things for myself and others and control over my own life . . ." is difficult, "[T]he message I received from my first year professors: Wipe your slate clean; we are here to make you into lawyers. I did wipe my slate clean and in the process I lost my own goals." When you wipe your slate clean, give up on your own story, forget your own goals, aims, and purposes law school becomes "hated," (as in the case of Bloomdahl) a time in which we lose touch with self.

Helene Schwartz, with no idealistic notions or image of herself as a lawyer found law school sufficiently disagreeable and boring that she thought of quitting. She decided not to quit and writes of her decision:

Clever animals adapt to even the most unnatural circumstances in order to survive. By my senior year of law school, I had become thoroughly anesthetized.³⁷

Whether idealistic and highly motivated, idle wanderer, or high-achievement drifter, women have historically found law school to be a bad experience. If we look carefully at women's stories we see a number of themes which help explain their negative reaction to law school. In an earlier decade, women were ridiculed and isolated. Their only hope was to survive law school, make of it whatever they could, and hope to do something significant in their later professional life.³⁸ Women law students have begun to tell stories of how the ideology of legal education silences women as effectively.

Once, one of the great men called on me in class, refused to accept my automatic response of "Unprepared," and forced me to recite. After completely destroying me, he proclaimed in a rising crescendo of outrage, "Miss Schwartz, will you please

tell me how you ever managed to get to your third year of law school?" I might have hung my head, cried, or at least cringed with embarrassment; instead, armed with the training born of long-accustomed boredom, I just stared back at him. All I wanted to do was graduate, and when the great day finally came, I had the feeling that I had pulled a fast one on Columbia by getting through.³⁹

The silence was imposed through ridicule⁴⁰ and isolation. "[O]n some rare occasions a professor would come in and would announce: 'We're going to have ladies day today.' And he would call on the ladies. We were but tolerated. We weren't considered really top drawer when it came to the study of law."⁴¹ Other women who attended law school during this period talk about "Ladies Day."

One profesor delighted in what he called "Ladies Day," a nefarious institution that I had heard was also popular in other law schools. On the designated day, he would call on all the women in the class to cite. Our male classmates, relieved of the anxiety of having to face recital themselves, watched with ill-disguised glee as the professor harangued the women. "Well, well, Portia," he would cry with mock surprise when one of the women answered correctly. Or: "Better get back to the kitchen," to someone who stumbled.⁴²

Some of the older professors still held "ladies' day," an hour reserved exclusively for the women of the class to demonstrate their wits. They would not call on us any other time, presumably because the subject matter was irrelevant to our future lives and too difficult. So, on "ladies' day," in Professor A. James Casner's first Property class we were quizzed on the intricacies of dower, that is, on the rights women have in their deceased husband's property. For the professors and the male students, "ladies' day" was an entertainment, a show put on at our expense.⁴³

The silence of women law students did not end with the outrageous and painful experience of Ladies' Day. Women are

now silenced not by overt sexual discrimination and harassment, but by more subtle aspects of the ideology of legal education. It is, of course, an ideology which silences women and men alike, but the painful awareness of the silence we hear most poignantly in the voice of women.

The ideology works by denying the significance of personal feelings and beliefs, a process that Scott Turow writes about in his account of the first year at Harvard.

All of our teachers tried to impress upon us that you do not sway a judge with emotional declarations of faith. Nicky Morris often derided responses as "sentimental goo," and Perini on more than one occasion quickly dispatched students who tried to argue by asserting supposedly irreducible principles.

Why, Perini asked one day, is the right to bargain and form contracts granted to all adults, rather than a select group within the society?

Because that was fundamental, one student suggested, basic: All persons were created equal.

"Oh, are they?" Perini asked. "Did you create them, Mr. Vivian? Have you taken a survey?"

"I believe it," Vivian answered.

"Well, hooray," said Perini, "that proves a great deal. How do you justify that, Mr. Vivian?"

The demand that we examine and justify our opinions was not always easily fulfilled. Many of the deepest beliefs often seemed inarticulable in their foundations, or sometimes contradictory of other strongly felt principles. I found that frequently. I thought, for example, that wealth should be widely distributed, but there were many instances presented in class which involved taking from the poor, for whom I felt that property rights should be regarded as absolute.

Yet, with relative speed, we all seemed to gain skill in reconciling and justifying our positions. In the fourth week of school, Professor Mann promoted a class debate on various schemes for regulating prostitution, and I noticed the differences in style of argument from similar sessions we'd had earlier in the year. Students now spoke about crime statistics and patterns of violence in areas where prostitution

occurred. They pointed to evidence, and avoided emotional appeals and arguments based on the depth and duration of their feelings.

But to Gina, the process which had brought that kind of change about was frightening and objectionable.

"I don't care if Bertram Mann doesn't want to know how I feel about prostitution," she said that day at lunch. "I feel a lot of things about prostitution and they have everything to do with the way I think about prostitution. I don't want to become the kind of person who tries to pretend that my feelings have nothing to do with my opinions. It's not bad to feel things."

Gina was not the only classmate making remarks like that. About the same time, from three or four others, people I respected, I heard similar comments, all to the effect that they were being limited, harmed, by the education, forced to substitute dry reason for emotion, to cultivate opinions which were "rational" but which had no roots in the experience, the life they'd had before. They were being cut away from themselves.⁴⁴

While Gina was not the only classmate that Turow heard talking about the toll that rationality was taking, it was Gina's remarks and her pain that remind us of the loss associated with professional training that denies human feelings.

In the following accounts of legal education we see how women experience their own feeling as objectionable and use silence in their effort to overcome the self that begs for expression.

The most painful example I can give is the Constitutional Law classroom treatment of abortion. I was seething with rage, that there in that book were my rights about my body and my ability to choose my life. Furious at how those rights reached existence-through men who were judges, lawyers, doctors, psychiatrists, hospital administrators, legislators. Terrified at how fragile those rights might become. Wounded by injustices of centuries. And pricked by my conscience and religion (what's left of it) because I'm not sure that I would exercise the freedom I see

as requisite to justice for women.

More immediately, in that class, with all this turmoil inside, I was furious, frustrated and pained not to be able to get it out. There were different restraints operating on me then. One was my own fear of speaking out in a class that size, as a woman, in what I knew would be a very emotional way. Also, I knew that I wanted to explode emotionally, and it was very clear, from the professor's handling of the material, which was absolutely frigid, and from every message I'd received since I'd first walked into that law school a year and a half before, that emotionally charged discussion was highly inappropriate. I did not know how to bridge the gap between all of my feelings about abortion and the normal classroom intellectual style. I said nothing.⁴⁵

Hated being called on in class when my mind went blank (always) and hated more my own fear at this outwardly simple task; later, hated hiding in back rows or scribbling my name illegibly on seating charts as avoidance tactics (but at least, began breathing easily and concentrating on the subject matter that way.⁴⁶

In this particular class the teacher made a comment about women that infuriated me. I had previously had the experience of being deeply disturbed by things said in class. I had reacted by turning off, shutting down, counting the minutes until the end of the class and leaving physically as quickly as possible. This time I actually asked myself questions like those listed above. Do I want to react normally? What else could I do? What is most effective? As I asked the questions I was flooded with answers. I realized that I could do any number of things: react normally, speed up my normal reaction by walking out, challenge his statement on intellectual grounds, tell him during class that I feel personally insulted by what he said, speak to the teacher privately about my reaction, make a general

appeal to the class to refuse to put up with his nonsense, or make a formal complaint to the powers-that-be.

When I focused on what I, Liz, a person who is a student in this class, wanted to do, I made a choice and acted on it. I spoke up, without raising my hand, and made an emotional statement challenging his comment on intellectual grounds. That experience has been very important for me. I did some things that Liz, the student doesn't do: volunteer a comment in a large class without waiting for the teacher's permission to speak, show my strong feelings about a real world and legal problem in the classroom, challenge a teacher as I would challenge a peer, and draw on my outside experience when speaking in class. What was most important to me was that in deciding to do all these things that I would usually never even dream of doing, I did what the whole of me wanted to do instead of subordinating most of myself (my experience, my feeling, by beliefs) to my role. And what has stayed with me most clearly since then is my surprise and then delight at the awareness that I have any number of choices; the boundaries of the role I have adopted are not the limit of what I can do.⁴⁷

Woman's silence in legal education is rooted in the "strangeness" of legal language⁴⁸ which divorces the language of the law from the "human sensitivity" associated with women's experience of and in the world. Law school fails women because it ignores women's experience, embodies a single mode of thought presenting a unidimensional view of the world rooted in masculine thought.

IV

What difference does it make that it is a woman that is being educated in law? The simple answer might be that in an ideal world it should make no difference, or that we would honor the difference and not try to hide it. It would make no difference, one might argue, if women had not historically been denied access to the public world and relegated to a private world of family and child rearing. The simple answer turns out to be less than simple. It is based on assumptions about the

psychology and politics of sexual differences, and ultimately the cultural and symbolic meaning of such differences.

Let me make clear that exploring the issues about women entering the legal profession--whether it makes a difference that you are a woman--has a political dimension which cannot be ignored. At the end of the 19th century the Supreme Court upheld Illinois exclusion of a woman from the legal profession solely on the basis of her being a woman.⁴⁹ It has been only in the last decade that women have entered the legal profession in significant numbers. To talk about women and the legal profession brings us face-to-face with the oppression of women in our culture and the historical and contemporary obstacles to women entering the professions.

The presence of significant numbers of women in law schools points to a fundamental shift in the social order. Women have begun to think of themselves as lawyers and society (in some ways begrudgingly) has accepted women in professional roles. The fact that women are now entering law school in record numbers suggests that women are going to play a different role in society. The presence of women in law says something both about society, and about what it means to be a lawyer. Women may carry on the practice of law, like men have historically practiced it, and they may not. The full participation of women in contemporary public life may result in fundamental social changes. Women in law schools may affect the way law is taught and ultimately practiced. Someday women may usher in a new conception of jurisprudence itself.

Women may some day discover that legal education promises more than it can deliver. In doing so, they will connect their negative experiences of law school with its masculine orientation and turn the power of feminist thought to a critique of the patriarchal ideology that dominates legal education. In the quest for a professional education that honors women's experience, women's voice, and women's stories we will get the long awaited and much needed humanistic perspective in legal education. It is the feminine experience of legal education which will so outrage women lawyers, that we will be forced to change legal education and adopt a more feminist/humanistic perspective. Women may help us see, not only how legal education has gone astray, as humanistic men legal educators have been arguing for several decades, but that there is a better way.

NOTES

1. See Stuart A. Scheingold, The Politics of Rights: Public Policy and Political Change (New Haven: Yale University Press, 1974), 151-169; Leonard L. Riskin, "Mediation and Lawyers," Ohio State Law Journal, 43 (Winter 1982), 43-51 (Outlining "the lawyer's standard philosophical map.")

2. See Diane Polan, "Toward a Theory of Law and Patriarchy," in David Kairys (ed.), The Politics of Law: A Progressive Critique (New York: Pantheon, 1982), 294-303; and Janet Rifkin, "Toward a Theory of Law and Patriarchy," in Piers Beirne and Richard Quinney (eds.) Marxism and Law (New York: John Wiley and Sons, 1982), 295-301. ("The fact that little exploration of the connection between law and patriarchy has been done can be largely attributed to the fact that the study of law takes place primarily in the context of law school where the focus is exclusively on legal principles and case study. The study of law in law school is confined to a narrow doctrinal analysis of law and largely excludes an approach which examines the connections between law and social theory. For the most part, law school does not provide students with a framework of ideas to aid them in formulating personal values to help them explore the relationship between social values and law. Because traditional legal education ignores the cultural, political and social foundations of law, it is not possible, in the law school context, to illuminate the relationship of patriarchy and law." *Ibid.*, 295-297.)

3. T.L. Shaffer, "Collaboration in Studying Law," Journal of Legal Education 25 (1973), 239.

4. See Riskin.

5. Jack Himmelstein in his work on the humanistic approach to legal education has emphasized this point. See Himmelstein, "Reassessing Law Schooling: An Inquiry Into the Application of Humanistic Educational Psychology to the Teaching of Law," New York University Law Review 53 (1978), 514; Elizabeth Dvorkin, Jack Himmelstein and H. Lesnick, Becoming a Lawyer: A Humanistic Perspective and Legal Education (St. Paul, Minn.:

West Publishing, 1980). For a critique of Himmelstein's work see James R. Elkins, "All My Friends are Becoming Strangers": The Psychological Perspective in Legal Education," West Virginia Law Review 84 (October 1981), 161-162.

6. The compartmentalization of private and public is of major significance to the role of women in society. See Jean Bethke Elstain, Public Man, Private Woman: Women in Social and Political Thought (Princeton, N.J.: Princeton University Press, 1981); M.Z. Rasaldo, "The Use and Abuse of Anthropology: Reflections on Feminism and Cross-Cultural Understanding," Signs 5, No. 3 (Spring 1980), 389-417 (An anthropological perspective on the domestic/political gender compartmentalization.)

7. See Menkel-Meadow, "Women as Law Teachers: Toward the 'Feminization' of Legal Education," in Humanistic Education in Law, (Monograph III, Essays on the Application of Humanistic Perspective to Law Teaching, Project for the Study and Application of Humanistic Education in Law, Columbia University School of Law, New York, N.Y., undated), 16-32.

8. See generally Kirsten Amundsen, The Silenced Majority: Women and American Democracy (Englewood Cliffs, N.J.: Prentice Hall, 1971), 88-105; Jean Bethke Elstain, "Feminist Discourse and its Discontents: Language, Power, Meaning," Signs 7, No. 3 (Spring 1982), 603-621; Elstain, "Moral and Immoral Man: A Consideration of the Public-Private Split and Its Political Ramifications," Politics and Society 4 (1974), 453-473; Polk, "Male Power and the Women's Movement," in Sue Cox (ed.), Female Psychology: The Emerging Self (Chicago: Science Research Associates, 1976), 400-413; Starrett, "The Metaphors of Power," in Charlene Spretnak (ed.), The Politics of Women's Spiritualist Power Within the Feminist Movement (New York: Doubleday, 1981), 185-193.

9. See Juliet Mitchell, Woman's Estate (New York: Random House, 1971).

10. See Section III, *infra*.

11. Ruth Bader Ginsburg, "Women's Work: The Place of Women in Law Schools," Journal of Legal Education, 32 (June 1982), 272-275.

12. Ibid., 274.

13. Betty Friedan, The Second Stage (New York: Summit Books, 1981). See also Daly, "After the Death of God the Father: Women's Liberation and the Transformation of Christian Consciousness," in Carol Christ and Judith Plaskow (eds.) Womanspirit Rising: A Feminist Reader in Religion (New York: Harper-Row, 1979), 53-67. ("... Phase One of critical research and writing in the movement has opened the way for the logical next step in creative thinking. We now have to ask how the women's revolution can and should change our whole vision of reality." Ibid., 54).

14. Friedan, 27.

15. I use the term "we" because Friedan believes that "the women's movement has come just about as far as it can in terms of women alone." Ibid. She abhors the "female machisms" in the women's movement and believes that women's relationship with men and their role in families must be a more integral part of the second stage of the movement.

16. Ibid., 34.

17. Ibid., 28.

18. Ibid., 38.

19. See Nancy Chodorow, The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender (Berkeley: University of California Press, 1978); Dorothy Dinnerstein, The Mermaid and the Minotaur: Sexual Arrangements and Human Malaise (New York: Harper and Row, 1976); Isaac D. Balbus, Marxism and Domination: A Neo-Hegelian, Feminist Psychoanalytic Theory of Sexual, Political and Technological Liberation (Princeton, N.J.: Princeton University Press, 1982).

20. Bradwell v. Illinois, 83 U.S. (16 Wall.) 130 (1873).

21. Sylvia Law, a law professor at NYU suggests that "[m]any, perhaps most, students do not have clear ideas about the goals they want to achieve with the skills acquired through legal education. For the most part, law school does not provide these students with a framework of large ideas to aid them in

formulating their personal values or to help them plan a career consistent with those values. This problem has become more acute in recent years. Legal education not only fails to provide affirmative assistance in helping students develop a social vision and a personal plan for constructive work consistent with that vision, but the years of legal education do not even give students time to grapple with these issues on their own. By the end of their first year, students are making plans and applying for jobs to begin after graduation. At a point when they have not yet even digested the experience of the first year of law school, students are making critical career choices for work two and three years in the future. This does not leave much time for study, contemplation, or talk about the alternative goals that a legal education might serve." Law, "Personal and Professionals Roles in Their Economic and Sexual Contexts," New York University Law Review, 53 (1978), 628, 629.

22. Janette Barnes, "Women and Entrance to the Legal Profession," Journal of Legal Education, 23 (1970), 276, 288-289.

23. Georgina W. LaRussa, "Portia's Decision: Women's Motives for Studying Law and their Later Career Satisfaction as Attorneys," Psychology of Women Quarterly, 1 No. 4, (Summer 1977), 350-363.

Ms. LaRussa's longitudinal study which began in 1970 followed 40 women law students during their legal education at Boalt Hall at Berkeley. The women comprised about half the women in the law school and ranged in age from 21 to 33 years of age. They were from all three classes. The women were interviewed and completed a battery of personality tests and self descriptions.

Table 1

Motivational Content Categories and
Number of Responses in Each

Response Content	<u>N</u> of responses	% of total responses	N of women giving such responses	% of women giving such responses
Realistic	33	23.7	23	57.5
Altruistic	21	15.1	21	52.5
Self-enhancement	20	14.4	16	40.0
Stimulation	17	12.2	15	37.5
Self-fulfillment	13	9.3	12	30.0
Professional-identification	12	8.6	12	30.0
Theoretical-interest	12	8.6	8	20.0
Action-orientation	11	7.9	10	25.0

Note: Total number of women = 40.

24. Carol Gilligan, In a Different Voice: Psychological Theory and Women's Development (Cambridge, Mass.: Harvard University Press, 1982), 2. See Carol Christ, "Spiritual Quest and Women's Experience," in Christ and Plaskow (eds.), Womanspirit Rising, 228-245.

25. Gilligan, 3. The recovery of a sense of who you are as an individual must take place in the context of a growing awareness of your place in a larger collective group. Each of us has a story which relates who we are as a person in the world.

See Carol Christ, Diving Deep and Surfacing: Women Writers on Spiritual Quest (Boston: Beacon Press, 1980). S. Keen and A.V. Fox, Telling Your story (New York: Doubleday, 1974); James B. Wiggins (ed.), Religion as Story (New York: Harper and Row, 1975); Hillman, A Note on Story 4(4) Parabola 43 (1979).

A story is part of a history, which is the story of a group or class. So we might think of a history of women

The difficulty of learning about the history of women in America is that, for the most part it is an unwritten history of millions of private lives, whose voices, those that were recorded at all, are scattered and buried in journals and letters. It isn't hard to find out what men thought of us--their ideas about women are accessible through the laws they passed and maintained, denying or restricting women's civil and property rights, through the religions they organized and practiced, through their literature.

. . . We need to know much more--about the women on plantations, on the lonely farms, in factories, schools, labor unions--in order to reclaim our past from obscurity, to discover our heroines, to understand our present.

Connie Brown and Jane Seitz, "You've Come a Long Way Baby: Historical Perspectives," in Robin Morgan (ed.), Sisterhood is Powerful: An Anthology of Writings from the Women's Liberation Movement (New York: Random House, 1970), 3-4.

Women have lived in the interstices between inchoate experiences and the shapings given to experience by the stories of men. In a very real sense, women have not experienced their own experience.

Men have actively shaped their experiences of self and world by creating the stories they have told. Their deepest stories orient them to what they perceive as the ultimate powers and realities of the universe. We women have not told our own stories. The dialectic between experiencing and shaping experience by storytelling has not been in our own hands.

In conscious-raising groups, in conversations, and in study, women are engaged in the immensely important task of recovering and discovering the shapes and contours of our own experience. We tell each other stories which have never been told before, stories utterly unlike the stories we have all learned from the culture.

Christ, "Spiritual Quest and Woman's Experience," 228, 229.

26. Bloomdahl, Columbia Law School student paper.

27. Helene Schwartz, Lawyering (New York: Farrar, Straus, & Giroux, 1976), 82.

28. Ibid., 86.

29. If you come to law school as Helene Schwartz says that she did "because she couldn't think of anything better to do," then you have to find something, a reason for engaging in this meaningless act. If the answer does not lie in the past, as is the case for those who have a dream that pushes them on, then one must find another force which can pull us into the future.

30. Schwartz, 83.

31. Brenda Fasteau, "Law and Women," in Jonathan Black (ed.) Radical Lawyers (New York: Avon, 1971), 239.

32. Bloomdahl.

33. Priscilla Fox, "Goodbye to Game Playing," Juris Doctor, 8 (Jan. 1978), 37.

34. Ibid.

35. Marcia Eisenberg, "Comment," in Dvorkin, Himmelstein, and Lesnick, Becoming a Lawyer, 170.

36. Ibid.

37. Schwartz; see James R. Elkins, "Coping Strategies in Legal Education," The Law Teacher, 16, No. 3 (1982), 195.

38. Helene Schwartz recounts a meeting with Marvin Frankel in which she discussed her decision to quit law school. He told her that if she had the slightest desire to practice law, the only important thing was to last out the three years at Columbia and pass the bar. "I believed him and stayed." Lawyering, 86.

39. Ibid.

40. Brenda Fasteau relates the following story:

One incident which sticks in my mind took place during a class taught by Professor Paul Freund, a nationally-known authority on constitutional law. We were discussing a case in which the Supreme Court upheld as constitutional a state law prohibiting women from being barmaids unless their husbands or fathers happened to be proprietors of the establishments. Professor Freund found the case terribly funny, made a series of wisecracks about it and soon had most of the class chortling. Needless to say, I was not amused and made my feelings quite clear--producing even more violent laughter. It was a frustrating experience.

Even the most liberal (liberated) professors rarely called on women, and when they did, hurried to get on to a man whom they could harass without fear of provoking overt (i.e. feminine) emotional collapse. The professors often addressed us all as "gentlemen" and would apologize to "the ladies" if a "damn" or "hell" should slip out.

in "Law and Women," 239, 240.

41. Barbara Jordan and Shelby Hearon, Barbara Jordan: A Self-Portrait (New York: Doubleday, 1979), 91-92.

42. Schwartz, 85.

43. Fasteau, 240.

44. Scott Turow, One "L" (New York: Putnam, 1977), 91-92.

45. Barbara Bezdek in Dvorkin, Himmelstein and Lesnick,

Becoming a Lawyer, 35-36.

46. Bloomdahl.

47. Elizabeth Dvorkin in Dvorkin, Himmelstein and Lesnick, Becoming a Lawyer, 43; Barbara Jordan, in her autobiography, notes that "I was always delighted when I would get called upon to recite in class. But the professors did not call on the 'ladies' very much." Jordan & Hearon, 91.

48. Jordan and Hearon, 87-88.

49. Bradwell v. Illinois, 83 U.S. (16 Wall.) 130 (1873).