

POSTSCRIPT: On Working with Feminine Energy

by James R. Elkins

In my first years of teaching (I started in 1975), I was surprised less by the number of women that were by then in law school, than by the energy, spirit, and hope they brought with them. I attended law school in the late 1960's and early 70's when women in law school were rare. Then, less than five years later, I found women to be the dominant force of energy in the law school. By dominant force I do not mean that they ran the law school, had more than token representation on the faculty, or controlled student government. The female energy I perceived certainly did not come from having what men would call power;¹ for they had little; it came from their presence, from feminine spirit. I wondered why these women seemed so much more dynamic and intellectually interesting than their male colleagues.

Since writing often helps me understand my own experience of the world, I decided to write something about the phenomena of women in legal education. I assumed that others had observed that women were coming to law school in significantly larger numbers and had speculated on what this might mean for legal education, the practice of law, and perhaps even our conception of law and justice. A review of the legal and social science literature indicated that no such work had been done. When I raised the subject with women students I was told to forget it. They warned that a man was not in a position to write about women and legal education. A historic problem for women, they cautioned, was that men wrote about their experiences for them, defining their experience by speaking for them. Politically, they said, it wouldn't work for a man to write about women. Masculine and feminine differences are a political issue, they pointed out, and a man cannot deal with that in a way that makes any sense to women. A bit baffled and, frankly, hurt, I took their advice and let the matter drop.

My courses in administrative law, criminal law, and

jurisprudence did not offer "obvious" opportunities (as if such an opportunity would ever appear as obvious) to introduce the idea of feminine energy and spirit directly into my teaching. Yet, I taught a course in Family Law which focused on the lawyer as family counselor and still did not raise women's issues. In fact, some women suggested that I include feminist-oriented articles and ideas in the course materials. In looking at the materials now, I am surprised to see that although I did rework the course materials and include some articles that suggested a feminist perspective, the course was not changed in any significant way.² I strongly felt that the crucial aspect of family law was the counseling. I failed to see that the sociological and psychological perspective that I tried to bring to the course might be gender-specific. I gave no thought to the possibility that women and men could have different views of the world and that the differences could affect one's view of the lawyer as counselor. I would teach family law differently today.

Listening to women tell their personal stories about deciding to be lawyers, together with the attendant conflicts, doubts, and hopes, pushes me to teach my courses differently.³ It helps me see why women place so much emphasis on bringing more women into law teaching. A woman would have been less blind to the obvious connection that legal issues in family law have to women's concerns. (This assumes that women law teachers are able to avoid the effects of "tokenism" which pushes them to adopt the perspective of the men who control their advancement in the system).

In 1982 I again found myself thinking about feminine spirit. My work in recent years had focused on legal education as a "felt experience." I was studying legal education from the ground up, from the student perspective.⁴ And so I began to ask my students: Is law school, law itself, connected in some way to gender differences? In what sense is law a masculine conception, law school a reflection of a man's world?⁵ Does it make any sense to talk about a man's world and a woman's world? Do women and men live in different worlds? When women come to law school do they leave the world of the feminine behind?

When I first mentioned that I planned to teach about this, women students greeted me with skepticism: "Women

and the Legal Profession should be taught by a woman." Intellectually, I accepted the idea. But I was disappointed in their reaction. We had only two women on the faculty, neither of whom had expressed any interest in teaching such a course. My qualification was my interest, my concern, my reading about women's lives.⁶ I was convinced I could work with women and listen as they explored the issues which faced them as women in legal education and in preparing for work in what has historically been a masculine profession.

* * * *

Louise Bernikow in Among Women, a book of wonderful essays on women's relationships, suggests that men have not (at least in literature) imagined the conversation of women.⁷ The women's silence that Bernikow finds in male-written literature also exists in legal education. There are few women teachers.⁸ The judicial opinions that make up the literature of law have been written by male judges. The lawyers who try the cases before the judges are men. When the law addresses women's issues, it does so through male attorneys and male judges. Arguably, the law itself has a distinctively masculine character.

There were few women in law school when I was there. What did I ever hear them say? What do I know about their stories? Few in number, they were viewed as oddities. I am tempted to label the women that I knew in law school "token women,"⁹ but it doesn't ring true. Tokens of what? Sadly, I know nothing of the lives of those women, how they view the experience which transformed my life and theirs. What could I have learned from them? What did they have to teach that was ignored in our courses? These women were the subject of stories and gossip. I listened to the stories men told of these women, but had no awareness that such conversations were a denial of women's voices, their stories. The women law school classmates (and the women with whom I practiced law) existed in a world of silence. Like the women Bernikow found in men's literature, they "drift[ed] about in the cosmic air, unconnected to anyone, as though they [had] sprung full blown from the head of Zeus."¹⁰ I did not have the foresight to imagine their world, or the effect of their silence and mine.

The women law students from my past are now ephemeral ghosts who shared a time and place with me without ever revealing themselves. I asked nothing of them and they spoke accordingly. These memories of masculine consciousness root patriarchy in my own life-world. Patriarchy depends on the silence of women, on the ability of men to "culturally forget" that men define the world for both men and women. So, like Bernikow, I have become "an archaeologist, digging for relics of female intimacy" which underlie masculine professional consciousness.¹¹

* * * *

One problem in working with the women students was to understand how my role as teacher and man might make some kinds of learning possible and at other times be the obstacle to learning. It is clear that some of the women in the class would gladly have bid me farewell, viewing me as more obstacle than aid in their quest.¹² Others found me "safe" to work with and had no objections to a man teaching women about themselves. Some, perhaps, actually found it easier and less threatening to work with a man. In response to these observations about my role in the course Ruth Knight, one of the students writes:

I dare say that some of the women who wanted you gone were so political they forgot to be personal. I related to your personal energy more than to your male energy. You did not seem like a typical man, neither did you seem like women I knew. I identified you with something very deep in me. Others may have felt this too.

For some of us the course was exploration; we were pioneers. It would be a mistake for me to swallow the feminist movement whole (that would be no different than swallowing patriarchy). But if my personal journey proves fruitful, I could add to the texture of the feminist movement. The "commitment" is not either/or. Our work allowed each of us to chart her own course.

I was an outsider in the class, an experience not unlike that described by Vivian Gornick.

I am not real to the culture that has spawned me and made use of me. I am only a collection of myths. I am an existential stand-in. The idea of me is real--the temptress, the goddess, the child, the mother--but I am not real.¹³

As the women in the class began to realize the significance of the telling of their own stories to each other,¹⁴ I found it increasingly difficult to find a place for myself in the course. The work we were doing, the questions we asked and discussed, the writing that we did, all seemed to make sense. Everyone seemed to agree that we were doing something worthwhile, something out of the ordinary, at least in terms of legal education. Enthusiasm was high. Yet none of us could ignore the problem of my presence. Louise Bernikow makes the point beautifully:

The man Sharon lives with entered the room and the tone changed. We spoke of other things. Another language shaped in each throat. We were then three friends together, but the light was different. Then each went back to work.¹⁵

The teacher was a man and that made a difference. It made a difference to me because I was the man. A male teacher changes the tone. Bernikow and the women in the course helped me see that my presence in the room, my posture as a teacher, the masculine consciousness I bring to the work, and the patterned ways that men talk and engage women make the silence possible. I began to see myself, both as a patriarchal symbol for the silencing of women and personally participating in the consciousness that carries the silence forward.¹⁶

Working with women required that I work with silence and try to see it in a new light.¹⁷

THE GEOGRAPHY OF SILENCE

A general devotes his life to war, a lover of
peace
A woman devoted to her husband, secretly
wishes her freedom
A child, impatient to be grown
And I, a man of words, seek silence

A teacher
I am entangled by words
Proud of their use
Defiant defender of language

Outspoken all my life
Enamoured with words
Reading words
Speaking words

A man of so many words
Too many words
Ideas and words
The cage of words

What would I be without words
Without the sounds I make as I speak
The making and the doing
Of a life of words

I surround myself with speech
Revel in it
Wonder at it Praise it

The sound
Of movement
And warmth
Of kind words

Words that envelope
And entice
And induce
And ignite

Words of longing
Desire
Love
Commitment

Words that pain
And words that heal
Words that give hope
And words of despair

Words
Written and Spoken
Speech
Language

Story
Poem
Song
Myth

I live the words
On the breath
Of the body
Speaking

We are so much in the world with our words
And the world is in us as words
Making words
And being made by them

Wait
Words are not all
There is a pride in silence
And a silence of beauty

To honor silence
To learn from it
To have more silence
Would be a gift

"Talk is cheap"
"Action speaks louder than words"
"She's got a big mouth"
"He has a loose tongue"

"You can't believe anything he says"
"She's all talk"
"He does all the talking"
"You can't get a word in edge ways"

"We've already talked about this"
"I'll talk to you when I get back"
"We should have talked more about it"
"I'll give you a call"

The silence of swallowed anger
The silence of insecurity, doubt, fear, shame
The silence of no words
The silence of darkness

The silence of restraint
And pride
The silence of understanding
And beauty

Working with silence
Working around silence
Working on silence
Working in silence

Silence is a burden
A defense
A code
A mystery

Those who speak and those of silence
Bound to each other
As day to night
Light to Darkness

We of the light
I among them
Afraid
Of Darkness

We did not know how to confront what many of us felt: the strangeness, the constraint, the tension which exists when we tried to work together to discover what it means to be a woman, a woman who has chosen law as life's work. If not a teacher of these women, what could I be? Adrienne Rich writes of men being mentors for women:

He can teach her to name her experience in language that may allow her to live, work, perhaps succeed in the common world of men. But he has no key to the powers she might share with other women.¹⁸

I learned, slowly and painfully, that what I needed to learn

is what women teach each other, what women already know. Some women were learning the same lesson. One wrote, "Before the class I was cut off from women who could teach me what women know. In my own teaching, I taught both women and men only what men taught me to teach. I didn't know what women knew. I thought women's knowledge consisted of how to bake bread, make kitchen curtains, and take care of children."

Another question for me was whether traditional teaching and learning could accompany consciousness-raising. The feminist literature makes clear the central and crucial significance of consciousness-raising for women who seek to find their own voice. Juliet Mitchell explains how women make the connection between the personal dimensions of their lives and the politics of feminism. Women, she notes, come to feminism with unspecified frustration of their own private lives, find that

what they thought was an individual dilemma is a social predicament and hence a political problem. The process of transforming the hidden, individual fears of women into a shared awareness of the meaning of them as social problems, the release of anger, anxiety, the struggle of proclaiming the painful and transforming it into the political—this process is consciousness-raising.¹⁹

Most students, women and men, do not envision a law school course as group therapy or consciousness-raising. Expectations are already defined about what will happen in a "law school class," what teachers will do and say, and how they will interact with their students. Traditional role expectations for students and teachers insure that the feminine is ignored, denied, forgotten. The question is how to make the feminine spirit and women's voice a part of learning, in this case learning law, and learning about one's self as a professional.

The class was a half-way house, neither prison nor total freedom, but an intermediary point. The work may have been dissatisfying for feminists bent on separatism (a position that I understand and support), but it seemed to be a vehicle that some women could use for self-exploration and mutual reinforcement of the authenticity of their own

experience. It provided a time and place to talk about women's issues and the problem of forging a professional identity in a masculine profession and a patriarchal culture. Our work recognized the feminine spirit and women's voice, along with the social and political dimension of women moving into the public world of law.

The work was exciting for me. I have never felt closer to a group of students or more in touch with the true art of teaching than in my work with these women. I watched these women work with the dream that had brought them to law school and the realization that law school had failed them in part, because it did not value the feminine spirit; because it did not take account of what women know and tell each other about the world (or what women can learn to do for each other). Reaching for something beyond silence, the law school path to a stronger sense of self was full of obstacles. Understanding those obstacles and how they appear in the lives of women and getting a sense of how to move ahead in spite of the obstacles may or may not require a feminist political perspective, it surely requires that women share their experience and perspective. We were indeed engaged in feminist work, a feminism defined by Adrienne Rich "as an ethics, a methodology, a more complex way of thinking about and more responsibility acting upon, the conditions of human life...."²⁰ Like Rich, I want to work with the meaning of women's experience and the reinterpretation of professionalism in terms of that experience. The method for doing this is to talk, listen, write, tell stories, share dreams, and discover the myths. Our work together makes an opening for each of us to find our way in the forest.

NOTES

1. It will come as no surprise that our conception of power emerges from a masculine conception of reality. Men are fascinated with power--having it, getting it, using it, not losing it. There is talk of political power, corporate

power, personal power. All of this talk about power is men talking about themselves. See e.g., A. Zaleznik and M. De Vries, POWER AND THE CORPORATE MIND (1975); D. Kipnis, THE POWERHOLDERS (1976).

We are now in a culture witnessing a reimagining of power, confronting the impoverishment of patriarchy which is the power of male domination, and envisioning women's conceptions of power. See e.g., Jean Baker Miller, TOWARD A NEW PSYCHOLOGY OF WOMEN (1976); WOMEN'S SPIRITUALITY (C. Spretnack ed. 1982). See also, R. Sampson, THE PSYCHOLOGY OF POWER (Vintage Books edition 1968).

2. To my knowledge there is yet today still no feminist-oriented published course materials for use in Family Law (nor for that matter any other law school course).

3. For example, in legal ethics I raise the question whether women and men have different ethical points of view, whether our conception of justice is affected by gender differences. See e.g., C. Gilligan, IN A DIFFERENT VOICE (1982) (Excerpts from the Gilligan book are assigned as part of the course readings).

4. See I. Shor, CRITICAL TEACHING AND EVERYDAY LIFE (1980).

5. See Polan, "Toward a Theory of Law and Patriarchy," in THE POLITICS OF LAW 294-303 (D. Kairys ed. 1982); Rifkin, "Toward a Theory of Law and Patriarchy," in MARXISM AND LAW 295-301 (P. Beirne & R. Quinney eds. 1982).

6. I distinctly remember reading Kate Millet's SEXUAL POLITICS (1969) shortly after it was published. I found the book breathtaking, admitting me to a world that I knew little about, a world that my experience had not prepared me. This first experience with feminist scholarship was an intellectual experience. In more recent years I read works like Marilyn French's THE WOMEN'S ROOM and THE BLEEDING HEART (1980); Erica Jong's FEAR OF FLYING (1973); HOW TO SAVE YOUR OWN LIFE (1977); Louise Bernikow's AMONG WOMEN (1981) and Adrienne Rich's ON LIES SECRETS, AND SILENCE (1979) which helped me

imagine women's experience of the world. Using Jungian psychology to explore my own interior feminine side has also influenced my teaching and my relations with women students. On the use of Jungian psychology in exploring gender, see, L. Olds, FULLY HUMAN (1981).

7.L. Bernikow, AMONG WOMEN (1981)

8.Fossum, Women Law Professors, 1980 Am. B. Found. Res. J. 903.

9.On tokenism, see Spangler, Gordon, and Pipkin, Token Women: An Empirical Test of Kanter's Hypothesis, 84 Am. J. Soc. 160 (1978). And on the corollary problem of marginality, see Gornick, "Woman as Outsider," in WOMEN IN SEXIST SOCIETY: STUDIES IN POWER AND POWERLESSNESS 126-144 (Vivia" Gornick & Barbara Moran eds. 1971).

10.Bernikow, supra note 7, at 5.

11.Id. at 8.

12.For a psychoanalytic interpretation of the desire to eliminate authority figures, see P. Slater, MICROCOSM: STRUCTURAL, PSYCHOLOGICAL AND RELIGIOUS EVOLUTION IN GROUPS (1966).

13.Gornick, supra note 9, at 144.

14.Being a student, a law student, engages more of who we are as persons than we admit. Personal stories explore the source of images and identities which affect our professional actions as students and lawyers. The development of a professional identity emerges from the concerns and expectations that students bring with them to law school. The way a person lives, their values and beliefs, affect the way law is learned and lawyering is practiced. Our values and beliefs and the conflicts they create as we try to live them constitute a story waiting to be told.

15.Bernikow, supra note 7, at 4.

16.The rather elemental insight that I note here came from working with women and learning the limitations (and power) that I bring to any situation as a male teacher.

17.Silence has been a preminent concern in feminist literature. See e.g., A. Rich, ON LIES, SECRETS, AND SILENCE (1979).

18.Id. at 210.

19.J. Mitchell, WOMAN'S ESTATE 61 (Vintage Books edition 1973).

20.Rich, supra note 6.

CONTRIBUTORS

Kathleen Abate is currently a clerk with the West Virginia Supreme Court of Appeals. After leaving the court she plans to enter the private practice of law.

Meg Baughman is a recent graduate of the College of Law, West Virginia University.

Mary Kay Buchmelter is a recent graduate of the College of Law, West Virginia University.

Denise Chamberlain is a third year law student at West Virginia University. Following graduation she will join the law firm of Recht & Johnson in Wheeling, West Virginia.

Susan Dalporto has a solo law practice in a small, rural West Virginia community.

James R. Elkins is a Professor of Law, West Virginia University College of Law.

Christy Farris is a recent graduate of the College of Law, West Virginia University.

Fran Hughes works as an Assistant Attorney General for the State of West Virginia. She plans to eventually enter a small private practice.

Ruth Knight is the wife of Tom and the mother of Erika, Eleanor, and Joseph. She plans to work for a legal publishing company and hopes to be a writer.

Cynthia L. Kotchek graduated from the College of Law, West Virginia University in May, 1983. She presently serves as research assistant for Judge Robert E. Maxwell, Chief Judge, Northern District of West Virginia, Elkins, West Virginia.

Jane Mainella is an associate with the law firm of Rose, Southern & Padden in Morgantown, West Virginia. She is an (aspiring) trial lawyer.

Kathy Moran is a recent graduate of the College of Law, West Virginia University.

Cathy Morgan is a 1983 graduate of the College of Law, West Virginia University.

Patty Myers graduated from the College of Law, West Virginia University in 1984 and plans to join a general practice in West Virginia or Pennsylvania.

Phyllis Palmieri is a third year law student at West Virginia University. She is planning to form a partnership with a recent woman graduate and practice in rural West Virginia.

Ann Spaner has worked for the Judiciary Committee of the West Virginia State legislature and intends a career in electoral politics.

Susan Spencer graduated from the College of Law, West Virginia University in May, 1983. Three weeks after graduation she gave birth to a daughter, Elizabeth. Ms. Spencer is presently at home with the baby, living near Philadelphia. She is studying for the Pennsylvania bar examination and hopes to begin the practice of law when her daughter celebrates her first birthday.

Kristi Treadway graduated from the College of Law, West Virginia University in May, 1984.

Deborah White is a recent graduate of the College of Law, West Virginia University.

Michelle Widmer is currently in private practice in Morgantown, West Virginia and teaches Commercial Law in the College of Business and Economics at West Virginia University.

