

Remembering

Ruth P. Knight

Having eyes, see ye not? and having ears, hear ye not? and do ye not remember?
—Mark 8:18

Locating the law school with my Safeway city map, I arrived in time to ask where the courtroom was. Group portraits of long ago law classes stared at me with masculine eyes as I walked down the hall between them. Inside the courtroom, large paintings of staid and sophisticated gentlemen looked down at me with poker faces. Young men and women sat apart from each other as if an exam approached. A few men took chairs on the stage in front of the judge's desk and shuffled papers. I smiled at everyone as if they were newcomers at church. Some smiled back.

Once seated, I asked the young man next to me where he was from.

He replied, "I probably will not be staying here past orientation; I am on the waiting list at the University of Virginia."

"I came here from Virginia because the out-of-state tuition is lower than in-state tuition in Virginia—and more jobs exist here for my husband," I said.

He berated himself for not taking a course that might have raised his LSAT score; he regretted his reliance on prepared study guides.

Trying to stay on the subject I asked, "People study for the entrance exam?"

He looked even more uncomfortable.

Actually only one person near me looked relaxed and excited; a man about thirty-five with wire-rimmed glasses and hippie hair sat across from me on the aisle, writing energetically in a journal.

The men up front, law professors, took turns at the podium, telling us that the Socratic method used in law school differed greatly from traditional teaching. We were to sift through the often stilted language of the court to discover the ruling, "brief" our findings, and prepare to answer hot-seat questions on the sifting and briefing. They told us never to stoop to using the "canned briefs" or outlines available in the bookstore. They did not write anything on the board or give us any handouts. I visited the bookstore to take a peek at the forbidden cans and outlines, but I did not dare ask for them and could not figure out what they were.

Ruth P. Knight now works as an executive editor for a major law publisher. Robert T. Noone is a trial lawyer and entertainer who performs at law-related functions throughout the country. Other names have been changed because the people in the story may want to remain private or to tell the story in their own words. Some of the subject matter in the opening section appeared in a somewhat different form in *Worlds of Silence: Women in Law School*, ed. James R. Elkins, 8 ALSA F. 1-161 (1984).

My first legal writing assignment brought me my first "C." The only comment on the paper was "Dicta." My *Random House Dictionary* defined "dicta" as the plural of "dictum," which meant "an authoritative pronouncement; judicial assertion."

I stood in line outside the office of the legal research and writing instructor, my only female teacher.

"My memo was supposed to be based on the dicta in these cases, so why . . . ?"

Her attempt to keep a straight face interrupted me. She swallowed and said, "Only the holding in the case is good law; anything else the judge says is dicta. Don't cite to dicta." Then she smiled and looked over my shoulder to the next student.

I looked up "holding" in my dictionary. It meant "the act of a person or thing that holds; a section of land leased or otherwise tenanted; a company owned by a holding company; property esp. stocks, bonds, and real estate."

The next week my writing assignment earned a "B." The only comment on the paper was "cert. denied" and an arrow pointing to a case name and its number. I found a law dictionary in the bookstore and bought it. Then I asked a classmate what "cert." abbreviated, so I could look it up.

During the first month we read fascinating cases about "finders keepers" that reminded me of everybody's ancient pottery and human-bone collections back in Arizona, where we lived before moving to Virginia. Many Arizona finders kept, but it seemed to me that they were not supposed to.

"Ah," I said to myself, looking at the dignified property professor behind the podium, "this is the man who can answer my question." I raised my hand. He looked startled, but called on me.

"What about ancient Indian pottery? Can you keep that if you dig some up while you are plowing or laying sprinkler pipe or something?"

The professor stopped cold. Irritation washed across his face like a sour washcloth.

"If there is time at the end of class, I will comment on that." He looked back at his seating chart and asked the next student a question about the next case. When people were noisily leaving he said, "As to Indian pottery, statute probably controls over the common law." The answer took less time than the avoidance tactic had taken at the time the question was asked. I felt like my former second graders must have felt when I had only fifteen minutes to teach them about the four basic food groups and they wanted to tell me how much they liked pizza. I had no defense; I could not tie up everyone's time with anchovies or long-buried bones. Still, I was disappointed that only the endless court analysis, with bare facts to hang it on, was touched in class.

Conversation in the student lounge regurgitated bits of class proceedings embellished with class-rank paranoia, or resentfully detailed how law school ruined one's love life—but it never consistently attempted to fit the cases into the lives of the speakers. It was as though the fact patterns no longer had anything to do with passion and pain and other humanizing elements, and that former humans—inferior ones—litigated for the sole

purpose of providing tired law students with case precedent. Case precedent, in turn, allowed some students to bandy strange Latin words about and to talk law-language as if they had been speaking it all their lives.

When I read the cases the way I wanted to read them, they made me want to write a novel. When I read them the way I was supposed to read them it was like traveling in a foreign country. I could not speak or understand law, but it was challenging and sometimes even exotic.

I likened the lectures to learning to do modern math calculations in different bases—it made little sense when it was first explained. But I figured that at the end of the semester the professors would tell us what to study for the tests, and I would memorize whatever I had to.

In the meantime I used all my energy to listen for note taking in class. Writing verbatim most of what the professor said, I hoped to catch the information so that I could use it once the professors told me how.

I decided that the orientation hype about new teaching techniques was either ignorance of effective teaching methods or a coverup. Where was the course preassessment? Why did they cram so much into a lecture session that they risked saturating the learners? How did they know whether we were absorbing the concepts? Why not put outlines on overhead projectors or give us handouts? Why did they not care about student self-esteem? Where was the “positive reinforcement”? Why were so many professors’ office doors closed? I told my family that if I could get my hands on the professors’ notes, I could present the material in a much less complicated, more understandable manner—that professors in any education school in the country would be appalled.

Of course, I told myself, any education school in the country would be appalled at what law school did to my parenting. My naptime-bedtime story reading fizzled out. I lost track of baby-book information. Although my church leaders strongly urged mothers to stay at home with their children, I had two kids in day care. As a former elementary school teacher, I was uncomfortable with the day-care overcrowding but was too frazzled with my own schooling to find better. Volunteering at the elementary school was impossible. My eldest child, a second grader, wrote a story describing how much she loved me in spite of the fact that I made her eat hot lunch and wear a plastic Halloween costume from Murphy Mart.

When first-semester final exams rolled around, not one professor told us what to study, and I panicked trying to rehash my hash of incomprehensible notes, all the while berating myself for being so stupid. I could not believe that it was time for testing and that I had no idea what was going on. All I could understand was the factual situations as embellished by my imagination, and I knew by then that the facts were the first thing professors and smart students carved away. Professors wanted only rules of law, carefully placed.

In panic, I tried to type each factual story, together with its rule of law, so that at least I could attach the rules to something I understood, and so I could read my notes. Amazingly, as I typed, main ideas began to rise to the

surface of the soup in a fluid pattern that I could not exactly lift out and organize, but which was definitely a pattern. I felt reverent, as though I had beheld a miracle.

Finally what the orientation professors had said about a different kind of teaching began to soak in—it was not simply bad teaching—law professors did what they did on purpose. But for the method truly to work, it seemed to me that the focus of the learning should be on consistent and frequent examination of what each student personally brought forth after absorbing the reading. Classes with one teacher to seventy-five students could hardly do that effectively. As it stood, the “Socratic method” still did not seem different from traditional public school teaching, except that traditional teachers listed the main ideas they wanted students to memorize—and presented the list to the students. In law school, professors expected students to memorize the professor-made lists, but the lists were withheld—students were supposed to guess what was on the lists before they memorized them. Unfortunately, I thought, I did not have time or the expertise to lift the organized lists from my disorganized notes. So I faced the exams with nothing but a hazy memory of some stories and a bright hope that the miracle of the patterns would help me survive.

Halfway through the first exam my hands went numb; I forgot to breathe. I suffered nausea during my entire Christmas vacation, thinking I had flunked.

Well into second semester, grades were posted, and students crowded around them. I heard swear words that did not exist back in the tiny Rocky Mountain religious community where I grew up or in the circles I had moved in since.

I was amazed to see that I was nowhere near the bottom of the charts. In fact I ranked well enough that when other students mourned their grades, I let them believe that mine were worse. They seemed to feel better when I expressed my bewilderment; I did not exactly lie—I merely avoided telling them the real reason I was bewildered.

I secretly reveled in my relative success and resolved to carve the cases and notes down to the bones as I went along so as to isolate the important stuff, so as to make straight A's. The effort was heroic but doomed. In classes such as property I semisuccessfully banished the lords and ladies, the castles and serfs' cottages, and my imaginings of ceremonies of feoffment in Nottingham Forest. I doggedly and dryly filled my brain with “T to A for life, R to B in fee if B attains 21; or O to T and his heirs to the use of O and his heirs.”

But the exercise was downright impossible for me when it came to Legal Writing, Criminal Offenses, and Constitutional Law. I inhaled about five-hundred cases for my moot court brief, at the expense of my other classes. I feverishly forgot about main ideas and foraged all the delicious trivia I could find. I found stories that cried out for better treatment of social guests who slipped and tripped on their hosts' loose carpeting. The Avon Lady could recover! The babysitter could recover if she was paid fifty cents an hour! But a poor, nice neighbor who comes over to bring flowers

to a sick friend can break her neck and not receive a penny for her doctor bills! I even found a case in which a railroad employee, who was standing on top of a parked boxcar in order to string a radio antenna from his two-room company-house to the tree on the other side of the tracks, was hit by a runaway train, and the court denied recovery because he was a trespasser. The rich railroad company would have been required to pay for his injuries if he had been in the boxcar, next to the boxcar, on the track, or in his bed asleep when the train bashed into the station. But no, the man was trespassing on top of the car, so forget it.

After we turned in our briefs, we were allowed to read photocopies of other briefs in preparation for oral arguments. I cried. My brief was not legal-sounding like the others; it was just a series of little stories. I interrupted the instructor and frantically told her that I had misunderstood the assignment; that I had done it all wrong. From her answer I gathered that doing briefs wrong is generally the problem of the writer and not the reader.

The morning of my first oral argument, I dragged myself to class with nothing on my mind but failure; the moot court brief and argument made up the biggest part of my writing grade. Even worse, I had to present my research publicly and to see my ineptitudes mirrored in the eyes of judges. As I made my way through the crowd, the writing instructor called to me over the heads of my classmates. I stopped. My left eyelid began to twitch.

"I know you are worried about your brief. It is . . ." She paused with her mouth open as if she was not sure how to begin, ". . . different."

My heart fell.

Then she said, "I think it just might be the best brief I ever read . . . Others might not agree, but I think it is very good."

I was still stunned when I went before the first panel of judges.

But I was first and found to my surprise that presenting my argument was not even as scary as speaking in church programs; the audience was smaller, and the judges helped by asking questions that either reminded me of important ideas I might have forgotten to mention or made me realize I had studied the problem better than they had. I did not feel any discomfort at all until my Vietnam veteran opponent got up to speak and clenched the podium so hard that his knuckles went white.

I won a place on our intercollegiate moot court team. Some classmates who had ignored me began asking me questions about lectures and study aids; when I did not know the answers they looked irritated. Some seemed frustrated that I made the team, implying that others were more deserving. I told them I did not mean to rank high, that I was just trying not to flunk. I agreed that the judging was probably unfair. I said I only accepted the appointment because I needed all the help I could get to find a job after law school. I promised I would try not to embarrass the university when I competed against other schools. Bewildered as I honestly was by the attention, a red devil deep inside me said, "Honey, you pulled it off."

Devils usually lie.

Determined to stay on top, I began studying nonstop from seven in the morning until midnight, doggedly attempting to memorize lists of rules.

On receiving my first second-semester exam I recognized the issues; I tried to write the rules I had memorized. But the rules seemed lifeless—and I remembered that it was my lively personal style that made me a winner in moot court. So I proceeded to illustrate my exams with stories and personal opinions. I said I knew for a fact that drug paraphernalia could be mistaken for perfectly innocent stuff because once I saw some drug paraphernalia and mistook it for a terrarium. I mentioned how my husband remembered the Virginia school closure in 1959 to defy *Brown v. Board of Education*. I gave the professors feedback on their teaching techniques. I wrote stream of consciousness, so delighted was I with what I found in my memory.

My grades plummeted, except for the “A” in legal research and writing.

Sobered, and unable to find out who my advisor was or whether I had one, I called the assistant dean, who had the distasteful job of telling some of my unluckier classmates that they had flunked out. I said law school was like coming into a movie when it was half over; that if I had learned the first part in undergraduate school as the other students had, things might have made more sense. I asked him whether I should do us all a favor by quitting school.

Before he could answer, I confessed that I did not comprehend constitutional law at all. “I am embarrassed to tell you that before taking Con Law I didn’t even know that the Supreme Court interpreted the Constitution; I guess I thought the Constitution only changed when it got amended. I went to remote rural schools where the history and government teachers milked cows before and after school; their lesson plans often consisted of giving us time to read the chapter and look up the terms—I copied the definitions out of the textbook glossary as fast as I could and then put a novel inside the text and pretended I was reading the chapter. Any history I remember probably comes from reading James Michener novels. I wrote words like “commerce power” and “strict scrutiny” into my Con Law notes, but I guess I thought they were adjective-like terms thrown into the cases to clarify complicated stories about loan sharks, men who made it with underage girls to whom they were not married, and people who were refused adequate public schooling because of the color of their skin.”

The assistant dean said, “A lot of students have trouble with constitutional law.”

“But, Dean,” I said, “It is not just Con Law; I think my missing the boat has something to do with seeing how generations of judges and lawyers see regular people. It seemed more important to look at that than it did to outline rules. . . . Of course, I would have tried to learn the way I was supposed to if I could have.”

He replied, “Usually when students concentrate on how judges think, they score well on the exams.”

I said, “I am sure you are right. I guess I wasn’t looking at their legal thinking.”

What I wanted to say was, “I grew up believing God guided the lawmakers in this great nation—and that a rich man going to heaven was

like a camel going through the eye of a needle; reading these cases and statutes makes me realize that rich people influence law a great deal. Con Law cases often deal with poor people, but I want to find out how a lawyer without power or means can help poor people. Still the cases in Property, Con Law . . . well most of the courses . . . demystify a few things for me. Maybe everybody else had the right prelaw background, and so they only need the statutes and rules with enough facts and history to enable them to practice law. I need the background, but I can't go back to undergraduate school to major in political science; my husband wants me to support our family so he can start a car-repair business. I can't practice law if I can't understand it, and I can't understand it unless I know about the world it is in. Furthermore, the world I grew up in seems somehow apart from the world that makes political decisions."

Instead I added, "For me to do appellate advocacy in the name of the university would probably be fraud—though I am not entirely sure, as a matter of law, what fraud amounts to."

The assistant dean told me that I might enjoy a course called Women and the Legal Profession. Needless to say, the course was not going to be on any bar exams—though it would fill a perspective requirement.

I

. . . seeking and learning are in fact nothing but recollection.

—Plato, *Meno*

I thought Women and the Legal Profession was going to be a course in how to dress for success or how to compete with tough-minded men who score high on aptitude tests, and I needed both if I planned to fight my way through the next two years.

Professor Engberson, dressed in blue jeans and tennis shoes, sat cross-legged on the floor surrounded by piles of colorful books that were decidedly not published by West, Lawyer's Co-op, or Michie. I tried to remember where I had seen him before, finally remembering the happy hippie from orientation a long year ago. He was the only male in the room. The rest of us sat on chairs that we pulled away from the seminar table to make a circle around him. The circle was so small that I could see peoples' necks move when they breathed.

He read us vivid passages from women's writings describing the atmosphere change when men entered rooms of women. At first I thought he was going to tell us that women messed up the law school atmosphere. But he did not. He appeared to be beginning a course by admitting that the teacher might be the course's biggest problem. Some of the women were intently listening. Some rolled their eyes at each other. Two or three looked as if they were in love with him. Some rudely whispered while he read. Two or three looked red-hot angry. Few wore the same faces they wore in normal classes. My usually smoking pen hung idle in charged air. What was going on was not the sort of thing one could transcribe into rote notes. A high-cheekboned woman with rippling muscles in her forearms flaired her

nostrils and clenched her jaw muscles. Finally she interrupted. In a voice that matched her biceps, she said, "I am sick and tired of men teaching women about women."

Instead of skillfully silencing her and moving on with the lecture, Professor Engberson looked uncomfortable and asked questions that encouraged her to let it all hang out. And she did. She worked midnight shifts mining coal to support young children and had quit law school twice before when she got caught working full time. I could not believe that she was telling us, knowing the rule that students could not work full time or attend school part time. Other women began chiming in. Most were angry, very angry, about male domination in the school. Professor Engberson asked questions that drew them out. One staid and conservative-looking woman in a grey interview suit unconsciously relaxed until her left foot rested on her right knee and I could see her white panties. When class ended, I felt sorry for Professor Engberson because he had not completed his presentation. I figured he had never had the benefit of taking Education 101, which would have taught him how to keep the reins tight enough to keep wild ponies from taking the class off the proper path. But his failure did not seem to bother him at all. In fact he was smiling with big white teeth and taking off his rimless glasses to clean them without ever breaking eye contact with whichever woman was telling him her life story. He gave us a two-page single-spaced list of questions, the answers to which would explain why we came to law school.

The next class carried a total change of atmosphere. Professor Engberson entered with his armload of books and his journal, but this time he could not even start the class, let alone finish it.

"You didn't tell us how many pages the paper was supposed to be," complained a woman who was on law review.

He said, "Just make it as long as you need it to be," and opened his journal.

"Look," said another one, "my GPA might not be important to you, but it is what is going to get me into a decent firm. I want to know what your grading standards are."

He adjusted his spectacles. "I honestly want you to do work in this class that is meaningful to you."

"And what might that be?"

He shrugged. "I don't know. You decide."

"Oh, we decide what we need to learn and do, but you grade us. Right?" The sarcasm sliced through the ivory-walled room and ricocheted off the light fixtures.

"Right," he replied, and tried to focus us on a quotation he had written in his journal.

"What good is this class going to do me in practice?"

"How many papers do we have to write?"

"We don't have to read all those books on the syllabus, do we?"

"Is it true that you gave everybody C's once in Professional Responsibility because you thought that is about how ethical they wanted to be?"

He shrugged again. Then he closed his journal and stacked up his books.. “If you would prefer to talk about how I grade the course rather than about what I see as the course, then we will—it is your course.”

Multiple body language said, “We want to talk about grades.”

“Do your other teachers give you clear enough guidelines that you can predict your grades?”

I thought everyone would agree that other teachers did not make their standards clear.

A sharp-nosed woman breathed out through her nose and said, “Yes.” She actually thought professors gave clear guidelines—even in classes I shared with her. She was not alone. But Professor Engberson held his line and asked more questions.

Finally the coal miner said irritably, “Damn it.” She paused to look around the room defiantly. “I don’t remember any professors giving me a hell of a lot of help if they could get out of it. The reason you know what to do is that most professors teach the same thing year after year, adding just the newest cases and statutes. There was always some student genius a few years ago who could have written *Gilbert’s*, but, instead, lives in nameless immortality as the compiler of your ‘guidelines.’ ”

Professor Engberson’s eyes flashed with gold flecks as he formulated the next question. I wrote on the blank page before me, “Talk to third-year students about outlines.” Then I reread what I had written and a light began to dawn.

The hysteria, manipulative reasoning, silences, and demand for regulation continued around me, but my spirit smiled. I had not volunteered a word in any class since I had asked about the Indian pottery, and I did not intend to risk it now, but before class ended my mind was full of silent comments that made sense to me.

In response to the first writing exercise, I joyfully spent the weekend typing an epistle of why I was who I was, and why I was where I was.

The evening after I handed it in, Professor Engberson called me on the phone for the first and only time. We talked while I folded clothes. He said, “You make me a bit speechless, and, as you know, I am seldom at a loss for words.”

I laughed.

He added, “I realize that you were simply pouring out pent-up feelings, but your writing holds together like a story, and I am intrigued by stories.” He told me about a project in which he had collected first-year law student journals and learned enormous amounts from them. I told him that keeping a journal was part of my religion. He asked a lot of questions that were carefully nonintrusive.

I compared law school to having a baby. “I lay there tearfully exhausted, admiring my baby, trying to tell the doctor how amazing it is to participate in something so miraculous—and he was trying to back out the door. I knew he thought childbirth was no big deal—he delivered hundreds of babies a year; anybody with female plumbing could put her feet in the stirrups and push—he did the part that took skill.”

I was afraid that sounded silly, so I tried to reillustrate with an Arizona experience. "When I finally figured out that a whole village existed on top of the cliffs, I gathered enough courage to go up there. I was terrified and dizzy by the height. A child not more than three years old sat on the edge of a narrow, towering world with his feet and a toy fishing line dangling over the edge. None of the quiet grownups paid him any mind. They noticed me and my amazement, smiled, and then turned politely to their work. I stood rooted, smelling a strange odor that reminded me of burning feathers. Suddenly drums began beckoning brightly masked men with bare chests and legs. I could not help staring. I wondered if they were staring at me from behind the amazing wooden faces. I was not exactly afraid of them, but I backed up until I was on the edge of the village. I think I had absorbed all I could handle for one visit. When I got the opportunity to talk to an Anglo who had written a book about kachinas, I was disappointed that he focused on which dolls are most valuable and which mesas allow Anglos to visit."

Professor Engberson said, "Even though you finished the course in one weekend, will you keep telling your stories?" I said I would try.

The conversation was so alive and delightful that I did not even feel guilty for starting my Evidence homework late. In a strange way, Women and the Legal Profession helped the Evidence homework. I saved Engberson assignments for Sundays because doing them seemed less like breaking the Sabbath than outlining the Rules of Evidence for a professor who was reported to have never given an "A" in his life. But more than that, the reading and writing for Engberson reminded me to ask myself questions about my more nuts-and-bolts courses, and the most important questions had less to do with what I thought would be on the test than what I would ask if I were teaching the class.

But even so I began to experience ambivalent feelings about both Women and Legal Profession and its professor. After he had us write about why we came to law school and how well law school lived up to our expectations, we began an indepth study of power. Then we took on Greek mythology and the archetypes it presented. Gossip about the class erupted.

The legal writing instructor had taken a liking to me, so one day I asked her whether she thought Engberson classes were worthwhile. She answered, with a puzzled look, "The man often infuriates me to the point that I want to strangle him, but just as I reach for his neck, he invariably says something profound, and I forget I was angry."

One Thursday Professor Engberson picked both my writing and my reasoning to pieces on an assignment into which I had put enormous effort. I left a nasty note taped to his office door. He said my attempt at doing the assignment still stunk, but the note deserved a decent grade—the note was honest.

As was his custom, he stayed in his office until after the library closed, writing or listening to a steady stream of talkative students. When students wrote for his classes or discussed the classes with him, they heard their best ideas integrated into the lecture for the next class—if students allowed him to lecture.

I took Professional Responsibility from him the next semester. We had what I thought were well-defined guidelines this time; we were to read the *Code of Professional Responsibility*, work through rule-related problems, read a couple of reams of the usual fascinating articles Engberson had gleaned from his voracious reading, and write answers to professor-made and self-made questions. The mainstream law students in the class were even more hungry for structure than the women in *Women and the Legal Profession* had been. Professor Engberson allowed them to blast him right in class. I watched the way their minds worked as they blasted, and the way his mind worked in answering them with questions. He did the writing assignments he required of his students and handed his work to us for review. My colleagues on the moot court team said he was a bleeding heart who could not make it in practice.

I wondered why so many people thought bleeding hearts could not “make it” in practice. I wished that I dared to conduct a poll on what my classmates thought “making it” meant and then to compare it to a poll of ordinary people. Were law students extraordinary? What was extraordinary? I bought wide-margin law school notebook paper and wrote my lists of questions in the left margin and my notes in the right.

Two perspective courses were required. Most people took Legal History or Law and Economics. *Women and the Legal Profession* filled one slot for me. My former Constitutional Law teacher offered another on law and literature. After talking a lot to Professor Engberson, I happily signed up.

My first assignment was to read the *Book of Job*. I said to myself, “Finally I got a law school task I know something about.”

The professor began in an uncharacteristically nervous voice. “You all are going to have to talk in this class, because this sort of course is as new to me as it is to you—or newer.”

Class discussion was lively; it seemed to arrive at the conclusion that God was unjust if there was a God, but that probably the God idea was conjured up by people who needed someone to blame the injustice on. I could not stand it. I decided it was time for me to break my vow of silence. I raised my hand. No one saw me. I lowered my elbow to the desk, but left my hand up. No one saw. They were not ignoring me. I was invisible.

Later reading assignments included *Antigone*, the *Crito*, and *A Man for All Seasons*, as well as selections from Martin Luther King, Jr., and Thoreau. I identified strongly with the powerfully eloquent feelings of aloneness. I quit trying to raise my hand because I thought that even if I was called on and said something, that there was not really any framework for me to be heard; I would sound like a religious housewife or something equally true and unacceptable.

Our first assignment was to write a “careful argument” juxtaposing the individual against the state with an underlying theme of civil disobedience. Class discussions carried over to the student lounge and parking lot. Students quoted holdings from many Supreme Court cases that made sense to me, so I looked the cases up. The other students were writing everything from legal arguments gleaned from court holdings to sociological essays about the legal ramifications of civil disobedience.

I asked myself, "How does a silenced person make a careful argument that can be heard by the silencers when the silencers do not know they are silencing anybody—or when the silencer is herself?"

My grade depended on three written assignments. I had lived through disappointing grades before. I decided that I could risk total failure on one assignment as a quasi-act of civil disobedience. During delightful Sunday afternoons I wrote a short story about a Hopi Indian who quietly and peacefully took on the whole United States legal and social system by refusing to allow his grandchildren to attend school in the Anglo mode. The system thought he lost, but the reader would know he won.

I did not fail. The professor stood before our class and said he had been dubious about teaching such a class for fear it would appear unnecessary and even insubstantial, but that after reading our personal thoughts about the assignments he realized that we had a lot to teach him about constitutional law and other subjects as well. I wrote more stories for him. He asked permission to pass them around to faculty and students. Suddenly I was no longer invisible. Faculty called me by name, and I smiled a lot.

II

... you go away having learned it and are benefited or harmed accordingly.

—Plato, *Protagoras*

In the spring of my second year, our law school hosted a big regional moot court competition in which I was a contestant. Although the problem appeared on the surface to relate to products liability, it really was straight constitutional law. I was to bailiff during our first round while both of my partners argued. Then partner Bob was to bailiff while partner Jeff and I argued. I sat with the stopwatch and the bailiff from the opposing team. My partners sat behind and to the right of the podium, nervously adjusting their ties. Our opponents sat to the left, doing the same thing.

Finally the judges arrived. The "chief justice," a well-known products liability lawyer, settled his overweight body and turned pale eyes on the bailiffs.

"You will not brief me on anything. I will brief you. I have done hundreds of these competitions, far more than either of you. Do not stand up with time cards. If the argument is boring I may cut it off before time. If I want to, I will let it go double time. I will not be interrupted."

We nodded like windup dolls.

The round began. Before Jeff said two sentences, the chief interrupted: "Define 'strict liability.'"

Jeff shifted gears from the commerce clause and tried to remember first-year torts. The chief would not allow him to finish, cutting in with, "On what *page* of the record is strict liability referred to?"

The opposing team exchanged panicked glances. My co-bailiff recorded the question on a yellow legal pad and underlined it six times.

Miracle of miracles, Jeff cited the exact page. We had picked the right swing person; that young man was fast on his feet. But he was never able

to get back to the commerce clause. The judges led him all over the law of torts. When Jeff's minutes were up, Henry got hit with all Jeff's issues, as well as his own. Our six weeks of meticulous, plodding research was evident in Henry's answers, though his voice trembled, and he was too tall to glance easily at his folder on the immovable podium. Although he was bombarded with unanticipated tort questions, he carefully took each one and thoughtfully fit it into a constitutional framework and tried to answer.

The chief got more and more impatient. Sarcastically, he interrupted: "Rational basis test, rational basis test, rational basis test. That is all you have said for ten minutes. Are you trying to tell me this court is not rational?!"

"Oh no, Your Honor," Henry's face softened. "This court is always rational." Not one judge smiled.

"Then quit trying to limit our ability to decide this case. Stop string citing. I do not want to hear any more cases cited. This is simply a matter of whether this two-year statute of limitations cuts off the plaintiff's claim."

Henry, a former dairy farmer from a remote county on the other side of the state, earnestly fielded the rest of the questions. I knew he would rather be cleaning calfpens than doing this. His class rank was spectacular, and he could have been on law review, but he sincerely wanted to improve his public-speaking ability. His fear was under control, but he looked more like a farmer than usual, standing there in stark relief against the backdrop of the two classically dressed, classically mannered gentlemen on the opposing team. My co-bailiff wrote down everything he said.

We lost that round.

Because winners argued winners and losers losers, we waited for the loser rounds. I was shocked when I realized how good the opposing team was. One of our three judges was a real judge; the other two were trial lawyers, one female. All three leaned back when I started into my fifth-amendment analysis. When I told the facts of *USDA v. Moreno* and urged the court to apply the same standard to the present case, they nodded and leaned forward. I forgot my folder with the flip cards. I forgot the library drudgery. I spoke in my own words with conviction, with good sense. I stumbled on only one question and picked myself up adequately.

On critique the judges said both teams were outstanding and that they had given us the highest scores they had given all day.

"We are certain that both teams will rank high in the finals."

The "real" judge called me by name and said, "It is particularly refreshing to hear a young advocate who knows her constitutional law."

Of course our negative fifty-four from the first round disqualified us from the final rounds. Because our school hosted the competition, the other members of the moot court board were in attendance. They avoided us. We had shamed the board. The dean said that if our law school was going to host and enter these competitions, we ought to win. I pulled Henry aside and told him funny stories, trying to cheer him. When that did not work, I used Professor Engberson-style questions to get him talking. That worked.

"I just want to hang out a shingle in the county seat nearest our farm, but I am halfway through law school and know close to nothing about settlements and serving my neighbors' legal needs."

"What skills have you learned?"

"Well, it is as if winning is the only important skill taught in law school; losing is only tolerated because it is so necessary to the winning."

"You are a winner, Henry, and you know it."

"No, I get good grades, but not the very best. The real winner testtakers need adequate competition so that their winning means something. The winners in the moot court team need a solid plodder to round up judges, citecheck briefs, and time first-year rounds."

I laughed. "Well, at least you know you're needed."

He did not laugh, but the anger went out of his voice. "Maybe I am just jealous because so many professors think you are a winner no matter how you perform."

Silence spoke. He knew me so well that he knew I was not offended. We just sat there.

I was the first to start to snicker.

Then a deep country chuckle erupted from somewhere deep inside him. He said, "That judge had no idea what the problem turned on, did he?"

"Rational basis. Rational basis," I mimicked. "Are you trying to tell my this court is not rational?"

"Yes!" Henry boomed. "This court is irrational and unprepared."

We reminded ourselves that this was probably hysterical laughter and that we should be more dignified. Then we decided to go to the party our board was hosting for the competitors.

At the party a classmate-composer, Bobby Noone, stood with his guitar and spoke seriously into the microphone, "When I got up to do first-year moot court arguments, I was Erving Younger, man!" And he gestured dramatically with his arms and facial expressions.

"But 'they' said to me, 'Bobby, you gotta stand still. Still! Put your hands on the podium. Speak in a calm, well-modulated voice.' I tried. I really tried . . . Still. Well-modulated. But . . ."

Bobby's guitar began a boogie almost by itself, as though he just could not help it. His feet began to dance. His head leaned back. He smiled. Then he sang:

Gonna boogie for the jury,
Gonna boogie for the judge,
Gonna boogie for the bailiff,
. . . If he don't hold no grudge.

Bobby lifted one eyebrow, and sang on:

My pretrial motion
Is sure to get relief,
I just refer to my demur'
And boogie in my brief.

Somehow the boogie on the outside of me touched some boogie inside of me, and my right toe began to tap, as Bobby and band danced themselves into their chorus.

Do the courtroom boogie,
Boogie 'til you're satisfied,
Do the courtroom boogie—
Don't object, not until you're tried.

The former competitors began to laugh.

The band dispersed throughout the room and moved into the next verse. Suddenly I realized that I boogied in my briefs, in my oral arguments, and anywhere else I could get away with it—and that I was getting away with it more and more. With that, the music put me on my feet, and I danced with the best of them, even though nobody ever taught me how.

Then I drove home along the edge of my university, eager to see the sleeping faces of my family, and wondering how in the world I learned so much constitutional law.

