1-1-2000

The Perils of Race and Gender in a World of Legal Abstraction

Catharine P. Wells
Boston College Law School, wellscc@bc.edu

The Perils of Race and Gender in a World of Legal Abstraction

By CATHARINE PIERCE WELLS*

ON MY DESK at school is a picture of Stephanie Wildman and me and our shared friend, Trina Grillo. It was taken at Stephanie's house several months before Trina died. The picture is there to remind me of who I am—both inside and outside the classroom. As an individual, my experience and judgment are profoundly affected by my own particular set of needs, desires, and aspirations. Yet, despite my normally clear understanding of this particular truth, I often find myself becoming someone else when I enter the classroom. I forget that I am an individual person with a unique set of attitudes, beliefs, and desires. Instead, I begin to think of myself as a more generic person, devoid of idiosyncrasy and able to speak from a place of universal truth and monolithic common sense. For example, I refer to justice as an abstract noun rather than acknowledge my feelings of fairness may or may not coincide with those of my students. My tendency in this regard is not surprising. I work in a profession that places a high value on abstract formulations, while heavily discounting individual feelings and experience.

During the period from 1992 to 1995, Stephanie, Trina, and I made a joint commitment to bring issues of race and gender[1] into our traditional first-year classes. The idea was not simply to "add" them on to other issues but to weave them into a critical understanding of the meaning of law in contemporary society. To do this, we had to resist the temptation to leave our individual selves behind. Race and gender construct radically different perspectives, and we could hardly expect to do justice to these issues without acknowledging the limitations of our own individual viewpoints. This was difficult for two reasons. First,

* Professor of Law, Boston College Law School. I am especially grateful to my research assistant, Jennifer Burke, for her many contributions to this article.

1. For convenience, I speak of "race and gender" when I mean to refer to other polarizing differences as well. This locution is a compromise between two difficulties. On the one hand, it would be wrong to suggest that race and gender are the only societal hierarchies. On the other, using the abstract terminology of "human differences" seems to dissipate the realities of oppression into the more genial realm of social anthropology.

as teachers, we became more exposed—our individual selves could no longer hide behind abstract nouns and the societal "we." Second, and more importantly, it deprived many of our students of the safety they felt when they embraced the illusion that we live in a world of shared experience and unanimous judgment. Despite the discomfort, however, we felt we were confronting something important; we felt we were attending to the most central task of legal education.

Law rests upon many "shared" assumptions. An important aspect of traditional first-year teaching is not only to make those assumptions explicit but to raise questions about them. To learn the law, students must fully explore the relationship between these "shared" assumptions and the adequacy of legal decision-making. Sometimes, questioning these assumptions generates no special difficulties. For example, students can readily grasp and apply arguments that are framed in terms of economic efficiency. Further, it is not hard for them to see that the assumptions that underlie economic analysis are open to some widely understood objections. But when we talk about race and gender, we do not always share the same basic assumptions. Nor do we find it easy to discuss our differences. For example, it is a fact that many of the women in a criminal law class worry about being raped, while many of the men worry about being falsely accused of rape. White men tend to worry about it in the context of date rape, while black men tend to worry about it more generally. Thus, a discussion of the issues involved in a rape prosecution inevitably raises a need to acknowledge individual students are differently situated with respect to key issues. As teachers, we have a choice—we can either sidestep these differences by becoming abstract and impersonal, or we can face them head on. Facing the differences risks polarizing the class and stirring up feelings of anger and frustration, resulting in discussions that are difficult to manage and control. While some students are comfortable with these discussions, many others find them difficult and threatening. Sometimes the pressure to avoid them is intense, but this avoidance comes at a price. Suppression of real differences between groups inevitably marginalizes[2] those who are not

2. "Marginalizing" was a term commonly used by feminists to refer to an ongoing process whereby the concerns of men are centralized and the concerns of women are dispersed to the margins of conscious attention. When I started discussing this classroom dynamic with some of my African-American students, I discovered they used the term "peripheralize" to refer to a similar phenomenon that they experience in discussions of racial difference.

members of the dominant group.[3] It also deprives those in the dominant group the opportunity to acquire a deeper, more inclusive view of the issues. Stephanie and Trina understood this and, despite the difficulties, were always steadfast about the need to undertake a full exploration of perspectival differences.

Since those days, the University of San Francisco Law School has lost both of these gifted teachers. Trina died in July of 1995,[4] and Stephanie retired in 1999; this essay is for Stephanie. It is based on a presentation that I made at the 1998 Society of American Law Teachers ("SALT") Teaching Conference. The assignment was not easy: I was asked to talk about "big and little murders"[5]—the personal and professional difficulties that confront "progressive"[6] law teachers. The assignment was difficult because I was asked both to discuss these murders without minimizing them and at the same time to say something upbeat—or at least "not too depressing"—about our shared aspirations. In preparing this speech, I often thought about Stephanie and about the matter-of-fact way in which she describes the injuries of difference. In her book, *Privilege Revealed: How Invisible Preferences Undermine America*,[7] she has helped us all to see the inevitable link between privilege and oppression. It is not enough, she eloquently reminds us, simply to avoid acts that overtly oppress others. We must also examine the dominant group privileges we ourselves hold, and we must be willing to deploy them in the service of active resistance.

3. *See generally* Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1 (1989), *reprinted in American Association of Law Schools Symposium: Bringing Values and Perspectives Back into the Law School Classroom: Practical Ideas for Teachers*, 4 S. CAL. REV. L. & WOMEN'S STUD. 33 (1994) (explaining the way in which the overly simplistic treatments of race and class issues marginalize "minority" students").

4. My earlier essay about Trina is one of a number of such writings. My essay—*The Theory and Practice of Being Trina: A Remembrance of Trina Grillo*—is contained in the Minnesota volume that is dedicated to her memory. *See* 81 MINN. L. REV. 1381 (1997). Other essays appeared in an earlier volume of this law review. *See* Symposium, *In Honor of Professor Trina Grillo: Legal Education for A Diverse World*, 31 U.S.F. L. REV. 731 (1997).

5. I believe the conference organizers meant the term "murders" to describe the kind of psychological assault that Patricia Williams describes in *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127 (1987).

6. SALT's use of "progressive" in this context is interesting. For the purposes of this panel, it seemed to be a way of referring to men and women of color and white women, without excluding white men who wished to align themselves with the "outsider" perspective. I am sympathetic to this usage of the term, but think its historical association with all white, and often elitist, movements is a little unfortunate.

7. STEPHANIE M. WILDMAN ET AL., PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA (1996).

For those of us who are white, educated, and not poor, the goal of resistance is easy to forget and hard to achieve. Stephanie is one of the people in my life who helps me to remember. Stephanie's gift to all of us is that she inspires hope while challenging complacency.

Big and Little Murders[8]

My job on this panel is to speak about the professional and personal difficulties that confront "progressive"[9] law teachers. Largely, this is a story about racism and sexism in the world of legal education. I have been assigned the title "Big and Little Murders," which I believe is a reference to the kind of daily demoralization that Patricia Williams describes in *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism.*[10] While I cannot match Williams' eloquence and insight, I will try to further the discussion in two ways. First, I will add to her description of the problem by pulling together some of the information that is already in the law reviews about the treatment of women and minorities in legal education. Second, since the organizers have asked me to be "upbeat," I will also talk about survival. I will share my belief that our spirits are strong and my hope that we can learn to live despite the spirit-murdering messages that pervade our daily lives.

Let me begin by describing some of what I found "in the literature" about the problem of spirit murder. Last summer, in the context of thinking about affirmative action, I asked my research assistant to look for all the law review articles that talked about the realities of discrimination in law school hiring and retention. The search was incredibly fruitful. There were studies of various types.[11] There were also

8. Catharine Pierce Wells, speech entitled *Plenary One* at the 1998 SALT Conference, Loyola University (Oct. 16, 1998).

9. *See supra* discussion note 7.

10. *See supra* discussion note 6.

11. There are studies about the experience of female and minority faculty in law schools. *See generally* Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537 (1988); Donna Fossum, *Women Law Professors*, 1980 AM. B. FOUND. RES. J. 903 (1980); Deborah J. Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199 (1997); Deborah J. Merritt & Barbara F. Reskin, *The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women*, 65 S. CAL. L. REV. 2299 (1992); Carl Tobias, *Engendering Law Faculties*, 44 U. MIAMI L. REV. 1143 (1990); Martha S. West, *Gender Bias in Academic Robes: The Law's Failure to Protect Women Faculty*, 67 TEMP. L. REV. 67 (1994); Elyce H. Zenoff & Kathryn V. Lorio, *What We Know, What We Think We Know, and What We Don't Know About Women Law Professors*, 25 ARIZ. L. REV. 869 (1984). There are also a number of studies that look at the experiences of female and minority students in law schools. *See generally* 1996 AMERICAN BAR ASSOCIATION COMMISSION ON WO-

detailed and thoughtful descriptions of the daily obstacles that confront women and minority faculty.[12] There were even several law review symposia dealing with the topic.[13] The depth and breadth of this literature was stunning. Equally stunning was the story of human suffering that emerged from its pages.

Since the organizers have asked me to be "upbeat," I will not dwell on the depressing statistics or the distressing personal stories. If anyone doubts the existence of real discrimination and oppression in legal education, I urge them to spend a day or two reading the articles I have cited. For now, however, I will limit myself to a few.

Let us consider, for example, the difference between popular (white) perception and reality when it comes to the plight of women of color. Many of you will remember that in the 1970s people would often talk about "two-fers." The phrase suggested that you would be particularly desirable in the job market if you were both a woman and a minority. Since you would then be entitled to a "double dose" of affirmative action, the job offers were supposed to come rolling in. But, as most of us know, this was not the reality. For example, one study shows that:

> [M]inority women who joined law school faculties during this period began teaching at significantly lower ranks than the minority

---

MEN IN THE PROFESSION, ELUSIVE EQUALITY: THE EXPERIENCES OF WOMEN IN LEGAL EDUCATION (1996); Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J.L. & FEMINISM 333 (1996); Paula Gaber, *Just Trying to Be Human in This Place: The Legal Education of Twenty Women*, 10 YALE J.L. & FEMINISM 165 (1998); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994); Cheryl M. Herden, *Women in Legal Education: A Feminist Analysis of Law School*, 63 REVISTA JURÍDICA UNIVERSIDAD DE PUERTO RICO 551 (1994); Scott N. Ihrig, *Sexual Orientation in Law School: Experiences of Gay, Lesbian, and Bisexual Law Students*, 14 LAW & INEQ. J. 555 (1995); Jean C. Love, *Twenty Questions on the Status of Women Students in Your Law School*, 11 WIS. WOMEN'S L.J. 405 (1997).

12. *See, e.g.*, Okianer Christian Dark, *Just My 'Magination*, 10 HARV. BLACKLETTER J. 21 *passim* (1993) (describing a variety of demeaning and demoralizing instances of racial hostility and insensitivity); Leslie G. Espinoza, *Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender*, 95 MICH. L. REV. 901 *passim* (1997) (describing difficulties of effectively dealing with race and gender issues when teaching); Ann E. Freedman, *Feminist Legal Method in Action: Challenging Racism, Sexism and Homophobia in Law School*, 24 GA. L. REV. 849 (1990) (describing how students undermine authority by behaving disrespectfully).

13. *See Academic Freedom and Tenure Symposium*, 15 PACE L. REV. 1 (1994); Symposium, *Critical Race Perspectives for the New Millennium—Second Annual Northeastern People of Color Legal Scholarship Conference*, 31 NEW ENG. L. REV. 705 (1997); Symposium, *In Your Midst: Contributions of Women of Color in the Law*, 28 HARV. C.R.-C.L. L. REV. 259 (1993); *Symposium on Civic and Legal Education: Panel Five: Ethics, Values, and Diversity in the Legal Academy*, 45 STAN. L. REV. 1885 (1993); Symposium, *The Voices of Women: A Symposium on Women in Legal Education*, 77 IOWA L. REV. 1 (1991).

> men, obtained positions at significantly less prestigious schools, and were significantly more likely to teach low-status courses like legal writing or trusts and estates. None of these disparities can be adequately explained through differences in credentials, age, work experience, geographic constraints, or family ties. Instead, law schools seem to treat minority women less favorably than minority men in the hiring process.[14]

This is not an old study. It was conducted in 1992 at a time when many argued that twenty years of affirmative action had finally allowed everyone to "catch up." To the contrary, however, the study suggests that the most serious problem with affirmative action is that there has been so little of it.[15]

In addition to simply studying the numbers, some authors have tried to "fill in the blanks" about why women and scholars of color have not flourished in the academy. In a study conducted by Richard Delgado and Derrick Bell[16] (the "Bell-Delgado survey"), for example, minority law professors were asked: On whom do you rely for institutional news and gossip, and from whom do you seek emotional support? Their reported responses were suggestive: "[N]o one, myself, minority or majority race students, secretaries or the clerical staff."[17] One said: "My long-distance phone bills are extraordinary."[18] Several said: "I'm usually the last to find out."[19] This kind of isolation is an obviously important factor. It not only makes it difficult to function in tightly-knit law school communities, it also brings frustration, anger, and severe loneliness.

We should also think about the verbal element in discrimination. Our mothers used to tell us that "sticks and stones will break our bones but words will never hurt us." Most of us have found this is not quite true. Words, in fact, can hurt badly when there is a constant theme of disparagement and invisibility. We have all been patronized, criticized, minimized, overlooked, accused, trivialized, and dehumanized in ways that are both small and large. Richard Delgado uses the

14. Merritt & Reskin, *The Double Minority, supra* note 12, at 2301.

15. I have heard it said numerous times that some particularly promising white male candidate has been told to give up his idea of law teaching because, he is told, law schools are not hiring anyone but women and minorities. The numbers clearly indicate that this particular piece of advice is not true.

16. Richard Delgado, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R-C.L. L. REV. 349 (1989).

17. *Id.* at 359.

18. *Id.*

19. *Id.*

term "microaggression" to refer to some of these incidents.[20] I like this term because it seems to recognize that, taken out of context, many of the injuries appear small and unnotable. Indeed, microaggressions are common in daily life and not entirely limited to race and gender. Nevertheless, when they are repeated daily and resonate with more serious forms of mistreatment, they can have a very large and very negative impact. Let me give you just one example of a series of microaggressions at work. The Federalist Society at Rutgers distributed a newsletter entitled, *2nd Annual International Girls Night Out: Bodies in Lotion.*[21] It was meant as a parody of an actual student-sponsored symposium on women's rights.[22] The parody, however, was not very clever. For example, the students made up a panel called: *The TOYS-R-US Lecture: Women as Property: How to Get the Most Work Out of Your Mail Order Chilean Bride; You Too Can Own Your Own in Fee Simple for a Simple Fee.*[23] At the risk of sounding humorless, I have to say that this does not sound like "good, clean fun" to me. The sexual exploitation of third world women is a real problem and it is one that deeply resonates with the experience of many of our women students. Treating it as a laughing matter is but one way in which those students are made to feel unwelcome in the law school environment.

For this reason, there may be only the slightest exaggeration in the use of the phrase "spirit murders." The treatment of Derrick Bell at Stanford is one very public example of this phenomenon.[24] I would suggest, however, that many of the most painful spirit murders are private. One example from the Bell-Delgado study[25] clearly illustrates how conduct can impart a deadly message while remaining unnoticed in the wider community. One respondent in the study reported that she is the only black woman teaching at a major southern university and that, "although she dresses impeccably, visitors to the law school often mistake her for a maid and call spills and messes to her atten-

20. *See* Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301, 309 (1987).

21. *See* Daniel Wise, *Symposium Program Parody Stirs Protest at Rutgers Law School: Dean Claims First Amendment Bars Disciplinary Action Against Students*, N.Y.L.J., Apr. 30, 1993, at 1.

22. *See id.*

23. *Id.*

24. Derrick Bell, a nationally known constitutional scholar, describes the incident this way: "Without consulting me, a few faculty members [at Stanford], with some degree of approval from the administration, organized a series of 'enrichment lectures' intended to supplement coverage of my [Constitutional Law] course." Derrick Bell, *The Price and Pain of Racial Perspective*, STAN. L. SCH. J., May 9, 1986, at 5. Students had complained that his course was not traditional enough in that it focused on racial issues. *See id.*

25. *See* Delgado, *Minority Law Professors' Lives*, supra note 17, at 360.

tion."[26] At best, these interactions are unpleasant and demeaning. At worst, through repetition and resonance,[27] they send a powerful message of hostility and exclusion. Make no mistake about it—the message is a deadly one even though it probably remains unnoticed in the wider community.

What I have recounted here are just a few stories from the lives of women and minorities in legal education. There are many, many more. I have had my share of them.[28] I know that such incidents—incidents that may seem minor to others—are often devastating to me. Yet I am no wimp. In eight years of litigation practice, I cried exactly twice. I cried twice that many times in the first week of law teaching. Not only have I cried. Incidents like these have rendered me speechless at crucial moments; left me in a state of demoralization for days and weeks at a time; and made me so angry that I would lie awake all night alternating between feelings of helplessness and thoughts of revenge. And I am not the only one. I know many women who teach law. Many of them look, for all the world, like white, middle class, successful women who have it all. They are strong, resourceful, and articulate. But sometimes they are so dispirited, depressed, and bone tired that they fantasize about violence or contemplate the advantages of being a bag lady. This is in contrast to the women I know who have succeeded in legal practice. As they come to the peak of their careers, they feel increasingly energized and empowered. Perhaps, we should ask ourselves: What is it about our profession that makes these kinds of incidents so debilitating? Why is it so hard *in this particular context* to simply "rise" above them? We need to consider the possibility that the nature of the academic world is at least part of the problem.

In the world of legal practice there are big and little successes all of the time. One wins a motion here; one solves a problem there. Perhaps a negotiation goes well; perhaps just the right bit of legal research brings order out of chaos. Even when one loses a case, there is

26. *Id.*

27. The seriousness of this kind of incident grows with repetition and by its resonance with her own experience. She believed—I suspect with some justification—that for many of her law students, she was the first black woman that they had ever seen "out of [the] uniform" of domestic service. *Id.*

28. My background has exposed me to many instances of discrimination, tokenism, and harassment—not to mention both covert and overt expressions of sexism. I went to graduate school in 1969 and to Harvard Law School in 1973. In both places, women were under-represented in the student body and entirely absent among the tenured faculty. After eight years of practice, I entered law teaching in 1984. Even at that late date, I was one of the women that Stephanie Wildman describes as accepting a job in legal education without fully realizing that we had to integrate the profession before we could work in it.

something to learn in the try. By contrast, in the academic world, the difference between success and failure is often hard to measure. The things that "count" are ephemeral things like peer opinion, student opinion, reputation, and national rankings. And it is not just your work that is assessed: Judgments about collegiality, accessibility, integrity, fairness, and decency are part of the mix. Such things are subtle: They are driven by sound-bites and casual impressions. Therefore, success requires a vigilant and strong ego. Unfortunately, however, a person who is dispirited or demoralized is unlikely to engage in the kind of behavior that leads to positive assessments by others. Thus, demoralization leads to a kind of worsening curve where paralysis and withdrawal constantly undermine public perception of successful performance.

In this world of fast impressions, it often seems to me that if you are white and male—but more particularly, if you are conventional in your approach and happy with the status quo—then the wind is at your back. If you choose, you can walk down a well-defined path to a hopeful and cheerful future. Or, in the alternative, you can choose to be a maverick and people will praise your originality. On the other hand, if you are not white or not male—if your views aren't conventional or you are unhappy with the status quo—then it all seems very different. You feel yourself swimming upstream on a river with white-water rapids and whirling eddies. Perhaps, as you proceed, great walls of water slam you into rocks or knock you down into the water. Perhaps there is thunder and lightening, and you can feel that it is about to rain. Worse yet, there are sharks and snakes and even alligators (though what they are doing in an inland river, I do not know). To those who watch from the safety of the shore, none of this seems to be happening, but—in the water where you are—*this* is what it feels like.

These feelings are real, but other things are real as well. With time, most of us have become stronger and better able to swim against the current. Since I am supposed to be upbeat, I have particularly tried to think about this latter, more hopeful development. Where does it come from? How can we make it a more central part of our experience? As I try to answer these questions, I hope no one will think that I am saying it is possible to think your way out of oppression. To the contrary, I believe that the problems I have described are mostly unavoidable. On the other hand, I do believe that the human spirit is resilient and that it is worthwhile to analyze the process by which we can sometimes create and sustain our own positive momentum.

There are three things, in particular, that I think might be helpful. The first is activism—the very thing that this conference is about. If we want social change, we need to get out of our classrooms and into the world. If we think that Critical Legal Studies is right and that the assertion of legal rights is not an effective strategy for social change,[29] then we need to forget about law reform and do some political organizing. And, if we believe that all politics is false consciousness, perhaps we could start a counter-hegemonic soup kitchen. In any case, we should not, under any circumstances, allow the purity of our theories to interfere with the need for social praxis.

Second, we need to look more seriously at the kind of communities that we have *not* formed. While most of us belong to many professional groups and organizations, very few of them are truly supportive and sustaining. Too often promising attempts at forming such groups are thwarted as members find themselves unable to sustain organizational momentum. In addition, the demands of faithful participation are often inconsistent with other institutional responsibilities. Accepting invitations to travel may mean that the individual is unavailable for staff meetings and other kinds of group interaction. The dilemma is this: On the one hand, the value system of the academy leads us to seek national recognition. On the other, pursuing these career goals is often inconsistent with maintaining our connection to local groups. If we are not there when people need us, we do not develop the right relationships. And, unfortunately, the problem is magnified by the fact that we are all, to some degree, opportunistic and self-seeking. If we want to build supportive communities, we must learn to place them ahead of the individualism that marks our professional lives.

Third, we need to talk more about what is going on inside ourselves. To use Emma Jordan's words, we need to "recover" from our "amnesia."[30] She uses these words to describe how hard it was for her to tell her own stories of racism and oppression:

> I am a recovering amnesiac. . . . As the days rolled by and the publishing deadline loomed, I was finally forced to confront the awful truth. I had no ready list of racial insults or injury. Could it be that I had somehow moved through 18 years of law teaching without a racial scratch? I now recognized that many of my exper-

29. *See, e.g.*, Mark Tushnet, *An Essay on Rights*, 62 TEX. L. REV. 1363 (1984) (discussing the various critiques of rights that have developed in American legal circles).

30. *See* Emma C. Jordan, *Nepenthe*, 6 BERKELEY WOMEN'S L.J. 113, 113 (1990–91).

> iences have been simply too painful to recall, and certainly too painful to share beyond a small circle of my friends.[31]

Yet, when it comes to race and gender, there has been no shortage of storytelling. The problem is that most of the stories have been told in the way that lawyers tell stories. We give a polished presentation of the facts together with just enough spin so that we can tell the good guys from the bad guys. Such stories may have their uses. They might, for example, help to reform sinners by making them understand the nature of their sins. For my own part, I am skeptical about working on this kind of redemption. I am far more interested in the kind of storytelling that heals the teller's soul. To heal, we need to tell our stories in the same way they are experienced—that is, with all the ambiguity, confusion, and emotion still attached. In the legal literature, such storytelling is rare, but I found one example that illustrates what I mean. In a law review article, Reginald Robinson describes what happened when he went into his colleague's office for a professional review:[32]

> When I entered my colleague's office, I was already deeply in pain. It was a very rough beginning. I was battle weary, bone tired. And when he began to talk, I sank into my pain which embraced me with rough, razor sharp arms. As he talked, I sensed that invisible cuts would hasten my death. I wondered if he saw my pain. He did not. As he continued to talk, I felt small and unsure. He, a liberal colleague, told me bluntly that I was "sub par," that my performance was "unacceptable." What most disturbed me was that he appeared to swagger unsympathetically in his seat. I felt threatened, unsupported, and disrespected. As he spouted on arrogantly and officiously, I looked at [a] junior female colleague [who was also in the room] . . .; I needed a reality check. I wanted some assurance that I was not misreading him. I also tried to see if she agreed with his outrageous conduct. As I looked at her, she turned her eyes away. I was stunned.[33]

I think that the lesson we can learn from Emma and Reggie is quite clear. We have a lot of experiences that are extremely painful. To survive, we often forget. But even when we remember, we remember at a distance. We fear that our recollections will overwhelm us and bring us down. Healing, on the other hand, requires that we reopen ourselves to the reality of our own experience. We need to tell these stories to one another in safe and private places. The point is not merely to process our feelings. We must also do what the Buddhist

31. *Id.* at 113.

32. *See* Reginald Leaman Robinson, *Teaching from the Margins: Race as a Pedagogical Sub-Text, a Critical Essay*, 19 W. NEW ENG. L. REV. 151, 175–76 (1997).

33. *Id.* at 175–76.

writer, Joanna Macy, describes as "despair work."[34] She developed this concept in the context of her work in deep ecology. She asks people to explore their feelings of deep distress about the environment.[35] She urges this in the hope that people will respond to their despair with action rather than apathy: "The cause of our apathy," she argues, "is not mere indifference. It stems from a fear of confronting the despair that lurks subliminally beneath the tenor of life-as-usual."[36] Thus, the point of despair work is not to rid ourselves of feeling, but to sharpen feelings; to process them to the point where they provide reliable feedback about the world.[37] However difficult this process may be, it is essential to any hope of improvement:

> The refusal to feel takes a heavy toll. Not only is there an impoverishment of our emotional and sensory life—flowers are dimmer and less fragrant, our loves less ecstatic—but this psychic numbing also impedes our capacity to process and respond to information. The energy expended in pushing down despair is diverted from more creative uses, depleting the resilience and imagination needed for fresh visions and strategies. Furthermore, the fear of despair can erect an invisible screen, selectively filtering out anxiety-provoking data. In a world where organisms require feedback in order to adapt and survive, this is suicidal. . . . Despair cannot be banished by injections of optimism or sermons on "positive thinking." Like grief, it must be acknowledged and worked through. This means it must be named and validated as a healthy, normal human response to the situation we find ourselves in.[38]

We would do well to undertake a similar task with respect to our feelings about oppression and injustice. We need to take a few minutes to think about "the despair that lurks subliminally beneath the tenor of [our] li[ves]-as-usual."[39] What makes us cry? What renders us speechless? We must probe the depths of our private despair. To remove the despair, we must break the silence. We must allow ourselves to really feel the suffering we have already experienced.

I believe that this process is the beginning of survival. We need to attend to our needs and the true circumstances of our lives. We must connect with our experiences and with our pain. We must do some despair work and take it seriously. We must commit ourselves—*really* commit ourselves—to communities that sustain us. And we must do some work—some real lawyering work—in our communities. If we do

34. JOANNA MACY, WORLD AS LOVER, WORLD AS SELF 15 (1991).
35. *See id.*
36. *Id.* at 15.
37. *See id.* 15–16.
38. *Id.*
39. *Id.* at 15.

these things, the despair will not leave us, but it will be joined in our experience with hope and with love for what is mysterious and beautiful in the world.

It took me a long time to confront my despair, but in the end, I came to an understanding which really does sustain me. I have come to think of political practice as being a kind of spiritual practice. We don't do it because it changes the world. We do it because it is an expression of our hopes and our yearnings. It calls from the best parts of ourselves and summons us to find a hope for the future. We do not do it for fame or glory. We do it because it teaches us patience, humility, and compassion. In it, we regain a loving relationship with the world. I believe that we can transform both ourselves and the world when we look for the best in ourselves and for all that is empowering and ennobling in the world.