

'SIT DOWN GIRLIE'

A column featuring local and international legal issues from a feminist perspective.

BACK OFF BARBIE

Feminist lawyers considering appropriate Christmas gifts for children may wish to take account of the following. The *Sunday Age's* 'Off the Planet' column reports that the manufacturers of Barbie dolls have agreed to modify the comments programmed into their talking Barbie. The doll had been programmed to say 'Math class is tough, math class is tough' and so on *ad nauseam*. Whatever happened to 'Mama' dolls?

Meanwhile the Editor of 'Off the Planet' and erstwhile member of the collective of the *LSB/Alt.LJ*, John Schauble, has won first prize at the Melbourne Show for his white bread and rock cakes, not to mention second prize for tomato sauce and lemon butter. On you, John!

HARASSMENT AND THE REASONABLE WOMAN

Towards the end of an argument an old judge mate of Girlie's used to take special delight in announcing that so far as the law is concerned there's no such thing as a reasonable woman. Well, think again, Sir John. The *National Law Journal* of 9 November 1992 reports that recent changes in sexual harassment laws in the United States have led to courts adopting a reasonable woman standard for determining whether a sexually hostile work environment existed. Expert testimony indicating the ways in which women react to particular conduct was also admitted.

Thus in the cases of *Robinson v Jacksonville Shipyards Inc.*, Judge Howell W. Melton (District Court Florida) adopted a gender-based analysis of sexual behaviour in the workplace. He did this 'because otherwise individual triers of fact especially males may have difficulty understanding and employing a gender-based norm'. Expert evidence was given by Dr Susan Fiske, Professor of Psychology at the University of

Massachusetts. She testified that people tend to categorise others as to gender and this can lead to discriminatory conduct in the workplace because workers are judged by the categorisation rather than on work performance.

The plaintiff also called K.C. Wagner, a consultant on women and the workplace. She said that women who enter male-dominated employment fields are more likely to be at risk of exposure to sexual teasing and pornography, and that such conditions existed at Jackson Shipyards. Based on her research, 12% more women than men characterise sexual remarks or material in the workplace as sexual harassment.

The defendants had their very own Professor of Psychology, one Dr Donald Mosher from the University of Connecticut. He argued that pictures on display at the shipyards would not 'create a serious or probable harm to the average woman'. He had conducted a study of women's reaction to a Playboy calendar and graded their responses as 'mild to low moderate in terms of being offensive or degrading'. However, the respondents' negative reactions to the calendar arose when they were asked for their reaction to the pictures if they were displayed in the workplace. While a higher number of the women found the workplace display to be 'moderately disgusting and moderately offensive', Dr Mosher interpreted their reactions as 'never a seriously negative response'.

Judge Melton did not consider Dr Mosher's evidence to be of significant value and preferred that presented on behalf of the defendant. His decision to distinguish the earlier case of *Lipsett v University of Puerto Rico* by admitting the expert evidence was based on his assessment that 'the failure to establish a gender-based analytical framework for investigation would risk injustice to the plaintiff'. It remains to be seen whether the 'reasonable woman' standard will be more

widely recognised by the courts and as Sir John would say with a sigh 'well, it is just an American case'.

BUMS ON BENCHES

In an article in the *Times* (8 October 1992) lawyer Helena Kennedy records some profound changes in judicial attitudes in England. She acknowledges that the legal system is run by and for men but points out that when judges were first confronted with the problem of gender bias they simply denied its existence. But now there are signs of movement. Judges, according to Kennedy, are becoming sensitised to arguments about accountability as a new generation [of men] takes to the benches. These are men more used to working alongside women and they come from a new democratically organised English Bar accustomed to challenging old orthodoxies.

Kennedy warns that, left on their own, the views of the new judges will soon solidify like lava. Like institutionalised children, prisoners and detained sufferers of mental illness, judges can become institutionalised, dependent on known forms and reluctant to contemplate change. Women, Kennedy promises, are not going to settle for a legal system that does not listen to them or take account of their lives, and the system is becoming wise to that fact. Women have gone through the stage where they did the adjusting and Kennedy considers that it is now time for the institutions to change.

Kennedy analyses 'judicial objectivity' as a male value which does not take account of women's, black or working class experience. Values other than traditional masculine conservative ones are systematically excluded under the guise of neutrality. Judges become socially isolated mixing only with their peers; they wield great power over people's lives and they are not accustomed to being challenged. She sees the road to reform in

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the selection process and warns that the present system of 'taking soundings' among incumbents makes the potential for cloning overwhelming. Instead, she argues, public notice should be given that a person is being considered for judicial office. This would provide an opportunity for debate on the appointee's track record, declared opinions and background.

Positive action is needed to appoint more women so they may be represented in real numbers. After all, quips Kennedy, most women who can manage a home and career can manage a court. Currently 19% of England's legal profession are women but only 4% of judges are women. In common with Australian women, Kennedy strongly disagrees that there are no women available for appointment. She says, 'I question the assertion that there are not enough women when I know competent, talented women who are not getting on the Bench'.

(Helena Kennedy's book, *Eve was Framed*, was published by Chatto & Windus in October 1992. Thanks to Bronwyn Naylor, Australian Feminist Lawyer currently studying for a PhD at Cambridge for sending the *Times* to Girlie.)

GIRLIE DOES A MADONNA AND REVEALS ENTIRE CONTENTS OF HER CHRISTMAS STOCKING

First the good news...

1. The United States is to have a feminist lawyer First Lady in the White House. Congratulations, Hilary.
2. Victoria has its first woman Attorney-General. Congratulations to Jan Wade, who has been quoted in the *Law Institute Journal* as saying: 'I would like to see women judges. I anticipate that it would be possible to call a woman to the Bench in the near future'.
3. The United Kingdom Synod of the Anglican Church has voted to ordain women priests. In Australia 50 women are expected to be ordained in December 1992.

4. *Roe v Wade* was not completely overturned and the Wollongong Abortion Rights Campaign was officially launched on 1 October 1992.
5. The American Bar Association has adopted a pro-choice, pro-gay policy.
6. More and more job ads are using non-sexist language.
7. Australia does not have the highest rate of sexual assault in the Western industrialised world.
7. The *Alternative Law Journal* increased its number of subscribers during 1992 by 13%.

And now for the bad news...

1. The United States still does not have a woman President.
2. Victoria still has no women judges and there are not many in other parts of Australia.
3. The orthodox churches remain male dominated with the men keeping all the best dresses for themselves.
4. Women are still denied the right to control their own fertility. The International Planned Parenthood Federation reports that over 200 000 women die annually in the

western industrialised world from abortions conducted in unhealthy circumstances.

5. More than 2000 US lawyers have resigned from the ABA as a result of its pro-choice, pro-gay policy.
6. Girlie's favourite critic, Mr Gardner, has forwarded a job ad which appeared recently in a Melbourne newspaper using the non-sexist term 'barpersons' but which goes on to specify that employees must be prepared to work topless and exotic.
7. Australia has the third highest rate of sexual assault throughout the western industrialised world. Up to two-thirds of adult victims of sexual assault do not report these crimes. (Source: Patricia Eastaale)
8. The *Alternative Law Journal* still needs more subscribers to survive and continue its brilliant work. Please consider a gift voucher for *Alt.L.J.* as an inexpensive and enlightening gift for your children, friends and opponents this year. After all, it sure beats Barbie.

Happy Christmas to all readers.

AMELIA RATE

Amelia Rate is a Feminist Lawyer.

Announcing a forum for different voices in law

AUSTRALIAN FEMINIST LAW JOURNAL

The **AUSTRALIAN FEMINIST LAW JOURNAL** is a newly established journal which aims to provide a forum for women writers engaged in feminist analysis of legal issues. The journal aims to demonstrate the relevance of feminist analysis and women's experience to the practice and transformation of law and to the related transformation of social order.

We invite the support and participation of women from a wide variety of disciplines and particularly encourage membership, subscriptions and contributions from people and groups not associated with formal institutions.

CALL FOR ARTICLES

The journal invites contributions for the first issue. We welcome articles of between 5000-10 000 words on the question of how women might empower themselves by disrupting masculinist law and/or legal practice that renders women invisible, or marginal. Disruption may include an act of disruption, campaigning, petitions, consciousness raising, feminist critique and

law reform. Articles should consider how to affect law and/or legal practice.

The closing date for articles is 1 March 1993, for expected publication in June 1993. The journal will not publish material that is sexist, racist, homophobic or otherwise discriminatory. All contributions (other than letters to the editors) will be reviewed for inclusion by a nominated referee with expertise and involvement in the area. In addition to articles, we will welcome comments on current issues or material published in previous issues of the Journal (up to 3000 words), casenotes (up to 2500 words), book reviews (up to 2000 words) and letters to the editors.

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