

'SIT DOWN GIRLIE'

Legal issues from a feminist perspective

SUFFER LITTLE CHILDREN OR PISS OFF KIDS?

In the Broadmeadows Magistrates' Court during April 1993 a mother, who had business before the court sat waiting with her husband, a babe in arms and a toddler. Without warning the magistrate ordered the protective services officer to remove the children from the court and made it clear that there would be a blanket ban on children entering the court while he was presiding. A barrister told Girlie that the children were creating no disturbance and she noted with dismay the shocked looks on the faces of all the family members. There are no child minding facilities at the court.

CIVIL LIBERTIES PRIZE

Congratulations to the Southall Black Sisters who were awarded the 1992 Civil Liberties Prize for their campaign which led to Kiranjit Ahluwalia being freed from a life sentence for killing her husband. The Sisters formed their group in 1979 in West London and their 'consistent and courageous' campaigning over the years was taken into account. They are Asian and Afro-Caribbean women who, according to Pragna Patel who accepted the prize on behalf of the group, struggle individually and collectively against 'one of the most pervasive violations of human rights — domestic violence'.

Source: *Guardian*, 10.12.92.

HURRAY WE GOT ANOTHER TWO!

Congratulations to Justice Margaret Beazley on her appointment as a Federal Court Judge. Formerly of the NSW Bar Her Honour was a Deputy Commissioner of the Independent Commission Against Corruption. Phillippa Smith has been appointed as the 'Commonwealth Ombudsman' — another first and well done.

And another . . . well sort of

The poor old Supreme Court of Victoria still doesn't have a woman judge. It has, however, coped with the appoint-

ment of its first female judicial officer, Listing Master [sic] Kathryn Kings. Congratulations and good luck.

ABORTION

On 9 March 1993 the United States Supreme Court rejected an appeal by the State of Louisiana which had sought to revive its law banning most abortions. And guess what — the mass media in Australia practically ignored the decision. Girlie found 28 words devoted to this topic in the *Australian* on 10.3.93. Meanwhile in another little snippet in the same newspaper it was revealed that women in the Arkansas House of Representatives have 'hit back at male members' [no pun intended] for passing a Bill requiring a 24 hour waiting period for abortions. The women have introduced legislation requiring the same waiting period for vasectomies. No, no, no Sisters in Louisiana, please hear Girlie's plea: no delays, no cooling off periods. Just get them in there as quickly as you can. Remember the old women's adage 'a snip in time saves nine'.

SELF-DEFENCE

The January 1993 edition of *The Economist* reports the case of Brenda Clubine. She was sent to California's Frontera Prison for killing her husband by hitting him with a bottle and stabbing him with a kitchen knife. In prison she met with other women who had killed violent men with whom they had been in relationships. Ms Clubine formed a self-help group, Convicted Women Against Abuse, which now has 44 members. In 1991 the group approached the women's caucus in the State's legislature headed by Jackie Speier who persuaded the Public Safety Committee to conduct a hearing at the prison. This resulted in new legislation allowing evidence of abuse to be admitted in court. The women are continuing to work to have brutal domestic circumstances accepted as a defence in murder cases. Volunteers from some of San Francisco and Los Angeles largest law firms are gathering evidence from women in prison and training more vol-

unteers, all *pro bono*. The San Francisco Bar Association has provided malpractice insurance. Thirty-four women from the Frontera Group have asked the Governor of California to commute their sentences. In 1991 the Governor of Maryland released eight women in similar circumstances, and the Governor of Ohio released 23. Twenty-six States are reviewing similar cases. At the end of 1992 the Governor of New York announced that he would pardon Jean Harris who killed her lover after 14 years of abuse. He did not, however, pardon her because of the abuse but because of an illness and her good behaviour in prison.

The Economist concludes:

Advocates for battered women realise that the plea has to be treated with care; that humiliation and mistreatment are often mutual; that the crimes are often premeditated, rather than paroxysms of despair, and that, even where abuse is admitted, women cannot be totally excused from penalties for killing. All they wish to do, they say, is modify the criminal laws to allow a broader interpretation of self-defence, leading to charges of manslaughter rather than murder; and to replace the sympathy of scattered States with national understanding.

BIT FAT UGLY WOMEN

Preliminary findings of the New South Wales Anti-Discrimination Board have revealed that many employers believe expectant mothers are ugly and confronting and pregnancy is used as grounds for dismissal or transferral to jobs with less contact with the public. Employers often deemed expectant mothers as unable to continue working effectively because their only focus would be on the birth. Steve Marks, the President of the Board, is expected to release his final findings in May 1993.

Meanwhile, a woman who was sacked for being pregnant has been awarded \$5000 compensation against her car dealer employer. The Human Rights and Equal Opportunity Commission upheld her complaint that she had suffered unlawful sexual discrimination when she was sacked from the interestingly named David Nutter Ford. Donna Kelly has been



reported as saying she hopes the decision will encourage more women to complain against unequal treatment. She conducted her own case after being refused help by the NSW and Victorian Legal Aid Commissions. Nutter says she will appeal.

SOUTHERN WAYS

Two women who were thrown out of an Adelaide nightclub because they were Aborigines have won an undisclosed amount of compensation following conciliation proceedings at the South Australian Equal Opportunities Commission. The club, Rio International, has also apologised for the distress and inconvenience caused to Gloria Sumner and Maxine Wyman.

ALTRUISM

A Melbourne law firm has advertised in the *Age* urging women who have been 'assaulted, raped and/or injured' by their 'husband, *de facto*, boyfriend in the last six years' to take legal action for compensation. The firm, Riordans, asks prospective litigants to call John O'Callaghan. Mr O'Callaghan said in an interview with the *Age* that some men might be deterred from domestic violence if there was a financial penalty attached.

BERLEI APPEAL

The New South Wales DPP has decided to appeal the decision of Pat O'Shane, magistrate, in the Berlei Five Case. Ms O'Shane recorded convictions against five women who defaced a billboard displaying sexist and violent images of women but she did not impose a penalty. In the *Herald-Sun*, 17.2.93, Ms O'Shane is reported as saying that the decision to appeal is based, not on her findings, but on the fact that she happens to be Aboriginal. Ms O'Shane believes that the press 'interest' which she receives is based on sexism and racism. 'I receive the kind of inordinate public attention I get because I am an Aboriginal woman — for no other reason.' Girlie can but agree, and on behalf of Feminist Lawyers congratulates Her Worship for an incredibly difficult job being exceptionally well done. Sydney Radio commentators Alan Jones and John Laws have called for her resignation or for her to be stood down. Girlie suggests that Mr Jones and Mr Laws might consider resignation in the public interest, a fine gesture in this International Year of Indigenous Populations.

HOW MANY PEOPLE HAVE TO KNOW?

A two-year-old child dies from horrible beatings inflicted by his stepfather who is subsequently gaoled for 22 years. Twenty-one 'professionals' are said to have been aware that Daniel Valerio was being assaulted. The State has responded by introducing mandatory reporting of child abuse. But as an employee of Community Services Victoria said 'We already knew'.

Meanwhile, Drs Chris Goddard and Peter Hiller in a report for the Victoria Law Foundation have concluded that any abuse of a child except that which causes death has been virtually decriminalised. In 205 cases at the Royal Children's Hospital only three abusers were gaoled — in all three cases deaths had occurred. In the other 202 cases, children were burnt, sexually abused, bruised and had their bones broken. Not one of their attackers was gaoled. In one extreme example two boys aged nine and ten were brought to the Hospital after being sexually assaulted. The attacker, described as a 'child molester', had convictions for previous sexual offences dating back 30 years. He was found guilty of sexual penetration and indecent assault of the children and his community-based order was extended. The authors suggest that the Norwegian model of a Children's Ombudsman should be followed here. The rights of adults are already well-represented but children are rarely given an opportunity express their views.

DISTRESS AND CORROBORATION

In *R v Sailor* ((unreported) judgment delivered in the Supreme Court of Queensland on 26 February 1993) a conviction for rape was set aside and a new trial ordered. The grounds of appeal were that the trial judge erred in admitting into evidence a complaint, when it was not made at the first possible opportunity; and that he was wrong in directing the jury that evidence of a distressed condition was capable of constituting corroboration. At the trial the appellant gave evidence admitting to having had intercourse with the complainant and therefore it was on the issue of consent that that distress could have any corroborating role or function. The complainant had said that although she had been distressed she had concealed this from her father for fear he would do something extreme. The first time she exhibited fear to an independent person was to her friend at about

10 a.m. the following morning. Evidence of distress was also given by her cousin.

Pincus J would have dismissed the appeal. He found that evidence of the complainant's distress was not so tenuous or remote as to give rise to a duty in the judge to withdraw it from the jury's consideration on the ground that it was incapable of being corroborative.

Justices McPherson and Byrne, however, had a different view. They noted that the appellant had forced the complainant to have sexual intercourse after producing a knife. Distress, they said, observed after the happening of an alleged incident, can be capable of being corroborative but it should be given little weight as it might be feigned, or it might be due to other causes. It would ordinarily be for the jury to decide matters like these, but 'there is a question of law at the threshold', which is whether the inference can be drawn that the distress is causally related to the incident. If on the evidence the apparent connection between the two is at most tenuous and remote, then evidence of distress should not be submitted to the jury as a circumstance capable of affording corroboration. The trial judge, they said, ought not to have directed the jury that the state of distress that was observed the following morning was capable of being corroborative.

ROUGH JUSTICE

There will be no new trial to benefit the victim in the South Australian case of *R v David Norman Johns* the Full Court of the Supreme Court of South Australia has overturned Justice Bollen's now infamous remarks concerning a husband's right to obtain sex from his wife using 'rougher than usual handling'. Similarly the court found that the judge had erred in including a story about an incident of false reporting which had no relevance to the case being decided. The Chief Justice dissented on the issue of consent. The appeal has forced the concession that the law does not condone violence against women. It is rare for judges to criticise each other (that's usually left to the likes of *Girlie*) but the outcome of the appeal may give some hope to those who wish to appeal against judicial error in rape cases, especially where gender bias is obvious. One can only hope that some members of the judiciary will eventually become so well educated they will no longer require rougher than usual handling from women's groups and the media.

ANNA FRONT

Anna Front is a Feminist Lawyer.