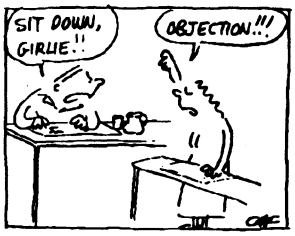
'SIT DOWN GIRLIE'



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

LAWYER WHACKS CLIENT

The *National Law Journal* has reported some unusual outcomes from the Hill-Thomas confrontation. Dan Crane has filed a complaint against his lawyer alleging she 'decked' him following a discussion about the case. Mr Crane is reported as saying, 'She knocked me silly. She communicated her point of view in the most physical way possible. I would be proud to have a right cross like that'. The lawyer is a staff member of the Public Defender's Office and has been representing Mr Crane in a long standing legal matter. Following Mr Crane's comments about feminism and Anita Hill he said his lawyer stopped on the sidewalk and stared at him: 'then she turns around, sets her briefcase down and whacks me'. Mr Crane claims he was unable to defend himself because as a chauvinist he couldn't hit a woman back.

AUSTRALIAN FEMINIST LAW JOURNAL

A group of women law students at Melbourne University is planning to establish an Australian Feminist Law Journal. A Working Group has been formed and a document produced setting out the aims and structure of the journal. It is intended that contributions and involvement be broadly representative of various women's organisations. A public meeting to discuss the proposal will be held on 25 March 1992 at 6.30 p.m. in the Joe Napolitano Room, 2nd Floor, Union Building, Melbourne University.

The Melbourne University Law Review invites contributions for its 1992 December edition on any topic in the area of 'Feminism and the Law'. Please send all contributions to the editors: Mary-Anne Hughson, Carl McCamish and Jason Pizer. Case notes, book reviews and articles are all welcome. Preference will be given to articles received before 31 July 1992.

LEAD – IN WHOSE PENCIL?

The Federal Court of Australia has effectively been asked to ban women from working in the lead industry. Mount Isa Mines issued a writ for an injunction to stop the adoption of a new government health standard allowing women to work in the industry under strict health guidelines. The case is one in which laws designed to prevent discrimination may also result in a safer work environment for all workers in the lead industry.

Only 12% of the industry's present workforce are women and the court action has halted a five year study by Worksafe to come up with new rules making the industry comply with the *Sex Discrimination Act* 1984 (Cth). The lead industry has traditionally excluded women because of dangers to foetuses but the 1984 Act made it unlawful to discriminate against women in this way. To avoid turmoil in industry and clashes with State regulatory bodies the Federal Government exempted the lead industry from the operation of the Act for a period of time. That time has now run out.

Worksafe's first inquiry concluded that the only way to make the industry safe would be to have levels of lead so low that the industry would be unviable. It therefore recommended that all women of child-bearing age be excluded from the workplace where lead levels were above those recommended for foetuses. Women's groups responded to Worksafe's paternalism by proposing a graduated lead reduction program. They pointed out that lead exposure also threatens male reproductive capacity. Worksafe redrafted its guidelines to the effect that all women could work anywhere in the industry unless they were pregnant or breast feeding, provided they were adequately warned of the risks. Yet another set of guidelines was drawn up following the outcry from an industry worried about clean up costs. (See Margo Kingston 'Is equality a health risk?', *Age*, 12.12.91).

ANITA HILL

While the University of Oklahoma saw fit to remove Professor Hill's photograph from an advertising pamphlet the majority of the university's students and staff have a different view. The *National Law Journal* reports that on her return to the University's Law Centre she was greeted as a heroine. Hundreds of people turned out to welcome her with moral support and flowers following the US Senate Judiciary hearings into her allegations that she was sexually harassed by Clarence Thomas. The university's faculty senate passed a unanimous resolution in her support and Professor Joel Paul (who testified on her behalf) says he has received hundreds of phone calls reporting sexual harassment. Many calls were from students who said they had been harassed in their summer jobs with law firms.

While most women who have been harassed while working for law firms do not report the problem but just move on (as did Professor Hill) several have recently sought legal redress in the US. In Denver three ex-employees of prominent trial lawyer Philip Lowery have filed federal suits for sexual harassment (*Gormley v Lowery, Lamb and Lowery* PC, 91-1331 (D.Colo.)). In Philadelphia a lawyer has complained to the Equal Opportunity Commission of harassment by a senior partner of a large law firm and in New York the case of *EEOC v Paul, Hastings, Janofsky & Walker*, 90-6304 has been settled. In that case a former associate and other employees claimed sexual harassment by Ronald Mysliwiec who was alleged to have made numerous unwelcome comments including referring to women as 'toots', 'honeybunch', '*little girl*' [Girlie's emphasis added!] and other derogatory comments. Mr Mysliweic is still employed by the firm but its executive committee says it has 'upped its efforts' in training about harassment.

'SIT DOWN GIRLIE'

Harassment of female lawyers can also be a problem in court according to a Maryland Special Joint Committee on Gender Bias which reported in 1989 that judges subjected 19% of women attorneys to verbal and physical sexual advances.

GIRLIE'S QUIZZICAL MAN OF THE MONTH

It's time for Girlie to stop generalising and for you to start guessing. At least one of Australia's judges has consistently demonstrated an understanding of gender bias issues. Who is it?

Clue: In the case of *Mercantile Mutual Life Insurance v Gosper* (November 1991) the court was asked to consider who should bear the cost of a husband's fraud. The applicant was a widow who had the misfortune to have married a dishonest barrister. Following his death she discovered that he had registered a variation of mortgage on property (of which she was the sole registered proprietor) without her knowledge. The dissenting judge commented upon the failure of the solicitors and the applicant to deal directly with the respondent:

> One can see in the facts of this case the remnants of an attitude to a wife, as a mere extension of the husband's property and financial interests. That attitude was not warranted in law. The respondent was the sole registered proprietor of the subject land in which her husband had no legal interest whatever. The appellant never did her the courtesy of communicating directly with her. It did not even write to her at her own address. . . . The old days in which it can be assumed that anything signed by a husband on behalf of his wife in respect of her property would bind the wife have long since passed. Earlier authorities, suggesting the contrary, whilst perhaps appropriate to the social circumstances in which they were determined, must be read with great care in contemporary social circumstances.

The correct answer will be published in the April issue of *Alt LJ*.

RAPE SHIELD PROTECTION LOST

In the case of *R v Seaboyer and Game* the Canadian Supreme Court struck down the 'rape shield' law leaving it up to individual judges to decide when and if a sex assault complainant should be forced to testify about her past sexual history. The relevant provisions of the *Criminal Code* have been found unconstitutional and the ruling leaves many unanswered questions.

The judges were split on the constitutionality of s.276 which states that a person accused of specified sex assault crimes cannot adduce evidence about the sexual activity of the complainant subject to some specified exceptions.

The majority held that s.276 violates the Charter of Rights and Freedoms because it permits exclusion of evidence which may be 'highly relevant' to the defence and whose probative value is not substantially outweighed by the potential prejudice to the trial process.

The minority judgment was delivered by Justice Clairs L'Heureux-Dube who comprehensively examined the political, social and historical context of the treatment of sexual assaults. She concluded that the vast majority of sexual history evidence excluded by s.276 was irrelevant because it was based on discriminatory beliefs and prejudices about women and sexual assault.

NEW AGE SENSITIVE JUDGES

Canada's federal Justice Minister Kim Campbell is negotiating with the federal judges to introduce mandatory judicial education on violence against women and other gender equality issues. She acknowledges that attempts to legislate in this regard may be seen as striking at judicial independence but the problem could be avoided if judges were obliged to take up the training courses after being named for the bench but prior to being sworn in. Judicial accountability must be balanced with judicial independence she said.

The Executive Director of the Canadian Judicial Centre is prepared to begin the courses immediately but also points out that judges are at present 'voluntarily and enthusiastically taking the courses that are presently available'. However, widely reported sexist comments by judges and lenient sentencing in some sex assault cases have caused concern. Ms Campbell told the *Lawyers Weekly* (27.9.91) that individual judges are not equipped to make decisions such as those anticipated by the ruling in *Seaboyer and Game* (see above).

SAFE SEX

Public health authorities and others concerned with educating the public about safe sex must sometimes despair at the stupidity of those who should know better. In Australia police have been known to wait outside needle exchanges and stamp on clean needles. In Britain workers in the sex industry have accused police of 'criminalising safe sex' by identifying prostitutes by the number of condoms they carry. The English Collective of Prostitutes says the practice undermines women's efforts to protect their own health and that of their clients.

Some comfort may be derived from a recent California case. An executive who was fired because of a memo he wrote on safe sex has subsequently been awarded $US5.3 million for unfair dismissal. The executive was employed by a subsidiary of the Shell Oil Company and was sacked after his secretary discovered a private memo outlining rules for a gay safe sex party. The judge found the memo to be 'undesirable in the workplace' but considered the firms reaction to be totally inappropriate. In the current AIDS epidemic, the judge said, the memo qualified as protected political speech. He also found that the sole reason for the sacking was the fact that the executive was a practising homosexual.

ROE v WADE

According to popular folklore Dan Quayle believes that *Roe v Wade* are alternative methods of crossing the Potomac River.

BETH WILSON

Beth Wilson is the co-ordinator of this column and a member of Feminist Lawyers.