

# 'SIT DOWN GIRLIE'

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



## NO MEANS NO MEANS BLOODY WELL NO! RAPE AND CONSENT IN THE USA

*Girlie* has combed the world and has finally found a court willing to acknowledge that sexual penetration without consent is rape.

The *National Law Journal* (21.9.92) reports that 'feminists are applauding a recent New Jersey Supreme Court decision that provides progressive [*Girlie* would say realistic] definitions of "force" and "consent" for proving rape'. The court in a unanimous decision in the case of *In the Interest of MTS*, 129 NJ 422, said that 'an act of sexual penetration alone meets the "physical force" requirement in the State's rape law and any act of sexual penetration engaged in by the defendant without the affirmative and freely given permission of the victim to the specific act of penetration constitutes . . . sexual assault'. The decision will shift the emphasis to whether the defendant could reasonably believe he had implicit or explicit affirmative consent for penetration. Most State laws require evidence of force or coercion in addition to penetration. Only Wisconsin and New Jersey have laws articulating the standard which was the subject of this case.

By contrast a superior Philadelphia court reversed a rape conviction on 19 May because there was no evidence of sufficient force to satisfy the State rape laws requirement of 'forcible compulsion'. According to the court, rape in Pennsylvania is not simply non-consensual sex. 'It is sex that has been physically or psychologically forced.' The victim in the Pennsylvania case 'was shoved to the bed by an acquaintance but not manhandled or kept from escaping, and she had said "No" both before and during the sexual act, but otherwise failed to resist' (*Commonwealth v Berkowitz* 1602).

In *MTS* a male who was living with

a family went into the daughter's room. Both consented to kissing and heavy petting but the woman never agreed to penetration. An appeal court found that the State rape law required a showing of both sexual contact and physical force. It was this decision which was reversed by the New Jersey Supreme Court.

## FEMINIST TAKEOVER OF ABA

The 1992 American Bar Association's Annual Meeting has been dominated by feminist themes. According to the *National Law Journal* (24.8.92) 'The appearances of Hilary Clinton and Anita Hill capped a wave of feminism that broke over the meeting with tidal force and swept the ABA back to its earlier stand on abortion rights'. The meeting featured a luncheon at which Hilary Clinton and Anita Hill were guest speakers. The 1200 guests (almost as many had to be turned away) cheered Anita Hill with cries of, 'we believe you' but the meeting was shocked into silence when Chief Judge Helen W. Nies said she was 'not entirely comfortable with Anita Hill as a heroine'.

The meeting also passed a constitutional amendment to allow the affiliation of the Gay and Lesbian lawyers. This followed a demonstration by members of the Bay Area Women's Action Coalition, wearing little more than black taped nipples chanting 'Hey hey ABA, vote pro-choice, vote pro-gay'.

In an impassioned speech urging the meeting to adopt a resolution opposing State and federal legislation restricting abortion, the outgoing President, Talbot S. D'Alemberte, asked the meeting, 'Are we, as lawyers, to be potted palms immobilised by our fear of conflict?' Well! Could it happen here? Sadly it has to be acknowledged that in Australia we have a few potted plants of our own, as stubborn as daisy roots and our law society meetings are a lot less fun than

those of our United States counterparts! But heaven forbid that *Girlie* should be required to bare all but black taped nipples outside the Law Institute in the midst of a Melbourne winter. *Girlie* is considering emigrating.

## KNOTS NOT FOR GIRLS

An Australian girl's fight for the right to join the Scouts is being conciliated at the Victorian Equal Opportunity Board, as the United States is grappling with the same issue. A Minneapolis judge has rejected a 13-year-old girl's request to join the Scouts pending a decision in a case in which the State of Minneapolis is contesting the Scouts' male only membership rule. The judge refused an injunction to allow her to join up in the interim saying that if her petition for admission ultimately fails it would result in serious harm to the Scouts to have her as a member.

## GIRLIE APPLAUDS JUDGE

In a letter to the *Age* newspaper Justice Nicholson of the Family Court (22.7.92) said: 'There is no doubt that the number of female judges will continue to increase in proportion to male appointments in the future . . . speaking for myself I am most anxious to increase the number of female appointments to the bench, both in Victoria and elsewhere as suitable appointees become available'.

## LECTURER VERY ANNOYED WITH LAW STUDENTS

Students at the Australian National University have lodged a complaint with the Dean of Law following a tutorial which featured a hypothetical rape case. According to the *Australian* (2.9.92) the complaint followed a tutorial by a law lecturer. He has responded by writing to the students threatening legal action. According to the *Australian*: 'It is understood the students may have been influenced by a

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visit of feminist legal scholar, Ms Nicola Lacey, who recently gave a seminar on gender in the curriculum. The seminar apparently made students more conscious of gender issues and the way they were being treated in the Law School'. The *Australian* has also chosen to describe the case as 'an example of political correctness . . . a primarily American phenomenon that seeks to impose "correct" views on universities and teachers'. Some academics, says the *Australian*, are afraid that the complaint could be the precursor of a political correctness movement on campus and one that could eventually curtail academic freedom.

## GIRLIE APOLOGISES

An upset male reader of this column has chastised your very own *Girlie* for use of sexist language. In the August issue of *Alt.LJ Girlie* inadvertently referred to a woman solicitor as 'solly'. Our irate reader suggests that this should be 'sollie'. In mitigation *Girlie* says that she, like the rest of us, was subjected to a sexist education and can only apologise. Thanks to Mr Gardner, our astute reader, for pointing out this oversight.

## GREEN, LEFT AND FEMINIST

A weekly newspaper, *Green Left*, reports primarily on environmental issues and also contains a good coverage of legal issues. The issue dated 2.9.92, for example, has a story by Catherine Brown which details the blatant discrimination in English law against women who are provoked into killing their husbands. On 31.7.92 the Court of Appeal quashed a murder conviction against Kiranjit Ahluwalia and ordered a retrial. Although Kiranjit had already served two years, bail was refused.

As a girl, Kiranjit had ambitions to be a lawyer, but was persuaded by her elder brothers to abandon her studies to marry a man she had never met. That was in 1979. For the next ten years she was repeatedly bashed, humiliated, and sexually abused by him. In 1984 and 1986 she obtained court injunctions but these did not deter him.

Kiranjit's appeal was supported by her husband's uncles and her family expressed concern that it was she who might have been the one to be killed. She was also supported by women's groups, principally young Asian women like Southall Black Sisters, who packed the galleries and demonstrated outside the court.

The case demonstrates once again that the defence of provocation has been designed to benefit men. The courts have defined the concept to exclude time lapse between the provocation and a reaction to it. Thus a woman who kills her husband after years of abuse is said not to have been provoked. In England last year, two men were given suspended sentences after killing their wives. Both had successfully argued that they had been provoked by their wives' 'nagging'.

*Green Left* has also published articles on abortion, domestic violence, police assaults on women. It is published by the Green Left Publishing Association, P.O. Box 394, Broadway, NSW 2007.

## NORTHERN TERRITORY APPOINTS WOMAN JUDGE

Sally Thomas has been appointed to the Supreme Court Bench in the Northern Territory after a most successful seven-year term as Chief Magistrate. Warmest congratulations to Her Honour and may Victoria hang her head in shame.

## ABUSING MEN

A Newcastle (NSW) psychiatrist has said it is 'inevitable' that Australian men abuse their wives. According to the *Australian* 31.8.92, Dr Bruce Chenoweth has found that Australian men resent women so much that one in three husbands abuses his wife. The doctor acknowledges similar violence in other countries but considers that Australian men have a deep and all-pervasive antagonism to women which arises from their need to be wanted, forced separation of boys from their mothers at an early age in order to identify with the strong cultural stereotype of maleness which

leads to feelings of betrayal and disappointment. Dr Chenoweth works with men who have committed acts of domestic violence and incest and says that men are taught to display dominance rather than connectedness. He sees the answer towards reducing 'gender disharmony' in getting men to play a greater role in child rearing and being willing to acknowledge their vulnerability to their sons.

## ABORTION

On 6 August 1992 Germany's Federal Constitutional Court granted an injunction blocking a liberal new abortion law which was to have come into force at midnight. The injunction was sought by 241 conservative Members of Parliament including Chancellor Helmut Kohl. A final ruling will be given later this year on whether the law is compatible with Germany's Constitution.

## ABORTION AND THE UNITING CHURCH

In September 1992 the New South Wales Uniting Church officially endorsed a progressive abortion policy. It acknowledges that the decision to have an abortion should be made by the pregnant woman rather than by doctors, lawyers, judges or the clergy. The decision limits the role of the clergy to counselling and education. In Victoria the Uniting Church synod responded by announcing a 12-month investigation into abortion and euthanasia. The Victorian Anglican Social Responsibilities Committee is also examining the issue and is expected to report to its synod in 1993.

## GIRLIE'S MAN OF THE MONTH

*Girlie* has it on good authority that Des Ryan, senior partner of a Melbourne law firm, Davies, Ryan De Boos, has donated seven desks to the Women's Legal Resources Group. Thank you Des.

**RITA WRONG**

*Rita Wrong is a member of Feminist Lawyers.*