

# 'SIT DOWN GIRLIE'

## Legal issues from a feminist perspective

### MAN SMART — WOMAN SMARTER

Researchers at Miami's Center for Neurosciences have 'discovered' that women have more brain cells than men. According to Dr Sandra Witelson the Center has found 'higher intellectual activities' in women and 5000 more brain cells per cubic millimetre. Dr Witelson says the finding may explain 'observed sex differences in speech and other perceptual skills . . . For example, young girls learn to read faster and women are better in phonetic tasks . . . we know that neither sex is smarter than the other . . . But women are better at fluency and recognising unfamiliar words.'

### HEART OF STONE

The *Melbourne Times* has given its Heart of Stone Award for 1994 to the publican of the Kingston Hotel in Richmond, Victoria. Madame Publican asked a mother to leave the dining-room because she was breast-feeding her baby. The stone-hearted publican informed the mother that in her day breast-feeding was done in the car.

### CRUEL AND UNUSUAL PUNISHMENT

United States District Judge Marilyn Hall Patel was unimpressed by arguments put by the Californian Attorney-General that tests with mice demonstrate that death by inhalation of cyanide gas is painless. She determined that California's gas chamber violated constitutional restrictions against cruel and unusual punishment (*Fierro v Gomez* C-92-1482 HMP, (*National Law Journal* 17 October 1994.) Prison records had shown that Robert Alton Harris was not unconscious for three minutes after the cyanide gas hit his face. An earlier decision in the case of *Campbell v Wood* 18 F.3d 662 had found Washington's method of execution to be constitutional because death was 'extremely rapid'. The Attorney-General has said he will appeal Judge Patel's decision but civil rights lawyers predict that her decision will not be overturned. Her findings were that death by gas is slow death by strangulation. There are more

then 400 prisoners on death row in California. They have the right to choose between gas and lethal injection. Some choice!

### BE WARY OF THE RIGHTEOUS

On 11 December 1994 the *Herald Sun* published an interview between reporter Bryan Patterson and a man described as a Catholic priest, (Father) David C. Trosch, who has some extreme views on abortion: 'They [the abortionists] are murderers who defy the laws of God and they should be put to death like the animals they are . . . My message to Australia is the same as my message to Americans. The time of mass reckoning is coming fast. Those who participate in any way in the murder of unborn babies will perish.' Trosch is reported to be an admirer of Paul Hill, sentenced to death for the murder of a doctor who performed abortions. According to Trosch Hill is not a murderer but a hero. Trosch has a strong desire to come to Australia to spread his message of hate but claims to be broke because his Bishop won't let him work at the moment. 'I've always had these views', says Trosch. 'I wish the time for righteous retribution was here already. I thought it might happen after the Hill verdict, but sadly it didn't.' Trosch has written to Congress predicting 'the massive killing of abortionists and their staff . . . In time the killing in protection of the innocent will begin to spill over into the killing of police and military who attempt to protect them [the abortionists] . . . Thereafter it will begin to affect those who direct them to protect abortionists. This will include city councillors, mayors, governors, senators, the President and his staff, judges and others who foster protection of mass murderers'.

### BELLE OF RIGHTS

The Australian Law Reform Commission's Final Report of its Inquiry Into Inequality Before the Law recommends a package of reforms to over-

come entrenched gender bias in the judiciary. It says a special Bill of Rights is needed to allow women to 'challenge laws, procedures and practices that create or perpetuate inequality'. An Equality Act, either on its own or in the Constitution as part of a Bill of Rights, would influence interpretation and development of the common law. Its underlying goal would be to assist in transforming legal concepts to make them more responsive to the needs and concerns of women. The Prime Minister, Paul Keating is expected to respond when he delivers the Government's Access to Justice Statement in February 1995.



### ASK THOSE WHO KNOW

In the December 1994 issue of the *Aboriginal Law Bulletin*, Catherine J Iorns explains the methodology used in the *Report Into Gender Bias in the Law and Administration of Justice in Western Australia*. That study paid particular attention to the bias faced by Aboriginal women. A sub-committee on Aboriginal Women and the Law was established to focus on the experiences of Aboriginal women with the law and the legal system. It had a majority of Aboriginal women as members and consulted widely with Aboriginal women and others. The sub-committee's recommendations focused on eight areas identified as being of particular concern: the courts, alternative dispute resolution, community responses to family violence, restraining orders, access to legal advice and services, bail, fines, and Aboriginal-police relations.

### FOR BETTER AND FOR WORSE

Refuge workers in Victoria report that women fleeing violent homes are forced to live in caravan parks and hostels or return to abusive partners, because of a lack of medium term housing. The workers have asked the Government to provide interim housing for victims in the same way as in NSW and South Australia. Women can

shelter in refuges for up to three months but there is little choice for them once they leave. 'Women who leave refuges go into the most awful circumstances', Robyn Kennedy explains. 'There is a long wait for public housing . . . and it can be six to nine months before a person on the priority list gets housed.' How little things have changed from the days when mum and the kids slept in the chook-house until the old man sobered up!

## ASSAULT, CONSENT AND SCHOOL DISCIPLINE

In the case of *Horan v Ferguson* the Queensland Court of Appeal quashed a guilty finding in a case in which a schoolteacher had been charged with nine counts of assault against girl pupils aged between 10 and 13 years. The Court decided that an assault does not occur where a teacher touches a child on the buttocks, or elsewhere, to encourage the child to move in a desired direction. The Court of Appeal (Fitzgerald P, McPherson JA and Demack J decided that 'a child attending school tacitly consents to receiving from a teacher tactile expressions of encouragements.' The charges under s.344(a) of the Criminal Code (Queensland) alleged that the unlawful assaults were offences of a sexual nature. The all male Bench decided that the touching was 'appropriate non-sexual touching' and acquitted the teacher.

## SOCIAL ALTERNATIVES

The January 1995 issue of *Social Alternatives* includes a feature section on domestic violence. It includes: 'Domestic violence — gendered abuse' by Michelle Robinson and Di Watson; 'The Child's Perspective', by Robin Purvis; 'Woman Bashing: An Urban Aboriginal Perspective', by Melissa Lucashenko and Odette Best.

## TOLERATION

In Girlie's not so humble opinion there are no two greater characteristics a society can possess than diversity and tolerance. How ironic that in this part of the world the International Year of Toleration begins with a visit from Pope John Paul the Sixth — a man whose theology is based on the works of Reginald the Rigid and who does not cope at all well with diversity or tolerance. The Pope was in Australia to beatify Mary McKillop (in case you failed to notice). The good Mary has a

history of standing up to men in the Church and encouraging her sisters to follow their consciences. It is said she was partial to a drop of brandy and appears to have had some characteristics not unlike those of modern day feminists. Perhaps the Queen Victoria approach prevailed — no-one told the Pope about the real Mary — he would not believe that such women exist. Not that the Pope dislikes women. He adores saints, angels and spritual mothers, but seems to have a bit of trouble coping with your everyday, average, modern, intelligent, independent, healthily sexually active type of woman. And as for women priests, well . . . The Pope believes that female dignity is to be found in motherhood which limits women's participation in other roles such as the priesthood. The Movement for the Ordination of Women disagrees and has vowed to continue its fight on the international level. The Movement is planning a conference in Rome to establish an international network.

## CIVIL RIGHTS AND AFFIRMATIVE ACTION

On Australia Day 1995 Geraldine Dooge's *Family Matters* (Radio National) canvassed moves in the United States to outlaw affirmative action legislation. Tom Woods, of the conservative Californian Association of Scholars claims that affirmative action laws are discriminatory. He wants them repealed and is lobbying for a return to the civil rights principles which prohibit discrimination. He describes his group as 'revolutionaries in a limited sense' who want to return to the old 'civil rights' values. He concedes that people are fearful of his 'initiative' but claims that the overwhelming majority want a return to the 'true principles'.

Also interviewed was Molly Monger, from the Legal Defence Fund of the National Association for the Advancement of Coloured People. She points out that affirmative action is necessary to remedy hundreds of years of discrimination against blacks and women. There was flagrant violation of the anti-discrimination laws which led to the civil rights law being used as a tool to cure a situation that closed doors for many years. She sees the conservatives as lacking a desire to remedy the enormous gaps. She pointed to the examples of the fire department and the police where there

is blatant discrimination and widespread sexual harassment to ensure that women and blacks are excluded from management positions.

## LET NO WOMAN SIT IN JUDGEMENT

The *National Law Journal* (5.12.94) reports on the 'long-standing, notorious views' of Ricky Eugene Kerr. Apart from being on a charge of murder facing the possibility of the death sentence Ricky has 'moral and religious' beliefs 'that women must respect and obey men and cannot judge, direct or even address men without permission'. Tough luck for Ricky. The judge assigned to his case is Judge Sharon McCrae. The prosecutor is Catherine Babbitt and the court reporter is a woman. Mr Kerr's attorney, San Antonio sole practitioner, Michael Granados has attempted to have Judge McCrae taken off the case because of her gender. An administrative judge (gender unknown) denied his petition and ordered that the trial proceed. Ricky Kerr is charged with the murder of his landlady and her son.

## GIRLIE'S FAVOURITE QUOTATIONS

'I want a break from the lonely room, as well as an extremely large amount of money. I need to finance my next two books and build up some financial fat to live on. I'm past applying for grants unless I'm broke.'

*Blanche* ['I Wanna be Bobby's Girl']  
*D'Alpuget, The Bulletin, 27 May 1986,*  
*p.75.*

'I endow this person with masculinity, even in 1994, because it seems to me inherently improbable that officiousness could be considered a female characteristic.'

*Justice Byrne, 'Implied Terms in Building Contracts: Inference or Imputation?'*  
*Building and Construction Law, Vol. 1,*  
*Part 1, p.6, footnote 2.*

'There is no open season on prostitutes. They are not outlaws who can be exploited and abused with impunity. They are entitled to the protection of the Court and they will get it.'

*Judge Fricke, sentencing Steven Richard Smith to 15 and a half years imprisonment for rape in the County Court, Victoria, on 6 February 1995.*

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