'SIT DOWN GIRLIE'

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

ISOLATION

In the preface to *The Forgotten Few: Overseas Born Women in Australian Prisons* Elizabeth Evatt writes, 'It is clear from this study that the principles of multiculturalism — access and equity — have not reached inside the prison gates'. The Bureau of Immigration Research report was written by Dr Patricia Easteal and it reveals a bleak picture of isolation and deprivation suffered by overseas-born women prisoners. These women often suffer discrimination from other prisoners, and their poor English skills and inability to learn the language of the prison sub-culture increase their isolation. There is virtually no effort made to provide support services to meet their special needs including cultural or religious preferences. The report indicates that overseas-born women prisoners are three times more likely than Australian-born inmates to serve in excess of five years and are less likely to have been gaoled previously. They tend to be older than their Australian-born counterparts and are more likely to be married.

AUSTRALIAN GAY AND LESBIAN LAW JOURNAL

Volume 1 of this new law journal appeared in the Autumn of 1992. Its objective is 'to provide a forum for discussion of the law and to disseminate legal information on issues which may affect the lives of and/or be of interest to gay men and lesbians'.

Please address all queries to: The Editor, AG&LLJ, School of Business and Public Administration, Charles Sturt University – Mitchell, Bathurst, NSW 2795.

GIRLIE'S FIRST MAN OF THE MONTH QUITS HARVARD

Professor Derrick Bell, who took unpaid leave from Harvard Law School until such time as the Faculty appointed a woman of colour to its academic staff has given up on Harvard. While Harvard claims that Professor Bell 'resigned' he denies this saying that: 'I did not resign . . . dismissed, expelled, divested; it's hard to know what is the proper nomenclature. I regret it but if that's the sacrifice that's necessary to open the door for others, then that's the sacrifice I'll have to make'. Professor Bell has promised to continue to be 'a little thorn in their side'. Long live Professor Bell!

ROE v WADE, PENNSYLVANIA AND A WOMAN'S RIGHT TO CHOOSE

On 30 June 1992 the United States Supreme Court made a ruling which essentially allows the States to impose restrictions on a woman's right to an abortion. Although the popular press has seen the decision in the *Planned Parenthood v Casey* as a compromise, the fact that George Bush has hailed it as 'victory which supports family values' gives little comfort to those who support a woman's right to choose. Norma McCovery who was the plaintiff in the earlier case of *Roe v Wade* summed it up when she said, 'I don't see why so many people want to dictate what a woman can do'. Mr Randall Terry, leader of the anti-abortion group 'Operation Rescue' was not satisfied and was quoted in the *Age* on 1 July 1992 as saying, 'Three Reagan-Bush Supreme Court appointees have stabbed the pro-life movement in the back'.

The majority decision was written by Sandra Day O'Connor, the Supreme Court's only woman judge. The 'essential holding of *Roe v Wade*' was upheld and Judge O'Connor listed three key elements of the law:

- a recognition of the right of the woman to choose to have an abortion and to obtain it without undue interference from the state;
- a confirmation of the state's power to restrict abortions provided that the law contains exceptions for pregnancies which endanger a woman's life or health; and
- the principle that the state has legitimate interests in protecting the health of the woman and the life of the foetus.

Judge O'Connor said that the obligation of the court is to define liberty and not to mandate its own moral code. She also said that to have overturned *Roe v Wade* would have caused 'profound and unnecessary damage to the court's legitimacy and to the nation's commitment to the rule of law'.

Surprise, surprise! The latest appointment to the bench, Judge Clarence Thomas (remember him?) was one of the minority judges who believed that 'authentic principles of [precedent] do not require that any portion of the reasoning in *Roe v Wade* be kept intact'. The minority viewed *Roe v Wade* as based on incorrect precedent and said that a woman's right to an abortion was not a fundamental right as stated in *Roe v Wade*.

The provision of the Pennsylvania law under consideration that a husband be notified before an abortion is performed was struck down.

The political aftermath

The United States House Judiciary Committee and the Senate Labor and Human Resources Committee have responded to the decision by proposing legislation to codify the protections in *Roe v Wade*. A committee member has been quoted in the *National Law Journal* as saying:

> The court's callous effort to repudiate a fundamental constitutional right demands a decisive response from the legislative branch, and I believe this legislation will receive prompt consideration from the House.

He was not confident, however, that a two-thirds majority vote could be achieved in order to overcome a veto by the President.

'SIT DOWN GIRLIE'

The proposed legislation would bar the restrictions placed on *Roe v Wade* by the Supreme Court but would permit States to impose minimal restrictions on early term abortions. Women would not be required to undergo counselling on abortion and its consequences, nor would they have to endure time limits following the counselling before an abortion could be performed. In effect, the proposed Bills would, if enacted, make it very difficult for the States to place obstacles in the way of women seeking abortions.

On the same day . . .

Roe v Wade was not the only case dealing with abortion which was reviewed on 29 June 1992. On the same day the 7th United States Circuit Court decided that anti-trust and racketeering statutes cannot be used to curb militant tactics by anti-abortion groups. In 1986 the Federal Court dismissed a case brought by the National Organisation for Women and two women's health centres against two men who head up anti-abortion lobby groups. The women's groups argued that there was a nation-wide conspiracy to close abortion clinics through acts of violence and intimidation, in the form of blockades and telephone harassment. While the Chief Judge acknowledged that men's actions had been 'reprehensible', they were not for economic gain, but were intended 'only to close the clinics'. (Source: *National Law Journal*, 13 July 1992, p.6).

RAPE AND ABORTION IN IRELAND

Remember the case of a 14-year-old who was raped in Ireland and the media hoohah which surrounded her desperate quest to obtain an abortion? If you look very carefully at the July newspapers, hidden away amongst the international news, you will find a tiny little paragraph which advises that nine charges have been laid against a 42-year-old man. It is alleged that he had unlawful sex and sexually assaulted the girl 'on occasions' between June 1990 and January 1992.

EGYPTIAN GAZETTE CRITICISES AUSSIE JUDGES

The one-time Mayor of St Kilda, Victoria, Melanie Eagle, and her barrister husband, John Thwaites, recently visited Egypt. Not really expecting much news from home they were bemused to read a full page article in the Egyptian Gazette featuring the case of *Hakopian*.

The editors were shocked to report that Australian judges believe prostitutes who suffer violent attacks are less likely to suffer than are other victims.

For an update see the Victorian Law Reform Commission's Report No. 46 Rape: *Reform of Law and Procedure: Supplementary Issues*, July 1992.

DEFENCE FORCES CAMP OUT

Australian and Canadian Defence Ministers have displayed very differing views on defence force bans on homosexuals. While Australia's Federal Government has taken a softly, softly approach, Canada's Minister for Defence, Mary Collins, has described such bans as outdated and contrary to community values. She criticised defence force attitudes to women in general and to homosexuals as being totally out of step and warned that the military would lose public support, reducing its ability to attract and retain good recruits. In Australia, homosexual conduct, even outside duty hours, means automatic dismissal from the defence forces. The Minister for Defence Personnel, Mr Bilney, has been reported as saying that he believes the ban should go but he did not say when. Instead, he stated 'there needs to be more education of the community at large and especially the Australian defence force before we can move further on this issue' and 'these changes need to be brought on very gradually especially in a conservative institution like the Australian defence force'. The Minister failed to explain how attitudes will be changed by reinforcing the ban, but the possibility of appeals to the United Nations for breaches of human rights may persuade him to hasten the change of attitude.

The ABC's *Four Corners* reported on the issue in August 1992. The program wheeled out some colourful characters who have been in charge over the years. Among the more interesting arguments advanced was this: 'there is no time for that sort of nonsense' in the 'serious business of killing and being killed'. Presumably there would be little time to engage in heterosexual contact in the midst of battle either. Meanwhile, eight countries are happy to allow homosexuals to serve in their defence forces.

TOO SHORT

In Canada, women rather than men have been found to lack the necessary inches for the job. A four foot nine inch complainant (apologies to the Metrics Board) was refused a job with a consignment shop trading as 'Lady Gordon Head' because she was too short! The British Columbia Human Rights Commission had a different view, however, and ordered the prospective employer to cease discriminating against the complainant and to pay her damages. In observing that a stool for the complainant would have cost $69 the Commission was shocked by 'the respondent's submission that the complainant's right to employment free of discrimination based on her physical disability has a value of less than $69' (*Fiset v Gamble*, June 1992, BC Council of Human Rights).

COURTROOM GENDER BENDER

New South Wales sources report an embarrassing courtroom incident. A judge refused to 'see' a solicitor who was wearing jewellery and a polo necked jumper instead of the mandatory suit and tie. Imagine his confusion when it was explained to him that the said solly was actually a woman!

LAURA FORM

Laura Form is a member of Feminist Lawyers.