1977

Women Law Student Association Newsletter

University of Michigan Law School

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Saturday's final activity was, of course, the Banquet at the Campus Inn. As those who braved the snow can testify, it was a good end to an eventful day.

Dean St. Antoine gave a short introductory speech, praising the Women Law Students, and women in general as the "bearers of civilization" and urged WLSA to set its sights beyond a mere 50% female representation.

The keynote speaker, Wanda Reif, a graduate of '71, spoke on "Practicing in Washington: Lessons I Didn't Learn in Law School." Ms. Reif has followed a varied career in Washington. Since 1971 she has worked in the Federal Aviation Association, has been Committee Counsel in the House, worked as an associate in a small D.C. firm, and is now going to start her own practice.

True to her word to give practical tips on working in Washington, Ms. Reif first suggested areas of employment often not contemplated by the student interested in working in Washington. She suggested work as lobbyists, in the U.S. Attorney's Office, in trade associations, and in the Library of Congress in the Congressional Research Service.

Ms. Reif then outlined her self-taught essential keys to a successful Washington career. Although Mr. Reif illustrated all her tips with telling anecdotes, space and time demand a less thorough presentation here. Briefly her points were:

1) THE NEED TO CREATE AN IMPRESSION OF PROXIMITY TO POWER. This is done mainly through name-dropping, with greater and lesser degrees of subtlety. This entails not so much knowing the powers that be, as creating the impression that you know them for the benefit of clients or colleagues.

2) CONTROVERSY BEATS COMPROMISE EVERYTIME. This means that although you make no enemies, or waves, you also make no progress.

3) CAPITAL HILL IS STILL IN THE 1950'S. All discrimination legislation carefully exempts the Legislature. Perhaps the most telling comment on this is the fact that Ms. Reif was
the first and only female Committee Counsel on the Hill. Furthermore, Congressmen feel no hesitation in expressing their "eccentric" views on the position of women in law.

4) ISSUES ARE USUALLY OF SECONDARY IMPORTANCE, PARTICULARLY WHERE FAVORS AND POLITICS ARE ALSO CONCERNED. On top of this, it is also difficult to get those whom you are counseling to listen to, let alone understand, what you are counseling.

5) JOB-HOPPING IS THE BEST WAY IN WASHINGTON TO GET AHEAD. This is made possible by the fact that the power structure in Washington changes quickly and that everyone else does it too, so that openings are often, if briefly available.

6) MORE BUSINESS IS DONE AT SOCIAL EVENTS. Although this may be true of many fields, in Washington this is taken to a fine art. Washington lunches and social dinners are especially good for making CONTACTS, which goes back, of course to tip # 1, which in turn leads to the culling of "inside information," which is the true commodity a Washington lawyer deals.

7) Finally, there are three specific suggestions that anyone bound for Washington might consider having tattooed on their arm, or otherwise memorialized.

   A) Memorize all office hours of all Executive Agencies with which you will deal. Calls a minute before or after hours will not be answered.
   
   B) Someone, somewhere in the Executive Branch has the answer to any question you may have. It is only a matter of finding them.
   
   C) Never go to the top to get the answer. The lowest, least visible member is always your best bet.

Ms. Reif concluded her speech by urging women to consider work in Washington. The opportunity and variety is there, especially for women, and there is the added benefit of the large number of women attorneys working in Washington already.

Jane McAtee re-announced the winner of this year's Susan B. Anthony Award, Professor Yale Kamisar. Professor Kamisar, who was out of town at the time of the Susan B. Anthony Dinner, gave a rousing speech, detailing some of his reactions to this year's panels and citing advances made by women law students in the last few years; such as the dramatic increase in the number of Supreme Court clerks. He ended with several quotes from his high school year book!

From a report of the Alumnae Conference Banquet made by Susan Shannon Swantek.
STRAIGHT TALK

From an interview with Assistant Dean Susan Eklund, conducted by Sheila Haughey.

Q. When you graduated from law school here in '73, you went to work for two years for the Legal services Corporation on a Navajo Reservation in Arizona. How did that happen?
A. I wasn't sure what I wanted to do when I finished law school, but I had no great desire to join a large corporate law firm. Steve, my husband, is a dentist, and we were both looking for work. He first was offered a job with the Public Health Service on the reservation, and we both were interested in a nationalized health service, so the offer was appealing. A little investigation revealed that I could work for Legal Services there so we decided to give it a try for a couple of years.

I enjoyed my work but found it very tiring and frustrating. The case load was almost overwhelming and I often felt I just couldn't do as much as I should for each client. I had the nagging feeling that maybe, as some argue, legal aid-type programs are just band-aids to keep the poor quiet a little longer. Anyway, I felt as though I needed a change and some time to think about how I could use my law degree to have the greatest beneficial impact on the system.

Ann Arbor had really become our home so we came back here. Steve started work on another degree in Public Health and I started working with The Research Group while thinking about long-range goals.

Q. What prompted your interest in your present job?
A. As an undergraduate, I served on several student-faculty committees and worked summers for the University. I really enjoyed those responsibilities, so the idea of going into administration was not a strange one for me. When I heard Rhonda Rivera was leaving, I thought about applying for the job and discussed it with Steve. But I was only 27 and decided that the school would probably consider me too young and inexperienced for the position. So I sort of tucked the idea away in the back of my mind for when the next person left the job. But then I went to the first Alumnae Conference, sponsored by WLSA, and renewed many old contacts. Someone (who shall remain nameless) suggested that I really should apply for the job and gave me the confidence to do so. I'm just thankful that plans to combine the jobs that Don Cohen and I now hold were dropped. That would have been too much for anyone!

Q. What do you hope to accomplish as Assistant Dean?
A. First of all, I am concerned that the job depends, or people at least believe it depends, so much on who holds it. I'd like to establish the character of the office so it's not
quite so important who sits in it. For instance, there was some thought that, depending on who took over from Rhonda, orientation might be discontinued. Students have a right to expect innovation on the part of the new administrators, but they have a right to expect some continuity, too. There are a few things I'd like to do which haven't been done in the past, or at least are not being done now. Many first-year students have expressed a desire for some continuing guidance in study techniques. I'm considering the possibility of organized study groups with a size and structure similar to the case clubs. I wanted to start this fall, but there wasn't time to do all the preliminary work on the project. Along the same line, many students have indicated concern over having just one exam per term in most courses. They'd like to have feedback from professors earlier in the course. Professor Carrington suggested that it might be a good idea to officially set time, other than class time, aside for mid-terms or some other form of evaluation or feedback generation. Professor Jackson often gives mid-terms and may possibly support such an approach. We may try it next year with a few selected first-year courses and see if the results are favorable enough to establish the procedure as a regular practice.

Q. Michigan has a reputation nationally as a 'corporate law school' and a look at the jobs offered through the Placement Office would tend to confirm that view. Many law students here, especially I think many of the women, would like the chance to consider alternate ways of using their law degrees. Can you help us to use the Placement Office to do that?

A. Money is a big problem again. The people offering jobs with small firms, neighborhood law offices, non-profit associations, etc., often can't afford to come here to recruit. But that's not to say that nothing can be done. I hope soon, probably in conjunction with Nancy Krieger, to survey the student body to get some statistical data as to actual job interests. If, for instance, we find 300 students who would like to be public defenders, I would think we could find a way to get some of those students together with some of the people who might be offering such positions. Students shouldn't hesitate to organize and articulate their needs in all areas, not just placement. They should know that the faculty is very good at letting us know their problems and at specifying just what they feel should be done about them. LSSS could be a very effective student tool for expressing student body sentiment regarding the sufficiency of the Placement Office or other services. There are two other ways I might be able to help a little concerning jobs. I'm considering surveying law school alumnae to find out what courses, and perhaps extra-curricular activities, have been most helpful to them in their work. Such practical information should be
helpful to students in planning schedules. And, I'd also like to get professors to define for students, as specifically as they can, the areas of expertise that are essential for certain fields of legal work.

Last question, Susan. What changes do you see in the law school since you were a student here, and do you view them as favorable?

A. The most obvious change is the increase in the number of women and minority students. My class was less than ten percent female and the first-year class now is almost twenty-five percent female. I think it's great. I'm also noticing more students in their mid-twenties and even thirties, people who have done other things after college before coming to law school, which I think is healthy. Success in a legal career requires maturity and a broad perspective. There's a good chance some older students will bring these qualities with them and they may rub off on other students as well.

I'm also very happy to see what appears to be a healthier attitude toward the whole law school experience on the part of many students. There's a greater emphasis on personal goals as opposed to strictly job-related goals, and law school is seen more and more as one important part of one's life but not as one's entire existence for a three-year period. Women especially seem more relaxed in law school than they were a few years ago, and they're more supportive of each other, not in just a professional sense, but also in a personal sense.

Finally, I believe I sense a greater willingness than I did before on the part of the faculty to serve the students -- to give better exams, to be better educators, to involve themselves more with students in general. Perhaps it's just that my perspective has changed now that I've become "one of them" but I don't think so. I hope I'm right, and if I am, students should use the trend to their best advantage.

FOCUS

GENERAL ELECTRIC

The following statement was graciously provided by Virginia B. Nordby who addressed the Alumnae Conference on the Gilbert v. General Electric decision.

In this landmark decision the Supreme Court last December ruled that it is not a violation of Title VII of the Civil Rights Act, prohibiting sex discrimination in employment, for an employer to exclude from its comprehensive disability plan absences associated with pregnancy, miscarriage, childbirth, or any disease complicated by pregnancy. The Court refused to extend deference to the Equal Employment Opportunity Commission Guideline requiring that pregnancy-related absences be treated the same as any other temporary disability.
The opinion of the majority of the Court, written by Justice Rehnquist, is noteworthy in several respects. First, and most significantly, the Court firmly announced that discrimination based on pregnancy is not sex discrimination. This proposition initially is rather startling. As Justice Brennan archly noted in his dissent: "Surely it offends common sense to suggest...that a classification revolving around pregnancy is not, at the minimum, strongly 'sex related.'" Nonetheless, the majority viewed the GE policy as dividing potential recipients into two groups - pregnant women and non-pregnant persons -- which does not constitute per se sex discrimination. The authority for this proposition is footnote 20 in the case of Geduldig v. Aiello, a case involving a Fourteenth Amendment equal protection issue about the constitutionality of a state-supported employee disability plan which excluded normal, uncomplicated childbirth.

As a matter of constitutional theory, footnote 20 is not totally surprising. The Court in previous pregnancy-related decisions has carefully avoided equal protection analysis. The abortion cases were decided under a privacy analysis and the mandatory maternity leave cases turned on a due process conclusive presumption theory. Indeed, theoretical analyses of the effect of the Equal Rights Amendment suggest a similar approach even under its mandate. These analyses recognize that the concept of equality should not demand sameness when unique physiological characteristics of the sexes are involved. The Senate Report accompanying the Equal Rights Amendment specifically uses as an example of a law which would be valid under this approach, a measure dealing with the medical costs of child bearing. The Gilbert Court correctly notes that the absence of per se sex discrimination does not end the analysis. The G.E. plan would still be a Title VII violation if it were a mere pretext for invidious discrimination or if it had a discriminatory effect.

The Court seriously misses the mark and almost totally ignores the facts in the case as it spins out its analysis on these two points. The Court sees no pretext for two reasons: 1) pregnancy is not a disease, and 2) pregnancy is normally voluntary. Nowhere does the Court attempt a medical definition of "disease" or consider why pregnancy would not be a "disease" but a broken leg or cosmetic surgery would. The Court ignores the fact that complications of pregnancy and childbirth are excluded from disability coverage by G.E., as are all non-pregnancy-related "real" diseases which occur while one is pregnant or on maternity leave. One of the plaintiffs in the case was denied disability pay for a pulmonary embolism which occurred after she had returned home following the still birth of an infant. The Court totally ignores the reality that childbirth is a medical occurrence which requires emergency hospitalization and professional care. The Court's approach to the notion that pregnancy is normally voluntary requires
another head-in-the-sand ignoring the facts in the case. Numerous unintended complications are excluded by the G.E. plan. Moreover, every other voluntary disability is allowable, including cosmetic surgery, hair transplants, injuries incurred during the commission of a crime or attempting suicide, and vasectomies. Further, it strains reality to assume that even normal pregnancies are usually voluntary. The initial act may always be voluntary but that does not make voluntary every statistically probable consequence. The skier who goes up the chair lift and starts down the hill may know the statistical probability of ending up in the hospital, but that does not make the broken leg voluntary. When attempting to assess whether or not the G.E. plan has a discriminatory effect, even though sex-neutral _per se_, the Court again misses the mark in its analysis. Beginning with the proposition that an employer need not provide any disability plan, the Court concludes that the requirement of Title VII is satisfied if the average cost to G.E. of disability coverage is equivalent for men and women. Naturally, this would be correct if G.E. were providing an income supplement and the issue arose under the Equal Pay Act. But G.E. was providing risk protection, not an income supplement. The fact that it need not provide risk protection at all, does not mean it can ignore the mandates of Congress once it begins to do so. When evaluating the discriminatory impact of the risk protection plan, the analyses should focus on the inclusion and exclusion of risks for men and women, not the average of employer costs for men and women. When an employer seeks to provide plant security, it is not relevant whether it costs more to protect female employees from the risk of rape than it costs to protect male employees from the risk of mugging or extortion and vice versa. In refusing to extend the customary "great deference" to EEOC Guidelines, the Court gutted the credibility and effectiveness of the Commission. Pointing to the sparcity of legislative history about the meaning of sex discrimination under Title VII, the Court ignored the extensive activities of Congress in the field under the Equal Pay Act, Title IX of the Education Amendments, the Educational Equality Act, etc., as well as revisions of Title VII itself in 1972 and 1974. It instead viewed as critical apparently inconsistent rulings from the more prestigious Labor Department. Taking a broad view of Gilbert v. General Electric, it seems the result in the case was inevitable, given the present make-up of the Court and the climate of the times. A conservative, non-activist Court is certain to be even more conservative about women's issues than any other. The current irrational attacks on the Equal Rights Amendment have created the impression that even the most basic rights and existing protections against discrimination are still under debate. The Court, so conservative
in its own wealthy life style, obviously has difficulty understanding the problems of working women and their families. It is a class problem, as well as a sex problem. The old common law tradition that a man must support his wife and children is deeply engrained in the institution of the law. The Court is not likely to shift that obligation to private industry or the government without a specific mandate from Congress. And finally, decisions in the area of sex discrimination are more likely to be conservative because of the sheer numbers of people involved. Women tend to think of themselves as an oppressed minority, but they are over half the population. Any change, particularly a major change, will always have far-reaching social and economic consequences.

Following the Gilbert decision, women called for an amendment of Title VII. That is just a piece of the challenge now presented. The EEOC must somehow be made more effective and creditable, or else abolished and its functions reassigned to another agency. Also the debate on the Equal Rights Amendment must be redirected so that its effect on issues such as pregnancy will be better understood.

Barb Etheridge expresses her sincere appreciation to those women who contributed their time and talent to the overwhelming success of the Alumnae Conference.