1973

June 21, 1973

University of Michigan Law School

Follow this and additional works at: http://repository.law.umich.edu/res_gestae

Part of the Legal Education Commons

Recommended Citation
http://repository.law.umich.edu/res_gestae/1083

This Article is brought to you for free and open access by the Law School History and Publications at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Res Gestae by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.
Michigan attorney Jean King has asserted that more must be done with what Susan B. Anthony and others won for women, in addressing a Sunday, June 17 Law Club Lounge gathering of fifty people sponsored by the National Organization for Women in centennial commemoration of the jailing of the women's suffrage leader.

By way of comparing the original struggle for extension of the vote to women with present-day action on women's rights, Ms. King first described in detail the events following Anthony's arrest for voting in the 1872 general election. That arrest was the culmination of years of temperance, abolitionist and general reform organizing, stemming from her Quaker background, whose eventual focus came to be national women's suffrage. Before her act of civil disobedience, Anthony had attempted to have "sex" included along with the Fifteenth Amendment's other prohibited qualifications for voting, but failing that attack along with other legislative agitation, she decided to create a test case for her theory that the Fourteenth Amendment outlawed restriction of the vote to men. Her trial on June 17, 1873 resulted in a fine of $100 and a jail sentence, but only after the presiding judge had directed a verdict of guilty and dismissed the jury—a procedure unheard of in criminal law, noted Ms. King. Following the trial, Anthony's strategy was to be imprisoned, refuse bail, obtain a federal writ of habeas corpus—which at the time involved direct review by the U.S. Supreme Court—and thereby assert her Fourteenth Amendment outlawed restriction of the vote to men. Her trial on June 17, 1873 resulted in a fine of $100 and a jail sentence, but only after the presiding judge had directed a verdict of guilty and dismissed the jury—a procedure unheard of in criminal law, noted Ms. King. Following the trial, Anthony's strategy was to be imprisoned, refuse bail, obtain a federal writ of habeas corpus—which at the time involved direct review by the U.S. Supreme Court—and thereby assert her Fourteenth Amendment claim. However, a man frustrated her plan, not for the first or last time according to Ms. King, in the person of Anthony's attorney who "couldn't stand to see a woman in jail." He put up bail without her knowledge, she couldn't revoke it, and the constitutional challenge was lost for a number of years until later the Supreme Court actually did rule that voting was a privilege, not an equal protection clause right, which could be regulated by the states.

The only route left open was to change the Constitution, so Anthony began her annual attempts to have a women's suffrage amendment, patterned after the Fifteenth, adopted by Congress and sent to the states for ratification. It took until the Spring of 1920 for 35 of the then required 36 states to ratify, but to give women a chance to register for the 1920 election somehow a 36th approval had to be wrung out of one of several states before the end of Summer. However, special legislative sessions were required in all states, which even in the most favorable states governors would not call, and progress halted until finally Tennessee was chosen as the best target. With the help of a U.S. Attorney General's opinion instigated by President Wilson, a disabling provision in the state constitution was overcome and a special session was called in which a majority of legislators—on paper—were pledged to support the Nineteenth.

Nevertheless, the liquor lobby, which had become the chief opposition along with railroad and manufacturing interests, tried what Ms. King noted to be a deathless ploy in women's issues—give pledged but squeamish legislators a plausible "out." Among the techniques, including threats to conveniently leave town, the most legitimately clad argument was that voting for ratification was tantamount to violating a legislator's oath of office to support the state constitution—invalid provision or not. To counter these moves, the suffrage supporters struck from their poll of votes all those whom they found to be bribeable, though pledged, and followed (see ANTHONY page two)
all other favorable legislators wherever they went until voting began. Although on one occasion it was reported that the entire legislature was drunk inside opposition hotel rooms, the Tennessee Senate passed the Amendment 25-4. Attention shifted to the House which had previously rebuffed a tabling motion 50-37 before postponing action while the liquor lobby continued to work on the 62 members who had signed pledges. On the day of the final vote, another tabling motion failed 48-48 and the Amendment was ratified by a 49-47 majority whose critical margin was provided by one Harry Burn who voted, he said, "the way my mother told me to."

 Shortly thereafter, it was argued that Tennessee customarily required a constitutional majority of 50 for passage of measures. A 50-46 vote was then mustered, but compromised by talk of reconsideration. The Tennessee Attorney General, however, quashed the controversy with an opinion that, once ratified, a constitutional amendment cannot be rescinded; an opinion, Ms. King pointed out, being used today with the Equal Rights Amendment (ERA). So the 19th Amendment was passed, ten million additional women were eligible to vote in 1920, and Warren Harding was elected President (draw your own conclusions).

In discussing the lessons of past political actions for women's rights, Ms. King commented that the length of the vote struggle alone, essentially 1848-1920, has not been brought home to women. "We're really in Kindergarten on using the vote," she noted, further criticizing women because we "allow our feelings of faith, hope and trust in institutions to take over, when we should have learned power is the only thing that works."

As an example of the need not to relax just when the pressure and legislator flip-flopping starts, Ms. King recalled the California ERA campaign where a nominal supporter, James Mills, who chaired the committee that had jurisdiction over ERA, refused to let the bill out of committee. Following a recall campaign and petitioning in his home district Mills relented. In another case, the addition of domestic workers to those covered by the new minimum wage law would not have occurred except for intensive lobbying by women's groups of absent members.

Besides equivocal officials, another problem for women in using their vote is lack of meaningful alternatives in candidates. Ms. King cited the recent Esch-Stempien Congressional race as one such Hobson's choice, where Stempien, as Michigan House majority leader, had consistently opposed abortion reform, and Esch had sponsored a Title VII amendment on behalf of Bell Telephone to allow sex discrimination in pension plans. Elsewhere, in a state legislative primary, Sen. George Kuhn, a nominal supporter of abortion reform, decided conservative backing in his home district was most valuable, wouldn't change his vote against reform, and forced women's groups to support an unknown Carl Purcell who eventually won. Such experiences teach women"the way to use our vote is in the primary," Ms. King concluded, since in general "the choices that are given us are never terribly appetizing." All in all, she summarized, political problems with getting legislators to vote right haven't changed very much in a hundred years so

"Hire without regard to ---! What's all the fuss. I've never had the slightest regard for anybody else's race, religion, sex or national origin."
NEW WAYS

The Teaching Law Firm

For more than a decade pressures for change have been mounting in legal education. Everyone from Warren Burger to Ralph Nadèr, it seems, has called for reform of the legal curriculum, and virtually every law school in the country has students—and not a few faculty members—who find traditional methods insufficient and irrelevant.

The critics believe that law schools have been graduating superficially trained generalists who often require further "apprenticeship" after three years of preparation; they say that law schools have failed to prepare students for poverty law, public-interest law, and many other new areas of concern to young prospective lawyers.

Antioch Law School, which opened in Washington, D.C., last fall with 145 students, is designed to answer many of these criticisms. It rejects the traditional case-study method of teaching law and the traditional criteria for admission to law school. Instead, it has adopted a "clinical" approach, analogous to medical education, in which a "teaching law firm" provides students with on-the-job training.

The law school also accepted a first-year class with a wide range of academic, economic, and racial backgrounds. Included in it are twenty blacks, nine American Indians, eight Chicanos, two Chinese-Americans, two Puerto Ricans, and one Cuban. Thirty per cent are women. The students include the Rev. James E. Groppi, the civil rights activist from Milwaukee; five journalists; two former members of the Harvard crew; an architect; and a retired federal official.

The school's founders are husband and wife—Edgar and Jean Camper Cahn—who are known, inelegantly, as the school's "codeuns." Graduates of Yale Law School, both have much expertise in poverty and public-interest law. Unlike many law school deans, they believe that law schools cannot remain morally neutral but must become active advocates for their clients—the "legally indigent." Mrs. Cahn, a black alumna of Swarthmore College, is founder of the Urban Law Institute, a project funded by the Office of Economic Opportunity and designed to offer legal services to the poor and to reform the curriculum and teaching methods of traditional law schools. The institute now acts as the teaching law firm where Antioch students gain clinical experience.

For his part, Edgar Cahn is the director of the Citizens' Advocate Center, the oldest public-interest law firm sponsored by the American Bar Association. Together, the Cahns are credited with designing the basic blueprint for the Legal Services Program of the Office of Economic Opportunity.

Antioch agreed to absorb the institute—and expand it to a full-fledged law school—after George Washington University, its original home, had severed relations in a dispute over its activist tendencies. Ozo was then provided about $1 million for the school's development. (The law school also has received some private contributions, but the Cahns feel that far more private support is needed, especially to help poor students meet payment of the $2,900 tuition.)

The new school received more than 1,000 applications for its first 145 places, and it expects to receive between 5,000 and 10,000 for next September's class. Edgar Cahn says that the law school has rejected several traditional assumptions. "One of them is that the LSAT and grade-point average in college are adequate or even accurate indices of a person's ability to function effectively as a lawyer." In fact, he says, Antioch assumes that many of the students who gain admittance on the basis of those scores "may not make good lawyers, or nearly as good lawyers as those who do not get in."

The school has a seven-page application that includes the following questions: "What aspects of American society do you feel are in the greatest need of change? How do you think these changes can best be brought about?" "Describe an experience in which you personally were subjected to or witnessed some significant form of injustice. How did you deal with it? Thinking back, how do you think you should have dealt with it?"

After they have enrolled at Antioch, the students are immersed in the problems of poverty and law. They spend their first six weeks living with an inner-city black family in order to "sensitize them and to remove perceptual blinders to injustice." During the first year students work in the teaching law firm, filing housing complaints and interviewing clients.

According to the school's catalogue, by the end of the first year students are expected to "provide tangible legal aid to clients" of the teaching law firm; by the end of the second year "they will be equal to a law clerk, able to serve as a junior associate to a senior lawyer in any type of firm"; and by the end of the third year "they will be able to provide actual representation to clients, where permitted."

So far Antioch has gained strong support from the legal profession. Chief Justice Burger has expressed his enthusiasm, as have the leaders of the American Bar Association and members of several prestigious law firms. Paul Porter, of Washington's Arnold and Porter, is heading Antioch's nationwide fund-raising drive.

With such support the Cahns hope to produce a "new breed" of lawyer. Even if they don't succeed with every student, says Edgar Cahn, they will at least produce a graduate "with a decent traditional legal education, plus some minimum capability to file legal papers and perform other chores law schools don't normally bother to teach."

MALCOLM SCULLY

(From Saturday Review of Education, March, 1973.)

(MORE ANTHONY cont'd from page two)

Jean King graduated with honors from U of M Law School, is co-founder of the Michigan Women's Political Caucus, and engineered the affirmative action challenge at U of M which at one point held up several million dollars of federal grants to the University. She is presently pursuing an ESEA Title IX sex discrimination proceeding against the Kalamazoo Public Schools.

Jean King graduated with honors from U of M Law School, is co-founder of the Michigan Women's Political Caucus, and engineered the affirmative action challenge at U of M which at one point held up several million dollars of federal grants to the University. She is presently pursuing an ESEA Title IX sex discrimination proceeding against the Kalamazoo Public Schools.

Jean King graduated with honors from U of M Law School, is co-founder of the Michigan Women's Political Caucus, and engineered the affirmative action challenge at U of M which at one point held up several million dollars of federal grants to the University. She is presently pursuing an ESEA Title IX sex discrimination proceeding against the Kalamazoo Public Schools.
Alice and I have never been much for hornbooks or canned briefs, but we couldn't help taking a short course in the law while strolling past the windows on the first floor of Hutchins Hall. Whomever old Cook commissioned to do the center panel drawings depicting various aspects of legal life must have been a celibate fundamentalist Baptist preacher on the side.

"Geez, this guy was death on welfare recipients," said Alice pointing to a panel showing a squatting beggar with his folded leg hidden by a hat over his bent knee, and captioned "fraud." Then there was another vignette entitled "robbery" in which a ragged boy was extending his cup toward a sympathetic lady.

"He comes down a little hard on free speech, too," I reasoned from a panel called "anarchy" illustrating a soap box speaker before a crowd with the Capitol in the background.

"Do you think the local constabulary failed to make our preacher-painter's Morality League meetings every week?" questioned Alice in front of a series of police-oriented scenes. Over the words "bribery" a cop confronted a shocked family group inside a car, and in another panel a smirking officer of the law was grabbing a paper from a forlorn newsboy with the line "extortion" written below. Elsewhere, in a vignette headed "coercion" a righteous looking businessman was accepting a ticket reading "police benefit" from yet another cop.

Moving on, we couldn't help noticing the creeping shadow of misanthropy. "This guy must have had 40 French maids troop through his boyhood," I gasped, noting each of the rare windows that depicted women, all acidly drawn.

"Male chauvinist pig!" hissed Alice. Not knowing if that was meant for me, the illustrator, or both, I examined with her anyway the panels marked "disguised," showing women being made-up in a beauty parlor, and one captioned "inheritance" with two haughty-faced veiled women waiting in a somber room. Not far away, a mother and daughter were scolding a very sheepish looking man over the title "divorce," and a final scene showed one woman directing a seering gaze at another coy-looking female arm-in-arm with a smug M-sweatered man (presumably a law student), all over the cryptic line "Matthew 5:21" -- that text reads "Thou shall not kill, and whosoever shall kill shall be in danger of the judgment."

"I swear," said Alice, "Cook must only have advertised for a painter in the Daily Pentecostal News."

"Well, maybe," I replied, "it just shows you to what panes some zealots will go."