

HAWAII WOMEN LAWYERS

NEWSLETTER

June 1996

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Coalition Formed To Combat Victim Intimidation

A Message From the President

As most of you know, Hawai'i Women Lawyers is an organization dedicated to the eradication of all remaining vestiges of discrimination and sexual harassment in the workplace. While Hawai'i Women Lawyers does not represent the special interests of a particular party litigant, or endorse tactics of a litigant's attorney, we nonetheless follow cases of special interest which further our organizational mission.

In doing so, most recently Hawai'i Women Lawyers learned of a very disturbing inquiry sought to be made into the private sexual life of an alleged sexual harassment victim, Clarissa Barta, prosecuting an action against the City and County of Honolulu Police Department et. al. alleging sexual harassment while working as a police woman at the Airport station for the City and County of Honolulu.

The Board of the Hawai'i Women Lawyers rarely authorizes intercession into ongoing litigation. Given the recent developments brought to our board's attention by the American Civil Liberties Union and the National Organization for Women, however, the board felt compelled to intercede in this case. The Hawai'i Women Lawyers' Board banded together with the National Organization for Women and the American Civil Liberties Union to interpose a memorandum of Amici Curiae in support of Clarissa Barta's request for an order from the Federal Bench precluding discovery of her private sexual conduct outside of the workplace.

The Board's action was taken based upon the history of unequal and harassing treatment given to women in the workplace. It was balanced against the probability of further victimization of these women in the litigation process if these types of sexual inquiries were allowed to occur.

One component of sexual harassment is often intimidation of the victim. Such intimidation is designed to frighten the victim from speaking out and exposing the harassment, through threats to expose "skeletons in her closet", or threats to destroy her career. In either case, the sole reason for making the threats is clear, and that is to silence the victim.

At a press conference held on June 24, 1996, attended by Elbridge W. Smith, Esq. for American Civil Liberties Union, Ellen Godbey Carson for the National

Organization for Women, and Magali V. Sunderland, for Hawai'i Women Lawyers, the coalition expressed their strong views in opposition to the indiscriminate disclosure of such highly confidential information about the victims private sexual activity, or lack thereof.

The coalition acknowledged the importance of a fair trial in cases involving allegations of sexual harassment. The coalition further recognized and supported the right and the need for defendants in cases based on such claims to vigorously defend and probe the truth regarding allegations of sexual harassment and sexual discrimination. However, when the defense to any case of this nature resorts to repugnant tactics of smearing the victim or of prying indiscriminately into highly private and personal sexual history, conduct, or medical history which has nothing to do with the issues of the case, the coalition felt compelled to respond.

The coalition expressed the view adopted by the federal bar that inquiry into such private non-workplace sexual behavior, or lack thereof, was impermissible, even in discovery. It does not shed any light at all on whether or not the alleged sexual harassment actually occurred, or the extent to which the victim may have been harmed thereby.

Moreover, victims of sexual harassment or sexual or racial discrimination must be encouraged to pursue their claims, or these vicious and unlawful acts will continue. If inquiry into such highly confidential matters were permitted, victims would be further victimized by the indiscriminate revelation of private matters which have no relationship to the claims being brought and would in effect silence those whom may have been harmed by the harassment from ever speaking out.

Defenses which consist of harassing, embarrassing, and humiliating a victim in the manner frighteningly akin to the long repudiated rape defense of "she asked for it" or "she was that kind of woman," do not lead to the discovery of the truth with respect to the sexual harassment or discrimination, or to the remedy of wrongs. They serve only to punish those with the courage to bring claims, to discourage other victims of these wrongs from exposing the wrongs to which they have been subjected, and to obfuscate the pursuit of justice and equal rights under the law.

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The coalition reviewed the pleadings in Barta v. City & County of Honolulu and the allegations of various serious charges of sexual harassment within the Honolulu Police Department as well as HPD's failure to investigate and halt this alleged conduct. These allegations deserve full and fair litigation.

Thus far, the coalition learned that the defendants have taken the partial deposition of Ms. Barta, asking highly personal and completely irrelevant questions on her sexual history and relations with her husband. They have taken the depositions of a former roommate and a former boyfriend, neither of whom had any knowledge of what occurred in the **workplace**. These individuals (who had been interviewed in advance by defense counsel, who thus knew that the witnesses had no knowledge relevant to the issues of the case) were asked on the record such questions as whether they had heard any rumors concerning the Plaintiffs' sexual conduct outside the workplace and what those rumors were.

It should go without saying that the "character" or past sexual history or conduct of any person is irrelevant to whether that person has been unlawfully harassed or discriminated against in the workplace. It is not a defense to harassment that a man or woman had sexual relationships outside of the workplace, was not a virgin, or did not adhere to the tenets of some particular faith in their daily life.

The coalition also learned that the defense conduct included *suing* the victims by way of counterclaim, even though neither plaintiff could possibly be responsible to the City or individual Defendants for the alleged wrongs committed by Clarissa Barta's co-workers at work. Judge Alan Kay has now dismissed those counterclaims. Even more reprehensible, the defense tactic in the Barta case has recently sunk to filing memoranda of law with exhibits attached - which are public records - which include gynecological records and testimony regarding marital relationships. One or more of the defendants have argued in memoranda filed with the Court that the victim's behavior in intimate, non-work social settings is relevant to what her feelings were in work settings, as if what she may have "done" with one man in a social setting meant that this is what she "invited" at work. The federal rules bar such implications.

Ms. Barta immediately sought to undo the harm caused by publication of her private gynecological records in a public record and requested that these pleadings be placed under seal. The court promptly granted her request. Nonetheless, the intended harm had already been done.

Ms. Barta's motion for an order precluding discovery into her sexual conduct outside the work-place was heard by Magistrate Judge Barry M. Kurren on June 26, 1996. Magistrate Kurren agreed with the position taken by Ms. Barta and the coalition. In fact, he further limited the scope of permissible discovery. The court ruled that any inquiry into the sexual conduct or lack thereof, of Ms. Barta other than with the named individual defendants was prohibited.

We will continue to monitor the progress of this case.

by Magali V. Sunderland, HWL President

Fulbright Association Seeking Environmental Lawyers For Proposed Task Force

The Fulbright Association is considering the formation of a Task Force on the Environment and Science.

The proposed task force would network scientists, educators, politicians, economists, and environmental lawyers. Possible topics the task force might explore include environmental management, population growth, cultural evolution, medical advances, inequities in food and consumption patterns, and issues relating to sustainable development in the industrial and developing nations.

Members already committed to the proposed Task Force on the Environment and Science include:

- Jon Broadway, US Environmental Protection Agency
- Sandra S. Hodge, Department of Forestry
- Arnis Richters, USC School of Medicine
- Israel Zelitch, Conn. Agricultural Experiment Station
- Zane Spiegel, Int'l Environmental Science/Hydrology
- Arthur Sylvester, USC Dept. of Geological Science
- Donald Wise, Center for Biotech Engineering
- Keith A. Howard, US Geological Survey
- John Byrne, Center for Energy & Environmental Policy.

If you are interested in learning more about this proposed task force, please fax your qualifications to the Fulbright Association at (202) 331-1979. They can also be reached by e-mail at falalum@ciesnet.cies.org.

Achievement Awards Luncheon Part of the ABA Annual Meeting

The ABA Commission on Women in the Profession is holding its sixth annual Margaret Brent Women Lawyers of Achievement Awards Luncheon on Sunday, August 4th in Orlando, Florida. The Awards Luncheon will take place during the ABA annual meeting. The keynote address will be given by Ambassador Madeleine K. Albright, United States Permanent Representative to the United Nations.

The 1996 Honorees are:

- **Hon. Rosemary Barkett** United States Court of Appeals, Eleventh Circuit, Miami, Florida
- **Hon. Beryl Levine** Associate Justice, North Dakota Supreme Court (retired)
- **Nina Miglionico**, Partner, Miglionico & Runmore Birmingham, Alabama
- **Lynn Hecht Schafran** Director, National Judicial Education Program/NOW Legal Defense and Education Fund New York, New York
- **Rep. Patricia Schroeder** United States House of Representatives, First District (Denver), Colorado.

NAWL Wins FGM Asylum Status

U.S. Atty General Janet Reno Intervenes

In the June issue of the National Association of Women Lawyers Newsletter, President and Professor Myrna Raeder wrote of her fight to get female genital mutilation (FGM) considered as "persecution" for purposes of granting refugee status. FGM violates a broad range of rights under U.S. and international law.

Eva Herzer, the co-chair of NAWL's International Law Committee, with Professor Raeder, co-authored a letter to Attorney General Janet Reno and to Commissioner Doris Meissner of the Immigration and Naturalization Service. Quoting from their letter:

"Such surgeries violate the right to sexual and corporal integrity which is inherent in the right to life, liberty and security of the person, as set forth in the U.S. Constitution as well as Article 3 of the Universal Declaration of Human Rights. These rights are underscored in Article 9 of the Covenant on Civil and Political Rights, which are ratified by the U.S. government. Such physically destructive practices are also a violation of the rights of the child "to enjoy special protection" under Principle 2 of the Declaration of the Right of the Child and may very well constitute a violation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, also ratified by our government. Very importantly, FGM also violates the right to health as set forth in Article 15 of the Universal Declaration of Human Rights, a norm also included in the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW)."

NAWL is not alone in their concern on this issue. First Lady Hillary Clinton spoke against FGM at the Beijing Women's Conference. FGM raises important health concerns which must not be ignored.

This issue was raised by the case of Faiziya Kasinga and her quest for asylum. Ms. Kasinga, an adolescent, fled from her country after the death of her father, who had previously protected her from FGM, which is practiced on young girls.

In a happy footnote to NAWL's story concerning this topic, the Honolulu Advertiser reported in late June that the U.S. Department of Immigration and Naturalization, with support from the State Department, had ruled favorably in this case and granted refugee status to Faiziya Kasinga.

Given NAWL's continuing interest in the international arena, NAWL has vowed to continue the FGM fight and will keep HWL members informed of new developments.

Governor Cayetano and Joan Bickson to Co-Chair Annual Mayors' Dinner

HWLF's Sixth Annual Mayors' Dinner will be held on Saturday, September 7th in the Monarch Room of the Royal Hawaiian Hotel in on Oahu. 1996 Honorary Co-Chairs are The Honorable Benjamin Cayetano, Governor, State of Hawaii and Ms. Joan Bickson, President, Girl Scout Council of Hawaii, Regional Director of Human Resources, Budget Rent A Car.

The evening will begin with a champagne reception at 5:30 p.m., followed by a 6:30 p.m. dinner and program. A silent auction will be running throughout the evening.

This year's dinner will feature Mayors Jeremy Harris, Maryanne Kusaka, Linda Crockett Lingle, and Steve Yamashiro.

Money raised through the event will be used:

- to buy computer equipment to modernize record-keeping and accounting at the **Family Peace Center**
- to pay for much-needed security and a van for the **Hale Ola Windward Abuse Shelter**
- to fund a video for children to minimize negative effects of divorce, via **Kids' First Program**;
- for start-up costs for right-to-know workshops, to prepare a paralegal position and Plan for Your Life Project for **The Domestic Violence Clearinghouse and Legal Hotline**
- for computer software, to assist in its education and outreach efforts of the **Hawaii State Committee on Family Violence**
- and to fund **Friends of Children's Advocacy Centers of Oahu's Enhancements Program**

Law firms and client corporations can show their support for these worthwhile projects by buying a table and inviting their key employees and suppliers. The following levels of contribution are available:

Mayor's Table \$3500

Patron Table \$2500

Sponsor Table \$1250

Each table seats 10 people. Donations are tax deductible to the extent allowed by law.

The Hawaii Women's Legal Foundation is a non-profit, Section 501(c) (3) corporation formed in 1982 to raise money and fund projects which "empower women in the legal profession..., influence the future of the legal profession, improve the status of women and advance equal opportunities for all people" in the State. Our membership consists of lawyers, business people, judges, physicians and other professionals and community leaders, both men and women.

To purchase a table, please call Mary Houghton at 396-8506, or fax your request to her at 396-9162. Silent auction donations and celebrity doodles are still being accepted as well. For information on the silent auction, please call Committee Chair Lynda Pelayo at 522-1027. Linda can make arrangements for your tax deductible donation to be picked up before the event.

Nominations are now being accepted for the Rhoda Lewis Scholarship.

This honor serves to reward and acknowledge the contributions of a female attorney who has chosen to enter the field of public service.

The award carries with it a stipend of \$500. The winner will be announced at the September 7th HWLF Mayor's Dinner.

Nominations may be made to:

Pamela Byrne (phone 541-2521; fax 541-3545)
or Janice Wolf (phone 532-0900; fax 532-0909)

Jazz Festival to Showcase Women

Lieutenant Governor Mazie Hirona To Introduce Event

The Hawaii International Jazz Festival this year will showcase "Women in Jazz," with acclaimed musicians Ann Patterson and Toshiko Akiyoshi. The event will be introduced by Hawaii Lieutenant Governor Mazie Hirona. When asked about her participation in the Festival, Hirona told HWL, "Women have made big strides in traditionally male-dominated artistic fields like jazz. This is the first year the Hawaii International Jazz Festival will be specifically highlighting the accomplishments of women, and I'm happy to help out. Since the Festival also does so much youth outreach, supporting 'Women in Jazz' helps encourage Hawaii's young women who are interested in jazz music to keep pursuing it."

With an extensive background as an accomplished classical oboist, featured artist Ann Patterson has in recent years focused her personal artistry on jazz saxophone and flute. Patterson is the leader of a 17-piece band, Maiden Voyage. It made its debut in 1980, and has long since outgrown the novelty of being an all women's band, achieving a high level of respect from fellow musicians, critics and audiences alike. Ann will perform July 18th at the Sheraton Waikiki, backed by the USC Big Band, one of the hottest in the country. She will give a clinic July 20 in the hotel's Lanai Ballroom, then close the festival July 21 with the "Parade of Big Bands."

Toshiko Akiyoshi stands as one of the most highly respected artists in the history of jazz, and her contribution as a pianist, composer, arranger and conductor is recognized as unique. Her big band compositions are considered standard textbook study among college jazz students at music schools across America. Akiyoshi's current New York based orchestra made its Carnegie Hall debut in 1983, as part of the Kool Jazz Festival, but Toshiko had already assured her place in musical history years earlier. She won the arranger category in the 1978 *Down Beat* Readers' Poll, the same year the Toshiko Akiyoshi Jazz Orchestra was named the #1 Big Band, making her the first woman to be so honored.

Akiyoshi is known for drawing from her Japanese heritage in bringing new cultural dimensions to jazz composition and performance. Her orchestra's first album, "Kogun," is one of the best selling big band jazz recordings ever. Toshiko will perform with her trio at the Royal Hawaiian on July 20. The day before, July 19, she will conduct a clinic in the Lanai Ballroom next door, immediately preceding Ann Patterson's.

**For more information on Festival events, call
Abe Weinstein, Hawaii International Jazz Festival, 941-9974.**

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