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An Agenda for Women Lawyers: Pandora's Box

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AN AGENDA FOR WOMEN LAWYERS: PANDORA'S BOX

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Publication of the Women's Law Forum is a welcome event. It will provide a unique opportunity to discuss women's issues in a publication read by people interested in all kinds of legal questions. This should lead to women and men analyzing the particular problems of women in relation to the general problems of jurisprudence.

I. "FIRST IMPORTANCE, SECOND IMPORTANCE"

There is a value in this publication simply describing every recent California case involving women's issues, as well as studying in depth specific kinds of cases in which women are involved, from litigation problems of high school female athletes to spousal support and joint custody, from administration of a system for the mentally "gravely disabled" to civil suits for sexual assault and employment discrimination remedies for lesbians.

However, although our resources are growing, we are still very short of lawyers who care to deal with the problems of women clients, particularly those discriminated against because they are women. We are still few in number and weak in financial stability and in the resources necessary to undertake major litigation, either for plaintiffs or defendants. It therefore continues to be important for us to weigh how we spend our time. The questions posed for women lawyers are: what to do when clients walk in the door with problems related to their status as women; what to do when no one walks through the door to retain our legal skills and knowledge; and how to earn a living while advocating women's issues.

"First importance, second importance" may be the best guide for the women's movement today, and particularly for the work that women lawyers undertake. I picked up this phrase from

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my mother,[1] and the ability to use it became my ace in the hole[2] all the way through law school and the bar examination, because I really had to decide what was critical and what could be eliminated from my life[3] in order to make the time and money necessary to become a lawyer.

Of course, we are required, and we want to handle the cases of paying clients who come into our offices. While it might appear that a woman lawyer can do her duty to the women's movement by representing wisely and well the women clients who come to her, this is only the very beginning of the problem. A great many women have legal problems, or problems that can be posed in legal terms, but they have no money to pay a fee. We face the "first importance, second importance" query primarily as to pro bono work. Should I take the case of a battered wife or of a woman seeking an alternative kind of job? Should I run for office or write a law review article?[4] Should I represent a rank-and-file union caucus, or an older woman denied a promotion?

II. SOME SUGGESTIONS ON PRIORITIES

A. Job Discrimination and Employment Cases

We cannot go wrong in considering job discrimination cases and all employment cases as of first importance. They are certain

1. There is a reason for quoting something my mother said in the text, and for providing few citations here to books, cases, or articles in scholarly journals. I am beginning to try to cite oral history, since women, for example, have only been literate for a century (along with many working class men, blacks and immigrants). Although they have been wise for centuries, women have seldom written down their wise thoughts and sayings. The wisdom of non-writers, when it is reduced to writing, is always screened through the insights of the literate author. So, many women (and other non-writers) can best be cited through the oral tradition. And the lawyers who talk, rather than write, can best be quoted from their speeches, briefs, and transcripts, as they are transcribed or excerpted in non-scholarly reviews.

2. People raised in the Depression remember a song that answered the question: "where can you turn for money when you're down and out?" As the places you can turn become fewer, your choices of behavior and lifestyle become limited. Ultimately one stands on one's own two feet and may then ponder with greater understanding the maxim: freedom is the recognition of necessity.

3. I consciously gave up piano playing, reading fiction, and shopping in my first year in law school. When older women lawyers are sometimes criticized for being "aggressive" and "unfeminine," I wish our critics would define their terms and describe what alternatives we had, precisely.

4. Until we engage in academic debates on paper, our views can die with us. But the time and energy to write for scholarly journals without pay is hard to find, to say nothing of the leisure and solitude required to spin a new theory or resuscitate an old one. Few women lawyers or law professors to date have found the supportive services (law clerks, large law libraries, manuscript typists) to write extensively.

to have significance, not only for the particular woman party, but for all women who work outside their homes for pay.[5]

In a theoretical sense, women need to challenge the whole male supremacist structure in employment, which is based on assumptions long since outmoded. When "master-servant" law was formulated in the early days of capitalism, centuries ago, women were considered, at law, the property of men. If women earned any money, it simply supplemented their husbands' income. When women, in increasing numbers, were forced to go to work to meet the financial needs of their families and themselves, this ideology forced them into jobs with low status and painfully low pay. Today any attack on unequal jobs and pay for women is part of the broader effort to change the relationships between workers and their employers so that workers will have a larger share in the income derived from their production and more say about how their industries should function.

Wages and salaries paid to women workers affect their lifestyles and their thinking profoundly and affirmatively. Money earned directly for work gives a woman power, independent of an emotional relationship with another person. A lawsuit that results in a court-ordered promotion in rank or a higher wage-scale to overcome unequal pay has an impact every pay day for the rest of a working woman's life. When a woman earns the money in her purse, she can spend it as she decides. She has more choices than a dependent person has on basic questions, such as whether to have a child or an abortion in the event of pregnancy, whether to enter or remain in a "marriage of convenience," and whether to sign up for a course to improve her ability to earn a living or seek a job closer to her heart's desire. The nature of childcare is intimately connected to the size and regularity of a mother's independent income. And the dignity and power that accompany steady work for women militate against relationships that degenerate into battery or rape.

Women employed outside their homes are gaining self-assurance as they master their jobs, and, having learned how to work in groups of working women, are playing a significant role

5. I think it can also be demonstrated that every victory over discrimination on the job helps women who work at home doing unpaid domestic work, child care, and other tasks that are paid for when performed outside the home. Housewives gain something in self-esteem, and learn something about how to improve their status, when they hear about victories of their sisters in the marketplace.

in women's issues within some existing unions. They have also started organizations for self-preservation or self-education in some industries that have become professional associations or labor unions.[6] Working women have entered the political arena from such organizations, bringing with them their own cheering sections and campaign committees.

In other words, the key to women gaining power in our society is through direct participation in the economic system as workers. This means that issues relating to employment are basic to all other issues the women's movement faces in the United States.

A second reason to focus on employment cases is that courts are better at dealing with money questions than with questions of principle or interpersonal relationships. The legal system—both the common law side, where money damages are the norm, and the equity side, where court orders can require specific performance—is geared to analyzing wrongs in money terms. Cases involving custody have been difficult to deal with in the courts because they are not amenable to a dollar-and-cents analysis or negotiated settlement.[7] While employment cases involve human relationships, the nexus of employment relations is cash—the salary or wage in return for the work—and judges are accustomed to issues involving this cash nexus.

Money verdicts also lend themselves to the payment of attorney's fees for vindicating the rights of the woman party. Without fees, women lawyers cannot survive. People highly motivated to work on women's issues learn very soon that survival of their law offices is a critical question. A law firm with continuity permits us to focus on litigation rather than on the internal administrative hassles that make it difficult to work effectively for our clients.

As it happens, women and minority men have entered the legal profession precisely when many others have entered the

6. My favorite example is the young women editors at a large San Francisco law publishing company who began meeting several years ago to raise their consciousness on women's issues. Soon they discovered the need to raise their pay and their status. This led to efforts to include older women in their group, and to turn themselves into a labor union. Two years later, the International Typographical Union had a new, all-woman chapter, more interested in negotiating pregnancy leaves than extra paid holidays, and with pay scales far below traditional I.T.U. wages.

7. For innovations in this field, *see* Ramey, Stender & Smaller, *Joint Custody: Are Two Homes Better Than One?, infra.*

field, so that, for example, in California the number of lawyers has doubled in the past ten years. This means it is very difficult to find a salaried job as a lawyer, and it is also hard to go into private practice because there is tremendous competition for every paying client. Under these circumstances, it is appropriate for women lawyers to pick those cases that are most likely to result in a fee for themselves. These are the cases in which the client also will get money at the end of the litigation, rather than only an injunction, for example.

Lawyers are needed to address all kinds of employment problems, from women breaking into a new field at the beginning of their working lives, to receiving equal pensions at the end. We frequently face problems with respect to admission to apprenticeship training programs and specialized educational institutions, maternity leaves, shadow seniority[8] to defeat lay-offs, upgrading on the job, the right to participate in on-the-job training, equal pay, no compulsory overtime, working conditions, sex roles in the office or plant, and sexual harassment by some employers. Several of these issues can lead to money verdicts for women clients, if we win the cases.

B. THE MORE THE MERRIER

Another standard to use in deciding which cases are of first importance is the number of people who will be affected by the outcome. Thanks to media coverage of "women's lib," almost every case we win today becomes a kind of class suit. Other women in the class, that is, those similarly situated, are likely to hear about a legal victory, and they can often find a way to use it on their own jobs. Sometimes it permits them to raise a new demand or return to an old one, citing this recent victory as new authority.

Using numbers as the test of importance, legal breakthroughs in traditional fields will affect the greatest number of women, since the vast majority of working women hold traditional jobs.[9] In the professional fields, many women are teachers,

8. Women lawyers may be able to make good use of decisions establishing shadow seniority rankings for blacks who finally got jobs through affirmative action plans many years after they first applied and were not hired, due to race, and even for some who could prove they failed to apply because of known discrimination. *See* International Bhd. of Teamsters v. United States, 431 U.S. 324, 363-65 (1977); Swint v. Pullman-Standard, 539 F.2d 77 (5th Cir. 1976).

9. U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, U.S. WORKING WOMEN: A

social workers, or nurses. White-collar women work in large and small offices and retail stores. In the blue-collar fields, women work in assembly and sub-assembly plants. Women do service and domestic work, employed as housekeepers and childcare workers, often as the only worker in a household. What are the legal problems on such jobs? They are numerous, but they all relate to the fact that the women are often underpaid, untrained or undertrained, and frequently are afraid to organize to resolve their most basic grievances.

Why have women filed so few lawsuits challenging unfair practices on their traditional jobs? The answer may be similar to a point made by a black lawyer with experience in both the South and the West. Ed Dawley maintained a few years ago[10] that black people did not have legal problems, meaning that black men and women are poor, and poor people don't have problems that can be ameliorated by filing a lawsuit. Their major problem is that they are poor, and as long as they are poor their problems are not court problems but problems of welfare and survival. These can be better addressed by building a civil rights movement and demonstrating in the streets, or by making demands of an administrative agency, than by going to court.[11]

One group of poor people have carved a different path, going to court repeatedly, as well as building a movement and demonstrating in the cities. Their successes should encourage women workers with employment problems. The experiences of the United Farm Workers, AFL-CIO, indicate that the law is one effective weapon to use in addressing the problems of poor people who work. The migrant farm workers were absolutely determined to change their status. First they built a strong union; then they built a permanent structure of consumers to support their demands. They consistently used lawyers to fight in the courts, to lobby in the state capitols, and, later, to handle cases before the California Agricultural Labor Relations Board.[12]

CHARTBOOK 7 (1975).

10. Dawley, *Black People Don't Have Legal Problems* in A. GINGER, THE RELEVANT LAWYERS 219, 220 (1972).

11. Of course, our women clients are often required to go to court, as defendants in criminal and civil cases. Sometimes it is possible to win something affirmative in the process of defending a client's interests.

12. Some UFW lawyers also joined the original staff of ALRB, providing experienced approaches to recurrent problems.

Domestic workers suffer from the kind of low pay and status common to migrant farm workers before the Delano strike. Their position has been defined by the fact that the majority of domestic workers have always been black women, often struggling against the remnants of the nineteenth century slaveowner ideology that slave women were property, both as slaves and as women. Can we make a breakthrough in the next decade, similar to the remarkable changes in the status of migrant farm workers, so that domestic workers get $5.00 an hour, plus coverage in medical and pension plans, vacations with pay, sick-leave, and protection against layoffs based on seniority?[13] To do so will certainly require the help of dedicated lawyers, assisting efforts already begun to build domestic workers' unions, and a solidarity group of consumers who will boycott scab employers as we all boycotted scab grapes.

Of course, raising the pay of domestic workers would create havoc for women who work outside the home and hire domestic workers to do some of the tasks they used to perform before they went to work in industry. The women doing industrial work would have to seek pay raises also, so they could afford to pay the new domestic worker rates. This would certainly nudge the women working in industry to demand the kind of wages men have long demanded.[14]

The lawyer who agrees with this scenario will be willing to represent domestic workers in their efforts to organize and improve their working conditions,[15] and will fight, case by case, for equal pay, and against discharges for refusal to work overtime or to do work that was not contracted for. Advocates will face the common question: are such wages for domestic work outlandish? The answer must include an awareness of the experience and age of the domestic worker, and comparisons with the income of men who now do the same or similar work. What is the real income of

13. There is little doubt that if women who work without pay in their own homes doing domestic work discovered that they could earn $5.00 an hour, with Social Security, paid vacations, and pensions, by doing the same work elsewhere, there could be a remarkable shift in spousal relationships. Yet $5.00 per hour only means $10,400 for 52 forty-hour weeks.

14. As men and women pay higher wages for domestic work, their views on its value are likely to change, as well as their views on the worth of those who perform this kind of work.

15. For suggestions, contact California Homemakers Association, 3500 Stockton Blvd., Sacramento, CA 95820.

a private who performs domestic work for an officer in the Armed Forces, or of a chef in a restaurant with a union contract?[16]

While representing domestic workers and other underpaid women workers in traditional jobs, it is also important to continue and increase representation of pioneers in nontraditional jobs for women. Clearly, pay is higher in these skilled trades, and, although the work is physically heavy and often seasonal, it gives women the freedom to work awhile at one job in one city and, on completion, to take time off, or to go to another city or to a job of a different kind in the same trade. These are rights few women have had in the past, and some women will find them very valuable.

However, the bulk of women workers are not now in the skilled trades and are not seeking to enter these trades. It is unlikely that large numbers of women will ever become plumbers, industrial carpenters, or steamfitters, for two reasons. There are not many people in these trades today, and the number is not growing rapidly. Industrialization in the United States has meant the diminution of the proportion of skilled crafts workers in each generation. The current bitter strikes in one industry after another, from printing to warehousing, have been over changes in work that mean the slow elimination of jobs so that workers' sons, to say nothing of daughters, will not be able to enter the same field of work.

The second reason some women will not enter the old skilled trades is that they are not conducive to another part of life that is meaningful, namely, pregnancy, childcare and family life. The highest-paying jobs in the skilled trades require several years of apprenticeship and heavy work that is often dangerous and may require moving from one area to another for weeks, months or years. We must take and win the cases of women seeking to work in these fields, but while these job characteristics persist, large numbers of women are going to want to continue to work at traditional tasks.

C. A Little Help from Our Friends

Another test in selecting cases to handle pro bono is to choose those in which it is possible to get a little help from our friends.

16. As lawyers, we will be reminded that students straight out of law school are now starting at $30,000 per year in some Wall Street firms.

While it is frequently necessary to struggle alone for a principle or to win a case, when the goal is to win it is wise to find whatever allies are available without compromising on the principle.

Black men, Chicano, Asian, and Native American men[17] are natural allies of women who seek to end discrimination on the basis of sex. Throughout our history, the black movement and the women's movement have worked together to their mutual benefit, and when they have failed to work together it has been to their mutual detriment. All of us are familiar now with the fact that the women's movement in the United States grew directly out of the abolitionist movement, which drew both men and women into its ranks. Abolitionists were early and constant supporters of the struggles of women before and after the Civil War.

In looking for sources of strength in our litigation, we find our most useful tool is Title VII of the 1964 Civil Rights Act.[18] That tool was given to us by the civil rights movement, which was basically a movement of black people and their white allies demanding an end to the worst features of race discrimination. The modern civil rights movement, like its predecessor, included both men and women. The women's movement as we know it today did not exist in 1964. It did not cause the adoption of Title VII. It is really the *product* of the civil rights movement and Title VII, rather than the gadfly that brought about the prohibition of sex, as well as race discrimination in Title VII.[19] This suggests that lawyers who agree to handle cases of sex discrimination in employment should analyze how this litigation will affect minority men in the same industry or shop, and pick those points for concentration where common cause can be made.

Additional allies may be found among older men workers and those who are disabled. Both groups are beginning to organize and litigate to protect their right to employment.

What about labor unions? Will they enthusiastically support litigation on behalf of women workers? Obviously there is no sim-

17. Hereafter, I may use "blacks" to include all racial minorities, since the word "minorities" conveys a negative sound, while writing the full list each time is cumbersome, and the phrase "Third World" seems inappropriate to describe United States citizens of color who are so intimately connected with life and work in the United States.

18. 42 U.S.C. §§ 2000e-2000e-17 (1976).

19. One prevalent theory is that a Southern senator amended Title VII to add the word "sex" in order to gain additional opponents and defeat the prohibition against race (and sex) discrimination in employment.

ple answer to this question. When pushed hard enough, "big labor" has supported the rights of women, in negotiations with management, in fighting grievances, in lobbying for legislation, etc. In the course of organizing or winning a new contract, labor finds it needs the support of women workers and minority workers. Between contracts, when that push is lacking, union leaders have often failed to see that defense of the rights of women is part of the defense of all workers.

In fact, women workers offer a classic proof of the truth of the slogan, "an injury to one is an injury to all." When employers can pay women lower wages than men, and can speed their work up faster than men's, many employers will try to lay off men, reorganize their jobs somewhat,[20] and offer them to women.[21] The only real answer to this natural tendency is to fight for pay raises and lower production quotas for women, along with general efforts to improve working conditions.

But any study of United States labor unions today will show frequent failures to follow this course. In some industries, labor unions pose a threat to women's rights that is seemingly as great as the threat posed by employers. This has led to the view held by many women and their lawyers: "I'm against Big Business and Big Labor." On closer examination, this view has little validity. Big as labor may be, its power is less than Big Business in a qualitative sense. A union can keep women out of the work-force or supervisorial positions if it wishes to do so *and* the employer concedes. But an employer determined to hire or upgrade women can fire any worker who refuses to go along.

The employer's power is more basic than a union's. The employer can decide to close a factory, to cut out the night shift, to decrease the force by half, or to move the plant from one city to another, one part of the country to another, or, more and more frequently today, from the United States to a foreign country.[22]

20. Employers will do this to lighten loads that must be lifted, or reposition machinery for somewhat shorter workers, for example.

21. Consider, for example, what has happened to typesetting in the past century in the United States. In the 1860's, this was a highly-paid job for union men who had completed a rigorous seven year apprenticeship. Today, non-union women typists often find themselves typing "camera-ready copy" to be used in offset printing, at a rate of pay far below the rate paid their union brothers before they lost their linotype jobs to computer typewriters.

22. For model contract clauses and resolutions on runaway shops, *see* International Longshoremen's and Warehousemen's Union, *Job Security in Hawaii and Longshore*, 31 LAW. GUILD PRAC. 1 (1973).

Labor unions do not have this power to turn jobs off and on. They can only react to the work-force the employer decides to employ in a particular place at a particular time. Because of their family ties, women workers are traditionally less mobile than men workers, so a change of shift or job location usually means loss of the job for a mother or wife. This is another reason for labor leaders to seek support from women workers against runaway shops, and, in return, to support women's litigation against management.

A dynamic also comes into play when women workers organize to demand rights on the job and in the unions. A certain momentum develops that changes the relationship of the status-quo leadership to the women activists. This has already led to the organization of the Coalition of Labor Union Women (CLUW), with official support from the male leaders in most international unions, and increased organizational support for working women's demands and for the goals of the women's movement generally.

Lawyers who represent women who work in unorganized shops learn very quickly, along with their clients, that in union there is strength. Women often take their first step toward self-respect and independence when they gather in someone's home to talk about a specific grievance on the job. This can be the first step to power, to some control over working conditions. Women lawyers may be asked to describe the fundamentals of labor relations law to individual women clients who have begun meeting with their friends to deal with their problems jointly. This legal advice parallels the lawyer's suggestion of a support group around any case with political implications, and may lead to the organization of a rank-and-file caucus. If your client starts a group with women only, she may later add men who are willing to work with women on issues of primary concern to women. Where a rank-and-file caucus is already in existence trying to push the union leadership into greater activity, the women with grievances may find instant support. And their lawyers may find knowledgeable witnesses, as well as prospective clients and people who will contribute to the costs of litigation and attorney's fees.

Lawyers for working women can also get a little help from the United States Constitution, the Bill of Rights, some of the other amendments, from state constitutions, and from the United Nations Universal Declaration of Human Rights and Declaration of the Rights of the Child.

This is not to suggest that we limit litigation on women's issues to constitutional questions. We cannot afford to do so because our constitutional development contains a serious gap. During the New Deal which grew out of the Great Depression, this country amended its fundamental law, its unwritten constitution, to say that people cannot be permitted to starve to death or to live in abject poverty when the economic system cannot provide them with jobs. Congress passed a whole series of bills to provide welfare for the people when they were not able to find work to pay for their own food, clothing and shelter; the President signed these bills, and in time the Supreme Court found them constitutional. These measures effectively amended the responsibilities of government, but were never translated into constitutional amendments. Therefore, it is often possible for a woman who has been treated unfairly to demand enforcement of a regulation issued by an administrator or of a statute passed by a legislative body, even when the Constitution does not specifically authorize the administrative regulation or the statute. The Equal Rights Amendment is intended to fill this constitutional gap.

D. Issues Amenable to Administrative and Legislative Action

This constitutional development suggests another guideline for selecting litigation on which to work when the choice is open to a lawyer. Try to find issues that are amenable to administrative and legislative action, or which come under state constitutional guarantees. These may be better issues than those requiring litigation, and especially better than those requiring litigation in the federal courts in this Nixon-Burger Court era, when the highest appellate federal court is moving away from decisions on the human rights issues that made the Warren Court famous.[23]

23. Brennan, *Address to New Jersey Bar*, 33 Law. Guild Prac. 152 (1976). We must also recognize the disability under which we are suffering in seeking to raise women's issues with the Court at this time. Justice Powell, in his opinion for the Court in Regents of Univ. of Cal. v. Bakke, 438 U.S. ___, 98 S. Ct. 2733, 2738 (1978), included this one-sentence statement of his understanding of our problems: "More importantly, the perception of racial classifications as inherently odious stems from a lengthy and tragic history that gender-based classifications do not share." *Id.* at ___, 98 S. Ct. at 2755. We will have to do some careful analysis to determine the best way to teach Justice Powell, and probably several of his brothers, the long and tragic history of gender-based classifications, and especially of classifications involving both race and gender.

But we should have few illusions even as to the Warren Court. While Chief Justice Earl Warren indicated in many ways his belief in equality for women, in his autobiography he did not feel called upon to mention a single woman practicing lawyer. The one woman lawyer he mentioned quit her job to become his administrative (not legal) assistant. E. Warren, The Memoirs of Chief Justice Earl Warren (1977).

This scanty evidence explains why many women feel the need for affirmative action

What is the strongest weapon United States women have today to support their legal efforts? It isn't their money, because working women (from professionals to domestics) bring home, on the average, about half as much as men.[24] The women with great wealth are few in number and historically have shown little concern for the legal problems of working women.[25]

Lawyers and clients discover that women's strongest potential weapon is their political power. This is due to the contradiction on which our political-economic system is based. All people (originally all white men) are equal at the ballot box, although they are, of course, unequal at the bank. A registered voter may have no job and no savings to tide him or her over a period of economic depression. In this circumstance, those with power in the bank use their own and borrowed money to try to buy power at the voting booth, that is, in the political arena.

Women are in the reverse situation. They can use, and withhold, their votes for candidates and on ballot propositions. More, they can expend, or withdraw, energy from election campaigns. Today they know how to raise campaign chests and elect candidates. If women campaign for successful candidates who are concerned about women's issues, their lawyers will have entree when they go to these elected administrators or legislators for help in solving a client's problems. Women lawyers can therefore fashion their legal strategy so that the forum is often political rather than judicial, and the pressure is political rather than economic.

What does this mean for the lawyer with a client disciplined or fired for refusing to work overtime because she has no one to take adequate care of young children at home after finishing her eight-hour shift and commute? The lawyer may file an individual lawsuit. She may also suggest that she be retained to write a brief to present to the city council, county board of supervisors, or state legislature supporting legislation forbidding compulsory overtime and making it a punishable offense for an employer to fire or fail

in education and employment until men in power discover their own prejudices and begin to overcome them.

24. According to the BUREAU OF LABOR STATISTICS REP. No. 536 (1978), women earned on the average $5,000 less than men in most large urban areas in the United States. For example, in 1975, women with college degrees earned an average of $10,861 compared to $17,891 for male college graduates.

25. There are, of course, notable exceptions, including the well-to-do wives of Chicago businessmen and industrialists who supported the work of the Hull House women; *see* text accompanying notes 71-74 *infra*.

to promote anyone who refuses to work overtime.[26] Preventive action which addresses the problem as a whole may be more effective than remedial action which deals with the problems of a single client.

This suggestion creates two problems for the lawyer. First, we are not taught in law school how to get new legislation or new regulations adopted by legislatures and administrative agencies. Law school training focuses instead on litigation. This requires women lawyers to hone their skills in administrative work—writing proposed regulations for administrative agencies, for example—and to learn to write and lobby for legislation that will help all women in a particular class or group.[27]

Second, lawyers are not taught how to convince clients or women's organizations to send them to the state capitol to lobby for a bill rather than, or in addition to, filing a lawsuit in court. Certainly corporate lawyers do not spend most of their time in litigation or in courtrooms. They lobby, one way or another, for important changes in the Internal Revenue Code, in OSHA regulations, and in tariffs. The same persuasive arguments corporate lawyers use to convince their clients to send them to lobby a legislative body or an administrator must be used by lawyers for women to convince their clients to pay for assistance in legislative work. While legislators are more impressed with rank-and-file witnesses testifying from personal experience, they like to read a well-drafted legal memo on legal questions raised by pending bills.

Certainly the passage of one legislative act, Title VII of the 1964 Civil Rights Act,[28] has revolutionized litigation on women's issues, in conjunction with the Civil Rights Attorney's Fees Awards Act.[29] If we can lobby for the enactment of germinal legis-

26. *See* text accompanying note 59 *infra*.

27. Women lawyers are also expected to participate in other forums in which advances for the women's movement may be made, such as demonstrations (most notably the recent ERA-extension demonstration in Washington, D.C.) and through political parties. These are areas in which lawyers have no more expertise than anyone else, which suggests that it is good for us to participate with our sisters and brothers, and to learn from them about non-legalistic approaches to basic questions. Very often these non-legalistic approaches will be more convincing to non-lawyers with whom we deal as lawyers (including jurors and witnesses) than are the legalistic approaches we learn in law school.

28. 42 U.S.C. §§ 2000e-2000e-17 (1976).

29. 42 U.S.C. § 1988 (Cum. Supp. 1978).

lation, our clients should feel that their legal fees were well spent, even though we pass a law rather than win a case in the Supreme Court.

E. Friend or Intervenor

Women lawyers may also be asked to represent interested parties not included in litigation when it is first filed, either by filing amicus briefs or by intervening. These tools need to be sharpened to their finest point because it is so expensive to litigate from scratch. Intervention is particularly important in lawsuits that are not properly constructed to raise all of the pertinent issues or to present all of the facts necessary to their fair resolution.

In this era, lawsuits are frequently brought by A, who alleges an interest in the rights of X and Y but who, in fact, benefits from keeping X and Y disunited and powerless. For example, it was a labor contractor, an employer of domestic workers on an hourly or daily basis, who sued to abolish compulsory payment of premium overtime. Homemakers, Inc. alleged it was fighting for women's liberation and equality for men when it attacked the California statute protecting premium overtime pay for women only.[30] In fact, the Attorney General of California was interpreting that statute together with the California Equal Pay Act[31] to require premium overtime for both men and women workers. The resulting litigation involved only an employer who had everything to gain by paying straight-time after eight hours a day, and the California Industrial Welfare Commission, which put a male lawyer into the courtroom to defend an administrative decision. The judges heard no passionate exposition of the history of the fight for premium pay after eight hours per day, no sharp delineation of the need for time-and-a-half pay to a worker receiving the minimum rate permissible under the Fair Labor Standards Act.[32]

We have seen the same problem in the *Bakke* and *Weber* anti-affirmative action cases,[33] in which neither the white male

30. Cal. Indus. Welfare Comm'n v. Homemakers, Inc., 356 F. Supp. 1111 (N.D. Cal. 1973), *aff'd*, 509 F.2d 20 (9th Cir. 1974), *cert. denied*, 423 U.S. 1063 (1976).

31. Cal. Lab. Code § 1197.5 (West 1971).

32. 52 Stat. 1060 (1938), 29 U.S.C. §§ 201-219. *See* discussion in Ginger & Mischel, *Which Side Are You On: The Contradictions When Homemakers Protected Blue Collar Workers*, 1 Women's Law Journal 27 (1977).

33. Regents of Univ. of Cal. v. Bakke, 438 U.S. ____, 98 S. Ct. 2733 (1978). Weber v. Kaiser Aluminum & Chem. Corp., 563 F.2d 216 (5th Cir. 1977), *cert. granted*, 47 U.S.L.W. 3401 (U.S. Dec. 11, 1978) (No. 78-435).

plaintiffs nor the defendants, the University of California Regents and Kaiser Aluminum, were prepared to put into the record the facts that could have won the cases.[34] Any minority or women's group in *Bakke* would have presented evidence on discrimination against minority and women applicants in the past that would have provided the basis for the affirmative action program the Regents instituted at the University of California at Davis. In the absence of such facts in the record, it was virtually impossible for the Supreme Court to hold that particular affirmative action plan constitutional.[35] The parallel problem in *Weber* led the United States Department of Justice to ask the Supreme Court to vacate and remand the case for the taking of further testimony. Instead, the Court granted certiorari.

The same problem arose in the Proposition 13 litigation in the summer of 1978, in which the only parties arguing before the California Supreme Court were cities, counties, and boards of education on the one hand, and the attorney general and tax assessors on the other.[36] Nowhere in the courtroom were there parties arguing that Proposition 13 discriminated against women and minorities, in particular, because the jobs lost through cutting services were jobs only recently gained by women and minority workers. Nor was there anyone to argue that the loss of child-care services discriminated against women, the main childrearers in our society at this time, making it impossible for women to go to work because they had no appropriate place to leave their children.[37]

Women lawyers need to be particularly attuned to all litigation involving disadvantaged groups (minorities, older workers, and disabled workers) that will have an impact on women's is-

34. *See* Lawrence, *When the Defendants Are Foxes Too: The Need for Intervention by Minorities in 'Reverse Discrimination' Suits*, 34 LAW. GUILD PRAC. 1 (1976).

35. Whether they would have upheld the plan on a proper record it is impossible to say. *See* Ginger, *Who Needs Affirmative Action*, 14 HARV. C.R.-C.L. REV. ___ (1979).

36. Amador Valley Joint Union High School District v. State Bd. of Equalization, 22 Cal. 3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239 (1978).

37. The California Supreme Court granted leave to file an amicus brief raising these issues on behalf of women's, mothers', and black lawyers' organizations, Brief for Union Women's Alliance To Gain Equality, et al., as amici curiae in Support of Petitioners, but did not discuss or rule on these points. The court also denied the mandamus petition by labor unions and their members, only permitting them to appear amicus. Cal. State Council of Serv. Employees Int'l Union v. Tinney, No. 23846 (Cal. Sup. Ct., filed June 7, 1978). Copies of briefs on file, Meikeljohn Civil Liberties Institute, Berkeley, Cal. Moore, et al., *Proposition 13 v. The People*, 35 LAW. GUILD PRAC. 65 (1978) (excerpts from mandamus petitions and briefs).

sues. Without intervention in such cases at the trial court level, there is no way a record can be made that will raise the women's issues so that the courts at the trial and appellate levels can reach decisions that will be fair to women.[38] It is not enough to file amicus briefs at the appellate level because they cannot put facts into the record from which the court can reach conclusions,[39] although they may do a better job of discussing legal questions than a recalcitrant party's brief. This was certainly true in the *Bakke* case, which generated numerous, well-written amicus briefs at the highest court level,[40] none of which could cure the defects in the record made below.

III. ANOTHER PART OF THE FOREST

It is possible to start a consideration of the legal problems of women in another place entirely, that is, with sex and sex relations. There is no doubt that the status of women in this country or in any country cannot be changed markedly unless certain changes are made in the attitudes of women and men, and of institutions, concerning sex questions. Whenever we try to win cases for clients demanding reproductive rights, we face remnants

38. *See, e.g.*, Weber v. Kaiser Aluminum & Chem. Corp., 563 F.2d 216 (5th Cir. 1977), *cert. granted*, 47 U.S.L.W. 3401 (U.S. Dec. 11, 1978) (No. 78-435).

39. One of the problems in the women's litigation field is that we do not have any equivalent, so far, for those uncorruptible Southern white federal judges, who know in their souls that race discrimination has existed in the past in the South and continues to exist in the present. When a black plaintiff (individually or for a class) alleges race discrimination, such a Southern white male federal judge quickly finds that a prima facie case of race discrimination has been made. The judge then requires the defendant—employer, school board, board of supervisors, or whomever—to present proof that the particular policy complained of by the plaintiffs does not encourage or perpetuate race discrimination. This simplifies the job of the plaintiff, and makes it much less expensive to litigate race discrimination cases in the South.

Two of the problems in the *Bakke* case were failure of the defendant University to make such a prima facie case and the unwillingness of the courts in California to find race discrimination simply from the facts showing very low enrollment of minority students in medical schools.

When women allege sex discrimination, based on statistics showing very low participation by women (as employees, students, apprentices), it would save a great deal of money and time if some judges showed their awareness of widespread sex discrimination and put the other side (employers, school administrators) to their proof.

40. *See, e.g.*, excerpts from the Amicus Brief for the United States, in Bell, *How Discrimination Hindered Minorities in Medicine*, 35 LAW. GUILD PRAC. 97 (1978); from the Amicus Brief for Columbia, Harvard, Stanford, and University of Pennsylvania, in Hardin, *Why Universities Developed Admissions Programs to Increase Minority Enrollment*, 35 LAW. GUILD PRAC. 118 (1978); from the Amicus Brief for the National Fund for Minority Engineering Students, in Ginsburg, *No "Racially-Neutral Means" Will Reduce Under-Representation in Engineering*, 35 LAW. GUILD PRAC. 120 (1978). Each contains invaluable statistics not easily collected. All briefs are on file at Meiklejohn Civil Liberties Institute, Berkeley, Cal.

of the old ideology that women are the property of men. This must be confronted and defeated to win for women control over pregnancy, abortion, and sterilization. We cannot make a breakthrough in attitudes toward rape as a major crime of violence against women until we erase the old idea that rape is a crime against male property rights. It isn't the theft of the virginity or chastity of a man's wife or daughter that makes rape a felony; it is the violent assault on the privacy of a woman's very self.

Lawyers representing women often have to deal with specific questions arising out of old attitudes toward women's rights:

> Should women without money be able to get safe abortions?[41]
>
> Should women with little money be able to bear children and raise them properly if they wish to do so, or should doctors be able to sterilize indigent women with one or more children whom our society labels "illegitimate" because their parents did not go through a marriage ceremony?[42]
>
> How long after she has been raped or battered can a woman attack her tormentor and claim self-defense?[43]
>
> When can a woman who works at home without pay obtain spousal support, and how much is she entitled to?
>
> When can unmarried women seek community property on the dissolution of relationships that did not involve legal marriage?
>
> How can mothers receiving financial aid to raise their children, maintain their dignity and right of privacy by refusing to turn in the men who are the fathers of their children so the state can collect child support from them?
>
> Lawyers deal with many questions of women arrested for prostitution. For example, can their clients obtain legal protection from their pimps or the managers of the houses of prostitution without losing their livelihoods? Can black and other minority women who walk the streets get the same treatment from the law as white women who cater

41. *See* cases in A. GINGER, HUMAN RIGHTS DOCKET U.S. 1979, § 171.100 (Meiklejohn Institute 1979).

42. *Id.* § 171.40. Contrast the United Nations Universal Declaration of Human Rights, art. 25(2): "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

43. *See* cases in A. GINGER, *supra* note 41, at §§ 325, 359.

> to more affluent clients? Women lawyers do not yet have a handle on these questions, any more than men or women lawyers know how to put a stop to selective prosecution in general.

A mere listing of these issues makes it obvious that most have an economic, as well as ideological, base. If women have enough money, they do not need to ask society to pay for abortions. If they are working in an industry with a good medical care plan, they can simply go privately to doctors in the plan and have their abortions. No legal questions are raised and the women's actions are none of society's business. Wealthy women can marry a series of men who father their children and desert them without social inquiry or disapproval, because the women can afford simply to raise their children by themselves.

There is also a close interrelation between lifestyle and economic questions. Many women today want to combine three facets of life: meaningful relations with another adult, childbirth and childcare, and work in the society. This need and desire of women has created pressure to permit permanent, well-paid part-time work. However, changes in lifestyle require acceptance by industrialists and businessmen. As inflation increases, fewer parents are going to be able to bankroll their children's efforts to live outside the five-day, forty-hour work week. As federal spending for military purposes reaches and maintains astronomical proportions,[44] the federal government will have less money available for all social and human needs, including such simple items as grants to permit experiments in lifestyle.[45]

Women can't work part-time if there are no part-time jobs, or of they need more money than they can earn by working part-time. A woman can't refuse to serve coffee to the boss, or to do almost any other act he demands, unless she has a union (with a lawyer) to insure she can keep the job if she refuses.

It may be that a lawyer ends up at the same point— working on women's issues that relate to income from work—whether she starts with employment problems or with sex-role problems.

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44. *See generally,* U.S. ARMS CONTROL AND DISARMAMENT AGENCY, WORLD MILITARY EXPENDITURES AND ARMS TRANSFERS 1967-1976 (1978). This fiscal year, United States military spending increased $14 billion over last year's record military budget, reaching $112.5 billion, according to the Disarmament Education Fund (Aug. 1978). Arms spending has reached such levels, worldwide, that the United Nations called a Special Session on Disarmament in 1978.

45. *See* text accompanying note 66 *infra.*

IV. THE CONTENTS OF PANDORA'S BOX

Many legal issues relating to employment will be found in Pandora's box containing the troubles of the world. Some are not yet being litigated and some will be litigated for a very long time to come.

1. *Unequal Pay:* Perhaps the most important single task for the women's movement, and therefore for the lawyers representing the movement, is to put more money in the purses of women who work outside the home. This requires a major onslaught on unequal pay for the same or similar work. A study and reclassification of every job title involving women workers would document massive under-titling and underpayment for jobs in offices, hospitals, nursing homes, factories, and almost every other place women work.

Today women receive, on the average, half as much money as men who work outside the home.[46] What percentage of this difference is due to unequal pay for the same or similar work, and what percentage is due to women working at less skilled work is not known. Clearly women lawyers are needed to help their clients rethink and re-list every task the women actually perform, to analyze the significance of each function and what the proper title and pay rate for each should be. We have all noticed the recent upgrading in titles in many kinds of occupations. In the legal field, all of the "hearing officers" have become "administrative law judges"; in the waste-disposal field we now have "sanitation workers" rather than "garbage men." Have the titles of occupations in which women work been upgraded to the same degree, and have payscales been raised accordingly?

We are accustomed to thinking of office work, for example, as being nonproductive. Therefore, office workers below the level of supervisors receive notoriously low pay. In a sense, of course, it is true that a person who pays bills and fills out forms is not actually producing a product. But redtape is so unending and critical to trade, and to the very existence of today's businesses, that its manipulators must be properly treated and paid. Moreover, business executives are paid large salaries for work that entails essentially the same tasks. Women lawyers might propose

46. U.S. COMMISSION ON CIVIL RIGHTS, SOCIAL INDICATORS OF EQUALITY FOR MINORITIES AND WOMEN 56-57 (1978).

this subject for a funded study on the status of women, leading to legislative and administrative action, both in and out of government.

2. *Apprenticeships:* Today, apprenticeships for women are not only necessary in nontraditional fields like plumbing and carpentry, they are also becoming increasingly necessary in traditional fields. How can a young black woman who has just graduated from high school get her first job in a field in which none of her relatives has ever worked? The same question can be asked of a young white woman from Appalachia, or frankly, about almost any young man or woman today. The current unemployment rate for black youth is astronomical, several times as high as the very high rate for white youth.[47] These rates are higher than the overall unemployment level, which is totally unacceptable.[48] In these circumstances, securing the first job is critical to one's entire future.

Women lawyers may have to sue to challenge traditional requirements for many traditional jobs because so many young women cannot meet those requirements. We are likely to discover that some of these "requirements" are totally unrelated to competence to do the particular job,[49] but are required only by custom and an employer's wish, to be surrounded by college-trained people, for example. Our legal education may be put to good use if we can open up job opportunities for young women and permit them a wider range of choices of occupation.

3. *Apprenticeships for Older Women:* "Displaced homemakers" often need apprenticeships today. Whether one is eighteen or fifty-eight, breaking into a field of employment may require an apprenticeship. Without regular, paid employment, an older woman may feel useless, unloved, and lonely, becoming emotionally and financially dependent on the nearest relative. This relative is likely to be a young working woman, and a draining relationship may begin at the very moment a daughter needs all of her energy to cope with a new job, a new baby, or some other basic relationship. It is not possible to separate the conditions of the older and younger women. If one is hurt, the other is also.

47. *Id.* at 34.

48. *Id.* at 28, 31.

49. Compare unrelated job requirements in cases challenging race discrimination, Griggs v. Duke Power Co., 401 U.S. 424 (1971).

4. *Affirmative Action:* The equivocal decision of the United States Supreme Court in *Regents of the University of California v. Bakke*[50] means that the question of affirmative action for racial minorities will continue to be litigated for a considerable period of time. Although many groups participated in the *Bakke* case and the affirmative action questions it posed at the Supreme Court level, it could not be said that the women's movement, as such, played a role in that litigation. Now the *Weber* case[51] is before the Court, challenging a voluntary union-employer plan to upgrade black and white workers in an industrial plant on a numerically equal basis. The outcome poses a grave threat to affirmative action. Will the women's movement do more than ask its lawyers to participate as amici?

That probably depends on our perception of affirmative action. Do we feel that women need affirmative action at this time? If not, our participation in cases like *Weber* is no more significant than the participation of any public-spirited group. But if women profoundly need affirmative action in order to enter certain fields or be promoted to certain levels in many fields, then we need to analyze the nature of affirmative action, the derivation of the concept, why it is needed, how to implement it, and for how long. Our failure to participate in affirmative action litigation will leave unprotected the needs and rights of women workers or students, because minority plaintiffs and defendants cannot be expected to deal with the myriad of questions especially involving women, as well as the questions involving race.

Women lawyers may want to study profoundly the kinds of questions posed in *Bakke* and *Weber* in terms of race to see how they relate to issues regarding sex. For example, is some sort of affirmative action program needed in the public education offered to women and girls so they will sharply improve in mathematics, science, physics, and related fields, where they presently do not do as well as men, in general? What kinds of help do women need in order to get into apprenticeship programs? Should society fund programs to coach women for placement examinations and apprenticeships as it now funds a few affirmative action programs for racial minorities wishing to enter some of the professions?[52]

50. 438 U.S. ___, 98 S. Ct. 2733 (1978).

51. Weber v. Kaiser Aluminum & Chem. Corp., 563 F.2d 216 (5th Cir. 1977), *cert. granted*, 47 U.S.L.W. 3401 (U.S. Dec. 11, 1978) (No. 78-435).

52. *See, e.g.*, the federally-funded Council on Legal Education Opportunity (CLEO)

5. *California's Proposition 13 Questions:* Can government bodies stop providing services essential to the livelihood of a class of citizens?[53] Do women have any legal rights when a government agency first grants, and then takes away, childcare that is necessary for them to hold remunerative jobs? This issue was posed most dramatically after passage of Proposition 13 when black mothers in Richmond, who had completed a training program so they could get paying work and get off welfare, faced a return to welfare when their childcare was wiped out, so they could not go to work. Women lawyers may be asked to use their legal skills to propose approaches to this and other problems raised by measures to cut local taxes.[54]

6. *Protective Legislation:* Women lawyers are becoming increasingly involved in issues relating to healthy and safe working conditions. The invalidation, under Title VII of the 1964 Civil Rights Act,[55] of protective legislation which formerly regulated this area has created a need for such legal work. In California, we had the bitter experience of ending 1976 with protections for men and women workers less rigorous than the protections for women alone that existed in 1968,[56] due to the federal courts' interpretation of Title VII.[57] Few working women are satisfied with the answer that "this is all for your own good because it will ultimately provide you with equal treatment with men," when the real subject is equal mistreatment. Clients are notoriously interested in their own particular, immediate needs rather than in long-range solutions.

Women lawyers may want to take a deeper look at the best ways to gain statutory protection regarding conditions affecting

summer program for minority and indigent law school applicants.

53. Perhaps the answer can be found in Reitman v. Mulkey, 387 U.S. 369 (1967), in which the United States Supreme Court agreed with the California Supreme Court that it was not necessary for a state to pass a law forbidding racial discrimination in private housing, but once such a law was adopted, it could not be abolished, even by referendum, without denying equal protection guaranteed by the fourteenth amendment.

54. Another approach to tax cutting maintains that local services cannot be cut much, because they provide human services, and that large cuts can and should be made in the national military budget. *See* debates on H.C.R. 1, the third annual "transfer amendment," to transfer some federal funds from military to civilian purposes (particularly to aid U.S. cities), 95 CONG. REC. H3503 (daily ed. May 3, 1978), S6268 (daily ed. Apr. 25, 1978).

55. 42 U.S.C. §§ 2000e-2000e-17, 78 Stat. 86 (1974).

56. *See* discussion in Ginger & Mischel, *supra* note 32, at 49-50.

57. In Rosenfield v. Southern Pacific Co., 293 F. Supp. 1219 (C.D. Cal. 1968), and Cal. Indus. Welfare Comm'n v. Homemakers, Inc., 356 F. Supp. 1111 (N.D. Cal. 1973), *aff'd*, 509 F.2d 20 (9th Cir. 1974), *cert. denied*, 423 U.S. 1063 (1976).

women and men workers on the job, including health and safety standards.[58] Federal protection has been sharply curtailed by amendments to the Occupational Safety and Health Act (OSHA), as well as by administrative interpretations. We may also be particularly strong advocates of legislation forbidding compulsory overtime[59] and of clauses covering this point in collective bargaining agreements, because many of us have faced the problem of having to finish some work at the office after our baby-sitting arrangements at home have come to an end for the day.

7. *High Unemployment Rate:* The shortage of paying work is common today to women and men, but more women are unemployed at any given moment than are men,[60] and a great many are underemployed. For this reason, women lawyers should be in the forefront of efforts to enforce the Employment Act of 1946,[61] the first step in the United States toward guaranteeing a right to employment.[62] The first litigation to enforce the Act by requiring the President to develop a plan for full employment was unsuccessful.[63] As the employment situation becomes more desperate, women lawyers can help discover how to litigate under this 1946 Act, the new Humphrey-Hawkins Full Employment and Balanced Growth Act of 1978,[64] which mandates a public policy to cut the unemployment rate to 4% and the inflation rate to 3% within five years subject to the priority of reducing unemployment, and the United Nations Universal Declaration of Human Rights standard of full employment.[65]

58. *See, e.g.*, California Industrial Welfare Commission Orders issued in 1976, discussed in Ginger & Mischel, *supra* note 32, at 49-50.

59. *See* Cal. A.B. 1295 (1977-78 Reg. Sess.), which passed the Assembly, but was killed in Committee in the Senate; National Lawyers Guild, *In Support of Bill To End Compulsory Overtime*, 35 LAW. GUILD PRAC. 58 (1978).

60. U.S. COMMISSION ON CIVIL RIGHTS, note 46 *supra*, at 30.

61. 15 U.S.C. § 1021 (1976).

62. Originally intended to guarantee an end to large-scale unemployment like that experienced in the Great Depression of the 1930's, the Full Employment Bill of 1945 was extensively amended before discussed in *Report by a Special Committee on Full Employment, New York Chapter, National Lawyers Guild*, in 5 LAW. GUILD REV. 575 (1945).

63. District 65, Wholesale, Retail, Office & Professional Union v. Nixon, 341 F. Supp. 1193 (D.C.N.Y. 1972) (complaint dismissed, but not for nonjusticiability). Grody, *District 65, Wholesale, Retail Union v. Nixon and Council of Economic Advisors*, 31 LAW. GUILD PRAC. 37 (1973).

64. 15 U.S.C. § 3101 (Supp. 1978). Weaknesses in an earlier, stronger version are discussed in Niebyl, *Hawkins-Reuss Equal Opportunity and Full Employment Bill*, 32 LAW. GUILD PRAC. 79 (1975). For a proposed constitutional amendment guaranteeing the right to employment, *see* Ginger, *The Nixon-Burger Court and What To Do About It*, 33 LAW. GUILD PRAC. 143, 150 (1976).

65. Art. 23(1): "Everyone has the right to work, to free choice of employment . . . and to protection against unemployment." .

Ann Crittenden, writing in the *New York Times* financial section[66] on "Guns Over Butter Equals Inflation," spelled out the problem for United States women, their lawyers, and the society generally in this period:

> Last week the President reiterated an earlier pledge to increase the military budget, by 3% a year above the rate of inflation. That would amount to $123.8 billion in outlays next year, or roughly 25% of all federal expenditures.[67] At the same time, the Administration has decreed a cut of about $15 billion in a broad range of social programs, including Social Security disability insurance, Medicare and Medicaid, the water and sewer programs of the Environmental Protection Agency and the Labor Department's public-service jobs program.
>
> This clear shift in Federal priorities cannot fail to have a significant impact on the national economy. And the consensus among economists is that although the shift toward military spending will benefit some communities and workers, the impact on the nation as a whole will add up to more inflation and fewer jobs in the coming years [because hurry-up military contracts often leave ghost towns behind].

8. *Ten Percent Set-Asides:* Women lawyers need to participate in a movement to get legislation for women subcontractors, similar to the Ten Percent Set-Aside for minority subcontractors on government contracts.[68] Such a campaign could move women out of the bottom levels of most jobs and into those that pay more and provide more interest and status. It may also enable women subcontractors to hire a significant number of women apprentices and journeywomen in high-paying trades.

9. *Supplemental Education:* Women lawyers can argue effectively that women need further education in order to shift from low-paying jobs to better paying ones, particularly after spending years at home performing childcare, which society considers one of our most socially useful tasks. Can we convince the legislators, educators, or judges that women, as taxpayers, citi-

66. N.Y. Times, Nov. 19, 1978, (Sun. Fin. Sec.) at 1.

67. This does not include federal expenditures to pay for past wars (interest on government loans), veterans benefits, or similar costs.

68. 42 U.S.C. § 6705(f)(2) (1977).

zens, and trainers of the next generation, have a right to a meaningful curriculum in a junior college or college in their vicinity? Do they have the right to the continuation of a course even in the face of some tax-cutting proposals?

10. *Parents' Freedom from Fear:* Women lawyers can contribute to adoption of the principle that parents are entitled to freedom from fear that their children are not being properly cared for when they are working and unable to be at home. We ought to be able to convince our fellow citizens that every child is entitled to receive proper and loving care when such care is needed. Our society has been slow to admit that the society loses when a child is abandoned for hours each day, as well as when a child is permanently abandoned by its parents. Yet we know that a high proportion of criminal offenses are committed by young people in their teens when they lack adequate supervision. A high proportion of automobile accidents involve new, young drivers and passengers, and attempts at suicide are most frequent among the young. Parents always worry about what their children are doing if they have to come home after school to an empty house because both parents are working. Workers also worry about their elderly parents, or their disabled relatives, who need some kind of attention during the forty hour work week.

Can women lawyers provide creative solutions to some of these omnipresent problems? At least we can draft legislation, or proposals for clients who want to experiment with new methods of dealing with these questions. Perhaps we can help union women clients negotiate childcare clauses based on the work of the Los Angeles County Employees Union Local 434, which has established four childcare programs at Martin Luther King Hospital, for the children of patients as well as of hospital workers. One program is particularly innovative; it is an effort to help families in which no parent is at home when teen-age children require some attention for a couple of hours each afternoon after school:

> The new program . . . involves a new concept of child care. Everybody under 18 is considered a child and care takes place at people's homes near the site of employment, or near the employee's home. If the child is sick, we will have a score of visiting mothers, homemakers who will be trained under the child care money in the occupational health centers which are sponsored by the State

> Board of Education. They will take over for the mother so she can go to work.[69]

This is a project in preventive law in the most basic sense.

11. *Inequities in Social Security:* There is a whole series of inequities in the Social Security System, well known to experts in that field.[70] We encourage women to work outside their homes for pay and to gain the freedom and breadth such work permits. Therefore, it is our responsibility as lawyers to analyze precisely what inequities are visited on the woman who stays at home caring for children and then goes out to work, but who has not worked long enough at a high enough rate of pay to obtain adequate social security benefits for herself, and who doesn't qualify under her husband's social security for some reason.

Could women lawyers help find a way to include more women workers in pension systems? Surely the women entitled to pensions through union contracts must be infinitesimal in our country today, given the scattered work-records of many women who have, nonetheless, worked for pay most of their adult lives. If young workers want to be able to turn to older women for militant support in union organizing drives and contract negotiations, they must be prepared to fight for proper pensions for women workers, including innovative approaches to the worker who has worked for many employers, and perhaps in many fields in many cities, over her lifetime.

V. NEW STYLES OF WORK

Many women lawyers seem to be looking for new styles of work, new tables of organization in our efforts to provide top-notch legal services to our clients, particularly women and women's organizations needing both traditional and innovative representation. I hope we can build something virtually non-existent in law offices run by men, real cooperation across the generations and disciplines, with a determination to satisfy the needs of the client before worrying about the ego-satisfaction of the lawyer, and without racial or status discrimination.

While we are still relatively few in number, we probably

69. Glenn, *Negotiating Women's Issues*, WOMEN IN THE LABOR MOVEMENT, California State Federation of Labor Women's Conference (1973) 15 (Union W.A.G.E. 1973).

70. *See* materials on age discrimination prepared for workshop, Women Inspirit, Women & The Law 1978, 8th Far-West Regional Conference 14-15 (San Diego).

could establish some model law offices, where it is customary for a practicing lawyer to work with a law professor, a student, an investigator, a sociologist/psychologist/economist/health and safety specialist, as needed. We could apportion the work and responsibilities so that women can shift from part-time to full-time to over-time work as their home responsibilities ebb and flow. We could make time for mothers to visit their children's classrooms without relegating them to low status and pay for this "favor".

We might take lessons from our older sisters of Hull House, who became the first social worker (Jane Adams),[71] the first factory inspector and woman labor lawyer (Florence Kelley),[72] the first practitioner of industrial medicine (Alice Hamilton).[73] We should be able to use each other's professional titles and skills to work for the betterment of all women, as they did so magnificently.[74]

In the process, can we, as women lawyers, use our professional weapons to face the underlying cultural problem of our sex in this era? Can we help women overcome sex discrimination without losing important attributes long associated with our sex? For centuries, women have been leaders in the preservation and transmission of culture,[75] and in the struggle for peace.[76] We may have been home-bound or under-paid, but we have gained longevity through the exercise of birth control and through prenatal care reducing maternal deaths. The challenge to us is whether we can enter fully into the highly competitive industrial world and gain positions of influence and direct power, without losing these qualities. Or are our daughters and grandnieces doomed to be executives in business and government, with attendant ulcers, high blood-pressure, alcoholism, heart attacks, shorter life expectancies, and lack of communication with their spouses and children?

The tools we use as lawyers are well-known. We are taught to read, talk, and think, to study precedents in order to analyze problems, propose workable solutions, and negotiate settlements. We come to realize that we, as lawyers, have little power, stand-

71. J. ADDAMS, TWENTY YEARS AT HULL-HOUSE (1938).
72. J. GOLDMARK, IMPATIENT CRUSADER (1953).
73. A. HAMILTON, EXPLORING THE DANGEROUS TRADES (1943).
74. Described in J. GOLDMARK, *supra* note 72, at 197-203 (1953).
75. M. BEARD, WOMAN AS FORCE IN HISTORY (1946).
76. *Id.*

ing alone with our equitable maxims and legal precedents. Standing with our clients and their supporters, we often can be helpful in drafting language to protect the rights they have won.[77] Can we contribute our skills in analysis and reasoning to help change established patterns and practices in the economic and governmental systems? Can we help women and men keep their jobs and do their work without the current kinds of competition and exploitation that threaten our moral and physical future?

VI. PANDORA'S BOX: THE LAST INGREDIENT

Each year that a lawyer opens her briefcase, her work becomes both easier and harder. Easier, because she knows better how to do the specific tasks she has done before. Harder, because she realizes how small her contribution is to the total scheme of things, and because she begins to perceive that she must expand her perspective in order to have any real impact on the problems of her clients.

If a lawyer devoted full-time to women's issues, if she concentrated on handling equal pay cases, if she won apprenticeship slots for women to become carpenters—even these efforts would not be very meaningful at this time in this country. The problems we face in seeking to improve the status of women are compounded exponentially by the fact that our society as a whole faces three problems of a new and terrifying character: the potential of nuclear war, economic depression and inflation, and renewed political repression.

Although I lived through World War II, I really did not comprehend the horror of that war as it affected the people of Europe and Asia until the figure of six million Jewish dead in central Europe and twenty million Soviet dead began to fully beat at my soul.[78] The commitment of the United States industrial-military complex[79] to armaments as a way of life affects every decision made by the United States government on every issue relating to women. When the Department of Defense takes a bloated 123.8

77. Walker, *The Class Role of U.S. Courts*, 31 LAW. GUILD PRAC. 41 (1974).

78. These figures stay in my head. They are not the total, unbelievably horrible figure of World War II dead, including 291,557 U.S. soldiers and casualties from almost every country on all continents, totaling 17,000,000 battle deaths, worldwide (excluding civilian deaths).

79. President Dwight Eisenhower's worried phrase in his last speech as chief executive.

billion dollars out of next year's budget,[80] it is clear that the federal government will not have money to fund the kinds of housing, education, medical care, and childcare facilities that are needed to change the way most women in the United States live today. When we put a neutron bomb on our national drawing boards,[81] research in every humanistic field loses priority status.

Although I lived through what is now known as The Great Depression of 1929-1940,[82] I am only now coming to see what horrible lessons we learned from that man-made catastrophe. We lost, in those years, the belief that hard work making high quality products brings financial security, and that thrift leads to savings in the bank that are inviolate.[83] Some wise sociologist may yet help us understand why the poverty-stricken children of the 1930's have become the commodity-consumers of the 1970's, who buy on credit without counting the environmental (and international) costs. Some woman scientist may yet spell out the specific psychic effects of the Depression on modern women. The President and his advisors tell us we now face another recession/depression in our country in the midst of inflation, a new phenomenon of unknown depth and length. This is bound to wipe out many of the gains we have made in getting new and better jobs for women.

Although I lived and fought my way through the Cold War repression now known as McCarthyism,[84] it is only now, as I skim the 100,000 documents obtained so far in *National Lawyers Guild v. Attorney General,*[85] that I begin to comprehend the extent to

80. Crittenden, *quoted in* text accompanying note 66 *supra.*

81. "The Illegality of the Neutron Bomb," statement of Lawyers Committee on the Illegality of the Neutron Bomb, *reprinted in* 95 CONG. REC. S15137 (daily ed. Sept. 14, 1978).

82. "Unemployment had begun to recede only very hesitatingly at the beginning of production for World War II. The unemployed were absorbed mainly in the military, rather than in expanding war production." Neibyl, *supra* note 64, at 80.

83. The 1933 "bank holiday" to end innumerable bank failures remains a valid memory for young and old in that era.

84. *See, e.g.,* A. BRADEN, THE WALL BETWEEN (1955) (Southern civil rights workers indicted for fighting discrimination in housing); L. DECAUX, LABOR RADICAL (1970) (blacklisting in the labor movement); S. FRITCHMAN, HERETIC (1977) (Unitarian and other churches fighting loyalty oath requirements); L. HELLMAN, SCOUNDREL TIME (1976) (playwright and Broadway face AWARE and blacklists); R. & M. MEEROPOL, WE ARE YOUR SONS: THE LEGACY OF ETHEL AND JULIUS ROSENBERG (1975); M. SOBELL, ON DOING TIME (1974); THIRTY YEARS OF TREASON: EXCERPTS FROM HEARINGS BEFORE THE HOUSE COMMITTEE ON UNAMERICAN ACTIVITIES, 1938-1968 (E. Bentley ed. 1971); CIVIL LIBERTIES DOCKET 1955-1969 (A. Ginger ed.) (case summaries).

85. No. 77-Civ.-999 (S.D.N.Y. 1977), described in HUMAN RIGHTS DOCKET U.S. 1979,

which the federal government became the leading law-breaker in our land. As we uncover the surveillance of Bella Abzug and parts of the women's movement, and discover relationships between the surveillance and "dirty tricks" on Martin Luther King, Jr., Malcolm X, Angela Davis,[86] and the early Black Panthers,[87] we can begin to understand why some of our past campaigns have failed. As women, and as lawyers, we can only work effectively for our clients in the legal arena if we fully comprehend the nature of our adversaries. The private individual or organization suing our client may be only one figure in the opposition. We cannot win cases for women activists if we fail to collect materials under the Freedom of Information Act[88] in appropriate cases, to illuminate the role of the FBI as both law-enforcer and law-violator.

Seeking to act like a lawyer while facing up to the realities of past and future depressions, wars, and political repression, I turn increasingly to the document fashioned with conscientious love by Eleanor Roosevelt and the United Nations drafting committee, the Universal Declaration of Human Rights, adopted December 10, 1948, "as a standard of achievement for all peoples and all nations." The Declaration, in its thirty articles, repeats most of our Bill of Rights, Reconstruction[89] and suffrage amendments.[90] It adds, as principles of international agreement and law, many of the social welfare concepts of our New Deal, Fair Deal, and War on Poverty.[91] And then it includes concepts we have not yet accepted, which could sharply increase the status of women in the United States:

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supra note 41, at § 205.11. The long battle of the Lawyers Guild against efforts by FBI director J. Edgar Hoover and Attorney General Herbert Brownell to place it on the list of "subversive organizations" is recounted in Bailey, *The Lawyers Guild Through the Eyes of the FBI*, 34 LAW. GUILD PRAC. 117 (1977); Emerson, *The National Lawyers Guild in 1950-1951*, 33 LAW. GUILD PRAC. 61 (1975); Silberstein, *The Seven Lean Years: 1947-1954*, 33 LAW. GUILD PRAC. 21, 34-37 (1975).

86. Reading B. APTHEKER, THE MORNING BREAKS: THE TRIAL OF ANGELA DAVIS (1975) and A. DAVIS, AN AUTOBIOGRAPHY (1975) taught me the extent to which violence (shootings, death, bombings, jail without bail) plagues black women and men whose experiences (as students, teachers, professionals, political activists) are otherwise not unlike my own.

87. One piece of the story emerged in Hampton v. Hanrahan, HUMAN RIGHTS DOCKET U.S. 1979, *supra* note 41 at § 304, ill. 40. Further information will probably emerge from discovery in Black Panther Party v. Levi, Civ. No. 76-2205 (D.C.D.C. 1976), reported in HUMAN RIGHTS DOCKET U.S. 1979 *supra* note 41, at § 205.14.

88. 5 U.S.C. § 552 (1976).

89. Thirteenth, fourteenth, and fifteenth amendments.

90. Nineteenth (women's suffrage), twenty-fourth (poor people's suffrage/anti-poll tax), and twenty-sixth (18-year-old vote) amendments.

91. Art. 22: "Everyone, as a member of society, has the right to social security . . . ."; art. 23(2): equal pay for equal work; art. 23(4): right to form and join trade unions.

> Everyone is entitled to all rights and all freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[92]
>
> Men and women . . . are entitled to equal rights as to marriage, during marriage and at its dissolution.[93]
>
> Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.[94]
>
> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.[95]
>
> Motherhood and childhood are entitled to special care and assistance.[96]
>
> Everyone has the right to education . . . . Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.[97]

As a practicing lawyer, I see the need to convince the United States Senate to ratify the Conventions[98] based on the Universal

92. *Id.* art. 2.
93. *Id.* art. 16(1).
94. *Id.* art. 23(1).
95. *Id.* art. 25(1).
96. *Id.* art. 25(2).
97. *Id.* art. 26(1) . . . (2).
98. The United States Senate has never debated ratification of the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Optional Protocol to that Covenant; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination, and other international instruments on narrower issues. *See* Human Rights Law Materials prepared by Lawyers Committee for International Human Rights, 236 East 46th St., N.Y., N.Y. 10017.

Declaration, so that they, as treaties, become part of our fundamental law. Then we can begin to bring the state and federal governments before the bar of justice for specific violations of human rights not spelled out in our 200-year-old Constitution.[99]

Is this a utopian dream? Where can we find the energy to devote to international law when we cannot even get jobs for our clients in certain fields, or save them from discriminatory layoffs?

I don't have the answer, but I know what impels me to keep active on both levels. I worked for four years on Market Street near the Civic Center of San Francisco, not far from Golden Gate University. I watched each day as law students mingled with women and men begging for jobs or coins, trying to pick up a trick, walking in a daze due to drink, drugs, or mental illness. From this backdrop I flew to Cuba last year for a meeting of the American Association of Jurists,[100] and I observed no such apparitions in downtown Havana. I realize that Cuba is no larger in population than the city of New York and that I saw little in one week, so that no precise parallels are appropriate. Nonetheless, the problems of urban women and youth displayed daily on our downtown city streets were not apparent in that city, and the Cuban lawyers proudly displayed their new Constitution containing commitments to full employment[101] and equality for women[102] and all racial groups.[103]

So I am propelled forward by the desire to learn whatever we can from other countries that may improve the lives of our clients and ourselves. And I am determined not to be pushed backward by involvement in another war or depression, or by fear of the rebirth of Joe McCarthy and the Cold War.

Other women lawyers from the United States may gain perspective by visiting Latin American countries, both those suffering from what the local people consider to be United States imperialism, and those benefiting from what the local people con-

99. *See, e.g.*, Newman & Burke, *Diggs v. Richardson: International Human Rights in U.S. Courts*, 34 LAW. GUILD PRAC. 52 (1977).

100. *See* Constitution of American Association of Jurists Resolutions of 2nd Inter-American Conference on Juridical Aspects of Independence (Panama 1975), on file at Meiklejohn Civil Liberties Institute, Berkeley, Cal.

101. CONSTITUTION OF THE REPUBLIC OF CUBA, art. 44.

102. *Id.* arts. 41, 43.

103. *Id.* arts. 41, 42.

sider to be Cuban socialism. We need to learn how our economic and governmental policies affect the status of women in neighboring countries, and how these policies, in turn, impinge on our status here.[104] This is particularly important to California lawyers, because we may see tens or hundreds of thousands of Mexican men and women seeking to return to land once part of Mexico, if they cannot earn a living in what is left of their native country.[105] This will change the very language of California, and require a more profound understanding of the multi-racial character of our society.

Unlike the nations of Europe, Asia, and Africa that have suffered war on native soil, we in the United States tend to doubt that war can ever come to our shores. We, in the women's movement, concentrate on more immediate questions, like adoption of the Equal Rights Amendment, how to elect women to office, or how to start a Women's Bank.

The realities of politics and finance will not leave us alone, nor the foreign policy of the United States, which is deeply involved with countries on the brink of war. We face danger from continued relations with South Africa, where apartheid is practiced to its vicious extremes,[106] with the brutal military dictatorship in Chile,[107] and even with the British Empire, in the face of its military and economic repression of Northern Ireland.[108] Few women lawyers in our country have as yet found time to participate in the Women's International League for Peace and Freedom,[109] Women for Racial and Economic Equality,[110] Union Women's Alliance to Gain Equality,[111] and similar organizations. As the number of women lawyers increases, and we find a little

104. The most obvious connections can be made between United States government support of foreign governments that harass labor unions and the movement of United States industries to those countries, running away from organized women and men workers.

105. *See* Treaty of Guadalupe Hidalgo (Feb. 1848), 9 Stat. 1848, T.S. No. 207 (ending the Mexican-American War).

106. *See, e.g.*, COALITION FOR A NEW FOREIGN AND MILITARY POLICY, HUMAN RIGHTS ACTION GUIDE 1978, at 13 (1978).

107. *Id.* at 11; NON-INTERVENTION IN CHILE, CHILE NEWSLETTER (Mar.-Apr. 1978).

108. *See, e.g.*, Amnesty International, *Northern Ireland Charged With Prisoner Maltreatment*, MATCHBOX (Summer 1978).

109. G. BUSSEY & M. TIMS, WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, 1915-1965 (1965); the national office is at 1213 Race St., Philadelphia, PA 19107; there are WILPF chapters in many U.S. cities, as well as abroad.

110. 266 W. 23rd St., N.Y., N.Y. 10011.

111. P.O. Box 642, Berkeley, CA 94701.

time to be free from our clients' immediate concerns, more of us may participate in such organizations. Women have a long history of concern with commerce and with peace in international relations. When we see the unity between our clients' fight for women's liberation and the need for peace, political openness, and full employment, we will find the energy to take steps to achieve all of these goals. Once we are able to lift our heads up beyond the immediate problems in employment and sexual relations that tend to overwhelm us today, we can become a significant force for social progress.

The last ingredient in Pandora's well-known box of troubles has been woman's constant companion. If women lawyers are to fit all of Pandora's problems into our briefcases, we must surely leave room for: hope.