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SYMPOSIUM INTRODUCTION: WOMEN'S WORK IS NEVER DONE: EMPLOYMENT, FAMILY, AND ACTIVISM

*Kristin Brandser Kalsem & Verna L. Williams**

In 1996, Dianne Hibbs was in a life-transforming accident. The car in which she was a passenger collided with another vehicle, leaving her with a severe neck injury.¹ She underwent surgery to address the problem, which left her with acute and chronic arm and neck pain.² As part of her treatment, doctors placed a metal plate with screws in her neck.³ These screws presented a danger to her esophagus, requiring her to be extremely careful when moving her body lest she suffer a fatal puncture wound.⁴ By the spring of 1997, Dianne's condition was deteriorating: she was plagued with complications such as liver damage and addiction because of prescribed pain medication, anxiety attacks, clinical depression, and suicidal tendencies.⁵ Doctors prescribed additional surgery and constant care at home—the caregiver of choice was William, Dianne's husband.⁶ The problem for William, however, was getting the leave from work necessary to care for his wife without jeopardizing his employment.⁷ When William became embroiled in a dispute with his employer over whether and how he might take advantage of the recently passed Family and Medical Leave Act (FMLA),⁸ he unwittingly took his place in a long line of United States Supreme Court litigants who challenged the way our society treats gender differences. In the spring of 2003, the College of Law, under the auspices of the Joint Degree Program in Law and Women's Studies⁹ sought to explore the significance of this case, *Nevada Department of Human Resources v. Hibbs*.¹⁰

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1. Respondents' Brief in Opposition to Petition for Certiorari at 3, *Nev. Dept. of Human Res. v. Hibbs*, 538 U.S. 721 (2003) (No. 01-1368).

2. *Id.*

3. *Id.*

4. *Id.* at 4.

5. *Id.*

6. *Id.*

7. *Id.*

8. 29 U.S.C. §§ 2601-2654 (2000).

9. The Joint Degree Program was the first of its kind in the nation, established in 1995. Students in the program earn a J.D. and an M.A. in Women's Studies. Through the program, they engage in a rigorous, interdisciplinary study of the law, taking such courses as Gender and the Law and Feminist Jurisprudence at the College of Law and Women and Diversity and Feminist Theory through the Department of Women's Studies. Students also research, prepare, and defend a Master's thesis.

10. 538 U.S. 721 (2003).

At issue was whether a private individual could enforce the FMLA's guarantee of 12 weeks of unpaid leave in a suit for damages against a state employer, a question of state immunity under the Eleventh Amendment.¹¹ In the course of deciding that issue, the Court examined the purposes animating Congress's enactment of the statute, and in so doing revealed its transformative potential. Specifically, the Supreme Court identified the FMLA as part of the nation's umbrella of civil rights laws, based on Congress's intent to dismantle gender-based stereotypes concerning caregiving that for too long had limited women's employment opportunities.¹² The Court noted that employers historically had denied or limited women's advancement in the workplace based on assumptions that when work and family conflicted, the latter would—and should—prevail.

The FMLA challenged those presumptions by providing family leave on a gender-neutral basis, giving men the opportunity and incentive to care for family members. In this sense, the Court suggested that the FMLA has the potential to infuse in the workplace the norm of family care, signifying that this important aspect of life is not solely the province of women. The consequences of this societal change would eradicate barriers to women's employment and advancement on the job. The Court noted:

By creating an across-the-board, routine employment benefit for all eligible employees, Congress sought to ensure that family-care leave would no longer be stigmatized as an inordinate drain on the workplace caused by female employees, and that employers could not evade leave obligations simply by hiring men. . . . [Thus], the FMLA attacks the formerly state-sanctioned stereotype that only women are responsible for family caregiving, thereby reducing employers' incentives to engage in discrimination by basing hiring and promotion decisions on stereotypes.¹³

In this regard, the Court further classified the FMLA as an important tool in combating the subordination of women. Namely, the statute's gender-neutral guarantee of family leave would better achieve Congress's remedial goals than "a statute mirroring Title VII, that simply mandated gender equality in the administration of leave benefits Such a law would allow States to provide for no family leave at all," an outcome that might have satisfied formal equality, but in practice, would have facilitated ongoing oppression of women in the workplace.¹⁴ Thus,

11. *Id.* at 724.

12. *See id.* at 736-37.

13. *Id.* at 737.

14. *Id.* at 738.

the Court identified and placed the constellation of work/family issues among the important civil rights matters of our day.

The *Hibbs* case and the opportunities that it presented to rethink issues of work/family, the legal subordination of women, and the law as an agent for social change seemed an ideal focus for the inaugural symposium of the Joint Degree Program. Rich in its implications, the case would serve as a springboard for the type of interdisciplinary discussion and analysis that we hoped to foster. We also wanted to host a symposium of a different kind, one that would be in keeping with the aspirations of the Joint Degree Program. Specifically, in the spirit of feminist jurisprudence, we wanted the symposium to focus on putting theory into practice.¹⁵ We also wanted to promote discussion across boundaries—not only boundaries between the academy and the “real world,” but also disciplinary boundaries, and boundaries between students who claim feminist issues as their own and those who, for a variety of reasons, may feel distanced from feminist discourse. Two specific aspects of the symposium were designed with these goals in mind.

First, the symposium was structured to move toward activism. While there was time allotted for questions and discussion after both the keynote address by Joan Williams and the panel discussion with Peggie Smith and Nancy Dowd, the final event of the day was a “Working Lunch.” As the participants (speakers and audience) moved from the formal auditorium setting to tables set up with box lunches, the conversations sparked by the morning presentations moved with them. At the lunch, questions and comments were offered from students, women working part-time, full-time, and on maternity leave from downtown law firms, a pastor from one of the local churches, and faculty from departments across campus (Law, Sociology, African-American Studies, English, Women’s Studies, Social Work, Political Science, and History). These discussions continued well into the afternoon as many participants moved again to a coffeehouse down the street. In this way, strategies for the activism that the title of the symposium promised began to take shape.

The second “different” aspect of the symposium was the complementary directed readings course on work/family issues that we taught in connection with the event. In this course, students read books and articles addressing various work/family issues, including several pieces

15. See, e.g., MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 3-4 (2d ed. 2003) (“[M]ore than other schools of thought, feminist theories are apt to emphasize the importance of concrete changes in society and to stress the interaction between theory and practice. Theory tends to be valued not for its own sake, but for its capacity to give meaning to women’s experience and to allow women to articulate their experiences more fully.”).

by each of the three speakers. Students in this course were actively involved in planning the symposium and had the special opportunity to pose questions that we discussed in class to the authors themselves. Fifteen students enrolled in this class and, as we had hoped, the structure and topic of the course attracted a more diverse group of students than either of us were used to seeing in our Feminist Jurisprudence and Gender and the Law courses. As the *Hibbs* case makes clear, and as the directed readings course bore out, work/family is one of those areas in which more people see the relevance of "feminist" issues in their own lives. In this sense, the course succeeded in realizing a larger goal of the Joint Degree Program. It integrated standard-fare women's studies discussions of the implications of gender, race, class, and sexuality on issues of policy into the law school curriculum. One student who described the course as "an awakening" commented on how grateful he was to have had an opportunity to view legal issues through a feminist lens. Another student reflected that the experience of the course and the symposium had, "for good or bad," made her realize how far we still have to go to find practical solutions to work/family issues that appropriately take into account issues of race, class, and gender.

The articles that follow, in the spirit of the symposium, provide a starting point for rethinking the implications of *Hibbs* as a catalyst for change—for tearing down the maternal wall, for building up protections for caregivers, and for expanding the discourse to make real differences in the lives of workers and families.