Public Hearing

before

SENATE JUDICIARY COMMITTEE

"Testimony regarding the Seaman case
and handling of sexual harassment
complaints against judges"

LOCATION: Committee Room 7
Legislative Office Building
Trenton, New Jersey

DATE: September 9, 1993
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator William L. Gormley, Chairman
Senator Louis F. Kosco
Senator Bradford S. Smith
Senator Edward T. O'Conner, Jr.
Senator Raymond J. Zane
Senator Robert J. Martin

ALSO PRESENT:

Senator Randy Corman, District 19
Assemblywoman Harriet Derman, District 18

John J. Tumulty
Office of Legislative Services
Aide, Senate Judiciary Committee

Hearing Recorded and Transcribed by
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New Jersey State Legislature

SENATE JUDICIARY COMMITTEE
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TRENTON, NEW JERSEY 08625-0068
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NOTICE OF PUBLIC HEARING

The Senate Judiciary Committee will hold a public hearing on **Thursday, September 9, 1993 at 10:00 AM in Committee Room 7, Legislative Office Building, Trenton, New Jersey.**

The hearing will be held on the following:

The Seaman case and the handling of sexual harrassment complaints against judges.

The public may address comments and questions to John J. Tumulty, Committee Aide, or make bill status and scheduling inquiries to Karen M. Hovemeyer, secretary, at (609) 292-5526. Those persons presenting written testimony should provide 10 copies to the committee on the day of the hearing.

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SENATOR WILLIAM L. GORMLEY (Chairman): I would like to thank you all for coming today. This hearing is designed to deal on a perspective matter, and when we deal with something perspectively, obviously we're going to look at some overview of recent events. But what we are going to do is review the recent case in which, unfortunately, a Judge of the Superior Court was charged with sexual harassment; found by the Supreme Court to have been guilty of the commission of sexual harassment; and his decision not to remain on the bench.

It is not the intent of the Chairman of this Committee to make or focus on anyone's errors for the sake of public relations. This is an unfortunate tragedy, and what we want to do is see what we can do so that the public has confidence in the process in the future.

This Committee -- the members of the Legislature sitting with me -- have been very circumspect, I believe, given the volatile nature of these types of charges, so that we were very careful to make sure that the independence of the judiciary was not affected while we were engaging in this review process. I am, quite frankly, very proud of Senator Corman, Assemblywoman Derman, and also Republican and Democratic members of the Committee who I polled before this hearing was originally scheduled. The support we received cannot be categorized as political, because it came from both sides of the aisle.

What we want to do is address the situation perspectively. We will call witnesses who are obviously familiar -- one in particular is obviously familiar with the case -- and then we will seek comment and conclusion from the Administrative Office of the Courts as to what decisions they have made upon reflection on the facts that have been related in this case, and upon what their procedures will be in the future.

As I said, I certainly appreciate what has been a very delicate balancing procedure between what some could perceive as the Legislature getting involved in matters of the judiciary, and quite frankly, I think it was handled as it should have been, as a clear message: We should not be involved in the day-to-day dealings in the judiciary. We should obviously not be involved in the influencing of their decision-making process. We should never have an elected judiciary in New Jersey, but if there are certain circumstances where the court might have erred in a conclusion, that there is an appropriate level of oversight. For those who over the years have said there is not oversight, I think this has proven the point, and it is unfortunate that the point had to be proven. But it was proven. There is oversight and there is a balance in this State.

I'd like now to ask Senator Corman to make comments, and his comments will be followed by Assemblywoman Derman. Then we'll call our first witness.

SENATOR CORMAN: Thank you, Senator Gormley. I really just have two brief points that I'd like to make. The first is just to describe the reaction that I've gotten from the average citizen since I first had something to say about the Judge Seaman matter. The response from just average people on the street has just been overwhelming. It would seem ever since I first spoke out on this matter, people would stop me wherever I was to express support, to express their outrage, and, in fact, it's still happening. Yesterday a woman stopped me in a diner while I was having breakfast, and talked to me about it.

I think the problem that is really highlighted by this public reaction is that the Seaman case, and how the Supreme Court handled it, left a large number of our citizens with the impression that there are two standards of justice. There is one standard of justice for judges, and another standard of

justice for everyone else. Obviously, if we are to have confidence in our system of justice, people cannot be allowed to have that kind of impression.

So that's why I would like to thank Senator Gormley for taking the lead on this, also Assemblywoman Derman for offering to drop in an impeachment resolution. But I think Senator Gormley deserves special praise, because I know that he is a firm believer in the independence of our judiciary, and as a defender of that independence, he also realizes that if that independence is to endure, the integrity of the judiciary must be ensured. So that's why I think Senator Gormley's sensitivity to this issue is a key factor in ensuring that progress is going to be made, because I think he realizes, as do I, that if the judiciary does not reform itself, someone else will want to step in and do that for them. That's why I think this hearing is a positive step in helping and ensuring that the judiciary does take the proper steps to reform themselves.

SENATOR GORMLEY: Thank you.

Assemblywoman Derman?

ASSEMBLYWOMAN DERMAN: Mr. Chairman, and members of the Committee, I speak to you as an Assemblyperson and as the former President of the Middlesex County Bar Association. I laud your efforts, Senator Gormley, to confront the problem of sexual harassment in the courtroom, and to hold a public hearing on the subject. Unfortunately, many individuals still do not get it, and the problem of sexual harassment continues unabated and grossly underreported. The reason I am focusing on this aspect of sexual harassment is that when I became involved in exploring the possible impeachment of Judge Seaman, the positive comments I received outweighed the negative comments by approximately 99 to 1.

The sole critical comment I received came from a lawyer who wrote to me as follows: "I have a further concern about this whole situation with Judge Seaman. It is no secret

that he has had female law clerks for a number of years. I find it surprising that when this story finally broke, other female law clerks did not come forward with similar allegations."

This statement from an attorney -- a well-educated man -- suggests a total absence of any understanding of sexual harassment and the silence which is implicit in its evil. It is a sociological fact that sexual harassment is underreported. Testimony has been admitted from experts in various trials throughout the country that reticence is common in cases of sexual harassment. The Equal Employment Opportunity Commission noted that although individuals are offended by certain contacts, they are reticent to report it for fear of losing jobs; creating controversy; not being believed; not being supported; or generally making matters worse.

One Appeals Court, in Vincent v. Taylor (phonetic spelling), a 1985 opinion, held that the peculiar problem faced by a victim in sexual harassment is cruel trilemma, in which the victim must choose among acquiescence in the harassment, opposition to it, or resignation from her job. Studies have shown that although approximately 50 percent of workers surveyed had experienced sexual harassment at work, only 22 percent of the total surveyed reported ever having complained to a coworker.

Susan Estrich in her article, "Sex at Work," published by Stanford Law Review, wrote, "Silence may well signal the shame, humiliation, fear, and dependence of the victim. The infrequency of reports of harassment is not reflective of the extent to which women are harassed, but rather their need to keep their jobs."

Governor Florio's Executive Order 88 found that fear of retaliation, loss of privacy, and unease about confidentiality, along with a lack of faith in the complaint

process accounts for the underreporting of sexual harassment. An inconsistent behavior is not at all uncommon. Of course, Judge Seaman's attorney would have us believe that Ms. Denny could not possibly have been harassed by Judge Seaman because she once complimented the Judge on dining out for lunch. Sexual harassment is ubiquitous. It occurs, or has the potential to occur, in courtrooms, in police stations, in schools, in manufacturing plants, and in the State House.

This is not about being called sweetie, or dearie, or honey, but about the rude comments, the inappropriate gesture, the unnecessary touching, and the unreasonable taking advantage of differences in authority, no better symbolized than by a Judge of the Superior Court -- and a presiding Judge at that -- victimizing a young and impressionable judicial clerk. This gives him an authority not unusual in the workplace -- represents a stunning imbalance of power. I want people to know that when women are sexually harassed in the workplace, including courtrooms, they do not always do what we think they should do: report, complain, or simply quit. When we understand it, then we can eradicate the problem.

Thank you, again, Mr. Chairman. I really want to point out how well you have conducted this whole controversy, and I also want to congratulate Senator Corman for the way that he handled himself in this matter and the results which were obtained.

SENATOR GORMLEY: Thank you.

Unfortunately, well, some days it's good, some days it's bad to be the Chairman. When it's a bad day, it's all your fault. But quite frankly, I'd like to thank the members of the Committee. They were polled. Senator Smith, Senator Kosco, and Senator Martin are here. And also, the Democratic members of the Committee were polled. We were very sensitive. We are proud of this Committee, and its responsibilities were taken quite seriously. We wanted to handle this in as

circumspect a manner as possible, at the same time while addressing the situation. I'd like to offer the opportunity to the Senators, if any of them would like to make a comment before we call the witnesses? (negative response)

Thank you.

First witness, Nancy Erika Smith.

N A N C Y E R I K A S M I T H, ESQ.: Senator Gormley, Senator Corman, Assemblywoman Derman, and members of the Committee, I appreciate the invitation to speak to you today. Your interest in the issue of sexual harassment in general, and discrimination in the court system in particular, is important and timely. As a woman who works in the system, it gives me hope.

After I briefly describe some of my own experiences as a female attorney, I will describe for you the process which my client, Barbara Denny, encountered after she suffered sexual harassment by her employer, Judge Edward Seaman, and give you my comments on what was wrong with that process.

I was born and bred in New Jersey. I'm a graduate of Montclair State College, Rutgers Law School in Newark. I was admitted to the bar in 1980. I'm also admitted to the bar as of the Third Circuit, United States Supreme Court. I'm Secretary Treasurer of the Executive Committee of the Labor and Employment Law Section of the New Jersey State Bar Association, and sit on the Executive Board of the National Employment Lawyers Association.

In my career as an attorney, I have encountered attorneys and judges who represent the best of our profession. I have also learned a great deal from some of the brightest, best, and wisest judges. I have experienced sexism and hostility from the bench and the bar as well, however.

Shortly after I graduated law school, I began to work for a law firm in Newark that did Workers' Compensation law. I was new to Workers' Compensation Court on the day I appeared in

front of Judge Grzankowski in Elizabeth. Within minutes of appearing in his chambers with the insurance company lawyer, Judge Grzankowski shook his finger in my face and said, "You better watch your step. I don't like girl lawyers. I'm telling you, I don't like girl lawyers. I'll give you an affidavit if you want." Today I would have taken the affidavit; back then I was terrified and extremely embarrassed.

A few months later, I was sitting in the attorney conference room at the Elizabeth's Compensation Court with about 10 male lawyers. Judge Witkowski walked into the room and began to converse with a few of the lawyers. At one point a male lawyer asked the judge if he would like the lawyer to get up and give the judge his seat. The judge pointed at me, but didn't look at me, and said, "No, I'll sit on her lap." He didn't know my name; he didn't address me. The men in the room thought that was an hysterical comment. I was extremely humiliated.

I will not catalog every instance like this, although there are many others. I am not alone. My female colleagues have suffered insult and disrespect of almost every type. I am hopeful, however, that because of the events of the last few months, the interest of this distinguished Committee, and brave politicians who have come and spoken out that my daughter will not ever experience what I have endured, or what my mother endured. Now, she's only two years old, so we have a little time to get our act together.

When I first read in the newspaper about Barbara Denny's allegations against Judge Seaman, I immediately believed her. I believed her because I had appeared in front of Judge Seaman some years earlier. After the argument in the case, I had to go to Judge Seaman and pick up an order because both sides were taking an emergent appeal. Judge Seaman invited me into his chambers, shut the door, leaned across his

desk and said, "That was an excellent argument. But, then again, when I look into your eyes, you could tell me black was white and I would believe you." I don't know how to describe how I felt. I thought I had done a good job in the argument.

As lawyers we're not always consistent. Some arguments you feel you really did a good job; you've mastered the facts in the law; and you are articulate. That's how I felt about the argument, and being complimented by someone with prestige, power, and experience means a lot. Having that compliment turn into sexual harassment, and turning you into a sex object is devastating. So I believed Barbara Denny. After I met Barbara Denny and she asked me to represent her and I heard her tell her story, I believed her even more.

You know Ms. Denny's case. I'm not going to repeat the facts and circumstances which led to the New Jersey Supreme Court decision based upon her complaint. The Supreme Court articulately and poignantly described her nine-month ordeal. I would like to discuss the process she went through to have her complaint heard, and the process she is still going through to redress what happened to her.

After nine months of extremely crude sexual harassment, Ms. Denny complained to the Assignment Judge in Middlesex County, Judge Herman Breitkopf, in June of 1989. Although Judge Breitkopf did assign Ms. Denny to work for other judges for the remainder of her clerkship, it was done in such a way that coworkers and other judges could have surmised that it was her behavior that caused the move.

Now, as far as we have been able to ascertain, Judge Breitkopf took no action against Judge Seaman or to facilitate an investigation of Ms. Denny's allegations. In August, as her clerkship ended, Ms. Denny filed a complaint with the Advisory Committee on Judicial Conduct. At that time and today there was no other internal mechanisms for her to bring her complaint to the attention of her employer, the judiciary. She didn't

want to sue, go to a lawyer, or go outside the judiciary because she wanted to protect her confidentiality. The ACJC took three and one-half years to investigate her complaint. Justice delayed is justice denied.

Then Ms. Denny was subjected to an adversarial and humiliating hearing before the ACJC. During the hearing, Ms. Denny's mother was asked if Ms. Denny was a "feminist". Ms. Denny's mother was questioned about Ms. Denny breaking off an engagement in law school. Ms. Denny was also subjected to extremely disrespectful cross-examination. For instance, in her written complaint Ms. Denny had complained that Judge Seaman had commented when she was holding a pen, that he said, "I wish that was my penis." During her oral testimony, she referred to it as a pencil. A member of the Committee held up a pen and said to her, "Do you know what this is?"

When the ACJC issued its findings and publicly released Ms. Denny's name without even notifying her that it intended to do so, she was humiliated publicly. She learned of the decision from the press. The ACJC recommended only a public reprimand. During the three and one-half years that the ACJC was investigating, Judge Seaman continued to sit on the bench. He was not even removed from sex discrimination cases. The taxpayers continued to pay him a salary. He continued to hold a job which provided him with both prestige and privilege.

More than four years after Barbara Denny first complained to Judge Breitkopf of sexual harassment, the New Jersey Supreme Court wrote a progressive and important decision in the case -- until the last page. As you know, after finding Ms. Denny credible and expressing outrage at Judge Seaman's behavior, the Court decided that Judge Seaman should get a 60-day suspension without pay and go to some sensitivity training before he returned to the bench.

The public outcry over this punishment is well-known. Senator Gormley and his Committee scheduled hearings. Finally, after Assembly member Harriet Derman announced that she would introduce articles of impeachment, Judge Seaman resigned.

In his letter of resignation, Judge Seaman indicated no remorse, and, in fact, indicated that he still "doesn't get it." This body was essential in getting a man found guilty of the grossest sexism and sexual harassment off the bench this time.

Although Judge Seaman's lawyer has written in the press that a Judge with a fine reputation has had his career ruined, Norma Rosenblum, President of New Jersey Women Lawyers Association, wrote to The New Jersey Lawyer newspaper this week, answering: "Both male and female colleagues in Middlesex County have frequently reported the Judge's inappropriate behavior and sexist comments in Chambers and off the record. When Barbara Denny's charges became public, the only surprise among those who practice in Middlesex County was that it had not happened sooner." In light of that statement, one wonders where Judge Breitkopf and Judge Seaman's colleagues have been.

Unfortunately, like many private employers, the judiciary has had to learn the hard way. But I have absolutely no doubt that it has learned that any form of discrimination is unacceptable in our court system, and that like private employers, it must implement procedures for training its employees -- including judges -- about all forms of discrimination and how to prevent them.

Employees of the court system must be able to approach an independent person in the judiciary with complaints of discrimination, knowing that: confidentiality will be respected; retaliation will be prohibited; a speedy and thorough investigation will take place; and wrongdoers will be appropriately punished.

I know that you are fortunate to have Cynthia Jacob, a respected officer of the State Bar Association and a formidable management attorney, here today to describe and provide detailed recommendations about how the judiciary should handle such issues in the future. One suggestion I have is to really implement a survey system of both lawyers and litigants, and to use those surveys to both educate and warn judges about inappropriate behavior.

Another branch of government is now involved with Ms. Denny. As you know, she filed a civil suit against Judge Seaman and the State of New Jersey, her employer. The executive branch, through Attorney -- Deputy Attorney General Pamela Katten, has now taken up Judge Seaman's case in the court system. The first thing the State did was file a motion to move the trial to Middlesex County; a motion that was, of course, denied. The State never discusses settling the case. In the private sector this case would have settled months ago. But the taxpayers are now fighting -- now paying to fight Ms. Denny in the courtroom.

I know that some people are now questioning the independence of the judiciary; wondering whether an elected judiciary should be implemented; and questioning the judiciary's ability to police itself. While I have certainly been critical of how this matter was handled, I want to speak against fundamental changes to our system of government.

I'm a civil rights attorney. I represent victims of sex, age, race, ethic, and handicap discrimination. I represent those members of the minority that must be protected if our democracy will survive. An independent judiciary is essential to that democracy.

While this Legislature has been admirable in providing protections through legislation, the courts in New Jersey also have been in the forefront of progressive case law in the areas of discrimination, employee rights, privacy, and school funding to name a few.

Two days before the opinion in the Seaman case, the New Jersey Supreme Court issued a landmark decision in the area of sexual harassment, an opinion which will undoubtedly be cited around the country. A free and independent judiciary is necessary to enable progress and protection for all members of our society. We learned this as a nation in 1954, when the United States Supreme Court decided Brown v. Board of Education. At that time, a majority of people in this country did not favor desegregation of our schools. If Federal judges were elected, Brown v. Board of Education may never have happened. As you know, school segregation was found not constitutional in 1954 and this nation was moved forward in a progressive way. Let's not forget that message.

Finally, I want to thank you again for the honor of discussing these issues with you. Thank you all for being instrumental in helping us all struggle together with these issues to make sure that everyone, in all walks of life, is judged with respect regardless of their sex, their race, their age, or other characteristic. And I want to personally thank Professor Anita Hill for giving me and many other women the courage to stand up and speak out.

SENATOR GORMLEY: Thank you.

Questions from members of the Committee?

Senator Smith.

SENATOR SMITH: I find your testimony extremely interesting. I have been a member of the Bar since 1975, and I haven't personally witnessed any of the kinds of incidents that you described. Maybe I did witness it and didn't realize what I was seeing. But I think that kind of conduct is -- to me it's surprising; it's uncalled for; and I think it represents a rather prehistoric attitude on the part of some members of the judiciary. It's incredible to me that they would make the kinds of comments that you've described.

My question is this: Have you found, in your experience, any distinction between older and younger members of the judiciary with respect to their attitude toward women? In other words, are things changing for the better? Have you witnessed that?

MS. SMITH: Yes, Senator Smith. I happily report that I think things are changing for the better. In the 13 years that I've been an attorney, I have seen more sensitivity-- The funny story that I tell people is that a real turning point for me was my first pregnancy 10 years ago, when judges who had treated me with great disrespect started showing me pictures of their grandchildren. Maybe that helped a little, but I do think that people are being sensitized. I think we have a way to go, but it has improved for me. I also wouldn't tolerate what I tolerated 10 years ago, and I do believe that people who perpetrate sexual harassment pick their victims well.

SENATOR SMITH: Have these kind of things -- these kinds of experiences that you described -- become less frequent than in more recent years?

MS. SMITH: They have become less frequent, but within the last four months I certainly have appeared before judges that interrupted me, spoke to me rudely in open court, made jokes in open court. That was very different from the way my adversary, who was a male, was being treated. I don't think that necessarily it's age -- he happened to be a very senior judge -- but it still happens. It may not be as crude, but as I speak out and become more confident, I think people are less likely to choose me as a victim. But I wonder whether the 25 year old behind me is now the victim.

SENATOR SMITH: I know I felt that way one time when I was before a female judge and my opponent was a female attorney. I didn't attribute that to the fact of me being male versus female. I can see where sometimes that feeling could develop in certain situations.

MS. SMITH: Well, it's absolutely true. Some judges have a different demeanor with everyone. Some judges are difficult and I can take that like any male. But I hate to quote Justice Stewart about pornography, but, really, sexism is like that: "You know it when you see it."

SENATOR SMITH: Well, I think what you're doing is good. I think what we're doing here today is good and it needs to be done. I have felt, particularly since I've been on this Judiciary Committee, that the courts themselves have not been doing a good job in policing themselves not only with sexual harassment, but in cases of judicial demeanor. I think judicial demeanor is a very important factor in being a judge that the courts have sort of ignored. I hope that through these kinds of hearings, and your efforts, that can start the change and let the courts do it themselves.

MS. SMITH: I agree. I appreciate that.

SENATOR SMITH: Thank you.

MS. SMITH: Thank you, sir.

SENATOR GORMLEY: Senator Kosco, and then Senator Martin.

SENATOR KOSCO: Judicial demeanor: Do you think that that would be affected in a positive way or a negative way if we either shortened the term of office for a judge and/or eliminated tenure?

MS. SMITH: Even if judicial demeanor was affected, Senator, the price of independence of the judiciary as a civil rights attorney would not be worth it. I would like to see judges held accountable for their demeanor. But shortening terms or getting rid of tenure is a goal I want to speak vehemently against, because I represent the minority members of our society, and in order for them to be protected, the judiciary must be independent. It cannot be controlled by political forces and the current feeling of the majority.

SENATOR KOSCO: Should it be not controlled by anyone?

MS. SMITH: It should be controlled by the judiciary, and I think that this Committee--

SENATOR KOSCO: But if they've proven that they're not able to control themselves, shouldn't everybody be controlled by themselves?

MS. SMITH: I think they should, Senator.

SENATOR KOSCO: The ultimate responsibility comes back to the Legislature.

MS. SMITH: Right.

SENATOR KOSCO: So don't you think the Legislature should have direct oversight over -- as long as we're taking the blame or the credit -- shouldn't the Legislature -- and I'm speaking as a nonattorney--

MS. SMITH: Yes.

SENATOR KOSCO: Don't you think the Legislature should have oversight as long as they're taking the responsibility and are asked to make the corrections when the corrections have to be made?

MS. SMITH: Well, I think that this is the Legislature making the corrections. This Committee meeting-- This press interest is the Legislature doing its job, and I would be shocked if the judiciary ever behaved like this again if a woman complained about sexual harassment. Just as in the private sector-- In my career as a civil rights attorney, I have seen employers learn to change their behavior, to respond differently to discrimination and sexual harassment. I don't believe that the judiciary has any less ability to learn from what has happened here, or any less ability to police itself. It has been a problem, and I agree with you it has to be addressed. I would not speak in favor of addressing it through fundamental changes in our balance of government, because independence of the judiciary is essential to the progressive causes that I fight for in the court system.

SENATOR KOSCO: So you would not be in favor of eliminating tenure?

MS. SMITH: No, I would not, Senator.

SENATOR KOSCO: Because we say the same thing about the education system. We say we shouldn't get politics, elected officials, or people involved internally with the educational system. We should let them do things the way they are supposed to for the benefit of our young people. Yet we consistently talk about eliminating tenure for school superintendents even though we want them to be separate. They want to eliminate tenure for teachers even though they think they should be independent. We're talking about term limitations for us; however, a judge, once he or she goes through the first term, is there forever.

MS. SMITH: Well, there is the impeachment process. I think the impeachment process--

SENATOR KOSCO: There is an impeachment process for us, too, but it never happens

MS. SMITH: Right. Well, I look at the judiciary, Senator, very differently from the school system. And I might agree with you if you proposed massive changes in the school system, because--

SENATOR KOSCO: Because you're not a teacher.

MS. SMITH: That's right. I'm not a teacher, although I've represented some. But I look at those rights, in terms of our democracy, as fundamentally different from the concept of a judiciary and judges that are separated from the--

SENATOR KOSCO: Higher? Above everybody else?

MS. SMITH: No, separated. Not higher, but separated from the majority rule. Because the majority does not always protect the rights of the minority. The majority would not have ended school segregation in 1954, and an independent judiciary is going to help us move in that progressive way. I don't think we can have elected judges or judges that are subject to

the ways of politics, which unfortunately I know that you suffer through, Senator. But it's a different branch of government, and I would object to a judiciary that wasn't indendent or that didn't have tenure for judges.

SENATOR KOSCO: Have you ever met a judge that sits on any bench, whether it be Municipal Court or in the Federal system, that has never been involved in party politics?

MS. SMITH: I don't know that. I'm not a politician, Senator, so I really don't know.

SENATOR KOSCO: Ninety percent of your judges have either been legislators, mayors, or involved in the political process, and that's why they're judges in the first place. They don't suddenly become a judge and then eliminate all that background.

MS. SMITH: Well, can't the Senate address that in the confirmation process and the tenure process? If people who are not qualified to be judges are being proposed because of party politics, I would hope that this body would speak out during the confirmation hearings.

SENATOR KOSCO: But once they've received tenure, someone has to bring them up on charges.

MS. SMITH: Well, hopefully after seven years if that judge is not qualified to sit on the bench and represent an independent judiciary in our democracy-- I hope that this body would speak out then.

SENATOR KOSCO: Okay.

SENATOR GORMLEY: Maybe we can have a rule that a politician wouldn't recommend a name. That way we could have it totally buffered.

MS. SMITH: Great.

SENATOR GORMLEY: Senator Martin.

SENATOR MARTIN: Just a little bit of a clarification. You spoke about and I understand and appreciate your thoughts about the independence of the judiciary. Since

this is a legislative body, and while we're concerned in looking specifically at the Judge Seaman matter with respect to what the Legislature should and can do, absent impeachment proceedings; absent, perhaps, hearings in appropriate circumstances to look at general issues, such as sexual harassment-- Do you see us trying to create some kind of a mechanism such as proposed by Senator Corman, where the Legislature itself would try to devise some kind of a body that would be able to review internal matters with the judiciary? Is that a good idea? Do you think it's something that we should just excuse ourselves from, other than perhaps making recommendations to the court?

MS. SMITH: Well, Senator, honestly I haven't reviewed in detail Senator Corman's proposal, but I do think that the judiciary can learn from this process today to police itself. I would be nervous about losing independence of the judiciary and making the judiciary subject to the Legislature looking in on how it handles its affairs, other than at the seven-year appointment process when tenure is granted.

I would love to see the Legislature review the surveys that allegedly the judiciary does. But if they don't, they should -- of litigants and lawyers that address issues like discrimination and demeanor, as Senator Smith was discussing. At that point, this body has a great deal of power over who gets tenure in this system. Other than that, I would like to at least give the judiciary an opportunity to implement procedures which are more workable.

SENATOR MARTIN: Given this particular case -- the Judge Seaman matter -- there are two things that I think strike us mostly as peculiar and wrong. First is the amount of the punishment that the Supreme Court decided, and perhaps even more bizarre is the original recommendation that there would be no suspension whatsoever, just simply censure. The other thing is the length of time it took to complete the investigation. I

suppose I could add a third thing, which was the process; as you described in the way Ms. Denny was treated during that process. On those points, was there some excuse, any justification why it would take anything close to three and a half years to conduct this?

MS. SMITH: Senator, I hadn't heard that excuse. I don't know what that is. I know that the ACJC is here today. Maybe the ACJC is overburdened. Maybe that's not the agency to hear this kind of specific complaint. I think that the judiciary should have an independent person, or persons, just for the discrimination issues in the judiciary. It's absurd to take three and a half years. If a private employer did that, I would have the punitive damages award of the century in front of a jury. I don't know what the excuse is, but, again, I would be shocked if it happened again.

SENATOR MARTIN: I gather from what you're saying, then, you don't want us to interfere with the independence of the judiciary. We recognize that policing itself is something that would be preferable. It seems to me that if we follow your logic, then what you would suggest is that we should take a wait-and-see attitude short term, given what's developed here, with the understanding that a hammer could drop if things don't change in the future.

MS. SMITH: I would agree with that, Senator. That really is my attitude. I think that the action that has been taken by the Legislature has been essential in sort of waking people up, and the public outcry has sort of shaken them into consciousness; that this is not going to be tolerated; that judges are not above the law; and that women litigants and lawyers are just not going to take it anymore. But I would like to give the judiciary an opportunity to fix it. I have confidence that they will.

SENATOR MARTIN: Thank you.

SENATOR GORMLEY: Questions from members of the Committee?

Senator Corman.

SENATOR CORMAN: No questions. I just want to thank you for your efforts in this, and if you will also relay my thanks to Barbara Denny. She had to have a great deal of courage to go through what she did. My thanks are on more of a personal level, because my sister is going back to college, and is thinking about becoming a lawyer and going to law school. When I first read about the Judge Seaman case, as an overprotective big brother, I thought maybe I wanted to talk her into another career. But because of your actions on this, because of Barbara Denny's courage and the actions Harriet Derman has taken, I think maybe my sister can go to law school and have a good career. I hope that she becomes as articulate and effective an advocate as you are.

MS. SMITH: Thank you, Senator.

SENATOR GORMLEY: Thank you.

Cynthia Jacob.

C Y N T H I A M. J A C O B, ESQ.: Senator Gormley, good morning to all of you. My name is Cynthia Jacob. I have been a practicing lawyer for 27 years. I, too, can tell my share of tales, but I won't. Today I am appearing as a representative of management. I represent managers in discrimination cases and sexual harassment cases of all sorts. In fact, Nan Smith is one of my honored adversaries.

As you may or may not know, I happen to be the Second Vice President of the New Jersey State Bar Association, but I'm not appearing in that capacity today. However, I think it is important to note that when the ACJC made its recommendation that a public reprimand should be imposed, the trustees of the New Jersey State Bar Association, in an unprecedented move, opted to file an amicus brief with the Supreme Court of New Jersey expressing our thoughts on what should be done regarding

the Seaman situation. Our efforts to appear as amicus were rejected. We were denied that right. However, in a sense, that gave me comfort, because had we actively been involved as a litigant, we would not have been able to speak out as we have since our request to appear as amicus was rejected.

Members of my firm, Patricia Robinson, Rosemary Gousman, and myself prepared the proposed amicus brief. The law against sexual harassment in the workplace is well-defined and dominant. It has been a dominant public policy since well before the Maritor v. Vincent (phonetic spelling) case. In addition to the public policy against sexual harassment in the workplace, a well-defined, dominant public policy favoring voluntary employer prevention -- an application of sanctions in the workplace -- exists. That's right out of the Third Circuit in a case called Strohman Bakeries. Voluntary employer prevention and voluntary application of sanctions against sexual harassment are the issues which must be addressed by the judiciary, by the AOC, and by this body on an ongoing basis.

Ms. Smith has said, and rightly so, the judiciary has probably been awakened by this case, and they should be given a chance, as every other employer is given a chance, to voluntarily police themselves. Now, the obligation of an employer confronted with the charge of sexual harassment in the workplace is well-established. It has been well-established since as early as 1980.

Employers faced with a charge of sexual harassment by an employee are encouraged to be proactive and follow guidelines promulgated by the Equal Opportunity Employment Commission (sic), commonly called the EEOC. In fact, I even goofed the name myself, because I'm so used to calling it the EEOC. They have long had standing regulations which require prevention as part of an ongoing education program by any employer.

In furtherance of their several regulations, the earliest of which were published in 1980, the EEOC has promulgated a series of policy guidances urging employers to create a preventative program which should include an explicit, written prohibition against sexual harassment that is clearly and regularly communicated to employees. For present purposes, employers are directed to have a procedure not only aimed at resolving complaints promptly, but also at encouraging victims of sexual harassment to come forward and report that harassment.

In order to avoid liability in a court of law, when an employer receives a complaint, they must "investigate promptly and thoroughly" and "Take immediate and appropriate corrective action wherever necessary by doing what is designed to end the harassment." In fact, the EEOC and the other bodies charged with applying the law know that these corrective actions range from a mere reprimand, to discharge if necessary, and often do. Even in the absence of a complaint, employers are enjoined to raise the subject affirmatively with all personnel, express strong disapproval of unlawful conduct, and explain the sanctions for harassment. The New Jersey Supreme Court had adopted basically all of these standards when they wrote Lehmann v. Toys "R" Us, which, as you know, came down very shortly before the Seaman opinion was issued.

Because on their own neither the EEOC, nor our own New Jersey Division on Civil Rights have the resources to investigate each and every complaint of sexual harassment, both agencies have actively encouraged self-policing among employers. In exchange for this the EEOC, at least, has recommended, and Federal courts have held -- I don't believe we have any such holding in State courts -- that if an employee becomes aware of sexual harassment, takes proper remedial action which effectively addresses the harassment, the employer cannot be charged with liability. The effect is to eliminate some of the lawsuits, of course.

In New Jersey, as a consequence of Toys "R" Us, there may well still be liability, but by taking prompt remedial action the employer will avoid imposition of punitive damages, which is by far the largest potential quantum of damages which we as employment lawyers face, which our clients as employers face. It is what we are scared of. Of course, you amended the law back in 1990-'91 to provide explicitly for punitive damages, so not only is it in the best interest of the workplace to eliminate sexual harassment, but it's also in the selfish interest of the employer to eliminate sexual harassment, because it in turn shields them from imposition of punitive damages.

Interestingly enough, well before the 1988 EEOC policy guidances our own Adminstrative Office of the Courts had promulgated a brochure in 1985, which is entitled "Sexual Harassment in the Workplace, What is It?" This brochure tells how to file a sexual harassment complaint, describes what trial court and State court employees should do if they wish to file such a complaint. It was remarkable to me in researching the proposed amicus brief to find that the AOC sexual harassment policy is right on the money. It's there; it does what is necessary. It calls for a prompt remediation and investigation. In fact, it calls for it all within, first, a 20-day period to assess the complaint, and basically a completion of the process within 30 days. There's no question that the mechanism is already in place.

Now, viewing the Seaman matter in hindsight, it appears that neither the AOC sexual harassment policy, nor any other procedure consistent with the guidance was followed. It doesn't appear that a supervisory person issued a written determination preceding the ACJC's procedures. It's interesting that apparently what happened here was because Judge Seaman was a judge. They bypassed the clearly stated AOC policy. Had they followed it, the problems we've confronted,

and are still confronting, might not be here, and we might not be holding this proceeding. The fact of the matter is, they had a good, viable policy in place, but I believe because the person against whom the complaint was made was a judge, it automatically got pushed over into the ACJC track without any thought being given to whether it should have followed the AOC track.

Certainly, our courts already have a policy in place. Now the problem becomes: How do we reconcile the rights of the judge versus what is given to an employee under the AOC policy? I know that the representative of the AOC will indicate to you that this case was not presented to the Advisory Committee as a sexual harassment case, rather it was presented, I assume, as a misconduct-in-office case, or as a conduct prejudicial to the administration of justice that brings the judicial office into disrepute. These are very different issues from sexual harassment. It just happened that in this case the misconduct -- or the prejudicial conduct -- took the form of sexual harassment.

As I've said, there were really two tracks which the Seaman matter could have taken: the ACJC track or the AOC complaint track. They are not mutually exclusive tracks and could have both been pursued simultaneously. I must say that I believe the problem lay in how it initially got processed. When Barbara Denny went to Judge Breitkopf, directly or indirectly, that was funneling the AOC complaint procedure. It's what happened thereafter that caused the problem. It immediately got shunted exclusively into the ACJC track, which has different burdens of proof, different procedures, and a very different mission, i.e., to see whether there has been a Rule 2:15 violation of misconduct in office.

We can only assume that the intake personnel failed to process this case along the AOC complaint track because Seaman was a judge. Of course, there is a true dilemma when the

harasser is a judge, because the AOC track does not contemplate a fixed burden of evidence. Its lodestar instead is a good-faith belief based on the facts revealed through a prompt, thorough investigation that a person has been harassed, and the taking of appropriate action based upon that belief.

In other words, the AOC, like any other employer, doesn't necessarily hold a hearing; doesn't necessarily have a due process procedure. They investigate. They investigate rapidly; they do it thoroughly; and they make a determination whether there's a good-faith belief that there's sexual harassment. If there is, at that point the employer is charged to take the appropriate remedial action.

So it's not like what we had at the ACJC, which is a full-blown hearing with testimony and burdens of proof by clear and convincing evidence. An employer, not the judiciary, when faced with something like this, doesn't even have a burden of proof. It's just simply a good-faith belief. Believe me, there are times -- I can tell you as a management lawyer -- when my employer's good-faith belief that sexual harassment has occurred is, in fact, ultimately proved to be wrong. In which case, very often the alleged harasser sues the employer. In other words, employers, in some ways, are damned if they do and damned if they don't. But they jolly well better do a prompt, thorough investigation. If they acted in good-faith, they will have acted before a jury or a judge with impunity.

The conundrum here lies in the remediation phase of the AOC procedure. If a judge is deemed to have sexually harassed someone, the procedure to be followed is in the Rule -- it's R 2:15-8, I know you're familiar with it. Interestingly, Rule 2:15-8 requires the ACJC to make a preliminary investigation. Nothing would prevent the ACJC from following the timeline in the AOC policy when the underlying conduct charged is sexual harassment. This would happen, I trust, so infrequently that it should be only a minor imposition on the ACJC to move quickly.

In other words, if folks are disturbed by the ACJC subsuming enforcement and investigation when a judge is the person doing the alleged harassing, then all that needs to be done is the ACJC can act as the investigator following the quick steps of the AOC procedure. Of course, there are things that need to be worked out, but there are interim steps that could be taken.

Suppose the ACJC were to make the quick determination that's required by the AOC procedure. They could immediately institute the kinds of steps that were instituted here, namely, taking Barbara Denny out from under the clerkship of Judge Seaman, assigning her or Judge Seaman some place else. There are immediate remediations that can be taken, awaiting a more thorough investigation to determine if a more stringent form of remediation should be adopted.

I suggest a hybrid along those lines, whereby the AOC does the prompt investigation required under its procedure, and if it has a good-faith belief that sexual harassment has taken place, like any other employer it can then take what remedial steps it can take, short, of course, of the censure, suspension, or impeachment. But they can refer it then to the ACJC if they don't want the ACJC to undertake the steps from the inception. The ACJC has the limited authority to take certain steps prior to the time they're completely done with the investigation.

There is a precedent for this procedure and we've all be overlooking it. It is in the area of traditional labor law. When an employee is covered by a collective bargaining agreement such that their job is protected, very often steps will be taken against the employee who has misbehaved, if you will. The employee then has every right to file a grievance and follow up on it. So there is precedent for a hybrid procedure such as the one I'm suggesting. But then again, there's nothing to say that the ACJC could not have acted

promptly here. I don't think they were aware of the AOC procedure, and with all due respect to them, I don't know that they were aware of the rapidly developing law of sexual harassment and the absolute necessity to avoid liability by doing a prompt, thorough investigation.

In the end, though, a Gordian knot is created. Unless there is an intervening change in precedent, legislation, or our court rules, a judge engaged in sexual harassment will not be subjected to the same sanctions as an at-will employee, who can be sanctioned up to and including termination without benefit of a hearing or due process based upon a good-faith belief that he or she has sexually harassed another.

But we have to be candid about this. There are certain employees who will not be fired for sexual harassment. The employee who, in effect, is president of the company and sexually harasses will not be discharged from his position, generally speaking, particularly when he is the owner of the business. We have to be realistic. Higher placed employees sometimes can avoid the stringency of the law. But they too, ultimately -- if they do it and they do it badly enough -- will be punished. I myself have on occasion recommended termination of highly placed executives based on sexual harassment, and indeed they have been terminated.

So the law at this point knows no favorites with regard to this form of misconduct in the workplace. But the supreme irony here is that those who are charged with enforcing and upholding the law without fear or favor, in effect, themselves were the recipient of favor.

SENATOR GORMLEY: Thank you.

Questions from members of the Committee? (no response)

Thank you for your testimony.

MS. JACOB: Thank you.

SENATOR GORMLEY: Now, David Anderson, Administrative Office of the Courts.

D A V I D P. A N D E R S O N, JR.: Thank you, Mr. Chairman, and members of the Committee. I have a relatively long statement, so please be patient.

I am pleased to be able to be with you today to describe the judiciary's policy and procedures concerning sexual harassment, as well the structure and operations of the Advisory Committee on Judicial Conduct. Sexual harassment by judges or by court staff directed at employees or any persons who come into the court is a matter of serious concern. The court system has on several occasions announced its policy and educated its staff about sexual harassment, so that the work environment of the courts and the integrity of the court system itself are preserved. We also are engaged in an ongoing effort to improve our procedures and strengthen our policy.

Let me describe to you the current policy of the judiciary, the procedures now in place, and our ongoing work in this area, starting with the judiciary's policy against sexual harassment. Beginning in 1985, the court system has distributed a brochure on "Sexual Harassment in the Workplace" to all employees at the State and trial levels. That brochure was updated and redistributed in September 1991, and since then it has been given to all new State employees.

I have a copy of that 1991 brochure with me, and have provided a copy for you. It seeks to answer questions on both what is sexual harassment, and what the employee should do if she or he is harassed. It encourages the employee to come forward and to talk to the appropriate person about the problem so that it can be resolved, and it assures employees that they cannot be fired for complaining. It refers employees not only to the AOC's Equal Employment Opportunity Office, but also to the Division on Women, the Division on Civil Rights, and the U.S. EEOC.

In addition to the brochure, the judiciary has distributed a short statement of the judiciary's policy on discrimination, including sexual harassment. That's also

provided for you. The most recent update of that distribution was October of 1992, and it went to all current employees and all new hires, as well as being posted on bulletin boards in work centers throughout the courts.

This is the policy statement concerning sexual harassment: The judiciary is committed to the idea that sexual harassment of employees is an abuse of authority and constitutes prohibited unprofessional and unacceptable conduct, which is not to be condoned. Sexual harassment undermines the integrity of the employment relationship, debilitates morale, and interferes with the productivity of its victims and their coworkers. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1) Submission to such conduct is explicitly or implicitly made a term or condition of an individual's employment, or;

2) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions, or;

3) Such conduct has the purpose or effect of interfering with an individual's performance, or creating an intimidating, hostile, or offensive environment.

Now, with regard to the judiciary's complaint procedure and its training program: Any employee may file a complaint regardless of their status as classified, provisional, or unclassified. The procedure is outlined in the 1991 brochure, and it is as follows:

First, the employee should discuss the matter with the employee's immediate supervisor, unless, of course, the complaint is against that person, in which case the employee should go directly to the next step.

The second step varies depending on whether the employee works at the vicinage or the State level. Vicinage employees who are either dissatisfied with the response of

their immediate supervisor, or who are alleging harassment by their immediate supervisor should file a complaint with the Assignment Judge. The Assignment Judge must acknowledge receipt of the complaint, investigate as necessary, and attempt to resolve the matter. If the employee works at the State level, this second step should be addressed to the Administrative Director, who must issue a written determination to the employee.

The third step for vicinage-level employees is to bring the complaint to the attention of the Administrative Director if the Assignment Judge's response has not been satisfactory. The Administrative Director must issue a final, written determination.

All employees are advised of their right to file their complaint before the New Jersey Division on Civil Rights and the U.S. Equal Employment Opportunity Commission.

The procedures are used when the complaints of sexual harassment involve court staff, but when they involve judges, persons are advised to file a complaint with the Advisory Committee on Judicial Conduct. In addition, complainants may bring civil actions for sexual harassment against judges or judiciary employees. In just a moment, I'll describe the ACJC's procedures.

These procedures are not secret. During the late 1980s, every judiciary employee throughout the State and most judges attended a one-day AA/EEO training program. Defining, identifying, and responding to sexual harassment was a major part of that program. A second mandatory training program has been underway for some time. Sexual harassment is a core component of this program.

All judges have received training in gender discrimination issues. The mandatory orientation seminars for new judges have for many years included a presentation by Judge Marilyn Loftus on gender-based discrimination in the courts,

and the Judicial College -- attended by all New Jersey judges each November -- has since 1990 included at least one course on women and the law, sexual discrimination in the courts, or sexual harassment.

Now, with regard to the Advisory Committee on Judicial Conduct: The Supreme Court created the Advisory Committee on Judicial Conduct in 1974 to assist the Court by reviewing allegations of unethical and improper conduct by judges, and by reporting to the Court those matters the Committee believes call for public discipline of the judge.

The Supreme Court appoints the nine members of the Committee to terms of two years, according to a formula that provides for membership from three groups of citizens: retired Justices or Judges, attorneys, and citizens who are not lawyers and who do not hold public office. Unlike similar organizations in other states, the ACJC does not and cannot have sitting judges as members.

At present, the membership of the ACJC consists of two retired Supreme Court Justices: Sidney Schreiber and Morris Pashman; one law professor: Russell Fairbanks, former Dean of Rutgers Law School in Camden; three practicing attorneys: George Kugler, former Attorney General of New Jersey and a partner with the Haddonfield firm of Archer and Greiner; Lorraine Abraham, former Municipal Court Judge and a partner with the Hackensack firm of Schiffman, Berger, Abraham and Kaufman; and Victor Harwood, a former Trustee of the then Client Security Fund and a partner in the Hackensack firm of Harwood Lloyd; and three public members: Robert Comstock, formerly executive editor of The Bergen Record and currently the Assistant Director of the Journalism Resources Institute; William M. Morton, a labor consultant and negotiator for the Steelworkers Union and former official of the NAACP; and Professor Walter F. Murphy, the McCormick Professor of Jurisprudence at Princeton University.

Complaints about judges come to the ACJC from a variety of sources. The vast majority come from litigants, a small number from attorneys, and a few from observers, jurors, witnesses, court personnel, and other judges. Most complaints are sent directly to the Committee's office, but some are referred by other agencies and offices. On occasion the Committee opens a case on its own motion, as, for example, when allegations are reported in the press.

When a complaint is received in the Committee's office, a member of the Committee's staff reviews it to determine if there is more information the Committee will need. The staffer then sends a letter of acknowledgement to the complainant requesting that information and explaining what the ACJC can do and what it cannot do. This is important because most complaints are about judicial decisions, and the Committee has no jurisdiction to determine the correctness of a judge's rulings. A copy of the complaint is then mailed to each member of the Committee. Unlike similar panels in other states, the ACJC does not permit its staff to screen out complaints.

The ACJC meets at least once each month. At the meeting, they discuss each matter among themselves and determine whether there is an indication of improper judicial conduct. If so, the Committee directs an appropriate investigation, which may involve reviewing the tape or transcript of the underlying proceeding, requesting the judge's response to the allegation, or interviewing witnesses. The Committee staff conducts the investigation and reports back at the next monthly meeting.

If the impropriety is relatively minor, such as a minor lapse in courtesy, the Committee may hold an informal conference with the judge. If the matter is more serious, the Committee will issue a formal complaint to the judge and then hold a formal hearing to take sworn testimony and other evidence.

If the Committee finds that the allegations are true, its next step depends upon the seriousness of the offense. In some matters, the Committee may decide to issue a letter of reprimand, admonition, or caution to the judge. Such a letter is private, but if the allegations have been publicized, the ACJC will issue a public statement about what it has done.

In other matters, the Committee files a presentment with the Supreme Court recommending that the Court publicly reprimand, censure, or suspend a judge without pay for a period of time, or it may recommend that the Supreme Court institute proceedings to remove the judge from the bench. The policy of the Supreme Court -- a policy embodied in Court rule -- is that it will make public every matter presented to it by the ACJC. No complaint deemed serious enough for public discipline by the Committee remains confidential.

The Committee staff is now preparing the caseload statistics from the most recent year, but over that time the Committee received 277 complaints against judges. Over the five previous years -- 1987 to 1992 -- the ACJC received 1100 complaints.

The Committee found no basis for pursuing 62 percent of those, usually because the complaint was about a judge's decisions and, therefore, properly the subject of an appeal and not a judicial conduct complaint.

The Committee dismissed another 27 percent of the 1100 matters after the investigation revealed no basis for disciplinary action. In 103 cases, or 10 percent of the total, the ACJC took private disciplinary action, and in 14 cases the Committee filed a presentment with the Supreme Court.

Over the last five years, the ACJC's time to disposition has been declining. Taking the five years as a whole, the average time for all cases that warrant any investigation at all has been 201 days. Those that resulted in a private letter to a judge took an average of 270 days, while

those that were serious enough to go to the Supreme Court -- setting aside the Seaman case, which was the longest -- took 339 days on average.

The Seaman matter has two components. In the one, the Supreme Court disciplined Judge Seaman for sexual harassment. In 1993, the victim of the harassment brought a civil action for money damage against Judge Seaman and the State. We've been advised, in light of the pending civil litigation, to refrain from discussing any of the details of the Seaman matter, but obviously we will respond to questions relating to the matter of public record.

The ACJC rarely receives complaints of judicial conduct that can be described as sexual harassment. In its almost 20-year history, it has had only three cases involving allegations of that sort, including the most recent matter involving Judge Seaman. We have no knowledge, of course, of matters that may have occurred but did not reach the ACJC.

The ACJC is a disciplinary panel. It deals only with the question of whether a judge's conduct is such that disciplinary action should be taken. The Committee does not try to consider the effect that the conduct may have had on others, except to the degree that it makes the proper disciplinary action more severe.

Our ongoing efforts: The judiciary is engaged in an ongoing review of its sexual harassment policy and procedures. The matter involving the Judge has led us to review the way in which we investigate allegations of harassment that are made against judges. Second, we need to quickly incorporate in our administrative procedure the new standard regarding sexual harassment established in the Supreme Court's most recent decisions, such as in the Toys "R" Us case. Finally, we recognize the need to stay abreast of current developments in this area, such as the report of the Governor's Review Committee on Sexual Harassment.

The Chief Justice established in August a Committee on Sexual Harassment. The Committee is chaired by Judge Marilyn Loftus, who is nationally recognized for New Jersey's pioneering effort at identifying and eliminating gender-based discrimination. The Committee has been asked by the Chief Justice to give priority to reviewing the procedures for complaints against judges, and to submit its recommendations in that area by the end of October. He has asked that the Committee complete its work on other issues by the end of this year if possible.

In my conclusion, I do not need to belabor the points we've all heard in recent months. The Supreme Court has disciplined a Superior Court Judge for harassment. That conduct is wrong and it is serious. We must take every step to eliminate sexual harassment in the judiciary. We must respond fairly and expeditiously to complaints of sexual harassment, no matter whom they are directed against. With the results of Judge Loftus' Committee expected very soon, I can assure you that the Supreme Court is determined to meet these needs very, very quickly.

Thank you.

SENATOR GORMLEY: Thank you. Four years, I mean, all the procedures and everything -- four years. That sort of sums up my feeling, and I think everybody's-- To a great degree, the members of the Committee-- Why so long?

MR. ANDERSON: Senator, I think it would be inappropriate to comment specifically on the Denny case, since that is a core issue of this civil matter that is pending in the Supreme Court. But I can say this: The subject of timeliness of the expedition of these complaints is a core issue of the mandate facing the Loftus Committee. So we learn from our procedures. I heard Cynthia Jacob say that we are capable of learning from this. Judge Loftus is taking the mandate, and the Committee is taking the mandate very

seriously. Their first meeting is September 15. An issue -- a clear issue -- in the timeliness of handling these matters is going to be on the top of the agenda.

SENATOR GORMLEY: I'm sorry. The Committee will complete its work by the end of the year?

MR. ANDERSON: No. Well, by the end of this year our policy will be before the Supreme Court for its adoption. The first meeting of the Loftus Committee is September 15.

SENATOR GORMLEY: Okay, so we're talking-- In case your years get--

MR. ANDERSON: I'm talking within three months.

SENATOR GORMLEY: Okay, we're talking the year we're in?

MR. ANDERSON: The year we're in. I beg your pardon.

SENATOR GORMLEY: Okay. Every once in a while there's a little confusion there. You just fade away around this place sometimes. (laughter)

MR. ANDERSON: I can tell you the Chief has asked Judge Loftus to expedite this process.

SENATOR GORMLEY: So without citing specifically the Seaman case, you're saying there will be a new set of procedures.

MR. ANDERSON: I am confident there will be procedures and time frames -- especially procedures on how to handle matters with judges, yes.

SENATOR GORMLEY: Okay, and that will be before the end of the year?

MR. ANDERSON: Before the end of the year. As I read in my statement, the Chief has asked that the matters as they relate to judges be considered by the Committee by the end of October.

SENATOR GORMLEY: Fine. We obviously would appreciate you getting that--

MR. ANDERSON: I can assure you that once I have a report this Committee will get a copy.

SENATOR GORMLEY: Questions from members of the Committee?

SENATOR SMITH: You've indicated that there is need to speed up reaction to sexual harassment cases. It's not a new subject. This has been a subject for years, and my question to you is, what is it in our system that has prevented the judiciary from tackling this problem and recognizing this problem until this late date? You still don't have an effective policy. What is it in our system that has done that?

MR. ANDERSON: I would say to you that the policy works. That this case took four years is, I believe, an exception. I would suggest to you that-- My understanding of the Denny matter, which is very, very limited, is that she even found out about the problem through our training program.

SENATOR SMITH: I don't mean to interrupt you. I'm not questioning the Denny matter. I'm questioning the fact that only now, today, you're coming in here and you're saying, "Well, we recognize that things have to move faster. We can't take 270 days in a sexual harassment case, or we can't take four years in a sexual harassment case." But sexual harassment is nothing new. Now--

MR. ANDERSON: Right. Senator, I would just--

SENATOR SMITH: Now, let me finish. As far as I can see, this thing should have been resolved a long time ago -- this whole issue -- and you should have an effective system in place. You obviously do not have an effective system in place, and my question is, what is it about our system that has caused the judiciary to be so far behind, that even today they don't have an effective system with respect to sexual harassment by judges? If you can answer?

MR. ANDERSON: I can answer in two ways. One, I think we have an effective system. It's going to be made better through this Loftus Committee. We have had a policy-- We were

probably the first branch in State government to have a policy. I think until recently -- I'm not sure what the legislative policy is -- we have one that works. For whatever reason, this one went to the ACJC and not through the steps that Cynthia Jacob described. I can't say that would have made it faster or not. I presume it would have, but it didn't. Someone a lot smarter than me and a lot higher in the judiciary will decide that. I believe that this is an exception, and that our sexual harassment matters are handled in a speedy way. Our examples with nonjudges have been effective.

SENATOR SMITH: I'm not questioning that.

MR. ANDERSON: We have three examples with judges that I know of: Two of them were handled in a timely way; this one was not. There's a lot of this that-- I don't know the details of what went on in the ACJC or the litigation, but my suspicion is it went the ACJC route. It may have gone another route and been handled faster. I don't know that.

SENATOR SMITH: I think the testimony I've heard here today supports the fact that apparently AOC has an effective policy in place with respect to employees. But when it comes to the ACJC and judges, there is no effective policy.

MR. ANDERSON: And I'm saying to you that if there is a flaw in that, the Loftus Committee will resolve it.

SENATOR SMITH: Okay. I don't have anything further.

SENATOR GORMLEY: Senator Martin.

SENATOR MARTIN: Thank you.

Hi, Dave.

MR. ANDERSON: Senator, how are you?

SENATOR MARTIN: Good. Fellow Morris Countian, came from Morris County Courthouse and did a good job there.

Dave, we heard from Ms. Jacob. I think she was suggesting that the AOC procedures seem to be satisfactory, at least from her review. There were no statistics, at least you didn't bring out a lot here, that describe from your experience

whether you felt that they have worked reasonably well. The reason I'm asking you that is because my follow-up question would be: Would you see some reason if they have, in fact, seemingly worked successfully, why they couldn't be incorporated at least procedurally into the ACJC method of dealing with judges?

MR. ANDERSON: I'm not a member of the Loftus Committee, but if I was to be a betting person, I would bet that there would be some discussion within the Loftus Committee about how to bring in the AOC procedures and have them apply to judges as well. I'm sure that's going to be a starting point of discussion. I would say this: The reporting of sexual harassment cases, I believe, has become better because of our training program. I think we had seven complaints in the last year. That's more than the year before, and I think part of it is education. Now, I'm talking about nonjudges when I talk about complaints.

Our education program is beginning to work. People are beginning to understand how to make a complaint, where it has to go, and we're learning to react to them in a very prompt way. Those successes may show and may be available to the Loftus Committee to report them into how they work with judges. I'm not sure what the Loftus Committee-- I don't want to predict what they're going to do, but I would bet that there will be some taking from what works and moving it into the system that may have had a flaw.

SENATOR MARTIN: Is there much or any pending litigation with AOC matters?

MR. ANDERSON: I got a report from our EEO people yesterday that said in the last year we had seven complaints. They range from a charge brought forth by a probationer client, to charges against coworkers and subordinates. There was no disposition made in two of the cases. One charge was deemed by the Assignment Judge to be warrantless. Disciplinary actions

were taken against the perpetrators in two cases. One was a five-day suspension; one was a warning letter; and two are still pending. People are involved. They're getting their hearings, and they're being resolved.

SENATOR MARTIN: Thank you.

SENATOR GORMLEY: Any other questions?

SENATOR SMITH: We're learning here today about the reaction of the judiciary to this sexual harassment situation, how they're dealing with it, and what they're going to do with it. I think it's at a rather late date, as I've already said. That's my opinion.

But there is another concern that seems to be an issue today. It's an important issue, I think, and that is with respect with the judicial demeanor of judges. With respect to that, I want to ask you what is, if anything, the concern of the judiciary and the policy of the judiciary with respect to policing themselves in regard to judicial demeanor? People must absolutely have confidence in our courts, and if judges are going to be rude and obnoxious to people appearing before them, that certainly doesn't give people confidence in our courts. I think it's something that the judiciary has to deal with. What is the judiciary doing in that regard?

MR. ANDERSON: Next to the quality of the decision-making process, we have to say that the judicial demeanor is the single most important thing that goes on in the courtroom. This Committee has the advantage of seeing the Judicial Performance Evaluation Program reports. Key in those evaluations are the reactions of Appellate Judges and trial lawyers to the conduct of a judge in a courtroom.

As you look at the total performance of a judge, it's not just the knowledge of the subject area and the confidence of the decision. It is their conduct in the courtroom that lawyers and Appellate judges, who get to read transcripts and comment on the conduct of judges-- As you consider judges for

that reappointment process, as the Governor's Office does before their nominations, they have the advantage of seeing those reports. So it is a key; it is a priority. It is discussed by the Chief with the trial judges regularly.

I would say to you that as I was reading to you those numbers, which probably bored you, on the kind of complaints that come to the ACJC, I would suggest to you that when you take out those that are poor -- trying to get another appeal of a case, where that's not the right forum, the overwhelming number are probably for demeanor. Those are the kind that result in some kind of action, whether it's informal or formal, through the ACJC. It is the highest priority.

SENATOR SMITH: What kinds of actions are taken in those?

MR. ANDERSON: There are a number of kinds. A Committee may invite a judge down for a discussion and explain what is wrong. It may be more serious than that, and it may require a private reprimand. It may be more serious than that and get a public reprimand. It could ultimately result in a referral to a removal panel. There was a judge in Municipal Court out of Mount Olive a number of years ago that had that problem, and was, in fact, removed by a three-judge panel pursuant to the statute. Those things happen when it gets that bad.

SENATOR SMITH: You mentioned with respect to sexual harassment different courses that judges could take--

MR. ANDERSON: Right.

SENATOR SMITH: --to, I guess, enlighten them in that regard. Are there any formal policies, training courses, or anything that judges receive with respect to their demeanor on the bench?

MR. ANDERSON: There are programs at the Judicial College. There are a wide range of programs, and there are various specialty courses. Demeanor, while it may not be

called demeanor -- it may be called bench conduct or the way people act -- there are programs for that, yes.

SENATOR SMITH: Okay, thank you.

MR. ANDERSON: I'll be glad to send you an agenda of the next Judicial College so you can see.

SENATOR SMITH: Fine.

SENATOR GORMLEY: Is that in Reno? (laughter)

MR. ANDERSON: No, it happens to be in-- I think it's in Teaneck.

SENATOR GORMLEY: Teaneck. Oh, but that used to be in Reno or whatever.

Dave, if I may make one comment, I think we all can appreciate matters that are under litigation. But I think the way you have to focus is, this is a case of the double "only." It's the only one that took four years, and it was the only sitting judge who ever had those types of charges. The public's confidence when you hit the-- It currently crops up in politics. We claim lightning struck in the same place twice -- it strains the public's confidence, and that's why the report of Judge Loftus and reforms that you take up are very important.

You can understand when you used the second "only" that would strain-- I know that would strain the court if a lawyer were in front of the court using a set of circumstances, "You won't believe this happened twice in the same matter." It only happened twice ever in the history of the court, and it happened in this one. I think that would strain, to a degree, the public's confidence.

MR. ANDERSON: I can tell you this: The Loftus Committee will make what we already think is a good policy better. It will be the best sexual harassment policy in this State, and maybe any other state. This judiciary--

SENATOR GORMLEY: No, no. It can be a perfect policy--

MR. ANDERSON: And it's implementation will be the best. Let me say this: The judiciary has taken it upon itself, unlike any other judiciary in this country, to attack its concerns about the problems of racial minorities, women in the courts, and now it will do the same with sexual harassment. Other states have followed us and made their policies similar to ours. The implementation of this policy will be the best. It will be the best.

SENATOR GORMLEY: I'm just saying a third "only" wouldn't add up too well.

Senator Kosco.

SENATOR KOSCO: I'm sitting here listening and I'm just overwhelmed, I guess, that we appoint a person to the bench and then we teach them -- tell them how to act. We teach them their demeanor. We tell them about sexual harassment. Instead of setting up all these classes and schools to teach someone how to be a judge after we've appointed them wouldn't it be more effective if we just had a better process in the first place of appointing a judge?

MR. ANDERSON: I leave the appointment process to you, Senator. (laughter)

SENATOR KOSCO: I'm not asking you a question--

MR. ANDERSON: I think the process of appointing judges has really nothing to do with this particular issue.

SENATOR KOSCO: Well, why--

MR. ANDERSON: This is a human issue. This is learned or--

SENATOR KOSCO: But that's part of the process of appointing a judge.

MR. ANDERSON: I think--

SENATOR KOSCO: I mean, we teach them demeanor. We have to teach them what sexual harassment is? I hire mechanics and I don't have to teach them that; they know.

MR. ANDERSON: I think it's healthy to be reminded on a regular basis, and we're going to do that.

SENATOR GORMLEY: Any further questions? (no response)

Thank you.

Myra Terry.

M Y R A T E R R Y: Good morning.

SENATOR GORMLEY: Good morning.

MS. TERRY: My name is Myra Terry, and I am President of the National Organization for Women of New Jersey. NOW-NJ represents 12,000 members residing in every single county in the State.

As the case of Judge Edward Seaman demonstrated, sexual harassment is an abuse of power which cannot be tolerated at any level, especially in the judicial branch of government. It is discriminatory; it is devastating to its victims; and it reinforces the glass ceiling which keeps women at lower levels of power and employment. The events involving Judge Seaman should serve as a red flag to alert us that even among the judiciary the serious nature of sexual harassment is not understood, and that education at all levels is desperately needed. This is not only needed in the judiciary, it's needed everywhere in New Jersey and in government at all levels.

Not until the Clarence Thomas controversy did America begin to realize that what was established in the Civil Rights Act of 1964 -- that sexual harassment is unlawful as a form of sex discrimination. For so long it has been standard procedure to make advances on women in the workplace, to just have a little fun with them. But the time is long overdue to spell it out once and for all that women will not be demeaned this way, especially within the branch of government entrusted to administer justice. Ignorance is no longer a viable excuse.

Education and prevention are the best tools to eliminate sexual harassment in the court system. It is the responsibility of the judiciary itself to guard against sex

discrimination by educating each and everyone of its employees to understand the meaning of sexual harassment and its repercussions.

The conduct of judges must set a good example, and must be befitting of their power. Judges are entrusted with our respect and with our decision-making, and as such, they must be held to the highest standard. In cases of sexual harassment, judges' conduct must be carefully scrutinized and victims' rights must be protected. Judges accused of sexual harassment should not be allowed to foster a hostile work environment while the allegations are considered. At the very least, the victim must somehow be protected from any hostility or backlash that may continue to occur on the job. Once found guilty of harassment, judges should be removed from the bench.

Judge Seaman was merely slapped on the wrist. The public's explosive reaction indicated that there was a need for much stronger action. In addition to swifter and stricter punishment, NOW-NJ makes the following recommendations:

First, that comprehensive sensitivity training be enacted within the judicial system to educate all employees about harassment and other forms of discrimination.

Second, that there be a strict monitoring system against harassment and discrimination, including an effective and impartial grievance procedure.

Most importantly, that women be believed when they risk their careers, their privacy, and their reputations to report hostile acts of sexual harassment.

SENATOR GORMLEY: Any questions from members of the Committee?

SENATOR SMITH: I have one.

You indicated-- You made a statement that if a judge was found to have committed an act of sexual harassment, he ought to be removed from the bench. My question is this: Are there different degrees of sexual harassment, in your opinion?

In other words, sexual harassment could be simply telling some very bad jokes, so to speak, or it could get to the point where there is touching and some sort of continual type of harassment. Would you recognize that there might be cases where removal from the bench is not appropriate, depending on what actually has occurred?

MS. TERRY: I think intent is really important. If we were talking here about African-Americans and jokes being made that were slurs against Blacks, people would be up in arms. I think the problem here, and you asked it, Senator, before-- I think what is the problem-- How come we can't get to the basis of this?

I think the problem is that women are second-class citizens in this society. It's pervasive, and it is not something that we think about. It's not something that anyone-- At birth no one said to me, "You're a second-class citizen," and it's something I didn't believe until, as a feminist and in my consciousness-raising -- that I looked at day in and day out. I watched the way -- the insidiousness of a man standing next to me, who might put his arm around me, whereas I would never do that to him. The idea that we are more childlike and that we are not due the respect that some men are--

I know that's a long answer to your question, but what I say to you is that women are not treated as first-class citizens, and those jokes are immoral, make us feel terrible. They're degrading and should not be part of the work environment.

SENATOR SMITH: I wasn't trying to condone jokes. I was trying to find some sort of an example to demonstrate that maybe there are some instances where there should be different types of punishment.

MS. TERRY: Maybe there are, but we have to take a look at them as they go. I think attitude is very important, and if a judge has an attitude about women -- a man or a woman

possibly could have that attitude -- how can a male or a female continue to judge cases where there is sexism involved? If you're not aware of your own sexism, then how can you deal with women in the court at all? That's the basis. I want to say that again: If you're not aware of your own sexism, how can you deal with women at all?

SENATOR SMITH: Well, a lot of people are not; a lot of males are not.

MS. TERRY: That's right, that's right.

SENATOR SMITH: It takes a lot of training, really, to make them aware of it.

MS. TERRY: It does, and I sit here often--

SENATOR SMITH: But it's not intentional. In many cases, I don't think it's intentional.

MS. TERRY: And it isn't intentional. But I sit here often, and most of the time I sit before an all male committee. I have to say to you that as a woman -- as a consciousness-raised woman and feminist -- it's still difficult for me to come in here and somehow feel that on some level, I'm begging to be heard as a female. I need to put that out to you. I implore you to hear that, and to know that that is in my psyche. It will never go away, because I'm 49 years old. I've lived 49 years in this society, which in the '50s certainly was very different than it is now. I think we're going forward, but with your help we can go forward faster.

SENATOR SMITH: You know that until quite recently, we did have a woman member of this Committee and she was elevated.

MS. TERRY: One is not enough. One is not enough. (laughter)

SENATOR SMITH: We got left behind. (laughter)

SENATOR GORMLEY: We're glad you're here. Don't take it the wrong way, okay?

That wasn't a slap at you, Senator. (laughter)

SENATOR MARTIN: I didn't take the Senate sensitivity training. (laughter)

SENATOR GORMLEY: Senator Kosco.

SENATOR KOSCO: I agree with your statement about once found guilty of harassment a judge should be removed from the bench. I believe in it very strongly. I also believe that definition has to be strongly defined because, as you just said during your comments, when someone comes up and puts their arm around you, you feel--

Now, Senator Cardinale just came in here, put his arm around me, and spoke to me. I went outside and said something to him. When I came back inside and walked up to Senator Gormley, I put my arm around him and said something to him. Now, was that sexual harassment?

MS. TERRY: Sexual harassment has to do with one sex against the other.

SENATOR MARTIN: Supposing it was a woman Senator that came in here and did that to me, would I have been eligible to say that was sexual harassment?

MS. TERRY: There's many times when someone puts their arm around me that I would not consider it as being sexual harassment. It has to do with power over-- When a man who feels that he has power over me-- If any one of you came up to me as a Senator and put your arm around me and said, "How are you, dear," that would feel-- I would expect that, but on some level I will tell you that it would feel very uncomfortable. It would feel demeaning. It is a power thing. It is not something that is done between equals. It's something that I do to other women; that I do to some men; I do to people who I am intimate with in my life.

But I think that touching another human being is usually what men do to women, and women don't usually do that to men. Men may do that to each other. It's because you have some sort of a very close relationship. People certainly don't

do it to each other who don't know each other well. In this case, you all would do it to each other because you have familiarity. The man who doesn't have familiarity with me, who does that to me, does it because I'm a woman.

SENATOR MARTIN: So shaking hands is touchy?

MS. TERRY: Shaking hands is an acceptable procedure that everyone does in this society.

SENATOR MARTIN: Don't you believe that just walking up to somebody, touching them on the back or saying, "Hi", that you've met for the first time is an acceptable procedure?

MS. TERRY: It depends upon who does it and why, and I think in each case you would have to look at it.

SENATOR MARTIN: That's why I'm saying that definition is so important, because I think that if someone gets-- I mean, you're talking about the death penalty as far as the judge is concerned. His career is over if he's out of there. He's not even going to be a good lawyer.

MS. TERRY: If he commits armed robbery, his career is over too. What I'm saying is, why aren't women that important? Why aren't we looked at as being important?

SENATOR MARTIN: I'm saying that the definition has to be very, very well thought out, because I don't feel offended when someone walks up to me for the first time. I know thousands and thousands of people who don't even give it a second thought, unless you're in that frame of mind.

MS. TERRY: One act of putting their arm around you does not constitute sexual harassment to me. That's not the point. I think this is usually something that goes on, and on, and on. It's not one particular case. It's a hostile work environment. Certainly, as I said to you, if somebody puts their arm around me, I accept it. I usually don't take their arm and say, "Get your hands off of me." That's a little hostile. But the reality is that I'm feeling that, I really am. But one case of it just shows that someone is ignorant and

doesn't have the sensitivity to me or to women. We know that in these cases usually what happens is that there is a hostile work environment that's set up; what happens is that most people support the person who is harassing because they're in power. It's all about power. So you need to look at it as a power move.

SENATOR GORMLEY: Thank you for your testimony.

MS. TERRY: Thank you.

SENATOR GORMLEY: I would-- First of all, any final comments from members of the Committee? (no response)

I want to compliment the Committee for what was a combined effort in terms of their support at the time that we called the hearing originally. I appreciate those who testified today. It is a very sensitive and complex issue, but one that has to be looked at. We anxiously await the recommendations within this year that are going to come from -- within this calender year, just in case -- that are going to come from the Court. (laughter)

Thank you all.

(HEARING CONCLUDED)

APPENDIX

JUDICIARY OF THE STATE OF NEW JERSEY
POLICY STATEMENT ON
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION, DISABILITIES AND SEXUAL HARASSMENT

A. POLICY STATEMENT ON EQUAL OPPORTUNITY

The Administrative Director of the Courts declares and publishes the following to be the policy of the Judiciary of the State of New Jersey in order to assure equal opportunity for all state-funded judicial employees and applicants for employment. All Judiciary employees have responsibility for implementation of our policy.

B. POLICY AFFECTING EMPLOYEES

The Judiciary is committed to the principle of equal employment opportunity and affirmative action. We do not discriminate in our recruitment and employment practices on the basis of race, creed, color, national origin, ancestry, sex, age, religion, disability or perceived disability, marital status, affectional or sexual orientation, liability for services in the Armed Forces of the United States or other non-job related criteria. Equal employment opportunity includes, but is not limited to, recruitment, selection, hiring, training, promotion, transfer, discipline, discharge, demotion, layoff, re-employment after layoff, job assignment, compensation, and fringe benefits. Affirmative action requires us to make positive efforts to employ minority group members and other protected classes in numbers that proportionally reflect their availability.

C. POLICY AFFECTING APPLICANTS AND EMPLOYEES WITH DISABILITIES

The Judiciary is committed to complying with the provisions of the Americans With Disabilities Act and will not discriminate against any qualified employee or job applicant with respect to any terms, privileges or conditions of employment because of a physical or mental disability. Moreover, the Judiciary will not discharge a worker who develops a disability including a disease such as cancer or AIDS, so long as that individual remains qualified and able to perform the essential duties of the job with or without reasonable accommodations. The Judiciary will make reasonable accommodation for all employees or applicants with disabilities, provided that the accommodations do not cause the Judiciary undue hardship. Accommodations needed should be requested by the individual with the disability.

D. POLICY ON SEXUAL HARASSMENT

The Judiciary is committed to the idea that sexual harassment of employees is an abuse of authority and constitutes prohibited unprofessional and unacceptable conduct which is not to be condoned. Sexual harassment undermines the integrity of the employment relationship, debilitates morale and interferes with the productivity of its victims and their co-workers. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is explicitly or implicitly made a term or condition of an individual's employment, or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions, or
3. Such conduct has the purpose or effect of interfering with an individual's performance or creating an intimidating, hostile or offensive environment.

E. PROGRAMS AND GOALS TO OVERCOME BARRIERS TO EQUAL OPPORTUNITY

As a means of overcoming the present effects of past inequities, the Judiciary will continue to take affirmative action to remove artificial barriers that keep minorities, women and individuals with disabilities from full enjoyment of all the privileges of employment. The Judiciary is engaging in a vigorous recruitment program of minorities and women at all job levels. Employment practices are reviewed periodically to determine whether Blacks, Hispanics, American Indians/Alaskan Natives, Asians/Pacific Islanders and women are being afforded fair and equal consideration for executive and middle management positions and other employment opportunities. This program includes the establishment of goals for hiring based on appropriate availability factors.

The Judiciary will continue to take all necessary steps to ensure that each employee's work environment is free of unlawful discrimination. Harassment, retaliation, coercion, interference or intimidation of any employee due to that employee's race, creed, color, national origin, ancestry, sex, age, religion, disability or perceived disability, marital status, affectional or sexual orientation and liability for services in the Armed Forces of the United States or other non-job related criteria is strictly forbidden. Any employee who experiences such treatment should report it immediately to his/her supervisor or to the EEO/AA Office.

F. DISSEMINATION

This Policy Statement on Equal Employment Opportunity/Affirmative Action, Disabilities and Sexual Harassment is being (1) sent to all employees, (2) distributed to new employees of the Judiciary and (3) posted in areas visible to court personnel and job applicants. Employees who have EEO, disability or sexual harassment related questions, problems or complaints should first communicate their concerns to their immediate supervisor. If they are dissatisfied with the handling of the matter they may contact the EEO/AA Office at (609) 633-6537 or may pursue their complaint according to the Administrative Office of the Court's discrimination complaint procedures.

October, 1992

Robert D. Lipscher
Administrative Director of the Courts

SEXUAL HARASSMENT IN THE WORKPLACE

What Is It?

WHAT CAN YOU DO ABOUT IT?

This pamphlet is being distributed to all Judiciary employees, both classified and unclassified at the State and Trial Court levels, to answer frequently asked questions about sexual harassment on the job. It is not intended to be the last word on the subject.

PERSONNEL SERVICES
ADMINISTRATIVE OFFICE OF THE COURTS

9/91

2X

WHAT IS SEXUAL HARASSMENT?

It is unwelcomed sexual advances, requests for sexual favors, and other spoken or physical conduct of a sexual nature. Sexual harassment occurs when:

a. It is either said or implied that to continue your employment you must comply with sexual advances or requests for sexual favors; or
b. It is either said or implied that your acceptance or rejection of sexual favors will be used as a basis for employment decisions affecting you; or
c. Such sexual advances, requests for sexual favors, and other spoken or physical conduct interferes with your work performance, or is creating an intimidating, hostile or offensive working environment. In essence, such actions affect your ability to do your job or make you feel uneasy, uncomfortable or angry while at work.

Following are examples of acts of sexual harassment:

a. Mr./Ms. X, your supervisor, says, "If you like working here you will have sex with me".
b. You are told by your supervisor that you are being considered for a promotion. The supervisor then says, "Your future prospects with the unit would be greatly improved if you went to a hotel with me tonight".
c. A co-worker uses vulgar language of a sexual nature whenever in your work area and makes sexually derogatory comments to you. If such language and comments make you feel uncomfortable and affect your ability to concentrate on your work, such actions are sexual harassment.

NOTE: No absolute standards exist for determining whether certain actions constitute sexual harassment or are simply reflections of personal or social relationships. Every incident must be reviewed individually.

WHAT RIGHTS DO YOU HAVE IN THIS AREA?

Sexual harassment is a violation of the Judiciary's personnel policies and federal and state laws. You have a right to work in an environment which is free of sexual harassment.

If harassment occurs and adverse employment consequences follow, or such conduct interferes with your work performance, or the working environment becomes intimidating, hostile, or offensive, you have a right to ask to have those actions corrected.

WHAT IS THE JUDICIARY'S POLICY ABOUT SEXUAL HARASSMENT ON THE JOB?

Managers are held accountable for maintaining a work environment which is free of sexual harassment. Once managers know of the problem, it is their responsibility to resolve the problem. This policy applies to all Judiciary employees, both classified and unclassified, at the State and Trial Court levels.

WHO IS RESPONSIBLE FOR CORRECTING ACTS OF SEXUAL HARASSMENT?

The Administrative Director of the Courts and the Assignment Judges are responsible for taking immediate and corrective action for:

a. The acts of the court's agents and supervisory employees with respect to sexual harassment.
b. Acts of sexual harassment between employees in the workplace.
c. Acts of sexual harassment of employees by non-employees which occur in the workplace.

3X

WHAT YOU SHOULD DO?

There is a natural reluctance to talk to others about such problems, but you should TALK TO SOMEONE. You should discuss the problem with an objective person, possibly a co-worker, friend or your supervisor, unless the problem involves the supervisor. You may also wish to contact the EEO Officer in the AOC or your Trial Court Administrator. DO NOT IGNORE THE PROBLEM.

WHAT IS THE PROCEDURE FOR FILING A DISCRIMINATION COMPLAINT?

NOTE: This discrimination complaint procedure should be used for all complaints alleging unlawful treatment among or between employees (e.g. transfer, termination) on the basis of race, color, sex (including sexual harassment), religion, age, national origin, political affiliation, marital status, physical or mental handicap. Both classified and unclassified employees, including judges' secretaries, may file discrimination complaints.

Trial Court Employees

1. Discuss the matter with an immediate supervisor (i.e. the judge to whom the employee is assigned or other key management personnel) and indicate that you want corrective action to be taken. In any complaint alleging discrimination by an immediate supervisor, the employee may bypass this step and follow Step 2.
2. If the employee is not satisfied with the results of the discussion with the immediate supervisor (or if Step 1 is bypassed), the employee may file a written complaint with the Assignment Judge and include the following information:
   a. The employee's name, title, and immediate supervisor
   b. The basis for the complaint (e.g. age, race, sex)
   c. Detailed information about the alleged discriminatory action.

   The Assignment Judge should acknowledge receipt of the complaint and send a copy to the EEO Officer in the AOC. The Assignment Judge shall issue a written determination to the employee within 30 days of the receipt of the complaint. A copy of the determination shall be sent to the EEO Officer in the AOC. If the employee agrees, the Assignment Judge may have an additional 20 days in which to respond.
3. If the employee is not satisfied with the determination of the Assignment Judge, the employee may appeal to the Administrative Director of the Courts. The appeal should include all of the information provided in Step 2 and a copy of the Assignment Judge's determination. The Administrative Director, or his designee, shall issue a final written determination within 30 days of the receipt of the appeal or complaint. A copy of the determination will be sent to the EEO Officer in the AOC.
4. The employee will be advised that the New Jersey Division on Civil Rights and the U.S. Equal Employment Opportunity Commission (EEOC) have complaint procedures which may be utilized.

State-level Employees

State-level employees should follow Step 1, and if not satisfied with the results, or if Step 1 is bypassed, a written complaint may be filed with the Administrative Director of the Courts as indicated in Step 3. (Step 2 does not apply to State-level employees.)

SHOULD YOU QUIT OR WILL YOU BE FIRED FOR SPEAKING UP?

Do not quit! Managers must listen seriously to your complaint. It is their responsibility to take corrective action. By speaking up you have made management aware a problem exists and that corrective action is needed.

Offer to help your employer to deal with the problem when filing your complaint. Indicate that you are aware of your obligations as an employee to conduct yourself properly. Also indicate you are aware of your employer's obligation to provide you with a working environment free of sexual harassment.

WHAT DO YOU DO IF YOUR EMPLOYER FIRES YOU FOR COMPLAINING?

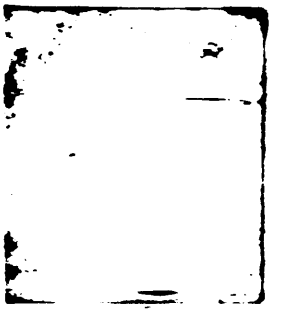
Firing you for complaining is illegal. However, if you are fired, you should immediately file a formal complaint with the EEO Officer within the AOC making sure to include documentation of good job performance.

Sexual harassment is an unlawful practice; it should be reported. It is a problem which can be corrected only if people refuse to tolerate it and report it.

HOW CAN YOU KEEP THE INCIDENT FROM HAPPENING AGAIN?

Deal with the person or problem promptly and forcefully THE FIRST TIME! Tell the person you do not approve of the actions and demand that it stop. Never make excuses or give the harasser the impression that you may be interested at a later date.

If you need help with sexual harassment in emploment, contact your EEO/Affirmative Action designee in your vicinage or the EEO Officer in the Administrative Office of the Courts. (See list below.)



EEO/Affirmative Action Office
New Jersey Judiciary
Justice Complex CN - 966
Trenton, New Jersey 08625
(609) 633-6537

N.J. Department of Community Affairs
Division on Women
CN - 801
Trenton, New Jersey 08625
(800) 322-8092 or (609) 292-8840

U.S. Equal Employment Opportunity Commission
Regional Officer
1421 Cherry Street, 10th floor
Philadelphia, PA 19102
(215) 597-9350

Division on Civil Rights
N.J. Department of Law & Public Safety

NEWARK: 31 Clinton Street, 3rd floor
Newark, New Jersey 07102
(201) 648-2700

PATERSON: 369 Broadway
Paterson, New Jersey 07501
(201) 977-4500

TRENTON: 383 West State Street
CN - 089
Trenton, New Jersey 08625-0089
(609) 292-4605

CAMDEN: 101 Haddon Ave.
Camden, New Jersey 08103
(609) 757-2850

ATLANTIC CITY: 1548 Atlantic Ave,
Atlantic City, New Jersey 08401
(609) 441-3100

5X

njcasa
new jersey coalition against sexual assault

TO: Senator Gormley
FROM: Jill Greenbaum, Ed.D.
New Jersey Coalition Against Sexual Assault

RE: Sexual Harassment
PRESENTED BY: Phyllis Searby, NJCASA
DATE: September 9, 1993

The membership of the New Jersey Coalition Against Sexual Assault is concerned with the philosophical and practical issues surrounding complaints of sexual harassment. As a representative of NJCASA I am writing to express some of our thoughts about policies regarding sexual harassment.

We believe that knowledge of and adherence to Federal Law regarding sexual harassment is insufficient. Additional steps must be undertaken to respond to the reality of the abuse of power and violence against women in the State of New Jersey. Legislators need to review the new and innovative laws of Maine, (P.L. 1991, Chapter 474), and Connecticut, (The Human Rights and Opportunities Act), and then develop a bill, to become law, in New Jersey.

Clearly any law must address philosophical, practical/legal, and procedural questions. The law must apply equally to all people, workers, supervisors/administrators, clergy, judges and legislators. Training for employers, employees, and students, is imperative. If the state is committed to creating safe environments for its citizens, the standards promoted by the law should be created with the guidance of experts, implemented with the assistance of rape crisis center personnel and monitored for compliance. Schedules for the timely investigation of complaints should be supported by timetables for educating employers, employees and students throughout New Jersey about the nature and scope of sexual harassment and criminal and civil justice remedies. (Both of the aforementioned might have positively influenced the laborious process of the case against Judge Seaman.)

The primary avenue of support, information, and resources for victims of sexual harassment is rape crisis centers. Funding to these community based crisis services will need to be increased to meet the demand for services which will arise as a result of increased awareness and reporting.

The members of the New Jersey Coalition Against Sexual Assault offer their expertise to the legislators in the development of policies and procedures to be enacted into law.

285 PASSAIC STREET • HACKENSACK, N.J. 07601 • (201) 488-7110

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TESTIMONY

of Melanie S. Griffin, Esq., Executive Director

Subject: The handling of sexual harassment complaints against judges
Date: September 9, 1993
Submitted to the Senate Judiciary Committee, Senator William Gormley, Chairman

Mr. Chairman and Distinguished Members of the Committee:

The handling of sexual harassment when it occurs in the Judiciary of this State is, as a matter of Constitutional law, the business of the Judiciary; as a social phenomenon that affects the fabric of law and of the working environment in this State, it is also a matter of social welfare; it is also a matter that can confirm or destroy public confidence in judges and the system of justice. As such, I add my voice to those others who will certainly congratulate the Senate Judiciary Committee for its courage in tackling such an immense issue. Putting aside for a moment the issue of whether it is a subject to be resolved by this Committee or the Legislature, it is heartening to see such attention paid to an issue that has been so long buried, accepted as normal, or denied by so many levels and branches of government.

As you will no doubt hear many times today, sexual harassment is about relationships, not about sexual relations. Therefore, the analysis of relative power positions in a work setting is all-important to the analysis of why sexual harassment occurs in the workplace and why it continues unpunished. This analysis creates the suspicion that sexual harassment is at least as prevalent in the public sector as in private settings. In government service, power often must substitute for the dual reward of money and power available in the private sector, so that we can expect that harassment will occur, and, when

it occurs, will be even more devastating to its victim, who suffers a diminution in her power rewards. And, without going into psychological profiles, people in government are probably at least as anxious to express and hold onto whatever power they have as anyone in the private sector.

Another important concept to the analysis of the dynamics of sexual harassment is that of male privilege. Men are taught by this society that women (and children) are subordinate and only deserve respect when they stay in their subordinate roles. This message has been countered by much media attention to the opposite point of view in the past twenty years, but men and boys still receive a very mixed message. Violence is the way the male privilege is enforced, and it takes the form of domestic violence and child abuse in the home, sexual assault and dating violence on the streets, and sexual harassment at work and at school. Women in government employment often enjoy greater opportunities than their counterparts in private employment because of affirmative action, civil service protections, unions, and the service nature of the work, but the popular assumption that governments are "fairer" places to work than private enterprises may only be true to a limited extent for women, the most frequent victims of sexual harassment. Harassment is perpetrated at a higher rate against women in better-paying and higher status positions than against women in "proper" subordinate roles. So the greater opportunities available to women in the public sector may be balanced by the harassment they are likely to experience. In the case of a law clerk, a judge holds more power over that person's career than most non-lawyers can imagine. A judge also has more opportunity to harass a clerk than most employers. If anything, we should be surprised that male judges behave so appropriately, given the level of control, the opportunity, and the general societal permission given to men to abuse women.

The proper inquiry for this Committee seems to be a two-part question:

1. Can this body stop sexual harassment from happening at all in the Judiciary of the state? If so, how?
2. If not, what can the Legislature do to minimize the effect and incidence of sexual harassment in the Judiciary?

I submit that the answer to question #1 is no; sexual harassment is, for the foreseeable future, a part of women's work lives, and the only way to make it go away is to engage in an intergenerational campaign that makes women truly legally equal to men while we simultaneously stop rewarding competitiveness and violence in the culture. This the Legislature cannot do in this session, although its continued funding of the Commission on Sex Discrimination in the Statutes and the Division on Women's Office on the Prevention of Violence Against Women are certainly good steps in the direction of legal equity.

The Legislature is probably in the best position, however, to accomplish a minimization of the effect and incidence of sexual harassment in the Judiciary. Education, and a clear, enforceable prohibition on the conduct that constitutes sexual harassment can greatly diminish the impact of sexual harassment on the current workforce. The Judiciary and the Legislature both need to engage in a process in which the Executive Branch has taken the lead. Two weeks ago, the Governor signed a branch-wide policy denouncing sexual harassment; the procedures to implement the policy are being written now, and the essential training that will make the policy reality for employees will take place over the next two years. **The Legislature can mandate and fund training for the Judiciary and for its own employees. The Legislature can adopt a policy prohibiting sexual harassment** (the Judiciary already has a very good one) and it can **require that procedures be put into place in both branches to assure prompt and effective investigations in house. The Legislature can fully fund the Division on Civil Rights** so that it can enforce the law when Barbara Denny comes looking for relief. **It can reverse the recent decision of the New Jersey Supreme Court that shortened the statute of limitations for discrimination actions to 2 years,** and either allow plaintiffs the 6 years that may be necessary to discover that they have been wronged, or create a "discovery" rule for cases of sexual harassment that tolls the statute of limitations as this Legislature did last year for cases of child sexual abuse.

What the Legislature should not do is attempt to second-guess or micromanage the Judiciary. As someone involved in institutional criticism of the Judiciary, both as staff to the Task Force on Women in the Courts and as Assistant Counsel to the Advisory Committee on Judicial Conduct, atter of close up the Judiciary's response to sexual harassment. When convinced that harassment exists, the system acts as swiftly as any governmental entity to address it. If the Judiciary were to develop comprehensive procedures for confidential reporting and investigation of sexual harassment, and if it were to engage in universal training in the identification of sexual harassment, I am confident that employees would report and the system would respond. Without adequate funding, however, this extremely costly undertaking will not be a priority, and it is difficult to see how the Legislature can make it one. I urge this Committee to take this very important opportunity to educate itself about the issue, to commit resources to its resolution, and to support the efforts of all branches to eradicate this horrible problem from public workplaces.