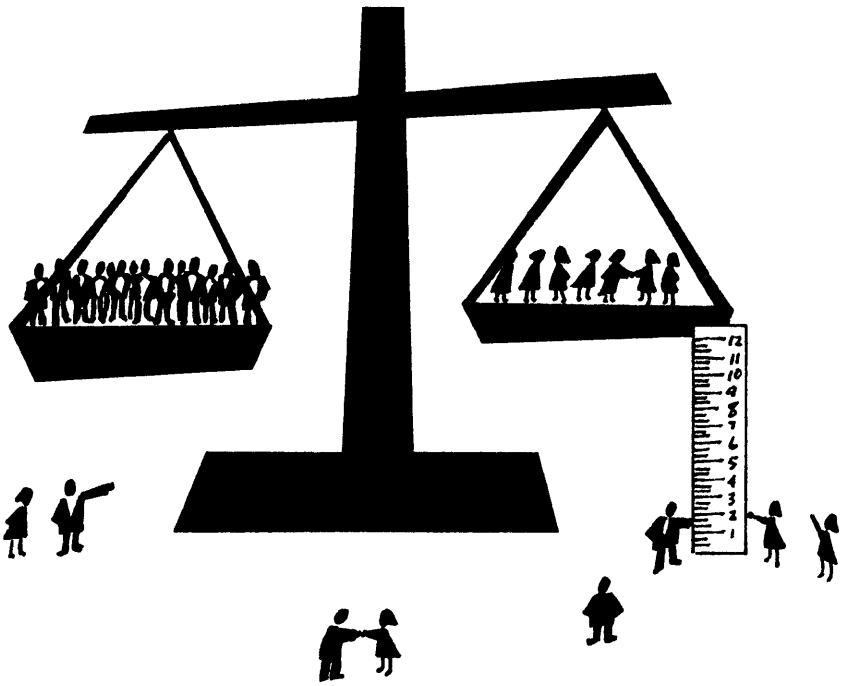
The 2nd Report of the

NEW JERSEY SUPREME COURT TASK FORCE ON

WOMEN IN THE COURTS



NEW JERSEY SUPREME COURT
TASK FORCE ON WOMEN IN THE COURTS

SECOND REPORT

JUNE 1986

THE SECOND REPORT OF THE TASK FORCE ON WOMEN IN THE COURTS

TABLE OF CONTENTS

Supreme Court of New Jersey

Robert N. Wilentz
Chief Justice

313 State Street
Perth Amboy, New Jersey 08861

The work of the Supreme Court's Task Force on Women in the Courts has resulted in substantial improvement in the behavior and attitudes of the Bench and the Bar towards women. Much remains to be done, however. The findings of the Subcommittee on Court Administration point to some areas where change is needed, changes that, in some cases, would result in better employment status for female support staff at various levels. This new challenge, to end employment discrimination, along with the continuing need to totally eliminate sexism from the Bench, the Bar, and the Courthouse, will require determination and effort if these goals are to be achieved. We look to the Task Force to guide us, to help us, and to monitor our progress. We are determined to continue this work.

Sincerely,

Robert N. Wilentz

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

ROBERT D. LIPSCHER
ADMINISTRATIVE DIRECTOR OF THE COURTS

CN-037
TRENTON, NEW JERSEY 08625

The past few years have been exciting ones in the New Jersey Judiciary. During this period we have tried to become more sensitive to the problems of gender bias as they affect women in the courts, whether they be practicing attorneys, judges, witnesses, litigants, court personnel or other participants in the court process. Thanks to the efforts of the Task Force on Women in the Courts, I believe there has been a marked improvement in sensitivity throughout the system by judges, administrators, and court personnel.

We have assisted the Task Force by: providing training on gender bias for all of the state judges at both state and vicinage levels; coordinating national distribution of the first year report of the Task Force and the videotape, "Women in the Courts: Changing Roles, Changing Attitudes;" and by examing our own policies and changing forms and procedures which reflected a bias. At this Task Force's request, we are in the process of studying matrimonial judgments to establish the extent of gender bias and determine appropriate remedial action. We will soon be resurveying the state's attorneys to assess any changes which may have occurred since the last survey in 1983.

My hope is that through the efforts of this task force and two others which are studying the concerns of minorities and persons in need of interpreting services, the underrepresented groups in society will share in one of the finest ideas of humankind: equal justice for all. A society which can solve its disagreements through the use of an effective, efficient, and impartial tribunal is a mark of a well-functioning civilization. It is my distinct pleasure to have been involved in the implementation of the recommendations made by the Task Force on Women in the Courts in its first report, which I hope will bring us closer to that goal.

Robert D. Lipscher

Robert D. Lipscher

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
MARILYN LOFTUS
JUDGE

ESSEX COUNTY COURTS BLDG.
NEWARK, N. J. 07102

The New Jersey Supreme Court Task Force on Women in the Courts provides a unique opportunity to work on a project which is having a significant, affirmative impact within the State and the Country. From all parts of New Jersey (and elsewhere) we hear of many positive changes that have occurred with regard to the treatment of women in the courts since the presentation of the Report of the Task Force at the opening session of the 1983 New Jersey Judicial College and the subsequent publication of the First Year Report in June, 1984.

This Second Report documents some of the steps that have been taken to eliminate gender bias in the court system and describes the ongoing work of the Task Force.

Implementation of the Task Force Recommendations

Chief Justice Robert N. Wilentz, Associate Justices of the New Jersey Supreme Court, Assignment Judges, Judges, and their staffs, as well as Administrative Director Robert D. Lipscher and the staff of the Administrative Office of the Courts affirmatively took steps to implement the recommendations of the First Year Report. Appendix A includes some documents of implementation to Judges, Trial Court Administrators, Supreme Court Committees, Bar Associations, and the Advisory Committee on Judicial Conduct, as well as District Ethics Committees. It also includes the procedures for processing litigants' complaints.

Judicial and Legal Education

The 1984 New Jersey Judicial College included educational programs entitled "Women and the Law: Changing Roles, Changing Attitudes"; "Value of a Homemaker's Contribution in Matrimonial and Personal Injury Cases"; and "Domestic Violence". During these programs, speeches were given by Task Force members on "How to Ensure Gender Equality in the Court and Judicial Environment"; "How to Utilize the Task Force Findings in Judicial Fact Finding and Decision Making Roles"; and "How to Conduct a Judicial Clerkship Interview". These speeches are reproduced in the body of the report.

During the 1984 and the 1985 Judicial College Programs, as well as at other legal and judicial conferences throughout the State and the country, an educational film developed by the Task Force entitled "Women and the Law: Changing Roles, Changing Attitudes" was shown. This film portrays representative scenes within the legal and judicial environment illustrating instances which are documented by the Task Force data. Task Force members, judges, lawyers, court personnel and their families played the various roles. It was filmed in the Essex County Courthouse in Newark. Copies of the videotape may be borrowed by writing to Melanie Griffin, Administrative Office of the Courts, CN 037, Trenton, New Jersey 08625.

At the 1985 New Jersey Judicial College Program the New Jersey Supreme Court Task Force on Women in the Courts joined with the New Jersey Supreme Court Task Force on Linguistic Minorities and the New Jersey Supreme Court Task Force on Minority Concerns to present a course entitled "Equal Justice Under the Law" which addressed the problems of gender, racial, ethnic, and cultural biases within the court system.

During these years, members of the Task Force have spoken at Bar Association Meetings, Law School Programs and Judicial Education Programs within and without the State of New Jersey. They have participated in programs at the American Judicature Society, the Pennsylvania Judges' Conference, the California State Bar Association, the Rhode Island Judicial College, the Delaware State Bar Association, the Illinois Judges Association Conference, National Association of Women Judges Conferences, an A.T.L.A. Conference in Washington, D.C., the Nevada Women's Political Caucus and the Virginia Women's Bar Association. In August, 1986, programs will be presented at the Joint Meeting of the National Conference of Chief Justices and the National Conference of State Court Administrators in Omaha, Nebraska, as well as at the Annual Meeting of the American Bar Association in New York City.

Ongoing Work of the Task Force

The matrimonial study recommended by the Subcommittee on Matrimonial Law in the First Year Report was initiated and is being completed by the Administrative Office of the Courts. The Subcommittee on Court Administration continued the work which it had previously begun and made the recommendations which are included herein. Under the leadership of Task Force member Professor Nadine Taub, the Women's Rights Litigation Clinic of Rutgers Law School prepared the Summary of New Jersey Appellate Decisions on Women's Rights which is included herein.

As we move forward into the next phase of our Task Force work, we plan to complete the pending projects of our

Subcommittees as well as to explore and document the positive impact that the Task Force work has had within the New Jersey Judicial System and elsewhere. We will be assisting other states with judicial education programs and the development of similar Task Forces. We hope that the Second Report will provide such assistance.

Task Forces similar to the New Jersey Supreme Court Task Force have been created in the states of Rhode Island and New York under the authority of their respective Supreme Courts. Wisconsin has appointed a Task Force to study gender bias in the bar association under the auspices of the Wisconsin Supreme Court. An ad hoc Committee to Study Gender Bias in the Courts exists in Arizona. There are indications that similar Task Forces and/or study groups may be created in other States.

Special Thanks

The New Jersey Supreme Court Task Force on Women in the Courts wishes to thank specifically Chief Justice Robert N. Wilentz, the Associate Justices of the Court, Administrative Director Robert D. Lipscher, and their staffs, without whose leadership and support these positive results could not have been accomplished. We extend our sincere appreciation to Melanie Griffin, Esq., staff person from the Administrative Office of the Courts, for all her diligent efforts on behalf of the Task Force. We also extend our gratitude to Ellen Robb Gaulkin for designing the covers of the reports. Most important, we thank all people (judges, lawyers, court personnel and others within the court system) who have read our First Year Report or attended our educational programs and as a result have made changes in their work environments. They have set an example for others to follow.

A Look to the Future: Equal Justice for All People

The cover of the Second Report illustrates a change from the cover of the First Year Report. The scales of justice are in more equal balance with regard to the treatment of women in the courts. Our Task Force is proud of this significant result. As we move forward, we hope that our work will ultimately result in ensuring equal justice for all people, not only in the court system, but in society generally.

Marilyn Loftus, J.S.C., Chair
New Jersey Supreme Court Task
Force on Women in the Courts

MANDATE OF THE TASK FORCE ON WOMEN IN THE COURTS

The original charge of the Task Force, when it was established in 1982, was to prepare a program on sex discrimination and gender biases in the court system for the 1983 Judicial College. The mandate was expanded after the College to include an in-depth investigation of the extent to which gender bias operates to disadvantage women in their interactions with the judicial branch of the New Jersey government and the development of educational programs to eliminate any such bias.

Speech of the Hon. Nicholas Scalera, J.S.C.

DELIVERED TO THE N.J. JUDICIAL COLLEGE

November 21, 1984

SUBJECT: How to ensure gender equality in the court and judicial environment.

One of the problems that I have with that videotape ("Women in the Courts: Changing Roles, Changing Attitudes") you just saw is that it is too funny. If you project yourself into the role of the people who are being victimized in that videotape, I think you will quickly come to the conclusion that the subject matter is really not a funny one: it may be funny to the people who are the observers, and it may be funny to the people who are enjoying looking at the butt of the joke, but if you put yourself into the position of the person who is being victimized in each of the vignettes, I think you'll see that it is really not a humorous situation. One of the problems with this whole area of discrimination, whether it be gender bias or other kinds of discrimination, is that we treat it lightly and humorously and I think it's because we're nervous about it. We feel guilty about it and, indeed, we should.

I was very much intimidated at the first meeting of the committee when I was appointed and I was dreadfully afraid that I was in the midst of a bunch of militant women who were going to scare the hell out of me, and they did.

But once I became comfortable with the fact that they had a genuine cause with which to be concerned, I started to think about what I could do in my daily professional life to enhance the committee's perfectly legitimate goals. Fortunately, in the last couple of years I have been in a position to take a leadership role. As an assignment judge, you have opportunities available to you that the ordinary trial judge would not have: powers of appointments, powers of assignments. You can therefore effect more quickly the goals that you must achieve. At the first meeting I remember that I made the point to the committee that we were not dealing with an unsophisticated audience, we were dealing with judges. By the very nature of their appointment and their profession, judges are independent thinkers. More important, they want to do what's right, so we have to appeal to that attribute of all judges, that they want to do what's right. I'm here today to tell you now that the committee has finished most of its work. It has done the research, it has been able to document that there is a problem, it has been able to document and prove to us as lawyers and judges that there is gender bias and gender discrimination and inequality. But the last step that we have to take as a committee is to commission Joanie and Johnny Appleseeds to go out now and to start doing things that will create changes and which will alleviate some of the biases that we know exist.

I have to address you discriminatorily by talking to the men in the audience and talking to the women in the

audience differently because you have different roles and, indeed, you have different perceptions. We've got to change not only the behaviorial inequalities that exist and that are obvious by the documentation and the vignettes that you saw, but more importantly we have to change perceptions, especially from the point of view of the victimized women. You can see in the videotape a very clear demonstration of the frustrations that the victimized must undergo on a day-to-day, hour-to-hour basis. We must not only change behavior, our own and that of others, when the opportunity arises, but we must work toward changing perceptions.

Perceptions are as important as actual discriminatory behavior. We know that there are litigants and attorneys out there who overreact and who will ascribe an otherwise professional decision to gender bias. And they're wrong, they're dead wrong. A judge may make a decision on the basis of the facts, on the merits or absence of a case. Some will leave the courtroom with the perception that the judge made a decision on the basis of their gender or that of their opponent. It is a judge's obligation now to affirmatively prove that the decision was validly made and was not based upon a gender bias. If you are the judge, does it matter if they go out of the courtroom thinking that you have made a biased decision? Of course, it makes a tremendous difference, because the perception of justice is now debased. A litigant or attorney should leave there thinking that you didn't know

the facts, that you didn't know the law, but not that you decided the way you did strictly because one of the litigants or lawyers was a woman.

Every day, we encounter various professional settings in which humor can be the springboard for affirmative action. If somebody tells an obviously sexist joke, I will respectfully disagree with the Chief Justice by asserting that we should not try to suppress the joke. We should, however, try to use such incidents to demonstrate a point. If a bad joke is made, a sexist joke, and everybody laughs at it, as a leadership step you can turn the joke around and make the author of the joke the butt of the joke to show that that person has now obviously raised a sexist perception. It's a lot like karate; you use the momentum of the assailant to make him the victim.

In the settlement conference vignette, the example had to be obvious because there would be unsophisticated audiences viewing it. I will tell you very candidly that women attorneys have received special attention from me, but it was not the special kind of attention that they would have received had they been male lawyers, based strictly upon their reputation and their abilities as lawyers. Biologically, the difference will never be abridged, I hope, but the fact is that now I make a conscious effort to treat women lawyers like male lawyers. One can say that the demonstration in the videotape was obviously skewed, but I suggest that what you saw may have actually happened in New Jersey. Those

people, those judges who authored that dialogue, didn't sign up for this course. You'll never change those people. But you're here, you're interested and you want to know the specifics.

When lawyers come into settlement conferences, the little things that you do, not the little things you don't do, make the difference. There is no reason why you should be extra gentle with a woman lawyer, because that's discrimination in a sense. If the merits of the lawyer's case are such that you would naturally react and say, "You know, you've got a lousy case," then say it whether the lawyer is male or female; if they have a good case, say it whether they are male or female. And if you think that the settlement will turn upon the abilities of the lawyer and how good and how experienced they are, then say it whether the lawyer is male or female. In many cases, the female lawyers are going to be relatively inexperienced, and that's because there haven't been many female lawyers in the past. But that's no reason to tread lightly in that situation, except that the female lawyer may be one of those overreacters who leaves your chambers and will say to herself that the judge undervalued her client's case because she was a woman. No, you've got to convince her that you undervalued the case because you felt that she wasn't that good and that she wouldn't be able to get that large a verdict. You have to take the extra step and explain to her why you think that her case doesn't have value. You may even have to ask the opposing lawyer to

step outside so you can tell the female lawyer that she has a lousy case or that she's not going to do well against her opponent because he's good, he knows what he's doing and when he cross-examines her witnesses he's going to tear them apart. So you've got to be gentle when it counts, but you also have to be perfectly professional and non-discriminatory when it counts, so that when that woman lawyer leaves your chambers she's more angered at you because you've undervalued her case and she's not emphasizing or overemphasizing the fact that she was a woman lawyer and you undervalued the case.

You saw that in one of the last vignettes there was a woman Ph.D. who was an economist. That woman was Judge Loftus' court clerk. She is now my civil assignment clerk. A male bastion has been broken. I didn't care that I was appointing a woman. I didn't go out and look for a woman to appoint and in that sense maybe the other members of the committee here have a problem with my lack of affirmative action. I appointed her because she was the best candidate on paper and my trial court administrator is here today and I think that he will confirm (and I almost surrender some of my argument by saying he) that we have now developed tunnel vision when it comes to deciding something on the merits. We will not let the sex of the applicant get in our way. We will not let the color of the applicant get in our way. I want the best person for the job. No longer are we restrained or restricted, nor do we feel uncomfortable because the person that we happen to

think is the best person for the job is a woman. She's now my civil assignment clerk, she deals with lawyers every day and the transition wasn't catastrophic. She does a hell of a job and lawyers like her. She's not rude to lawyers, she's certainly not rude to women lawyers because she's been told all lawyers are lawyers and professionals and that she had better treat them the way they should be treated, and she has done a marvelous job. The same is true of TCA positions and case manager positions, although the civil service system has destroyed our ability to take a lot of affirmative steps because it's based strictly upon certification and order of grades.

I would suggest to you that as assignment judge I also have become more sensitized to appointments for fee-generating cases; for example, commissioners on condemnation. I have solicited resumes throughout the bar and in my court if you submit a resume and I look it over and you're qualified to be a commissioner, you go on a list. I don't even know who's the next named commissioner. That's my law clerk's function; she goes down the list and she appoints the commissioner as the next one in line, provided that the matter is not one which requires special expertise, in which case I hand pick the condemnation commissioner, as I think I should. But I don't get all that many resumes, so in a sense the women lawyers are falling down on the job. They're not submitting their resumes to me. But eventually the word will get out to them that it's not a futile gesture to submit a resume to a

judge for an appointment. They should be appointed. They've earned the same respect through the same obstacles and through the same heartbreaks that you and I went through to get to be professionals.

It used to be true that at bar association activities women lawyers were treated more than cordially because they happened to be good looking, or because they dressed well. In the bar association of Essex County, I am pleased to tell you, things are changing dramatically. Still, judges have a very special mission when they go to bar association activities. A judge can't tell them what to do because he or she is not part of that organization, but there are many, many opportunities for judges to mention or make an observation to the president or the officers or the trustees concerning the dearth of women in positions of power in the organization. They may come back and give you some very acceptable answers. They will tell you that women haven't been active in the bar all that long. That's true and women lawyers have an equally aggressive responsibility in this regard. They have to actually go out and look for these positions. But a judge, with his or her authority, may make an observation, and can thereby actually take that extra step forward.

Recently I asked Marilyn Loftus why she picked me. I didn't need this other committee responsibility. She said that many years ago, when she and I shared a common library and we used to exchange charges, she remembered me as the first judge whose charges were drafted so

that they were neutral, and not written so that a male figure was always the object of the charge. I didn't do it because of the lofty ideals of this committee; I did it because I felt if a woman was the object of my criminal charge I should say she or her. I didn't realize that I was making such an impression by doing that, but I'm happy I did. If you view your charges you will see that our charge committees and our legislative enactments, dominated as they have been by the male influence, are horrible examples of sexist language. And we always pride ourselves on the fact that in interrogatories wherever it says he it means she or it. Did you ever see a set of 4,000 interrogatories and it says he/him and then at the outset they will say wherever it says he it means she, if applicable. A little extra effort would enable one to draft those charges so that there is no emphasis on the male. The obvious sometimes does not permit us to lecture to the sophisticated concerning that subject. But it was some time before I started to use, comfortably, "Good morning, ladies and gentlemen," or "Good morning, counsellor," as opposed to, "Good morning, gentlemen,... and ladies," as I saw a woman lawyer that I knew. It's a question of attitudinal changes. If you will remind yourselves on your modes of address either in court or in correspondence, I think you will find that it does not take too much of an effort. It means a great deal to the recipients of that kind of communication that they are

recognized for what they are, not as women but as professionals.

I could go on and suggest other situations to you about calendar calls, court personnel, public functions, swearing in, grand jury - making sure you select a forelady or deputy forelady and that you did not discriminate in that regard. However, I will merely reiterate that the work of the committee is more or less finished, but we can't do what you can do. You can go out now and, on a day-to-day basis, affect and infect other judges, litigants, lawyers, and court personnel with the proper thing to do, so that the not so funny situations that you saw in the videotape will not be repeated. Basically we are all fair-minded people, and it's distressing to me when I think about how unfair I've been over the years, just because I have been thoughtless about it. So if you think about it and you take a few minor steps each day, in a few years the work of this committee will be a complete anachronism, and that's what we're all about.

Speech of The Hon. Virginia A. Long, J.A.D.

DELIVERED TO THE N.J. JUDICIAL COLLEGE

November 21, 1984

SUBJECT: How the changing roles of women in society impact upon our judicial responsibilities and how the data contained in the first year report can be utilized in our judicial fact-finding and decision-making roles.

You've heard from the other panelists how gender bias affects the interaction of lawyers, witnesses, litigants, judges and court personnel in judicial and extra-judicial settings. As you know, the Task Force also looked into the question of whether gender-based myths and biases and stereotypes actually affect substantive law and impact upon judicial decision-making. In other words, do they affect the outcome? With few exceptions, the findings and results of the substantive law subcommittee, the attorney survey, the regional meetings and the state bar indicate that, although our written case law tends to be gender neutral, there are cases in which stereotyped myths, beliefs and biases seem to affect decision-making in certain subject matter areas. Those areas are domestic violence, juvenile justice, matrimonial, and sentencing. I will briefly run through these areas and some of the findings of the committees with a view toward pointing out the kinds of stereotypical thinking that we should avoid.

First let me turn to the area of damages. In this connection, I direct your attention to the excellent

materials that were prepared by Judith Avner and Lynn Schafran in connection with Course No. 9 that was given at this judicial college (Economic Aspects of Homemaking in Damages and Divorce). The analysis of the damages areas in those materials is obviously much more in depth than what I can tell you here, but I do recommend those materials to you. The information that was received by the Task Force indicated that there are several universal perceptions, at least as far as damages awards are concerned. The first is that male and female wage earners receive higher awards for pain, suffering and disability than homemakers. The second is that a woman wage earner is likely to be awarded less than her male counterpart. The third universal perception is that women receive lower awards for certain kinds of pain and disability, for example, back aches and head aches, apparently because of the assumption that women either suffer these more or suffer them better than men. Finally, women receive higher awards than men for injuries involving scarring or disfigurement, based apparently upon the perception that appearance is more important for a woman than it is for a man.

A 1983 national survey of adult plaintiffs concluded that younger women (ages 18 through 39), fared far better in recovery and verdict award size than women litigants in the 40 through 64 age group, and that the likelihood of successful litigation for a female plaintiff appeared to decrease dramatically as her age increased, whereas the converse was true as far as men were concerned;

that is, that their potential for success was increased with the increase in their ages. Underlying all of this seems to be the idea that women, unlike men, tend to lose value as they get older.

The most significant problem, however, in the damages area is that personal injury awards tend to be wage-intensive, so that a person whose work is uncompensated (classically a woman) is often relegated to a modest award. This is true whether the woman's career is exclusively in the home or partially outside and partially in the home. Neither our case law nor the model jury charge which is presently in place seem to recognize that personal injuries and the associated pain, suffering, and temporary or permanent disability impact just as heavily upon the uncompensated home worker as they do upon the wage earner. An additional problem appears to be a reported hesitancy on the part of judges to accept evidence on this element of damages if the plaintiff is non-wage earner. There is no question that expert evidence of the value of the work of a homemaker is admissible, relevant evidence, and there is no reason, except if there is something wrong with the particular evidence in an individual case, why it should not be allowed. It is relatively common in certain other jurisdictions, but I think that we have to keep an open mind as to the nature of proofs that can be adduced in this area.

Probably all of us are familiar with the replacement cost concept. That is where an economist gets up and

says well the woman is a bottlewasher and a bottlewasher gets a $1.25 an hour, or the woman is a cook and a cook gets $3.25 an hour, or whatever. But Judith Avner has argued that there is some problem with the replacement cost method of valuing homemakers' services which spills over, obviously, into the damage area. For example, how do we characterize the exact job that we are attempting to evaluate? If we call the homemaker a cook she gets a very different wage rate than if we call her a chef or a pastry chef, for example. It is clear that the present method of evaluating the homemaker's contribution is not foolproof; nevertheless, it is serviceable, it should be allowed, and we should have an open mind as to new methods of making this kind of calculation. As you know, the Task Force recommended that Civil Jury Charge 6.10 be supplemented with instructions specifically addressed to the measurement of damages for a plaintiff who works in the home, and that the charge should permit the jury to assess the economic value of the plaintiff's ability to produce that economic value. The Task Force did prepare a model jury charge for use in this kind of situation. It has not yet been approved, so I can't tell you to take that model charge and just use it. But I think it is pretty clear that you can't just accept model charge 6.10 as it is in the book. What you have to do, as you would in any case, is to adapt the charge to the evidence which is adduced during the course of the trial, and to the extent that the evidence is of a new kind or a new nature, the charge that you presently

have in hand, although it has not been formally adopted, should be utilized by you in any action in this kind of case.

There was another significant area in which the information-gathering mechanism concurred that some gender based mindset seemed to affect the outcome. That was in the area of domestic violence. Before outlining the area, it is important to know that domestic violence is not going to go away, and in fact is on an upward spiral. It is reaching epidemic proportions and crisis intervention is required. I was listening to a TV newscast the other night and they said in New York City alone there was a 300% increase in the number of reported domestic violence cases over the past year. It is with us and it has to be dealt with. Of course, there are many non-judge related problems in the domestic violence area; for example, the absence of facilities to which people can go if necessary, and problems with law enforcement. I'm not going to deal with these problems. They are outlined with a lot of specificity in the Task Force Report. I am going to tell you, though, about the report of the Task Force insofar as the problems are related to judicial functioning, and insofar as they are caused by stereotypes and gender bias.

The first and the major point made by the attorney survey respondents is that there are judges who still try to convince a complainant in a domestic violence matter that a domestic problem is not a crime or the basis for a civil tort action. I think you may have seen that in the

videotape. It is a recurring theme which reveals more than inappropriate conduct by a judge. It reveals the trivialization of a very important issue in our society: the plight of victims in domestic violence cases. A second area complained about was that judges allow, without comment, an abuser to testify as to what his partner did to earn her beating. This is viewed, and rightly so, as a judicial expression of the prejudice which holds that the wife is property and that violence is a victim-precipitated crime, the same prejudice which used to be common in rape cases, and which still occurs in sexual harassment and domestic violence suits. The third complaint is that judges fail to enforce and appropriately punish violations of domestic violence laws. This essentially expresses a reluctance to exercise discretion with regard to behavior that clearly would not be tolerated except in a domestic context. Again, it is part of the trivialization process.

These are all expressions of subtle bias, and there are other practical problems caused by judges in this area. For example, inadequate support orders or child visitation arrangements which essentially force the abused person to have contact with the abuser are viewed as evidence of judicial insensitivity to the dependency factors present in an abusive relationship. Intertwined with this is the recurrent theme that judges are reluctant, for some reason, to accept a complaint if a prior complaint has been withdrawn. Apparently, judges feel that the withdrawal of an earlier complaint affirms their belief

that the problem is merely a recurrent domestic squabble. I would commend to your attention in this respect the recent decision of the Supreme Court in State v. Gladys Kelly. Although it is contextually different because it was a criminal case, I think it is helpful in formulating an attitude toward that kind of a situation. Gladys Kelly of East Orange was indicted for the murder of her husband Ernest. She conceded that she stabbed him with a pair of scissors, but argued that the action was taken in self-defense. At her trial she attempted to introduce evidence of the battered woman syndrome. The trial court excluded the evidence, she was convicted of reckless manslaughter, and she received a five-year jail term. The Appellate Division affirmed the conviction and the Supreme Court accepted her petition for certification. It's a very involved, excellent decision which held that based on the limited record before the Court, the battered woman syndrome was a subject appropriate for expert testimony. Her proposed expert was qualified, according to the Court, to testify on the syndrome, and the Court held that if after a full examination of the issues the evidence continued to support her conclusions, the expert testimony would be admitted as relevant to the honesty and reasonableness of Mrs. Kelly's belief that deadly force was necessary to protect her against death and serious bodily harm.

I mentioned before that obviously this is contextually different from a domestic violence case, but the case, at least in the domestic violence field, has a

transcendent importance, a transcendent meaning, because it identified the existence of the battered woman syndrome and described the cyclical nature of the syndrome, which makes the filing, withdrawal, and refiling of complaints an expected series of events.

The first phase in the cycle is the tension-building state, when minor incidents of abuse occur. The second is an acute battering incident, and the final stage is characterized by contrition and loving behavior on the part of the batterer. If we accept that this syndrome exists, and if we accept this expression or this articulation of the cyclical nature of the syndrome then the kinds of considerations which judges have previously expressed right on the record ("She withdrew this complaint last time, so why should I give it any credence now?") are very explicable.

The Court spoke in terms which I think are very important to the stereotyping issue. It specifically addressed the currency enjoyed by stereotypes and myths concerning the characteristics of battered women and their reasons for staying in battering relationships. Some popular misconceptions about battered women include the belief that they are masochistic and actually enjoy their beatings; that they purposely provoke their husbands into violent behavior; and, most critically, that women who remain in battering relationships are free to leave their abusers at any time. The opinion is really helpful in dispersing these myths, and it is very important to keep in

mind that none of the old stereotypes that we may have held about domestic violence issues should be allowed to carry the day when we are faced with an individual violence case.

Two other areas with which the Task Force dealt are juvenile justice and sentencing. In the juvenile justice field it is sufficient to say that all data showed that juveniles are treated extremely differently depending upon their sex. We have had a new Code of Juvenile Justice in New Jersey since January 1, 1984, and the recommendation of the Task Force was that there should be close monitoring of the sentencing provisions for juveniles in order to ascertain whether or not the national data is consonant with that in New Jersey.

Adult sentencing is probably the only area in which women appear to get something beneficial, at least one might call it beneficial, from gender based myths and stereotypes, because women appear to receive lighter and fewer custodial sentences than male defendants, at least in certain types of cases. There does appear to be a tendency to give women heavier sentences when they are involved in "male-type" crimes in which the sentencing judges apparently feel they should not be involved, as opposed to "female-type" crimes, which are all right. The Task Force recommended that a study be undertaken to determine whether the factors that judges use to sentence are different for women than for men. You may have noted that we had the first female death penalty imposition last week in the case of a torture murder; although I didn't follow it too closely, it

probably fell within the scope of crimes which would not ordinarily be considered to be "female-type" criminal activity.

By far the most significant area, the area of greatest concern, is matrimonial. That's probably no surprise to anyone. Stereotypes about men and women are most strongly expressed here, the facts are least known, and the economic disadvantage to women appears to be the greatest. The data that the subcommittee gathered shows that on a national scale divorce portends long-term deepening poverty for a large proportion of women and their children.

The phenomenon is a result of many different things: wage discrimination; job segregation; inadequate job opportunities for displaced homemakers; inadequate awards of alimony and child support that just simply don't take into consideration market realities, the true cost of living, widespread default in the payment of ordered alimony and child support; and over-estimation of the degree to which marital property offsets these disadvantages. After divorce the economic status of men appears to follow a normal upward course, whereas the economic status of women appears to deteriorate. There is a perception that some judges make the assumption, both biased and inaccurate, that divorced women will remarry and thereby regain lost economic ground. Statistics demonstrate that after age 25 women remarry at a significantly lower rate than do men, and that this disparity increases sharply with

age. Stereotyping tends to be the most hard-core in this area.

One of the major problems is the area of support and alimony. There was strong agreement that our courts do not understand the economic obstacles confronting women, with the result that women suffer inequitable long-range outcomes with respect to property division, support awards, and enforcement. Judges seem to lack accurate information about the kinds of jobs that are available to women and the actual cost of feeding and caring for children. The fact that they don't have adequate information, however, according to the Task Force, doesn't seem to deter them at all from making findings as to exactly what the proper amount of support and alimony would be in any individual case.

The second most significant area is in regard to the limitations on equitable distribution and support. Attorneys from all parts of the state observed that there appears to be an unofficial standard that the wife will receive no more than 35 to 40 percent of net marital assets and equitable distribution, and a support award of no more than 30 percent of the husband's net pay, even when there are small children in the custody of the wife. This is not just information that has been funneled into the Task Force, because the same information came from the judges themselves when this matter was discussed at Course No. 9. These standards are based upon absolutely stereotypical mindsets, and those mindsets are nothing more than stereotypes: one, that a wife could not be more than a 35 to 40

percent partner in a marriage and, two, that regardless of the number of dependent children, the husband deserves to keep 60 percent of his net pay. These are pernicious ideas which are rooted in bias and not in fact, and which cause suffering to innocent children as well as inequity to wives, who often participate in more than an equal way in the family partnership.

Another area in which there was a belief that gender bias exists is in the allocation of counsel, accountant and appraiser fees. Women are seen as disadvantaged in divorce proceedings by the reluctance of some judges to award pendente lite counsel fees and fees for accountants and appraisers. No or low fee awards make it difficult for women to obtain full discovery and properly pursue their cases. What's important about this is that very often judges will say, "Well, I don't award pendente lite counsel fees to anybody. I don't award appraiser's fees or accountant's fees to anyone." It seems to me that that's like Anatole France's observation that the law forbids the rich and the poor alike to beg, steal bread and sleep under bridges. The fact of the matter is that if you know that your so-called equal treatment is consistently falling more heavily on poor litigants who at least classically have been women, then there is gender discriminatory thinking involved.

The last area in the matrimonial field that I would like to discuss is rehabilitative alimony; that is, support granted to a homemaking spouse for a specific

period to enable the recipient to obtain training or retraining in order to establish herself in the work force. A lot of concern was raised that the developing concept of rehabilitative alimony has begun to hurt women. Some judges are already expressing the idea that no alimony should continue for more than a few years, even when the marriage has been of long duration and the wife is unlikely to rise to her husband's level of earning power.

This brings me to the idea that all stereotypes are wrong, and that some of the new stereotypes which are replacing the old chestnuts can be just as devastating. For example, one new stereotype is embodied in the idea that a homemaker needs to be rehabilitated, or that anyone, regardless of her status, can in fact be rehabilitated. Many judges are awarding short term rehabilitative alimony to older women, many of whom have little or no work experience outside the home and who have no chance of ever being able to support themselves at more than a subsistence level.

There are two recent cases from other states which deal with this area. In Molnar v. Molnar, 314 S.E. 2d 73 (W. Va. Sup. Ct. App. 1984), a trial judge awarded rehabilitative alimony only to a 53-year-old woman who earned a net monthly salary of $438 as a clerk and really had dismal prospects for future employment. Her husband was an executive with a high monthly pay. In this case the wife was successful on the appeal and the award of rehabilitative alimony was ruled to be an abuse of

discretion. Factors for judges to take into account in future cases were spelled out, not the least of which was the reality of the case with which the court was dealing. In Holston v. Holston, 473 A. 2d 459 (Md. App. 1984), the trial judge awarded alimony of $150 a week for three years to a 39- year-old woman who had left school and become a secretary in order to support her husband while he pursued his education. At the time of the divorce in 1982 both were 39. She had been a homemaker since 1967 and he was earning $85,000 a year as a dentist. The couple's five minor children were in her care. The Appellate Division in Maryland, in reversing the award of rehabilitative alimony, stated that, "Reading this record we see no reason to expect that if alimony terminates after three years the respective standards of living of the parties would not then be unconscionably disparate." What was involved here was kind of a double bind imposed by the trial court on the matrimonial litigant. The decision is based on a stereotype; that is, that a 39-year-old secretary can certainly support herself with no difficulty. In addition, the decision applies what looks like an avant-garde theory (and judges, like everybody else, like to be involved in the avant-garde); that is, rehabilitative alimony. Together they manage to place the litigant in a pretty serious bind.

The idea of the new stereotype as opposed to the old stereotype became clear to me the other night. I heard a female comedienne on television who said, "I'm a woman of the eighties. I had a baby an hour ago and now I'm back to

work." That's basically a good joke, and it's funny because it's an eighties stereotype. We're used to old-fashioned stereotypes that we can easily set aside as trite cliches. But it's really important not to be taken in by the fact that a stereotype is a stereotype whether or not it's modern or from antiquity. You can give a 53-year-old woman who has never worked three years of rehabilitative alimony and say on the record that in today's improved employment climate for women she can certainly get a good job in industry and be self-supporting. That isn't going to make it true, because the fact that some women are becoming captains of industry and astronauts and surgeons and judges and lawyers doesn't mean that all women have similar employment opportunities. Nor does it mean that any given woman who appears before you in court can get such a job, or any job for that matter.

That brings me around to the part of the topic that Judge Loftus introduced first; that is, how do the changing roles of women in society impact upon our judicial responsibility? This is an extremely interesting topic because it suggests, obliquely at least, that some change in the way that we perform our judicial responsibility may be linked to women's changing roles. This concept deserves close scrutiny. If we recognize that the proper exercise of the judicial function is to give full and fair consideration to the facts of each and every case, and to render a decision based upon those facts, it is clear that societal changes should have absolutely no effect whatsoever on the

judicial function itself. In other words, if we're doing what we are supposed to be doing, that is, evaluating each case on its own merits and not on some idea of the way things are out there, then the results in our cases may be changing as a reflection of cultural changes, but the function should remain the same. The problem is that many of us have not been doing the job the way it is supposed to be done. Stereotypes have become a large part of judicial thinking, especially in the areas which I've previously outlined. The judges who engage in these stereotypes probably view themselves as excellent jurists (and in other cases I am sure they are), but the application of a stereotype for any reason under any circumstances in judicial decision-making is an abdication of the proper judicial function. In order to maintain the kind of judicial integrity and to make the kinds of judicial decisions that we should be making, we need to hie back to what they probably told us on the first day: You decide this case based on the facts of this case and this case alone, without any other considerations.

Before I close, there are two other judicial decisions that I want to commend to you. The first is Hischon v. King and Spaulding, which was decided in 1984 in May by the U.S. Supreme Court. It involved a female associate in a law firm in Atlanta who was denied partnership. It's a pretty expansive decision by the U.S. Supreme Court about the rights available to an individual who believes that she has been denied access, as a result of

her sex, to partnership or to employment opportunities or to any of the benefits which might attend employment.

Finally, and I see that Judge Haines is here - I met him out in the hall and I told him I was going to use his opinion this morning - it's really worthwhile. The decision is In the Matter of the Application of John Michael Thomas Rossell [196 N.J. Super. 109 (L. Div. 1984)]. It was an application for a name change by a son to his mother's name. The father and the child had very little contact. The child lived with his mother, and was very young -- two years of age. Judge Haines traced the history of the law governing surnames, beginning with the principle or the supposed principle, as he calls it, in Sobel v. Sobel [46 N.J. Super. 284 (Ch. Div. 1976)] that, absent extenuating circumstances, a father has the right to expect his kin to bear his name.

The next case in this series is In re Lone [134 N.J. Super. 213 (Law Div. 1975)], which changed the focus from the father's right to the child's right and concluded that the realities are that the child's present name represents his identity, his paternity, and the remaining bond with his father, and that these realities would advance the best interests of the child. Judge Haines said as follows:

> It is here that I am obliged to part company with Lone. The principle which it espouses denies equality. The right of the father to have his child bear his name is no greater than the right of the mother to have the child bear her name. The deference which Lone accords the father is a deference rooted in antiquity. It

> echoes fortunately disappearing sexual values. It is still the legally unnecessary custom in our society for a woman to adopt her husband's surname upon marriage. Children, without their knowing participation and usually with little thought on the part of the parents, then receive the same name. Considerations of fame, fortune, culture and aesthetics, which may make a mother's name decidedly more attractive to a child, are universally ignored. The automatic establishment of the father's name obviously removes a serious potential conflict between father and mother but does so at the cost of the mother's identity. This masculine usurpation of authority is permitted to continue if the principles advanced by Lone are recognized."

He went on to decide the case and to say that this child in fact should be allowed to adopt his mother's name. This case is a perfect example of a person dealing with the realities of the issues before him. None of the stereotypes, myths, or biases which normally would attach to daily living were allowed to interfere with Judge Haines taking a look at the real facts and the real circumstances in that particular case and rendering what ultimately turned out, at least in my estimation, to be a fair decision for all the parties involved. That's what is expected of us, and if we do that, nobody can expect anything else.

Speech of Professor Roger S. Clark, Rutgers University School of Law at Camden, New Jersey

Delivered to the New Jersey Judicial College,

November 21, 1984

SUBJECT: How to conduct a judicial clerkship interview.

What I have to say reflects three levels of personal experience:

As a member of the Supreme Court Task Force on Women in the Courts, I was exposed to the compelling material which we received in answers to our questionnaire, in the comments made at our regional meetings and in other anecdotal material that came our way as a result of our being known to be associated with the Task Force. Such material is summarized in our report. Judge Mary Ellen Talbott captured the flavor of it with you last year. And we have retold it in the soap opera medium in our inspiring video.

I speak also as chair of my faculty's Appointments and Promotions Committee, which is, aside from grading exams, the least sought after chore in the teaching branch of the legal profession. The profound changes in the sexual composition of the legal profession in the past two decades have created the same opportunities and the same pitfalls for law schools as they have for law firms and judges. On the one hand there is the opportunity to

find the best from a pool of previously untapped talent. On the other is the challenge of coping with remaining vestiges of attitudes that in the past made it difficult for women to be treated seriously in many professional roles.

Which brings me to the third layer of my experience; that is, as a member of a law school faculty whose product, talented and well-educated people, has these past few years been 40 to 45% female. Placement offices have been forced to respond to this challenge. They hear the same kind of horror stories that members of the Task Force heard. I shall certainly not reveal trade secrets in the form of techniques that the creative members of the placement profession have devised to send egregiously and incorrigibly sexist potential employers into outer darkness, but I can assure you that the bush telegraph is a very powerful instrument. I shall say a word or two in a minute about how to avoid that fate. I must tell you, however, that the problem is taken sufficiently seriously in many schools that placement directors find it necessary to counsel individual applicants for employment on methods for responding firmly and emphatically to improper questions. Needless to say, some of the same issues arise in connection with questions concerning race and religion as occur in relation to gender, and similar sensitivity is required to deal with each of these areas. My own placement office assures me that things are getting better on all these fronts in New Jersey.

A final background point. What we are talking about is on one level a matter of shifting mores, customs, attitudes, even of manners if you like. At another level it is about some rather important principles of law. Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in employment on the basis of race, color, sex (including pregnancy, childbirth or abortion) religion and national origin. Title VII applies to clerkship appointments. At the international level, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (about which Professor Defeis is a much greater authority than I) obligates those states which become parties to it to "embody the principle of equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle." These are fine phrases but, like the Civil Rights Act, merely hortatory unless an effort is made to work them out in operational settings as specific as a job interview. We are talking, then, about "appropriate means" and the "practical realization" of a very important principle. Our task, in short, is at one level to deal with a difficult piece of detail. At another level it is how to give concrete content to some of the most important emerging legal principles of our time.

I turn to The First Year Report of the Supreme Court Task Force on Women in the Courts and the videotape

produced by the Task Force, "Women in the Courts: Changing Roles, Changing Attitudes." The vignettes you saw were collapsed from several to two but the gist of the tales you saw was amply documented by material in the Task Force's files and, I might add, in the experience of law school placement officials. (One of the most troubling of placement stories is that of the judge who gave a clerkship to a male applicant over a highly qualified female applicant on the basis that the male "needed it"; the unstated assumption seemed to be that the woman's husband could take care of her. Such generalizations are simply not acceptable as a matter of policy or of law.)

The Judicial Clerkship interview segment of the video is replete with echoes of such stereotyping:

- the judge who never hires a woman as civil clerk because that one is in charge of others (lurking assumption - how would either she or they cope?)

- the merging of the woman's personality with that of her husband

- the assumption that her husband might have some kind of veto power over whether she might apply for a particular kind of employment

- the assumption that a woman must be at home to look after the children

- the assumption that one who writes for a women's rights journal is somehow a little irrational by inclination or training, and the deeper prejudice that such endeavors are not to be taken seriously.

The parting crack to the applicant about the "little woman" rings all too true. The little play with the secretary at the end where Jim Beckwith is to be told that his wife will not be hired is not apocryphal. It happened in real life, too. The point of that incident is one that one might have felt did not have to be made: husbands are no longer their wives' keepers; wives are not chattels that husbands rent out to employers.

The law firm associate interview section of the video catches in a little more depth the issue of who looks after the children. I will return to this. The interview is also designed to expose another hoary stereotype - the notion that there are some professional roles for which women are uniquely ordained and others from which they should be steered away. In the hypothetical law firm of Cartwright & Ellis, litigation is men's work; family law, domestic relations, is women's. We have had the same kind of problem in the academic world. I am sure that many entering women law teachers have found themselves in family law, trusts and estates, and Title VII law and kept out of criminal law, tax, and anti-trust. No part of our profession can afford to allocate its resources without considering individual talents. Some women are good at matrimonial work; some hate it and have no aptitude for it. The same is true for men. There is absolutely no rational basis for the kinds of stereotyping in which Cartwright & Ellis indulge.

What lessons should be drawn from our little morality plays? What do the report and the film do for the reasonably conscientious and fair-minded judge (the judicial equivalent of that model of morality the reasonable person)? I believe that there are three messages here. One is the matter of consciousness-raising. Many of us have never thought about the issues at all. Now that we have, our instincts will take care of many of the problems. A second message is a black-letter one. There are certain no-nos to follow. Do not ask if a candidate is married. Do not ask if she is using contraceptives. Do not ask if she has her husband's permission to work for you. Do not ask her if she knows where her children are at the moment and who will look after them when you make impossible demands on her time. Ms Beckwith in the film, incidentally, had a good response to the problem which we perhaps made a little too low key in our script. She knew that judges and partners in law firms are not the only workaholics out there. Many law professors have the same character defect. Ms Beckwith had just survived three years of coping with assorted sadists and egomaniacs of both sexes who made inordinate demands of her time. She also coped with the demands of a law journal. She undoubtedly had a plan for dealing with the judge's demands also. There is nothing wrong with mentioning your crazy work habits to male and female applicants alike. Then you can ask them if they can cope with a demanding work schedule that may sometimes involve deadlines and extreme hours.

Beyond this, the only acceptable way to handle the issue is to proceed on the basis that it is inherent in accepting employment that an applicant, male or female, is prepared to handle his or her personal matters in such a manner as not to impinge upon work responsibilities. The potential employer must presume that to be the case unless experience proves otherwise.

What I am saying here is that there are some black-letter rules to be followed as you would the code of civil procedure. Compliance with them is required by the law and by proper administrative practices.

My final point is the hardest part. It is reflective, systemic if you like. We all need to devote some thought to why we interview people. What do we want to find out which is genuinely job related? Take the question about who minds the children. There is a job-related issue here - can the person you are interviewing work difficult hours. Ask that question, not the personal ones about babies and weddings and boy friends. The same goes for other questions of the same ilk. Ask yourself what you really need to know of an applicant, male or female, and direct your inquiries accordingly. Moreover, what image do we want to project of ourselves in an interview? Remember that at the end of the interviews we intend to hire at least some of the people we interview. The people we hire will have a significant impact on our professional lives. There is not much point in souring a

significant number of them to our particular branch of the profession by mindless questioning.

Implementing Memoranda

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

ROBERT D. LIPSCHER
ADMINISTRATIVE DIRECTOR OF THE COURTS

CN-037
TRENTON, NEW JERSEY 08625

MEMORANDUM

TO: Family Division Judges

FROM: Robert D. Lipscher RDL

SUBJECT: Women in the Courts Task Force: Juvenile Justice Recommendations

DATE: August 17, 1984

You recently received a report of the first year's progress of the Task Force on Women in the Courts. I would like to bring your particular attention to the section regarding Juvenile Justice which begins on page 52 of the report. The report recommends that "educational programs for all involved with the new Code's administration should be reviewed to ensure that the potential for continued disparate treatments is discussed." (Report at page 59.)

If you are involved in the preparation or teaching of judicial education programs, I encourage you to avail yourself of the expertise of the Task Force. Ms. Nadine Taub, Professor of Law at Rutgers University, School of Law at Newark, served as chair of the Committee on Juvenile Justice, and would be a valuable source for background information on the committee's findings and resources.

I wish you well for the new court year.

/mfk

cc: Honorable Marilyn Loftus
Professor Nadine Taub
Richard L. Saks, Esq.

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

ROBERT D. LIPSCHER
ADMINISTRATIVE DIRECTOR OF THE COURTS

CN-037
TRENTON, NEW JERSEY 08625

September 13, 1984

Honorable Betty J. Lester
Presiding Judge, Municipal Court
31 Green Street
Newark, New Jersey 07102

Dear Judge Lester:

Re: Subcommittee on Domestic Violence of the Task Force on Women in the Courts

I am writing to solicit any comments or suggested changes which came out of your subcommittee and which you feel would be of use in improving the way we collect data on domestic violence.

I note that there was one concrete suggestion incorporated in the report (breaking out mandated and recommended counseling). I am particularly interested in capturing statistics on any reluctance on the part of judges to hear cases, grant relief, or grant the relief requested. If you have any suggestions that impact on any step of the progress of a case, however, I would be happy to consider collecting statistics in that area.

Thank you for your anticipated cooperation and continuing concern.

Very truly yours,

Robert D. Lipscher

Robert D. Lipscher

mal

SUPREME COURT OF NEW JERSEY

ROBERT N. WILENTZ
CHIEF JUSTICE

313 STATE STREET
PERTH AMBOY, NEW JERSEY 08861

MEMORANDUM

TO: All Judges

SUBJECT: Women as Litigants, Attorneys, Jurors, and Witnesses in the New Jersey Courts

DATE: September 28, 1984

Shortly before this court year began, the Task Force on Women in the Courts published its first-year report. The issues it identifies prompt me to send this reminder of specific areas in which the Judiciary must demonstrate the highest standards of professionalism and exemplary behavior. In general, I ask for sensitive understanding of the particular problems women have faced in their dealings with the court system in the past, and ask your help in establishing a level of conduct for the Judiciary that will totally erase the gender bias that affects every institution and practically every person within it.

The Task Force cites as basic to impartial justice the notion that all attorneys, lay witnesses, expert witnesses, witnesses who are also victims of domestic crimes, and jurors should be addressed in a manner befitting their role in whatever proceeding is before the court, and not treated differently or addressed by a more familiar title or in a demeaning tone if they are women. Accordingly, it should be the practice of every judge, at the beginning of every trial, to meet with the attorneys and advise them to address witnesses in a non-sexist manner, to avoid sexist remarks to the jury if there is one, and to address all attorneys (male and female) by the neutral term "counsellor."

Each judge should also examine his or her conduct. In particular, I ask that you scrutinize your behavior toward female applicants for law clerk positions; that you examine your awards of fees to female attorneys for any bias; that you recognize, and show by your demeanor that you recognize, incidents of domestic violence for the crimes they are; that you judge expert witnesses on their qualifications, and not on their gender; and that you refuse to tolerate sexist humor in the courtroom or your chambers.

The Task Force found, in general, that judges are much less likely to offend women in the courtroom than are male attorneys or parties. I commend you for that, and hope that your efforts to make the position of the judiciary on this issue clear will effectively eliminate most demeaning behavior by those who appear in the courts. I urge you to carefully read and digest the report of the Task Force, and especially those sections concerning areas of law with which you deal most frequently.

I hope we will eliminate much that is bad in the courts for women by behaving fairly and consistently ourselves and by requiring the same behavior of those before us.

R.N.W.

/mfk

cc: Members of the Court
Robert D. Lipscher, Esq.
Ms. Catherine S. Arnone
Melanie S. Griffin, Esq.

ADMINISTRATIVE OFFICE OF THE COURTS

INTEROFFICE MEMO

TO: Assistant Directors, Clerks of the Court, Chiefs, Trial Court Administrators

FROM: Robert D. Lipscher RDL

SUBJECT: Gender Bias in Court Administration

DATE: September 28, 1984

In remarks at the Judicial College in 1983, the Chief Justice took a strong stand against all forms of gender bias in the court system. He said, "There's no room for the funny joke...for conscious, inadvertent, sophisticated, clumsy, or any other kind of gender bias...It will not be tolerated in any form whatsoever."

In June of this year, the Task Force on Women in the Courts issued its first report with recommendations. I call your attention especially to the report of the Subcommittee on Court Administration and recommendations of the Task Force with regard to hiring and appointments and professional interaction (attached hereto). These two documents contain some very important observations on gender bias in forms as well as unacceptable modes of address for attorneys. I would further suggest that we all need to be sensitive to both actual and perceived gender bias in all our dealings with the public and co-workers.

I am specifically asking you to review forms under your domain and to set a suitable expectation with your staff regarding their sensitivity to these issues in their written, verbal and other behavior towards co-workers and the public. The New Jersey Courts have taken a leadership position in the nation by creating a Task Force on Women in the Courts and it is vital that we do all we can to respond to the recommendations which affect us.

/ajb
Attachment
cc: Chief Justice Robert N. Wilentz
Hon. Marilyn Loftus
Hon. Florence R. Peskoe
Assignment Judges

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

ROBERT D. LIPSCHER
ADMINISTRATIVE DIRECTOR OF THE COURTS

CN-037
TRENTON, NEW JERSEY 08625

October 25, 1984

Hon. Marilyn Loftus
814 Essex County Courts Building
Market Street
Newark, New Jersey 07102

Dear Judge Loftus:

I have asked Melanie Griffin to acknowledge the letters in the file you sent with her to the Administrative Office of the Courts of litigants' complaints, and am concerned that we develop a procedure for dealing with such letters. I want the Task Force to get the information it needs to develop long-range solutions to widespread problems, but if the problem outlined in a letter is a current one in which the AOC should intervene, I also want to assure that the litigant's individual complaint is addressed.

Therefore, please acknowledge each letter and explain what will be done with the information in it. If you are sending the letter to the AOC, explain our functions and limitations, and that if the problem requires a change in caselaw our involvement can have no effect on that aspect. If the letter does not raise a current problem, but will be useful to the Task Force in studying the general problem of gender bias, your acknowledgement should make it clear that we are grateful for the litigant's input but will not pursue the individual problem. I do not want the litigant/complainant to expect more from the Task Force than it can do.

Please be assured that we will do all we can to make the courts function properly for all litigants. I hope that the correspondence you receive will make us all more sensitive to the problems which exist. As the Task Force identifies ways we can correct any continuing biases which disadvantage women, I hope you will bring them to my attention, and where the problem is one which can be resolved through traditional administrative channels or judicial education, I consider it my responsibility to correct it.

Yours very truly,

Robert D. Lipscher

Robert D. Lipscher

/lsh
cc: Chief Justice Robert N. Wilentz
Melanie S. Griffin, Esq.

ADMINISTRATIVE OFFICE OF THE COURTS

INTEROFFICE MEMO

TO: Richard L. Saks

FROM: Robert D. Lipscher RDL

SUBJECT: TASK FORCE ON WOMEN IN THE COURTS - Impact of Report on Substantive Judicial Education Programs

DATE: February 15, 1985

Dr. Norma Wikler, a consultant to the Task Force on Women in the Courts, has suggested that there be a positive effort to integrate the findings of the Task Force into the substantive law courses offered at the 1985 Judicial College. I agree that the work of the Task Force should not only be addressed in a separate course which will naturally tend to attract those judges who need education least, but should be a part of the other efforts we make to keep judges abreast of the current state of the law.

Particular items which should be available for your use by the time of the next Judicial College include the results of the sentencing and divorce studies and the discussion by the subcommittee on Civil Jury charges which will soon decide whether to recommend a charge which compensates homemakers for lost "earnings". In addition, a subcommittee of the Municipal Courts Task Force has reported on the enforcement of the Prevention of Domestic Violence Act; its recommendations to the Accountability Committee of the Task Force will be useful in municipal court and family part education. I assume that to whatever extent is appropriate, you will incorporate these materials into the next College program.

/lsh

cc: Chief Justice Wilentz

OFFICE OF ATTORNEY ETHICS
OF THE
SUPREME COURT OF NEW JERSEY
RICHARD J. HUGHES JUSTICE COMPLEX
CN 037
TRENTON, NEW JERSEY 08625
609-292-8750

DAVID E. JOHNSON, JR.
Director

OFFICE OF DIRECTOR

TO: CHAIRS, VICE-CHAIRS, AND SECRETARIES
District Ethics Committees and
District Fee Arbitration Committees

FROM: David E. Johnson, Jr., Director

SUBJECT: Women In The Courts Task Force Report

DATE: March 8, 1985

You are probably aware that in 1982 Chief Justice Robert N. Wilentz appointed a Task Force on Women in the Courts, chaired by the Honorable Marilyn Loftus, to study and report to the Court on gender bias in the courts. The Task Force made many recommendations having to do with attorneys' behavior toward clients, witnesses, and other attorneys. Because you are to some extent the judges of some of that behavior, and because you set standards for the profession with your decisions, the Court has asked me to share the results of the Task Force's work with you. I am sure you will want to share the enclosed copy of the first year report with your committees.

/ce
Enclosure

cc: Chief Justice Robert N. Wilentz, w/o att
Hon. Marilyn Loftus, w/o att
Robert D. Lipscher, Esq., w/o att

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

ROBERT D. LIPSCHER
ADMINISTRATIVE DIRECTOR OF THE COURTS

CN-037
TRENTON, NEW JERSEY 08625

MEMORANDUM TO: Presiding Family Division Judges

SUBJECT: Supreme Court Committee on Women in the Courts

DATE: April 16, 1985

The Chief Justice has approved a request by the Supreme Court Committee on Women in the Courts to conduct a New Jersey Divorce Study. The goal of the Study is to assess the even-handedness of treatment of divorce litigants regardless of their sex.

The Statistical Services Unit of the AOC has drafted the attached Code Sheet to capture data on approximately 300 divorce cases statewide. The Unit will send staff to each county to cull from case files (including the Case Information Statement and dispositional order) data in order to complete the Code Sheet. Thus, the only work that will be required of local staff will be to pull case files for AOC staff.

I am requesting that you review the draft Code Sheet and advise me of any suggestions for changes you would like to make for consideration in the development of the final form. For example, are there questions that should be modified for purposes of greater clarity, eliminated or added? I would appreciate your advising Ed Kennedy of your comments within two weeks of your receipt of this memorandum.

R.D.L.

/jgb
Attachment
cc: Chief Justice Robert N. Wilentz (w/o attachment)
Assignment Judges (w/o attachment)
Hon. Marilyn Loftus (w/o attachment)
Trial Court Administrators (w/o attachment)
Family Division Case Managers (w/attachment)
Edwin Kennedy (w/attachment)
Raymond Rainville (w/attachment)
Steven Yoslov, Esq. (w/attachment)

SUPREME COURT OF NEW JERSEY

ROBERT N. WILENTZ
CHIEF JUSTICE

313 STATE STREET
PERTH AMBOY, NEW JERSEY 08861

July 18, 1985

John L. White, Esquire
President
New Jersey State Bar Association
22 North Broad Street
Woodbury, New Jersey 08096

Dear Jack:

The Task Force on Women in the Courts as you are no doubt aware has been working since 1982 to define and address the particular problems that women encounter in their dealings with the State's judicial system. A survey of New Jersey lawyers done in 1983 reflected that informal associations of attorneys to which women are not admitted often influence the administration of the various bar associations. I would like to make sure that you know that the Task Force is available to you as a resource to combat the problem if you observe it and I urge you to make use of its report, videotape, and speakers from its membership as you need them.

New Jersey has become a leader in the study of women in the legal field and the Bar Association might by taking an active role in the acknowledgement and correction of gender bias can send the important message that women are welcome to the profession of law as well as to its practice, and welcome as equals. The Bar could do exciting work in this area.

Sincerely,

Robert N. Wilentz

P.S. Jack, you might want to consider presenting a program on the changing role of women in the legal profession at the annual meeting of the State Bar Association.

AN OVERVIEW OF NEW JERSEY APPELLATE DECISIONS AFFECTING WOMEN'S RIGHTS

Prepared by the
Women's Rights Litigation Clinic at
Rutgers University Law School - Newark
for the Supreme Court Task Force
on Women in the Courts

The Task Force on Women in the Courts appreciates the work done by the Rutgers students who prepared the original overview: Joyce Caesar, June Duffy, Mary Sue Henifin, Sara Mandelbaum, and Harriet Miller; and those who assisted in its preparation: Marie Chen, Diana Hassel, Jennifer Kang, and Joanne Orizal; under the supervision of Professors Nadine Taub and Annamay T. Sheppard.

I. CRIMINAL LAW

New Jersey has been at the forefront in legal developments involving women and criminal justice. From the 1973 decision striking down indeterminate sentencing for women, to a 1984 decision recognizing the battered woman's syndrome as a valid defense to the murder of a batterer, the New Jersey courts have brought the law to a new level of reality as it relates to the rights of women.

State v. Chambers, 63 N.J. 287 (1973). In this landmark decision, a unanimous Supreme Court invalidated New Jersey's statutory provisions "for the custodial sentencing of female criminal offenders insofar as they require the sentencing of a female offender for an indeterminate term in a situation where a male offender would be sentenced to State Prison for a minimum-maximum term for the same offense." 63 N.J. at 291.

The Court found that there was no validity to the theory that women are more amenable to rehabilitation and found that under the statutory scheme women could be confined longer than men. The Court determined that the statute was unconstitutional on its face and declared the statute void. The New Jersey Code of Criminal Justice, effective in 1979, eliminates any disparate sentencing based on sex. N.J.S.A. 2C:43-1 et seq.

State v. Saunders, 75 N.J. 200 (1977). The Court interpreted the New Jersey Constitution in a criminal context in a way which would afford substantial protection to privacy rights. The statute at issue prohibited

fornication, which was defined as sexual relations between any man and an unmarried woman. N.J.S.A. 2A:110-1. Concluding that "the conduct statutorily defined as fornication involves, by its very nature, a fundamental personal choice," 75 N.J. at 213, the Court held that the criminalization of consensual sexual conduct was an infringement on the right to privacy guaranteed by both the state and federal constitutions. In so holding, the Court rejected the arguments that the statute furthered a compelling interest in the prevention of venereal disease, the regulation of the number of illegitimate children, and the protection of marriage and public morality.

State v. Kelly, 97 N.J. 178 (1984). In another landmark decision, the Court held that expert testimony regarding the battered woman's syndrome was admissible to establish that a murder defendant acted in self defense in the honest and reasonable belief that she was in imminent danger of death at the hands of her victim. The Court also held that despite the relatively recent nature of the research, the battered woman's syndrome has a sufficient scientific basis to be admissible. However, it remanded to permit the state to inquire further into the reliability of "this developing field of scientific knowledge." On remand, Ms. Kelly was found guilty of manslaughter.

State v. Martinez, 97 N.J. 567 (1984). N.J.S.A. 2C:14-2a(4) provides that a person is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person and he is armed with a weapon or any

object fashioned in such a manner as to lead the victim to reasonably believe it to be a weapon. In holding that the threat need not occur during the actual sexual penetration, the Court was sensitive to the reality that the menacing pointing of a gun adds substantially to the harm done in a rape, regardless of when the actor chooses to point it.

State v. Hill, 170 N.J. Super. 485 (App. Div. 1979). The Appellate Division here upheld the constitutionality of N.J.S.A. 2A:138-2, which criminalized carnal knowledge of institutionalized women (but not men). Applying the intermediate standard of review employed by the federal courts in sex discrimination cases, the Appellate Division found that the state's interest in protecting institutionalized feeble-minded or mentally ill females is an important governmental objective, and the prohibition of sexual intercourse with such persons, who may not fully comprehend the significance or consequences of such conduct, is substantially related to the achievement of that protection." 170 N.J. Super. at 488. The holding in this case was modified to include both men and women by the subsequent enactment of N.J.S.A. 2C:14-2c(3), which criminalizes even consensual sexual acts where one of the parties (male or female) is hospitalized or mentally defective, and the other is in a supervisory relationship with that person.

State v. Bardoff, A-5756-82T5 (App. Div., July 11, 1984). At issue in this criminal appeal was the systematic exclusion of women from service as grand jury

forepersons. Defendant showed that, of the grand juries empanelled by the assignment judge between 1976 and 1981 in Middlesex County, approximately 5% had female forepersons and approximately 95% had male forepersons, despite the fact that women and men were represented in equal numbers in the foreperson pool. The Appellate Division, ignoring the negative symbolic effect of tolerating the underrepresentation of women, affirmed the trial court's rejection of defendant's equal protection and sixth amendment challenges, reasoning that since the position of grand jury foreperson has no leadership function, the disproportionate underrepresentation of women as forepersons failed to raise constitutional concerns.

II. REPRODUCTIVE FREEDOM

Abortion

Doe v. Bridgeton Hospital Association, 71 N.J. 478 (1976), cert. denied, 433 U.S. 914 (1977), modification denied, 160 N.J. Super. 266 (Law Div. 1978), aff'd, 168 N.J. Super. 593 (App. Div. 1979). In this case, women and their physicians successfully challenged the refusal of three private, nonprofit, nonsectarian hospitals to make their facilities available for elective abortions during the first trimester of pregnancy. The trial court dismissed their claims, and, while the matter was pending in the Appellate Division, the New Jersey Supreme Court chose to hear the case sua sponte. It held that, as quasi-public institutions, nonsectarian hospitals must not implement a policy which contravenes the public interest or frustrates

constitutional rights where there is neither a medical or "general welfare" justification for the policy. The Court also held inapplicable to nonsectarian hospitals the state "conscience clause", which was enacted during the course of the litigation and provides that no hospital shall incur civil or criminal liability for refusing to provide abortions. If the statute were applied to allow nonsectarian, nonprofit hospitals to refuse to perform elective, first-trimester abortions, the Court reasoned, the statute would have the effect of allowing the hospitals to abrogate a woman's constitutional rights under Roe v. Wade, 410 U.S. 113 (1973), and thus would constitute impermissible state action.

Subsequently, defendants attempted to reopen the decision in light of three United States Supreme Court decisions upholding states' right to deny public funding for abortions, Beal v. Doe, 432 U.S. 438 (1977); Poelker v. Doe, 432 U.S. 519 (1977); Maher v. Roe, 432 U.S. 526 (1977). The trial court and Appellate Division, however, flatly rejected defendants' argument, and held that the essence of the United States Supreme Court's decisions was that the state's failure affirmatively to fund abortions for women who could not afford them did not place an "obstacle...in the pregnant woman's path to an abortion." 160 N.J. Super. at 271, citing plaintiff's brief and Maher, supra. By contrast, the refusals in this case did constitute such an obstacle.

Right to Choose v. Byrne, 91 N.J. 287 (1982). This is one of a series of decisions making clear that New Jersey constitutional guarantees afford greater protection to individual rights than do their federal counterparts. The Court invalidated a New Jersey statute which limited public funding to those abortions necessary to preserve the life of the mother by holding that New Jersey must fund abortions on the same basis as it funds other medical services, particularly childbirth. In particular, it held that Medicaid funding must be provided for abortions which are necessary to protect the health of the mother. Although the Court did not define health, in response to the lower court's ruling the Department of Human Services issued regulations issued which defined health broadly. Justice Pashman (concurring in part and dissenting in part) urged that "the State Constitution requires the State to fund all abortions, including elective abortions, for women who could not otherwise afford them." 91 N.J. at 319.

Livingston v. New Jersey Board of Medical Examiners, 168 N.J. Super. 259 (App. Div. 1979). Livingston upheld a rule restricting access to second trimester abortions against both procedural and constitutional challenges. Promulgated by the Board of Medical Examiners, the rule established 14 gestational weeks as a cut-off point after which abortions could only be performed on an inpatient hospital basis. Faced with conflicting medical evidence concerning the effect of the rule on maternal health, the court deferred to the Board's expertise and

held that the rule was both "reasonably related to maternal health" and "narrowly drawn to express only the legitimate interests at stake" as required by Roe v. Wade, 410 U.S. 113, 154 (1973). The effect of the decision was to bar outpatient clinics from performing late second trimester abortions by the saline method.

As to the rule's impact on indigent women, the court concluded that this state of indigency "is neither created nor in any way affected by the regulation," citing Maher v. Roe, 432 U.S. 526 (1977). The court noted that there is evidence of a large demand for second trimester abortions, and that the cost of having an abortion in a hospital on an inpatient basis is admittedly higher. Nevertheless, the court concluded: "It does not follow, however, that the Board must advocate a rule which in its opinion would be deleterious to maternal health." the court further noted that the rule would not effectively inhibit all second trimester abortions, but would appear to allow for the majority of second trimester abortions, which fall within the early second trimester (and thus could be performed on an outpatient basis). Id. at 268-69.

The Board was recently enjoined from enforcing the regulation by the federal courts. The District Court found that the plaintiff was likely to succeed on the merits based on the standards set forth in 1983 United States Supreme Court cases; that is, that the regulations will be upheld only if it comports with "accepted medical practice. The court's decision reflects both a change in

the law and changing medical practices. The Pilgrim Medical Group v. New Jersey Board of Medical Examiners, (No. 84-5178, decided July 16, 1985, 54 U.S.L.W. 2111 (8/20/85).)

Sterilization

In the Matter of Lee Ann Grady, 85 N.J. 235 (1981). The parents of Lee Ann Grady, a nineteen-year-old woman afflicted with Down's Syndrome, sought to have their daughter sterilized and were refused by the hospitals. Finding that a mentally impaired person's right to decide whether or not to be sterilized is protected by both the federal and New Jersey Constitutions, the New Jersey Supreme Court rejected the state's contention that "strict necessity" must be shown before mentally impaired persons may be sterilized. Instead, the Court determined the proper standard to be whether there is clear and convincing proof to satisfy the court that sterilization is in the incompetent person's best interests.

Justice Pashman's careful attention to both the "sordid past" of sterilization abuse and the related abuse sanctioned by compulsory sterilization laws in some states is one of the key strengths of his opinion. To ensure that the mentally impaired person's rights to privacy and choice would not be frustrated either by the guardian (who may have interests which conflict with those of the disabled person) or by the courts, the Court relegated the determination of the propriety of sterilization to independent judicial decision-making pursuant to detailed procedural

safeguards. Another strength of the decision is its concern for maximizing Lee Ann Grady's personal autonomy and independence in day-to-day life. Her disability, in the Court's view, should not require her to forfeit her constitutional right to privacy nor to the benefits that a meaningful choice would bring to her life.

Ponter v. Ponter, 135 N.J. Super. 50 (Ch. Div. 1975). Because New Jersey had not yet ruled on a married woman's constitutional right to be sterilized without spousal consent, the physicians in this case feared potential civil liability and refused to sterilize the plaintiff. Holding that a married woman's right to obtain a sterilization operation without her spouse's consent is a logical corollary to her right to obtain an abortion without his consent, the Chancery Division granted plaintiff the declaratory judgment she sought. Ponter represents a progressive decision in two respects. First, the Court found requisite state involvement to invoke constitutional guarantees in its refusal to recognize as meritorious a spouse's potential civil suit against the treating physicians. Second, the court's affirmation that a woman's right to choose whether to bear children exists in that regardless of her marital status came a year before the United States Supreme Court ruled that this right existed in Planned Parenthood of Missouri v. Danforth, 428 U.S. 52 (1976). Judge Gruccio noted that: "Women have emerged in our law from the status of their husband's chattels to the position of 'frail vessels' and now finally to the

recognition that women are individual persons with certain and absolute constitutional rights." 135 N.J. Super. at 56.

Wrongful Life

Procanik v. Cillo, 97 N.J. 339 (1984). This decision recognized an infant's cause of action for damages against the physicians who failed to prevent his birth. The Court held that a child born with congenital rubella syndrome whose mother, because of a physician's negligent diagnosis, was deprived of the choice of terminating the pregnancy, may recover special damages for extraordinary medical expenses attributable to his affliction, but not general damages for either diminished childhood or for pain and suffering.

Prior to Procanik, the only means of redress available in such cases was recovery by the parents for emotional distress attendant upon the birth of their child. To the extent that Procanik increases possible damage awards to families who have been affected by a loss of reproductive choice, the decision is a positive one for women, who, more often than men, are burdened with the care of a handicapped child.

III. EMPLOYMENT

Employers have spent almost 4 million dollars compensating victims of illegal employment discrimination who have filed claims with the New Jersey Division of Civil Rights over the last five years. Of the 6,164 cases filed

with the Division from 1980 through 1984, 90.8 percent were job related (New York Times, May 5, 1985, p. 69).

The legal framework established by the New Jersey cases has furthered the ability of women and other employment discrimination victims to vindicate their rights. With a few exceptions, however, the major advances have come either as confirmation of Civil Rights Division initiatives or in response to United States Supreme Court precedent. Moreover, the development of a consistent sex-neutral approach to certain issues (such as pregnancy) has proved particularly evasive.

Establishing a Discrimination Claim

Peper v. Princeton University Board of Trustees, 77 N.J. 55 (1978). Peper establishes that a cause of action for sex discrimination exists under the equal protection guarantee of article I, paragraph 1 of the New Jersey Constitution.

Peper sued Princeton University, alleging failure to promote her to an administrative officer position when male co-workers were promoted. In reviewing the facts of the case, the Court found that she had not met her burden of proof, because she failed to show that she and the males were "similarly situated." The Court defined similarly situated persons as those "possessing equivalent qualifications and working in the same job category as plaintiff."

While Ms. Peper held the same job title "Administrative Assistant" as her male co-workers, this equivalence was deemed insufficient to meet the criteria for being

"similarly situated" to qualify for promotional advancement. The Court found that Ms. Peper's acceptance of a transfer from the employment unit to the training unit in the personnel office in 1972 barred her claim, because she had thereby removed herself from the "promotional stream" of the men who were promoted in 1973.

Thus, the Court held promotions given to the male administrative assistants by the university were not the product of insidious sexual discrimination against Ms. Peper.

Countiss v. Trenton State College, 77 N.J. 590 (1978). This case involved the denial of tenure to women coaches who were pursuing doctorates as required by a new policy. The tenure denial was upheld even though the Court found that women coaches were given heavier workloads than men, which left them less time than the men had to pursue graduate studies. Although discriminatory intent was inferable from the differential workloads and the new doctoral requirement clearly had a disparate impact, the Court found no discrimination.

Jones v. College of Medicine & Dentistry, 155 N.J. Super. 232 (App. Div. 1977), certif. denied 77 N.J. 482 (1978). The complainant in this case was a black man who had been denied an internal promotion from custodian to security guard. A white woman and a white male over 40, both members of protected classes, were hired instead. The College claimed the successful applicants' qualifications were better than Jones', although no formal inquiry was

made regarding Jones' qualifications because he was already employed at the College. If the failure to request Jones' qualifications was a deviation from normal procedure, it could have been regarded as evidence of intent. If it was a standard operating procedure, the failure to formally request the qualifications of present employees seeking promotions would be a facially neutral policy which may have had a disparate impact on minorities and women already hired by the employer into low status jobs. The court neglected to consider the question of disparate impact, thereby limiting the relief available to future plaintiffs who cannot show intent to discriminate.

New Jersey courts have not treated the question of qualifications consistently. Discrimination is generally not found where a white male selected by the employer is more qualified than the plaintiff. See, e.g., Kiss v. Department of Community Affairs, 171 N.J. Super. 193 (App. Div. 1979), and other cases cited in the Civil Service section of this overview, infra. But even a finding that the woman or minority applicant is better qualified has not always led to a finding of intentional discrimination. For example, in Kearny Generating System v. Roper, 184 N.J. Super. 253 (App. Div. 1982) the court, denying a claim of race discrimination, gave, as an example of lack of intent:

> [I]f an employer is presented with a choice between two qualified applicants, selection of the least qualified because of a greater experience or personal attributes which enhance the applicant's value to the prospective employer is perfectly valid and permissible.

184 N.J. Super. at 261.

The court seemed particularly convinced that no discrimination had occurred in this instance because the employer had exceeded its affirmative action goals for the year. This bottom line approach was later discounted in Connecticut v. Teal, 457 U.S. 440 (1982), a race discrimination case in which the United States Supreme Court did not allow an employer to use the fact that its promotional practices resulted in an appropriate racial balance to avoid or defend a discrimination claim.

On the other hand, New Jersey courts have had no trouble upholding claims of discrimination where there is clear evidence of intent to treat employees or applicants differently on the basis of race or sex. See, e.g., Goodman v. London Metals Exchange, Inc., 86 N.J. 19 (1981) (employer acknowledged intent to hire only male field representatives); Hebard v. Basking Ridge Fire Co. No. 1, 164 N.J. Super. 77 (App. Div. 1978) (voluntary fire department refused to permit women membership); Decker v. Board of Education for the City of Elizabeth, 153 N.J. Super. 470 (App. Div. 1977) (female cook paid less than male counterpart). More important, New Jersey courts will uphold findings of sex discrimination where sex, while not the "sole reason for the employment practice...played at least a part and was a causal factor" in denying a woman the job she sought. Harvard v. Bushberg Brothers, Inc., 137 N.J. Super. 537, 540 (App. Div. 1975).

Damages

The New Jersey Law Against Discrimination is broader in the scope of possible recovery than Title VII. Victims of employment discrimination may recover for their pain, suffering, and humiliation as well as their out-of-pocket expenses, even in the absence of expert testimony. Zahorian v. Russell Fitt Real Estate Agency, 62 N.J. 399 (1973), discussed in Housing section, infra. However, as a matter of general principle, New Jersey, like many other jurisdictions, requires plaintiffs to mitigate damages whenever reasonable. In Goodman v. London Metals Exchange, Inc., 86 N.J. 19 (1981), this principle was applied rigorously to employment discrimination cases. The New Jersey Supreme Court denied back pay to a victim of discrimination who had refused to seek or accept other suitable positions. The Court went so far as to adopt the "principle of lower sights," which requires the plaintiff to seek lesser jobs if that is all that is available. It noted that the principle is to be applied with caution, because any recovery may be reduced, not by the amount the claimant earned to mitigate, but by the lowest salary he or she should have, in the trier's opinion, accepted. 86 N.J. at 40, n.3. To avoid unfair results, the Court suggested that doubts be resolved in favor of the employee. Nevertheless, in addition to letting the discriminator "off the hook", the "lower sights" doctrine may genuinely confuse employment discrimination victims about when lowering their sights will hurt their recovery.

Affirmative Action

The New Jersey courts distinguish sharply between hiring "quotas", which require the hiring of a specified number of minorities, women, or other protected class members and "goals", which require good faith efforts to hire protected class members to achieve desirable representations. As the following cases show, goals, but not quotas, have been upheld in cases involving class-based relief. Sex or race classifications have also been upheld where necessary to make individual victims of discrimination whole. Affirmative action measures short of preferential hiring have been upheld as well.

Lige v. Montclair Township, 72 N.J. 5 (1976). The New Jersey Supreme Court, considering the concept of reverse discrimination for the first time, overturned affirmative action plans with racial quotas for Montclair's police and fire departments. The plans had been instituted after complaints were brought that departmental hiring and promotion exams did not measure traits necessary for successful job performance and had a discriminatory impact on minorities. Although discriminatory testing had been demonstrated, the affirmative action quotas were found to constitute reverse discrimination.

In an eloquent dissent, Justice Pashman remarks upon the impact of this decision on the progress of women and minorities in employment:

The majority decision today represents more than

> a lamentable judicial insensitivity to the difficult task of enforcing New Jersey's anti-discrimination laws. With the majority's sweeping requirement of constitutional color blindness, this Court has declared itself opposed to those forms of affirmative action for minorities which cause a perceptible loss to any member of a non-minority group....I can only conclude that the majority's holding is a formula for another generation of delay.

72 N.J. at 62.

United Building and Construction Trades Council v. Mayor and Council, City of Camden, 88 N.J. 317 (1982). The Court here upheld Camden's 25% minority hiring goal for its public work contracts, relying upon Fullilove v. Klutznick, 448 U.S. 448 (1980), which upheld a federal statute setting affirmative action goals for minority contractors. Because of the similarity of the fact pattern in Fullilove, the holding is in no way remarkable. It is, however, a welcome clarification of Lige.

Terry v. Mercer County Board of Freeholders, 86 N.J. 141 (1981). In this case, the New Jersey High Court approved promotions and retroactive seniority for two women found to be actual victims of discrimination. Rejecting a claim of reverse discrimination, the Court recognized that to deny retroactive seniority in this case would:

> ...in effect, always place the residual burden of discrimination on those victimized by it. In this sense such a bar would perpetuate rather than extirpate the destructive consequences of invidious discrimination.

86 N.J. at 157.

Flanders v. William Paterson College, 163 N.J. Super. 225 (App. Div. 1976). Here, affirmative action

measures, including recruiting, hiring, and promoting qualified women; requiring written reasons for the failure to hire female candidates; and mandating the development of policies to insure salary equity between comparable male and female employees were upheld as appropriate remedies under the state anti-discrimination statute for the pattern and practice of discrimination established against one defendant, the College of Medicine and Dentistry. Although 10% of the faculty were women, no woman had ever been promoted to the status of full professor. It was also found that sex discrimination was the sole reason for the failure to promote a woman who had been a respected member of the faculty for 19 years.

Patrolmen's Benevolent Association, Local 145 v. Township of East Brunswick, 180 N.J. Super. 68 (App. Div. 1981). This case allowed the maintenance of separate hiring lists for female and male police officer candidates as a method of hiring more female police officers.

Pregnancy

Employers have historically maintained special maternity policies that confused childbearing and child-rearing. As a result, men were denied childrearing leaves available to women. Pregnancy, whether incapacitating or not, was used to compel women to take unpaid leaves, but when pregnancy was incapacitating, women were denied sick leave and other benefits available to other disabled workers.

In the early 1970's, federal litigation and

regulations issued pursuant to Title VII of the 1964 Civil Rights Act established the principle that men must be granted childrearing or parental leaves when those leaves are available to women. However, there has been greater confusion and more inconsistency at the federal level regarding the treatment of pregnancy. Although it invalidated mandatory leave provisions as unconstitutional burdens on procreative choice in 1973, the United States Supreme Court in 1974 ruled that the denial of disability benefits for pregnancy-related disabilities did not discriminate on the basis of sex and did not violate federal equal protection guarantees. Two years later the Supreme Court held that classifications based on pregnancy did not violate Title VII's ban on sex-based classifications.

In sharp contrast to these federal decisions, a number of state courts held that pregnancy classifications violated state constitutional guarantees and anti-discrimination statutes. Congress also showed its disagreement with the Supreme Court's approach by enacting the Pregnancy Discrimination Act of 1978, which provides that the federal prohibition on sex discrimination contained in Title VII applies to pregnancy discrimination as well. The intent of Congress is clear: "[W]omen affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits...as other persons not so affected but similar in their ability or inability to work...." 42 U.S.C.S. §2000e (Supp. 1985).

Pregnancy discrimination is an area in which New Jersey's courts have sometimes mirrored, rather than clarified, the confusion in the federal courts. Some decisions reflect a clear understanding of the need for a sex-neutral analysis of childbearing and childrearing. In Castellano v. Linden Board of Education, 79 N.J. 407 (1979), the Court held that a prohibition against use of sick days for absence due to childbirth and a mandatory one-year maternity leave for pregnant teachers constituted sex discrimination. Castellano was followed in Farley v. Ocean Township Board of Education, 174 N.J. Super. 449 (App. Div. 1980), certif. denied 85 N.J. 140, which held that a policy denying pregnant teachers the use of sick days for any disability arising during pregnancy was sex discrimination. The court found that, under their contract, pregnant teachers were entitled to both paid sick leave for disability and unpaid maternity leave for child care.

On the other hand, in a 1983 case, Chaleff v. Board of Trustees, Teachers Pension & Annuity Fund, 188 N.J. Super. 194 (App. Div. 1983) certif. denied 94 N.J. 573, the Appellate Division ruled that the Teachers' Pension and Annuity Fund Law, N.J.S.A. 18A:67-1 et seq., which permits purchase of pension credits for periods of absence of up to two years for personal illness or maternity leave could not be used to authorize purchase of pension credits by a father who was granted a one-year leave to care for his infant child. The court found that

"maternity leave" only referred to pregnancy-related disability leaves even though, as the Attorney General conceded, this interpretation was at variance with past practices. The court dismissed child care leaves taken by women as "an aberration".

At least one New Jersey decision supports the view that differential treatment of disabilities caused by pregnancy will be tolerated. In Gilchrist v. Board of Education of Haddonfield, 155 N.J. Super. 358 (App. Div. 1978), a non-tenured teacher was denied renewal of her contract because she was pregnant, although she had not been terminated the previous year for losing over two weeks of work because of a back ailment and even though she had 16 days of sick leave that she had earned over the course of her employment. In ruling for the Board of Education, the court accepted the Board's claim that all disabling conditions were treated the same to further a policy of "continuity of instruction." This decision would appear to be contrary to both the Pregnancy Discrimination Act and United States Supreme Court rulings regarding procreative choice.

Hynes v. Board of Education of the Township of Bloomfield, 190 N.J. Super. 36 (App. Div. 1983), also diverges from the requirements of the federal Pregnancy Discrimination Act. In Hynes, the Appellate Division upheld the State Board of Education's policy of granting a presumptive period of disability without a certificate of disability for pregnant women for four weeks prior to and

four weeks after the projected date of birth. Although all other employees seeking disability benefits are required to furnish appropriate medical certificates to support the request, the court rejected a claim of employment discrimination, holding that the policy was a "not unreasonable exercise of administrative authority to expedite disability benefits."

Judge Botter agreed with the majority result, but thought its reasoning was inconsistent with medical knowledge and discrimination law. He particularly noted in his dissent:

> A certificate that merely says a teacher is pregnant does not certify that she is unable to work. Pregnancy is a natural condition, not an illness.

190 N.J. Super. at 43

Jaeger v. New Jersey, 176 N.J. Super. 222 (App. Div. 1980). This case involved a challenge by state college employees to a policy that required an employee to work throughout a five-year probationary period to be eligible for a multi-year contract and that consequently prevented temporarily disabled employees or parents taking child care leaves from achieving a multi-year contract in a five year period. After the complaint was filed the underlying statute was amended to base eligibility on completion of five academic years within a period of any six consecutive years. Following the amendment, two women who had been on maternity leave for more than one year continued the suit, challenging the statute as discriminatory on the basis of sex and claiming that it had a dispa-

rate impact on women. They alleged that women would be more likely than men to take more than one year's leave in any six year period because of childbirth and child care exigencies. The court denied the claim, noting that all workers taking leave time were treated the same under the statute but ignoring the question of whether or not the policy had a disparate impact on women.

Marital Status

Unlike federal fair employment guarantees, the New Jersey Law Against Discrimination proscribes discrimination on the basis of marital status. Although the full reach of this provision has yet to be determined by the New Jersey courts, two cases are pertinent.

Thomason v. Sanborn's Motor Express Inc., 154 N.J. Super. 555 (App. Div. 1977). At issue was a trucking company's policy prohibiting the full-time employment of relatives in the same department or terminal. The court found the policy did not constitute discrimination on the basis of marital status when applied to spouses because all family relationships were covered and because there had been no showing that the policy's uneven enforcement had been directed particularly against married relatives. The court left open the possibility of showing that a "no-relatives" policy has a disproportionate impact on married couples or on women in particular. This possibility is important because the marriage relationship is often more visible than other family ties and so more likely to

provoke enforcement of anti-nepotism policies. Additionally, since women usually occupy less important and less senior positions, they are most often the victims of such policies.

Slohoda v. United Parcel Service., Inc., 193 N.J. Super. 586 (App. Div. 1984). This case also makes clear the importance of factual showings under the Law Against Discrimination. Here the plaintiff was given permission to prove his contention that it was company policy to discharge married management employees who engaged in sexual activity out of wedlock, but retain unmarried management employees who engaged in similar conduct. The decision also emphasized that marital status need not be the sole cause of the adverse action for a finding of discrimination to be made. Although not bearing directly on women's employment opportunities, the case promotes women's rights by endorsing a liberal reading of the marital rights proscriptions.

Employee Benefits

Tomarchio v. Township of Greenwich, 75 N.J. 62 (1977). The Court here overturned a requirement that widowers must prove dependency before they can receive workers' compensation death benefits, although widows were presumptively entitled to dependence benefits. The decision was based on the equal protection clause of the 14th amendment. Noting that any other solution would "ignore the present economic reality that most spouses are mutually dependent economically and suffer equally upon the economic

dislocation resulting from the disruption of their union," the Court extended presumptive dependency to widowers and also made the duration of benefits the same for widows and widowers. Tomarchio thus reinforced the United States Supreme Court's decision regarding social security benefits in Califano v. Goldfarb, 430 U.S. 199 (1977), extending equal protection to the important area of employee benefits, and anticipated the United States Supreme Court's decision regarding worker's compensation in Wengler v. Druggists Mutual Ins. Co., 446 U.S. 142 (1980). A similar scheme requiring widowers but not widows to prove dependency to receive death benefits under Newark's employees' retirement system was overturned in Palagonia v. City of Newark, 153 N.J. Super. 256 (App. Div. 1977).

Civil Service

Ballou v. New Jersey, 75 N.J. 365 (1978). In accordance with New Jersey's absolute preference for veterans, Ruth Ballou, who had received the highest grade (99.999) on a competitive examination was passed over for an executive position in favor of a veteran who had achieved the next highest score (82.5). She challenged the absolute preference as inconsistent with federal due process and equal protection guarantees and with the state constitutional provision dealing with veterans preference. Following the lead of the United States Supreme Court in Massachusetts v. Feeney, 434 U.S. 884 (1977), the New Jersey Supreme Court upheld the absolute preference, disregarding the history of sex discrimination practiced by

the armed services. The New Jersey Court also read Art. II, §11 of the New Jersey Constitution as authorizing the Civil Service program, although the provision does not specify that the veteran's preference be absolute.

Kiss v. Department of Community Affairs, 171 N.J. Super. 193 (App. Div. 1979). This case involves an unsuccessful challenge to the Civil Service "Rule of Three" which authorizes supervisors to decide which of the three highest scoring applicants is hired. Miriam Kiss had scored highest on two civil service exams, but was nevertheless passed over in favor of men three times. The court upheld the "broad discretion accorded an employer in exercising the right of fair selection under the Civil Service Rule of Three" and specifically rejected her claim that the rule was discriminatory as it was applied.

Media

In 1973 the New Jersey Supreme Court upheld a Division on Civil Rights employment advertising rule that made it a violation of the Law Against Discrimination for newspapers to publish "help wanted" ads segregated on the basis of sex or expressing discriminatory limitations. The Passaic Daily News v. Blair, 63 N.J. 474 (1973). The Court rejected the newspaper's challenge, supported by the New Jersey Press Association as amicus curiae, which alleged that the regulation was an unconstitutional infringement on the freedom of the press. The ruling followed Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations, 413 U.S. 376 (1973), which held that illegally discriminatory

commercial speech is not protected by the first amendment.

IV. EDUCATION

Hinfey v. Matawan Regional Board of Education, 77 N.J. 514 (1978). In Hinfey, a complaint was filed with the Division of Civil Rights charging sex discrimination in curricular patterns and employment practices relating to sports within the high school and middle schools of Matawan. Certain classes of sports in the schools were segregated by sex, and more attention and money were given to the sports in which boys participated, including higher salaries to coaches in boy-dominated sports. The Division retained the part of the complaint relating to employment discrimination and transferred the part relating to discrimination in curricula to the Department of Education, pursuant to Attorney General Formal Opinion No. 28-1975, which had concluded that the Department of Education had exclusive jurisdiction over complaints alleging discrimination in public school curricula. Thirty-nine similar complaints from other school districts were also transferred.

On appeal, the Appellate Division held that the Civil Rights Division and the Department of Education had concurrent jurisdiction and that the Division had mandatory jurisdiction over complaints initially filed with it. However, the Supreme Court reversed. While conceding that concurrent jurisdiction existed, the Court held that the jurisdiction of the Division was not mandatory and that it was entirely proper for the Division to transfer the cases

to the Commissioner of Education in the interests of assuring that the tribunal with the best competence and expertise adjudicate the matter.

The Supreme Court's opinion thus rests on principles of administrative comity rather than jurisdiction. Presumably, then, if the Civil Rights Division determined that it should retain jurisdiction, it would be permitted to do so. Unfortunately, the Court's decision upholding the transfer had the practical effect of terminating all 40 cases, as the complainants were unable to obtain private counsel to pursue their cases before the Department of Education.

In re Grossman, 127 N.J. Super. 13 (App. Div. 1974). This was an appeal from the decision of the Commissioner of the Board of Education dismissing on grounds of unfitness a teacher who had had sex reassignment surgery. The court declined to disturb the Commissioner's decision to dismiss Grossman as unfit in view of the potential psychological harm her presence would cause students.

V. HOUSING

Zahorian v. Russell Fitt Real Estate Agency, 62 N.J. 399 (1973). The Court held that the Division of Civil Rights had authority to award compensatory damages for actual pain and suffering, but not mental suffering, in addition to economic loss, inflicted upon a single female plaintiff who was denied rental housing because of her sex and marital status where the humiliation, pain and suffering damages were the incidental, rather than the primary,

relief. Relying on a broad interpretation of the legislative intent of N.J.S.A. 10:5-17, 10:5-27 and other sections of the statute, the Supreme Court's decision placed New Jersey in the vanguard of states that permit their state human rights agencies to award damages for emotional distress. The major problem with the decision--the possibility that a party proceeding in the agency may be barred from the larger emotional distress awards available in the courts--was obviated by subsequent legislation allowing a complainant to go directly to court.

South Burlington County NAACP v. Mount Laurel Township, 92 N.J. 158 (1983) (Hereinafter, Mount Laurel II). In Mt. Laurel II, the Court held that every municipality is required by the state constitution to provide a realistic opportunity for affordable low and moderate income housing.

> The basis for the constitutional obligation is simple: the State controls the use of land, all of the land. In exercising that control it cannot favor rich over poor. It cannot legislatively set aside dilapidated housing in urban ghettos for the poor and decent housing elsewhere for everyone else. The government that controls this land represents everyone. While the State may not have the ability to eliminate poverty, it cannot use that condition as the basis for imposing further disadvantages.

62 N.J. at 209. [Emphasis in original]

New Jersey housing statistics indicate that in more than half of the households presently eligible for Mt. Laurel housing, the chief income producer is female. This rate is double that found in New Jersey as a whole.

Projections for 1990 are similar. (U.S. Census of Population & Housing: 1980-New Jersey Public Use Sample Projections Using ODEA Demographic Cohort Model (N.J. Dept. of Labor)). Because women's economic status severely restricts women's access to housing, Mt. Laurel II has the potential to significantly improve the quality of life for many New Jersey women and their families.

VI. PUBLIC ACCOMMODATION

National Organization for Women v. Little League Baseball, Inc., 127 N.J. Super. 522 (App. Div.), sum. aff'd 67 N.J. 320 (1974). This landmark case affirmed the right of girls to be admitted to and participate equally with boys in little league baseball. Stating that the Law Against Discrimination "is remedial and should be read with an approach sympathetic to its objectives," id. at 530, the Appellate Division interpreted the law broadly and found that Little League was a place of public accommodation within the meaning of the N.J.S.A. 10:5-5.e, even though it was not literally a place. The Court also rejected Little League's argument that it came within the exclusion in N.J.S.A. 10:5-12.f for a place of public accommodation "which is in its nature reasonably restricted exclusively to individuals of one sex." The case is frequently cited by other jurisdictions to illustrate that the underlying purpose of legislation can be to emancipate people from stereotypes.

VII. SEXUAL HARASSMENT

In re Polk License Revocation, 90 N.J. 550 (1982). In reviewing the revocation of an allergist's license by the State Board of Medical Examiners, the Supreme Court vindicated women's right to complain about invasions of their bodily integrity. The Board had found that the testimony of three adolescent girls that the physician had sexually imposed himself on them was credible and that the charges had been proved by a preponderance of the evidence.

The Court determined this standard of proof to be the usual burden in contested administrative adjudications and not violative of equal protection guarantees, notwithstanding the fact that attorney disciplinary proceedings are governed by the higher clear and convincing standard. The Court also sustained the Board's conclusion that sexual imposition is properly considered to be gross malpractice or gross neglect in the practice of medicine. Importantly, in so finding, the Court did not belittle the complainants. However, the Court did remand for further consideration of possible mitigating circumstances.

In re Addonizio, 95 N.J. 121 (1984). In a disciplinary action against an attorney who had pled guilty to New Jersey's criminal prohibition on sexual contact, the New Jersey Supreme Court vacated a Disciplinary Review Board recommendation for public reprimand and instead suspended the lawyer from practice for three months. The Court noted that the primary purpose of discipline is not

punishment, but rather protection of the public against unworthy members of the bar, in this case a client's right to be free of sexual harassment. Although limited to disciplinary proceedings resulting from illegal sexual conduct, which the Court noted were rare, the decision advanced women's right to the integrity of their bodies by holding that criminal sexual conduct, even if indirectly related to the lawyer-client relationship, is unethical conduct.

Demech v. Board of Review, 167 N.J. Super. 35 (App. Div. 1979). This case concerns the consequences for unemployment benefits of a woman's minor yet violent response to sexual harassment. The petitioner was employed as a supermarket meat wrapper. After an employee's repeated sexually offensive verbal and physical abuse, petitioner hurled a 25-pound roast beef at him, and was discharged. The Appellate Division determined that petitioner's conduct did not bar her eligibility for unemployment compensation. The decision underscored the provocative and inexcusable nature of sexual harassment by holding that an isolated, minor, violent act in response to unremitting sexual harassment was not "misconduct" under the unemployment compensation law, N.J.S.A. 43:21-5(b).

The judges noted their opposition to violence (see especially the concurring opinion). However, the rationale behind the decision, that the "all too human quality" of claimant's rage in response to provocative and unremitting sexual harassment is "understandable," is a

step forward in the articulation and understanding of the intolerability of sexual harassment.

VIII. CONSEQUENCES OF MARRIAGE

Jersey Shore Medical Center-Fitkin Hospital v. Estate of Baum, 84 N.J. 137 (1980). The New Jersey Supreme Court reconsidered the common law doctrine concerning one spouse's responsibility to provide for the other's necessities. The common law had imposed liability on the husband for the necessaries furnished to his wife, but had not placed a corresponding obligation on the wife to pay for her husband's necessaries. In this decision the Court extended the common law obligation to hold the wife liable for her husband's necessary expenses. It reasoned that holding only the husband liable for the provision of necessaries violated the equal protection clause of the United States Constitution and similar provisions in the state constitution. Although the decision noted the lower earning power of many working wives when compared to their husbands, the justices reasoned that this income disparity was insufficient to sustain a gender-based classification under federal and state equal protection guarantees.

National Account Systems, Inc. v. Mercedo, 196 N.J. Super. 133 (App. Div. 1984). The Appellate Division here applied Jersey Shore to a case in which the husband incurred pre-death medical expenses after the couple had been separated for over four years, although they had never divorced. The court held that the couple was no longer a financial unit, and that the plaintiff's assignor could not

reasonably rely on the wife's assets to pay the debt. The case established that the rule of Jersey Shore also encompassed the exceptions which that rule had always had for men who had obligations under the necessaries doctrine.

Merenoff v. Merenoff, 76 N.J. 535 (1978). In this decision, which abrogated interspousal immunity for personal injuries arising from domestic and household accidents. The only immunities preserved were those in which marital privileges, consensual acts, or common domestic negligence were involved. Justice Handler rejected the usual justifications for interspousal immunity in torts: danger to marital harmony, risk of collusive or fraudulent actions, and risk of frivolous or inflated claims.

Tevis v. Tevis, 79 N.J. 422 (1979). The Court here explained that a person's right to sue her spouse in tort includes intentional and reckless acts.

In re Gaulkin, 69 N.J. 185 (1976). The Court held that although a Superior Court judge's spouse may participate in political activity (judges may not do so without violating the Code of Judicial Conduct), she may not use the home or other marital assets in such activity, and that the spouse who is a judge may not participate in or contribute to the campaign in any way.

Greenberg v. Kimmelman, 99 N.J. 552 (1985). Barbara Greenberg, the spouse of a Superior Court judge, brought this action challenging the constitutionality of a 1981 amendment to the casino ethics law which prohibited

her from working in the Atlantic City casinos. The Court, unable to completely discard the idea of a married couple being one person, applied the rational relationship standard to uphold the amendment, which it said furthers the "objective of preserving the public confidence in casino gambling."

IX. DIVORCE

Painter v. Painter, 65 N.J. 196 (1974). This case determined that property acquired by a party before marriage (or its appreciation, if any) should not be considered marital property for purposes of equitable distribution.

Lepis v. Lepis, 83 N.J. 139 (1980). The Court held that alimony and support orders define obligations as of the time they are entered and that they are subject to review and modification upon a showing of changed circumstances. Upon a prima facie showing of changed circumstances, the court may order discovery of an ex-spouse's financial status. Such circumstances may include changes foreseeable at the time of divorce. The extent of economic dependency and the standard of living maintained before separation determine the duration and amount of spousal support.

Mahoney v. Mahoney, 91 N.J. 488 (1982). Although an M.B.A. degree earned during marriage is not property subject to equitable distribution under N.J.S.A. 2A:34-23, the M.B.A. recipient may be required, upon divorce, to

reimburse the former spouse for the contribution she made during his years of study.

Hill v. Hill, 91 N.J. 506 (1982). A husband who was supported by his wife while in dental school may be called upon to pay rehabilitative or reimbursement alimony to his former spouse while she pursues a dental school education.

Lynn v. Lynn, 91 N.J. 510 (1982). Where there is great divergence in the circumstances of the divorced litigants (here, the former wife's physical handicap resulted in her depending on social security disability benefits while the former husband enjoyed a profitable medical practice), both an initial lump sum award of reimbursement alimony and a separate continuing alimony obligation may be appropriate.

Beck v. Beck, 86 N.J. 480 (1981). In this landmark case on joint custody, the Court authorized, where appropriate, joint custody upon divorce, and stated that the result was consonant with common law and statutes governing the general care, welfare, and custody of children. In awarding joint custody, the trial court must determine that each parent shows potential to cooperate in matters involving the children. The trial court must examine practical considerations in deciding whether custody should be joint physically as well as legally.

The courts, however, continue to award custody to the primary caretaker when they judge it to be in the best interest of the child to do co. Although many women's

groups are concerned about the abuses that can occur for women under a joint custody order, in terms of how much financial and physical custody is actually taken on by the father, the courts still articulate the child's interest as primary.

X. TERMINATION OF PARENTAL RIGHTS

Sorentino v. Family and Children's Society of Elizabeth II, 74 N.J. 313 (1977). This case involved a teenage, unwed mother who was forced by family circumstances to put her newborn infant in temporary foster care. Within a month thereafter, the mother sought to regain the child and prevent its placement for adoption, but the agency refused. After 31 months of delay by the agency and the courts, the decision of the trial court divesting the mother and father of parental rights was affirmed on the basis that the child had established bonds with the foster parents that should not be severed. A corollary of the bonding theory accepted here is that parents who entrust the daily care of their young children to transitory others while they pursue out-of-home goals put the psychological well-being of those children at risk. Efforts toward economic independence by single or married women may thus become the basis for a threat to custody through the office of a theory that is facially sex-neutral but disproportionately affects women. By elevating psychological bonding theory to the status of proven fact, the Sorentino decision

has the potential to impede gender equality goals, not only for poor or government-dependent women, but for women at all economic levels.

XI. NAME CHANGE

New Jersey courts have recognized that a woman's claim to an independent identity entails the right to identify herself by using her birth name even when children may be involved.

Egner v. Egner, 133 N.J. Super. 403 (App. Div. 1975) was a consolidation of three appeals from trial court decisions granting women uncontested divorces but denying them leave to resume their birth names. Plaintiffs were mothers of minor children. All three trial judges based their decisions on their concern for future harassment or other detriment to children whose names differ from their mothers'. The Appellate Division reversed and remanded the three judgments on the ground that the statute must construed consistent with the common law principle that any adult or emancipated person is at liberty to adopt any name as his or her legal name except for fraudulent or criminal purpose without resort to any court. Thus the court concluded that the courts are precluded from creating an exception in the case of divorced women.

In the Matter of the Application of Lawrence, 133 N.J. Super. 408 (App. Div. 1975) involved an appeal from a denial of an application under a general name change statute. Plaintiff had been married for more than five

years, and her husband consented to her name change. The couple was childless but of child-bearing age. The trial judge's decision was based on his concern for any children they might have, and for the stability of the marriage relationship. Reversing and remanding under the Egner rationale, the Appellate Division held that where the husband consents to his wife's resumption of her maiden name, the denial of her application is an abuse of the trial judge's discretion. Although the reference to the husband's consent could be construed as a limitation on women's autonomy, on closer reading it is clear that the husband's consent is immaterial to a woman's right to adopt any name absent a fraudulent or criminal purpose.

In the Matter of the Application of John Michael Thomas Rossell, 196 N.J. Super. 109 (Law Div. 1984) involved a divorced mother's request to have her minor child's surname changed to her name. The court granted the application over the father's objection. The young age of the child, as well as the father's lack of involvement with the child, were reasons cited by the court to support its grant of the petition.

PRELIMINARY REPORT OF THE SUBCOMMITTEE ON COURT ADMINISTRATION

INTRODUCTION

The Task Force has recently received the report of the Subcommittee on the Administration of the Courts. The subject matter, the more than 6,000 court support personnel, spread over 21 counties with differing conditions in each is most complex. Because of the scope of the assignment (identification of gender bias in court personnel employment and formulation of recommendations to correct it) and the limited resources of the Subcommittee, both in time and staff, the report is understandably of a general nature. Despite those difficulties, the Task Force believes that the Subcommittee's report will be a helpful starting point for efforts to overcome long term problems of employment discrimination, problems that have thus far proven intractable throughout the nation.

Members of the Subcommittee included one assignment judge, two trial judges, two trial court administrators, two court clerks, a judicial clerk, a judicial secretary, and a representative from the Administrative Office of the Courts. Others who were interested but unable to attend were invited to make written submissions. The chairperson defined the goal as the attainment of a "just" court system, in appearance as well as substance, for those who work within the system and for those who come to it as

litigants or other participants. Members were asked to address subjects relevant to those people, other than judges and lawyers, who constitute the system. Particular focus is on hiring, promotion and career ladders: the mechanisms that operate; whether they are good, bad or neutral for women; and what alternate routes there may be.

There is subtle and unintentional discrimination; there are effects that appear to be clearly discriminatory; there are the usual problems of male insensitivity in personal relationships at the workplace; there is the effect, perhaps most important, of generations of discrimination leading to a pattern of employment in which males have almost all of the supervisory positions and females the least desirable clerical and ministerial positions. The Subcommittee's report strongly suggests that employment in the court support staff is affected by the same gender problems that are found in both public and private employment throughout the nation. Additionally, the report notes some areas of concern that are, or appear to be, unique to the Judiciary or to the court support staff within the vicinage levels of the Judiciary. See Appendix A. The Subcommittee identified these problems and formulated its recommendations.

There was no attempt to document, quantify, or carefully analyze either the existence of the problems or their causes. That kind of work would be far beyond the resources available to the Subcommittee. Assuming that the problems exist (and we assume they do, because they appear

widely in employment) some of them can be relieved, and perhaps remedied, by the Judiciary, but over long periods. The remedies are affected by the very practical problem that the counties and the State share the responsibility and control for Judiciary employees. Other problems are probably beyond the responsibility of the Judiciary, except to the extent that institution may influence other branches of government.

Despite these inevitable limitations, the Task Force and Subcommittee believe that the report can serve as a constructive beginning step for further work. The Chief Justice has explicitly indicated his determination to clearly identify gender bias and to remedy problems where the solution is within the power of the Judiciary. He has asked the Administrative Office of the Courts to examine the matter in detail, using such staff as is needed both to document the existence of the problems and to develop specific courses of action for their solution.

FINDINGS

The following problem areas have been identified by the subcommittee:

A. Judicial Publications

1. The rules governing the courts of New Jersey, are adopted by the Supreme Court and published accordingly, use male pronouns to refer to both men and women. Although this usage is grammatically correct, it is demeaning to

women and conveys an appearance of gender bias. Gender-neutral pronouns are clearly preferable.

2. Documents, forms, notices and correspondence issued by courts and clerks' offices do not utilize gender-neutral language uniformly, and may therefore convey an appearance that gender bias is accepted in the state courts.

3. Model jury charges are not written with gender-neutral language. Although not mandated by the Supreme Court, they are reviewed and the language approved by committees appointed by the Court, and are widely used by trial judges. The charges may therefore convey an appearance of gender bias within the court system.

B. Working Conditions

As noted above in the introduction, the problems identified here are by no means universally found throughout the court system. Reports of their occurrence are frequent enough, however, to warrant comment and corrective action where appropriate.

1. Female court employees are often addressed by males in terms that are suggestive, overly familiar, or patronizing. This behavior may include, for example, inappropriate comments on the personal appearance of female employees both in and out of their presence.

2. Attorneys sometimes disregard instructions given by female court staff in the exercise of their

responsibilities, even though the instructions are consistent with court procedure. Judges or supervisors are not always aware of this practice and, therefore, do not take appropriate steps to require attorneys to follow the proper instructions.

3. Judges, attorneys and supervisors sometimes impose on female court employees by requiring them to perform tasks not within their job responsibilities and by utilizing their desks, equipment and personal property without authorization. Attorneys impose on judges' secretaries, interfering with their time and work priorities by asking the secretaries to make phone calls, serve coffee, type or make copies for them.

4. Where dress codes apply on their face to all court personnel, they are sometimes enforced more strictly with respect to female than male personnel, and more strictly with respect to clerical employees, most of whom are female, than professional employees. For instance, in some courts female uniformed officers are not permitted to deviate from the dress code at all, although male officers are permitted to do so.

5. Female court personnel are often assigned the least challenging and responsible tasks in the various court support units. For example, among probation investigators, female investigators are predominant in support enforcement and family investigation assignments. These assignments are generally given to male investigators only when they are new hires or for disciplinary reasons;

female investigators tend to receive and remain in these assignments on a far more frequent basis.

6. Women employees, in the court system as in many other work settings, perceive that there may be health and safety problems created by constant exposure to video display terminals, and perceive that those problems may not have been adequately researched because most employees required to do so are women.

C. Hiring, Promotion and Compensation

There are a number of conditions of employment in the judicial system which, although not explicitly discriminatory nor within the scope of the Judiciary's power, impact negatively on women employees. For example, limits imposed by Civil Service (other than those due to seniority) within a particular classification have a negative impact on women employees, many of whom are in those positions requiring the fewest skills. As another prominent example, the preference afforded armed forces veterans, the majority of whom are men, adversely affects women's opportunities to advance.

Among the problems identified are the following:

1. Application forms, procedures and interviews frequently request personal information from female applicants not required of male applicants. In some cases the application forms themselves require the same information from all applicants, but male applicants are instructed to

omit some of the responses, such as information concerning marital status. In other cases, the information sought at interviews differs for male and female applicants. For instance, female applicants may be asked about availability of transportation, their willingness to work overtime, and their attitudes toward family responsibilities.

2. Many persons serving in the judicial branch are restricted from undertaking additional employment outside the court system. Some employees of the Judiciary are prohibited from any kind of outside employment by statute or court rule. N.J.S.A. 2A:12-2; R. 1:17-1. Other employees are effectively prohibited from outside employment because their jobs require 24-hour availability. (For example, many probation department employees are theoretically required to be available around-the-clock). These restrictions affect the ability of such employees to obtain supplemental income that may be necessary to meet family obligations. The impact of these restrictions is most strongly felt by employees at the lowest salary levels who are, primarily, women.

RECOMMENDATIONS

The subcommittee recommends the following items for court action:

A. Recommendations for Immediate Court Action

1. Court rules should be revised to incorporate gender-neutral language.

2. Documents, forms, notices and correspondence prepared by or used by the courts and clerks' offices should be revised utilizing gender-neutral language.

3. Model jury charges should be revised using gender-neutral language.

4. Carefully worded messages endorsed by the Supreme Court and the State Bar Association regarding appropriate conduct by attorneys in relation to court personnel should be prepared. The messages should appear in the New Jersey Law Journal and should be mailed with state and county bar bulletins.

5. The videotape prepared by the Task Force on Women in the Courts should be shown to all court staff and to every county bar association. Each Assignment Judge should provide introductory comments to showings in the vicinage to emphasize the seriousness of the message.

6. Judges and supervisors should require attorneys to obey the instructions given by all court staff in the exercise of their responsibilities.

7. Judges should make it clear that their secretaries cannot provide clerical or other services for attorneys except as the judge may direct.

8. Training programs should be instituted to sensitize supervisors of court personnel to the need to treat all court personnel with equal respect. Supervisors should thereafter provide similar training programs for all court personnel under their supervision.

9. Each Assignment Judge should designate an appropriate person in each court house to receive gender bias complaints from court personnel on an informal basis. That person should assist the complainant to work out the problem with all persons involved. This informal procedure should not supplant, but should function in addition to, any formal complaint resolution process.

B. Recommendations for Further Study

1. The Supreme Court should consider amending the Code of Judicial Conduct and the Rules of Professional Conduct to prohibit or discourage the improper treatment of women: particularly court employees, but also other persons who use or work in the courts. See proposed amendments at Appendix B.

2. The Judiciary should study the feasibility of providing training programs for, especially, the lowest-paid employees which will give them opportunities to learn new skills or qualify for promotions.

3. R. 1:17-1, restricting outside employment for employees of the Judiciary, should be reviewed to assess the necessity of its application to all persons now constrained by the rule. This review should focus, in particular, on paragraphs (c), (d), (e), (f), (h), and (i).

4. Court units requiring employees to be available on a 24-hour basis should review those requirements and eliminate them wherever possible.

5. Assignment criteria within job categories

should be made. Consideration should be given to rotating job assignments on a periodic basis or providing some other means to ensure fairness and avoid gender bias in assignments.

6. Positions in the court system typically occupied by women should be reviewed for possible upgrading. For example, court interpreter jobs, which are filed predominantly by females, are designated as clerical positions. Based on the skills and training needed for these jobs, they might appropriately be given a professional or para-professional title.

7. Recruitment methods for high-level positions in court administrative and professional categories should be reviewed, with special attention to increasing the availability of opportunities to women who are already serving in the court system.

8. Application forms, procedures and interview practices should be reviewed to eliminate irrelevant inquiries of applicants and to ensure that all applicants are treated similarly.

9. The necessity and appropriateness of dress codes for court employees should be studied. If found necessary, appropriate codes should be enforced uniformly.

10. The structure of clerical and secretarial assistance should be examined to see if a greater range of positions could be offered to employees who currently have limited career ladders available to them.

11. The Administrative Office of the Courts should

conduct further research on the issue of whether constant exposure to word processing equipment creates health or safety problems and take appropriate corrective action.

12. The Court should study the possibility of providing or subsidizing day care for its employees' children and elderly relatives, for whom women typically take responsibility. If possible, any such efforts should be coordinated with other government employers in the vicinity.

C. Recommendations for Referral to Other Branches of Government

1. Statutory preference given to veterans should be examined. Consideration should be given to limiting or terminating it. N.J.S.A. 11:27-1 et seq.

2. Criteria by which eligibility is determined for classification, transfer and promotion in the civil service, as they affect court employees, should be examined. N.J.S.A. 11 (subtitles 2 and 3, generally).

AFFIRMATIVE ACTION GOALS BY EEOC JOB CATEGORY

Department/Agency: State of N.J. Judiciary

Report Date From: _____ To: April 1986

PROFESSIONALS

	CURRENT STATUS			
	1	2	3	4
MALE	No.	%	SDU %	DIFF %
WHITE NON-HISPANIC	169	49.9	47.5	+2.4
BLACK NON-HISPANIC	10	2.9	5.3	-2.4
HISPANIC	1	.3	3.4	-3.1
ASIAN	1	.3	.8	- .5
AMERICAN INDIAN			.1	
TOTAL MINORITY MALES	12	3.5	9.6	-6.1
TOTAL MALES	181	53.4	57.2	-3.8
FEMALE	No.	%	SDU %	DIFF %
WHITE NON-HISPANIC	126	37.2	34.2	+3.0
BLACK NON-HISPANIC	25	7.4	5.4	+2.0
HISPANIC	5	1.5	2.5	-1.0
ASIAN	2	.6	.6	.0
AMERICAN INDIAN			.0	
TOTAL MINORITY FEMALES	32	9.4	8.6	+ .8
TOTAL FEMALES	158	46.6	42.8	+3.8
TOTAL	No.	%	SDU %	DIFF %
TOTAL MINORITY	44	13.0	18.2	-5.2
GRAND TOTALS	339	100.0		

AFFIRMATIVE ACTION GOALS BY EEOC JOB CATEGORY

Department/Agency: State of N.J. Judiciary Report Date From: _____ To: April 1986

OFFICE CLERICAL WORKERS

	CURRENT STATUS			
	1	2	3	4
MALE	No.	%	SDU %	DIFF %
WHITE NON-HISPANIC	26	5.0	47.5	-42.5
BLACK NON-HISPANIC	15	2.9	5.3	- 2.4
HISPANIC	1	.2	3.4	- 3.2
ASIAN			0.8	
AMERICAN INDIAN			0.1	
TOTAL MINORITY MALES	16	3.1	9.6	- 6.5
TOTAL MALES	42	8.1	57.2	-49.1
FEMALE	No.	%	SDU %	DIFF %
WHITE NON-HISPANIC	344	66.3	34.2	+32.1
BLACK NON-HISPANIC	116	22.4	5.4	+17.0
HISPANIC	13	2.5	2.5	.0
ASIAN	3	.6	.6	.0
AMERICAN INDIAN	1	.2	.1	+ .1
TOTAL MINORITY FEMALES	133	25.6	8.6	+17.0
TOTAL FEMALES	477	91.9	42.8	+49.1
TOTAL	No.	%	SDU %	DIFF %
TOTAL MINORITY	149	28.7	18.2	+10.5
GRAND TOTALS	519	100.0		

SUGGESTED AMENDMENTS TO THE CODE OF JUDICIAL CONDUCT AND THE RULES OF PROFESSIONAL CONDUCT

Comment A(3) to Canon 3 of the Code of Judicial Conduct should be amended to say:

> A.(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom [he] the judge deals in [his] an official capacity, regardless of their race, nationality, or sex, and should require similar conduct of lawyers, [and of his], court staff, court officials, and others subject to [his] the judge's direction and control.

RPC 8.4(d) should be amended to read:

> (d) engage in conduct that is prejudicial to the administration of justice, including but not limited to differential, harmful, or discriminatory treatment of women or minorities;

CASE INDEX

APPENDIX A

MEMBERS OF THE TASK FORCE

Honorable Marilyn Loftus, Judge, Superior Court (Essex), Chair

APPELLATE JUDGES:
Hon. Julia L. Ashbey
Hon. Geoffrey Gaulkin
Hon. Michael Patrick King
Hon. Virginia A. Long
Hon. Nicholas Scalera
Hon. Thomas F. Shebell, Jr.

SUPERIOR COURT JUDGES:
Hon. Philip S. Carchman (Essex)
Hon. Rosemary Higgins Cass (Essex)
Hon. Elaine Davis (Hudson)
Hon. Theodore Z. Davis (Camden)
Hon. Steven Z. Kleiner (Cumberland)
Hon. Betty J. Lester (Essex)
Hon. Florence R. Peskoe (Monmouth)
Hon. Mary Ellen Talbott (Camden)

Emily Arnow Alman, Esq., Professor Emeritus, Rutgers University
Catherine S. Arnone, Manager, Public Awareness and Communications Services, Port Authority of New York and New Jersey
Roger S. Clark, Esq., Professor of Law, Rutgers Law School at Camden
Dean Elizabeth F. Defeis, Seton Hall Law School
Hector E. DeSoto, Esq., Director of Personnel, Essex County College
William J. Kearns, Jr., Esq., Former Chair, Women's Rights Section, New Jersey State Bar Association; Past President, Burlington County Bar Association
Judith M. O'Leary, Esq., Assistant Prosecutor (Morris)
Susan R. Oxford, Assistant Deputy Public Advocate
Lynn Hecht Schafran, Esq., Director, National Judicial Program to Promote Equality for Women and Men in the Courts
Phoebe W. Seham, Esq., Chair, Women's Rights Section, New Jersey State Bar Association; Chair, Judiciary Committee, New Jersey Women Lawyers Association
Annamay T. Sheppard, Esq., Professor of Law, Rutgers Law School at Newark
Helen Handin Spiro, Esq., Former Special Assistant tot Chief Justice Wilentz
Theodosia A. Tamborlane, Esq., Chair, Health and Hospital Law Committee, New Jersey State Bar Association
Nadine Taub, Esq., Professor of Law, Rutgers Law School at Newark

Eileen Thornton, Past National President, Women's Economic Equity League
Raymond R. Trombadore, Esq., President, New Jersey State Bar Association
Dolores Pegram Wilson, Esq., Past Vice President, National Bar Association; President-Elect of the National Conference of Women's Bar Associations

Advisor to the Task Force:
Norma J. Wikler, Ph.D., Associate Professor of Sociology, University of California at Santa Cruz; Former Director, National Judicial Education Program to Promote Equality for Men and Women in the Courts

Observers and Staff to the Task Force:
Cheryl Edwards, Division on Women, State of New Jersey
Melanie S. Griffin, Esq., Administrative Office of the Courts
Patricia K. Nagle, Esq.
Michael L. Park, Esq., Special Assistant to Chief Justice Robert N. Wilentz
Alice J. Solomon, Esq., Law Clerk (Essex)
Sue Pai Yang, Deputy Attorney General

SUBCOMMITTEES OF THE SUPREME COURT TASK FORCE
ON WOMEN IN THE COURTS

I. SUBSTANTIVE LAW
- DEAN ELIZABETH F. DEFEIS
- PROSECUTOR PHILIP S. CARCHMAN
- HON. GEOFFREY GAULKIN
- HON. BETTY J. LESTER
- PROFESSOR NADINE TAUB
- PROFESSOR ANNAMAY SHEPPARD
- THEODOSIA A. TAMBORLANE, ESQ.

II. ATTORNEYS' SURVEY FORM
- HON. ROSEMARY HIGGINS CASS
- PROFESSOR EMILY ARNOW ALMAN
- WILLIAM J. KEARNS, ESQ.
- SUSAN R. OXFORD, ESQ.
- RAYMOND R. TROMBADORE, ESQ.
- DOLORES PEGRAM WILSON, ESQ.
- HELEN HANDIN SPIRO, ESQ.

III. COMMITTEE TO REVIEW ATTORNEYS' SURVEY FORM
- HON. MARILYN LOFTUS
- HON. ROSEMARY HIGGINS CASS
- DEAN ELIZABETH F. DEFEIS
- DOLORES PEGRAM WILSON, ESQ.
- SUSAN R. OXFORD, ESQ.
- PATRICIA K. NAGLE, ESQ.
- THERESA FRITZGES, PH.D.
- JUDITH M. O'LEARY, ESQ.

IV. ATTORNEYS' SURVEY ANALYSIS
- LYNN HECHT SCHAFRAN, ESQ.
- NORMA J. WIKLER, PH.D

V. REGIONAL BAR ASSOCIATION MEETINGS
- PHOEBE W. SEHAM, ESQ.

VI. LITIGANTS' COMPLAINTS
- HON. VIRGINIA A. LONG
- DEAN ELIZABETH F. DEFEIS
- JACQUELINE TINNESZ, ESQ.

VII. FORMAT 1983 JUDICIAL COLLEGE
- HON. MICHAEL PATRICK KING
- DEAN ELIZABETH F. DEFEIS
- PROFESSOR ROGER S. CLARK
- HON. NICHOLAS SCALERA
- LYNN HECHT SCHAFRAN, ESQ.
- HON. MARY ELLEN TALBOTT
- HON. VIRGINIA LONG
- PATRICIA K. NAGLE, ESQ.

VIII. VIDEO TAPE
- HON. MARILYN LOFTUS
- DEAN ELIZABETH F. DEFEIS
- JUDITH M. O'LEARY, ESQ.
- LYNN SCHAFRAN, ESQ.

IX. JUDICIAL PARTICIPATION FORM
- HON. ROSEMARY HIGGINS CASS
- STEVEN D. BONVILLE, ESQ.
- PATRICIA K. NAGLE, ESQ.
- MELANIE S. GRIFFIN, ESQ.

X. FORMAT 1984 JUDICIAL COLLEGE
- HON. MARILYN LOFTUS
- DEAN ELIZABETH F. DEFEIS
- HON. VIRGINIA A. LONG
- HON. NICHOLAS SCALERA
- PROFESSOR ROGER S. CLARK

XI. COURT ADMINISTRATION
- HON. FLORENCE R. PESKOE
- HON. ROSEMARY HIGGINS CASS
- HON. MARTIN HAINES
- DAVID P. ANDERSON, JR., T.C.A.
- MARION FEEHAN
- MAUREEN LE FRANCIS
- DOLLIE E. GALLAGHER, T.C.A.
- PAULA GIACOMARA
- ROBERT JOE LEE
- DONNA KAYE, ESQ.
- JEAN WARGO

XII. WORKING GROUP ON MARRIAGE AND FAMILY LAW
- HON. ROSEMARY HIGGINS CASS
- DEAN ELIZABETH F. DEFEIS
- BILL KEARNS, ESQ.
- HON. JULIA L. ASHBEY
- TED METH, ESQ.
- PHOEBE W. SEHAM, ESQ.
- PROFESSOR ANNAMAY T. SHEPPARD
- THEODOSIA A. TAMBORLANE, ESQ.

APPENDIX B

TABLE OF CONTENTS