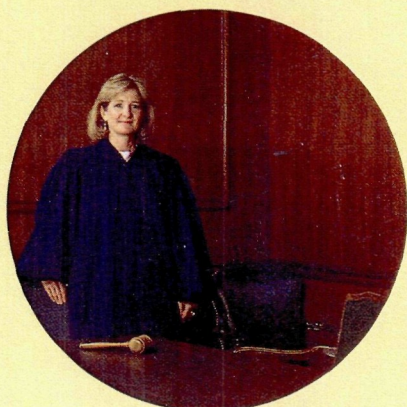


DELAWARE LAWYER

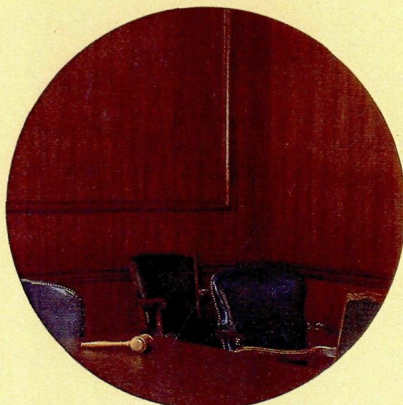
A PUBLICATION OF
DELAWARE BAR
FOUNDATION

Volume 12 Number 3

\$3.00 Fall 1993



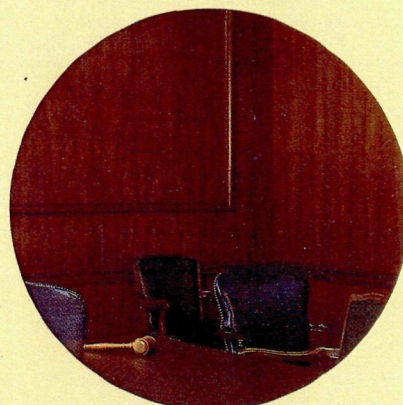
Chancery



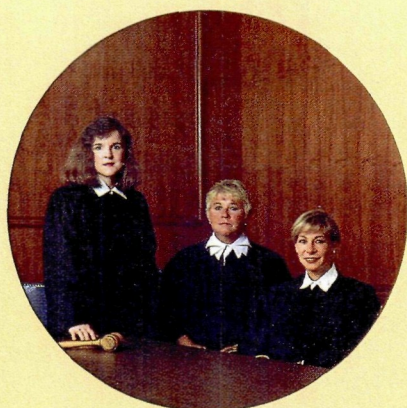
Supreme Court



Superior Court



Common Pleas



Family Court



District Court

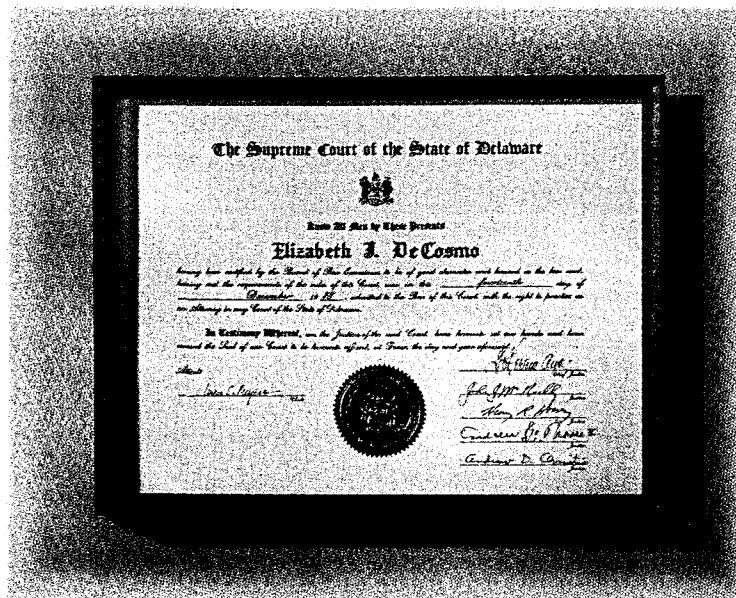


Third Circuit

Women in Delaware Law:
A Status Report

Nonprofit Organization
U.S. Postage
PAID
Wilmington, Delaware
PERMIT NO. 697





Your associate likes the look of the firm's benefits,
your junior partner likes to look after his investments,
and you'd like to look into rollovers.

You're definitely doing something different
with this year's bonus.

The firm is ready for a new computer system.
And a loan to pay for it.

And you need to arrange a mortgage for the vacation cottage
that you signed a contract on over the weekend.

It's time you talked with a private banker
from Wilmington Trust.

We understand the special financial requirements of attorneys who want to make the most of their firms for themselves and their families.

The private bankers at Wilmington Trust are talented professionals who can coordinate customized credit and insurance arrangements, provide estate planning, manage investments and develop tax-advantaged retirement benefit plans.

If you are among those actively building substantial assets, call David Ernst in Private Banking at (302) 651-8855.



WILMINGTON TRUST
MEMBER FDIC



Toll Brothers

...with 35 communities in the Delaware Valley

Delaware's Premier Communities!

See the Award-Winning Value of Toll Brothers.

Discover what over 8,000 homeowners already know. Toll Brothers builds more quality and value into their homes than any

other builder. By offering more choices, innovative design, and extraordinary luxury features, we've set the standard for home building in Delaware. Visit one of our many fine communities today.

New Communities in Hockessin!

Two new Toll Brothers communities are now open in Hockessin. Don't miss seeing the outstanding new Cedarbrook (pictured).

Hitchen's Farm

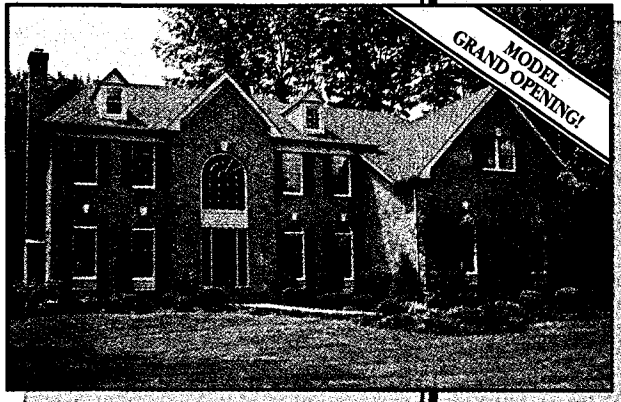
Estates at Autumnwood

From the low \$200,000's **From the mid \$200,000's**

Hitchen's Farm Directions: From I-95, take Rt. 141 N. 2.3 miles to Rt. 2W.

(Kirkwood Highway). Continue on Rt. 2W. for 6/10ths mile to Rt. 41 N. and turn right. Take Rt. 41N. for 4 miles to Brackenville Rd. and turn left. Go 1.6 miles to Rt. 7. Continue straight across intersection onto Little Baltimore Rd. Hitchen's Farm is 1.3 miles on the left.

Estates at Autumnwood Directions: From I-95, take Rt. 141 N. 2-3/10 miles to Rt. 2 W. (Kirkwood Hwy.). Continue on Rt. 2 W. for 6/10ths mile to Rt. 41 N., turn right. Take Rt. 41 for 4 mi. to left on Brackenville Rd. Go 1-6/10 ml. to Rt. 7. Continue across intersection onto Little Baltimore Rd. The Estates at Autumnwood is 1-1/10 ml. on the right. Open Mon.-Fri. 12-5, Sat. & Sun. 11-5. (302) 234-9910.



Grand Opening- final section!

Come see our new model- the lavishly detailed Cornell!

- These last 14 homesites are our most beautiful!
- Walk-out basements available
- Expansive 9 ft. high first floor ceilings.
- Gourmet kitchen with Jenn Air appliances
- Convenient second rear staircase off family room
- A sensational master bath and master den
- A well-established neighborhood where you'll feel right at home

ESTATES OF CORNER KETCH

**From the
\$240,000's**

Directions: From Wilmington, take Robert Kirkwood Hwy. (Rt.2) to Rt. 7 & go north. Follow Rt. 7 to 72 and turn left. Turn right onto Corner Ketch Rd. Entrance on left. Open Mon.-Fri. 12-5, Sat. & Sun. 11-5. (302) 239-6955.



Hockessin's Best!

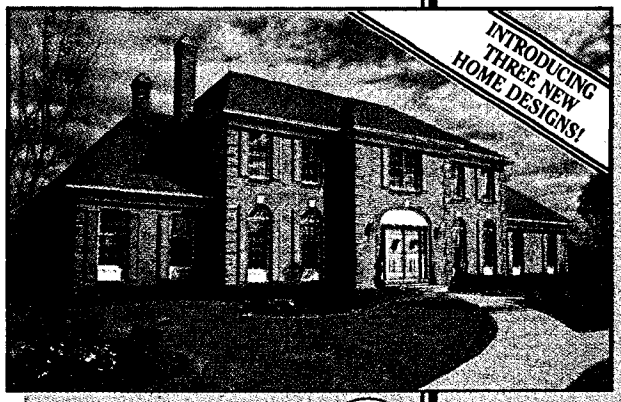
How fitting that those who can choose any home choose Toll Brothers at Sanford Ridge in Hockessin. All the luxuries you require are here... elegant double entry doors, 2-story foyers, 9 ft. and vaulted ceilings, detailed trim work, center island kitchens with Jenn-Air appliances, and master suites with whirlpool tubs.



SANFORD RIDGE

**From the upper
\$300,000's**

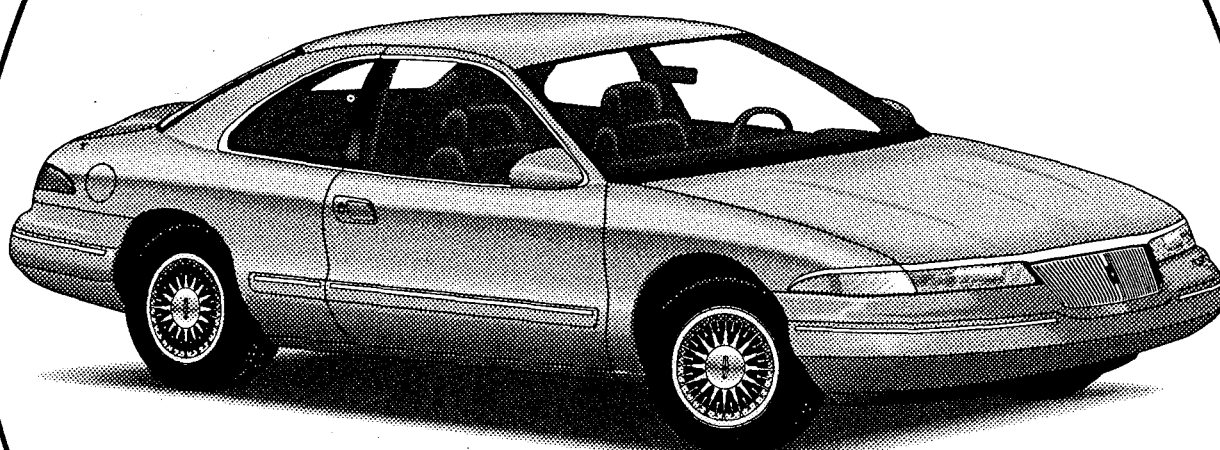
Directions: From I-95 take exit 7B (Rt. 52 N.). Turn right at light. Continue on Rt. 52 N. in far left lane 1-1/2 mi. to Greenhill Ave. Turn left. Travel 1 mi. to Rt. 48. Turn right. Take Rt. 48 for 5-1/2 mi. to entrance on left. Open everyday 12-5. (302) 234-1800.



Corporate Office: (215) 676-TOLL.
Broker Cooperation Invited.
Prices Subject to Change.

Quality Homes by Design®





WINNER CIRCLE

The totally new 1993
Lincoln Mark VIII

**The quality of today's cars and trucks is more than you think.
And when you pick a Winner, it's your choice.**

Not only are cars and trucks built better today, but you get more for your money ... performance, safety, and convenience features, standard today that were optional (or even unavailable) a few years ago.

And when you choose Winner, you have a choice of hundreds of car, truck, van, and

sport/utility models among a dozen of the finest domestic and quality import nameplates.

Choose a Winner, and discover who has made the biggest commitment to your transportation needs.

Discover why we're "Delaware's Favorite Car Dealer!"



LINCOLN-MERCURY, Newark • FORD-SUZUKI, Newark • BUICK, Newark • NISSAN, Newark • FORD, Dover • MITSUBISHI, Dover • HYUNDAI, Dover • OLDS-CADILLAC-GMC, Pennsville, NJ • SATURN of Newark, West Chester • INFINITI, Newark • WINNER GROUP LEASING • WINNER AUTO BODY

C CONTENTS

7

EDITOR'S PAGE

8

DELAWARE'S FIRST WOMEN LAWYERS:
THE FLOW OF ACCEPTABILITY
JACQUELINE P. PARADEE

12

PRELIMINARY FINDINGS OF THE 1992
DELAWARE LAWYER SATISFACTION SURVEY
LAURA A. OTTEN AND PATRICIA C. HANNIGAN

18

SUBJECTIVE EMPLOYMENT AND TRAINING
DECISIONS — THE "UNINTENTIONAL" DISCRIMINATION
JOYCE KORIE HAYES

23

WOMEN AND THE SUPREME COURT OF DELAWARE
A BRIEF REVIEW OF KEY CASES THAT AFFECT WOMEN
CHRISTINE M. MCDERMOTT, ESQUIRE

30

THE BAR ASSOCIATION SECTION ON WOMEN AND
THE LAW: A BRIEF HISTORY
ELLEN S. MEYER

36

THE IMPACT OF DELAWARE WOMEN LAWYERS
ON THE PRACTICE OF LAW
ANN MASSEY BADMUS
AND AMY ARNOTT QUINLAN

Cover Photographs by Madeline Polss

ON THE COVER:

Judges

(reading left to right)

Chancery: Carolyn Berger

Family Court: Alison Whitmer Tumas, Jean A. Crompton, Peggy L. Ableman,
Battle R. Robinson (not pictured on the cover, see photo at right)

District Court: Magistrate Mary Pat Trostle, Helen S. Balick,
Sue L. Robinson

Third Circuit: Jane R. Roth

Superior Court: Susan C. Del Pesco, Haile L. Alford

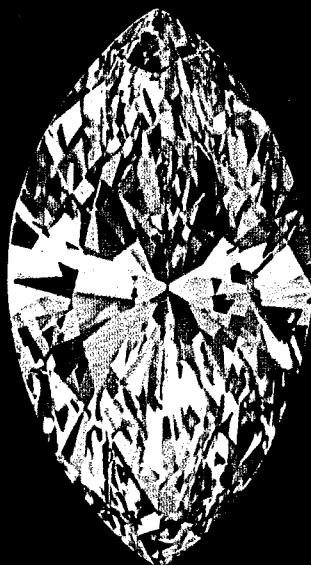
(Supreme Court and Common Pleas still await women members.)



18



30



QUALITY
AND VALUE.
IT'S AS
IMPORTANT
IN
DIAMONDS
AS IN
ANYTHING
ELSE YOU
OWN.

Stuart Kingston
JEWELERS

2010 Pennsylvania Ave., Wilm., DE 19806 • 302/652-7978 • Mon - Fri 9:30 - 5:30 • Sat 10-4

Exceptional Quality Transcripts

from

CORBETT & ASSOCIATES

ACCURATE • DEPENDABLE • PROFESSIONAL

Rapid Turnaround

Reporting for all Types of Legal Proceedings

Real-Time Reporting

Min-U-Script *Free* with All Transcripts

ASCII Disks on Request

Discovery ZX

In-House Videographers

Ellen Corbett Hannum, RPR, CM, CMR, President
Registered Professional Reporter

1400 FRENCH STREET, WILMINGTON, DELAWARE 19801
302-571-0510

DELAWARE LAWYER

A publication of Delaware Bar Foundation
Volume 12, Number 3
1225 King Street
Wilmington, Delaware 19801

BOARD OF EDITORS

William E. Wiggin, Chairman
Richard A. Levine, Managing Editor
Thomas L. Ambro
John M. Bader
Hon. Carolyn Berger
Lawrence S. Drexler
Hon. Jack B. Jacobs
Richard C. Kiger
David C. McBride
Susan F. Paikin
Carroll F. Poole
Hon. Vincent J. Poppiti
Vernon R. Proctor
Paula S. Shulak

DELAWARE BAR FOUNDATION

BOARD OF DIRECTORS

O. Francis Biondi, Chairman
Arthur G. Connolly, Jr.
Hon. Andrew G. T. Moore, II
William Prickett
Nicholas H. Rodriguez
Harvey Bernard Rubenstein
Dennis L. Schrader
Mary E. Sherlock
Bruce M. Stargatt

Editorial inquiries should be directed to:

DELAWARE LAWYER

Attention: Chairman, Board of Editors
c/o Suburban Marketing Associates, Inc.
Three Christina Centre
201 N. Walnut Street, Suite 1204
Wilmington, Delaware 19801

Address changes, subscription orders,
requests for information about advertising
should be directed to:

SUBURBAN MARKETING ASSOCIATES, INC.

at the preceding address
Telephone inquiries to (302) 656-8440

DELAWARE LAWYER is published by Delaware Bar Foundation as part of its commitment to publish and distribute addresses, reports, treatises, and other literary works on legal subjects of general interest to Delaware judges, lawyers, and the community at large. As it is one of the objectives of DELAWARE LAWYER to be a forum for the free expression and interchange of ideas, the opinions and positions stated in signed material are those of the authors and not by the fact of publication, necessarily those of Delaware Bar Foundation or DELAWARE LAWYER. All manuscripts are carefully considered by the Board of Editors. Material accepted for publication becomes the property of Delaware Bar Foundation. Contributing authors are requested and expected to disclose any financial, economic, or professional interests or affiliations that may have influenced positions taken or advocated in the articles. That they have done so is an implied representation by each author.

Copyright 1993
Delaware Bar Foundation
All rights reserved, ISSN 0735-6595

USCA NOW ON CD-ROM

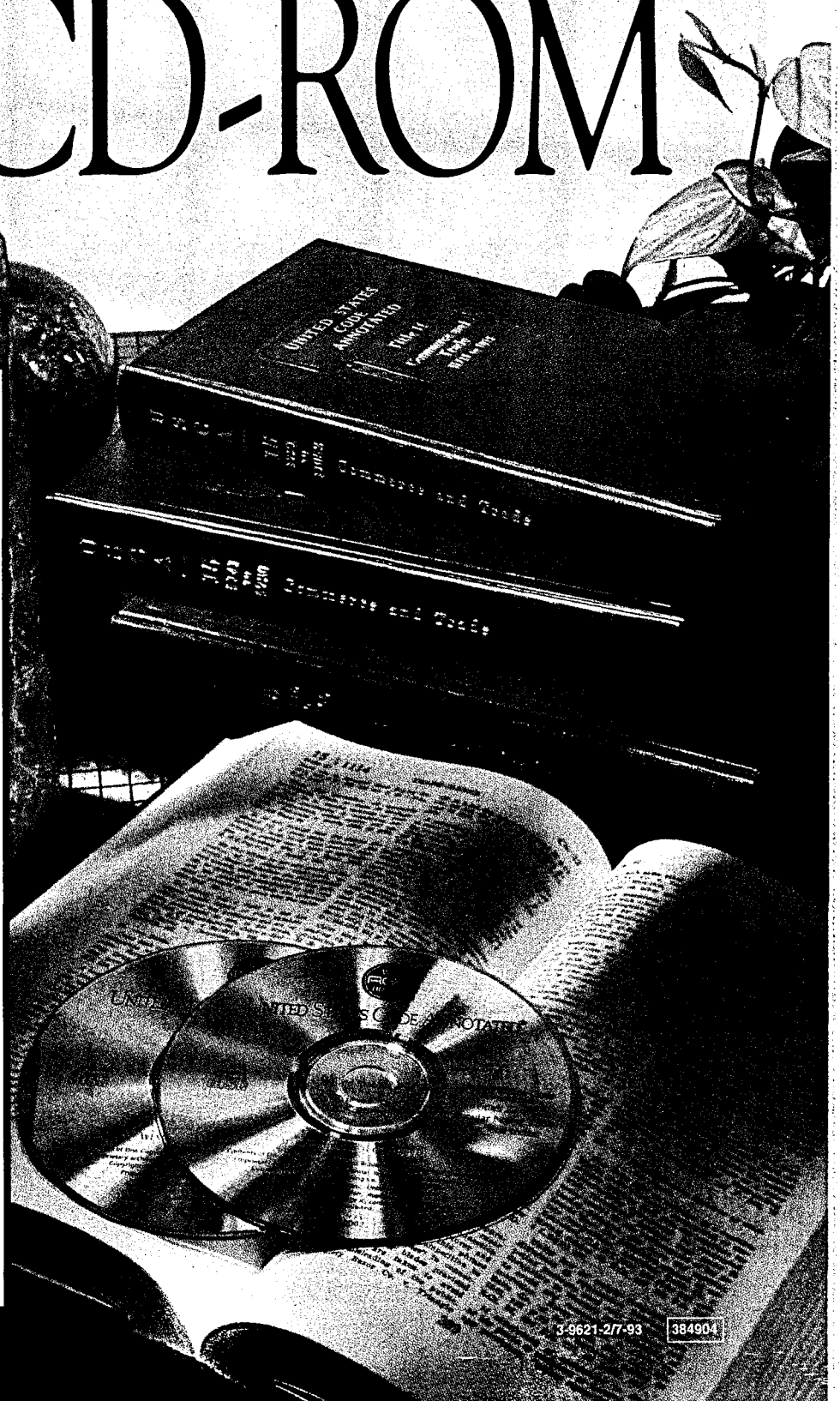
THE CHOICE FOR SUCCESS NOW COMES IN A CHOICE OF FORMATS.

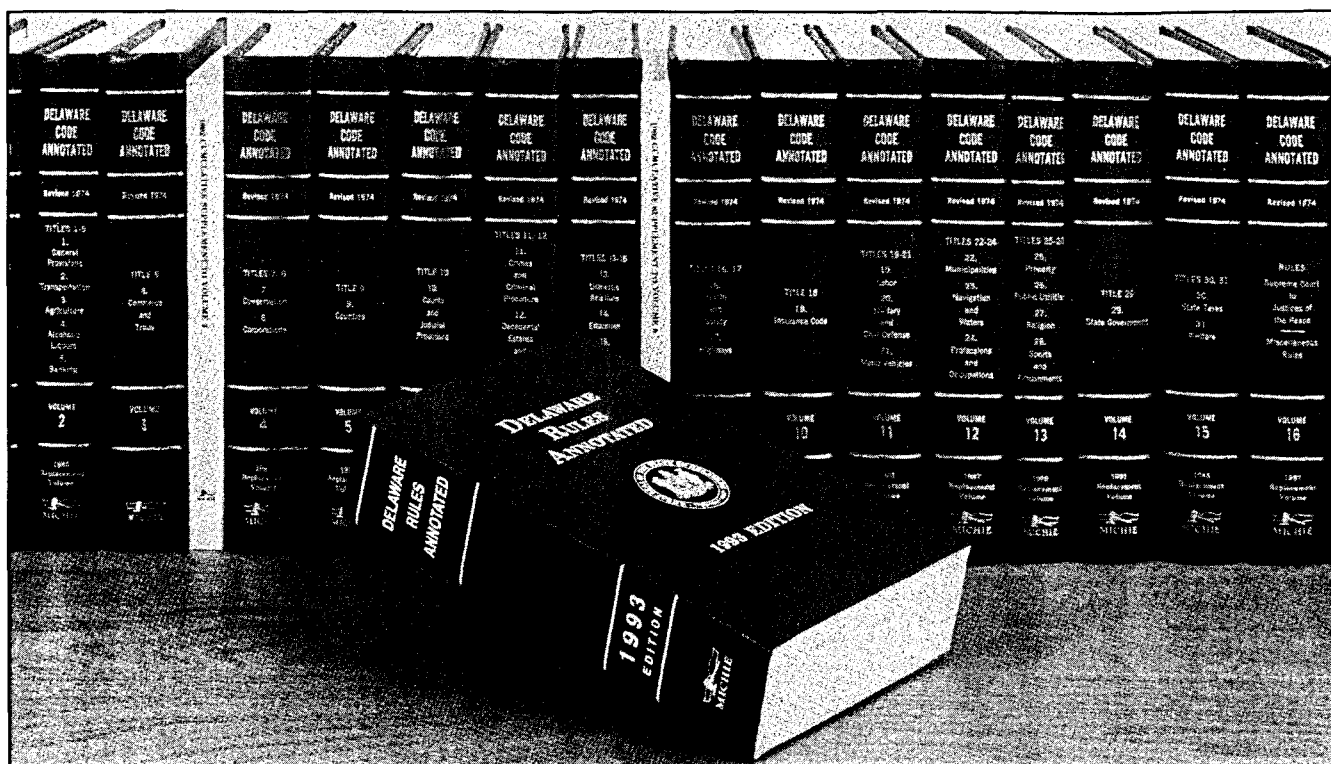
West's® United States Code Annotated® is now available on easy-to-use CD-ROM. What's more, it's complete with all the features that make USCA the number one source for federal law. So you get all of USCA - on just two convenient compact discs.

Call 1-800-255-2549, ext. 7000 today for a no-obligation demonstration in your office.

USCA®

West Publishing 
More ways to win





Delaware's annotated Rules, now including the local Federal Rules.

Only from The Michie Company.

For years, law offices all over the state have relied on Michie's *Delaware Code Annotated* for the official, annotated court rules. Now, there's even more to rely on. Just published, Michie's *Delaware Rules Annotated* consolidates the Code's official text and annotations for the Rules in one softbound volume. *Delaware Rules Annotated* covers the Rules for all levels of the Delaware judicial system, including Rules of Evidence and Rules of Criminal and Civil Procedure. It also contains the Federal Rules of the Third District, the U.S. District Court for Delaware, local U.S. Bankruptcy Rules, and Rules for 2254 and 2255 cases. With indexes for each set of Rules as part of the portable single-volume format, it's perfect for pretrial research and courtroom reference.

Semiannual updates put timely law in your briefcase.

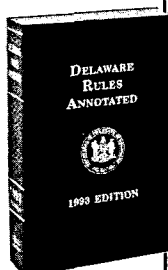
When the Rules change, rely on *Delaware Rules Annotated* to keep you current. The volume is updated semiannually and replaced annually, with all changes integrated into the text.

At just \$45 per copy, shouldn't your briefcase contain a copy of Michie's Delaware Rules Annotated?*

\$45*

Approximately 1500 pages, softbound, revised annually, supplemented semiannually ©1993, The Michie Company

New editions and supplements issued within 60 days of purchase will be sent free of charge.



Order today!

Examine for 30 days without risk or obligation.

- Mail the coupon below
- Call toll-free 800/562-1215
- Fax your order to 800/643-1280

Or contact your Michie sales representative—

GIL WARD
800/545-5447 or 410/557-9780

THE MICHIE COMPANY

LAW PUBLISHERS SINCE 1855

P.O. BOX 7587 • CHARLOTTESVILLE, VA 22906-7587 • 1-800-562-1215

☐ Yes! Please send _____ copies of *Delaware Rules Annotated*, 1993 Edition at \$45* each. (41540)

30-Day Trial Offer: I may return my purchase within 30 days without obligation if not completely satisfied. New editions will be sent to me with the same return privileges.

- ☐ Payment enclosed (save shipping and handling charges)
- ☐ Bill me ☐ Bill my firm
- (Plus shipping and handling, net 30 days)
- ☐ Send me the current Michie Company catalog

Name _____ Phone _____

Account name _____

Address _____

City _____ State _____ Zip _____

* Plus sales tax where applicable.

EDV SUMMER/93

EDITOR'S PAGE

DEDICATION

This issue is dedicated to all the women lawyers who were neither expected nor encouraged to embark upon professional careers, but who believed that they could succeed despite adversity and alter expectations as well. Thank you for your inspiration.

This issue is dedicated to all the women lawyers who were expected and encouraged to lead professional lives, but were never prepared for the discrimination and harassment they had to face. Thank you for your perseverance.

This issue is dedicated to all the women lawyers who dared to personalize the practice of law to conform with their life styles. Thank you for your courage.

This issue is dedicated to all the women lawyers who skillfully pursue their professional careers, and ably create and nurture the next generation. Thank you for your versatility.

This issue is dedicated to all those people who support, care for, and encourage women lawyers. Thank you.

This issue is also dedicated to all those who read it. Thank you for your interest, whatever the motive.

Cathy J. Testa, Issue Editor

Cathy Testa, who has so ably shepherded this issue on its long trek from original conception to the reality of print, practices law with the firm of Skadden, Arps, Slate, Meagher & Flom — W.E.W.



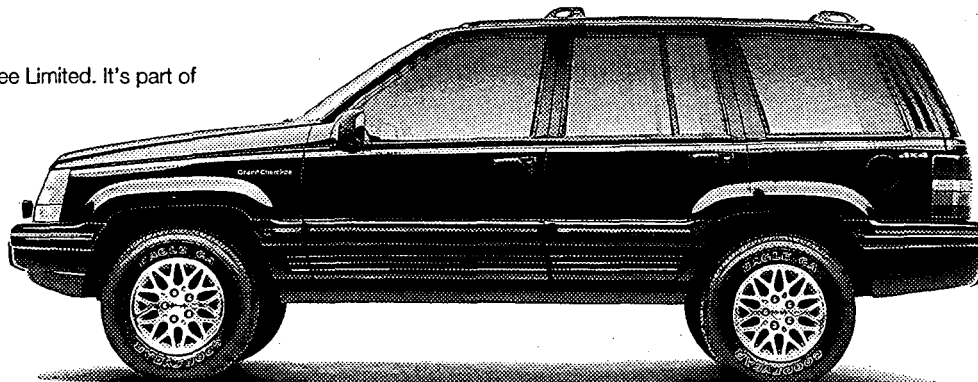
(302) 764-3888

THE 1993 JEEP® GRAND CHEROKEE. A GREAT JEEP IN THE GRAND TRADITION.

It's like no other Jeep vehicle ever before. This is the Jeep Grand Cherokee Limited. As rugged and tough as you'd expect any Jeep Cherokee to be, yet as sporty and comfortable as you'd expect a sophisticated road car to feel. This is four-wheeling in an entirely new dimension. Here's why:

- The only 4x4 with a driver side air bag.
- Four-wheel anti-lock brake system standard.
- Quadra-Trac® all-the-time four-wheel drive standard.
- A 4.0 litre 190 horsepower engine standard; plus, available 220 horsepower V8.
- Split-folding rear seat.

The 1993 Jeep Grand Cherokee Limited. It's part of a grand new tradition.



Jeep is a registered trademark of Chrysler Corporation. Buckle up for safety.

With the recent attention to the increasing number of women lawyers within the state and nation, it is interesting to know that the Delaware Bar's first female members joined its ranks not 20 or 30 years ago, but 70 years ago — in 1923. The story of these women is the story of the Delaware Bar, its progress, changes, and successes. In 1923 Evangilyn Barsky and Sybil Ward became the first female members of the Delaware Bar. Sybil Ward was born in 1894 into a family of lawyers. While still in grade school she decided that she too would pursue a legal career.¹ A graduate of the University of Pennsylvania Law School,² Ms. Ward settled into her legal career and became involved in politics. From 1925 until 1929, she represented the twelfth Ward as the first woman elected to the Wilmington City Council.³ Shortly after she died on March 30, 1977, Tom Malone wrote: "She was proud of being the first woman lawyer in Delaware, but insisted there was nothing strange about it."⁴ Many of the more senior members of the bar recollect her performing title searches for the family law firm Ward and Gray, begun by her father Herbert Ward, now Potter, Anderson and Corroon.

Evangelyn Barsky shared a passion for law and politics similar to Ms. Ward's. Born and raised in Wilmington, she graduated from Goucher, and received her A.B. and LL.B. from the University of Pennsylvania.⁵

Evangelyn was an active member of the Delaware State and American Bar Associations as well as non-legal associa-

tions such as the League of Women Voters, the American Association of University Women, and the New Century Club.⁶ During World War I, she was a member of the women's motor car corps.⁷ She was also active in politics.⁸ On July 1, 1935, she was appointed Assistant City Solicitor and put in charge of delinquent taxes. She was the first Republican woman to receive such a

from Temple in 1931.¹³ Thereafter, she opened her own law office in Wilmington. In 1933, E. Ennalls Berl appointed her Assistant City Solicitor in charge of prosecution.¹⁴ According to an article in the News Journal, Mrs. Bodziak was the first woman prosecutor in Delaware.¹⁵ She served in this role until 1935.

Like her female predecessors, Mrs. Bodziak was active in politics. She was elected to the Democratic National Committee by the Delaware Democratic State Convention and served in that capacity from 1932 until 1944.¹⁶ In 1936, having served on the national committee of the Democratic State Convention for four years, she was favored for the congressional nomination on the Democratic ticket.¹⁷ Several non-partisan women's organizations urged her to become a candidate.¹⁸

Eight years later Mrs. Bodziak offered her services to the Republican party and was quoted in the News Journal as saying, "I am taking a walk. I cannot go into the voting booth and vote the Republican ticket yet pose as a Democrat. I am not a hypocrite."¹⁹ The author of the *News*

Journal article commented: "Mrs. Bodziak has seen the vast danger in perpetuating in power the New Deal and its philosophy."

In 1941, a fifth female was admitted to the Delaware Bar. Roxana Cannon Arshnt was a 1939 graduate of the University of Pennsylvania Law School. At that time, a law school graduate interested in becoming a member of the Delaware Bar was required to clerk with a law firm. Her father received permission from William S. Potter, Esquire, senior partner at Ward and Gray (where Sybil Ward worked as a title searcher) for his daugh-

Delaware's First Women Lawyers: The Flow of Acceptability

Jacqueline P. Paradee

political appointment.⁹ Unfortunately, her tenure was short-lived. Ms. Barsky was killed in an automobile accident on September 13, 1936.¹⁰

In 1926 Annie Saulsbury became the third woman admitted to the Delaware Bar. Little is known about her career, except that she did not practice in Delaware. Five years later Marguerite Hopkins Bodziak was admitted. She was born in Elkton, Maryland on July 12, 1889.¹¹ After graduating from Goldey College in 1907, she took a job with the law firm of Marvel, Marvel, Layton and Hughes.¹² She obtained her law degree

ter to clerk in that office for no pay.

During her clerkship, Judge Arsht studied for the Delaware Bar and met, and eventually married, S. Samuel Arsht. During their courtship, their respective law firms became embroiled in the famous Coca-Cola case of the 1940's. This was the first time in Delaware's his-

female pioneers, she simply states that she became a lawyer to enable herself to be a useful member of society, unaware that she was blazing a path for others.

Delaware's first woman to be named a judge on the Third Circuit Court of Appeals entered the practice of law in 1965. Jane Roth, a graduate of Harvard

In her junior year in college, Judge Roth spent a year abroad in Paris. While there, she visited England and toured the British courts and observed a trial. The plaintiff was a handyman who, while cleaning an attic window, fell several floors to the ground. The fall severely injured his leg. The issue before the court was whether the window frame has been damaged by bombs during World War II, or whether the handyman had been careless. Had his disability been caused by wartime damage, he would have received only national health benefits. Judge Roth recalls that as she listened to the parties' arguments, she felt a surge of interest, and began to consider law school.

At the age of twenty-six, Judge Roth entered Harvard Law. She was one of twenty-five women in a class of more than five hundred students. During the early 1960s, there was a professor of property at Harvard Law School who



Evangilyn
Barsky
◀

tory that two law firms addressed an ethical conflict stemming from married lawyers. Ward and Gray decided that Roxana should not work on that case in light of her relationship with Sam Arsht.

After passing the Delaware Bar, Roxana applied for jobs all over town, but did not get one positive response. Absent the opportunity to serve, she busied herself as a wife, a community leader, and a mother.

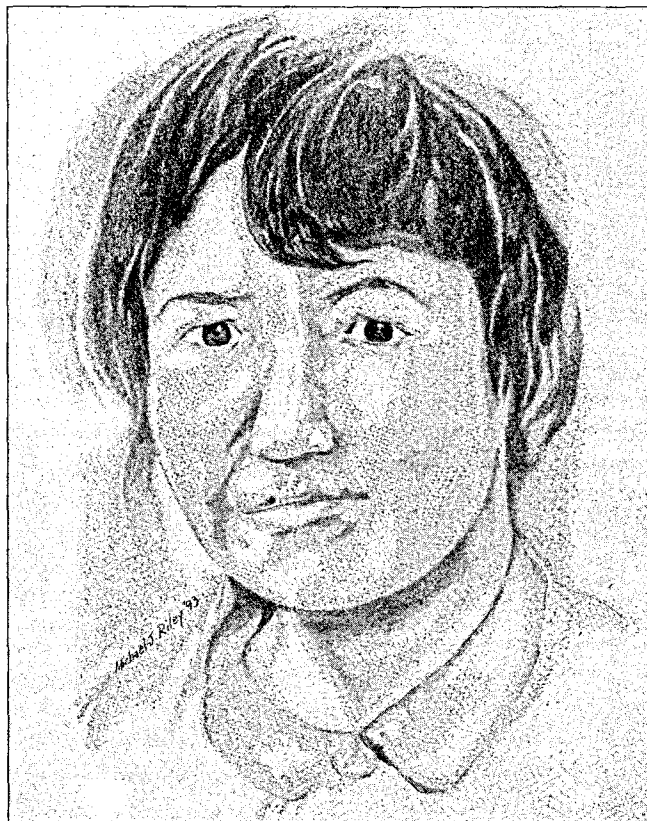
In 1962 Sam Arsht was approached by Judge Melson, Sr. who asked whether Sam was willing to "donate his wife to the Family Court" and she began her career as an unpaid Master. In the early years of Judge Arsht's career, the Family Court dealt primarily with delinquencies, assault and battery, and domestic disputes. In 1971, after nine years as Master, Roxana Arsht was appointed a judge of the Family Court. Throughout her term, Judge Arsht watched the Family Court's responsibilities and jurisdiction expand into the areas with which we are now familiar.

Judge Arsht retired in 1983. Although thought of today as one of Delaware's

School, was influenced by two different sources. The first, and most obvious, was her father, Robert Richards. As the daughter of one of Delaware's leading lawyers of the 1950s and 1960s, Judge Roth was exposed to the courtroom at an early age. However, it was a case she observed in England that made the greatest impression upon her. Judge Roth recounts the story with such vivid clarity that it is no wonder she became a lawyer.

had a practice called "ladies day". According to Judge Roth, this professor refused to call on women in his class except two days a year. On these two days, the women were required to field his endless questions before the class.

After graduation from she became an associate at Richards, Layton & Finger. In the early days of her career, it was decided that, since she was a woman, she would be well-suited to domestic issues.



Sybil
Ward
▶

She found her niche, however, in medical malpractice. She recalls one malpractice case involving notorious Philadelphia lawyer. Unnerved by a female adversary, he became belligerent and abusive. At one point during the trial, after three of Judge Roth's objections to the same statement were sustained, he turned to Judge Roth and shouted, "Stop yelling at me like a fishwife." Undismayed by these histrionics, Judge Roth methodically pursued the issues and won.

Eight years of practice and two children later, Judge Roth became the first female partner of a law firm in Delaware, even though she had been told when she started that a woman would never make partner. When asked of her impact upon today's generation she stated: "I think I knew that if I did not do a specific task well it might be said I didn't do it well because I was woman, and women shouldn't be doing this kind of work. I think in many cases I worked twice as hard because if I messed up, some of the men attorneys in time would say, 'You see, that's what happens when you let a woman do the work.' So it provided a certain amount of impetus. There have been times when I've really felt proud that I . . . have made men lawyers think better of women lawyers because I've done the job and I have done it well."

Three years after Judge Roth joined the Delaware Bar, Delaware's second female member of the judiciary, the Honorable Helen S. Balick, became a member. After graduating from high school, Judge Balick went to work in a Pennsylvania law office as a secretary. She married a man who persuaded her to go to the law school. At his insistence, Judge Balick applied to the Bar Examiners in Pennsylvania, who agreed to let her take the graduate record examination and three area tests as a substitute for a college diploma. She passed the two day examination, applied to The Dickinson School of Law, and was accepted. However, she decided not to attend. Two years later her first husband died. Judge Balick then decided to enter Dickinson with the class of 1963. In June, 1967 she married the Honorable Bernard Balick.

After graduating from law school, Judge Balick was admitted to the Pennsylvania Bar. Shortly thereafter, she attempted to register with the Delaware Bar, but was refused registration because she did not have an undergraduate degree. She was given the alternative of examinations at the University of Dela-

ware. After hours of examinations in English Composition, Literature, American and British History, and French, she petitioned the Supreme Court for permission to take the Delaware Bar Examination. In March, 1969, she became their tenth woman admitted to the Delaware Bar.

From 1966 until 1968, Judge Balick was employed at the Girard Trust Bank as a probate administrator. In 1968, she left Girard to serve her required clerkship at the Community Legal Aid Society as an unpaid intern. Thereafter, she became a Legal Aid staff attorney. She recalls: "I interviewed a client, who had some kind of landlord-tenant problem, obviously a tenant, and I was able to resolve it. When he got up to go, he said, 'Well, thank you very much, ma'am, but when do I get to see the lawyer?'" Judge Balick left Legal Aid in September of 1971 and served as a Master in Family Court until April, 1974, when she was offered the position of Bankruptcy Judge/U.S. Magistrate for the District of Delaware. Since 1980, she has served as the only bankruptcy judge in the Delaware district.

When asked how the 1960s influenced her career, Judge Balick commented that at that time, most large organizations were eager to hire women. When she worked at Girard Trust Bank in the mid-1960s, she was the only woman in the trust department and the probate administration division. During these pioneer days, Judge Balick recalls feeling a sense of responsibility not only to other women but to society in general. Judge Balick's commission in the Bankruptcy Court expires in 1999, and she is looking forward to retirement.

The 1970s brought more women to the Delaware Bar with the opportunity to make greater inroads for the woman of today. Although women had been members of the Delaware Bar in New Castle county since 1923, it was not until 1970 that Sussex County received its first female attorney, the Honorable Battle Robinson. After graduating from law school in 1963, Judge Robinson worked for seven years in the Justice Department in Washington, D.C., before marrying and moving to Sussex County, Delaware in 1970. When Judge Robinson gave birth to her first child in 1972, the Delaware State Bar Association sent her roses with a card to "the first lawyer in Sussex County ever to have a baby."

Before entering private practice, Judge Robinson worked for the General

Assembly. She later practiced with Wilson, Halbrook & Bayard until she went to the Governor's office as Governor du Pont's assistant legal counsel. She ran for Lieutenant Governor in 1984 and lost. In 1985 she was appointed a Judge of the Family Court in Sussex County. Two years ago she took part in another first in Sussex County history: a female attorney for the plaintiff and a female attorney for the defendant argued a case before the presiding female judge.

When asked how the 1960s affected her career, Judge Robinson stated: "I think coming along in the 1960s, going to law school in the 1960s, I had a high motivation for public service, for using the law to benefit people. I had a much more public law and public service approach. I think I had that earlier, but maybe that's part of the reason I got interested in the law. I think in the 1960s there was a lot of emphasis on that . . . if you want to change the world, you get to be a lawyer and that's how you use the law."

Judge Robinson's commitment to government service was shared by Christine McDermott who became a member of the Delaware Bar in 1972. Ms. McDermott experience a close relation of the infamous Harvard "ladies day" at the Dickinson School of Law, where women students were called upon for cases in which women were defendants or victims, particularly rape cases. After clerking during her law school summers with the law firm of Cooch & Taylor, Ms. McDermott accepted a position at the City Solicitor's Office, where she worked on civil issues, zoning, and the desegregation case, *Evans & Buchanan*.

After a year with the City Solicitor's Office, she moved into criminal prosecution, despite warnings that "girls can't do that". Eventually, she became chief prosecutor, a position she held until 1976, when Governor Tribbett asked her to run the Delaware Agency to Reduce Crime. She headed the Agency (now known as the Criminal Justice Council) until 1981, and thereafter taught at the University of Delaware for three years. From 1985, to 1988, she directed the private, non-profit Delaware Council on Crime and Justice. In 1988, she was offered the opportunity to run Delaware Volunteer Legal Services, which later merged with the Civil Clinic of Widener University School of Law. She now also serves as a visiting associate professor at Widener, "thus fulfilling my grandmother's prophecy that I would always have

teaching on which to fall back".

When asked whether the women's movement of the 1960s and the desegregation movement of the 1950 and 1960s affected her career, Ms. McDermott replied that when she was in college, she wrote a paper for her history class on desegregation in Delaware, and learned about Louis Redding, the first black lawyer in Delaware and the only one until the 1950s. Mr. Redding's work and Ms. McDermott's experiences as an elementary school student in a desegregated Delaware school in the 1950s motivated her to pursue a legal career. As one of the few women litigators in Wilmington in the early 1970s, there were times when the lack of camaraderie created a sense of loneliness, but she recognized that her perseverance as one of Delaware's first female prosecutors opened the way of women who would follow her.

The first woman lawyer appointed to the Delaware Superior Court was the Honorable Susan C. Del Pesco. Judge Del Pesco became a member of the bar in 1975. She began her career with the law firm of Schnee and Castle. Shortly after Governor Michael Castle became Lieutenant Governor the remaining attorneys from Schnee and Castle joined Prickett, Jones, Elliott, Kristol & Schnee. Two years later Judge Del Pesco became a partner. In 1988 she was appointed Judge of the Superior Court.

Judge Del Pesco grew up at a time when conventional wisdom taught a woman not to work, but if forced to do so, to become a nurse, a secretary, or a teacher. The 1970s brought opportunities for women who were entering the legal profession. Although she felt a sense of isolation as one of Delaware's few women attorneys she recalls that she was considered intellectually equal to her male peers. Intellectual equality, however, does not necessarily mean total equality: "I don't know that we should resist the notion that we're different. And I think in understanding that there are differences we can also understand the qualities that each sex has a result of those differences and learn to use those strengths effectively."

As Judges Del Pesco and Robinson entered the profession in the 1970s in Wilmington and Georgetown, respectively, female lawyers trickled into Kent County as well. By the late 1970s there were four women lawyers practicing in Dover. Carol Braverman was one of the first, and the first woman in Dover to

become a name partner. She became a member of the Bar in 1979. Although she felt isolated as one of the first female attorneys in Dover, she remembers that her peers were helpful mentors. However, she felt that she had to do everything twice as well because she was a woman. She initially performed domestic, bankruptcy, and collection work because women were not perceived as capable of effectively advising male clients. In 1988, when the firm with which she has been associated dissolved, she and her current partners formed the partnership that is today Twilley, Street, Rich, & Braverman.

By the end of the 1970s, women's roles in the Delaware Bar has changed remarkably. From the earlier experiences of Judges Arsh, Roth, and Balick, to the experiences of Judges Del Pesco and Judge Robinson, Christine McDermott, and Carol Braverman, the curiosity that women created and the cynicism of male practitioners when women first entered the profession had decreased. Their contribution succeeded in making women integral members of bench and bar. Through their leadership, perseverance, and hard work, they have established a legacy of which Delaware can be proud.

* * *

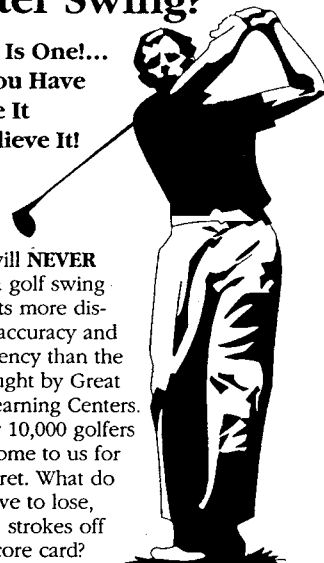
Constraints of space make it impossible to include the author's extensive footnotes, but the numbers to these footnotes appear. The full footnotes will be available upon request to the offices of this magazine.



Jacqueline Paradee is a member of the Women In The Law Section of the Delaware State Bar Association, and is an attorney for the Delaware General Assembly House of Representatives. ♦

Still Looking For The "Secret" To A Better Swing?

There Is One!...
But You Have
To See It
To Believe It!



You will NEVER make a golf swing that gets more distance, accuracy and consistency than the one taught by Great Golf Learning Centers.

Over 10,000 golfers have come to us for the secret. What do you have to lose, except, strokes off your score card?

475-3430
215-459-8718
1-800-TEE-OFF-9

GREAT GOLF®
Learning Centers

1800 Naamans Rd., Suite 3, Wilm., DE

TRADEMARK & COPYRIGHT SEARCHES

TRADEMARK-Supply word and/or design plus goods or services.

SEARCH FEES:

COMBINED SEARCH — \$ 205*
TRADEMARK OFFICE — \$70*
STATE TRADEMARKS — \$75
COMMON LAW — \$65
EXPANDED COMMON LAW — \$115*
DESIGNS — \$95* per class minimum
COPYRIGHT — \$105*

*plus photo copy cost.

INTERNATIONAL SEARCHING

DOCUMENT PREPARATION

(for attorneys only - Applications, Section 8 & 15, Assignments, renewals.)

RESEARCH - (SEC - 10K's, ICC, FCC, COURT RECORDS, CONGRESS)

APPROVED. Our services meet standards set for us by a D.C. Court of Appeals Committee.

Over 100 years total staff experience - not connected with the Federal Government.

GOVERNMENT LIAISON SERVICES, INC.

3030 Clarendon Blvd., Suite 209

Arlington, VA 22201

Phone: (703) 524-8200

Fax: (703) 525-8451

All major credit cards accepted

TOLL FREE: 800-642-6564

Since 1957

Preliminary Findings of the 1992 Delaware Lawyer Satisfaction Survey

Women attorneys tend to be left out of the rosier aspects of the picture. Among other things, they earn significantly less than their male counterparts, although they put in the same hours in the same kinds of workplaces. It has been suggested that the differences in income between men and women will disappear over time, as women become more senior in their workplaces. But such a change is not yet evident when the effect of seniority is removed, by comparing women only against men who have graduated from law school more recently.

In 1990, the Young Lawyers Division of the American Bar Association (A.B.A.) published a report entitled, "The State of The Legal Profession." This report discussed the results of a lengthy and comprehensive national survey conducted on a carefully selected representative sample of over 1000 lawyers. The disturbing results showed broad dissatisfaction within the profession.

In an effort to see whether and to what extent members of the profession in Delaware face such problems, the Women And The Law Section, with the imprimatur of the Bar Association Executive Committee, sought the services of Dr. Laura A. Otten, a sociologist at La Salle University, to conduct a scaled-down version of the survey among members of the Delaware Bar. The abbreviated questionnaire was distributed in the February issue of *In Re*, and all members of the Delaware Bar were encouraged to respond. In most cases, questions were taken verbatim from the A.B.A. survey, to permit direct comparison of the Delaware responses to the national results.

Of the approximately 1800 current members of the Delaware Bar, 277 (15%) returned completed questionnaires.

Representative of the Delaware Bar?

The extent to which the survey respondents are representative of the Delaware Bar as a whole governs the extent to which generalizations from their responses are valid. Accordingly, we look first to see how representative the respondents were. The statistics reported here describing the membership of the Delaware Bar were provided by the Delaware State Bar Association (D.S.B.A.).

Although more than two thirds of the respondents were male (68%), the proportion of female attorneys responding (32%) was higher than at the Bar as a

whole, where only about 21% of the membership is female. Nearly all the respondents were white (97%), which likely reflects the Bar as a whole,¹ but which unfortunately precludes the possibility of making any meaningful comparisons of responses by race.² The respondents tended to be among the younger members of the Bar; although they ranged in age from 26 to 84, the median³ age was 40. And although the year of graduation from law school ranged from 1933 to 1991, the median year was 1980, with the single largest group graduating in 1989. Although the D.S.B.A. keeps no record of practitioners' ages, the information available on year of graduation of members of the Delaware Bar is quite similar to that of the survey respondents: 31% of the Delaware Bar graduated from law school in 1985 or later; 34% graduated between 1975 and 1984; and 34% graduated before 1975.

By far the largest number of respondents worked in New Castle County (84%), which is consistent with the Bar as a whole (86%). Most worked at law firms (72%): 41% were partners and 30% were associates. Only 11% worked for corporations, 9% for a government, and 4% for courts. These statistics, too, are generally consistent with the Bar as a whole, where 13% work for a corporation, 12% for a government and 75% are in private practice.

Seven judges (4%) were among the respondents, whereas judges make up 3% of the Bar as a whole.

In summary then, aside from the fact that women attorneys were overrepresented, respondents tended to be generally representative of the Delaware Bar as a whole,⁴ in age, county of practice, and type of practice.

As a result of the overrepresentation of women among the respondents, one

should use caution when comparing the responses of men and women. One particular note about the comparison of men and women respondents: because 99% of the women respondents graduated from law school after 1967, it would be easy to confuse the effects of gender with the effects of seniority. It would be expected that those who graduated earlier than 1967, as a group, would have higher status, higher income, would more likely be partners, etc. than would those who graduated more recently. Results which show that men respondents have a significantly higher income than women respondents, for example, might simply reflect the fact that men have been at the bar longer and should thus be expected to have higher incomes. In an effort to remove this effect of seniority, the analysis employed a technique used by the A.B.A. in reporting the national survey results. In the comparison between women and men attorneys, a separate analysis was performed for those who graduated since 1967, eliminating the almost entirely male segment who, having been at the bar longer, would be expected to be at the top of their profession.⁵ Thus, to return to the illustration above, when the results show that *of those who graduated from law school in 1968 or later*, women report significantly lower incomes, it is clear that the explanation is not simply that men have been at the bar longer.

This is, however, when all is said and done, not a carefully selected random sample. Limited resources precluded a study of that scale, although it is hoped that the D.S.B.A. might consider funding such an effort in the future. This report should be viewed as a glimpse, substantially less subjective than has been available in the past, but nevertheless as seen through a glass indistinctly, if not darkly.

In order for the reader fairly to understand the survey results, one definitional issue must be highlighted. "Significance" is a term of art in the statistics context. It means that the likelihood of getting the results one sees *by chance* is less than 5%. Put another way, it means that it is 95% likely that the results genuinely reflect some underlying relationship, and that they are not just random. For example, where it is reported that "government lawyers were significantly more likely than others to describe their jobs as holding great intellectual challenge", there is a 95% chance that the difference between respondents employed by a government and others on this issue is *not* a chance

outcome, but shows a genuine effect of type of employment on the attorney's opinion regarding the extent of intellectual challenge the job presents. The word "significant" appears repeatedly in the following report, and always refers to the "95% to 5%" probability scheme described here. It does not refer to substantive significance, which is a completely separate matter.

A final note of caution: statistics reveal much about patterns of behavior in groups, but nothing about individuals.

Women respondents were more likely to have been in the top 5 to 10% of their law school class than were men.

The results reported here may or may not be consistent with your personal observations. This report is meant to open a door, to pique questions and comment. It is in this spirit that the following analysis is presented for your review.

Survey Results

History at the Bar, Status and Income

Most respondents (70%) had worked for only one or two employers since entering the bar. Of respondents in law firms, as was true with the A.B.A. results, men were significantly⁶ more likely to be partners than women, and the reverse was true regarding associates. This pattern remained evident even when respondents who had graduated from law school in 1968 or later were analyzed separately, eliminating much of the effect of seniority. Consistent with this difference in status, men reported significantly more often than women that they had considerable control over the selection of cases and considerable input into management decisions. Again, this difference persisted even when only those graduating since 1967 were examined. The difference, thus, is not due simply to the fact that male attorneys have gained a more senior status in the profession by virtue of having been admitted longer.

Respondents' median annual income was between \$65,000 and \$85,000, although 15% reported an income over

\$165,000. Less than 1% reported an income under \$25,000. There was a significant difference between men and women with respect to income: only one percent of the women respondents reported an income over \$125,000, whereas women were twice as likely as men to report an income at the low end of the scale (under \$65,000). Again, this pattern was observed even when men and women graduating since 1967 were examined separately. The same pattern emerged in the A.B.A. survey results, leading those authors to comment that "women continue to be far worse off financially than their male colleagues in most positions." Government attorneys were significantly more likely than others to report being at the lower end of the pay scale. This pattern did not vary by gender. Attorneys with firms were more likely to report income at the high end of the scale.

Over 70% of respondents believed that the financial rewards of their jobs were great, but conversely, nearly 30% believed the opposite. This latter group was composed principally of government attorneys.

Women respondents were more likely to have been in the top 5 to 10% of their law school class (42%) than were men (18% of the men respondents as a group, 28% of those graduating after 1967), although the difference was not statistically significant.

Time At Work

Respondents reported that they worked up to 75 hours per week, with an average of 50 hours. There was no significant difference between men and women in the number of hours worked. Not surprisingly, those who worked more than 50 hours per week were significantly more likely to find the number of hours worked to be unattractive. Forty-two percent of respondents believed they do not have enough time to spend with their families, and even more (54%) felt they do not have enough time for themselves. Attorneys with firms were significantly more likely to report insufficient time for themselves and for their families than were attorneys with the government; attorneys with businesses or corporations fell between the other two groups.

As was true with the A.B.A. results, there was no significant difference between men and women respondents on these items. The widespread complaints about lack of time for themselves and their families led the authors of the A.B.A. survey to identify a "time famine" from which the profession suffers, and to call it "an issue of major con-

cern" and a serious source of dissatisfaction among attorneys.

Job Satisfaction

Most respondents reported general job satisfaction; 45% said they were very satisfied with their jobs and 39% said they were somewhat satisfied. This result is higher than the response to the national survey, which showed 33% and 43% respectively. It is also true regardless of the respondent's gender or type of employment. Nearly 90% reported that the intellectual challenge of their work was great. This is consistent with the national survey, where the authors found that intellectual stimulation is by far the single most important reason why people choose the practice of law as a profession. Interestingly, government lawyers were significantly more likely than others to describe their jobs as providing great intellectual challenge.

Although job satisfaction as reported on a general question was quite high, the picture was somewhat less clear when respondents were asked specific questions about their workplaces. Only about half the respondents (52%) thought their employers were very supportive of men attorneys, and even fewer (44%) thought their employers were very supportive of women attorneys. There was a significant difference between men and women on this issue, men being more likely to report that their employers were supportive of women attorneys than were women themselves. This was true regardless of whether the group as a whole was examined or only those graduating since 1967. Similarly, although most male respondents (65%) considered their offices definitely to be good places for women to work, women themselves were significantly less likely to think so (only 35%). On the other hand, fewer than two-thirds of the respondents thought their offices was definitely a good places for *either* male (62%) or female (56%) attorneys to work.

Workplace Atmosphere

Thirty-two percent of respondents reported political intrigue and backbiting in their place of employment. Only 6% reported minimal pressure or tension on the job; 31% reported just the opposite. Only 38% of the respondents reported having had a mentor. Interestingly, women were significantly more likely than men to report such an experience, although that gender difference disappeared when considering the experiences only of men and women graduating since 1967. These results suggest that

the mentoring phenomenon has become equally available (or unavailable) to women and men in the more-or-less recent past. Almost all of the mentors were male, only 4% reporting a female mentor. This is not surprising, given the comparatively small number of senior women attorneys at the bar.

Fewer than one-third of the respondents reported receiving frequent instruction, training, or even feedback from superiors.

Most respondents (85%) reported that racial bias was not evident in their work place, although women were significantly more likely than men to perceive such bias. On the other hand, 15% report racial bias suggests cause for concern in a bar where many attorneys rarely have the opportunity to see certain types of racial bias, since they rarely interact with (or perhaps even see) minority attorneys. Unfortunately, because of the small number of respondents who are members of minority groups, it was not possible to explore whether minority attorneys themselves have a different view of this issue than do white attorneys.

Somewhat surprisingly, only half the respondents reported being encouraged to do *pro bono* work.

Opportunities

Most respondents (80%) reported a perception that their opportunities for professional development were very good, although women were significantly less likely than men to feel so. This difference was true even when looking only at those who graduated since 1967, suggesting that it reflects the effect of gender more than the effect of seniority at the bar. Most respondents believed that their opportunities for advancement were good (61%), and that advancement is determined more by the quality than the quantity of one's work (58%). However, a troubling minority (25%) felt that quantity was more important than quality in their place of employment. The vast majority of respondents (84%) reported that the atmosphere of their workplaces was warm and personal, and that they were respected and treated as professional colleagues by their superiors (77%) and peers (88%).

Approximately 70% of respondents thought their employers treated men and women attorneys equally in giving them independent responsibility and equal opportunities for advancement, although women were significantly less likely than men to report that. This gender difference in perception existed both

for the sample as a whole and for the post-1967 graduates alone. Indeed, 11% of respondents reported that their employers definitely gave men more opportunity and 8% said their employers definitely gave men more independent responsibility. The perception appears even more acute among those graduating since 1967, although 30% chose not to answer these questions. Only about one-half of the respondents who graduated from law school since 1967 believed that opportunities for promotion, involvement in firm management, better job assignments, litigation work, and compensation were equal for men and women. Among the half who reported a difference, far more thought these opportunities were better for men than for women, and women significantly more often than men reported this. In general, women tended to think opportunities were better for men, men tended to think opportunities were equal, and virtually no one thought that women had better opportunities.

Respondents reported no differences between women and men attorneys at the same level of experience in attracting or keeping clients, although again, approximately one-third of the respondents skipped this question.

Professionalism

What has come locally to be called the "Delaware Lawyer" ethic was apparent: 80% reported that their colleagues tended to be courteous to opposing counsel, although lawyers working for the government were significantly less likely than others to report this. Comparison to the A.B.A. results on this item is difficult, because the national study reported this issue in a different way. In the national study, half the respondents reported that they "sometimes" saw lack of courtesy among attorneys, and a remarkable 23% reported observing such behavior "often". Such behavior was "rarely" or "never" seen only by a total of 23% of the national sample.

Although measured somewhat differently, these response patterns certainly suggest a genuinely different perception of the level of courtesy among members of the bar by the Delaware respondents as opposed to the national survey respondents.

Sexual Harassment

Women were significantly more likely than men to have witnessed, or been a victim of, sexual teasing, and to report "other" types of sexual harassment. On the other hand, most respondents (73% to 92%,

depending on the question) reported not having seen or experienced sexual harassment in the workplace at all. Fourteen women and one man (5%) reported having been victims of such harassment. (The lone male respondent volunteered his answer notwithstanding the fact that the question was actually worded for women. If the question had not been sex-specific, perhaps more men would have answered it.) Although more women than men reported having seen unwanted pressure for dates, unwanted sexual looks or gestures, and unwanted deliberate touching, leaning over or cornering, the differences between the sexes were not statistically significant on those measures.

Respondents were asked about the interview process the last time they interviewed for a job. While not necessarily indicative of sexual harassment, women were significantly more likely than men to have been asked about their marital status and their family plans, although there was no significant difference between the sexes on whether they were asked about their commitment to a full time career or about their spouses' (or significant others') feelings about their career plans or goals. When the responses of men and women admitted since 1967 were compared on these items, the only significant difference was that women remained more likely than men to have been asked about family plans, suggesting that, over time, the questions about marital status have been culled from interviewers' lists. Questioning women about family plans apparently remains more common than questioning men about this issue.

Treatment By Judges

Men respondents were significantly more likely to report a perception that judges treat men and women attorneys equally: 46% of the men, as compared to only 16% of the women, thought that was generally the case, although even 60% of the women thought that was true most of the time. Only 2% of the men thought judges treated men better, whereas 17% of the women thought so.

Parental Leave

Women were significantly more likely than men to have taken parental leave, although the total number of respondents reporting such leave was only 37. Of these, approximately 25% reported that their leave-taking resulted in loss of opportunity for quality assignments, permanent reassignment of job responsibilities and client matters, and loss of client or colleague respect. This report of rather substantial impact on one's career as a

Need a temporary office across from the Court House?

Be our guest.

Next time you have court proceedings in Delaware, set up your office at the Hotel du Pont. We're just across from the Court House. And we have a special suite of rooms, with private conference facilities — plus plenty of room for files and other materials. We'll even rearrange a room to fit your specific needs. We also have extensive business services. Like 24-hour room service. Voice mail. Copying and fax facilities. And much more. Call the Hotel du Pont at (302) 594-3100 or 1-800-441-9019. And experience the luxury of convenience.



Wilmington, Delaware



HCAI: HEALTH CARE AUDITORS, INC.

MEDICAL EXPERT TESTIMONY SERVICES



CONSULTATIVE EXPERTS
TO THE MEDICAL-LEGAL COMMUNITY

MEDICAL/DENTAL MALPRACTICE EXPERTS

STAT STAT AFFIDAVIT SERVICE - ALL SPECIALTIES

- **GRATIS MEDICAL TEAM PREVIEW OF YOUR CASE:** An in-depth evaluation to ascertain and define causation, liability and breaches in standards of care.
- **GRATIS CLINICAL CONFERENCES:** We shall carefully take you step by step through each case to insure that your clinical knowledge is commensurate with ours. We shall be brutally candid if case evidences no merit, or if causation is poor.
- **GRATIS CLINICAL REPRESENTATIVES TO YOUR OFFICE:** Representative will explore potential medical strategy/arguments and tactics commonly used by opposing side to indemnify their clients.
- **GRATIS, DETAILED, WRITTEN REPORTS:** Should a case be unworthy of pursuit, and upon your directives, we shall be pleased to forward a detailed report.
- **OUR Basic FEE is \$275:** You incur no costs until you choose to pursue the expert's work-up for his affidavit. No retired, no foreign, and no court-worn experts. No university physicians who can sabotage your plaintiff's case in favor of defense. We are not a simple referral service as we have provided litigation support to over 750 firms throughout the U.S. We have earned our reputation prudently, for defense firms, carriers and plaintiffs.

HCAI: Health Care Auditors, Inc.
2 Corporate Drive, Penthouse 690
Clearwater, Florida 34622

Telephone (813) 579-8054
Telecopier (813) 573-1333
We are pleased to receive your calls.

result of taking parental leave is considerably higher than that reported in the A.B.A.'s national survey, where the proportion of respondents reporting such effects ranged from 11% to 18%. On the other hand, it may be unwise to read too much into a report of only 37 people.

Summary and Conclusion

Remembering the caveats mentioned earlier about the fact that the respondents were not a truly representative sample of the Delaware Bar, there are nonetheless some interesting conclusions

**This report
should be
viewed as a
glimpse,
substantially
less subjective
than has been
available in the
past, but never-
theless as seen
through a glass
indistinctly,
if not darkly.**

to be drawn from the survey results.

The good news is that the vast majority of respondents reported general job satisfaction. Their work is intellectually challenging, they feel they have opportunities for professional development and advancement, their workplaces are warm and personal, they are treated as professional colleagues by their peers, and they tend to be very well remunerated. The bad news is that they spend a great deal of time at work, they feel they are short-changing their private lives, their employers are not very supportive of them, and the quantity of their work is often more important than the quality.

Women attorneys tend to be left out of the rosier aspects of the picture. Among other things, they earn significantly less than their male counterparts, although they put in the same hours in the same kinds of workplaces. It has been suggested that the differences in income between men and women will

(Continued on page 35)

Baskets & Crafts Boutique

Tel. (302) 571-1335

WE DELIVER

GIFT BASKETS

For ALL Occasions

Birthdays
Baby Shower
Wedding
Get Well Soon
House Warming

STARTING @ \$25.00

PLEASE CALL FOR INFORMATION!
WE WILL BE HAPPY TO COME BY
AND DROP OFF THE CATALOG

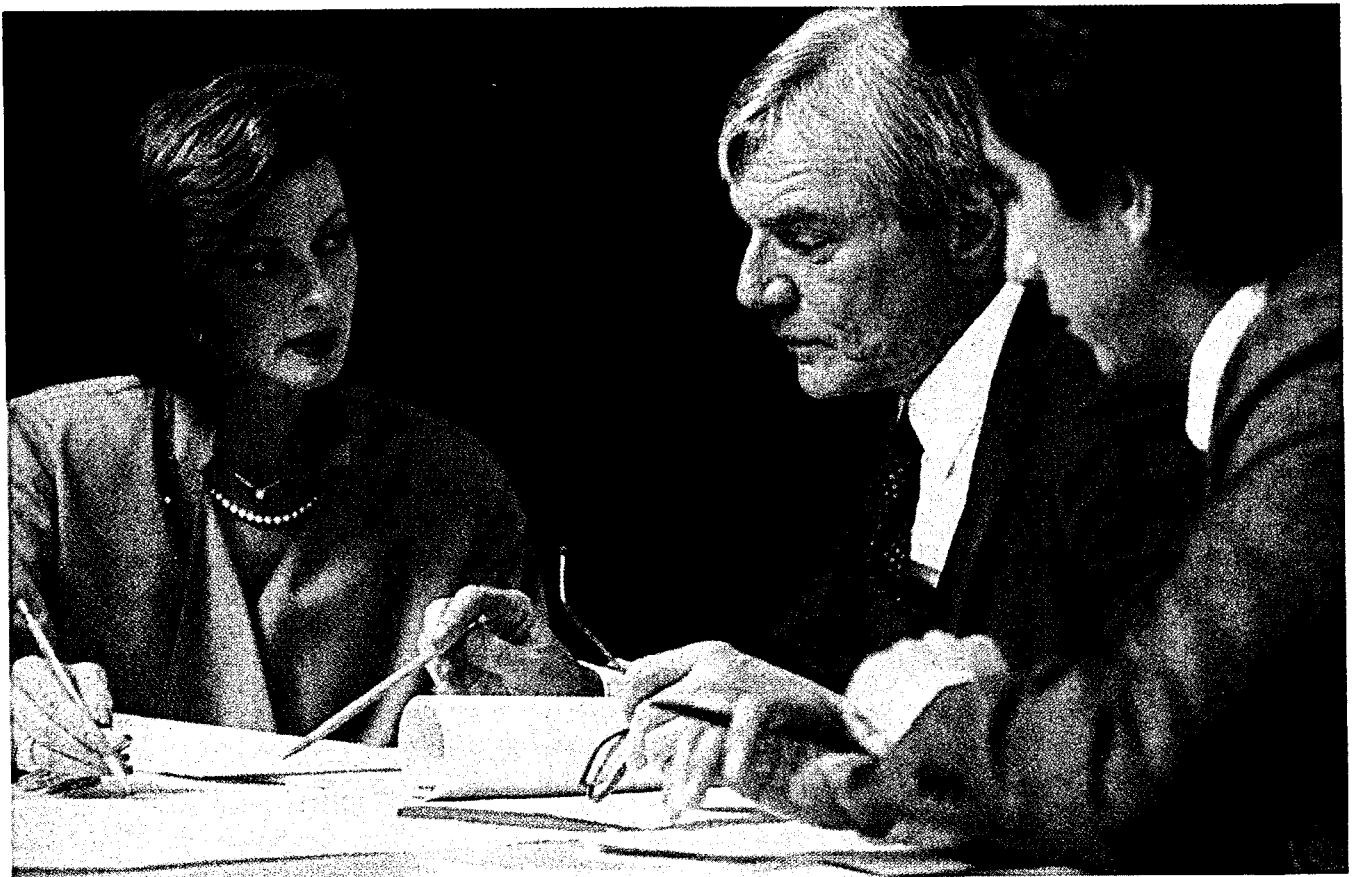
People who are going places wait
for your opinion. People who make
pots of money value your advice.
You must be doing something right.

You may be so busy thinking about other people's problems, you haven't stopped
to think about your own. We hope you never have any. But we thought you might like
to know that Jamison has specialized in protecting members of the legal
profession for over fifty years. In fact, over 20,000 lawyers and judges are insured
by Jamison's professional liability programs.

JAMISON

Call Jamison. We know you're busy, so we'll be brief.

Insure it well.



Herbert L. Jamison & Co. 1-800-JAMISON

Subjective Employment and Training Decisions — the "Unintentional" Discrimination

Performance appraisals, training, assignments of new matters or new clients, promotions, and demotions are examples of decisions affecting an employee's career path. If those decisions

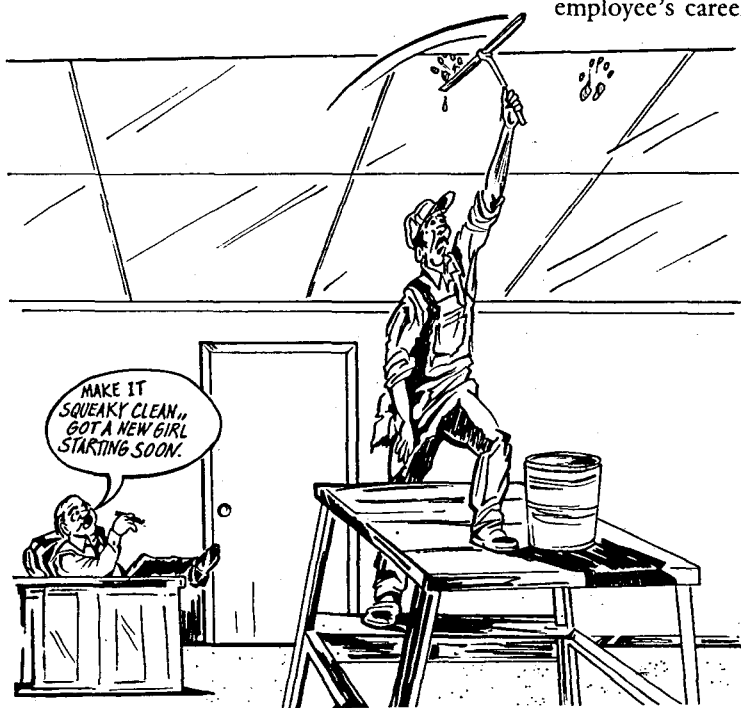
are left to individual members of senior management or partners in the firm, who generally are male, and if the decisions consistently favor men, unintentional, perhaps mindless, discrimination against women results. It is largely irrelevant that the discrimination is not a result of true *animus* but simply an unintentional outgrowth of "mentoring" or the firm's longstanding decision-making process. The result undoubtedly is a

contributing factor to the "Glass Ceiling" that professional women encounter. A few recent cases, in which professional women in legal and non-legal career fields have sued, illustrate how allegations of discrimination may result from subjective employment decisions.

Accounting Firm:

Ms. Ann B. Hopkins began working for Price Waterhouse in August 1978 as a manager in the firm's Washington Office of Government Services.¹ In 1982, the partners in that office nominated her for partnership. She was the only woman among eighty-eight candidates nominated. She had been exceptionally successful in garnering business for the firm and had billed more hours than any other candidate under consideration. In spite of her qualifications, Ms. Hopkins was among twenty candidates placed on hold for reconsideration the following year. Various partners' comments about Ms. Hopkins during the evaluation process included complaints about her "interpersonal skills," her supposedly aggressive or "macho" personality and her use of profanity. After her partnership was placed on hold, she was advised to "walk more femininely, talk more femininely, dress more femininely, wear makeup, have her hair styled and wear jewelry."² Four months later, Ms. Hopkins was not renominated for partnership. Although she was told that she could remain with the firm, it was customary for a candidate rejected for partnership to leave. Ms. Hopkins left the firm and set up her own consulting firm. She then brought suit against Price Waterhouse for discrimination.

The district court found that a *prima facie* case of sex discrimination was established: She was qualified, she was



Many women and minorities encounter the glass ceiling in the course of their careers, but choose not to seek to enforce their civil rights.

The author normally deals with federal securities and corporate law issues. This article was prepared at the request of the editors of this issue of DELAWARE LAWYER and attempts no more than to outline a few recent cases in which women professionals have alleged discrimination. It should not be considered a comprehensive treatment of the legal issues discussed.

rejected, and the firm continued to seek partners with her qualifications.³ The district court found that Price Waterhouse had discriminated against Hopkins by maintaining an evaluation process that allowed unconscious stereotyping to play a determinative role.

Although the stereotyping by individual partners may have been unconscious on their part, the maintenance of a system that gave weight to such biased criticisms was a conscious act of the partnership as a whole. There is no direct evidence of any determined purpose to maliciously discriminate against women but plaintiff appears to have been the victim of "omissive and subtle" discrimination created by a system that made evaluations based on "outmoded attitudes" determinative.⁴

Nevertheless, the district court did not find constructive discharge, ruling that Ms. Hopkins' departure was due neither to intolerable working conditions nor to aggravating circumstances such as undue humiliation. Price Waterhouse appealed the district court's finding of discrimination. Ms. Hopkins appealed the finding of no constructive discharge.

On appeal Price Waterhouse challenged a determination of liability absent intent — only "unconscious" sexual stereotyping had occurred. The Court of Appeals found that blatant or calculated discrimination was *not* necessary. "Unwitting or ingrained bias is no less injurious or worthy of eradication." The court cited *Lynn v. Regents of University of California*, 656 F.2d 1337 (9th Cir. 1981), *cert. denied*, 459 U.S. 823, 103 S. Ct. 823, 74 L. Ed. 2d 59 (1982), in which

the Ninth Circuit observed that it was once accepted wisdom that women were unfit to vote, practice law, or undertake professional careers. These beliefs were no less pernicious merely because those subscribing to them may not have suspected their own discriminatory attitudes. Today, "[o]ther concepts reflect a discriminatory attitude more subtly; the subtlety does not however, make the impact less significant or less unlawful. It serves only to make the courts' task of scrutinizing attitudes and motivation, in order to determine the true reason for employment decisions, more exacting".⁵

It was also irrelevant that some of the

remarks critical of Hopkins were made by her supporters. These comments still reflected stereotypical thinking: "Stereotypical attitudes that sometimes work to the advantage of women . . . are no less the product of archaic thinking than those attitudes that disadvantage women."⁶

On the issue of constructive discharge, the court found that the failure to be renominated would have been viewed by any reasonable senior manager as a career-ending action amounting to constructive discharge.⁷

This opinion was upheld by the Supreme Court but remanded on the issue of proof of nondiscriminatory motivation.⁸ On remand the district court ordered Price Waterhouse to admit Ms. Hopkins as a partner and awarded her \$371,000 in back pay.⁹

The lesson to be learned from *Hopkins* is that in order to avoid allegations of discrimination, a firm or company must ensure that the performance appraisal process considers only those abilities relevant to performance, and filters out criticisms based on stereotypical attitudes.

Law Firm:

In 1983, Ms. Nancy Ezold¹⁰ went to work for a major Philadelphia law firm in the litigation department. For the next five years, she was assigned small, non-complex cases. When evaluated, Ms. Ezold was criticized for a lack of experience in complex cases. Her legal work was otherwise exemplary and she received praise from partners working with her. When time came for her to be considered for partnership, the firm refused to make her a partner in commercial litigation, "because too many partners did not believe she had sufficient legal analytical ability to handle complex legal issues."¹¹ She was also criticized for being aggressive, while at the same time her male peers were criticized for nonaggression. She was also criticized for being too much concerned with "women's issues," while an instance of sexual harassment by a male peer was not worthy of mention to the committee that was evaluating associates.¹² Instead of offering her a partnership in commercial litigation, the firm offered her a position as a partner in domestic relations litigation after one year's experience in that branch of the law.

Ms. Ezold left the firm and sued her former employer for discrimination. After a review of evaluations of male associates who were offered partnerships, the court found that the firm discriminated in failing to promote Ms. Ezold while promot-

ing men who had received similar or less favorable evaluations. The court found no constructive discharge, however, holding that to establish constructive discharge, the plaintiff must demonstrate that the employer knowingly permitted conditions of discrimination under which a reasonable person would feel compelled to resign. Ms. Ezold's subjective preference for one partnership specialty over another was not deemed to warrant finding constructive discharge.¹³

On appeal, the United States Court of Appeals for the Third Circuit overturned the district court decision.¹⁴ It found that Ms. Ezold's evaluations for legal analytical ability were less favorable than those of male counterparts who were offered partnerships, and it held that the district court had improperly substituted its subjective judgment for that of the partners who had determined that a certain level of legal analytical ability was a requirement for partnership.

While the Court of Appeals noted

This Court has recognized that when an employer discriminatorily denies training and support, the employer may not then disfavor the plaintiff because her performance is affected by lack of opportunity.¹⁵

it found that the lack of referral of complex cases was due not to sex discrimination but to the assigning partner's perceptions of her legal abilities.

To avoid allegations of discrimination, assignments of training and experience opportunities could be made in accordance with a objective rotating schedule. If subjective decisions are required, care must be taken that personal prejudices arising from impermissible biases do not result assignments being made in a discriminatory way.

Brokerage:

Theresa M. Contardo¹⁶ had filed a complaint alleging discriminatory hiring to force a major brokerage firm to hire her. She prevailed and was hired. She proceeded to do well and received many compliments on her work. She also earned special awards. Yet she found that she was not getting the account referrals from retiring brokers that her male peers enjoyed, nor was she getting the same opportunity to participate in the placement of tax-sheltered real estate partnerships. Referrals of both opportunities were made informally. She also endured what a court later termed a "locker room atmosphere" where lewd remarks were made in her presence. Furthermore, she

Historic Restoration and Renovation
Period Reproductions
Residential

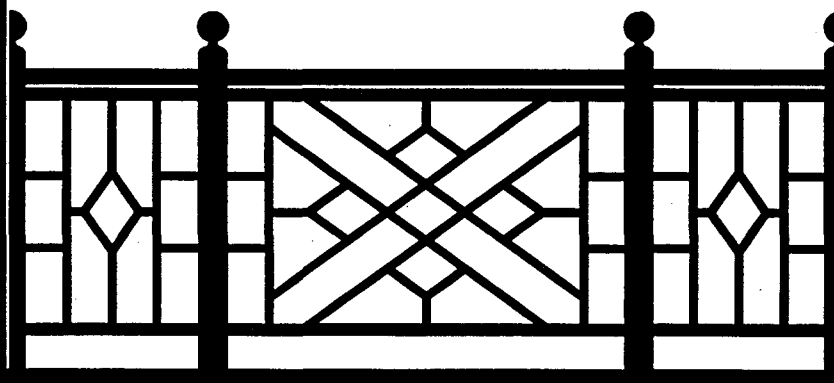
Space Planning
Computer Design Capability
Commercial

Douglas S. Heckrotte, AIA ARCHITECT

Offices in Wilmington and West Mount Airy:

1942 Gilpin Avenue
Wilmington, Delaware 19806
302 656 0242

656 West Ellet Street
Philadelphia, Pennsylvania 19119
215 843 9298



professional staffing associates

Contact PSA for CUSTOMIZED EMPLOYEE TRAINING PROGRAMS

- Computer Software Programs
- Secretarial/Administrative Assistant Skills
 - Typing/Data Entry
- Personal Development Courses
 - Basic Skills Upgrade

Priscilla Turgon, President

919 Market St., Suite 505, Wilmington, DE (302) 652-3519

TRI-STATE POLYGRAPH CONSULTANTS INCORPORATED

Since 1978

*A Licensed Private
Detective Agency Specializing
in Professional Lie Detection Services*

Robert C. Shannon
President, T.P.C., Inc.

526 Cricket Lane
Hockessin, DE 19707
(302) 239-4750

TECHNIFOTE

Photography for the Legal Profession

- Accident Scenes
- In-office Executive Portraits
- Close-up/Macro
- Injury

(302) 996 - 0349

was not included in firm outings where business was discussed.

Ms. Contardo then sued the firm (once again) for discrimination and this time for constructive discharge. The United States District Court for the District of Massachusetts found that the firm had indeed discriminated against her. The court quoted the Supreme Court decision in *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 990-1, 108 S. Ct. 2777, 2786-87, 101 L. Ed. 2d 827 (1987) in which all of the Justices concurred:

If an employer's undisciplined system of subjective decisionmaking has precisely the same effect as a system pervaded by impermissible intentional discrimination, it is difficult to see why Title VII's proscription against discriminatory actions should not apply. . . . We conclude, accordingly, that subjective or discretionary employment practices may be analyzed under the disparate impact approach in appropriate cases.¹⁷

The court found this discrimination to be "relatively covert, and habitual, even mindless, rather than premeditated, though no less detrimental from the plaintiff's point of view, or illegal from this court's point of view, than overt discrimination might have been."¹⁸

However, the court did not find constructive discharge. The failure to refer to Ms. Contardo her fair share of accounts of retiring brokers or real estate partnerships placement opportunities did not constitute a "career-ending" action. Nor was she subjected to demotion, humiliation, unjustified criticism, or additional work loads.

Ms. Contardo had submitted no evidence as to what she would have earned in the absence of discrimination. Since she was not seeking reinstatement, relief was unavailable under Title VII as it existed at that time.¹⁹ The court did award Ms. Contardo \$1 in nominal damages and \$250,000 in punitive damages under the Massachusetts Civil Rights Act.²⁰

Business:

Susan Faust²¹ was a manager in the Human Resources Department of the New Orleans Hilton. She had worked for the company for over six years and had received two promotions when the company decided to "upgrade" her current position. She was offered a demotion to the position she had held before her two previous promotions. At the same time, a

male manager of another hotel, who had received criticism for poor performance, was retained in the upgraded position and given performance goals to meet if he wanted to retain the position. Ms. Faust sued Hilton.

The district court noted that the plaintiff had the initial burden of persuading the trier of fact that the defendant intentionally discriminated against her. "This 'factual inquiry' consists of showing that 'the employer... treat[ed] some people less favorably than others because of their race, color, religion, sex, or national origin.'"²² Ms. Faust showed that she was qualified for the upgraded position and that she had been rejected. The circumstances of the rejection — that a male who had been subject to performance criticism was retained in the upgraded position — and the inadequacy of other explanations proffered by Hilton led the court to conclude that Ms. Faust was the subject of discrimination. In view of the fact that she had been double demoted to a position that did not qualify for bonuses, resulting in an effective end to her career with Hilton and her hopes of advancement, the court found constructive discharge.

If managers are allowed to make a subjective employment decisions regarding promotion, training, or work assignments, a natural inclination will be to choose the candidate with whom the manager is most comfortable. Perhaps the candidate will be a sports partner or a member of the same club. If, as a result of the subjective decisions, female or minority candidates are not receiving equal opportunities, discrimination results. As the foregoing cases illustrate, some women are suing in response to such discrimination. But more often than not, women still do not sue. Nancy Ezold testified at one of the Committee hearings on the Civil Rights Act of 1991. The House Report stated:

[T]he discriminatory denial of partnership she suffered, as well as the firm's attacks on her skills and credibility after she sought to enforce her Title VII rights, may have permanently damaged her career. Many women and minorities encounter the glass ceiling in the course of their careers, but choose not to seek to enforce their civil rights because of these very risks.²³

A Congressional response was the "Glass Ceiling Act of 1991" which was included in the Civil Rights Act of 1991

Complete Environmental Expertise

WIK Associates, Inc. offers a complete range of environmental evaluation, investigation and remedial services including:

- Environmental audits for real estate transactions and industry
- Soil and groundwater bio-remediation programs
- Underground storage tank management
- Resource protection planning
- Hydro-geological investigations
- Surface and subsurface contamination evaluation
- Regulatory and compliance reviews
- Sampling and analytical programs
- Wetlands identification and delineation

For any environmental need,
call WIK Associates...
"The Environmental Experts"



Seashore Galleries, Limited

"For Those Accustomed To The Best"

*Fine Custom Framing
Art & Frame Restoration*

*Unique Accessories
Selected Antiques*

Interior Design

*59 Baltimore Avenue • Rehoboth Beach, DE
Phone: 227-7817 • Open Year Round • Fax: 227-8992*

KRESTON

LIQUOR MART

CELEBRATING 60 YEARS
SAME FAMILY - SAME LOCATION

A TOUR OF OUR
WINE CELLAR
IS LIKE A TRIP
AROUND THE WORLD!

WINE TASTING EVERY SATURDAY 12-5

DELAWARE'S LARGEST & MOST COMPLETE LIQUOR STORE
FINE IMPORTS & RARITIES FROM THE WORLD OVER

904 CONCORD AVENUE
(CONCORD AVENUE & BROOM STREETS)
WILMINGTON, DELAWARE

Major Credit Cards & Mac Card Accepted
Ample Parking On Our Lot

652-3792

9am - 9pm Monday thru Saturday

SEEING IS BELIEVING!

as Title II.²⁴ The Glass Ceiling Act establishes a new Glass Ceiling Commission to study and make recommendations on methods to eliminate artificial barriers to the advancement of women and minorities into upper level management. The work of the Commission may result in more recognition of the subtle forms of discrimination that still exist. This type of discrimination is undoubtedly a contributing factor in the inability of women and minorities to attain roles of higher responsibility in the professional and business worlds. No matter what action the Commission takes, in this writer's opinion, these subtle forms of discrimination will continue until senior partners of professional firms and senior managements of business organizations decree that such discrimination and the practices that allow it to occur are *unacceptable* and *impermissible*. If decisions affecting employee career paths are going to be subjective, every effort should be made to ensure that the decisions are equitable and that women and minorities are given equal opportunities.

* * *

Constraints of space make it impossible to include the author's extensive footnotes, but the numbers to these footnotes appear. The full footnotes will be available upon request to the offices of this magazine.



George J.
Weiner
Associates

300 DELAWARE AVENUE
SUITE 914
WILMINGTON, DELAWARE 19801
(302) 658-0218 (410) 398-7560
FAX 302-658-2259

SPECIALIZING IN EMPLOYEE
BENEFIT PROGRAMS AND INSURANCE
PRODUCTS FOR ESTATE PLANNING.

GEORGE J. WEINER, RHU

XAVIER J. DECAIRE

DONALD T. FULTON, CLU, ChFC

TERRY L. WOLF, CLU, ChFC

Call For Details:
Delaware State Bar Association
Disability Program

DELAWARE DOCUMENT ASSEMBLY SOFTWARE

\$200 each

**30 Day Money-Back
Guarantee**

Produces drafts in 10-15 minutes
using a simple question-and-answer
format. Edit these documents with
your word-processing software.

Wills, Trusts, Real Estate, Limited
Partnerships, Business sales and 11
others.

For information call
(800) 221-2972 ext. 503 or 565.

Excelsior-Legal, Inc.
62 White Street,
NYC 10013



Joyce Hayes is Associate General Counsel and Assistant Secretary, Columbia Gas System Service Corporation in Wilmington. A Delaware native and a member of the Delaware Bar, she began her career in New York City with Donovan Leisure Newton & Irvine. After returning to Wilmington, she worked part time with Morris Nichols Arshat & Tunnell before joining Columbia Gas. ♦

Women and the Supreme Court of Delaware

Key Cases that Affect Women

"The most dominant influence of all relations is that of husband over wife;... (t)here are exceptional cases, of course, where the woman is the more masterful." (the view of women at law and in society as articulated by the Delaware Supreme Court in 1939.)

Herewith a brief review of the Delaware Supreme Court's treatment of women in the areas of family, criminal, and tort law. (Current statutes in Delaware that affect women's lives are noted in the insert.)

RIGHTS OF MARRIED WOMEN

Married Women's Acts were enacted in the mid-nineteenth century as a means of decreasing a woman's dependence on her husband. These major legislative reforms affected women's status in civil law. Previously, a married woman forfeited her right to contract, to sue and be sued, and to own and control property in her name. These and a host of other lost rights were known as coverture disabilities. The Delaware Enactment allowed a married woman to own property in her own name, to receive and to keep her salary, and to sue and be sued for the "preservation and protection of her property."¹ It also benefited the state: a woman, owning property and earning a salary, was less likely to be destitute if her husband deserted her. These acts were narrowly construed. The Superior Court held in *Forbes v. Thompson*, 47 A. 1015 (Del. Super. Ct. 1900), referring to the Delaware "Act for the Protection of Women",² that such an act was "to be construed so as to suppress the mischief against which it was aimed, but not as altering the common law any further than is necessary to remove that mischief."³

The doctrine of coverture was based on the unity of husband and wife. The Act, in removing coverture disabilities, provided a remedy for the plaintiff wife in *Eliason v. Draper*, 77 A. 572 (Del. Super. Ct. 1910). The Court held that a wife may sue another married woman for alienation of her husband's affections.⁴ The Court reasoned that a wife was entitled to her

husband's affection; thus the Act conferred upon a married woman a right of action for loss of consortium.⁵ Before the passage of the Act, this right was unremediable because a wife could not sue without her husband and he could not join as plaintiff in an action seeking relief from his own improper conduct.⁶

The Superior Court dealt with the issue of whether a wife may sue for loss of consortium in *Yonner v. Adams*, 167 A.2d 717 (Del. Super. Ct. 1961). It concluded that a wife, as well as a husband, could maintain such an action. In its ruling in *Draper v. Oliver Paving Co.*, 181 A.2d 565 (Del. 1962), the Supreme Court appeared hesitant to adopt this as a rule of law. In *Draper*, the Court had cautioned that its opinion was not "to be read as either an implied approval or disapproval of [Yonner]."⁷ The Court again balked at deciding the issue in *Reynolds v. Willis*, 209 A.2d 760 (Del. 1965), where it assumed, without deciding, the correctness of *Yonner*. In *Folk v. York-Shipley*, 239 A.2d 236 (Del. 1968), the issue was left undecided once again when the Court determined that the case should be tried under Pennsylvania substantive law, which denied a wife the right to sue for loss of consortium.⁸ Though the Court noted that *Yonner* was not to be regarded as finally settled,⁹ it has since upheld a number of claims by wives for loss of consortium.¹⁰

Though the Court has never specifically ruled on the issue in *Yonner*, it recently expanded a wife's right to sue for loss of consortium. *Jones v. Elliot*, 551 A.2d 62 (Del. 1988), held that a husband cannot unilaterally extinguish his wife's consortium claim.¹¹ The Court reasoned that, although the wife's claim

is derivative of the primary claim, once that claim is created, it is wholly within the power of the wife to release it.¹²

Divorce, Custody, and Child Support

The Supreme Court review of these issues involves financial as well as moral considerations. One line of cases that assists a woman's ability to support herself and her children is exemplified by *Shuba v. Ex. Rel Reese*, 564 A.2d 1084 (Del. 1989). The Court held that the father's standard of living is relevant to a determination of child support under Delaware's Melson Formula, even though the child never lived with the father.¹³ In holding that the formula applies equally to both marital and non-marital children, the Court rejected the view of the New York case upon which the father based his claim.¹⁴ Although this ruling aided women by providing them with a broader income base for the support of their children, it is more accurately construed as benefiting the children.

Examples of other progressive holdings by the Court with respect to wives, mothers and children:

- * retroactive child support is *per se* admissible;¹⁵

- * an unfavorable change in an ex-husband's financial circumstances does not bar enforcement of a separation agreement;¹⁶

- * a favorable change in an ex-wife's income will not act to lower an ex-husband's maintenance payments, absent an agreement to the contrary;¹⁷

- * a husband is not an agent of his wife and cannot make her jointly liable for taxes due by signing her name to the tax return, absent proof that she was unavailable to sign;¹⁸

- * a wife's signature on a mortgage is evidence of husband's intent that she have an interest in the property;¹⁹ and

- * stocks bought from money in a joint checking account create a joint tenancy regardless of the wife's actual contribution to the account.²⁰

In a line of earlier cases, morality was a factor. The Court closely examined the behavior of the mother in the first of two cases entitled, *In re Two Minor Children*, 173 A.2d 876 (Del. 1961). The Court found that an adulterer gave up her right to visitation. The Court reasoned that "upon leaving [the mother] made no arrangements for the care of her two minor children...other than to leave

them in the care of a nursemaid."²¹ The Court implied that it was the mother's duty to care for the children and found that the mother had forfeited visitation by acts of adultery, leaving the father to take care of the children alone.²² The decision apparently weighed more on the conduct of the mother than the best interests of the children. It concluded that if the mother continued to lead a stable and moral life, she might overcome the forfeiture at a later date.²³

Six years later the mother tried to obtain visitation in the second case of the same name.²⁴ The Supreme Court found that the mother now led an emotionally stable and moral life as they had required her to do.²⁵ However, the Court then applied the standard of the best interests of the children in limiting visitation to one day a month.²⁶

In *S. v. S.*, 435 A.2d 721 (Del. 1981), the Court held that 13 Del. C.727 (1974), created a presumption for visitation in favor of the noncustodial parent, unless the parent presented a physical or emotional threat to the child.²⁷ The noncustodial parent maintained such a right even if that parent was involved in an adulterous relationship. In *S. v. S.*, the father was an adulterer.²⁸ The Court reasoned that, although this statute changed the common law presumption relied upon in *In re Two Minor Children*,²⁹ it did not remove all moral scrutiny from the court's purview.³⁰ The Court held that it was necessary to determine what effect the adulterous relationship had on the daughter and remanded the case to Family Court.³¹ *S. v. S.* is also distinguishable from *In re Two Minor Children*³² because the husband's adulterous relationship was ongoing in *S. v. S.*, while the wife's affair in *In re Two Minor Children*³³ had ended, without immediate impact on the children. Most likely, the outcome of both *In re Two Minor Children* cases would be different if tried today under 13 Del. Code Ann. 727.

CRIMES BY WOMEN

Murder, Manslaughter, or Self Defense?

Self-defense and appropriate charges for homicides are two issues where results in the Delaware Courts appear to differ between male and female defendants. Comparisons are difficult because of cases in which women reached the Supreme Court on issues of self-defense.

In the 1950's the Supreme Court heard three appeals from women convicted of murder in the second-degree. In all three cases claims of self-defense were asserted.

Powell v. State, 86 A.2d 371 (Del.

1951) affirmed a murder verdict when the female defendant told one of her companions on the evening of the homicide that she would shoot if the victim not leave her home as he had promised.³⁴ When he refused, she shot him in the arm.³⁵ Unfortunately, the bullet was deflected into his heart.³⁶ She was indicted and tried for murder in the first degree.³⁷ The jury found her guilty of second degree murder, although it recommended mercy.³⁸ The defendant appealed, arguing that there was no evidence to justify the submission of first degree murder.³⁹ The Court rejected all her arguments, including her contention that the requisite intent for murder was lacking.⁴⁰ The Court reasoned that the mere use of a deadly weapon, without circumstances to the contrary, raised a presumption that her intent was to cause death.⁴¹ However, the facts included information that could have been considered "circumstances to the contrary." Thelma Powell knew how to shoot and the bullet went where she aimed.⁴² Her stated intention was to hurt not to kill.⁴³

The Supreme Court also rejected her contention that the unsolicited recommendation for mercy transformed the verdict of second degree murder into manslaughter.⁴⁴ She argued that if the jurors had realized that their recommendation would not reduce her sentence, they would have found her guilty of manslaughter instead.⁴⁵ The Court noted that although the recommendation would not change the sentence, it would receive "earnest consideration" upon application for executive clemency.⁴⁶

In *Brown v. State*, 105 A.2d 646 (Del. 1954) after a stormy eleven year marriage, in the midst of an argument the defendant shot her husband.⁴⁷ The argument began in the street when the husband threatened her with a knife.⁴⁸ A friend convinced the husband to spare his wife's life.⁴⁹ However, the argument continued in their bedroom, and the defendant shot her husband after he approached her in a threatening manner.⁵⁰ With respect to her claim of self-defense, the Court stated:

There is nothing in the [defendant's] statement which would indicate that the deceased was about to make an assault on the [defendant], or that he had any weapon with which to carry out his threat.⁵¹

However, as noted in the dissent, the facts appear to contradict that statement.⁵² Apparently there was no reason

for this jury to believe that the husband would not have carried out his threat. Though the majority opinion held that the decedent no longer had a knife, the dissent points out that he had wielded a knife moments before his death, and a knife was found by his body.⁵³

In *Ruffin v. State*, 123 A.2d 461 (Del. 1956), the female defendant killed a man after he forced her at gunpoint to have sexual intercourse with another man and then "compelled her to submit to unnatural sexual relations and indignities with him."⁵⁴ After this, assailant lay down to rest and the defendant left to empty a slop bucket.⁵⁵ Upon returning, the assailant told her he would kill her if she left the room again.⁵⁶ The defendant then grabbed a pistol and shot at the assailant.⁵⁷ The shot failed to stop him, and he lunged at her.⁵⁸ Defendant then shot assailant four more times.⁵⁹

The Supreme Court was not convinced that the defendant was entitled to have the issue of self-defense submitted to the jury, because of the lapse of time between the rape and the shooting, although the lower court had submitted the issue to the jury.⁶⁰ Yet there was evidence showing that the victim was a violent man with an extensive criminal record who had previously tried to hang his wife.⁶¹

A significant common thread running through these cases is that the defendants were not "virtuous" women in the eyes of the Court. Thelma Powell took two men to her house after an evening of drinking, carousing, and shooting bullfrogs.⁶² Mary Brown had been out drinking for the evening with someone other than her husband.⁶³ Chanie Ruffin was intimate with a man to whom she was not married.⁶⁴ All three women ultimately were convicted of murder.

It is interesting to compare these cases with others in which the defendants were males. In a case similar to *Ruffin*, a man who strangled his lover was found guilty of manslaughter, not murder. *Nelson v. State*, 123 A.2d 859 (Del. 1956). In another case the Court considered a manslaughter conviction of man who threw oil on the woman he lived with and set her on fire. *Littlejohn v. State*, 219 A.2d 155 Del. 1966. Despite these acts, neither had been found guilty of murder in Superior Court.

WOMEN AND TORT LAW

Interspousal Tort Immunity

In 1950 a Florida court held that upon marriage a woman and man become one person⁶⁵ and that person is the husband. In *Saunders v. Hill*, 202 A.2d

807 (Del. 1964), the Delaware Supreme Court adopted interspousal tort immunity, based in part on this legal fiction. This doctrine prevents one spouse from suing the other in tort. In *Saunders*, the Court noted that at common law a husband was not only immune from suit but because of the unity of husband and wife, a cause of action between husband and wife could never even arise.⁶⁶ The Court explained the purpose of these restrictive principles "as a means to promote family harmony and [to discourage] collusion and fraud upon insurance companies."⁶⁷

One year later in *Fields v. Synthetic Ropes, Inc.*, 215 A.2d 427 (Del. 1965), the Court found that a wife *does* have a cause of action for torts committed upon her by her husband but she has no legal redress because she lacks a right of action.⁶⁸ *Fields* held that an employer could be held liable for injuries caused by its employee even though that employee was immune from suit because of his relationship with the plaintiff.⁶⁹ The husband's immunity is not extended to his employer.

The Court revisited the issue in *Alfree v. Alfree*, 410 A.2d 161 (Del. 1979). It affirmed the Superior Court's grant of summary judgment on the grounds that one spouse may not sue the other in tort.⁷⁰ It cautioned that if it were otherwise, one spouse might sue the other for assault or intentional infliction of emotional distress, which troubled the Court as it went to "the heart of public policy and legislative policy relating to marriage."⁷¹

The Delaware Superior Court recognized a strong trend away from the immunity doctrine in *Hudson v. Hudson*, 532 A.2d 620 (Del. 1987), where it held that there was no interspousal immunity from suit where the parties were divorced, even though the cause of action had arisen during marriage. Upon divorce, the wife had a right of action to pursue the claim.

Only Delaware and Hawaii currently retain the original doctrine.⁷² In *Alfree*, the Supreme Court said that changes to interspousal immunity would best be left to the legislature, as it compared the doctrine to the "oft-attacked" Automobile Guest Statute.⁷³ The Court stated that the doctrine and the statute had been widely criticized as being inconsistent with public policy considerations.⁷⁴

The Delaware General Assembly repealed the Automobile Guest Statute shortly after the *Alfree* decision but has not yet addressed the immunity doctrine. Since interspousal tort immunity was purely a judicial creation, it can be

argued that it is for the Court, not the legislature, to eliminate it.

The doctrine is now facing a challenge before the Delaware Supreme Court in *Beattie v. Beattie*, No. 286, 1992.* The importance of the issue is underscored by the filing of amicus curiae memoranda by the Defense Counsel of Delaware (supporting the doctrine) the Delaware Trial Lawyers' Association and the Bar Association Section on Women and The Law (in opposition.)

Learned Intermediary

The Delaware Supreme Court recently adopted the learned intermediary doctrine. See, e.g., *Lacy v. Searle*, 567 A.2d 398 (Del. 1989). A manufacturer of a product available exclusively through a physician, need only warn the physician, the learned intermediary, of any product dangers; the physician must take the warnings into account, but is not required to relay them to the patient.⁷⁵

The impact of this doctrine on women was revealed in *Lacy*, in which the plaintiff had suffered a perforated uterus when an intrauterine device (IUD) was inserted by her physician too soon after the birth of her first child.⁷⁶ Subsequent surgery left the plaintiff unable to bear children.⁷⁷ The Court held that the physician was a learned intermediary between the manufacturer, Searle, and the plaintiff, and granted summary judgment to Searle.⁷⁸ The physician had received warnings that perforation could occur if the IUD was inserted within two months of pregnancy.⁷⁹ The plaintiff had received a pamphlet prepared by the manufacturer listing warnings as required by law,⁸⁰ but the version made available to her failed to mention the two month waiting period.⁸¹

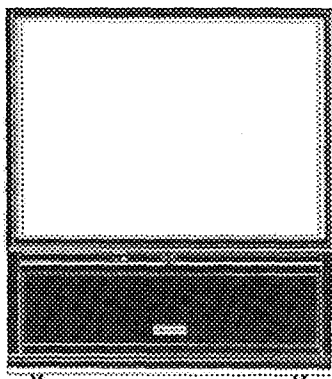
Upon adequately warning the physician, the manufacturer is relieved of liability for failure to warn under the learned intermediary doctrine.⁸² In *Lacy* the Court quoted the Supreme Court of Washington:

Where a product is available only on prescription or through the services of a physician, the physician acts as a "learned intermediary" between the manufacturer or seller and patient. It is his duty to inform himself of the qualities and characteristics of those products which he prescribes for or administers to or uses on his patients, and to exercise an independent judgment, taking into account his knowledge of the patient as well as the product.⁸³

(*See page 29)

Tired of Sticky Feet at the Movies?

Let **Hifi House** show you how to enjoy your own **HOME THEATER!**



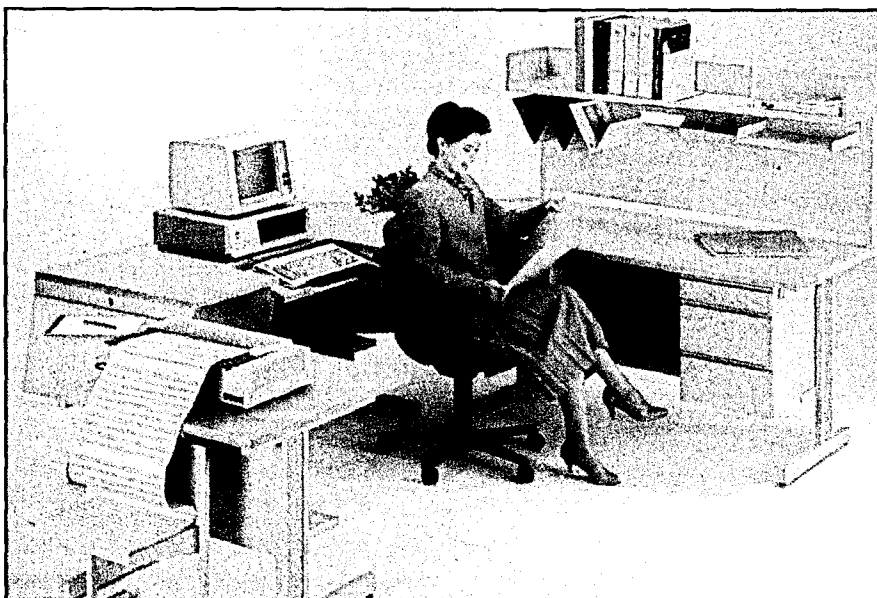
- Pro 96 50" Big Screen TV
- VSX-95 Dolby Pro-Logic Receiver
- CLD 52 Combination CD Player

ELITE
BY PIONEER

Hifi House

3908 Concord Pike
Wilmington DE
(302) 478-3575

3847 Kirkwood Hwy
Wilmington DE
(302) 633-6363



TIFFANY OFFICE FURNITURE

- DESKS • CHAIRS • FILES • SHELVING
- SAFES • LEATHER FURNITURE



Designers & Decorators of Fine Offices

BERGER BROS. INC

EXPERTS SINCE 1919

LOCATED AT 3RD & MARKET, WILMINGTON
302/655-7166 FAX 302/656-4083

While this statement appears to be an innocuous limitation on medical products liability, the practical effect of the doctrine is to remove the judgment and power of choice from the woman and give it to her physician. The Court rejected Lacy's argument that the learned intermediary doctrine should not apply in cases where the prescription was elective, hence requiring that the manufacturer provide the patient with more info.⁸⁴ The Court made an inapposite comparison between birth control and vaccines, to which the doctrine has also been applied.⁸⁵ There is typically no choice in selection of a vaccine; there are a number of options with birth control.

Delaware Supreme Court decisions have tended to reflect societal views of women. In the 1950s, the Court actually referred to certain adult women as "girls."⁸⁶ As statutes have been adopted, the Court has adjusted its rulings. A presumption articulated by the Court that mothers were unfit if they committed adultery was overturned by statute in 1974 (13 Del.C.727). Some doctrines in tort law which on their face do not appear to affect women, have in fact reduced their options as plaintiffs. There are cases that appear to suggest that female defendants who act violently toward men were dealt with more severely than male defendants who attack and kill women. One cannot blindly assert that all are equal under the law. The gender impact of common law decisions and statutes is an issue that warrants continuous review.

PERTINENT LEGISLATION

The following sections of the Delaware Code affect women. **Stalking Law (11 Del.C. 1312(A))**

The General Assembly has recently made "stalking" a felony, Section 1312(A) of Title 11 provides in part:

(a) Any person who wilfully, maliciously and repeatedly follows or harasses another person or who repeatedly makes a credible threat with the intent to place that person in reasonable fear of death or serious physical injury is guilty of the crime of stalking.

The minimum penalty is six months in jail with a maximum fine of \$1,000 (1992).

Sexual Harassment (11 Del. C. 763)

A person is guilty of sexual harassment when:

(1) He threatens to engage in conduct likely to result in the commission of a

sexual offense against another person; or

(2) He suggests, solicits, requests, commands, importunes or otherwise attempts to induce another person to have sexual contact or sexual intercourse or unlawful sexual penetration with him, knowing that he is thereby likely to cause annoyance, offense or alarm to that person.

Sexual harassment is an unclassified misdemeanor.

Employment

Hiring and Firing (19 Del.C. 711)

It is unlawful to fail to hire or to fire a person because of reasons of gender.

It is also unlawful to limit, segregate, or classify employees in a way that would limit their employment opportunities because of gender.

Enforcement (19 Del.C. 712) - A charge must be filed with the Delaware Department of Labor within 90 days after the alleged unlawful employment practice or 120 days after the discovery thereof, whichever is the later. If upon investigation the department finds merit in the allegations it will attempt conciliation. Neither the charge nor anything about conciliation attempts may be made public. Maximum penalty for making information public is \$1,150 and/or imprisonment for one year.

Compensation (19 Del.C. 1107(A)) - Different pay rates for men and women are prohibited. However, different pay rates based on merit or seniority are allowed.

Marriage

Common law marriages are not valid in Delaware. *Berdikas v. Berdikas*, 178 A.2d 468 (1962).

Divorce (13 Del.C. 1505)

A divorce is granted when the Court finds that the marriage is irretrievably broken and reconciliation is improbable. There must be a separation to find the marriage irretrievably broken. Such separation may be caused voluntarily, by incompatibility, or by respondent's mental illness or misconduct.

Jurisdiction (13 Del.C. 1504) - There is a six month residency requirement for jurisdiction.

Property Division (13 Del. C. 1513)

Upon dissolution of a marriage, property is to be divided equitably without consideration of misconduct. Among the things the Court takes into account are: the length of the marriage, any prior marriage, age and health of the parties and their employability, what each party contributed or failed to contribute to the property (including contribution as a homemaker), debts of the parties, and



Welcome Home



The new Wilmington Downtown Courtyard invites you to relax and enjoy during your next visit to Wilmington.

Enjoy one of our "Elite" Rooms which include a whirlpool, mini bar, microwave and remote control TV/video cassette player.

Unwind in our health center, but most of all enjoy the home-like setting and the friendly service our associates will provide as soon as you walk through the door.

Since you have a choice when you are away - the choice is simple. The Courtyard by Marriott-Wilmington Downtown.

Wilmington Downtown
1102 West Street, Wilmington, DE 19801

FOR MORE INFORMATION CALL
302-429-7600 • 1-800-321-2211

Weekday **'ELITE' ROOM**
~~\$99~~
Weekend **\$79**



CATHY ABELSON LEGAL SEARCH

Successful Legal Matches

CATHY ABELSON • SANDRA MANNIX • LIZ SHAPIRO

Attorneys Placed with Law Firms,
Financial Institutions and Corporations Nationally.

1601 Market Street • Suite 300 • Philadelphia, PA 19103
Tel: 215-561-3010 Fax: 215-561-3001

RCI

Reproduction Center, Inc.

Phone
328-5019

Fax
328-5067

Specializing in Jury Display Enlargements

High Speed Copies • Blue Printing
Volume Pricing • Computer Printouts

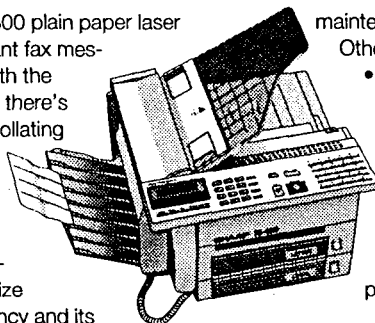
Free Pick Up & Delivery
740-8130

NEW FROM THE NO. 1 FAX BRAND:
PLAIN PAPER. LASER PRINTING.
ADVANCED MEMORY.
AND IT COLLATES TOO.

THE NEW FO-4800 FAX. ONLY FROM SHARP.

The Sharp FO-4800 plain paper laser fax prints important fax messages collated with the first page first, so there's no wasted time collating them by hand.

Advanced memory features and dual access functions help maximize your office efficiency and its compact size saves office space. Plus Sharp's F.A.S.T. Remote Diagnostic system means you almost never have to think about supplies, programming or



maintenance.

Other features include:

- Crisp, clean reproduction
- Large paper capacity either letter or legal size with easy to use front-loading cassette
- Fast 9-second per page transmission
- Laser printing on plain bond paper

Call today for full details and to arrange a free demonstration of the FO-4800 plain paper laser fax from Sharp, America's #1 fax choice since 1987.

SHARP
FROM SHARP MINDS
COME SHARP PRODUCTS™

LCD
▼

Hilyard's
BUSINESS MACHINES FOR EVERY PURPOSE

1616 Newport Gap Pike
Wilmington, Delaware
995-2201

tax consequences.

The marital property to be divided includes all property acquired during the marriage without regard to how such property is titled. Exceptions include: property acquired through testate or interstate succession, property exchanged for property owned prior to marriage, and property excluded by a valid agreement between the parties.

Abortion (24 Del.C. 1790)

Although Delaware laws on abortion are not currently being enforced (as much of them would be found unconstitutional), they are extraordinarily strict. Section 1790 of Title 24 limits the right of abortion to cases of rape or incest, or where continuing the pregnancy is likely to result in the death or permanent physical/mental injury of the mother, or where there is a substantial risk of physical deformity or mental retardation of the child (1987 & Supp. 1990).

The statute fails to mention third degree unlawful sexual intercourse, effectively blocking abortion for pregnancies due to date rapes where there has been no physical injury. The same statute required all unmarried female under 18 to obtain the consent of both her parents if she resides with both. Otherwise consent of one parent is acceptable. There is no judicial bypass provision.

Although this statute was on the books in substantially the same form before *Roe v. Wade*, 410 U.S. 113 (1973), the General Assembly amended it in 1988, adding the rape exception.

Delaware requires informed consent prior to an abortion. Part of such informed consent is a 24-hour waiting period after written consent is given, unless an emergency arises. (24 Del.C. 1794).

Rape (11 Del.C. 773, 774, 775)

Delaware subdivides Rape into three degrees. There are no gender distinctions.

Unlawful sexual intercourse in the third degree occurs when the intercourse is without the other person's consent or the victim is below 16 years of age. 11 Del. C. Ann. sec. 773 (Supp. 1990).

Unlawful sexual intercourse in the second degree occurs when the intercourse is without the victim's consent and:

- 1) The attacker inflicts physical, mental, or emotional injury on the occasion of the crime, during the immediate flight from the crime, or in attempting to prevent the reporting of the crime; or
- 2) The victim was not the defendant's voluntary social companion on the occasion of the crime. 11 Del. C. Ann. sec. 774 (Supp. 1990).

Unlawful sexual intercourse consists of sexual intercourse with another person without his or her consent and:

1) The defendant inflicts serious physical, mental or emotional injury; or

2) The victim was not the defendant's voluntary social companion on the occasion of the crime and had not permitted the defendant sexual intercourse within the previous 12 months; or

3) The defendant displayed what appeared to be a deadly weapon in the course of committing unlawful sexual intercourse in the second or third degree. 11 Del.C. Ann. sec. 775 (Supp. 1990).

These statutes represent the continuing disparity in Delaware law between date rape and other rapes. This is especially apparent in the distinction between second and first degree unlawful sexual intercourse, because of the narrow definition of "serious physical injury". If the victim was the attacker's voluntary social companion or had permitted the attacker sexual intercourse in the past year, the victim must sustain injuries, which create a substantial risk of death, or which cause serious and prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ in order for the attacker to be prosecuted for unlawful sexual intercourse. 11 Del.C. sec. 222 (21) (1987).

"Physical injury" as applied to second degree unlawful sexual intercourse is defined in the code as "impairment of physical condition or substantial pain." 11 Del. C. Ann. sec. 222 (20) (1987).

Neither mental nor emotional injury is defined. Expert testimony at trial is necessary to establish physical, mental and emotional injury.

* * *

Constraints of space make it impossible to include the authors' extensive footnotes, but the numbers to these footnotes appear. The full footnotes will be available upon request to the offices of this magazine.

**On July 29, 1993 the Supreme Court abolished the old doctrine. Mrs. Beattie may indeed sue her spouse.*

Ms. Susan R. Deane is a 1993 graduate of Widener University School of Law and a 1990 cum laude graduate of Temple University. She plans to practice in Pennsylvania.

Christine McDermott is the Executive Director of Delaware volunteer Legal Services and a visiting Associate Professor at Widener University School of Law. ♦

Mortgages

Jumbo loans... skimpy rates... enormous service!

If you're looking for a jumbo mortgage for your home purchase, be sure to call Ninth Ward Savings Bank. We offer very low rates and exceptional *personal* service.

Our friendly, efficient staff makes the mortgage process easy for you. We never, *ever* treat you like a number. At Ninth Ward we provide individual guidance and expertise, and keep you informed of your loan progress. And, **we service all of our loans.** That means your mortgage and escrow payments are taken care of right here—by the Ninth Ward Savings staff.

For complete information, please call **(302) 654-7791** weekdays, **8am to 4pm**, and ask to speak with a loan officer. We're looking forward to assisting you.

400 Delaware
Avenue
Wilmington,
DE 19801

Free
parking lot
on West St.

**9th WARD
SAVINGS BANK**

HOMETOWN SERVICE SINCE 1922

FDIC
Insured



SUBSCRIPTION ORDER FORM

YES! Please enter my subscription for 4 issues at \$12.00. My check is enclosed payable to DELAWARE LAWYER.

I would like information about obtaining back issues of DELAWARE LAWYER. Please send me a list of those still available.

I would like to send a gift subscription for 4 issues at \$12.00 to a colleague.

Name _____

Address _____

City _____ State _____ Zip _____

Gift from _____ Tel. () _____

Mail to: Suburban Marketing Associates, Inc., P.O. Box 2087, Wilmington, DE 19899-2087 • 302-656-8440

The Bar Association Section on Women and the Law: A Brief History

As recently as sixteen years ago there was no Women and the Law Section or any other Bar Association group devoted to women's issues. There was no network, informal or otherwise, for

Delaware's female attorneys. They were routinely excluded from international organizations such as Rotary and from social clubs. There were two female judges in 1977 and only thirty-three female members of the Delaware State Bar Association.

Today women enjoy full membership in many organization and clubs that formerly were all male. Women have become an essential component of the Bar Association, as evidenced by the

recent presidency of Judge Susan C. DelPesco.

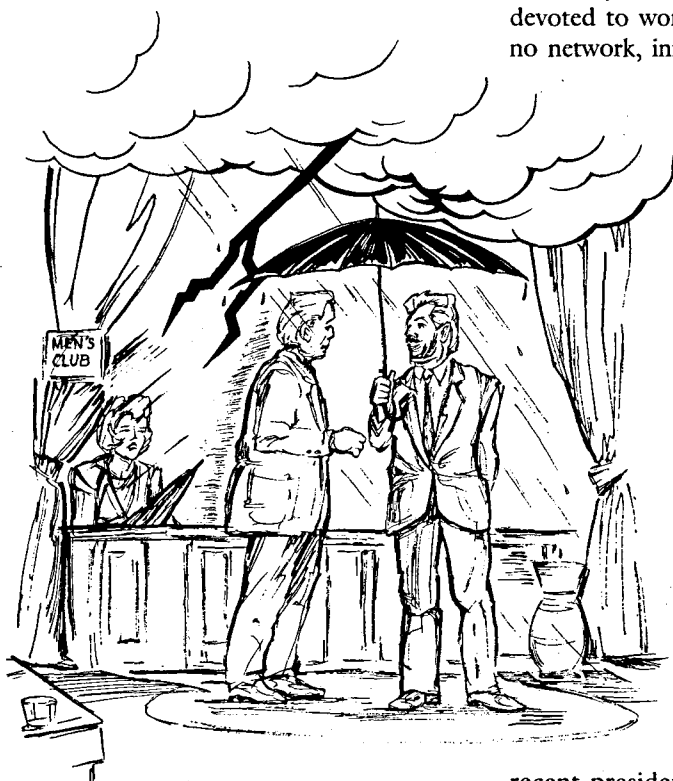
The emergence of women as a presence in the Delaware legal community is due in large part to the efforts of the Women and the Law Section, whose pioneers banded together in 1977 to provide mutual support and to advance the cause of women in Delaware. The two individuals most instrumental in the creation of the Section were Aida Wasserstein and Mary C. Boudart.

Wasserstein and Boudart met in 1976 while preparing for the Delaware Bar exam. They discussed the need for a support group for the increasing number of women being admitted to the Delaware

Bar. They wanted to get to know other women lawyers, deal with issues of concern to other practicing female attorneys (such as how to thrive in a male-dominated profession and how to juggle career and family), work on legislation for women, and serve as role models for women who would follow them. In early 1977 they founded the first Bar Association committee devoted entirely to women's issues.

The mid-1970s was a time of great upheaval for women. Deeply ingrained beliefs about women's proper societal roles were being questioned by organizations such as the National Organization for Women. Discrimination against women was being challenged successfully in the courts. In 1977 the United States Supreme Court in *Reed v. Reed*¹ applied a stricter standard in determining whether women were discriminated against in the preference of men as administrators in intestacy. Two years later, the Court in *Frontiero v. Richardson*² upheld this heightened test in finding discrimination against women in the military. These decisions were instrumental in Wasserstein's and Boudart's choice of a name for the Women's Rights Committee.³

An announcement of the formation of the Committee appeared in the Bar Association Newsletter in early January, 1977. All Bar Association members (both male and female) were invited to the inaugural meeting to be held on the evening of January 20, 1977 at the Hotel DuPont Grill. In addition to Wasserstein and Boudart, those who expressed an interest in the Women's Rights Committee at the first meeting, and who became the founding members, were: Peggy Ableman (now the Honorable Peggy L. Ableman of Family Court), the Honorable Helen S. Balick of Bankruptcy



Throughout the 1980s the Section brought continuous pressure to change the Wilmington City Code so as to prohibit discrimination by city clubs, which deemed themselves private, while performing public and quasi-public services.

Court (one of the two female judges then on the bench in the State of Delaware), Christine McDermott, Marsha Kramarck, Nan Mullen (now Nan Mullen Perillo), Mary Pat Trostle (now the Honorable Mary Pat Trostle, U.S. Magistrate), Fritz Haas, and Julianne Hammond.

Mimi Boudart became Chair of the committee, as she recalls, merely because she agreed to host the first reception for new female admittees to the Delaware Bar. Although her third floor, Union Park gardens apartment could be reached only by climbing exactly 39 steps, approximately twelve women (of the 33 Delaware State Bar Association members) attended that reception, including the two founders of the Committee (who also were newly admitted to the Bar).⁴

This initial celebration in honor of all recently admitted female members of the Bar has evolved into an annual reception, to which both male and female newcomers are invited. Each year, the reception draws approximately one hundred an fifty celebrants (both new and seasoned members of the bar).

A list of possible areas of concern for the new Committee was compiled at this meeting. The list included prison reform, potential legislative changes affecting women, the need for a wife abuse center (or centers), prostitution laws and their enforcement, vocational and man power [sic] training programs, and the State's alimony and other domestic relations law.

By April members of the Committee had already begun to lobby for change in Delaware's alimony laws.

One year after its founding, membership on the Committee had grown to seventeen (sixteen females and one male). In May, 1978 the Committee proposed members for inclusion in a talent bank that the Delaware Commission for Women was establishing to see that qualified women were appointed to fill vacancies on governmental boards. Members also represented the Committee on legislative task forces and on YWCA advisory boards. Two projects of the Committee at this time were to engage attorneys to assist women in battered women's shelters and to provide lists of female attorneys when people needing legal representation requested women.

In 1979 the Committee submitted an *amicus curiae* brief to the Delaware Supreme Court supporting the constitutionality of the ratification of the Equal Rights Amendment by the Delaware General Assembly.⁵ (Governor duPont

had asked the Court for an advisory opinion on the constitutionality of the proposed amendment earlier that year.) The brief was prepared by Susan C. DelPescio and Marsha Kramarck. The Court refused to decide the constitutionality of the ratification;⁶ this represented a victory for the position taken by the Committee.

By May 1980 interest in the Committee began to wane; there had not been a meeting in more than a year. A special meeting was called to determine whether the Committee had met its goals and should therefore be abolished. It is unclear what happened at that meeting, but as Boudart and Waserstein recall, it was the newer members' commitment to ongoing projects that kept the Committee alive during these lean years.⁷ Perhaps it was the updating of a 1975 legal handbook for women that stimulated interest in the Women's Rights Committee.

In the early 1980s the Committee became involved in drafting and lobbying for legislation affecting women. It took a strong position against attempts to restrict abortion rights. Members of the Committee also lobbied for other legislation, such as mandating household and child care state income tax deductions and making all statutory language gender-neutral. Clearly, the Committee's work was not completed.

Another ongoing project of the Committee in the early 1980s was providing speakers for a series of noontime workshops at the YWCA dealing with testamentary rights, bankruptcy, family law, real estate law, and legal considerations in establishing one's own business.

In 1983, when the Bar Association decided to establish permanent sections covering various disciplines in the law, the Committee applied for section status. The application stated that a section for women was needed to address more effectively the impact of the laws of the state upon women in Delaware, to assure delivery of legal services to women, and to further the role of women in the legal community.⁸

Throughout the 1980s the Women and the Law Section brought continuous pressure to change the Wilmington City Code to prohibit discrimination by city clubs, which deemed themselves private, while performing public and quasi-public services.⁹ As early as June 1982, the Women's Rights Committee supported a resolution opposing all such clubs' exclusion of women as club members. After

the City Code was changed and the issue had been put to a vote three times, the University & Whist Club amended its bylaws to allow women into full membership. The all-male Wilmington Club, however, voted to eliminate all public and quasi-public services rather than open its membership.

When Waserstein helped found the Women and the Law Section, her goals were to interact with other women lawyers, to provide a support group for new women lawyers, and to provide a network for women lawyers. Although not one of her goals, Waserstein also found that the Section provided a mechanism for her to form her own law firm partnership, currently the only all female partnership in Delaware. In 1983, at the annual reception for new female admittees to the Bar Association, Waserstein met Christine Demsey, and it was the friendship they formed that led to their creating the partnership of Waserstein & Demsey In January, 1984.

In 1983, the Section provided the Wilmington Women in Business annual career conference with literature on how to find and choose a lawyer. Several members of the Section participated as speakers and moderators at that conference. In the spring of 1984, work began on a handout on spousal abuse for dissemination in Family Court. Section members conducted research on the need for legislation on informed consent for breast cancer surgery, and drafted legislation to correct discriminatory language in 12 Del.C. §3902(d).¹⁰ In November, 1984, the Delaware Alliance for Professional Women chose the nominee of the Section on Women and the Law for its annual Trailblazer Award. The honoree was the Honorable Helen S. Balick, Judge of the U.S. Bankruptcy Court of the District of Delaware. Six years later, in November, 1990, the Honorable Roxana C. Arsht, the Section's nominee that year, (who not only was the first female judge on Family Court, but also the first female judge in the State of Delaware [and third female member of the Delaware Bar]), was chosen to receive the Trailblazer Award.

In 1985 the New Castle Council endorsed a study of the county pay structure to compare the pay of women in traditionally female jobs with the pay in jobs with similar requirements in training and skills, in which men predominated and received higher salaries. Members of the Section participated in the research and preparation of that study.

Other milestones during the mid-1980s were: lobbying for the successful passage of a revision to the alimony statute (The amended statute became law in 1988.);¹¹ assisting in studies of the availability of child care in Delaware (This research led to the creation in 1986 of the Child Care Connection, launching a telephone linkage network which provides up-to-date information on statewide and regional child care facilities.);¹² and joining with other female Bar Associations in the National Conference of Women's Bar Associations.

regarding parental leave and sexual harassment. This survey was the genesis of what later became the Model Employer Policies guidelines. The Section worked on spousal abuse legislation and monitored women's prison issues.

A symposium in Georgetown on gender and legal ethics attended by Section member and vice chair Judy Renzulli led to a law students' project initiated by the Women and the Law Section to prepare women law students for life in the profession.

In 1989, as the U.S. Supreme Court

and the Labor Law Section. This policy provides a detailed model on disability leave for pregnancy, childbirth, and related medical conditions, child care leave, family care leave, part time work, and child care assistance. It also includes a model employer policy prohibiting sexual harassment with multiple exhibits on the background and development of model employer policies. Judy Renzulli headed this project, with the assistance of Barbara McDonald and Erin Kelly.¹⁵

Members of the Section participated in drafting a bill to enlarge the legal remedies of victims of domestic violence.¹⁶ The bill was introduced in the General Assembly in the 1992 legislative session, and several members of the Section lobbied for its passage. It passed the Senate, but unfortunately died in the House. It undoubtedly will be introduced in the next legislative session in a slightly different version.

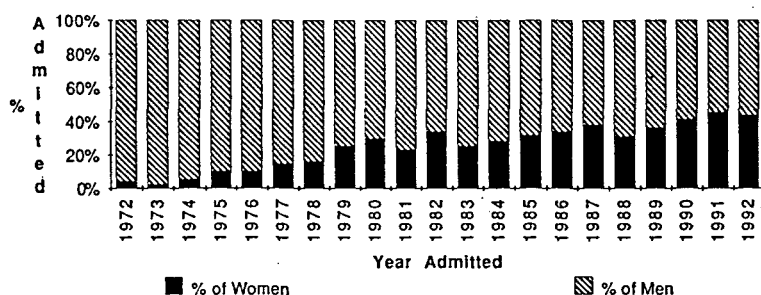
In 1991-1992, the Section reviewed police procedures for strip and body cavity searches following expressions of concern by the Honorable Susan DelPescio about how these procedures were being performed on women. The Section continues to follow and monitor legislation, specifically the Family Care Act, domestic violence legislation and the codification of the Battered Spouse Defense. On the federal level, pieces of legislation being monitored are the Freedom of Choice Act and the re-authorization of the Title 10 Family Planning Program.

During the 1991-1992 season the Section also provided a panel of speakers to area law schools on options for legal employment in Delaware. The Section led efforts to move all Bar Association functions from locations that engage in discriminatory practices, and the Section joined with the American Association of University Women to expedite the project first undertaken in 1989 to appoint more women to the Judicial Nominating Committee and to judicial office.

Unlike other Bar Associations sections (which are defined by area of substantive law), the Women and the Law Section has members who practice in a wide range of legal areas. However, when the Domestic Violence Task Force approached the Section for its co-sponsorship of a seminar on domestic violence, a decision was made by the membership to assist in education in this crucial area of law affecting the most vulnerable women.

The Section remains a liaison between its members and other organization com-

Study of Women in The Bar



Through the years, the Women and the Law Section has supported and lobbied for a Family Care Leave Bill, which was introduced in varying forms over the past few years, but has not passing.¹³

In 1988, the Section was instrumental in convincing the Delaware State Bar Association to adopt two American Bar Association policy resolutions: Resolution 121, which called for the elimination of all practices in the Bar that prevented participation of women in all aspects of the legal profession, and Resolution 10G, which urged all lawyers not to hold functions at private clubs that discriminate against women or minorities.

The Section also joined with the American Association of University Women in attempting to obtain a Delaware Supreme Court-directed study of the treatment of female litigants and lawyers in the Delaware courts. This study remains to be mandated by the Court, but it is currently being urged by the Council for Criminal Justice.

During 1989-1990, the Section investigated the procedure for achieving membership on the judicial nominating committee of the Delaware State Bar. Members of the Section participated in a statewide commission to make recommendations to the Governor on achieving gender balance on boards and commissions.

The Section conducted by an extensive survey to determine law firm policies

regarding parental leave and sexual harassment. This survey was the genesis of what later became the Model Employer Policies guidelines. The Section worked on spousal abuse legislation and monitored women's prison issues. A symposium in Georgetown on gender and legal ethics attended by Section member and vice chair Judy Renzulli led to a law students' project initiated by the Women and the Law Section to prepare women law students for life in the profession. In 1989, as the U.S. Supreme Court returned to the states the power to regulate abortion,¹⁴ the Section faced another crisis. Many members believed that the Section should support reproductive freedom in Delaware and actively assist in maintaining Delaware women's unencumbered rights to abortion. Some Section members were adamant that the Section should *not* support reproductive freedom. At an emotionally charged, heavily attended meeting in the fall of 1989, it was decided by a narrow margin not to take a position as a Section on abortion rights. Instead, the Section decided to monitor all legislation introduced that might affect those rights and to take positions on a bill-by-bill basis. Because of the decision of the Section not to take a stand in favor of reproductive choice, several members of the Section, who still remain active members, formed Delaware Lawyers for Choice to work exclusively for abortion rights.

The Section reviewed revisions to the Model Code of Judicial Conduct and the Executive Committee of the Bar Association unanimously adopted amendments to the Delaware Lawyers' Rules of Professional Conduct prohibiting judges from membership in organizations that discriminate. The Section also supported revisions to that Code to make it gender neutral.

Perhaps the most impressive achievement of the Section so far in the 1990s has been the development, drafting, and promulgation of the Delaware State Bar Association Model Employer Policies, in conjunction with the Family Law Section

THE JUDGES SAY WE'RE THE BEST IN THE U.S.



Delaware Today is proud to have been selected the 1993 national winner for general excellence in the 9th annual White Awards competition

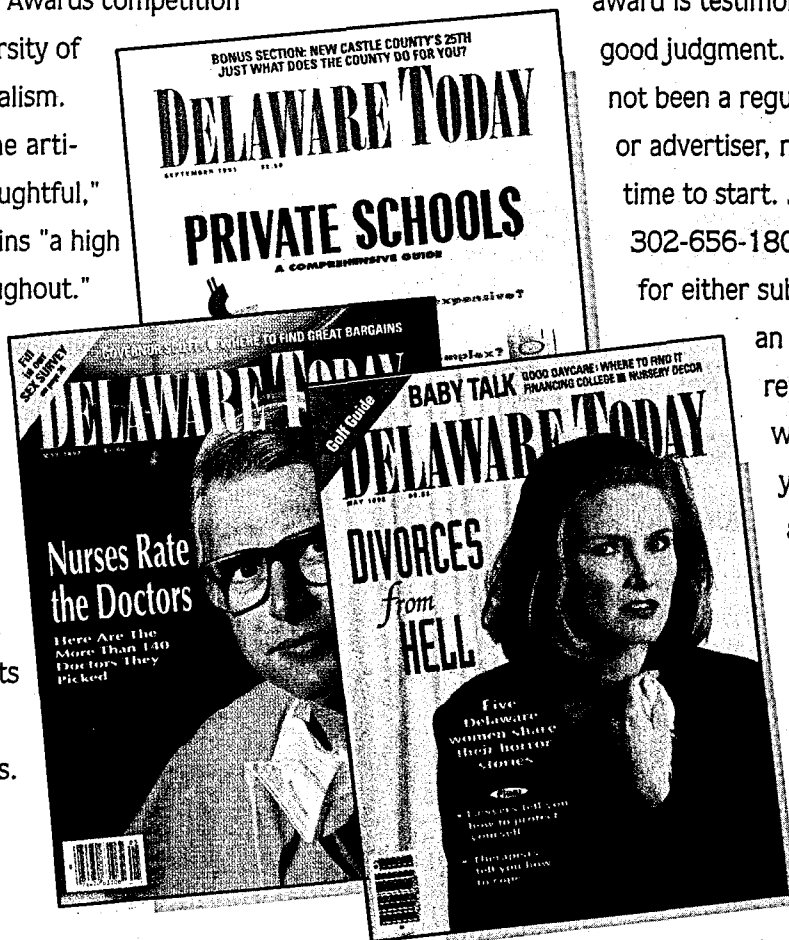
conducted by the University of Kansas School of Journalism. The judges said that "the articles are timely and thoughtful," and the magazine sustains "a high level of excellence throughout."

Our 104,000 readers have known for quite some time that our magazine offers editorial and design excellence. Our 1,000 advertisers have known that their advertisements in **Delaware Today** definitely stimulate sales.

We want to thank those readers and advertisers for their support over the years. This national

award is testimony to their good judgment. If you have not been a regular reader or advertiser, now is the time to start. Just call 302-656-1809 and ask for either subscriptions or

an advertising representative who will give you the details about upcoming issues and rates.



DELAWARE TODAY

READ IT. LIVE IT.

RICHARD-DONALD FURS
713 Market Street
Wilmington, Delaware
Established 1948

PRE-HOLIDAY FUR SALE

NOW is the perfect time to
choose an exquisite new fur from
Richard Donald's huge selection -
at Pre-Season savings!

FUR, THE FASHION OF CHOICE

DAILY & SATURDAYS 9 TO 5
FRIDAYS 9 TO 8

302/656-1693



IN THE DELAWARE VALLEY

**A BMW
FROM OTTO'S:
YOU CAN
HANDLE IT!**



Otto's BMW

Rt. 202-West Chester (215) 399-6800; (800) 292-OTTO

mitted to women's issues such as the Agenda for Delaware Women, the Delaware Commission for Women, the Coalition for Choice and the National Conference of Women's Bar Associations.

The Section continues to hold the annual reception for all new members of the Delaware Bar and the annual picnic in June for all members of the Section at the home of Judge Arsh. For the first time in 1992, it held a joint dinner with the American Society of Women Accountants.

The Section is considering joining a task force to study gender bias in sentencing in the Delaware courts. The Section also is considering expansion of the Model Employer Policies publishes in 1990-1991 and adopted shortly thereafter by the Delaware State Bar's Executive Committee. Expansion would include a model policy on alternative work schedules.

Section members are also engaged in drafting a chapter about women in the legal profession to be included in a history of the Delaware State Bar Association.

At last count, the number of members in the Section was 101.

From its creation a mere sixteen years ago by two newly minted law school graduates awaiting their bar exam results, the Women and the Law Section has grown into a visible, active effective educator and defender of women's legal rights in Delaware.

* * *

Constraints of space make it impossible to include the author's extensive footnotes, but the numbers to these footnotes appear. The full footnotes will be available upon request to the offices of this magazine.



Ellen Meyer, a member of both the Delaware and Pennsylvania bars, practices in Wilmington. She is an articulate and dedicated advocate of women's rights. Among other distinctions she chairs Delaware Lawyers for Choice and the Delaware Coalition for Choice. ♦

Otten/Hannigan

(continued from page 16)

disappear over time, as women become more senior in their workplaces. But such a change is not yet evident when the effect of seniority is removed, by comparing women only against men who have graduated from law school more recently. In addition, women themselves believe they do not have the same professional opportunities for the future as do their male counterparts. Finally, although the number reporting any type of sexual harassment was small, women attorneys were more likely to have been victimized by sexual teasing of "other" types of sexual harassment in the workplace than were men.

Furthermore, men and women respondents perceive their workplaces quite differently. Men are more than twice as likely as women to think their offices are good places for women to work. Men are also much more likely than women to think judges treat men and women attorneys equally.

It is not possible in this brief report to review every detail appearing in the analysis. Any member of the bar who has a particular question is invited to consult either Ms. Hannigan or Dr. Otten. In addition, interested readers can obtain copies of the report on the A.B.A. survey, and copies of the Delaware questionnaire form showing the total percentage response to each question, from the D.S.B.A. office.

Finally: many thanks to the 277 respondents who took the time to complete the questionnaire, making this analysis possible.

* * *

Constraints of space make it impossible to include the author's extensive footnotes, but the numbers to these footnotes appear. The full footnotes will be available upon request to the offices of this magazine.

Laura A. Otten is an Assistant Professor of Criminal Justice at La Salle University. She is completing a book that uses United States Supreme Court decisions to trace changes in women's status from colonial times to the present.

Patricia C. Hannigan served as an Assistant Public Defender for four years, and then was as an associate with the law firm of Ashby & Geddes for two years. For the last four years she has been an Assistant United States Attorney for the District of Delaware. ♦

COMFORTABLE SENIOR LIVING WITH A PERSONAL TOUCH



Do we like it here? Absolutely!

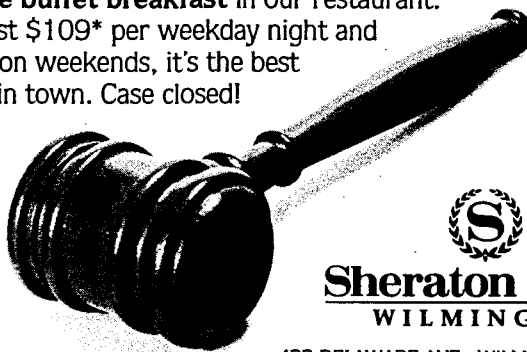
The best way to know what a retirement community is really like is to ask the residents. Lorelton people love their active lifestyles, bright apartments, reliable security and great food. But don't take our word for it. Ask them!

The LORELTON

Independent and Assisted Living
2200 WEST FOURTH • WILMINGTON, DE
(302) 573-3580

Your clients deserve the luxury...you deserve the savings.

When you include out-of-town participants in legal proceedings in Wilmington...arrange accommodations that offer two-room suites for the price of just a room at many hotels. That price includes a coffee maker, refrigerator, wet bar and two remote televisions in each suite...plus a **free buffet breakfast** in our restaurant. At just \$109* per weekday night and \$69 on weekends, it's the best deal in town. Case closed!




Sheraton Suites
WILMINGTON

422 DELAWARE AVE., WILMINGTON, DE 19801
(302) 654-8300



*Longer stays and larger groups of rooms, rates negotiated separately.

The Impact of Delaware Women Lawyers on the Practice of Law

In the past twenty-five years, the number of female members in the Delaware Bar has grown from 10 to the current 309 — 15% of the Bar. The fallout from this explosion and the profes-

sional choices these women have made have influenced significantly the way law is practiced in this state.

As women have begun to enter the market, they have brought their own ideas, experiences, and concerns to bear on the profession. One need only to look around at the many successful female attorneys to realize how integral a part of this bar women have become. As more women are admitted and devel-

op into skilled attorneys, their concerns will intensify, as will the influence they have upon the future of the bar. Issues such as child care and maternity leave, once thought of solely as women's issues, now must be recognized for their global impact if we intend, as a professional community, to progress.

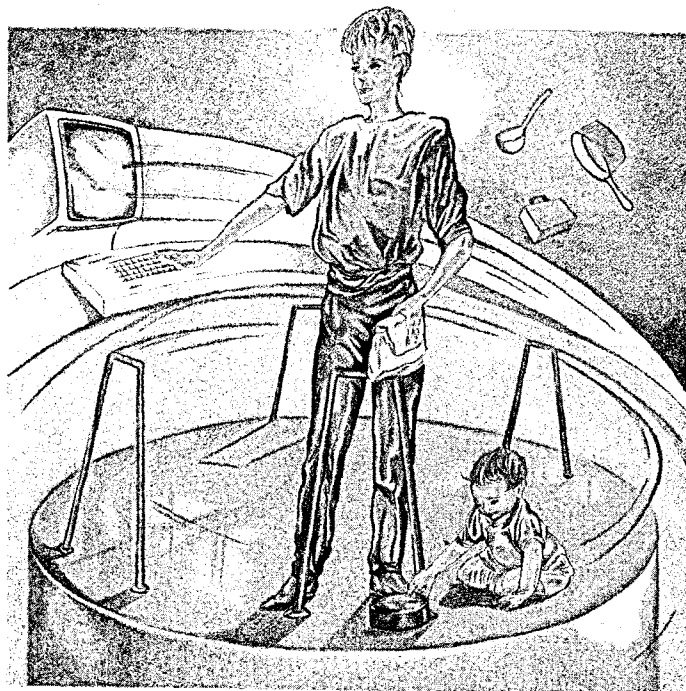
To isolate some of their experiences and to identify concerns women have as members of this legal community, we interviewed twenty Delaware female attorneys from a cross-section of the bar. Although those interviewed vary in background, they shared many of the same ideas, particularly with regard to their reasons for choosing law as their profes-

sion, their approach to lawyering, their perspective on the balance of work and family, and their views on the professional advancement of women attorneys. Whenever possible, we have identified those interviewed. However, many asked that their names be kept confidential. Nonetheless, we have attempted to set forth those issues and ideas that most concerned the interviewees and that provide a glimpse into the impending changes in the legal profession.

The Path Taken

While men and women share many reasons for attending law school, there are distinct differences. A 1988 study of Stanford Law School students and graduates, found that men, more than women, give financial gain as their primary goal.¹ As in the Stanford study, not one of the twenty women interviewed mentioned making money as a primary reason for choosing a law career. Of course, as one woman put it, "making more money . . . is a nice by-product," but it was not the driving force behind her career choice.

Why do men and women differ about money and its role in their choice of occupation? Certainly women can appreciate the benefits of wealth. Some suggest the answer may lie in how women measure success. Historically women in the work force were not the primary bread winners. Many were relegated to low paying jobs. Those women able to choose a career focused on child rearing first and career second. Because these women often did not provide the primary or sole source of income for their families, compensation became less important. High salary jobs were usually held by males because of their principal financial role in many families. Limitations on



Child care and maternity leave, once thought of solely as women's issues, now must be recognized.

women's occupational choices may have led women to redefine their career goals and ideas of success.

The choice to enter law school seemed to have been guided in many instances by the presence of a highly defined support network. Most interviewees did not even consider law school until their later years in college or while employed in another job. For example, the Honorable Battle Robinson decided to pursue a law degree only after signing up for federal jurisdiction and federal procedure courses at Georgetown Law School that related to her position in a Washington office. Similarly, the Honorable Susan Del Pesco became interested in law after many years of observing the legal system as a social worker.

Style and Substance

Have women lawyers transformed the way the legal profession practices law? Those who would answer yes to that question posit that the transformation is due in part to women's moral perspectives. It is suggested that men's morality is based on a system designed to preserve individual rights,² and that, accordingly, they resolve conflicts by balancing competing rights, determined by a rational system of values. Women, on the other hand, strive to preserve relationships when resolving moral conflicts. Applied to the legal field, the theory hypothesizes that women's emphasis on relationships may diminish the win/lose aspect of the adversarial system and change the way lawyers interact with their clients and each other.³

Those interviewed agreed, suggesting that women in general communicate better with clients than men do. Many also believe that most women attorneys are more receptive to alternative dispute resolution techniques. No surprisingly they tend to respect and admire those male colleagues who are less confrontational, yet no less effective. However, some women sense that a double standard prevails. While men are capable of wearing many hats, women may be more restricted to follow the norm. For instance, a woman's use of conciliatory skills may be perceived as a weakness whereas a man's use of the same style is views as simply a stylistic difference. To compound the matter for women searching for an effective approach, women who display an assertive style are often labeled overly aggressive. Many hope that these perceptions will change and that the legal community will recognize and encourage a variety of lawyer-

ing approaches for men and women.

Courtroom Techniques

How does this difference in approach manifest itself in the most hostile of all legal environments — the court room? Women attorneys have been very successful in Delaware courtrooms, but, in response to questions regarding litigation style, a few noted that they had some difficulty developing effective courtroom techniques in this male-dominated field.

Some of the more senior litigators believed that the lack of female role models in their early careers contributed

There are accomplished women attorneys in legal practice in Delaware from government to private practice, associate to partner, and lawyer to judge.

to this difficulty. While they found that the examples set by many male litigators were valuable in developing their style, they also observed that what works well for a man may not be so effective for a woman lawyer. Again, the muddled perceptions of proper behavior for women presented a problem. Nevertheless, aware that perception is crucial in litigation, these women applied other methods they believe to be equally effective. For example, many emphasized alternative dispute resolutions while standing firm on the merits of their cases and expressing a willingness to go trial. This combination has apparently proved successful for many.

Professional Growth

There are accomplished women attorneys in legal practice in Delaware from government to private practice, associate to partner, and lawyer to judge. For the most part, these attorneys found themselves well received by the Delaware Bar. Still, they pointed out that difficult problems did and still do exist.

One problem of great concern to the more senior members of the Bar, partic-

ularly with regard to early practice, was loneliness. Until recently, there were few practicing female attorneys. Most of these women also shouldered household and child rearing responsibilities. The strain of dual roles was something only women attorneys understood because men generally did not bear primary household responsibilities. Therefore, without female counterparts to share their frustrations, life as a female attorney could be lonely.

The paucity of women attorneys in the past contribute to another problem many women face today — professional development and advancement through mentoring. Undoubtedly, mentoring is important to the success of any attorney, but it often requires a rapport between the mentor and student that male and female attorneys may find difficult to establish. As one woman observed, men are usually more comfortable with other men in a business setting. Consequently, many women attorneys believe their opportunities for professional growth are more limited than their male colleagues. They submit that if the profession is to adjust to its changing demographics, mentoring must be a conscious and purposeful effort to include all attorneys.

The Untapped Network

Many women in private practice speak of the difficulty experienced in cultivating clients. One woman explained that, in her view, women generally do not have the business contacts that men enjoy. Since networking is essential in private practice, this deficiency can be troubling. One suggested reason is that standard business practice in developing clients can present awkward moments for women. Attorneys typically rely on outside leisure activities to build a client base and cement professional relationships. For example, lawyers traditionally solicit business in sports settings. But as some observed:

Sports have been and continue to be a great source of business for men. They are the focus for all sorts of male bonding. . . . [T]his kind of traditional activity has gone on and still goes on and women don't have an equal activity. How many woman play golf? Again, the 19th hole is the scene of many a business transaction. And when men aren't playing these sports, a lot of times they are watching them. They go to basketball games and football games. And sports are an area than many

women as adults just haven't been interested in.⁴

Similarly, the exclusive "men only" club and the traditional business dinner, the sites of many a business deal, until recently have been closed to women.

Networking problems like these, can hinder a career. As one attorney noted, in the past women have been less receptive to the idea of politicking. She suggested that women need to expend more effort developing and utilizing relationships. Women need to find settings in which they are comfortable with clients, both male and female.

Male colleagues similarly must share in creating new situations in which both men and women may relate. Often the tone of a relationship with a client will be directly related to the rapport between co-workers. Moreover, a client will watch carefully the manner in which male partners interact with associates. It is in everyone's best interest to foster new relationships between the female attorneys and clients.

For such a complicated issue, no one solution is clear. What is certain to many, however, is that with the number of women entering the field, the profession will have to examine itself to accommodate their various skills and interests.

Family/Work Conflict

Few issues have so strong a potential for drastically influencing and changing the face of the working environment as child-rearing and family. Historically, society has expected women to shoulder the primary responsibility of child-rearing.⁵ The same is true today.⁶ The interviews in this survey establish conclusively that women attorneys are not excepted. But in the legal profession, where long hours and broad accessibility to clients and partners are also traditional expectations, conflict between personal and professional demands is inevitable. The confrontation of family and work intensifies when one considers that the partnership track and beginning parenthood typically fall within the same ten to fifteen year period. According to an American Bar Association survey, this conflict has driven a number of lawyers — male and female — to forego parenthood.⁷ And men and women attorneys report that colleagues have questioned the fervor of their career commitments when they expressed a desire for more flexible work arrangement to accommodate family responsibilities.⁸

Perhaps to avoid these repercussions, women in the past generally made the

adjustment between family and work without much hope for change in the structure of the legal work environment. As Christine M. McDermott, Executive Director of Delaware Volunteer Legal Services, recalls:

"[I]n 1975 the expectation was that a woman in a profession was supposed to do everything . . . if you wanted to work and you wanted to maintain your [profes-

**With job
sharing, two
persons divide
as equally as
possible the
responsibilities
of one job.
This arrangement
gives the
employer
the benefit of
full-time work.**

sional] reputation, the expectation was that you did both jobs full-time, your job at home and your job at the office and that's what you did."

Today, however, many attorneys search for other solutions.

Potential Responses To A Growing Problem

For some, solo projects is an answer to the family/work issue. When asked if she would consider firm practice again, one Delaware solo practitioner responded in the negative if the move forced her to give up nights and weekends with her children. Like many others, she believes that with her own practice, she could better balance both career and family. Similarly, the need for greater control over personal and professional life was one of the reasons Aida Waserstein and Christine Demsey of Waserstein & Demsey formed a partnership in 1984.

Other women choose corporate legal departments to resolve the family/work conflict. According to some, corporate practice offers more predictable hours, well-developed part-time and child care

policies, and freedom from the billing and rainmaking pressures inherent in many law firms.⁹ For these same reasons, some women surveyed valued their government positions. The movement of many women to these area signals women's refusals to simply accept the status quo. Rather, many are determined to find a professional culture that validates their concerns by addressing them.

Despite the foregoing, a large percentage of women lawyers remain in law firm practice.¹⁰ A few have found their firms flexible and willing to deviate from traditional firm practice to allow a better balance between career and family. With the ever increasing number of women attorneys and male attorneys who seek a more balanced life style, many organizations are realizing that they must address the family/work issue or risk losing some of their best and brightest attorneys.¹¹

How Does Delaware Rank?

Some Delaware firms and corporations, like those throughout the nation, have faced and met the challenge. For example, some have instituted flexible child care leave policies, providing from two to twelve months leave after the birth or adoption of a child. These employers may recognize that most mothers are not emotionally prepared, and therefore not professionally prepared, to return to work soon after their children are born.¹² Apparently, they also recognize that the more flexible and supportive they are with working parents, the greater the likelihood that they will develop satisfied attorneys who will be loyal and productive for years to come.¹³ The converse also may be true. That is, as one Delaware attorney surmised, firms who limit or deny maternity or child care benefits on the assumption that the attorneys will leave to be with their families are setting in motion a self-fulfilling prophecy by providing a reason for the departure.

The Part-Time Potential

Very few Delaware establishment have arranged for part-time work for attorneys. For the women who take advantage of this opportunity, part-time work can fulfill their need to spend more time at home while preserving their investment in their careers. In fact, recent research shows that most working mothers would prefer part-time work at first, with a gradual return to full-time work.¹⁴

But how does part-time work affect profitability and client service? The women attorneys interviewed who work part-time believe there is little loss of

professional dedication and productivity. These women often work at home on their "off" days and make it a point to return client calls promptly whether or not they are in the office. Aida Wasserstein of Wasserstein and Demsey described her experience as a part-time attorney in 1979 in this way:

"The time that I was most productive as a lawyer was after I had my first child. I was in a new job and I was working three days a week . . . and I was so efficient. I didn't talk to anybody on the phone and I didn't take much time for lunch and I didn't chat with people . . . I really had a very clear sense that every minute I'm spending here I want it to be very productive because this is time I'm not spending with my child."

For those employers who believe that part-time work is not beneficial for them, job sharing may be an alternative. With job sharing, two persons divide as equally as possible the responsibilities of one job, thereby, giving the employer the benefit of full-time work. Although not uncommon in other occupations, job sharing has not gained ready acceptance in the legal profession.¹⁵ Some of the women interviewed were aware of only one such arrangement in Delaware. However, some attorneys who have tried job sharing in other states report that if the two attorneys sharing the position interact well, it can work.¹⁶

Availability of Day Care Services

Alternative work arrangements aside, one of the greatest impediments for women and men in pursuit of a full and balanced life is the limited availability of good day care. There is a child care crisis in the United States.¹⁷ Today, with about 57% of mothers with children under school age working outside of the home,¹⁸ the number of affordable and good facilities and is still inadequate. For the sake of all families, many interviewees would like to see government address this issue, as other countries have done. Unfortunately, for reasons too complex to discuss here, government has not.¹⁹ Thus, many families, like some of those of the women surveyed, must pool their resources, and look to extended families or neighbors. Some believe, however, that the problems they encounter may be better resolved with assistance from greater community, including employers, who also have a vested interest in the welfare of our children.

One particularly difficult problem

that confronts professional women is the hours of operation for child care facilities. Most facilities require that children be picked up by 5:30 p.m. or 6:00 p.m., frustrating many attorneys whose jobs often require late hours. Cynthia Kaiser, a transactional attorney at Richards, Layton & Finger, considered day care for her first child because of the socialization it would provide. However, she and her husband chose to hire a live-in nanny,

**With the ever
increasing number of women
attorneys and
male attorneys
who seek a
more balanced
life style, many
organizations are
realizing that
they must address
the family/work
issue.**

primarily to avoid the added stress of having to pick up their child by a certain time every night. Kaiser, like most of the other women interviewed, would like to see more day care centers that cater to professional couples who have less predictable hours.

Care for sick children is another concern for working parents. In general, day care centers will not accept children when they are sick. With the scarcity of facilities that will accept sick children, more often than not, one parent must stay home. Were schedules more flexible, most parents would not mind this necessity. But there are days when meetings must be attended, depositions taken, or closings completed. Aida Wasserstein and Christine Demsey found one solution by setting aside a room in their office for their children, fully equipped with a television, VCR, and various toys and books.

Hope for the Future

Although many of these interviewed acknowledge that not all legal employers can offer the Wasserstein & Demsey arrangement, it is an example of flexibility they value. They realize, however, that

there are no easy solutions. The practice of law demands time and effort. Economic realities create barriers to solutions such as flexible or part-time work arrangements. Furthermore, smaller firms may find themselves unable to meet their client demands when they are left short staffed for any length of time. Yet, with a potential of 45 years of dedicated service, the six months for parental leave or even one to five years in which a woman is working a flexible time schedule seems a small sacrifice. Moreover, it is important for employers to be comfortable with the knowledge that the employees with whom they have spent long hours of training will return committed to their careers.

The women surveyed hope that more employers address these issues for solutions acceptable to the entire profession. They were encouraged when the Delaware State Bar Association adopted Model Employer Policies developed by its Family Law and Women and the Law Sections, providing guidelines for policies for parental leave, elder care, child care assistance, and alternative work arrangements. The promulgation of these Model policies is but one indicator of the unquestionable impact of women attorneys on the practice of law.

Undeniably, women are an integral part of the Delaware legal community. They have advanced the practice of law as judges, prosecutors, litigators, and skilled practitioners in every field of law. As a result, their perspective and concerns, particularly regarding lawyer style, professional advancement, and the balance of work and family, have transcended gender lines and become issues that cannot be ignored.

* * *

Constraints of space make it impossible to include the author's extensive footnotes, but the numbers to these footnotes appear. The full footnotes will be available upon request to the offices of this magazine.

Ann Massey Badmus and Amy Arnott Quinlan are associates of the Wilmington firm of Ashby & Geddes. Ms. Badmus holds a Bachelor of Mechanical Engineering degree from the University of Delaware and a law degree from Widener University School of Law. Her practice consists primarily of commercial litigation. Ms. Quinlan holds a Bachelor of Arts degree from Bates College and a law degree from Boston University School of Law. She practices primarily in the areas of bankruptcy and commercial law. ♦

N

eed A Magazine?

Suburban Marketing Associates can produce, design, publish and distribute magazines "tailor-made" for your business, association or potential clients.

Whatever your publishing needs, we work from the ground up. We bring a group of high-quality writers, photographers, designers, editors and marketers to every project.

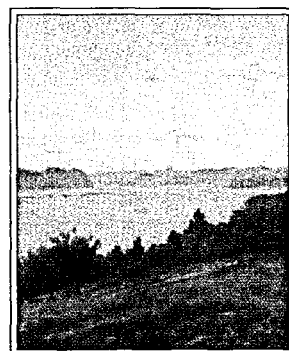


To find out more about our custom publishing capabilities, call Fred Miller at 800-944-0100.

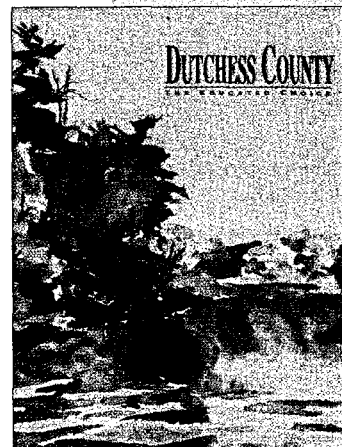
Suburban **M**arketing **A**ssociates, Inc.

800-944-0100

Rockland County



DUTCHESS COUNTY



PROFESSIONAL LIABILITY INSURANCE, INC.

We keep good company.

*Committed to
Creative Insurance
and Risk
Management
Solutions.*

Only two professional liability programs have earned the Delaware State Bar Association's endorsement. CNA's Lawyer Protector Plan is one of them.

Professional Liability Insurance, Inc., is the sponsored administrator for the CNA Lawyer Protection Plan. CNA is just one of many fine carriers through which PLI can provide all the insurance protection you need.

As an independent broker, we offer a broad range of professional liability options and services that have earned us our own endorsement—the admiration and trust of Delaware attorneys.

MORE THAN 50 YEARS OF CONTINUED SERVICE



Professional Liability Insurance, Inc.
an affiliate of Harry David Zutz Insurance, Inc.

300 Delaware Ave. • P.O. Box 2287
Wilmington, DE 19899 (302) 658-8000

Albion House 87-89 Aldgate High Street
London EC3N 1 LH, England



For All the Commitments You Make®

If Time Equals Money, it Pays to Spend it Wisely.

When too many demands on your time keep you from effectively handling your financial affairs, it is time you realized the advantages of a Delaware Trust Private Banker.

Delaware Trust developed the first Private Banking Division in this region over a decade ago; providing clients with the utmost in sophisticated banking services and confidentiality. Many prominent families throughout Delaware and the United States have benefited from our seasoned approach.

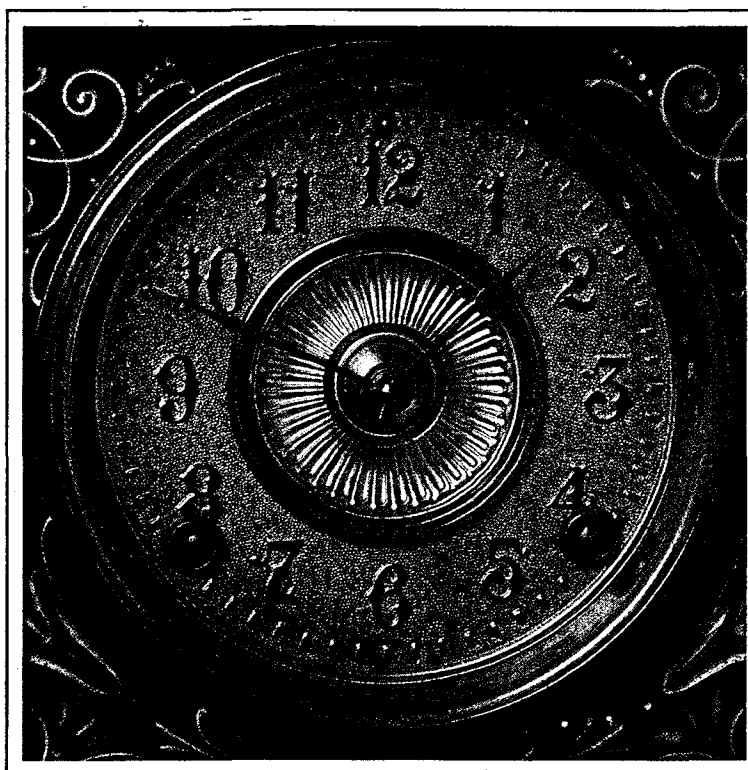
Our Private Banking Officers make it their business to know and understand the needs of our clients, providing a personalized plan to assist in achieving your financial goals.

Acting as liaison with all divisions of the bank, your Private Banking Officer affords you the convenience of

one bank, one contact. Also, a bank within a bank, our Private Banking Division offers you exclusive access to a special suite of offices, along with your own teller

to assist in conducting your banking transactions.

We are at your service anytime of the day or night; wherever and whenever you need us. In fact, we are there even when you are not. While out of town on business or vacationing abroad, your Private Banking Officer can tend to your Delaware Trust financial matters in your absence. And we respond quickly should any complex financial situations arise.



Clock courtesy of Hagley Museum and Library.

Not everyone requires this extraordinary attention and highly personalized service. If you are someone who equates time with money, contact our Private Banking Division at (302) 421-7450.

Where people make the difference



DELAWARE TRUST
Member FDIC