

of things these men said. Judge Urbom says, although the evidence of the supervisors' sexist statements and behaviors by itself does not conclusively prove that they considered the top candidates' gender in reaching their promotion decision, it makes it difficult to believe that their testimony...in their testimony that they lifted themselves above the insensitivity of their usual attitudes as they made the promotion decision. It is a twist of reason to believe that persons committed to equal opportunity would subject one group of workers, here women, to demeaning and unprofessional remarks and behavior. Then he continued. He said, the supervisor made comments to the member of my church and a correctional counsel to the effect that after she had had her baby she probably would not return to work due to maternal instincts. Concerning a tour of the facility that she gave to outside visitors, she said that the supervisor made the comment to the effect that we were real progressive here because they had pregnant women giving the tour. He attempted to pat my stomach. Then you have another comment. It says, the supervisor's reference to women's bodies, weight gaining, maternal instincts, personal lifestyles, his assigning clerical tasks to females and repeatedly calling females "the girls" after warning, indicates a discriminatory animus which relegated females to an inferior position in a professional environment. Further, it was the supervisor's preference to work with someone he was comfortable with socially, another male who was a personal friend, rather than a female whose position might threaten his discriminatory attitudes and practices. Lastly, the judge concludes that Shaw has shown...Barbara Shaw has shown by a preponderance of the evidence that the defendants intentionally discriminated against her because she is female. Intentional discrimination. What is the standard that we have for indemnification? I passed it out to you and it talks about indemnification in Section 81-8239.05. Indemnification shall occur with two exceptions. The one, subsection (2), says, shall not apply in the case of malfeasance in office. And when you...how does one define malfeasance? Well, I have a definition there from the law dictionary which says, malfeasance is the commission of some act which is positively unlawful. And I submit to you that when someone intentionally discriminates against a woman because of her sex and denies a promotion opportunity to her because of that, that is a positively unlawful thing to do, particularly in an area where they are committed to equality of opportunity, and when they do that, I don't think the state should condone it by indemnifying them in that process. There is no basis for it and if we...if we, in