FOURTEENTH AMENDMENT—DUE PROCESS, EQUAL PROTECTION AND LAW AGAINST DISCRIMINATION—MATERIAL ISSUE OF FACT AS TO WHETHER COUNTY SHERIFF ENGAGED IN DISCRIMINATORY HARASSMENT BY UTTERING ONE RACIAL EPITHET THAT WAS SUFFICIENTLY SEVERE TO CREATE A HOSTILE WORK ENVIRONMENT AND WOULD CAUSE A REASONABLE AFRICAN AMERICAN TO SUFFER SEVERE EMOTIONAL DISTRESS PRECLUDED SUMMARY JUDGMENT FOR SHERIFF—*Taylor v. Metzger*, 152 N.J. 490, 706 A.2d 685 (1998).

The New Jersey Supreme Court recently held that a rational factfinder could conclude that there was a material issue of fact as to whether a county sheriff engaged in discriminatory harassment by uttering a racial epithet that was sufficiently severe to have created a hostile work environment and that would result in severe emotional distress to an average African American, and thus, precluded summary judgment in favor of the sheriff. *Taylor v. Metzger*, 152 N.J. 490, 706 A.2d 685 (1998). In so holding, the Court reasoned that there was sufficient evidence to support a claim asserting a violation of the Law Against Discrimination ("LAD"), and intentional infliction of emotional distress. *See id.* at 508, 706 A.2d at 693. The Court found that a rational factfinder might reasonably conclude that a single racial slur by a superior to a subordinate employee could rise to the level of severity necessary to maintain a LAD claim. *See id.*, 706 A.2d at 693-94. Therefore, the Court concluded that a jury should have decided the outcome, and summary judgment was inappropriate. *See id.*, 706 A.2d at 694. Although the *Taylor* decision expands the threshold requirements of the Law Against Discrimination and the tort of intentional infliction of emotional distress, such an expansion only results in the introduction of the issues before a jury, not the expansion of the standards themselves.

Carrie Taylor, an African American female, had been employed as a Burlington County Sheriff since 1972. *See id.* at 495, 706 A.2d at 687. On January 31, 1992, Taylor was openly insulted by her supervisor, Sheriff Henry Metzger, who said "There's the jungle bunny" when referring to her in a conversation with Undersheriff Gerald Isham. *See id.* Finding the comment to be derogatory and demeaning, Taylor became quite upset and retreated to the bathroom. *See id.* Thereafter, she related her experience to her fellow officers, who were unsympathetic and exacerbated the injury by making additional comments. *See id.* at 496, 706 A.2d at 687. Taylor promptly informed the grievance committee and a meeting between the parties was arranged. *See id.*

On February 5, 1992, Taylor and two union representatives met with Metzger and Isham to demand a written apology. *See id.* Metzger, claiming that he was unaware that his comment had a derogatory connotation, chastised Taylor for interpreting the remark as a racial slur. *See id.* Despite his contentions, Metzger offered Taylor a written apology that contained a false stipulation that

Taylor was dressed in camouflage fatigues at the time of the incident. *See id.*, 706 A.2d at 688. As a result of the falsehood, Taylor refused to accept the apology. *See id.* A subsequent apology attempt was also refused because Taylor did not have her attorney present. *See id.* At the conclusion of the second meeting, Taylor disclosed the events to the media, and immediately began receiving harassing calls and hate mail. *See id.* at 496-97, 706 A.2d at 688. Taylor alleged that other sheriffs acted coldly toward her and stopped talking to her. *See id.* at 497, 706 A.2d at 688. Additionally, she was labeled a troublemaker and believed that her co-workers had been warned to stay away from her. *See id.* Taylor claims that the incident caused her emotional distress for which she needed the services of a psychiatrist. *See id.*

Taylor filed a four-part complaint in the Superior Court that alleged: (1) racial discrimination by the county sheriff in violation of the LAD; (2) intentional infliction of emotional distress by the county sheriff; (3) a prima facie tort claim against the county sheriff; and (4) violation of federal civil rights statutes by the county sheriff. *See id.* at 495, 706 A.2d at 687. The trial court granted summary judgment for the sheriff on the LAD claim and dismissed all of the remaining claims. *See id.* In dismissing the claim of intentional infliction of emotional distress, the trial court reasoned that Taylor's allegations were insufficient to permit a finding of emotional distress. *See id.* at 508, 706 A.2d at 693. Subsequently, Taylor appealed the trial court's grant of summary judgment, and the Appellate Division affirmed the judgment in an unreported decision. *See id.* at 495, 706 A.2d at 687. As a result, Taylor appealed the decision to the Supreme Court. *See id.*

The New Jersey Supreme Court granted Taylor's petition for certification. *See id.* The Court held that a material issue of fact existed as to whether the county sheriff engaged in discriminatory harassment by uttering a racial epithet that was sufficiently severe to have created a hostile working environment, and thus, precluded the award of summary judgment in favor of the sheriff. *See id.* at 508, 706 A.2d at 693. Additionally, the Court found that Taylor presented sufficient evidence to support a claim of intentional infliction of emotional distress, and thus raised questions of material facts that should have been resolved by a jury, again precluding summary judgment. *See id.* at 521, 706 A.2d at 700. Accordingly, the New Jersey Supreme Court reversed in part and remanded the case for trial in accordance with the decision. *See id.* at 523, 706 A.2d at 701.

Writing for the majority, Justice Handler first addressed whether a single derogatory racial comment could create a hostile work environment in violation of the LAD. *See id.* at 498, 706 A.2d at 688. Acknowledging that the LAD explicitly prohibits discrimination based on race, the majority articulated the standard for determining whether a violation had occurred. *See id.* (citing *Lehmann v. Toys 'R' Us, Inc.*, 132 N.J. 587 (1993)). The Court noted that a LAD allegation requires the plaintiff to demonstrate that the defendant's al-

leged conduct would not have occurred but for the plaintiff's race, and that the conduct was severe or pervasive enough to make a reasonable member of the plaintiff's race believe that the harassment had resulted in a change in the conditions of the plaintiff's employment and that the work environment had become hostile. *See id.*, 706 A.2d at 688-89 (citing *Lehmann*, 132 N.J. at 603-04). By adopting this standard, the Court rejected the alternative regular and pervasive standard that would have required repetitive acts to establish harassment. *See id.* at 499, 706 A.2d at 689.

After demonstrating that in rare and extreme cases a single incident of harassing conduct could create a hostile work environment, the Court confronted the issue of whether a rational factfinder could reasonably determine that the racial comment made by Metzger, in the presence of the Undersheriff, was sufficiently severe to have created a hostile work environment. *See id.* at 500, 706 A.2d at 689. Addressing various racial epithets, the majority surmised that racial epithets could be especially harmful and capable of causing a severe impact in the workplace. *See id.* at 502, 706 A.2d at 690. Here, the Court observed that the Sheriff's use of the phrase "jungle bunny" was patently racist and demeaning. *See id.* Additionally, Justice Handler recognized that this particular comment was made by Taylor's supervisor, thereby exacerbating the damage. *See id.* at 503, 706 A.2d at 691. As a result of the employer-employee relationship, the Justice concluded that Taylor had no recourse after the comment was made since the individual to whom such behavior should be reported was the one who perpetrated it. *See id.* at 503-05, 706 A.2d at 691-92. Therefore, the majority opined that a rational factfinder could conclude that the remark was sufficiently severe to contribute to the creation of a hostile work environment. *See id.* at 506, 706 A.2d at 692-93.

Next, Justice Handler addressed whether evidence of an actual change in working condition was necessary to create a hostile work environment. *See id.* at 505, 706 A.2d at 692. In reaching its conclusion, the Court recognized that discrimination itself was the harm that the LAD sought to eradicate. *See id.* (quoting *Lehmann*, 132 N.J. at 610). Moreover, the Court insisted that evidence of specific, tangible adverse changes in the work environment are not required in order to state a LAD racial harassment claim. *See id.* Thus, the majority articulated the appropriate standard to apply in this case: whether a reasonable African American would have found the comment severe enough to create a hostile work environment. *See id.* at 506, 706 A.2d at 692.

Although there was no need to produce evidence suggesting a change in working conditions, Justice Handler pointed to evidence that manifested an actual change in the work environment. *See id.* at 507, 706 A.2d at 693. Specifically, the Court referred to the treatment Taylor received from her co-workers immediately following the incident. *See id.* at 508, 706 A.2d at 693. Therefore, Justice Handler concluded there was a genuine issue of fact as to whether a hostile work environment existed, thereby precluding summary

judgment. *See id.*, 706 A.2d at 693-94.

The Court next addressed whether the utterance of a single derogatory racial epithet was enough to constitute the tort of intentional infliction of emotional distress. *See id.* at 509, 706 A.2d at 694. Justice Handler first articulated the standard for a cause of action for this tort: the plaintiff must establish intentional and outrageous conduct by the defendant, proximate cause, and distress that is severe. *See id.* (citing *Buckley v. Trenton Sav. Fund Soc'y*, 111 N.J. 355, 365-67 (1988)). The majority emphasized, however, that the conduct must be so outrageous and extreme as to go beyond what a civilized community considers decent. *See id.* Defying the position of other jurisdictions, the Court found that a supervisor's utterance of a racial slur to one of his subordinates could be considered extreme and outrageous conduct giving rise to an intentional infliction of emotional distress cause of action. *See id.* In so holding, Judge Handler emphasized the employer-employee relationship involved, and the severity of the comment itself. *See id.* at 511, 706 A.2d at 695. Acknowledging that questions remained regarding the actual severity of the comment and Metzger's intent, the Court concluded that summary judgment was improper. *See id.* at 513, 706 A.2d at 696.

Finally, the majority addressed Taylor's prima facie tort claim. *See id.* at 522, 706 A.2d at 700. Justice Handler remarked that prima facie tort claims are usually only permitted in limited contexts where plaintiffs have no other causes of action. *See id.*, 706 A.2d at 700-01. Hence, the Court declined to recognize a claim in prima facie tort, especially since Taylor had other causes of action at her disposal. *See id.* at 523, 706 A.2d at 701. Accordingly, Justice Handler affirmed the lower court's dismissal of that claim. *See id.*

Justice Garibaldi concurred in part and dissented in part, agreeing with the majority that dismissal of Taylor's prima facie tort claim was appropriate. *See id.* at 524, 706 A.2d at 701 (Garibaldi, J., concurring in part and dissenting in part). Justice Garibaldi diverged from the majority's opinion, however, in disagreeing with its expansion of the scope of both the LAD, and intentional infliction of emotional distress claims. *See id.*, 706 A.2d at 701-02 (Garibaldi, J., concurring in part and dissenting in part). Noting that the majority's decision on both issues ran contrary to previous holdings, Justice Garibaldi found that such expansion altered well-established evidentiary thresholds that are required in order to maintain a claim of hostile work environment or intentional infliction of emotional distress. *See id.* at 531-32, 706 A.2d at 704 (Garibaldi, J., concurring in part and dissenting in part).

First, the dissenter restated the applicable standards employed in racial discrimination cases. *See id.* at 524, 706 A.2d at 701-02 (Garibaldi, J., concurring in part and dissenting in part) (citing *Lehmann*, 132 N.J. at 606-07). Justice Garibaldi agreed with the majority that a single incident of racial harassment might be severe enough to produce a hostile work environment. *See id.*, 706 A.2d at 702 (Garibaldi, J., concurring in part and dissenting in

part). Additionally, Justice Garibaldi agreed that the fact that the derogatory racial slur was made by Taylor's supervisor should weigh heavily in the determination of whether a hostile work environment was created. *See id.* at 525, 706 A.2d at 702 (Garibaldi, J., concurring in part and dissenting in part).

Justice Garibaldi disagreed with the majority's opinion, however, by rejecting the majority's attempt to excuse Taylor's failure to prove a change in her working environment, a condition Justice Garibaldi believed to be an essential element in establishing a hostile work environment. *See id.* at 525-26, 706 A.2d at 702 (Garibaldi, J., concurring in part and dissenting in part). Additionally, the lone dissenter asserted that the majority disregarded the fact that the harasser's conduct and not the plaintiff's injury, must be severe and pervasive. *See id.* at 526, 706 A.2d at 702 (Garibaldi, J., concurring in part and dissenting in part). Here, Justice Garibaldi does not dispute that the defendant made a deplorable racial slur, or that the severity of the comment was exacerbated because the plaintiff's supervisor uttered it. *See id.*

Although offensive, Justice Garibaldi argued that the sheriff's remark was uttered only once and there were no prior incidents in the plaintiff's twenty-year career. *See id.* Moreover, Justice Garibaldi pointed out that apologies were offered, however reluctantly, and were rejected by the plaintiff. *See id.* Finally, Justice Garibaldi emphasized that there was no evidence to suggest that the plaintiff experienced adverse consequences to the terms of her employment: Taylor remained a Sheriff's officer; continued on her assigned duties unfettered; and experienced no reduction in salary or seniority. *See id.* Therefore, Justice Garibaldi concluded that Taylor failed to show that her working conditions were affected by the harassment to the point where a reasonable woman in the same situation would consider the working environment hostile. *See id.* at 527, 706 A.2d at 703 (Garibaldi, J., concurring in part and dissenting in part). Since Justice Garibaldi disagreed with the majority's adaptation of the evidentiary requirement as to a change in the work environment, combined with the fact that the plaintiff did not produce such evidence, the dissenter opined that summary judgment was appropriate. *See id.*

Next, Justice Garibaldi addressed the issue of intentional infliction of emotional distress. *See id.* Reiterating the majority's view, Justice Garibaldi opined that most jurisdictions find that a supervisor's uttering of a racial slur to a subordinate is not extreme and outrageous conduct that would justify a cause of action for intentional infliction of emotional distress. *See id.* Justice Garibaldi firmly concluded that in this jurisdiction a single racial epithet uttered by a superior would not cause severe emotional distress to an average African American of ordinary experience and sensibility. *See id.* at 528-29, 706 A.2d at 704 (Garibaldi, J., concurring in part and dissenting in part) (citing *Buckley*, 111 N.J. at 366-67). In so holding, Justice Garibaldi relied upon the plaintiff's evidence: there was a distasteful racial comment uttered by a superior; it was a single, isolated event in over twenty years of service under the same work con-

ditions; and in no way was Taylor's nervousness and fear of physical injury justified to the extent that she had experienced. *See id.* at 529, 706 A.2d at 704. Justice Garibaldi concluded that the comment, however distasteful, did no more than aggravate, annoy, and embarrass Taylor, and thus, did not rise to the level of outrageous conduct necessary to make a claim of intentional infliction of emotional distress. *See id.* at 531, 706 A.2d at 704 (Garibaldi, J., concurring in part and dissenting in part). Accordingly, the dissent concluded that summary judgment was justified. *See id.*

ANALYSIS

The decision in *Taylor v. Metzger* reflects the Court's long-standing desire to require all issues of material fact to be decided by a jury, especially when the claims arise from racial discrimination and the resultant infliction of emotional distress. Although the decision reduces the requirements necessary to claim a violation of the Law Against Discrimination and intentional infliction of emotional distress, such a reduction seems appropriate to safeguard the plaintiff's rights, and to promote fairness in general. Despite Justice Garibaldi's justifiable concerns regarding the appropriate standards, *see id.* at 532, 706 A.2d at 706 (Garibaldi, J., concurring in part and dissenting in part), her fears should be allayed by recognizing the majority's ultimate goal: assuring that plaintiffs get their day in court.

The majority did not expand the standards established in *Lehman*, for LAD claims and in *Buckley* for intentional infliction of emotional distress claims, it simply proclaimed that when there is a dispute as to whether the prongs of these standards were satisfied, the decision should be left to a jury. *See id.* at 508, 706 A.2d at 693-94. By holding that a plaintiff be judged by a panel of her peers, the majority protects the rights of the plaintiff, and establishes a limited role for the court. This is especially important since the various prongs of both standards incorporate a reasonable person analysis. Notwithstanding the fact that satisfaction of either test requires an analysis of the specific circumstances of each plaintiff, a jury is capable of extending itself through the experiences of its individual members.

Thus, the *Taylor* decision did not dispute the fact that a derogatory racial comment was made in this case. Nor was it argued that the affects of this comment were exacerbated because the plaintiff's supervisor made it. The proper standards were articulated and applied by both the majority and the dissent. There was simply a question of whether the various prongs of these standards had been satisfied. As a result, the Court decided that a jury was best situated to make this determination.

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