

STOP SEXUAL HARASSMENT NOW!

Ms.

FALL 2005

5 Ways to Make 'Em Back Off

Charlize Theron & Niki Caro
Fight for Working Women

6 Steps to Getting Paid
What You Deserve

Dr. Susan Love

**ENDING BREAST
CANCER BY 2015**

**Women
Defy Vatican**

**It's Our
Party—**

**LESLEY GORE TALKS WITH
KATHLEEN HANNA**

New Fiction

BY HARLEY JANE KOZAK

Reviewed

AMY TAN

BARBARA EHRENREICH

JOAN DIDION



**CHARLIZE
THERON**

**AS APPEARING IN THE FILM
NORTH COUNTRY**

WWW.MSMAGAZINE.COM

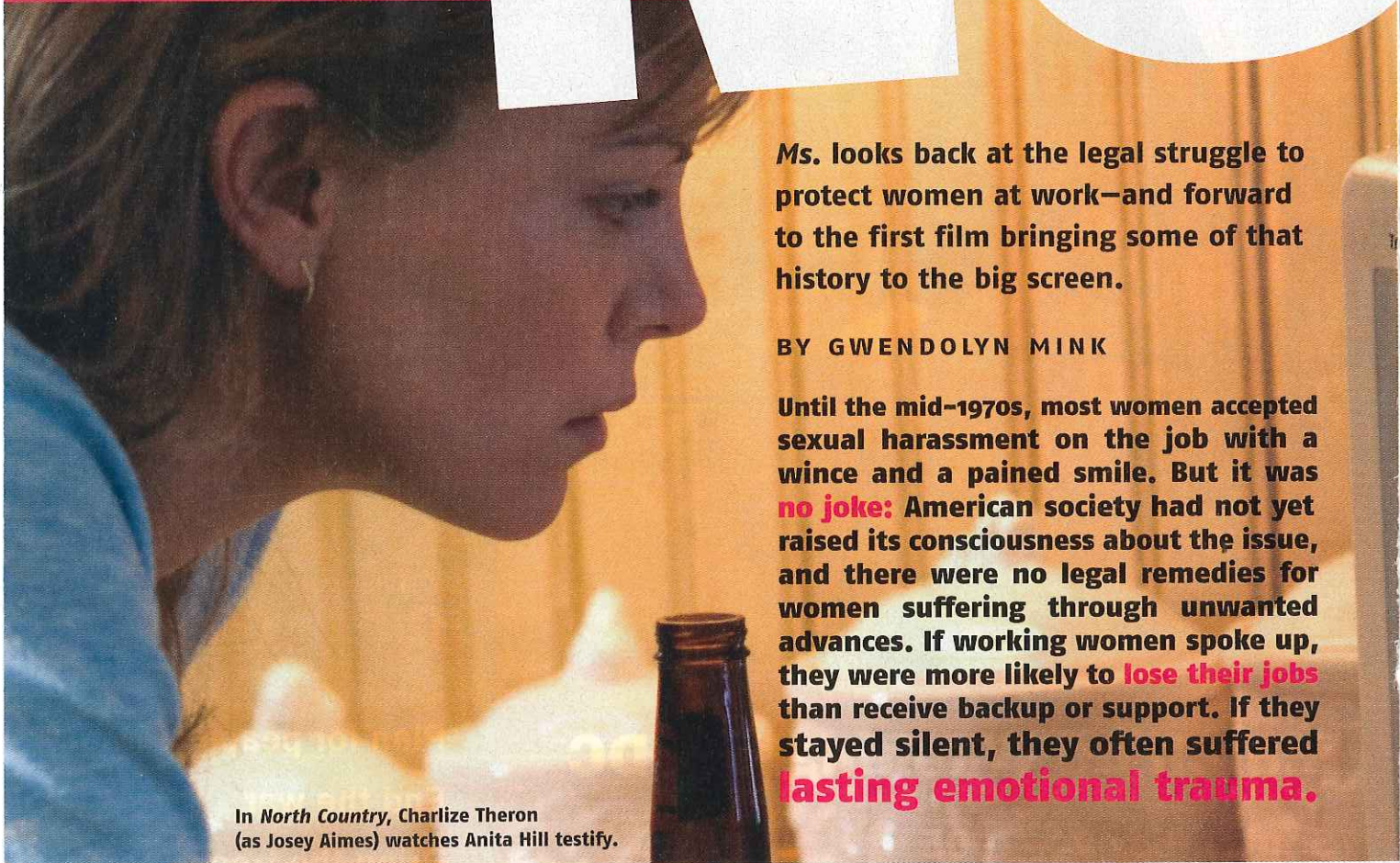
U.S. \$5.95 CANADA \$6.95



DISPLAY UNTIL DEC. 31

STOP SEXUAL

NO

A woman with dark hair, seen in profile from the side, is looking towards the right. She is wearing a light blue top. The background is a warm, yellowish-orange color, possibly a wall or a screen. A dark bottle is visible in the foreground, partially obscuring the bottom of the frame.

Ms. looks back at the legal struggle to protect women at work—and forward to the first film bringing some of that history to the big screen.

BY GWENDOLYN MINK

Until the mid-1970s, most women accepted sexual harassment on the job with a wince and a pained smile. But it was no joke: American society had not yet raised its consciousness about the issue, and there were no legal remedies for women suffering through unwanted advances. If working women spoke up, they were more likely to lose their jobs than receive backup or support. If they stayed silent, they often suffered lasting emotional trauma.

In *North Country*, Charlize Theron (as Josey Aimes) watches Anita Hill testify.

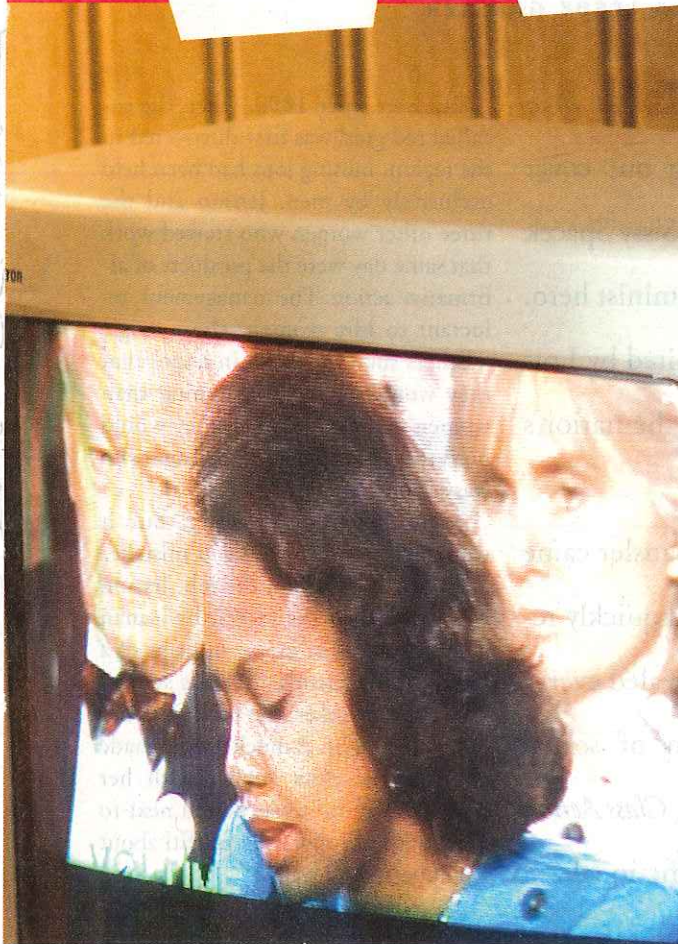
But then courageous women began to talk publicly about sexual harassment, and turned to courts for relief against this form of workplace inequality. In 1974, Paulette Barnes, whose boss at the Environmental Protection Agency had abolished her job after she rebuffed his sexual propositions, took the first sexual harassment case to court.

Barnes argued that harassment violated the ban on workplace sex discrimination in Title VII of the 1964 Civil Rights Act, but she lost her case in district court when the judge decided that what happened to her was a “personal controversy,” not discrimination. Other lower courts reached similar conclusions in cases against Bausch

and Lomb (1975), Bank of America (1976) and Public Service Electric and Gas (1976).

Finally, in 1976, a federal district court in Washington, D.C., agreed with plaintiff Diane Williams that when her supervisor humiliated, threatened and ultimately fired her for rejecting his sexual advances, he had discriminated against her based on sex. The next year, other courts—including an appellate court that overturned the lower court decision in the Paulette Barnes case—agreed that sexual harassment could be challenged under Title VII. The Barnes ruling secured a “quid pro quo” legal framework to vindicate women who had lost jobs, raises or promotions when they refused a supervisor’s sexual advances.

HARASSMENT



In 1986, that framework was expanded to include conduct that creates a “hostile environment” at work, whether or not direct economic retribution is involved. The case establishing the new framework, *Meritor Savings Bank v. Vinson*—plaintiff Mechelle Vinson had been raped by her supervisor for more than two years—was unfortunately filled with loopholes that still make sexual-harassment claims hard to prove. Not only must a plaintiff convince the court that the harassment actually occurred, she also must prove it was unwelcome, severe, or pervasive and offensive. A defendant may try to show that the plaintiff invited sexual advances by her dress or demeanor, that she overreacted to sexual pressure or hu-

miliation, or that a reasonable person would not find the harasser’s behavior offensive.

Although harassment was determined in the 1970s to be a form of sex discrimination, the question later arose in the courts whether employers are *responsible* for such discrimination. Two cases decided in 1998 determined that employers are indeed liable, under Title VII, when a supervisor harasses a subordinate—whether or not the supervisor takes official action against the employee. However, the courts also found that an employer may defend against liability if the plaintiff did not pursue the employer’s established sexual-harassment grievance procedure.

The Supreme Court enforced such a defense in the 2004 case of Nancy Suders, who quit her job with the Pennsylvania State Police to escape intolerable abuse from some of her supervisors. The Pennsylvania police avoided liability by showing that Suders had failed to use internal procedures to secure relief from harassment.

As pro-employer conservatism tightens its grip on the federal bench—and new, more conservative appointments to the Supreme Court loom—it may become more difficult to vindicate harassed workers’ claims in court. (The Court will, coincidentally, consider a harassment case in its upcoming term.) At least we can learn as individuals how to creatively stop harassers by confronting them (see page 39). And we can take inspiration from the Minnesota miners who successfully brought the first class-action sexual-harassment lawsuit, *Jenson v. Eveleth*, which is now the subject of a new film by director Niki Caro (*Whale Rider*), starring Charlize Theron (see pages 38 and 41). Beyond that, we must work to fight the confirmation of judges insensitive to women’s rights. And we must continue in the footsteps of women like Barnes, Williams, Vinson and Jenson, speaking out against the injustice of sexual harassment and having the guts to bring the lawbreakers to court. **Ms.**

GWENDOLYN MINK is Charles N. Clark Professor of Women’s Studies at Smith College and is author of *Hostile Environment: The Political Betrayal of Sexually Harassed Women and Welfare’s End* (Cornell University Press, 2000 & 2002).

TOUGH AS IRON

How the courageous women depicted in *North Country* made legal history—and helped protect all of us against sexual harassment.

BY CLARA BINGHAM AND LAURA LEEDY GANSLER

In the subversive tradition of *Norma Rae*, *Silkwood* and *Erin Brockovich*, the new film *North Country*—starring our cover woman, Charlize Theron, Frances McDormand and Sissy Spacek—tells the stirring tale of a real-life, working-class feminist hero. In this case, Theron's character, Josey Aimes, is inspired by Lois Jenson, the pioneering Minnesota miner who led the nation's first class-action lawsuit against sexual harassment.

Writers Clara Bingham and Laura Leedy Gansler came upon the case of *Jenson v. Eveleth Mines* in 1998, and quickly realized that the little-known 10-year legal battle “revealed everything we wanted to know about the evolution of sexual harassment law.” So they wrote a book about the suit, *Class Action* (Doubleday, 2002), which serves as the basis for the fictionalized *North Country*, directed by Niki Caro, a *Ms.* Woman of the Year in 2003. Here, the writers remember the actual struggle of the group of determined female miners who helped secure women's legal right to a safe workplace.

IT WAS A SNOWY MARCH DAY IN 1975 WHEN LOIS JENSON, A SINGLE mother living on welfare, began work as one of the first female laborers at Eveleth Mines in Minnesota's remote Iron Range. Jobs in the taconite (a low-grade iron ore) mines were coveted because they were the only high-paying positions in the region. They were unionized, provided benefits and paid three to five times more than working in a store, waitressing or teaching.

But ever since 1890, when the so-called red gold was first discovered in the region, mining jobs had been held exclusively by men. Jenson and the three other women who started work that same day were the products of affirmative action. The management, reluctant to hire women, chose single mothers such as Jenson in hopes that they would be less threatening than women without children; they would need the job as much as any man who was supporting a family.

Management was wrong, but it would take years to realize its mistake.

In her first year on the job, Jenson was grabbed in the crotch by a man with a handful of grease in front of a group of his friends. She was stalked by a male coworker who broke into her house one night. A mock vagina made of industrial pink rubber with her name drawn on it was placed next to her work station. Crude graffiti about her appeared on walls.

For novice miner Kathy Anderson, a single mother of three who drove large trucks in the vast craters where taconite was strip-mined, the treatment wasn't much better. There were no bathrooms nearby, and men just relieved themselves outside their trucks. When Anderson asked for a Porta Potty, her request was returned with taunts from her coworkers and a refusal by her foreman. She tried to avoid needing a bathroom and stopped drinking water, even on hot days, which led to severe kidney infections. On the days Anderson had her period, she would walk off the job with her pants soaked in blood.

Miner Judy Jarvela, a mother of three whose husband was disabled and unable to work, opened her locker at the mine and found semen on her clothes. The third time it happened she complained to her foreman, but no one was disciplined.

As other women joined the workforce, they too were stalked, pinched, grabbed, flashed and propositioned. The abuse, they all assumed, came with the territory and was the price they had to pay for high union wages. But fearful for their safety, some women armed themselves—a knife in a lunch box, a small gun in a bra. Outside work, the women were shunned, called “mining whores” by miners’ wives who were fearful of women working with their husbands. Some of the women’s children were teased and bullied at school.

By 1984, Jenson, an avid reader of newspapers and magazines, realized that what was happening to her and her female coworkers was illegal. When her boss—who had written her long love letters—eliminated her job because she would not return his affection, she finally filed formal complaints about the harassment first with the union and then with the Minnesota Department of Human Rights. When that tack proved a dead end, Jenson then picked up the Yellow Pages and called 50 lawyers.

On August 15, 1988, Minneapolis lawyer Paul Sprenger, who had a successful record of litigating employment civil rights cases, filed *Lois E. Jenson and Patricia S. Kosmach v. Eveleth Taconite Co.*, asking the U.S. District Court to certify the case as a class action. Sprenger knew it would be much harder to discredit a *group* of women than just one or two.

Until that day, there had never been a sexual-harassment class action. Only two years had passed since the Supreme

Stop Right There!

Here's an anti-harassment tool kit that really works.

BY MARTY LANGELAN

Strong legal remedies against sexual harassment in the workplace are essential but, as Lois Jenson and her sister miners in Minnesota learned, achieving justice under the law can be a long, frustrating process. So feminists have also developed powerful, precise “nonviolent confrontation” tactics to deal with harassers.

A clear, principled confrontation surprises the harasser and throws him off balance. Most harassers fold immediately; some will even apologize. Just remember to stay calm (no insults, sarcasm, cursing or yelling), stand tall, make eye contact and use a matter-of-fact voice. Don't smile or undermine your message with verbal fluff and padding. Keep your statement brief, honest, serious and specific. You're simply defending a basic human right: the freedom to work without sexual abuse.

Here are a few of the most effective confrontation tools:

- **Name the behavior.** Describe out loud exactly what the harasser is doing, stating the behavior, the principle and a direct command: “You are exposing yourself. This is about respect. Put that penis back in your pants right now.”
- **Interrupt harassers with this all-purpose statement:** In an almost bored voice say, “Stop harassing women. I don't like it—no one likes it. Show some respect.”
- **Make an A-B-C statement** (or write a short A-B-C letter). “When you do A, the effect is B, and I want C from now on.” For example, “When you stare at women's breasts, it's obvious to everyone in the room. Look us in the face from now on.”
- **Jot it down.** To unnerve a repeat harasser, whip out a notebook and write down what he says or does as he's standing there. Keep a copy in a safe place for documentation.
- **Ask a Socratic question.** “That's so interesting—can you explain why you think you can put your hand on my leg?” The more idiotic the action, the more impossible it will be for him to explain.
- **Put up a “stop sign.”** Put your hands in front of your chest, palms facing out, look the harasser in the eye and say, “Stop right there.”
- **Stick to your own agenda.** Don't get tangled in what the harasser says; like a broken record, just repeat, “You heard me. Show some respect.”
- **Organize a consistent group action** to confront persistent harassers and groups of harassers. Working with coworkers or others, decide as a group to say exactly the same line every time harassment occurs: “Stop harassing women. No one likes it.”
- **Find unexpected allies.** The good guys have been silent way too long. Ask the harasser's buddies to tell him they don't like what he's doing.
- **Be an ally yourself.** Speak up even when you're not the target; you may have more safety or job security than the one being harassed. Intervene to stop racism, gay-bashing, male-bashing and other types of bigotry. Speak on your own account: “I don't want to hear that.”

Marty Langelan is author of *Back Off: How to Confront and Stop Sexual Harassment and Harassers (Fireside/Simon & Schuster, 1993)*. Past president of the D.C. Rape Crisis Center, she provides training, consulting and research on harassment, assault, self-defense and violence-intervention strategies.



Niki Caro (left) directs Charlize Theron in a *North Country* scene.

Court held, in *Meritor v. Vinson*, that sexual harassment in general, and a hostile work environment in particular, could constitute sex discrimination under Title VII of the Civil Rights Act. The prevailing wisdom was that sexual harassment was too individual, too “he-said, she-said,” to be brought as a class action. But Sprenger realized that without a provision for class-action suits, the law would lack teeth.

On December 16, 1991, two months after Anita Hill took the stand in front of the Senate Judiciary Committee and testified that she’d been sexually harassed by Supreme Court justice nominee Clarence Thomas, the district court handed Sprenger a landmark victory: The judge ruled that *Jenson v. Eveleth* could be litigated as a class action. Corporate America immediately took notice, and companies began adopting sexual-harassment policies in an effort to insulate themselves from liability.

The next step in the *Jenson* case was to establish whether Eveleth Mines maintained a hostile work environment in violation of Title VII. That trial, which lasted six weeks, ended in a second major victory for the miners, the court finding that Eveleth Mines maintained a work environment that

was egregiously hostile to women.

But the case was still not over. For the plaintiffs, the worst was yet to come.

The women had already been treated in their local community as pariahs because they had dared sue the best-paying employer in town. Now, Eveleth Mines lawyers undertook a classic “nuts and sluts” defense to avoid paying a high settlement to the women. They tried to prove that either the women were so morally loose that they did not mind the harassment, or that they had been so emotionally and mentally damaged from experiences outside the workplace—many of the plaintiffs, in fact, had been subject to domestic violence and other tragedies—that the harassment did not count.

For the next two and a half years, the women were subjected to intrusive and burdensome discovery, required to produce every medical record since birth and list every visit to the dentist, psychiatrist and even gynecologist. Then they were cross-examined about those records and the rest of their intimate lives. One woman said she left the stand feeling as if she had been raped.

After this aggressive invasion of privacy, the court-appointed “special master” assigned to calculate damages

dismissed the women as “histrionic” and “[unable] to get along with others” and resolved all factual disputes in favor of the accused men. In a deeply contemptuous opinion, he gratuitously referred to one woman as fat and called another’s mother promiscuous. Worst of all, he cruelly revealed the irrelevant fact that one woman’s son was the product of a rape—a closely guarded secret that even the mine’s lawyers had agreed to keep confidential.

But the women still would not give up. They appealed the decision to the 8th Circuit Court of Appeals, which rejected the lower court’s obviously biased assessment of damages. It was a stunning opinion, and one that has helped protect women who bring charges of sexual harassment from being put on trial themselves, much as rape victims have been in the past.

And still, the case wasn’t done: It had to go to a jury for a new damages hearing. But by December 1998, the women were finally exhausted by their ordeal. On the eve of what would have been their fourth trial, they agreed to settle for \$3.5 million—and a promise from Eveleth Mines to make a serious commitment to reform.

The *Jenson* case, a historic milestone in the struggle for gender equality in the workplace, highlights the continued relevance of sexual-harassment law to working women in America. We’re glad to see it on the screen in *North Country*, where millions will become aware of the courage of female miners and the devastating effects sexual harassment can have on women’s personal and financial security. We believe the legal case—and now the film—serves as a powerful rebuttal to anyone who belittles the impact of sexual harassment or fails to realize how protections against this form of workplace abuse help secure economic freedom for the workers who need it most. **MS.**

CLARA BINGHAM is also the author of *Women on the Hill: Challenging the Culture of Congress* (Crown, 1996). LAURA LEEDY GANSLER is a lawyer and writer living in Chevy Chase, Md.

"YOU JUST HAVE TO BE HUMAN"

Charlize Theron talks with *North Country* director Niki Caro about sexual harassment and heroic women.

NIKI CARO: *So Ms. magazine would like to know why you chose this role out of all the roles that you were offered after winning the Academy Award.*

CHARLIZE THERON: I thought it was a story that needed to be told. I guess it was the same kind of response I had with *Monster* [the film about serial murderer Aileen Wuornos for which Theron garnered her Best Actress Oscar], where I read it and went, This is a story I need to tell. Because a lot of times I read scripts and think, Why even bother?

And personally, I felt very connected to [my character Josey Aimes'] struggle and to the fact that she will do anything for her kids. It reminded me a lot of the way women are in South Africa: Women stand up everywhere, women survive, and women do what they have to do to get through the day. That's what you do in northern Minnesota, and that's just how women are in South Africa. I love that [Josey] is heroic without trying to be heroic.

NC: *You recognize this coming from South Africa and I recognize it coming from New Zealand and we both recognize it in northern Minnesota. Why is it, then, so rare to see this sort of character in Hollywood movies?*

CT: Because there's a lack of understanding and empathy for what society really is all about. When I played Aileen, everybody was like, "She's a prostitute, she killed people, therefore she's a bad person." There was so little willingness to really understand the internal process of a person like that.

NC: *Have you ever experienced sexual harassment?*

CT: I haven't. People assume you choose roles very close to your own personal life. But while I haven't been personally sexually harassed, I care about the issue passionately. I worked on the first anti-

rape campaign in South Africa 10 years ago. The campaign—commercial spots on TV—was very hard-hitting, basically saying that this is what's really happening out there and if you don't talk about it, and if you don't stand up when you know somebody's being hurt, then you're not a human being. When I did that, everyone assumed that I must have been raped. That's so funny to me, because you don't have to have been raped—you just have to be human.

NC: *One of the things that I'm surprised about in the making of this film is how many people have an experience with sexual harassment—male and female. Everybody knows what it is. They've either experienced it or they've witnessed it and nobody's ever made a film about it. It's a very interesting film to make for that reason, because nobody talks about it and we're talking about it.*

CT: It is interesting, isn't it? I mean even today, if something like that happens to you, you don't even tell your friends about it until you know them really well. Spending time with those women [in northern Minnesota], I really got a true understanding of how tremendously hard it is to survive something like that successfully, where it doesn't control every aspect of your life anymore. They were so incredibly unsentimental about it.

NC: *I think people from remote places, people from harsh landscapes, people who work in tough environments, tend to have amazing senses of humor because they've just got to. It's what gets them through.*

CT: I know. And I look at those women and so much about them reminds me of my mother. I mean, we might not all be from the same place, but we for sure share the same qualities. **MS.**

A "Participant" against violence

Most Hollywood film companies primarily watch the bottom line, but Participant Productions—producer of *North Country*—keeps its eye on a "double bottom line."

"We want to make films that are commercially viable and socially relevant," says Meredith Blake, Participant's senior vice president for corporate and community affairs. Her job is to build social awareness around each film produced by the company, which was founded in 2004 by eBay cofounder-turned-philanthropist Jeff Skoll. For *North Country*, Participant's first feature film, that means a Stand Up campaign, in partnership with NOW, Family Violence Prevention Fund and Feminist Majority Foundation (publisher of *Ms.*).

The campaign hopes to raise awareness of sexual harassment and domestic violence, encouraging people to "stand up and make a difference."

Specifically, moviegoers will be urged to become active at the local or national level on issues of fair workplace practices, and to speak up in support of reauthorizing the 11-year-old federal Violence Against Women Act (VAWA).

VAWA 2005 will provide \$794 million a year for five years to combat domestic violence, sexual assault and stalking. The reauthorization will expand existing services funded by the landmark act (rape crisis centers, domestic-violence shelters, law-enforcement training and other community assistance programs) to include housing support and employment protection.

For more information, visit www.participantproductions.com.

—AISLINN EMIRZIAN