

*Orphans Court - Jurisdiction - Corporation Not-for-Profit Code - College Closing - Cy Pres Doctrine - Gross Abuse of Authority and Discretion*

1. Section 7549(b) of the Corporation Not-for-Profit Code, Act of November 15, 1972, P.L. 1063, 15 Pa. C.S.A. Sect. 7549(b) requires that the trustees of a non-profit corporation seek Orphans Court approval before changing the nature of the institution.

2. Due to the uniqueness of a college and the problems peculiar to the continuing viability of such an ongoing institution, a governing body may not implement any decision to terminate it unless and until court approval has been secured.

3. The trustees of a charitable trust or a non-profit corporation may not divest trust or corporate assets to purposes other than those provided by the settlor of a trust or the charter of a non-profit corporation unless and until the fulfillment of its charitable purposes has become impossible or impractical.

4. The failure of a College President to implement and provide leadership in furthering recommendations made by professional consultants to strengthen the programs of the college and to delegate authority to the college's administrative staff, coupled with the failure of the President to promptly and regularly share with the Board of Trustees, administrative staff, faculty, student body and alumnae the severe problems of the college as they were developing constituted a gross abuse of authority and discretion under section 7726(c) of the Not-for-Profit Corporation Code.

5. The governing body of a college, operating as a non-profit corporation, before implementing any decision to terminate, must, in addition to securing court approval, allow the public, represented by the Attorney General as parens patriae, an opportunity to comment upon or protest the decision.

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ADJUDICATION AND DECREE NISI

KELLER, J., May 25, 1979:

On March 27, 1979, counsel for the petitioners, in the presence of counsel for respondents, hereinafter TRUSTEES, presented a petition for a citation to issue to the respondents-trustees of Wilson College, hereinafter COLLEGE, to appear and show cause why they should not be removed immediately as trustees; successor trustees appointed, the Court thereafter to exercise its supervisory powers over the administration of the College in conjunction with the new trustees; that they be permanently enjoined from implementing the closing of the College; and further relief including the awarding of counsel fees and costs of suit to petitioners be granted. The petitioners also sought an injunction pendente lite to restrain further action implementing the closing of the College to prevent waste. This Court declined to grant the preliminary injunction prayed for by the petitioners. A decree was entered the same date directing the issuance of the citations to the Trustees and setting May 7, 1979, at 9:30 A.M. as the date they were returnable and for hearing on the matter. On the same date a pretrial conference was scheduled for 1:30 P.M. on April 30, 1979. On April 5, 1979, J. Thomas Menaker, Esq., of McNees, Wallace & Nurick advised the Court that he was entering a general appearance on behalf of the properly served respondents. On April 30, 1979, the properly served respondents' answer containing new matter and objections was filed. On the same date Bartholomew DeLuca, Jr., Deputy Attorney General, entered an appearance on behalf of the Commonwealth of Pennsylvania, Department of Justice.

On April 30, 1979, at 1:30 P.M. the Court met with counsel for the parties and the Deputy Attorney General for a prolonged in depth pretrial conference. Pursuant to the Court's request, counsel for the parties submitted extensive memoranda of law on disputed issues, and the Deputy Attorney General submitted a memorandum limited to the issues of jurisdiction of the Court, the Court's supervisory authority, and whether trustees of a non-profit corporation must secure Orphans' Court approval before implementing their decision to end or fundamentally alter the said corporation.

On May 1, 1979, counsel for petitioners presented their motion to amend the original petition to include an allegation that Wilson College be made a party, and that the College be joined as a necessary or indispensable party to the proceeding. On the same date an Order was entered granting petitioners leave to amend, and joining the College as a party.

This matter was heard from May 7, 1979 through May 11, 1979, and is ripe for disposition.

Parenthetically, we note that in the disposition of this case time is of the essence due to the trustees public announcement of February 19, 1979 that the College will cease operations as a college at the end of the current "academic year", which is a somewhat ambiguous expression due to the fact that the College's graduation is scheduled for May 27, 1979, all classes presumably end about the end of May, and the fiscal year ends June 30, 1979. From testimony received it appears the trustees now consider June 30, 1979 as the closing date. To expedite this disposition, we will limit this adjudication to the Findings of Fact, a very abbreviated Discussion, Conclusions of law and a Decree Nisi similar to the procedure followed on the equity side. The parties may then file such exceptions as they deem necessary and appropriate, and the Court will, after argument, file a full and complete opinion.

#### FINDINGS OF FACT

1. Wilson College was incorporated by the Legislature of the Commonwealth of Pennsylvania by Act No. 481 of the Session of 1869, and the Act was approved by Governor Geary on March 24, 1869. Section 1 of the Act provided after identification of the incorporator that they "are hereby constituted a body politic corporate, by the name of Wilson Female College, to be located in Franklin County, near the Borough of Chambersburg;..." The Act further provides inter alia:

"Section 2. The object and purpose of said corporation are hereby declared to be to promote the education of young women in literature, science and the arts.

"Section 3. The college may grant the students under its charge diplomas or honorary testimonials, in such form as it may designate; it may also grant and confer such honors, degrees and diplomas as are granted by any university, college or seminary of learning in the United States."

2. Through various amendments of the corporate charter approved by this Court over the years and filed of record with the Corporation Bureau, Department of State, Commonwealth of Pennsylvania under the Non-Profit Corporation Law, the name of the College was changed to Wilson College, the composition of the Board was changed, and Section 2, supra, was broadened to include men, inter alia.

3. It was the intention of the incorporators and the Legislature of this Commonwealth to establish an institution of higher learning as a teaching institution. None of the amendments to the charter altered or modified that intent.

4. Wilson College is located on and owns real estate in the Borough of Chambersburg and Greene Township, Franklin County, Pennsylvania; its registered office is located on Philadelphia Avenue in the Borough of Chambersburg, Franklin County, Pennsylvania.

5. The petitioner, Jean Colgan Zehner, is an adult individual and a member of the Board of Trustees of the College since November 1971. From the reports of the President of the College and the Development Office concerning finances and admissions to a November 3, 1978 Committee meeting, and as ascertained from the minutes of the November 4, 1978 Board meeting, she felt the outlook of the College was very positive. Prior to the February 3, 1979 Trustees' meeting, she had no knowledge or notice that the College was experiencing significant financial problems, and its survival was in jeopardy. She was aware of the fact that the Board of trustees had authorized invasion of the endowment fund to balance budget deficits over the past 6 years.

6. At the February 3, 1979 Trustees' meeting, petitioner Zehner learned that the admissions program had been unsuccessful, and the College had not secured the student enrollment projected at the November Board meeting, and the fund-raising drive had not raised the funds necessary to cover operating costs. The report caused grave concern among all of the Trustees. The Board directed that a panel of experts be consulted and their recommendation secured for a special meeting to be held February 17, 1979. She did not attend the February 17th meeting because she was out of the country and, therefore, did not vote for or against the decision to close the College.

7. The petitioner Zehner had at some prior time recommended to the Board alterations in the College curriculum to include career oriented courses, and she was laughed at and accused of wanting to start a "trade school".

8. The petitioner, Karen Devey, is an adult individual residing in Moravian Academy, Bethlehem, Pennsylvania and she is a senior at the College.

9. The petitioner, Gretchen VanNess, is an adult individual residing at 221 Edgerton Street, Rochester, New

York, and is a member of the junior class at the College. She expected to graduate in the Class of 1980 and receive a Wilson College degree if she paid her tuition and completed all of the prerequisites for graduation. She was aware of the College problems, but from reports received believed new programs were to be brought into the curriculum and things were going to be much better. The President of the College advised her twenty-five minutes before the all-campus meeting on the proposed closing, and that came as a surprise to her. She holds a class office and participates in many extra-curricular activities.

10. Petitioner VanNess and her family pay approximately one-quarter of her total tuition and fees, and the balance is received through student loans, scholarships, grant and a work-study program. She was never asked for a tuition increase to save the College, and would be willing to pay \$2,000.00 additional tuition.

11. Petitioner VanNess has applied to Dickinson College, William and Mary College, and Smith College but has not been accepted by any of the colleges. She understands she is guaranteed admission to Dickinson College as a member of the consortium. She does not believe she could successfully get involved in extra-curricular activities at a new school in her senior year.

12. Petitioner VanNess testified that she would continue to attend the College if it were kept open, even if the student body would necessarily be very small and she believed many of the present student body would do likewise.

13. Petitioner VanNess has not paid any tuition or fee to the College beyond the academic year 1978-79.

14. Petitioner Susan Nussbaum is an adult individual residing at 380 Carol Drive, Massapequa Park, New York and she is a sophomore at the College. She has paid tuition and fees only for this academic year and she expected when she enrolled at the College to graduate in 1981 if she fulfilled all requirements. She learned of the intended closing of the College on February 19, 1979, and it was a surprise. She is involved in extra-curricular activities and does not believe she would be able to so participate on a transfer to another College because she could not recoup her loss.

15. Petitioner Nussbaum was never asked to pay more tuition and is willing to pay approximately \$1,500.00 more per year, which is what she would be required to pay if she transfers to Franklin & Marshall College.

16. Petitioner Nussbaum's parents pay 75% of her tuition and fees, and she pays the balance. No other fees or tuition have been requested or paid beyond the current semester of the College.

17. Petitioner Laurel Bauer is an adult individual residing at 9 Candlestick Park Court, Dix Hills, New York, and she is a freshman student at the College commencing September 1978. She expected to receive a Wilson degree if she completed all requirements and paid all tuition and fees. She first learned of the proposed closing of the College on February 19, 1979, at the all-campus meeting and it was a complete surprise to her. She had not been informed the College was on the verge of closing. No one had asked for more tuition. She would return to the College if it remains open, and would pay up to \$1,500.00 more tuition because that is what she would pay at Wells College if she would be admitted, but where she cannot get a major in biochemistry.

18. Petitioner Bauer's parents pay her tuition and fees, and none have been paid beyond the current academic semester at the College.

19. Petitioner Merry Hope Meloy was on January 15, 1979, notified of her acceptance to the freshman class expected to matriculate at the College in September 1979. Petitioner Meloy did not as of February 23, 1979, tender the \$100.00 deposit required to secure a place in that class (the last due deposit was May 1, 1979). On February 23, 1979, she was notified that the offer of admission was rescinded because the College would close on June 30, 1979.

20. Petitioner David Platt is an adult individual residing in the Borough of Chambersburg, Penna., and he has been a member of the faculty of the College and a Professor of Philosophy for 23 years enjoying tenure. He learned on February 19, 1979, of the plan to close the College, and it came as a complete surprise because there had been no notice that the College was on the verge of closing. There had been no discussion that the faculty accept salary cuts since 1973 or 1974 during the Dennis administration, and no such request in 1978 or 1979. Faculty salary increases were granted during the last three years. He testified to his willingness to take a substantial salary cut in the thousands of dollars if the College was under different management and it appeared that it would be a viable institution. He never previously volunteered to take a salary cut.

21. Petitioner Platt testified to various course changes

with no major or substantial changes in curriculum in the last 2 or 3 years.

22. Petitioner Isabel W. Fulton is an adult individual residing in Pittsburgh, Pennsylvania. She is an alumna of the College and has contributed over \$10,000.00 to the College in the last 50 years. In the two preceding years, she made contributions to the College and expected that they would be used for education of young women at the College. On February 3 or 4, 1979, she received a note from the Development Office of the College indicating her pledge was due and she immediately mailed it.

23. Petitioner Fulton is now engaged in raising money to continue the College as a teaching institution. She has no knowledge that her prior donations were not used to educate young women.

24. Petitioner Mrs. J. McLain King is an adult individual who resides in Carlisle, Pennsylvania. She is an alumna of Wilson College and a past member of the Board of Trustees. She has contributed regularly to the College and in the last 3 years has contributed in excess of \$2,000.00 per year either directly or via L. B. Smith Foundation, which adds 25% to the personal donation.

25. Petitioner King served as a member of the Board of Trustees for over 20 years, and was aware the College had severe admissions and financial problems from 1970 until 1976, when she retired from the Board. She was aware of the "Moon Report", but did not feel that the College was on the brink of closing. She was led to believe the College would continue in operation by President Waggoner who in a personal conversation in October or November 1978 stated to the petitioner that, "We have turned the corner."

26. Petitioner King did not believe her contribution was not used for the education of Wilson College women.

27. The contributions of petitioners Fulton and King to the College were unrestricted.

28. Petitioner Nancy Besch is an adult individual residing in Camp Hill, Pennsylvania. She is an alumna of the College, who is actively involved as one of the Trustees of the "Preservation of Wilson College Trust", which was announced to alumnae on March 20, 1979.

29. No evidence was introduced that petitioner Besch's

reputation, economic interest, and standing would be adversely affected by the closing of the College.

30. The following Respondents and Trustees were personally served:

William H. Alexander  
Mrs. Alfred K. Blackadar  
Robert S. Damerjian  
Mrs. Paul R. Diely  
Mrs. William H. Work  
Mary Patterson McPherson  
Sidney M. Palmer  
Margaret Waggoner, President  
Mrs. Martha B. Walker  
Mrs. Charles O. Wood, III

31. The following Respondents and Trustees were served by certified mail:

Pauline M. Austin  
Alice L. Beeman  
Elethea H. Caldwell  
Mrs. William M. E. Clarkson  
Howard O. Colgan, Jr.  
John H. Culbertson  
Richard R. Hough  
Stanley Stillman  
Mrs. Edward C. Sweeney

32. J. Thomas Menaker, Esq., of McNees, Wallace & Nurick stated to counsel for the petitioners and to the Court that he was authorized and would accept service on behalf of his wife, Bonnie Douglass Menaker, an individual respondent and Trustee. It appears Mr. Menaker inadvertently neglected to accept service as he had stated.

33. Individual respondents and Trustees, Patricia Hicks Hartman and Mrs. Paul J. Thomas, did not claim the certified mail pieces addressed to them enclosing true copies of the petition and citation and preliminary decree despite post office notices to them to pick up the certified mail pieces. The unopened envelopes were returned to counsel for the petitioners. Respondent and Trustee Hartman refused to accept the certified mail piece when hand-delivered to her.

34. Respondent and Trustee Jane R. Stewart was neither served personally nor by certified mail.

35. The Trustees admitted that on or about February 17,

#### NOTICE

The Journal is happy to announce that, because of continued fiscal success due to the support of our subscribers and commercial advertisers, the rates for legal notice advertising will be reduced five (5%) percent, for all notices charged by the line, effective with the first issue in July, 1979. This will not affect fictitious name ads, executor's and administrator's notices, nor Clerk's account notices.

MANAGING EDITOR

1979, in Philadelphia, Penna., a majority of the Board of Trustees of the said College voted to adopt a resolution to close the College permanently as of June 30, 1979.

36. The Trustees admitted that on or about February 19, 1979, the resolution referred to in Finding of Fact No. 35 was publicly announced.

37. The Trustees admitted on April 30, 1979, that implementation of the decision referred to in Findings of Fact Nos. 35 and 36 had been commenced, and the process of attempted relocation of faculty, students, and prospective students was underway, inter alia.

38. The Trustees admitted no amendment to the Articles of Incorporation of the said non-profit corporation (College) have been filed with the Corporation Bureau purporting to authorize the said termination of the College pursuant to Chapter 79 of Title 15 of the Pennsylvania Consolidated Statutes, Act of November 15, 1972, P.L. , No. 271, 15 Pa. C.S. Sections 7901-90 (1978-79 Supp.) provisions respecting fundamental change of non-profit corporation.

39. The Trustees admitted no court order pursuant to Sect. 7549 of the Non-Profit Corporation Law of 1972, Act of November 15, 1972, P.L. , No. 271, 15 Pa. C.S. Sect. 7549 has been obtained authorizing a diversion of property committed to charitable purposes from the objects to which it was donated, granted, or devised, with respect to the said College in the aforesaid actions of the Board of Trustees.

41. The Trustees deny that it was necessary as of April 30, 1979, to amend the Articles of Incorporation of the said non-profit corporation (College); secure a court order pursuant to Sect. 7549 of the Non-Profit Corporation Law; or institute any cy pres proceeding of any type.

40. The Trustees admitted that no cy pres proceeding of any type has been instituted as of April 30, 1979, with respect to the said College in the aforesaid actions of the Board of Trustees.

41. The Trustees deny that it was necessary as of April 30, 1979, to amend the Articles of Incorporation of the said non-profit corporation (College); secure a court order pursuant to Sect. 7549 of the Non-Profit Corporation Law; or institute any cy pres proceeding of any type.

42. Judicial notice is taken of the filing on May 4, 1979 of the petition of Martha B. Walker, Chairman of the Board of Trustees of Wilson College, seeking judicial approval of the intended sale of corporate assets and a decree that such sale or lease did not divert property committed to charitable purposes from the object to which it was donated; or in the alternative enter a decree that all of Wilson College's remaining assets continue in the same corporation operating as the Wilson College Foundation. Judicial notice is also taken of the order entered May 7, 1979, upon consideration of the said petition that a hearing on the matters raised by the petition be held July 2, 1979, at 9:30 o'clock A.M.

43. As of April 30, 1979, the Trustees admitted that by reason of the need for confidence in the continued existence of a college in order to sustain the interest of prospective applicants, donors, students, faculty and administration, the aforesaid actions of the Board of Trustees have caused irreparable harm to the said institution and, if continued, will cause further irreparable harm, threatening the ability of the College to survive.

44. The Trustees deny the existence of "supervisory powers" in the Court to conclude that the actions of the Trustees were improper.

45. The Trustees admitted that the Board of Trustees failed to sufficiently implement a November 2, 1974, report prepared for the Trustees and President of Wilson College by the Academy for Educational Development, Inc., entitled "Survival for Wilson College: The Time for Stewardship and Sacrifice" (Moon Report).

46. It is alleged that the Wilson College Board of Trustees had no obligation to implement any portion or all of the alleged report.

#### ADMISSIONS - ATTRITION - THE ADMISSIONS OFFICE

47. All evidence presented established a declining rate of admissions coupled with an escalating attrition rate as a continuing basic problem in maintaining a student body of adequate size at Wilson College. The largest entering class of 252 students occurred in 1965, and 138 of those who entered graduated. Each year thereafter the number of entering students decreased, and the percentage of students withdrawing increased, except in the graduating classes of 1970, 1974, 1975, 1976 and 1978.

48. Entering classes in 1975, 1976, 1977 and 1978 had enrollments of 92 students, 39 students, 62 students and 55 students and a student withdrawal rate in the same years of 52%, 15%, 42%, and 4% as of December 1978.

49. The College could without substantial renovations of existing facilities handle a student body of 650. Opinions as to an optimum student body ranged from 500 to 650. On February 1, 1979, there were 214 students, including 12 full-time day students and 19 part-time day students.

50. A student body of adequate size is an absolute necessity to the continuing viability of any college or university, not only because it provides necessary funding through tuition and fees, but also because:

- (a) It justifies a competent faculty of adequate size to provide adequate coverage of fields.
- (b) It permits maintenance of a reasonable and realistic student-faculty ratio.
- (c) It assures a diversity of students to permit peer interaction and social experiences.
- (d) It permits more and better extra-curricular activities.

51. In August 1975, there were 48 or 49 full-time faculty members, and a few part-time members. In 1979, there were 42 full-time members and 8 part-time. The 5 to 1 student-faculty ratio was described as high and unsupportable, and luxurious. The normal ratio for a small private woman's college is 10 or 12 students per faculty member.

52. The drop from 92 entering students in 1975 to 39 entering students in 1976 was attributed to the resignation of President Cole, various internal problems, and the circulation of reports that the College was on the verge of closing.

53. Dr. Margaret Waggoner was hired as President of Wilson College on August 1, 1975.

54. Mary Ellen Stanwick was hired as the new Admissions Officer in September 1975, and resigned "due to the pressure of her job" in the winter of 1976-1977.

Using traditional student recruitment procedures such as admission staff member high school visits and attendance at

college nights and fairs, personal staff contacts and visits, campus visits by prospects, advertising, and alumnae involvement via the 1 plus 1 program; Miss Stanwick reversed the disastrous enrollment drop of 1976 and commenced the planning for student recruitment for the Fall 1977 freshman class.

55. John M. Mason was employed as Director of Admissions for the College in March 1977. He graduated from Randolph Macon College in 1966 with B.A. degree, and was hired by that college from September 1966 to June 1974 as a teacher, coach, staff member of the Development Office and Public Relations Office, and to do some travelling for student recruiting. In July 1974 he was employed as Director of Admissions for Southern Seminary Junior College, an independent two year college for women with 250 students. He used the student search program extensively during his tenure at Southern Seminary.

56. The student search program is a college recruiting technique wherein the college interested in adopting the procedure addresses a "Participation Form" to the College Board, the national agency which designs, develops and arranges for the administration of P.S.A.T. and S.A.T. tests to high school students interested in post high school education. The "Participation Form" indicates inter alia the lowest acceptable P.S.A.T. test scores, the lowest acceptable high school grade point average, sex preference, parameters of geographical interest, intended college majors and the minimum and maximum number of students to be reported to the college. The College Board then prepares a list of students names and addresses matching the general description submitted by the college on the "Participation Form" and forwards the list either to the college or to a packaging and bulk mailing firm selected by the college. All students on the list are mailed by bulk mail a personalized letter and/or brochure about the college, together with a postage paid reply slip to be mailed to the college if the prospective student is interested in the college and desires additional information. If the reply slip is returned, then additional follow-up procedures are to be followed looking to a successful recruitment and enrollment of the prospective student.

57. President Waggoner instructed Mr. Mason, when he was hired, that his mission was to generate new student enrollment in the way he saw fit with the programs he thought would succeed.

58. Philosophically, Mr. Mason had eliminated the

traditional student recruitment technique from his considerations prior to becoming the Admission Director of the College.

59. Presumably the recruitment efforts followed for the 1977 freshman class were primarily those prepared by Miss Stanwick and resulted in enrollment of 62 students.

60. The Annual Report of Director of Admissions, R. Russell Shunk, dated June 30, 1975 for the 1974-75 college fiscal year discussed the short and long term recruitment plans of the office; emphasized the importance of personal follow-up after receipt of a Prospective student inquiry; and warned of tampering with the "mix" of admissions programs in search and implementation of instant panaceas which in reality would not solve the College's problems. Mr. Shunk left the Admissions Office sometime after the Waggoner administration began on August 1, 1975.

61. For the 1977-78 year and the recruitment plan for the Fall 1978 freshman class, Mr. Mason continued the high school visits, college nights and fairs, conducted one Spring 1977 and two Fall 1977 visits to campus for prospective students, and used the services of the alumnae via the 1 plus 1 program and other traditional programs. In September 1979, he also used the student search program to develop a mailing list of 42,000 prospects which in turn produced a total of 1,962 reply slips.

62. All recruitment procedures for the Fall 1978 class produced 185 applications and 63 enrollments. The 1,962 inquiries developed via the student search program generated 49 applications and 17 enrollments or 2.5% applications and .08% enrollment; as compared to 427 direct mail inquiries which generated 36 applications and 13 enrollment or 8.4% applications and 3% enrollment.

63. The 1 plus 1 program was developed on the 1974 recommendation of the Academy for Educational Development (Moon Report) to actively involve alumnae in the student recruitment activities of the College. Forty-eight alumna served as chairman or representatives in various areas of the United States and recruited other alumnae in their respective areas to assist in the program. The primary mission of the 1 plus 1 groups was to receive via the chairman from the Admissions Office interview forms bearing the name, address and telephone number of prospective students who had demonstrated an interest in the College by returning the reply slip supplied under the student search program or by some other contact. The alumna was then responsible for promptly making personal

contacts with the prospective student and her family, answering their questions, telling them about the College, urging them to visit the campus and above all else encouraging continued interest in and ultimate enrollment in the College. In addition the alumnae representatives and their assistants were to assist travelling representatives of the Admissions Office in hosting teas and other social get togethers to facilitate the meeting of prospective students with the Office representatives.

64. Despite the low (0.8%) enrollment rate produced by the student search program for the 1978 freshman class, Mr. Mason implemented his personal belief in the student search program by expanding the search to 70,000 students and eliminating Admissions Office staff visits to high schools, college nights and fairs. One staff member was detailed to travel through Pennsylvania, New York, New Jersey and New England from October 8, 1978 until early in December attending meetings in homes of alumnae as part of the 1 plus 1 program. The Admissions Office accepted 100 invitations to college nights and fairs. Alumnae representatives and their assistants were to cover them. Frequently, Admissions Office materials did not arrive on time and only 25 college nights and fairs were covered.

65. The criteria sent to the College Boards to initiate the expanded search plan for the 1979 freshman class included:

- (a) Minimum P.S.A.T. score of 1180.
- (b) Minimum High school grade average of 87.
- (c) To be sent to 11th grade females in the 1977-78 school year.

66. Mr. Mason considered an 87 high school grade point average to be the equivalent of a "C", and the "bottom limit" of the student search because that would place the prospect in the upper 50% or 40% of her class.

67. An 87 is a middle to high "B" and would place a student with such an average well above the upper 40% or 50% of her class.

68. An 1180 P.S.A.T. score is well above the national average (Although not in evidence it has been ascertained that the 1977 mean national average P.S.A.T. scores for all college bound juniors was 860.)

69. The firm of Epsilon Data Management (Epsilon) was retained to package, address and bulk mail the 42,000 letters in September 1977. Epsilon was also retained by the college to handle the 70,000 student prospect list prepared by the College Board and also a follow-up mailing.

70. The College Board's charge for producing the list of 70,000 prospective students was approximately \$7,300.00. Epsilon's budget estimate was \$29,297.00.

71. Epsilon packaged and mailed for each of the 70,000 prospects 1 well-written letter from Mr. Mason, a brief well-designed brochure describing the College, a postage paid envelope addressed to the Admissions Office, and a reply slip for enclosure in the envelope. The reply slip included a personal note from the Admissions Director to the prospect indicating he would give returned reply slips "special attention", and provide help to the prospect in choosing her college. The slip also:

- (a) Invited requests for more specific information about the College to be identified by the prospect.
- (b) Provided a space to request more information about financial aid.
- (c) Requested prospect's telephone number and name of her present school.

The 70,000 letters were bulk mailed by Epsilon on April 19, 1978.

72. Commencing April 26, 1978, the Admissions Office began receiving reply slips from prospective students. Approximately 7,000 reply slips were received with the most of them arriving in May and June. The staff coded and recorded the reply slips and programmed the information into "System 6", a form of computer.

73. The Admissions Office attempted to respond to the reply slips within 24 hours, but some responses took a week, 10 days or 2 weeks. The response consisted of a follow-up letter from the Director, a "Three-Minute Summary of Wilson College" and a postage paid reply card addressed to the Admissions Office for completion and mailing by the prospect. The reply card in addition to providing blank spaces for insertion of the prospect's name, address, telephone number, high school graduation year, and major academic interest had:

- (a) A separate space for "Questions and Comments".

(b) A space to request a "Minicatalog or Application."

74. Mr. Mason testified 1500 reply cards were received by the Admissions Office primarily in the months of May, June and July 1978.

75. The reply cards were admitted in evidence and there were approximately 1414 cards. The vast majority of the cards were received in May, June and July, and a very limited number thereafter.

76. The Director of Admissions June 30, 1978 Annual Report (presumably to the College Administration and Board of Trustees) for the 1977-78 fiscal year reported on the activities and plans of his office. He described the results of the student search plan as being "beyond our fondest dreams." He predicted on the basis of receiving 11,000 inquiries that 550 applications for college admission would be received, and conservatively 164 students would be enrolled.

77. Under "Personnel" the Annual Report noted the Admissions Office had had a staff of five, excluding the director, but three had resigned as of the date of the report and replacements were being sought.

The only replacement hired was Debra Cramer who commenced her employment as Assistant Director of Admissions on August 21, 1978. Miss Cramer testified that she had limited experience in admissions work and was placed in charge of on-the-road recruiting with very little instruction or training. She had no other duties assigned to her in the Admissions Office.

78. The Admissions Officer testified concerning the handling of the reply cards by the Admissions Office that:

(a) The purpose of the reply card was to permit the prospective student to make an appointment to visit the campus, but he did not know if any appointments were made.

(b) As reply cards were received the office sent a prospectus, application form, and a 1977-78 college catalog until the office ran out of catalogs and feared it might exhaust its supply of applications needed for the 1979 freshman class.

(c) Approximately 1100 of the prospective students who returned reply cards were sent something, i.e., a prospectus and/or application and/or an old catalog, and a notation of the

information sent was noted on each reply card.

(d) Postcards were addressed to the reply card senders, and the Admissions Office intended to acknowledge receipt of the reply cards and state that answers to inquiries would be forthcoming. With the exception of a few cards handwritten by the Director, none were completed and mailed, and no reason was given.

79. Despite the space for "Questions and Comments" on the reply card, the Director testified that his usage of the student search plan did not contemplate handling specific individual questions by interested prospective students; and he did not know if a large number of the reply cards contained individual questions or comments because he did not look at them.

80. Two responses, viz. the reply slip and the reply card, within several months by over 1,400 prospective students evidenced a significant pool of substantially interested prospective students.

81. Contrary to the testimony of the Admissions Director an analysis of the 1,414 cards admitted in evidence discloses:

A. 778 cards received between June 8, 1978 and September 21, 1978 were not responded to by the Admissions Office.

(1) 215 of the cards requested college application forms.

(2) 243 of the cards included specific questions.

(3) 49 of the cards requested general information.

(4) 3 of the cards requested information about campus visits.

B. 636 cards received between May 15, 1978 and June 7, 1978 were responded to by the Admissions Office as follows.

(1) A "Prospectus" was sent to 284 prospects in response to 68 requests for college applications, 96 specific questions and 120 cards.

(2) A "Prospectus", college application and 1977-78 catalog were sent to 47 prospects in response to no requests for applications, 9 specific questions, 3 inquiries about campus visits and 35 cards.

(3) A "Prospectus" and a college application were sent to 76 prospects in response to 2 requests for applications, 27 specific

questions, 1 inquiry about a campus visit and 46 cards.

(4) A 1977-78 catalog was sent to 227 prospects in response to 54 requests for applications, 60 specific questions and 113 cards.

(5) A "Prospectus" and 1977-78 catalog was sent to one prospect in response to a question not related to a catalog.

82. Summarizing the analysis set forth in Finding of Fact No. 81:

(a) The Admissions Office ignored 339 specific requests for college application forms.

(b) The Admissions Office failed to answer specific questions on 436 reply cards.

(c) The Admissions Office failed to respond to 7 inquiries concerning campus visits.

(d) The Admissions Office sent college admission forms to 47 card senders who did not request them.

83. Failure to respond to requests for college application forms, specific questions and inquiries concerning campus visits or ignoring such requests, and mailing unsolicited materials demonstrated a marked lack of personal interest and concern on the part of the Admissions Office necessarily reflecting adversely upon the College.

84. Evidence of the activities of the Admissions Director and his staff from the Spring of 1978 until the end of the year was limited to the handling of the reply slips, mailing the initial response to the slips, mailing some form of response to less than half of the reply cards, Kathy Haines involvement in the 1 plus 1 program, and Debra Cramer's recruitment tour from October 8, 1978 until sometime in December when it was aborted due to automobile trouble and weather.

85. On August 29, 1978, Epsilon made a second bulk mailing to the 63,000 prospective students who had not responded to the first mailing in April. This bulk mailing generated 3,900 reply slips which were received throughout the Fall of 1978. These reply slips were apparently responded to in the same way as the 7,000 previously received. No evidence was introduced concerning receipt of reply cards as a result of the second bulk mailing and response to reply slips.

86. On, September 25, 1978, October 3, 1978, October 10, 1978, and November 8, 1978, the Admissions Office mailed 7,145, 1,754, 836 and 2,660 pieces of mail respectively, a total of 12,395 letters to all prospective students who had evidence; any interest in the College via the student search program (approximately 11,000 reply slips) or in any other way. Each envelope contained a "Prospectus" and a college application form. The new college catalog was held by the Admissions Office for mailing after an application was submitted.

87. The 1,414 prospects who had mailed reply slips and reply cards received the same impersonal mailing as the other approximate 11,000 who received the Fall bulk mailing. In January and February 1979 the Admissions Office wrote letters to 163 of the 1,414 prospects who had mailed reply cards.

88. The Admissions Office sent a September-October, November-December, January-February and February 2 "Wilson Update" to all prospective students who had evidenced any interest in the College. (The February 2, 1979, "Wilson Update" was mailed on February 6, 1979, at a cost of \$329.94 to 12,220 prospects for the 1979 freshman class at a time when the Trustees were seriously considering closing the College, and had already set February 14, 1979 as the date for the special meeting to make a final decision.)

89. A goal of 150 new students for the 1979 freshman class had been set.

90. Pursuant to the plan of the Admissions Office to use the 1 plus 1 program to supplement the expanded student search plan alumnae representatives were encouraged to develop their roster of alumnae assistants in their respective assigned geographical areas and prepare to receive the interview forms for prospective students. There being no evidence to the contrary we accept the experience of the Baltimore area alumnae group as representative of the Admissions Office handling and use of the alumnae volunteers in the 1 plus 1 program. The experience of that group was:

(a) As of June 12, 1978, the representative and her alumnae assistants were ready to proceed to make contacts with prospective students, and so notified the Admissions Office.

(b) To effectively use an alumna assistant vacationing on the Eastern Shore during the summer months. The representative in June requested the Admissions Office forward the forms for

prospects located on the Eastern Shore. After additional calls 22 names were submitted in mid-August.

(c) At the end of August the representative called the Admissions Office again requesting interview forms with the names, addresses and telephone numbers of prospective students without result, but she was told there would be a college day on campus for prospective students on November 5 and 6, 1978, and she forwarded that information to alumnae assistants to give to prospects.

(d) Several more calls to the Admissions Office were made seeking the prospect list, without success.

(e) In September the representative attended a meeting on campus and the Admissions Director reported on the progress of the student search program; said there would be no more high school visits and the previously announced plan for the November 5th and 6th college day on campus had been shelved. The representative was also advised at the meeting that the prospect lists were not ready and no time or date had been set to submit them to the 1 plus 1 groups, but the Admissions Office was preparing a 1 plus 1 manual for alumnae.

(f) The Admissions Office on October 18, 1978, mailed 102 interview forms to the representative and they arrived at her address 3 or 4 days later. The forms indicated that the student inquiries had been made in the Spring of 1978.

(g) 60 interview forms were mailed by the Admissions Office early in December 1978, and reflected the student inquiries were made between May and August 1978.

(h) 25 interview forms were received in January 1979 with similar dates for the student inquiries.

(i) 25 interview forms were mailed by the Admissions Office on February 17, 1979, and received by the representative after the Board's decision to close the College.

(j) The representative promptly distributed the interview forms to her alumnae representative who promptly attempted to contact the prospective students.

(k) The alumnae assistant promptly attempted to contact their prospects and learned that the majority of the prospective students had already decided on another college or university or had forgotten they had previously expressed an interest in the College.

(l) At an October 1978 meeting of the Baltimore alumnae group the Admissions Director had advised that his office was not at the present in need of the group's help; had plenty of names and would be in touch if help was needed.

(m) The alumnae representative had repeatedly told Kathy Hanes, the 24 year old Admissions Counselor in charge of the 1 plus 1 program, that the drive for students was going to be too late to be effective.

91. Approximately 150 high school students directed the College Board to send copies of their P.S.A.T. scores to the College. The Admissions Office acknowledged receipt of the scores to each student and advised what other information the College would require. No other timely and special follow-up was made of these prospective students who on their own initiative evidenced their interest in the College.

92. At some unascertained time the Admissions Office turned over 35 reply card inquiries concerning the athletic program to Professor Glassman, and 50 reply card inquiries concerning the equitation program to Professor Keener. Presumably these professors answered the questions posed.

93. In December 1978, members of the faculty wrote general letters describing their particular disciplines, programs and class activities, and encouraged prospective students to make visits to campus to discuss any questions they might have with the faculty. It was not clear when or to whom these general letters were mailed.

94. In 1975 President Dennis and Dr. Diaz, a Professor of Spanish at the College, developed a plan for Dr. Diaz to meet with the Minister of Education of Venezuela, a close personal friend of President Dennis, to discuss the funding of twenty-five full four-year scholarships at Wilson College by Venezuela for qualified Venezuelan students. The plan had progressed to the point where the secretary to the Minister had advised Dr. Diaz he would arrange an appointment after September 15, 1975. When President Waggoner took office on August 1, 1975, Dr. Diaz wrote to her for approval of the plan. He was notified not to continue with the recruitment project. Dr. Diaz attempted to revive the project in 1976 and 1977, and was advised President Waggoner disapproved the plan and was not going to turn Wilson College into a school to teach English to foreigners.

95. There was no assurance that the plan formulated by President Dennis and Dr. Diaz would have been accepted or funded by Venezuela. However, had it been accepted, it would

## LEGAL NOTICES, cont.

Rolando, Charles H. :  
Knapp, Mary M. Nor- :  
ris, Samuel Parron, :  
Adelaide S. Wilson, J. :  
Appleton Wilson and :  
Mary W. Wilson, Mary :  
E. B. Findlay, Lucy I. :  
Stonestreet, Ella Cow- : A.D. 1979-158  
man, Louise Henry, :  
Fanny Scott Waters, :  
Clarence C. Curtis, :  
Mrs. Burton Despard, :  
Gladys Whiting, D. J. :  
Mason Hundley, Percivel :  
Hall, and Kate B. Pitt, :  
their heirs, executors, :  
administrators and :  
assigns, : Action to Quiet  
Defendants Title

To: Thomas Hughes, Mrs. K. William Boyd,  
Katherine Detrick, Andrew Ellicott  
Maccoun, Virginia Creighton, Fielding  
L. Marshall, George Roper, John Roper,  
Annie McKim, Anne H. Rolando,  
Charles H. Knapp, Mary M. Norris,  
Samuel Parron, Adelaide S. Wilson, J.  
Appleton Wilson and Mary W. Wilson,  
Mary E. B. Findlay, Lucy I. Stonest-  
street, Ella Cowman, Louise Henry,  
Fanny Scott Waters, Clarence C.  
Curtis, Mrs. Burton Despard, Gladys  
Whiting, D. J. Mason Hundley, Perci-  
vel Hall, and Kate B. Pitt, their heirs,  
executors, administrators and assigns.

You are notified that the plaintiff has  
commenced an Action to Quiet Title against  
you by a Complaint filed on June 23, 1979  
in the Office of the Prothonotary in Franklin  
County, Pennsylvania, to the above number  
and term.

If you wish to defend against the claims  
set forth in the above mentioned Complaint  
you must take action within 20 days after  
service of the Complaint and notice has  
been completed by publication by entering  
a written appearance personally or by at-  
torney and filing in writing with the court  
your defenses or objections to the claims set  
forth against you. You are warned that if  
you fail to do so the case may proceed  
without you and a judgment may be entered  
against you by the court without further  
notice for any money claimed in the Com-  
plaint or for any other claims or relief  
requested by the plaintiffs. You may lose  
money or property or other rights important  
to you.

You should take this notice to your lawyer  
at once. If you do not know of a lawyer,  
contact

Legal Reference Service of  
Franklin-Fulton Counties  
Court House  
Chambersburg, PA 17201  
Tel. No.:

Chambersburg 264-4125, Ext. 13

This Action concerns the land herein  
described: ALL THAT CERTAIN real estate  
lying and being situate in the Township of  
Washington, County of Franklin, and State  
of Pennsylvania, and bounded and limited as  
follows: Beginning at an iron pin in the  
center line of the Old Furnace Road at  
corner of land now or formerly of J. Earl  
Pryor; thence in the center line of said road  
north 16 degrees 45 minutes east 75 feet to  
an iron pin, also in the center line of said  
road at land now or formerly of the Monterey  
Water Co.; thence leaving said road and  
along land now or formerly of the Monterey  
Water Co. south 85 degrees 35 minutes east

## LEGAL NOTICES, cont.

467 feet to an iron pin, formerly a stone  
pile; thence further along land now or for-  
merly of the Monterey Water Co. south 62  
degrees 35 minutes east 510 feet to an iron  
pin in the center line of Forrest Drive;  
thence in the center line of Forrest Drive  
south 10 degrees 5 minutes west 150 feet to  
a spike in the center line of the intersection  
of Forrest Drive and the public road leading  
to Fairfield known as Township Route 701;  
formerly Legislative Route No. 44; thence  
in the center line of said public road south  
89 degrees 5 minutes west 448 feet to a spike  
in the center line of said public road at  
corner of land now or formerly of J. Earl  
Pryor; thence leaving said road and along  
land now or formerly of J. Earl Pryor north  
23 degrees west 155 feet to an iron pin;  
thence along the same north 47 degrees 15  
minutes west 102 feet to an iron pin; thence  
along the same north 69 degrees west 167 feet  
to an iron pin; thence along the same north  
65 degrees west 193 feet to an iron pin in  
the Old Furnace Road, the place of be-  
ginning.

By Stephen E. Patterson  
Beck, Patterson and Kaminaki  
Attorneys for Plaintiff  
237 E. Main St.  
Waynesboro, PA 17268

Frank H. Bender, Sheriff  
(7-6, 7-13, 7-20)

## NOTICE TO THE BAR

IN THE COURT OF COMMON PLEAS  
OF THE 39TH JUDICIAL DISTRICT  
OF PENNSYLVANIA — FRANKLIN  
COUNTY BRANCH

|                    |               |
|--------------------|---------------|
| In Re:             | CIVIL ACTION  |
| Safeguard Mutual : |               |
| Insurance Com- :   | Miscellaneous |
| pany,              | : Docket      |
| Defendant :        |               |
|                    | : Vol. Page   |

## ORDER OF COURT

NOW, June 29, 1979, it appearing to the  
Court that Harvey Bartle, III, Insurance  
Commissioner of the Commonwealth of  
Pennsylvania, ordered suspension of the en-  
tire business of Safeguard Mutual Insurance  
Company, and

It appearing that the aforementioned sus-  
pension order made no provision for the pay-  
ment of counsel fees for representation of  
Safeguard Mutual Insurance Company or its  
Insureds,

IT IS HEREBY ORDERED that all cases  
pending in the Court of Common Pleas of  
Franklin County in which Safeguard Mutual  
Insurance Company or its insureds are named  
parties be stayed pending arrangements for  
the representation of Safeguard Mutual In-  
surance Company and its insureds, and/or  
to provide for adequate notification to the  
insureds of Safeguard Mutual Insurance  
Company in the event there is no provision  
for representation in the suspension order as  
modified.

IT IS FURTHER ORDERED that this  
Stay Order shall remain in full force and  
effect until vacated or modified by this  
Court and any party aggrieved hereby may  
make application for relief to the Court.  
This Order shall be published in the  
Franklin County Legal Journal.

By the Court,  
GEORGE C. EPPINGER, P.J.

(7-6)

have produced twenty-five students for four years and  
approximately \$125,000 income per year to the College.

96. Debra Cramer had had no assigned duties after her  
return to the Admissions Office in December 1978 from the  
aborted recruiting tour. After the Christmas holidays she  
learned of the existence of the reply cards on a shelf. On her  
own initiative she began writing letters and making telephone  
calls to prospective students. The office did receive some  
inquiries and applications after her contacts.

97. Applications began to be received by the Admissions  
Office in September 1978. As of January 29, 1979 only 81  
applications had been received compared to 101 on January 31,  
1978, and 88 on January 31, 1977. On the basis of the  
applications received the Director of Admissions projected a  
receipt of approximately 180 applications, and an entering  
freshman class in September of 1979 of 50-60 students.

98. As of February 1979 only 85 completed applications  
had been received. 80 notices of acceptance had been mailed to  
applicants. 8 students had forwarded their \$100.00 deposit to  
hold their place at the College. The deadline for making the  
deposit was May 1, 1979.

99. The student search plan is widely used by many  
colleges and universities due to the severe competition for  
student bodies of adequate size. This wide usage has decreased  
its effectiveness as a recruiting tool, and it can be expected to  
produce a low percentage of returns.

100. Reliance upon the student search plan as the  
exclusive or almost exclusive recruiting technique is risky  
because of the low percentage of returns reasonably expectable.

101. To maximize the effectiveness of the student search  
plan prompt and personal follow-up of prospective student  
responses by letters, telephone calls and other personal contacts  
by a trained and adequately staffed Admissions Office is  
necessary.

102. Prompt and personal contacts are peculiarly essential  
to a small woman's college such as Wilson due to the likelihood  
that students interested in matriculating at a small school will  
desire and expect personal attention.

103. Dr. McPherson, respondent-trustee and President of  
Bryn Mawr College, expressed reservations as to the adequate  
staffing of the Admissions Office of the College to adequately

handle a search program of 70,000, but didn't feel it was her business to convey that information to the Director of Admissions.

104. The Director of Admissions lost any advantage accruing to the College from the expanded student search plan due to his total failure to recognize the personal and prompt contact imperative.

105. The Director of Admissions reliance upon the student search program and virtual abandonment of all traditional recruiting procedure in 1978-79 was unwarranted in the light of the experience of the preceding year and a serious error of judgment.

106. The Director of Admissions projection of a 1979 freshman class of 164 students based on an estimated 11,000 inquiries generated by the student search plan was not warranted on the basis of any facts submitted. It was misleading to the Board of Trustees and the President and represented mere puffery.

107. The 87 minimum high school grade average, coupled with the 1180 minimum P.S.A.T. score criteria for the search plan, was unrealistically high and undoubtedly excluded from consideration prospective students who would not have qualified at academically higher ranked colleges and universities, but would have been interested in matriculation at Wilson College.

108. The failure of the Director of Admissions to see that there was an expeditious and personal follow-up of the 150 high school students who had their P.S.A.T. scores sent to the College, and the 1,414 prospective students who sent reply cards as a second indication of interest in the College is inexplicable and inexcusable.

109. All evidence establishes the Director of Admissions was not competent to perform the duties of his office, and the student recruitment program of the College suffered accordingly.

110. "...The Director of Admissions shall be responsible, under the general supervision of the President, for planning and executing the College's program of student recruitment and selection. The Director of Admissions shall annually make a written report to the President of the College,...

"The appointment of the Director of Admissions shall be

at the pleasure of the Board." By Law of Wilson College Art. V, Section 6.

111. The President of the College failed in her responsibility to adequately supervise the Director of Admissions in the discharge of his mission.

## THE BOARD OF TRUSTEES

112. "The number of Trustees shall be not more than twenty-nine, one of whom shall be the President of the College, two of whom shall be alumnae, nominated as hereinafter provided and known as 'Alumnae Trustees', and one of whom shall be the President of the Wilson College Alumnae Association, ex-officio." By Law Art. I, Section 1.

113. "The President of the College shall be a trustee during his or her term of office and shall be counted in the number of Trustees in determining a quorum."

114. , President Margaret Waggoner is a member of the Board of Trustees, and not an ex-officio member.

115. The present Board of Trustees has 26 members including the President of the College.

116. The Board of Trustees of the College is, with the exception of the President of the College, a wholly self-perpetuating body in that it is solely responsible for the selection of its membership.

117. Due to a continuing decline in the number of entering students, the increasing attrition rate and regular operating budget deficits, members of the Board, and particularly Trustee Walker, were in 1974 dissatisfied with the overall situation of the College. The Academy of Educational Development was retained to make a comprehensive study of the management situation at Wilson College, prepare a report of findings and make recommendations for the improvement of the management of Wilson College.

118. Rexford G. Moon, Senior Vice President of the Academy, chaired a team of five consultants including Mary McPherson, who became a Trustee of the College in 1976. The consultants were supplied with all information requested and team members visited the College in September and October 1974 conducting interviews and making such other investigations as their respective areas of expertise required.

119. The consultants prepared and submitted reports on their assigned areas to Mr. Moon, who consolidated the separate reports into its final form dated November 2, 1974, and titled: "Survival for Wilson College: The Time for Stewardship and Sacrifice" (hereafter referred to as the Moon Report).

120. A working draft of the Moon Report was distributed to most members of the Board of Trustees (hereafter referred to as Board) on November 1, 1974, and to others present at the Board meeting on November 2, 1974.

121. Mr. Moon was present at the November 2, 1974 Board meeting during which he reviewed the working draft of the report and answered questions.

122. Eight members of the present Board were members of the Board on November 2, 1974. Present Trustees, Austin, Clarkson, Walker and Work attended the November 2, 1974 meeting.

123. At the November 2, 1974 Board meeting the members adopted a resolution which declared "that extreme financial conditions prevailed which require immediate remedial action, and that a state of financial exigency exists". The adoption of this resolution and the form of the resolution were suggested in the Appendix to the Moon Report.

124. At the November 2nd meeting the Board adopted the following recommendations in the form contained in the Moon Report:

(a) Retention of legal counsel to the Board on (1) responsibility, use, obligations, and liability of the Trustees; (2) retrenchment; (3) possible invasion of restricted endowments;

(b) Request the faculty, under the leadership of the Dean of the College, to develop faculty personnel retrenchment procedures for the consideration by the Board at its February 1975 meeting;

(c) Approve in concept the "1 plus 1 campaign" as suggested in the Moon Report and outlined in detail in the Appendix to that report;

(d) Appoint a Board member as national chairperson of "1 plus 1" and thereupon appointed Martha B. Walker to that position;

(e) Approve as general guidelines to the Dean and the faculty those recommendations of the Moon Report with respect to the future role of the Dean, curricular revision, faculty productivity, and the decision to remain a woman's college;

(f) Place a moratorium on:

(1) granting of tenure, effective immediately;

(2) purchase of equipment or library books, effective immediately;

(3) any expansion of staff or faculty without prior Board approval and, then, only when that expansion will increase enrollment or income, effective immediately;

(4) replacement of faculty leaving the College or going on sabbatical leave without prior Board approval and, then, only when such replacement is demonstrably justified in terms of both quantitative and qualitative criteria, effective immediately.

(g) Executive Committee established as the implementation committee to review the Moon Report, secure necessary legal and outside counsel, recommend additional actions by the Board, monitor progress toward the implementation of objectives and policies set by the Board, report monthly to the full Board the status of the College, and, in particular, progress or lack of it, and develop contingency plans for varying levels of enrollment, income and expense.

125. The stated purpose of the Moon Report was to provide recommendations for the improvement of the management of Wilson College at a point in time where the authors of the report acknowledged that the College "is in deep trouble" because of external forces and internal problems, and is "fighting to survive".

126. The Moon Report identified three crises which Wilson College must overcome to survive: Identity, leadership, and planning. The report indicates that the College must define its role as a woman's college in the perspective of the future role of women in Western culture. Wilson must organize its leadership to overcome problems created by overstaffing, historical failure to delegate leadership burdens from the President to other key positions, and failure to utilize Trustees, alumnae, parents and student groups to accomplish tasks. In addition, the College must develop a viable plan for its future which is critical and objective, and with contingency points

built-in to permit flexibility when variable factors such as enrollment and inflation affect it.

127. The report suggests one of a number of possible approaches to bringing costs and income into line, and then devotes the balance of the report to management arrangements which are necessary to assure a viable future for the College.

128. The Board adopted the following recommendations of the Moon Report:

(a) The President should strengthen the Dean's roll in academic affairs; and, the Dean, with the support of the President, should begin functioning as the chief academic officer and develop active and well informed departments or division chairmen.

(b) The Trustees and President should request the Dean and faculty to give further consideration to curriculum revision; and the Dean and the faculty should rethink the curriculum and utilize the consortium to greater advantage for interdisciplinary work.

(c) The highest priority should be given to increasing faculty productivity because the present 6 to 1 ratio is unsupportable. However, careful planning of retrenchment is necessary so that teaching staff reductions do not contribute to attrition of students.

(d) The decision to remain a woman's college should be seriously addressed, especially by the faculty because the faculty is out of touch with the general trends in national educational scene with respect to developments in women's education. Faculty and students feel that paternalism pervades the College.

129. Additional recommendations of the Moon Report were not adopted by the Board at the November 2, 1974 meeting.

130. Subsequent to the adoption of the Moon report recommendations the traditional academic departmental structure (25 departments) was converted to a divisional organization of 4 divisions consisting of mathematics, science, humanities and social studies. This change occurred in the Spring of 1975.

131. Curriculum changes since 1974 have been minor, consisting primarily of the addition of courses rather than a

radical restructuring of the overall curriculum, or any reorientation to career preparatory work.

132. The sabbatical leave moratorium was adopted.

133. The 1 plus 1 program was established and utilized to enroll students in 1976, 1977, 1978, and for the class to enter in 1979.

134. The Moon Report identifies the following 15 major management limitations which make the management of the College difficult:

(a) A substantial number of important positions in administration are held by persons of very limited experience.

(b) The faculty has moved very slowly in curriculum reform, and a number of confrontations with Trustees and the President over curriculum matters has left deep scars.

(c) A great many of the major and minor decisions have been centralized in the President's office.

(d) There has either been limited delegation of responsibility along with job assignments or individuals have been unable or reluctant to assume initiative and responsibility.

(e) There is evidence of very limited coordination and cooperation among persons in the administration performing interdependent functions.

(f) There appears to be some areas of overlap in administrative positions with a number of half or quarter time assignments being involved.

(g) There has been substantial turnover in very important positions crucial to academic leadership, to the conduct of external affairs, and to the organization of student life on campus.

(h) The maintenance of such a large full-time faculty with such a decline in enrollment has created difficult problems with respect to promotion, tenure, morale, inactivity, etc.

(i) There has been a serious lack of effort to organize the alumnae on behalf of the recruiting program of the College and to develop information about alumnae, parents and friends which could help in recruiting students.

(j) The declining financial situation of the College has not

been made clear to the faculty. Therefore, limited efforts to revise the curriculum were carried out without knowledge of the importance of this work to the future viability of the College.

(k) Key officers of the College are limited in their contacts with the Trustees. The President has not shared the burdens of his office sufficiently with other officers of the College.

(l) Long postponed tenure decision for many faculty members has affected faculty morale. Shifting interests of students and new recognition of the importance of a woman's college may further affect this situation.

(m) There is a serious lack of planning in the key areas of the College's activities. Budgetary procedures are on an "add-on" or "take-off" basis. Alternatives have not been sufficiently examined, especially with respect to the future viability of the institution, under differing assumptions. Unbudgeted expenditures from restricted funds are substantial.

(n) There is a general atmosphere of tension on the campus which we believe exists because of extensive secrecy and the over-centralization of decision making.

(o) We find there is very little team approach to major problems of the College, be these academic or other. The faculty especially has not been able to work to any extent on an inter-departmental or interdisciplinary basis.

135. With the exception of the establishment of the 1 plus 1 program involving alumnae in recruiting efforts, it does not appear that any serious, sustained or productive efforts were made by the Board or Administration to correct the major management limitations set forth in Finding of Fact 134.

136. The Moon Report makes specific recommendations to overcome the management weaknesses at the College in each of three areas of concern: Academic management, financial management, and external affairs management.

137. The Moon Report makes eight specific recommendations with respect to future Academic Management of the College:

(a) The President should strengthen the Dean's role in the academic affairs.

(b) The Trustees and President should request the Dean and

the faculty to give further consideration to curriculum revision.

(c) The Dean and faculty should rethink the curriculum in light of a better understanding of the national educational situation and with some clearer sense of what is possible within the Consortium and within their own ranks.

(d) The Dean and the faculty should give highest priority to arrangements for increasing faculty productivity.

(e) The College, especially the faculty, should address seriously its decision to remain a women's college - such a decision is different from a decision to preserve status quo.

(f) The Dean, with the support of the President, should begin functioning as the chief academic officer and develop active and well-informed department or division chairmen.

(g) The Trustees should make it possible for the Dean, some faculty members, and some students to visit other institutions in order to acquaint the faculty with some fresh ideas and the cooperation that hopefully such exposure will produce.

(h) The Trustees should request the Dean and faculty to investigate the possibility of Wilson acting as a host institution to another college which might introduce a select number of career-related courses on the Wilson campus.

138. The Moon Report recommended that consideration be given to the College developing distinction as a women's college by making its faculty and administration aware of their sexism, having the faculty develop their courses with emphasis on women's contributions in their particular area, introducing a woman's studies course, filling faculty and administrative positions with women, projecting the image of a woman's college more effectively in its own publications, recruiting through feminist publications, and the strengthening of career counseling.

139. Other than the inclusion of Women's Studies courses in the College curriculum there is no evidence that the other recommendations in Finding of Fact 137, supra, were implemented by the administration or faculty. It does not appear that the Board gave any further consideration to the said recommendations as might have been expected under its resolution in Finding of Fact 124 (e).

140. There is no evidence that the Board took any action

with regard to the recommendations of the Moon Report set forth in Findings of Fact 137 (g) and (h).

141. Concerning the financial management of the College the Moon Report observes that "the College has not acted rapidly or decisively enough to halt its financial decline when the warnings were all around."

142. Fifteen specific recommendations were made by the Moon Report concerning financial management:

(a) The Board of Trustees must assert financial exigency and publicize this to the major constituencies of the College in a positive way, including faculty, staff, students, alumnae, and friends of Wilson College.

(b) The Board should immediately retain legal counsel on three critical matters: responsibilities, obligations, and liabilities of the Trustees; retrenchment; invasion of restricted endowments.

(c) The Board should immediately call for the development of retrenchment procedures by the faculty under the leadership of the Dean of the College.

(d) Immediate attention should be given to the development of alternative financial and operating plans covering a three to five year period.

(e) Serious consideration should be given to raising tuition and other charges for the 1975-76 year.

(f) The Trustees should immediately place a limited moratorium on the increase of personnel expenditures.

(g) The Trustees should place an immediate moratorium on the granting of tenure.

(h) The budgeting process of the College should reflect the alternative strategies developed through the contingency planning process.

(i) The officers of the Board should review the membership of the Board at an early date. ("...Members of the Board should be asked to recommit themselves as Trustees and should be expected to devote their time, talents, and money to help Wilson College through this difficult period. If the Trustees are unable or unwilling to make such a commitment, they should be given the opportunity to resign from the Board so that

others willing to exercise such stewardship of the resources of the College may take their places." page 71)

(j) Administrative officers of the College should give particular attention to the content of personnel records.

(k) The Board should establish operational goals and outcomes for the College based upon the contingency planning process and careful review of the strategies and progress milestones adopted by the Board.

(l) The Board should adopt basic principles to guide the development of retrenchment procedures.

(m) The Board should take early action to reduce nonsalary expenditures.

(n) A moratorium should be placed on sabbaticals beginning with the fall semester of 1975.

(o) Reduction in the administrative staff should be thoroughly considered.

143. The resolution adopted by the Board at the November 2, 1974 meeting specifically included recommendations (a), (b), (c), (f) and (g) of Finding 142.

144. There is no evidence that the Board or Administration took action or attempted to implement the other financial management recommendations.

145. As heretofore found the Board at the November 2, 1974 meeting declared a state of financial exigency to exist. The Board failed to publicize the financial exigency in a positive way to all the major constituencies of the College. The mere adoption of the resolution declaring the state of financial exigency did not successfully implement the recommendation of the Moon Report.

146. There is no evidence that the Board went beyond the adoption of the resolution to retain legal counsel for guidance in the three critical areas identified in Finding of Fact 142(b), supra. Thus, there was no implementation of the recommendation or the resolution.

147. Beyond the adoption of the resolution that the Board request the faculty under the leadership of the Dean to develop faculty personnel retrenchment procedures for consideration by the Board at its February 1975 meeting, and

earlier if possible, there is no evidence that the Board implemented any plan for retrenchment or sought to compel the administration or faculty to develop such a plan.

148. The President of the College attempted to control the costs of maintaining and operating the physical plant of the College.

149. There is no evidence of the development of alternative financial and operating plans covering a 3 to 5 year period by the Board or the Administration of the College.

150. There is no evidence that tuition was increased as recommended.

151. There is no evidence that the administration considered reductions in the administrative staff or that such reduction occurred.

152. The Moon Report makes seven specific recommendations for the management of external relations:

(a) The President should devote more of his time to educating the Board with respect to their roles and responsibilities.

(b) An overall plan for coordinating external relations activities needs to be developed.

(c) The President should assume active leadership in the area of external affairs and produce a plan for the next two years.

(d) The major thrust of the College's program of external affairs in the next two years should be aimed at student recruitment and retention.

(e) The President with the National Chairperson should be the key campus organizer for the 1 plus 1 program.

(f) The Trustees should put their full support behind the 1 plus 1 program.

(g) The President should ask each officer in the area of external affairs to indicate his or her current objectives for 1974-1975; what the priorities of these are; what activities are now related to the 1 plus 1 program, and which ones may have to be postponed.

153. There is no evidence of Board implementation of the recommendations of the Moon Report as to management of

external relations.

154. There is no evidence that the President of the College devoted more time to the education of the Board or produced a long-term plan for external affairs as envisioned by the report.

155. The 116 page Report and 31 page Appendix is an extra-ordinarily well-written analysis of the problem areas of Wilson College and comprehensive proposals for the correction of the same. It is written to be read and understood by persons whose education and training is not necessarily in the field of college administration.

156. The Moon Report recommendations are too numerous and too comprehensive to admit of adoption and implementation at a single or even several meetings of the Board. It specifically recommended that the Executive Committee be established as an implementation committee to review the report, recommend additional action by the Board, monitor progress toward the implementation of objectives and policy, and report monthly to the full Board on the status of the College. Thus, the report envisioned an ongoing review and monthly report to the Board which would dictate more frequent Board meetings than provided by the By-Laws.

157. The Board at its November 2, 1974 meeting adopted the concept of the Executive Committee serving as the implementation committee as above set forth, and to make monthly reports to the full Board.

158. There is no evidence that the Board via its implementation committee, any other committee, or as a full Board took any action to monitor progress toward the implementation of the recommendations of the Moon Report following the November 1974 meeting.

159. With the exception of the implementation of the 1 plus 1 recommendation, it appears that very little was done by way of effective usage of the Moon Report or its recommendations other than certain cosmetic changes.

160. Contrary to paragraph 23 of respondents' answer that the Board of Trustees had no obligation to implement any portion or all of the alleged "report", the Board by its action on November 2, 1974 did act in areas above set forth which with the exception of the 1 plus 1 campaign were not thereafter implemented.

161. In 1972 Penn Hall, a junior college and preparatory

school for young women, located immediately adjacent to the College closed and was for sale. It was rumored that the University of Pittsburgh was considering purchasing it to establish a branch campus. The Board felt the gymnasium and fine arts building would be a valuable addition to the existing college campus and facilities. All the Penn Hall real estate and personal property was purchased by the Board for \$1,100,000.

162. The Penn Hall gymnasium and fine arts building were renovated.

163. In 1973-1974 an ad hoc committee of the Board caused a survey of the Penn Hall real estate, excluding the fine arts building and gymnasium, to be made and subdivided into four tracts. The Board entered into a contract with Herman G. Hartman, a Rockville, Maryland realtor to attempt to sell the excess 180 acres with improvements for a period of one year from August 19, 1974. The realtor received a consulting fee of \$1,000.00 per quarter, which was to be credited against the 6% brokerage fee if a sale was effected.

164. The Board had informally agreed upon a sale price of \$560,000. Mr. Hartman received only one offer of \$300,000.00 payable over ten years with \$10,000.00 down. The offer was rejected. The realtor's contract was not renewed.

165. No other realtor was retained. The Board made no other efforts to sell the property due to a change in the administration and the development of the equitation program which was attracting students.

166. President Waggoner was familiar with the Moon Report.

167. Subsequent to the receipt of the Moon Report there was a substantial increase in gifts and grants:

|           |                |
|-----------|----------------|
| 1974-1975 | \$367,353.00   |
| 1975-1976 | \$618,475.00   |
| 1976-1977 | \$1,153,702.00 |
| 1977-1978 | \$1,202,893.00 |

168. The College Operating Budget reflects for the same four years:

|           |                        |
|-----------|------------------------|
| 1974-1975 | \$862,546.00 - deficit |
| 1975-1976 | \$442,888.00 - deficit |
| 1976-1977 | \$7,327.00 - surplus   |
| 1977-1978 | \$31,449.00 - surplus  |

169. The number of entering students in the same four years:

|      |             |
|------|-------------|
| 1975 | 92 students |
| 1976 | 39 students |
| 1977 | 62 students |
| 1978 | 55 students |

170. The Board drew on the unrestricted endowment to make up operating deficits as required.

171. In 1976-1977 the College received a \$500,000.00 contribution from an anonymous donor which was included in the operating budget of that year as part of the gifts and grants.

172. In 1977-78 the College received an unrestricted bequest of approximately \$1,100,000.00. The Board applied approximately \$600,000.00 to the operating budget and the balance to unrestricted endowment.

173. The Board was aware of the fact that during the tenure of President Waggoner there had been four Deans, three Directors of Admissions, two Directors of Development, and two Public Information Officers. It took no action concerning this turn-over in the administration.

174. Despite the commentary and recommendations of the Moon Report that the curriculum of the College be revitalized to reflect the prevailing trends in women's education in the United States with more career orientation, the Board decided to retain the traditional liberal arts base.

175. President Waggoner is committed to the importance of liberal arts education for women, and has a fundamental difference of opinion with those educators who advocate heavy emphasis in career education.

176. Presumably President Waggoner made known her philosophy concerning liberal arts education vis-a-vis career oriented education or a combination of the two to the Board search committee in 1975. Thus her employment as President of the College insured a maintenance of the basic curriculum.

177. At least some members of the Board and the President of the College were aware that Hood College, a private women's college in Frederick, Maryland, had suffered the same problems as Wilson College in the early 1970's, i.e., a declining enrollment, budget deficits, an upheaval in the administration, a traditional liberal arts curriculum, etc. In 1973 Hood's

enrollment was approximately 500 students, and there was serious concern over its viability. The Hood Board of Trustees revitalized its admissions procedures, became less selective in its admissions standards, reorganized its curriculum by adding a substantial number of career-oriented programs to its existing liberal arts goal and cut increases in faculty salaries. Cooperation was secured by the Hood Board from its faculty administration, student body, and alumnae. The student body has now increased to over 1,000 and as more students have become available Hood has been able to become more selective in its admissions policy.

178. The experience and success of Hood College was dismissed with the statement that Wilson shouldn't try to be a second Hood.

179. In the spring of 1978 the College was evaluated for accreditation by the Commission on Higher Education of the Middle States Association of Colleges and Schools. This evaluation is made by a team of educators selected by the Commission as evaluators who after studying previously supplied necessary information spend 3 days on campus reviewing all aspects of the college program. The team members evaluate the separate areas of the college and its program to which they have been assigned. Part of the evaluation is developed via interviews with many people. The chairman of the team and team members meet daily and the members submit written reports. The team chairman submits a final written report to the Commission. The Commission determines whether accreditation shall be granted.

180. Wilson College was accredited with a report on several matters to be reviewed before the expiration of the usual ten year accreditation period.

The finding may be summarized as:

A. The College chose the "selected topics" approach to the institutional self-study rather than a comprehensive self-analysis. Neither of the two most important problems of the College: viz. (1) financial limitation, or (2) declining enrollments were among the three selected topics.

B. There was an apparent lack of interest and involvement in the self-study by all segments of the College.

C. There was a lack of documentation and supporting materials for the study, i.e., no evidence that significant institutional research studies have been made in recent years.

#### D. Part I - Selected Topics

##### 1. Curriculum and Individual Student Programs:

(a) There is a serious question as to whether the curriculum is optimally designed to achieve the goal of a quality liberal arts education for women.

(b) There is a need for sharpening the focus and definition of a "liberal arts education" in view of national trend, i.e., liberal and professional programs need not be mutually exclusive. The College's program would profit from a serious consideration of such current developments.

(c) It is questionable whether the program is "for" or only "to" women, i.e., a curricular vehicle designed especially for women.

(d) In the area of curricular scope and structure it appears the faculty is spread thin over a large number of courses indicating a need to establish priorities and areas of emphasis. The need for realistic, tough-minded curricular planning and decision making appears to be one of the most critical needs of the College at this time.

(e) Curricular content and vitality should be subjected to critical scrutiny.

(f) There is a critical need to develop more formalized, systematic procedures for program evaluation.

##### 2. Faculty Development:

(a) There is a need for development of a formalized program for strengthening and evaluating teaching effectiveness.

(b) There is a need for acceleration of a program of faculty research and productive scholarship.

(c) There is a need for a strong esprit de corps among faculty and administration members.

(d) There is a need for clarification and strengthening of academic leadership roles and responsibilities.

### 3. Continuing Education:

- (a) Declining enrollment evidences a need for strengthening and clarifying administrative responsibilities for the program of the College.

### E. Part II - General Topics

1. A revised statement of objectives is needed.
2. As a matter of accountability in higher education there is a need to identify the college's intent, i.e., objectives and the college's accomplishments or outcomes by follow-up studies of graduates.
3. There is a clear, urgent need for more delegation of authority.
4. There is a need for more communication and interaction among administrative staff members.
5. It is recommended that the College secure the advice and assistance of various external agencies.
6. In the area of successful recruitment efforts there is a need:
  - (a) for better organization analysis of admission and recruitment data to show class profiles, studies of "no-shows", and similar information.
  - (b) to cement relationship with neighboring high schools to attract commuter and Early Admissions students.
  - (c) to consider granting a special rate for Early Admission students.
  - (d) to review the policy of credit acceptance attracting transfer students.
  - (e) greater involvement of faculty in recruitment efforts.
7. There is a critical need for more efforts at retention and for an intensive and comprehensive study of attrition.
8. There is an under utilization of physical plant and facilities.

181. The similarity in the deficiencies noted in the Middle Atlantic Admissions Report of April 1978 to findings in the Moon Report of 1974 evidences a continuing lack of change, modification, or revision over a period in excess of 3 years.

182. The Board was led to believe that the goal of 150 students for the freshman class beginning in September 1979 would be met.

183. The proposed budget for 1978-1979 was prepared anticipating the substantial increase in fee income that would be developed by the expanded student body.

184. The information supplied throughout 1978 justifiably led the Board to believe the problems of inadequate enrollment and inadequate financing had been resolved.

185. At the February 3, 1979 meeting of the Board, the previously nurtured optimism of the members was demolished by the reports that the 1979 freshman class was projected to be no larger than the 1978 class instead of the 150 plus students; that the number of in-coming students would not be sufficient to meet financial and attrition problems; and alumnae giving had not produced the amount required to meet financial needs.

186. Although anticipated budget deficits, transfers from unrestricted endowment and small in-coming freshmen classes were far from unusual to this Board of Trustees, the sudden, unforeseen and inexplicable reversal from optimism to pessimism created a crisis atmosphere and apparently led without reflection or hesitation to discussion of closing the College.

187. In essence the Board of Trustees panicked, and a sense of urgency to close the College prevailed.

188. The Board directed its officers with the assistance of the President to seek the advice of a panel of experts to review all avenues of relief previously explored and to determine what options, if any, remained available to the Board as to the continuing viability of the College. The Board officers were directed to report back to the Board on the results obtained from the experts at a meeting of the Board scheduled for February 17, 1979 in Philadelphia, Pennsylvania.

189. President Waggoner contacted Dr. David B. Truman on February 4 or 5, 1979 to chair a panel to consult with her and Officers of the Board on the future of the College, and whether the Board had failed to consider any options. Dr.

Truman has a lifetime of experience in large institutions of higher learning but has had no experience with non-nationally known institutions or with those having relatively small endowments and budgets. He had no experience in considering the closing of any college of any size.

190. Dr. Truman, who was acquainted with President Waggoner when she was Dean of Smith College and he was President of the Board of Five Colleges of Amherst, requested President Waggoner to bring to the panel meeting scheduled for February 9, 1979, all basic documents, i.e., budgets, admissions, enrollments, attrition rates, etc., for at least 5 or 6 years.

191. The selected panel consisted of Dr. Truman, John Butler of Barnes & Roach, a fund raising firm, Dr. Robinson of Peat, Marwick and Mitchell, a big accounting firm (Mr. Robinson has special expertise in accounting and budgeting of non-profit organizations) and William Ihlenfeldt, Vice-President in charge of Admissions at Northwestern University.

192. The panel met with President Waggoner for six hours without a lunch break on February 9, 1979. Mr. Ihlenfeldt did not attend but was consulted by telephone.

193. President Waggoner brought the requested documents with her. These documents, including the Moon Report, represented literally hundreds of pages of detailed (at times finely detailed) records of the life and activities of Wilson College. They were identified by Mr. Truman and admitted in evidence.

194. Petitioners' Exhibits 4(X) and 4(Y) were identified as a part of the mass of documents presented to the panel of experts of February 9, 1979. Exhibits 4(X) and 4(Y) are the four-page new announcement of the closing of Wilson College marked "Release at 12:00 Noon, Monday, February 19, 1979."

195. During the 6 hour meeting the panel of three experts requested the President to go over with them the documents she had brought with her so that they would have "a clear idea of the history and current situation". Dr. Truman expressed the opinion that the panel members examined and reviewed all of the documents. They asked the President both specific and general questions, and satisfied themselves that the "information was accurate" and they "had ample evidence upon which to base its judgment".

196. Upon all the evidence the panel concluded there was

nothing more for the Board to do or change. The panel could think of no major consequences which would develop from a change.

197. The panel conducted its affairs in an informal manner and no written report of any kind was ever submitted.

198. There was no evidence of input to the panel of experts from Mr. Ihlenfeldt, the expert on admissions.

199. With due regard to the expertise of the three panelists in their respective areas, it is inconceivable that they, with or without the help of President Waggoner, could have scanned, digested and comprehended the mass of printed material presented to them, and then conducted a meaningful examination of President Waggoner in 6 hours.

200. We do not question the good intentions or the good motives of the panel of experts. However, comparing their 6 hour meeting to the meticulous preliminary preparations, on campus investigations and interviews, team meetings, preliminary and final reports of the Moon Report consultants and the Middle Atlantic Association evaluators; we find their oral report as presented utterly devoid of merit or value.

201. On February 14, 1979 Dr. Truman met with President Waggoner and Trustees Walker, Hough, Beeman and Stewart, Officers of the Board. For two to two and one-half hours Dr. Truman answered questions posed to him concerning alternatives to closing the College. On the inquiry of Chairman Martha B. Walker, Dr. Truman advised that based on the documents and oral information submitted, it was the panel's opinion that it was really not practical or feasible to continue beyond this college year; that it would be a frittering away of assets without purpose and extremely painful - there was no way out.

202. Dr. Truman left the meeting at the conclusion of his interrogation. The officers and President remained for further discussion and ultimately to adopt a resolution to present to the Board for the closing of the school. President Waggoner was directed before the February 17, 1979 Board meeting to seek another opinion on the admissions questions and seek legal counsel on closing procedures and creation of a foundation.

203. Dr. Truman's answers and opinions given to the officers at the February 14, 1979 meeting were predicated on the information presented to him and the panel on February 9,

1979. For the same reasons set forth in Finding of Fact 200 the answers and opinions were of no value.

204. Presumably the officers of the Board were aware of the meticulous procedures followed by the Middle Atlantic Association in determining whether a college would be accredited. Chairman Walker had specific knowledge of the procedures followed by the Moon Report consultants. The Officers of the Board were not justified in relying on the oral report of Dr. Truman on a matter as monumentally serious as the closing of a 109 year old college; nor were they justified in proceeding to draft a recommendation to the Board for such closing on such an inadequate study.

205. The officers of the Board had been directed by the Board at the February 3, 1979 meeting to determine whether there were any other options available to the Board that had not been considered or tried. The Board had not authorized its officers to prepare a recommendation for the closing of the College, and certainly had not authorized the officers to take upon themselves the responsibility of considering and recommending a disposition of the remaining assets of the College subsequent to a closing which had not been given Board approval.

206. The officers of the Board exceeded their express and implied authority by formulating a resolution to close the College, change the corporate name of the College to Wilson College Foundation, and to apply the assets of the College to the purposes of the foundation.

207. President Waggoner conferred by telephone with Mr. Thomas Huddleston of Bradley University; supplied him with full information about admission statistics of the College and apparently received no recommendations differing from those supplied by the panel of experts and Dr. Truman.

208. Pursuant to the direction of the officers of the Board, President Waggoner consulted with Attorneys Menaker and LeFever of the Law Firm of McNees, Wallace & Nurick on February 14 through 17, 1979, for a total period of 2 to 3 hours concerning the form of the resolution to be taken to the Board with regard to closing and transferring assets to the foundation. Mr. LeFever modified or added wording to the resolution prepared by the Board officers, but otherwise made no correction of the resolution. The President was advised a cy pres proceeding would be required before the actual closing of the College, and she understood it would be necessary to proceed with cy pres to use the assets of the College for

something else. She was not advised by counsel that only the Court had authority to decide whether the College would be closed. The President requested Mr. LeFever to contact the Attorney General's Office to inform it of the Board's intention to file a cy pres proceeding, and she was advised that contact with the Attorney General's Office was conditioned upon Board approval of the resolution.

209. President Waggoner testified that it was understood that announcing the intended closing of the College would foreclose the other options available to the Board, including continuing the College in the form of a College.

210. On the morning of February 17, 1979, President Waggoner met with the officers of the Board and advised them of her telephone conversation with Mr. Huddleston, and reported that there was no basis for change in the recommendation.

211. Twenty (20) Trustees of the Board met at 2:40 P.M., February 17, 1979, in the office of Mr. Damerjian in the Girard Bank, Philadelphia, Pennsylvania.

212. The Board received reports from President Waggoner concerning her conference with the "panel of outside experts", and telephone conference with Thomas Huddleston and from Chairman Walker on the meeting of the Board officers with Dr. Truman. After Board discussion, some in the presence of President Waggoner and some after she had been excused; Chairman Walker moved and Trustee Marguerite Thomas seconded the following resolution:

"Aware of the deteriorating situation with regard to admissions, retention and enrollment as well as voluntary gifts and grants and of the jeopardy in which the continuation of the College as an excellent and effective college for women is placed, the Board of Trustees of Wilson College hereby resolves and gives notice that classes shall be suspended at the end of the academic year 1978-1979, and that the Board of Trustees shall begin at this time those steps necessary in which it deems appropriate to conclude the operation of the College in its present form.

"It is agreed by the Board that as of 1 July 1979 the corporate entity in which Wilson College now conducts its function shall change its corporate name to the Wilson College Foundation, and that the assets of the foundation other than those needed for the administrative functioning of the foundation that are not already in such form shall then be converted, over such

## LEGAL NOTICES, cont.

Blue Ridge Summit : In the Court of  
Lions Club, by Donald : Common Pleas of  
E. Folkenroth, : the 39th Judicial  
Trustee ad Litem, : District of Penn-  
Plaintiff : sylvania  
vs.  
Thomas Hughes, Mrs. K. : Franklin County  
William Boyd, Kathe- : Branch  
rine Detrick, Andrew :  
Ellicott Maccoun, Vir- :  
ginia Creighton, Field- :  
ing L. Marshall, George :  
Roper, John Roper, An- : Civil Action —  
nie McKim, Anne H. : Law  
Rolando, Charles H. :  
Knapp, Mary M. Nor- :  
ris, Samuel Parron, :  
Adelaide S. Wilson, J. :  
Appleton Wilson and :  
Mary W. Wilson, Mary :  
E. B. Findlay, Lucy I. :  
Stonestreet, Ella Cow- : A.D. 1979-158  
man, Louise Henry, :  
Fanny Scott Waters, :  
Clarence C. Curtiss, :  
Mrs. Burton Despard, :  
Gladys Whiting, D. J. :  
Mason Hundley, Percival :  
Hall, and Kate B. Pitt, :  
their heirs, executors, :  
administrators and :  
assigns, : Action to Quiet  
Defendants : Title

To: Thomas Hughes, Mrs. K. William Boyd,  
Katherine Detrick, Andrew Ellicott  
Maccoun, Virginia Creighton, Fielding  
L. Marshall, George Roper, John Roper,  
Annie McKim, Anne H. Rolando,  
Charles H. Knapp, Mary M. Norris,  
Samuel Parron, Adelaide S. Wilson, J.  
Appleton Wilson and Mary W. Wilson,  
Mary E. B. Findlay, Lucy I. Stone-  
street, Ella Cowman, Louise Henry,  
Fanny Scott Waters, Clarence C.  
Curtiss, Mrs. Burton Despard, Gladys  
Whiting, D. J. Mason Hundley, Perci-  
val Hall, and Kate B. Pitt, their heirs,  
executors, administrators and assigns.

You are notified that the plaintiff has  
commenced an Action to Quiet Title against  
you by a Complaint filed on June 25, 1979  
in the Office of the Prothonotary in Franklin  
County, Pennsylvania, to the above number  
and term.

If you wish to defend against the claims  
set forth in the above mentioned Complaint  
you must take action within 20 days after  
service of the Complaint and notice has  
been completed by publication by entering  
a written appearance personally or by at-  
torney and filing in writing with the court  
your defenses or objections to the claims set  
forth against you. You are warned that if  
you fail to do so the case may proceed  
without you and a judgment may be entered  
against you by the court without further  
notice for any money claimed in the Com-  
plaint or for any other claims or relief  
requested by the plaintiffs. You may lose  
money or property or other rights important  
to you.

You should take this notice to your lawyer  
at once. If you do not know of a lawyer,  
contact

Legal Reference Service of  
Franklin-Fulton Counties  
Court House  
Chambersburg, PA 17201  
Tel. No.:  
Chambersburg 264-4125, Ext. 13

## LEGAL NOTICES, cont.

This Action concerns the land herein  
described: ALL THAT CERTAIN real estate  
lying and being situate in the Township of  
Washington, County of Franklin, and State  
of Pennsylvania, and bounded and limited as  
follows: Beginning at an iron pin in the  
center line of the Old Furnace Road at  
corner of land now or formerly of J. Earl  
Pryor; thence in the center line of said road  
north 16 degrees 45 minutes east 75 feet to  
an iron pin, also in the center line of said  
road at land now or formerly of the Monterey  
Water Co.; thence leaving said road and  
along land now or formerly of the Monterey  
Water Co. south 85 degrees 35 minutes east  
467 feet to an iron pin, formerly a stone  
pile; thence further along land now or for-  
merly of the Monterey Water Co. south 62  
degrees 35 minutes east 510 feet to an iron  
pin in the center line of Forrest Drive;  
thence in the center line of Forrest Drive  
south 10 degrees 5 minutes west 150 feet to  
a spike in the center line of the intersection  
of Forrest Drive and the public road leading  
to Fairfield known as Township Route 701;  
formerly Legislative Route No. 44; thence  
in the center line of said public road south  
89 degrees 5 minutes west 448 feet to a spike  
in the center line of said public road at  
corner of land now or formerly of J. Earl  
Pryor; thence leaving said road and along  
land now or formerly of J. Earl Pryor north  
23 degrees west 155 feet to an iron pin;  
thence along the same north 47 degrees 15  
minutes west 102 feet to an iron pin; thence  
along the same north 69 degrees west 167 feet  
to an iron pin; thence along the same north  
65 degrees west 193 feet to an iron pin in  
the Old Furnace Road, the place of be-  
ginning.

By Stephen E. Patterson  
Beck, Patterson and Kaminski  
Attorneys for Plaintiff  
237 E. Main St.  
Waynesboro, PA 17268

Frank H. Bender, Sheriff  
(7-6, 7-13, 7-20)

period of time as to the foundation shall seem necessary and  
prudent with a view to maximizing values, into endowment or  
investment-type assets producing an appropriate return.

"The purpose of the Wilson College Foundation shall thence  
forth be to continue to work toward the aims of Wilson  
College when an operating educational institution, and to  
administer the assets of the foundation in a manner as nearly  
as possible to fulfill the purposes fulfilled by Wilson College  
when an operating educational institution. The purpose of  
Wilson College as stated by its founders and continued to the  
present time has been to provide for women the opportunity  
for a broad and thorough education of the highest quality. As  
stated in its first catalog 'The aim of the institution is...to  
provide in its course that thorough and effective discipline,  
which shall develop the mental faculties, and secure both  
habits of thought and real scholarship.' From the beginning,  
there has been particular concern that the development of  
character be an integral part of a Wilson education. Hence the  
purpose of the Wilson College Foundation shall be to foster  
the liberal education of women for excellence, for leadership,  
for service. This goal may be pursued by the Foundation by  
such aid to the undergraduate education of women as it may  
deem appropriate to furthering the aims of Wilson College,  
including but not necessarily limited to educational research  
and development and scholarships for the undergraduate  
education of women."

The resolution was put to the vote and carried with no nay  
votes and one abstention.

213. A "draft copy" of the events of the February 17,  
1979 Board meeting was circulated among Trustees (petitioners'  
Exhibit 24). Subsequently "final minutes" of the same Board  
meeting were circulated. The following sentence was deleted  
from highlight No. 4, page 2, wherein Chairman Walker was  
summarizing Dr. Truman's comments on the responsibility of  
Trustees:

"If the Trustees decide to keep the College open, he urged that  
they understand that they must commit themselves to a  
greater investment of energy and personal resources than has  
been made before."

Also deleted from page 2 of the final draft under  
Chairman Walker's summarization of the feeling of the panel:

"Only if the Trustees are willing to gamble and change the  
essential character of Wilson College can there be any real

chance of survival — and that is only a chance, not a guarantee."

214. Neither President Waggoner nor Chairman Walker in their testimony concerning discussions with the panel of experts or with Dr. Truman ever made any reference to either the panel or Dr. Truman giving any consideration to the possibility that the College would remain open.

215. Chairman Walker testified that she had noted upon reading the "draft minutes" that Trustee Turner was incorrectly recorded as being absent, and suggested that that error be corrected but suggested no other revisions.

216. President Waggoner testified that the initial set of minutes (draft minutes) was sent out and then corrections were made and the corrected minutes were sent out which were approved at the next Board meeting. She testified that she didn't know whether the corrections were just made by her secretary or at someone else's initiative and she did not know if the final set of minutes were sent out a day or so after the instant litigation was initiated.

217. Contrary to the statement appearing at page 3 of both sets of minutes of the February 17th meeting, that the formal resolution of closing was drafted by the College attorney the testimony of President Waggoner and Chairman Walker was to the effect that the recommendation or resolution of closing was prepared by the Board Officers after the meeting with Dr. Truman, and it was presented to Mr. LeFever and Mr. Menaker for modification and additional wording.

218. The Board of Trustees gave no consideration to going to the community, the faculty, and the student body and reporting the necessity for closing the College in the absence of a strong infusion of money before acting to close the College.

219. At an all-campus convocation held at Noon, Monday, February 19, 1979, Chairman Walker notified the student body, faculty and staff of Wilson College of the Board's decision to close the College at the end of the current academic year. The notice of the closing was released to the press at the same time in the form heretofore referred to in petitioners' Exhibits 4(X) and 4(Y).

## THE PRESIDENT, THE ADMINISTRATION AND THE FACULTY

220. Dr. Margaret Waggoner was elected President of Wilson College on August 1, 1975. She has a Bachelor's Degree, Master of Science Degree and Ph. D. Degree in Physics from the University of Iowa.

221. President Waggoner's only administrative experience was as Dean of Smith College from 1970 to 1973. From 1973 to 1975 she remained at Smith College doing research on the philosophy of science.

222. The President was familiar with the Moon Report and was aware of the admissions and financial problems of the College prior to agreeing to accept the appointment.

223. During her tenure certain improvements were made to campus buildings, including the renovation of the fine arts center and gymnasium of Penn Hall.

224. During her tenure there were some curriculum changes described by her as "rather small". An archeology program, equitation program and biochemistry were developed.

225. The President effectively participated in the efforts to prepare the financial strength of the College, and sought gifts and grants from institutions and foundations without any significant success. Minimal federal and Commonwealth funds were received by the College.

226. As previously noted there was an excessive turnover of administrative staff during her tenure.

227. The President agreed with the Moon Report description of the faculty as traditional and inflexible, but provided no evident leadership to correct the condition or replace faculty members adversely affecting the progress of the College's program.

228. In December 1978, the President made a statement to the media that Wilson College had "turned the corner" indicating that the recruitment-enrollment problem had been solved. This statement was made at a time when the Admissions Office had to be aware of the fact that the number of applications being received was falling far short of the optimistic predictions previously made.

229. The failure of the President to promptly and

regularly share with the Board, administrative staff, faculty, the student body and the alumnae the problems of the College. as they were developing contributed to the lack of cooperation, effort and support which could have been available.

230. The presidential failure to provide leadership in following the recommendations of the Moon Report perpetuated the problem areas identified by the consultants who prepared that report.

231. The failure of the President to strengthen the Dean's role in academic affairs directly related to the failure of the College to adopt a curriculum more likely to appeal to women interested in entering a small, private women's college.

232. There appeared to be very little delegation of authority by the President to the administrative staff.

233. It appears there was very little cooperation or coordination among the faculty members, and among the academic divisions of the College.

234. The faculty, being unaware of the financial straits of the College, via its committee requested a 15% salary increase over two years plus cost-of-living increase on the day preceding the February 3, 1979 Board meeting.

235. The recommendations of the Moon Report for the retrenchment and restructuring of the faculty with an infusion of women members was largely ignored by the President, the administrative staff, and the faculty.

236. Prior to the Board's decision to close the College no faculty members had offered to accept a cut in salary. They had not been informed of the financial position of the College.

237. There was a significant lack of leadership in the faculty to change, revise or modernize the College curriculum.

238.. Dr. Marilyn Mumford offered in a letter to President Waggoner to teach without compensation a course at the College which she had successfully introduced at Bucknell University. She never received an answer to her offer. There is no evidence that the proposed new course was ever discussed by the President with the administrative staff or the faculty.

#### GENERAL

239. Promptly after the February 19, 1979 news report of

the closing of the College alumnae met and formed a "Save Wilson Committee", and began to solicit funds for administrative, mailing and legal expenses in connection with this litigation and three-year pledges to the "Preservation of Wilson College Trust".

240. As of May 7, 1979, 1,840 three-year pledges for a total of \$804,009.00 had been received. The pledges are due and payable during the years 1979-1980, 1980-1981, and 1981-1982. The pledges are conditioned upon the continuation of the College as a teaching institution.

241. A trust instrument has been drafted by an attorney executed and presumably filed.

242. The initial Save Wilson Committee appeal for pledges reported to the alumnae that the trust would be formed and would be tax exempt. No tax exemption had been approved as of May 7, 1979.

243. No evidence was introduced as to the amount of funds received for legal expenses, administration expenses, etc.

244. The Save Wilson Committee on April 26, 1979 mailed letters appealing for special gift pledges, and as of May 7, 1979 had received sixty (60) special gift pledges totalling \$18,200.00.

245. A committee of the Save Wilson Committee prepared a list of 25 "replacement Trustee candidates," together with written expressions of their willingness to serve, and their curriculum vitae. The proposed list was offered in evidence. The Court directed that it be sealed and held by the court reporter for the use of the Court only in the event the Court should remove all of the present Trustees. (In the absence of such action the By-Laws of the College require successor Trustees to be appointed to the Board by those Trustees then on the Board.) The sealed list with accompanying documents is marked as petitioners' Exhibit 14(A through Y).

246. The efforts of the Save Wilson Committee to secure pledges is continuing.

247. The Major Mission Fund of the Presbyterian Church has allocated \$181,000 to Wilson College, and will be payable to the College over a three-year period commencing July 1, 1979.

248. The Major Mission Fund has also allocated \$14,764.00 to a scholarship fund for Wilson College.

249. Four members of the faculty of the College offered to accept substantial salary reductions if the College continued as a teaching institution. They did not suggest that they spoke for other members of the faculty.

250. The restricted endowment book value as of June 30, 1978 was \$2,548,716.00.

251. The unrestricted endowment book value as of June 30, 1978 was \$2,140,764.00.

252. The book value of campus buildings as of June 30, 1978 was \$7,848,766.00 with a replacement value for insurance purposes of \$16,663,182.00.

253. The College equipment has an approximate value of \$2,000,000.00.

254. The total long-term indebtedness of the College as of June 30, 1978 was \$1,250,910.00.

255. Approximately \$450,000.00 of the long-term indebtedness is owed to HUD and will be repayable only if the College ceases to function as a teaching institution.

256. According to the President's testimony the market value of the unrestricted endowment was \$1,300,000.00 on June 30, 1978, and as of early April 1979 was approximately \$980,000.00 of which \$450,000.00 was received to pay the HUD mortgage, which will become due on the closing of the College.

257. The President testified approximately \$260,000.00 had been or would be withdrawn from unrestricted endowment to meet current operating expenses leaving a balance of \$260,000.00.

258. If the College closes it will be required to pay the Commonwealth of Pennsylvania approximately \$280,000.00 unemployment compensation. In addition, there will be professional fees and costs of sales or leasing of assets of an unknown and unestimated amount.

259. College By-Laws Art. VII, Section 6(c)(1) provides:

"c. Removal for institutional considerations (1) If termination of employment before the end of the period of appointment is based upon institutional considerations, such as the discontinuance of a program or financial exigency, the Faculty member shall be given notice as soon as possible. If it is not

possible to give a notice of at least twelve months, the Faculty member shall be given severance pay to provide, with the inclusion of the period of notice given, the equivalent of a notice of twelve months."

260. Judicial notice is taken of the fact that 37 members of the College faculty initiated an action in assumpsit against Wilson College on May 11, 1979 to A.D. 1979-118 claiming damages in the total amount of \$666,906.71. The complaint alleges termination of their employment contracts and claims for severance pay as provided in Art. VII, Section 6(c)(1), supra.

261. Notices of the closing of the College were sent to all applicants for admission to the freshman class of 1979.

262. Members of the present freshman, sophomore and junior classes of the College have been notified of the closing and are being assisted in transferring to other colleges and universities. The number of students who have transferred or are in the process of transferring is unknown.

263. Assistance of the College was offered members of the faculty and administrative staff in seeking other employment. The number of faculty members and staff members who have secured other employment is unknown.

264. The February 19, 1979 notice of the closing of the College and action in furtherance of the Board's decision damaged the College as to:

(a) The maintenance of the present student body.

(b) The availability of any incoming 1979 freshman class.

(c) The status of the present faculty, the administrative staff and maintenance staff.

(d) Potential liability, e.g., the Commonwealth unemployment compensation claim, the HUD mortgage claim, the faculty severance pay suit.

(e) Its ongoing academic integrity.

(f) Its financial integrity.

(g) Its potential credibility as a functioning educational institution.

The damage done is incalculable at this point, but extremely serious.

265. The College is not bankrupt or near that fiscal disaster point. The assets far exceed the established or presently known potential liabilities.

266. Whether Wilson College can regain its viability as an ongoing educational institution cannot be determined at this time.

267. Those members of the Board of Trustees who voted in favor of the resolution to conclude the operation of the College in its present form, establish a Foundation, and fund it with the remaining assets of the College acted precipitously without sufficient or valid information and consequently irresponsibly.

268. The conduct of the officers of the Board is more subject to censure, for they failed to assure themselves of the expertise of the panel to address itself to the problems of a small college and its possible closing, the adequacy and accuracy of the information submitted to the panel, that the entire panel had been assembled and would devote the time required to consider issues involving the life or death of an institution. The action of the officers in exceeding the authority granted them by the Board in preparing the resolution for closing, creation of the foundation and transfer of college assets to the foundation for presentation at the February 17, 1979 meeting was particularly censurable. The deletion from the final Board minutes of the February 17, 1979 meeting of the statements concerning the non-closing of the College attributed to Dr. Truman by Chairman Walker apparently without objection of any of the Board officers is seriously suspect.

269. President Waggoner misled the Board, student body, alumnae and the public as to the state of the College in the late months of 1978. This occurred either by design or by a total failure of the President to maintain any supervision of the Director of Admissions.

270. The failure of the President and Chairman Walker to inform the Board, the student body and the alumnae of the evident failure of the widely touted successful admissions program in early January 1979 was an unreasonable nondisclosure, improper and irresponsible; and it directly contributed to the Board's panic reaction and sense of urgency to close at the February 3, 1979 meeting.

271. The extraordinary turnover rate of administrative staff, the well-documented incompetence of the present Director of Admissions, the failure to follow the clear recommendations of the Moon Report (excluding the liberal arts versus career course philosophical dispute) establishes the incompetency of President Waggoner as the chief executive of the College.

272. The President's presentation to the Truman panel on February 9, 1979 of a news release anticipating the February 17, 1979 Board action to close the College, establish a foundation and fund it with the remaining assets of the College is inexplicable, but of necessity creates the gravest doubts as to President Waggoner's motivation.

273. The qualifications of Dr. Mary Patterson McPherson as an educator and administrator are beyond doubt. The expertise she was capable of bringing to the Board of Trustees of Wilson College is also beyond doubt.

274. Despite the fact that Bryn Mawr College and Wilson College are poles apart in the size of their student bodies, and no doubt in endowments and curriculum; nevertheless both colleges must compete for women students out of the national pool of students and to some extent compete in the same geographical area, i.e., the Middle Atlantic and New England States. An irreconcilable conflict of interest, therefore, exists.

275. The evidence does not demonstrate that Dr. McPherson, as an educator, college administrator, and one of the consultants on the team who prepared the Moon Report, brought to the Board of Wilson College the expertise and leadership of which she was capable. There was no evidence that she sought to implement the recommendations of the Moon Report or made recommendations based upon her successful achievements at Bryn Mawr College. Indeed, she did not advise the Director of Admissions that she believed his staff was inadequate to handle a 70,000 student pool because she felt it wasn't her business.

276. While the conduct of the various members of the Board of Trustees who voted in favor of the resolution to close the College was censurable in varying degrees as above set forth, we find that with the exception of President Waggoner that they had a sincere and well-intentioned interest in the well-being and welfare of Wilson College and acted out of good and proper motives. Those Trustees were not educated as to the charter purposes of the College, and their responsibilities to exhaust themselves and every avenue in seeking to achieve and

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maintain the ultimate goal of continuing Wilson College as an educational institution. As to those Trustees, though their culpability be of varying degrees, they were seriously misled and meant only well for Wilson College.

## DISCUSSION

It is undisputed that Wilson College is a nonprofit corporation and is, therefore, subject to regulation under the Corporation Not-for-Profit Code, Act of November 15, 1972, P.L. 1063, No. 271, 15 Pa. C.S. Sect. 7101 et seq. Jurisdiction over the instant proceeding is granted to the Orphans' Court under Rule 2156 of the Rules of Judicial Administration which states inter alia:

In addition to other matters which by law are to be heard and determined by the orphans' court division of a court of common pleas, the division shall hear and determine the following matters:

(1) Nonprofit corporations: The administration and proper application of property committed to charitable purposes held or controlled by any domestic or foreign nonprofit corporation and all matters arising under Title 15 of the Pennsylvania Consolidated Statutes....

Recent decisions have interpreted this provision as giving the Orphans' Court broad jurisdiction over the administration of property held by nonprofit corporations for charitable purposes. *In Re Pennsylvania Home Teaching Society*, 15 Fiduc. Rep. 556 (Phil. 1975); *The Music Fund Society*, 73 D&C 2d 115 (Phil. 1975); *Women's Christian Temperance Union of Pennsylvania v. Bearhalter*, 6 D&C 3rd 207 (Bucks 1977). These decisions indicate that "the scope of the rule contemplates that jurisdiction extends to all internal matters of non-profit corporations for charitable purposes, even to matters not directly bearing upon such funds." *Women's Christian* at 212.

This jurisdiction, applicable to all matters arising under Title 14, is made particularly relevant to the hearing of petitions to remove trustees by Section 7726 of the Corporation Not-for-Profit Code and to hear and determine the validity of corporate action by Section 7783. Most importantly, Section 7749 of the Code requires the approval of the Orphans' Court before any property committed to charitable purposes can be diverted from its purpose.

The Court in *In Re Pennsylvania Home Teaching Society*, supra., at 567 determined that: "the provisions of the Estates

Act of 1947, now 20 Pa. C.S. Sect. 6101 et seq., do apply [in cases arising under Pennsylvania Rules of Judicial Administration No. 2156] and especially the *cy pres* doctrine as delineated in 20 Pa. C.S. Sect. 6110. We have arrived at this conclusion because we are satisfied the legislative intent expressed in 15 Pa. C.S. Sect. 7549(b) is to require court approval for any fundamental change as to the disposition of property committed to charitable purposes which affects the basic conditions under which such property was donated, granted, or devised..."

Therefore, although the Corporation Not-for-Profit Code under Pennsylvania Rule of Judicial Administration 2156 authorizes the Orphans' Court to hear actions involving nonprofit corporations, this does not deprive the Court of jurisdiction under the Probate, Estates and Fiduciaries Code, Act of June 30, 1972, P.L. 508 as amended, 20 Pa. C.S. Sect. 711.

The situation presented by the proposed closing of Wilson College is unique. Property held by a standard charitable trust generates annual income, and alterations or attempts to alter the purposes of the trust do no generally damage the trust, its principal, or its income-earning capacity. The assets of Wilson College, however, are held for the charitable purpose defined by Wilson's charter, the establishment and maintenance of an institution of higher learning as a teaching institution. As an ongoing entity, a college is significantly affected by any change in its structure. Attempts to implement such changes can severely damage the corporation, the entity of the college, in ways which may be difficult to repair.

It is for this reason that Section 7549(b) of the Corporation Not-for-Profit Code must be read by the Court to require that the trustees of a nonprofit corporation must seek Orphans' Court approval before changing the nature of the institution. Section 7549(b) states:

Property committed to charitable purposes shall not, by any proceeding under Chapter 79 of this title (relating to fundamental changes) or otherwise, be diverted from the objects to which it was donated, granted or devised, *unless and until* the board of directors or other body obtains from the court an order under the Estates Act of 1947 specifying the disposition of the property. (emphasis added)

The legislature has clearly indicated that no change in the use of assets committed to charitable purposes can be made "unless and until" the Orphans' Court grants approval to the

trustees. Otherwise, in the instance of the proposed closing of a functioning college, the Court would be presented with a fait accompli.

By implementing the decision to close Wilson College the Trustees attempted to essentially deprive the Court of its power to review the recommendation of the Board and to approve or disapprove the proposed diversion of college assets from a teaching institution to some other charitable use. In addition, the implementation of the decision to close Wilson College without prior approval of the Court attempted to deprive the public, represented by the Attorney General as *parens patriae*, of an opportunity to comment upon or protest the decision.

We therefore conclude:

1. This Court has jurisdiction of the subject matter here in litigation.

2. Due to the uniqueness of a college and the problems peculiar to the continuing viability of such an ongoing institution, we conclude a governing body may not implement any decision to terminate a college unless and until Court approval has been secured.

The trustees of a charitable trust or a non-profit corporation may not divert trust or corporate assets to purposes other than those provided by the settlor of a trust or the charter of a non-profit corporation unless and until the fulfillment of those charitable purposes has become impossible or impractical. The evidence in the case at bar does not establish either the impossibility or the impracticability of Wilson College continuing as a teaching college — only that its continuation will be difficult and demanding of much time, effort, and dedication.

While we recognize, as we must, the distinct possibility that a time will come when the continuation of Wilson College as a teaching institution may become either impractical or impossible of fulfillment, the totality of the evidence did not persuade us that that time is now. The difficult days that lie ahead for Wilson College, its governing board, its alumnae and its student body are obvious. However, we doubt that those future days are any more fraught with peril, any more risky, any more doomed to failure than the conditions and circumstances which confronted the incorporators 110 years ago.

The prayer of the petition inter alia seeks the removal of

all trustees. Counsel for the petitioners contend that the very act of voting to close the College and then without Court approval proceeding to implement that decision to close was totally detrimental to the charter purpose of Wilson College and grounds for judicial removal. They also contend that the evidence establishes a history of mismanagement directly contravening the educational purposes of the corporation which justifies removal.

Being mindful of the fact that the individual trustees took their seats on the Board at various times over a period of many years and their tenure in office varied greatly, we are not prepared to attribute or even attempt to attribute collective Board action or inaction over an unidentified period of years to individual members of the Board. With some very few exceptions not here applicable, those who seek the removal of trustee or trustees must sustain the burden of proving that the specific trustee was personally guilty of conduct justifying removal. To hold otherwise would constitute guilt by association, a concept we reject.

"The court may, upon petition of any member or director, remove from office any director in case of fraudulent or dishonest acts, or gross abuse of authority or discretion with reference to the corporation, or for any other proper cause, and may bar from office any director so removed for a period prescribed by the court." Act of 1972, Nov. 15, No. 271, Sect. 7726(c), 15 Pa. C.S.A. 7726(c).

In the case at bar we find no evidence of fraudulent conduct or dishonest acts with reference to the corporation by any trustee.

We do conclude the conduct of Dr. Margaret Waggoner constituted a gross abuse of authority and discretion, and she will be permanently removed from the Board of Trustees of Wilson College.

We do conclude Dr. Mary Patterson McPherson must be removed from the Board of Trustees of Wilson College due to the existence of the conflict of interest between Bryn Mawr College and Wilson College and her failure to exercise the special knowledge and expertise she has which we conclude constitutes "other proper cause". Dr. McPherson will be eligible for reappointment or reelection to the Board upon termination of the presently existing conflict of interest.

We do not find that the petitioners sustained their burden of proving that the conduct of the remaining trustees

constituted "gross abuse of authority or discretion with reference to the corporation" or "any other proper cause". We therefore decline to remove any of the remaining trustees.

Parenthetically, we are constrained to observe that we have grave doubts as to the wisdom of this Board or any governing body being a self perpetuating entity; for it tends to thwart the introduction of innovative programs and concepts, stultify progress and consecrate past actions and decisions, which may no longer be viable. We would commend to the Board for its consideration the amendment of the By-Laws to permit the election of a certain number of trustees annually or biannually by the natural constituency of Wilson College, its alumnae.

Speaking of the Wilson alumnae, the Court feels it only appropriate to conclude this discussion by noting the singular appropriateness of Daniel Webster's famous statement in the Dartmouth College case:

"It is sir, as I have said, a small college, and yet there are those who love it."

## CONCLUSIONS OF LAW

1. This Court has jurisdiction of the subject matter.
2. The trustees other than Jane R. Stewart were properly and adequately served and are subject to the jurisdiction of this Court.
3. The petitioners Jean Colgan Zehner, David Platt, Isabel W. Fulton, Mrs. J. McLain King, Nancy Besch, and Wilson College have legal standing to maintain this proceeding.
4. The petitioners Karen Devey, Gretchen Van Ness, Susan Nussbaum, Laurel Bauer and Merry Hope Meloy, while having a distinct and unique interest in the proceeding do not have legal standing to maintain it.
5. The Board of Directors of Wilson College, as the directors of an on-going non-profit corporation actively engaged in the field of education, could determine that the corporation should discontinue its chartered non-profit activities; but it had no lawful right to set a termination date for those non-profit activities or take any steps toward the implementation of that termination decision until Court approval had been secured.

6. Without prior Court Approval the Board of Trustees of Wilson College had no lawful right to determine what disposition should be made of the assets of the non-profit corporation.

7. The trustees of Wilson College have a fiduciary responsibility to the College to fulfill the mandate of its charter, viz. that it be a teaching institution.

8. The assets of Wilson College were accumulated over 110 years in the discharge of and to discharge its charter mandate.

9. The fiduciary responsibility of the Board of Trustees required that Board to use those assets of the College to continue it as an institution of higher learning and as a teaching institution until its charter purposes became impossible or impractical of fulfillment.

10. On February 17, 1979 and as of this date fulfillment of the charter purposes are neither impossible nor impractical though in jeopardy as a result of the improvident and precipitous decision of the Board of Trustees on February 17, 1979.

11. Neither on the facts or the law was the Board of Trustees justified in resolving on February 17, 1979 to close Wilson College as of June 30, 1979.

12. The closing of Wilson College on June 30, 1979 will be enjoined.

13. The evidence establishes a gross abuse of discretion and authority on the part of Dr. Margaret Waggoner, President of Wilson College, and she shall be removed as member of the Board of Trustees of Wilson College.

14. The law requires trustees of a non-profit corporation to bring to the board to which they are elected or appointed that expertise which can reasonably be expected considering their training, experience and background; for the duties and responsibilities of such trustees may not be taken lightly.

15. A trustee of a non-profit corporation may not have any interest conflicting with the interest of the corporation.

16. Dr. Mary Patterson McPherson shall be removed from the Board of Directors of Wilson College due to the patent conflict of interest existing between Bryn Mawr College where

she is the chief executive officer and Wilson College; and due to her failure to exercise her recognized expertise as a director of Wilson College.

17. The evidence does not establish as to the remaining trustees of the Board of Trustees of Wilson College that individually their errors of judgement rise to the level required by law for their removal as trustees.

18. The remaining members of the Board of Trustees shall without delay meet and fill all vacancies on the Board and take the action necessary to insure that Wilson College will open to discharge its chartered purposes at the appropriate time in September, 1979.

19. The Board of Trustees shall meet as often as the exigencies of the situation shall require.

20. The Court will retain jurisdiction of this matter.

21. The February 17, 1979 action of the Board of Directors was indefensible procedurally and substantively. Therefore no assets of Wilson College shall be expended in payment for defense of the same

#### DECREE NISI

NOW, this 25th day of May, 1979:

1. The closing of Wilson College on June 30, 1979, or on any other date, without prior Court approval, is enjoined.

2. Dr. Margaret Waggoner is removed from the Board of Trustees of Wilson College this date.

3. Dr. Mary Patterson McPherson is removed from the Board of Trustees of Wilson College this date.

4. No funds of Wilson College shall be expended on behalf of the respondents herein.

5. Costs of this proceeding shall be paid by the properly served respondents.

6. Jurisdiction of this matter shall be retained by this Court.

Exceptions are granted the petitioners and respondents.