

ments in support of our class-certification motion, which was filed in 2003 and granted in 2004. ... Wal-Mart has since vigorously appealed that decision, and ERA has remained with the women of Wal-Mart through the case's long journey through the appellate process and all the way to its current place on the U.S. Supreme Court's docket.

**HK: What legal issues were addressed by the Supreme Court hearing on March 29?**

**AH:** The plaintiffs had presented extensive evidence in the trial court, which the trial judge ruled was sufficient to allow them to proceed as a class. The 9th U.S. Circuit Court of Appeals affirmed this decision twice. The U.S. Supreme Court is deciding whether the trial court that heard and considered all this evidence firsthand erred in granting class certification.

The evidence the trial and appeals courts reviewed consisted of Wal-Mart's own internal employment data, which revealed, among other things, that even though 65 percent of Wal-Mart's 1 million hourly employees were women, women held fewer than one-third of management jobs and only 15 percent of store manager positions, making Wal-Mart one of the worst American retailers in terms of percentage of women in management.



From left: Betty Dukes, Edith Arana, AAUW Executive Director Linda Hallman, and Arcelia Hurtado

The internal data also showed that women were paid less than men of equal seniority in every major job category, even though women on average had higher performance ratings and less turnover. Statistical analysis indicated that the odds that this discrepancy in pay could be attributable to chance were "less than one chance in many billions."

**HK: Why is the outcome of this hearing so significant?**

**AH:** Legal scholars have repeatedly outlined the implications of this, the largest employment class action in U.S. history, but what is first and foremost in my mind is the case's significance to the courageous women who constitute the members of the class.

In the words of named plaintiff Edith Arana, "These women have names, they

have families, they have faces. ... This is something that I am determined to do until the end, whatever the end is, because I believe in what I am doing, and what I am doing is right."

The case also stands for the right of every working woman to be paid what her work is worth and to be given an equal opportunity to advance based on her merit. ... It implicates the fate of the working class in this country—women who have families to support, who are single mothers, who are struggling to make ends meet and failing due to systematic discrimination that is unfortunately not a relic of the past yet.

In the words of Betty Dukes, "I'm just existing, I'm not living at all. ... With my age and my limited education, I had to press forward and maintain my independence, maintain my dignity even though I am not making a living wage by any stretch of the imagination, and there's nothing I can do about it."

**HK: It's so important to remember the human aspect of the case. Thanks for the important work you and ERA are doing!**

**AH:** Sure. And your readers can obtain more information about our work at www.equalrights.org. We also have a toll-free, multilingual advice and counseling line for women with questions related to inequities at work and in schools: 800/839-4372.

**Wal-Mart Plaintiffs Thank AAUW**



AAUW rallied outside the U.S. Supreme Court during the Wal-Mart v. Dukes hearing.

On the eve of the oral arguments at the U.S. Supreme Court, LAF Program Manager Holly Kearl spoke with several plaintiffs at a reception that AAUW co-hosted to honor them. The plaintiffs were very grateful for AAUW's support, both financial and emotional, including the reception and rally outside the Supreme Court.

"We've been blessed to have wonderful support from the AAUW. ... I'm very honored and humbled about their generosity. Hopefully ... when it's all over, I can contribute back to them."

—Betty Dukes, named plaintiff

"I'm humbled by the generosity of AAUW, and tomorrow is our day."

—Edith Arana, named plaintiff and speaker at the 2011 AAUW National Convention

wrestling team, allege sex discrimination in violation of Title IX of the Education Amendments of 1972. For nearly a decade, their case has gone through different courts to decide whether there was sufficient notice of the discrimination, not whether discrimination occurred. In February 2010, the 9th U.S. Circuit Court of Appeals issued an opinion remanding the matter for trial and reinstated the plaintiffs' equal protection claims against the individual defendants.

**Status:** The case went to trial in federal court in Sacramento, California, on May 23 and lasted three weeks. Local AAUW members attended the trial to support the plaintiffs.

**Case Conclusions**

**Sun v. University of Massachusetts, Dartmouth**

**Background:** Lulu Sun, an English professor, alleged sex and race discrimination in the promotion process at the University of Massachusetts, Dartmouth. Sun filed charges with the

Massachusetts Commission against Discrimination, which found probable cause for a case claiming retaliation and discrimination based on gender, race, and national origin. Not only is Sun seeking a promotion and damages for this alleged injustice, she is also requesting an order from the commission that the university administration undertake training in diversity and anti-discrimination as well as actively recruit and promote women faculty, especially women of color.

**Status:** The public hearing was held in December 2010 and January 2011. In June, the hearing officer ruled in Sun's favor, awarding her a promotion to full professor and requiring the university to undergo training. The school is expected to appeal the ruling.

Please contact [laf@aauw.org](mailto:laf@aauw.org) for a case recommendation form if you know about a workplace or higher education sex discrimination case that has the potential to set precedent. Read more about LAF's expanded case support program and full case backgrounds online at [www.aauw.org/act/laf/cases](http://www.aauw.org/act/laf/cases).

**About LAF**

The AAUW Legal Advocacy Fund partners with other civil and women's rights organizations to support strategic litigation that affects women in all workplaces. Through our campus programs and online resource library, LAF educates campuses and the general public about barriers faced by women and the legal rights, policies, and strategies that can help to eradicate sex discrimination in higher education and the workplace.

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**Breaking through Barriers for Women and Girls**

**LAF/UPDATE**

Spring 2011

**Also in This Edition**

- Title IX Protects Students from Sexual Violence, Too
- A Record Year for Campus Programming
- Latest Case Updates

**From the President**



Carolyn Garfein

I am very pleased to share this edition of *LAF Update* with you. As I read through the articles about the important cases that we are supporting through the AAUW Legal Advocacy Fund, I am reminded of 19th-century British Prime Minister William E. Gladstone's famous statement, "Justice delayed is justice denied."

Although this is considered a fundamental principle of Western jurisprudence, we all know that the tactic of delay is embedded in the American legal system—and it is often used by the rich and powerful to deter individuals from seeking justice. Trials are expensive, and delay can be even more expensive, which makes the process unaffordable for ordinary citizens.

That's where we come in. For many years, AAUW has been supporting those who face gender discrimination no matter how long their cases have dragged on. Think about the 11 years Betty Dukes and her colleagues have fought just for the right to sue Wal-Mart together as a class for years of systematic gender discrimination. Think of the 10 years it has taken the women of the University of California, Davis, wrestling team to get into a courtroom to present the facts in their Title IX case.

And there's still a long slog ahead for these women. But the facts in these cases are compelling, and righteous decisions can mean true protection for others in the future. So even when the system has allowed unjust delay, we'll still be there to make sure that justice will not ultimately be denied.

Sincerely,

Carolyn H. Garfein  
AAUW President

**Q and A with Wal-Mart Case Expert**

In June, the U.S. Supreme Court will issue its decision on whether *Wal-Mart v. Dukes*, an LAF-supported sex discrimination case against the world's largest retailer, can continue as a class-action suit. Lead plaintiff Betty Dukes, a current Wal-Mart employee, alleges gender discrimination in pay and promotion policies and practices in Wal-Mart stores. If the court rules in favor of Dukes and the other plaintiffs, their case will become the largest class-action civil rights suit in the nation's history, representing approximately 1.6 million Wal-Mart and Sam's Club employees.

Arcelia Hurtado, executive director of Equal Rights Advocates (ERA), a national nonprofit legal organization and one of the organizations representing the plaintiffs, talked with AAUW this spring about the significance of the case.

**LAF Program Manager Holly Kearl (HK): How long has ERA been involved with Wal-Mart v. Dukes?**

**Hurtado (AH):** ERA has represented the women of the historic Wal-Mart class action since day one. ERA began receiving complaints from Wal-Mart women employees through our Advice and Counseling Hotline in 1999. ERA helped lead plaintiff Betty Dukes file her original complaint in this case with the U.S. Equal Employment Opportunity Commission. ERA, along with co-counsel, filed the class-action lawsuit in 2001 on behalf of Dukes and six other women, representing a class of women workers similarly situated.

In 2002, ERA and co-counsel traveled the country talking to potential class members and taking their state-

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## Title IX Protects Students from Sexual Violence, Too

In April, the U.S. Department of Education's Office for Civil Rights (OCR) released a "Dear Colleague" letter to schools clarifying that student sexual harassment, including acts of sexual violence, are prohibited under Title IX. Although commonly associated with athletics, Title IX forbids all sex discrimination in educational programs or activities that are operated by recipients of federal financial assistance. In explaining its opinion, OCR said that "the sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime."

The same week that OCR released this letter, the office announced it was opening an investigation of Yale University for fostering a campus atmosphere that permits sexual harassment. The Yale complaint came after several high-profile incidents of

harassment at the school, but studies suggest that this type of behavior is common on campus, underscoring OCR's need to address this issue.

A report prepared for the National Institute of Justice found that one in five college women are victims of sexual assault and that, in 2009, college campuses reported nearly 3,300 forcible sex offenses. According to AAUW research, 80 percent of students at the secondary level reported that they had experienced sexual harassment. At the college level, nearly two-thirds of students (62 percent) said they have been sexually harassed, including nearly one-third of freshmen, and 41 percent of college students admitted to sexually harassing another student.

In its letter, OCR reminded schools about how they can comply with Title IX and protect students from sexual harassment and violence:

- Every school that receives federal funding must do three things: place a public notice of nondiscrimination in its facilities, designate at least one employee as the school's Title IX compliance coordinator, and adopt and publish grievance procedures that provide for a prompt and equitable settlement of complaints.
- Title IX protects students at academic, educational, extracurricular, athletic, and other programs at a school, whether the activities take place in the school itself or at an event sponsored by the school. If a school knows or reasonably should know about harassment in these venues, Title IX requires immediate action to stop the harassment, prevent its recurrence, and address its effects.

## Case Updates

In April, the AAUW Board of Directors awarded \$11,000 to the plaintiffs in *Mansourian v. Regents of the University of California* for trial-related expenses. In May, they voted to award \$14,800 more for the Mansourian trial and \$4,000 to plaintiffs in each of the three cases against Feather River Community College and to *Sun v. University of Massachusetts, Dartmouth*. The board also voted to accept two new cases, *Cioca v. Rumsfeld and Gates* and *Parker v. Franklin County Community School Corporation* and to award them \$3,000 and \$4,200, respectively.

### New Cases

#### *Cioca v. Rumsfeld and Gates*

**Background:** Sixteen veteran and current members of the U.S. military who were allegedly raped, sexually assaulted, and harassed while on active duty filed a lawsuit against the Department of Defense (DOD), charging that the agency violated their constitutional rights by allowing a culture of assault and failing to act on complaints.

The plaintiffs allege that DOD failed to prevent plaintiffs and others from being raped and sexually assaulted by not investigating rapes and sexual assaults, prosecuting perpetrators, providing an adequate judicial system as required by the Uniform Military Justice Act, or abiding by deadlines to implement congressionally ordered reforms to stop rapes and other sexual assaults. The plaintiffs say they want to achieve change within the military, not gain financial compensation.

**Status:** The case was filed in the U.S. District Court for Eastern Virginia on February 15, 2011. The plaintiffs' lawyers are writing a white paper on reforms they want the military to make regarding sexual assault and would be willing to drop the suit if the military adopts it.

#### *Parker v. Franklin County Community School Corporation*

**Background:** The primary issue in the case is whether the scheduling of girls' basketball games on less desirable days violates Title IX of the Education Amendments of 1972. The district court granted summary judgment for the school districts. It also went against precedent in holding that the school districts were entitled to immunity from suits in federal court, an issue with potentially far-reaching consequences. This case could set significant precedent regarding the alleged Title IX violation and whether school districts are arms of the state and therefore immune from suit in federal court.

**Status:** The National Women's Law Center and co-counsel filed a plaintiffs' opening brief with the 7th U.S. Circuit Court of Appeals in January 2011 and the reply brief in April 2011. Oral arguments for the case occurred on May 31.

### Continuing Cases

#### *Wal-Mart v. Dukes*

**Background:** In 2001, women employees at Wal-Mart filed a class-action sex discrimination lawsuit in the U.S. District Court for Northern California. The lawsuit alleges that women employees at Wal-Mart were denied advancement and training opportunities, paid less than men for the same or comparable work, steered to lower-wage departments, subjected to a sexually hostile work environment, and retaliated against when they attempted to address sex discrimination.

**Status:** On December 6, 2010, the U.S. Supreme Court agreed to decide whether 1.6 million women employees of Wal-Mart can pursue job discrimination claims as a class in one suit or whether they'll have to split up and file against individual

stores. The case was argued before the U.S. Supreme Court on March 29, 2011, and a decision will be issued in June.

#### *Jaureguito v. Feather River Community College, Thein v. Feather River Community College, Warluft v. Feather River Community College*

**Background:** The plaintiffs allege sex discrimination and retaliation for complaining of sex discrimination in violation of Title IX of the Education Amendments of 1972.

**Status:** On October 19, 2010, the California State Personnel Board officially dismissed the whistleblower complaints of all three plaintiffs. Feather River Community College filed a motion to dismiss the federal cases, and the plaintiffs and their lawyer are in the process of opposing the motion. The federal court dates continue to be on hold until each side submits its brief. In February, the case was transferred to a new judge, delaying the process.

#### *Mansourian v. Regents of the University of California*



Mansourian plaintiffs, from left: Arezou Mansourian, Christine Ng, and Lauren Mancuso

**Background:** Arezou Mansourian and the other plaintiffs, former students at the University of California, Davis, and former members of the university's women's

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## AAUW Legal Advocacy Fund Major Donors

We extend sincere thanks to the donors whose contributions to LAF were received between December 1, 2010, and March 31, 2011.

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9. AAUW Greater Naples (FL) Branch
10. AAUW Los Altos-Mountain View (CA) Branch

### A Message from Development

Please remember that without financial support, we cannot provide these essential programs. We hope you will join other generous donors and support our critical work by using the enclosed donation envelope or visiting our secure website at [www.aauw.org/contribute](http://www.aauw.org/contribute). If you have any questions or would prefer to make a contribution over the phone, please contact Tremayne Parquet at 202/728-7611 or Kristie Malley at 202/785-7766 for assistance.

## A Record Year for Campus Programming

Last year, LAF Program Manager Holly Kearl challenged branches to publicize and apply for AAUW grants to launch campus projects, and they stepped up to the challenge.

During 2010–11, AAUW funded a record eight LAF Campus Outreach Programs, with projects in Alabama, California, New York, and Oregon. Program topics included workplace discrimination, dating violence, stalking, sexual assault, fair pay, and Title IX. Events held in California were generously funded by the Gloria Weston Outreach Fund, and the Evvie Curry Giving Circle funded the events in New York.

After the AAUW Newport-Mesa-Irvine (CA) Branch collaborated with the University of California, Irvine, to hold an awareness program about stalking on campus,

Director of Campus Assault Resources and Education Mandy K. Mount said, "I would like to extend a huge thank you to our AAUW partners. What a fabulous collaboration! Our center has seen a noticeable increase in students seeking services for stalking—a true testament to the efficacy of this awareness project. We look forward to much fruitful collaboration."

Programming ideas are available in the LAF Campus Outreach Program in a Box, which you can download at [www.aauw.org/member\\_center/programs/PIAB.cfm](http://www.aauw.org/member_center/programs/PIAB.cfm). Start \$mart salary negotiation workshops are ready-made programs to consider implementing on your local campus. The AAUW Westchester (NY) Branch hosted a Start \$mart event at Westchester Community College, and branch member Jane Pendergast said the program was a great

success. "The attendees acquired new knowledge of the pay gap and new pay negotiation skills. . . . Several older student participants said they wished they had known about the pay negotiation process earlier in their lives, but they were pleased to have these skills for future use."

Holding a Campus Outreach Program benefits both AAUW branches and campuses by bringing more visibility to AAUW, making a concrete difference on campus, fostering connections between AAUW and students, and so much more.

Starting July 1, 2011, AAUW members can apply on a rolling basis for up to \$750 in funding through the Campus Outreach Program. The simple, one-page application is available on the AAUW website at [www.aauw.org/act/laf/campusOutreach.cfm](http://www.aauw.org/act/laf/campusOutreach.cfm).

## What Is AAUW Doing to Address Sexual Harassment and Assault?



From left: Stephen Miller, Marty Langelan, Brooke Applegate, and Maureen Evans Arthurs at the D.C. community safety audit

- The LAF Online Resource Library's sections on sexual harassment and assault on campus are updated frequently with new resources, including some from the Obama administration. Find them at [www.aauw.org/act/laf/library](http://www.aauw.org/act/laf/library).
- An updated Campus Sexual Assault Program in a Box includes numerous ideas for how students, parents, alumnae, faculty, staff, and AAUW branches can make campuses safer. Download program ideas at [www.aauw.org/member\\_center/programs/upload/CampusSexualAssaultPIAB.pdf](http://www.aauw.org/member_center/programs/upload/CampusSexualAssaultPIAB.pdf).
- LAF and AAUW's research department are collaborating to produce a new report on sexual harassment in middle and high schools. This research will be the first since the 2001 AAUW report *Hostile Hallways* to include nationally representative information. The report will include cyber sexual harassment and will be released later this year.
- This spring, LAF Program Manager Holly Kearl collaborated with AAUW Community Action Grant recipients Holla Back DC! to lead the first-ever Washington, D.C., community safety audit to evaluate indicators of inclusion and safety, particularly for women. Several AAUW members and staff participated. Kearl will create a new Program in a Box for AAUW members who would like to conduct their own safety audits.