

LAF/UPDATE

Summer 2008

From the Board President



Barbara O'Connor

When the AAUW Legal Advocacy Fund began in the 1980s, its purpose was to encourage AAUW members to invest in activities that would prevent sex discrimination and promote gender equity in academia. This year, as part of our Strategic Process, the AAUW and AAUW

Educational Foundation boards approved the expansion of LAF case support to align more closely with our Value Promise to break through educational and economic barriers so that all women have a fair chance. This means that, going forward, the generous donations of our members will be available to help women in all workplaces, not just in academia.

Our intent is to focus on strategic litigation. Instead of responding to applications for support, we are working proactively with a number of civil and women's rights organizations to identify litigation that has strong potential for establishing precedent or making some other significant contribution to advancing equity or reducing discriminatory workplace practices.

Plaintiffs selected for support by LAF will continue to be available to travel to visit branches. Likewise, we will continue supporting campus outreach programs and expanding our online LAF resource library to include more topics on discrimination in the wider workplace.

AAUW leaders and staff have been working very hard on expanding and enhancing LAF. We strongly believe that the time is right for these changes and that they make LAF an even more valuable investment for our members who want to continue helping to break through barriers for women and girls.

We hope you share our excitement about and commitment to the expansion of LAF!

A handwritten signature in blue ink that reads "Barbara L. O'Connor".

Barbara L. O'Connor
President, AAUW Educational Foundation

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- The Importance of Family and Medical Leave
- Members Moved by Plaintiff Speakers
- Latest Case Updates

AAUW Hosts LAF Discussion

As part of the Legal Advocacy Fund's expansion, AAUW hosted a luncheon on July 22, 2008, with key leaders of women's and civil rights organizations to discuss our plans to support strategic litigation in the wider workplace and to gain their collaboration in those efforts. The organizations included in this discussion have lawyers on staff litigating cases related to LAF priorities: People for the American Way, the National Women's Law Center, the National Partnership for Women and Families, the Mexican American Legal Defense and Education Fund, Equal Rights Advocates, the Lambda Legal Defense and Education Fund, the Women's Law Project, the Women's Rights Project of the American Civil Liberties Union, and the Northwest Women's Law Center.

AAUW Executive Director Linda Hallman, CAE, opened the discussion with a brief history of AAUW and LAF, describing the successful support of dozens of plaintiffs that has brought us to our current vision for LAF's strategic expansion. She noted that, over the years, in addition to a continued commitment to fight discrimination in the academic arena, AAUW members have increasingly indicated a desire to support cases in the wider workplace.

In February 2008, the Educational Foundation Board of Directors voted to expand LAF case support to the wider workplace and to focus on strategic cases with precedent-setting potential. At the luncheon, Hallman stressed that case selection is a critical aspect of this strategy and asked attendees to use their legal expertise to help us identify significant cases to support. As she explained, "For twenty-five years, AAUW has been proud to support plaintiffs through difficult and trying times in their lives, and now we are very pleased that we can support key cases that will not only help specific plaintiffs but also will

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The Importance of Family and Medical Leave

The creation and enforcement of leave policies that allow caregivers to keep their jobs while balancing their family responsibilities is an important workplace issue addressed by the AAUW Legal Advocacy Fund.

The U.S. Census Bureau's Current Population Survey consistently shows that households in which one person stays home full time are the minority. Thus, most employees do not have someone at home to handle child care or the care of an ill or injured family member and, therefore, may need time off from work at some point to address those issues themselves.

More employees than ever are responsible for the care of their aging parents. The AARP found that up to 30 percent of employees have elder-care responsibilities and 40 percent of those employees also have children at home. The average length of elder caregiving is eight years, and the AARP estimates that half of the U.S. labor force will be caregivers within the next five years. Also noteworthy: While caregiving has traditionally been the role of women, 45 percent of working caregivers of elderly parents are men, according to the AARP.

Under the Family and Medical Leave Act of 1993, passed in part through AAUW's lobbying efforts, certain businesses must allow their eligible employees to take up to 12 weeks of unpaid time off from work for medical reasons or to fulfill certain family obligations. Approximately 40 percent of employees are not eligible for this leave, and the ones who are eligible may not be able to afford to take the leave. There is no federal anti-discrimination statute that explicitly pro-

FMLA Qualifications

To qualify for FMLA leave, one must:

1. work for an organization with 50 or more employees within a 75-mile radius of the workplace,
2. have worked for the organization for at least one year, and
3. have worked for 1,250 hours at the organization in the previous 12 months.

Qualified employees can take up to 12 weeks of unpaid leave each year in order to

1. care for a new baby or recently adopted child,
2. tend to a seriously ill spouse, child, or parent, or
3. overcome their own serious health problems.

As of January 28, 2008, the FMLA also permits eligible employees to take up to 26 weeks of leave to care for a spouse, child, parent, or next of kin who is a member of the armed forces and is undergoing medical treatment, therapy, is in outpatient care, or is on the temporary disability retired list due to a serious injury or illness.

protects family caregivers in the workplace.

According to a 2007 *New York Times Magazine* article "Family-Leave Values," since the mid-1990s, the number of workers who have sued their employers for discrimination because of family responsibilities has increased by more than 300 percent. More than 1,150 lawsuits have been filed in federal and state courts by plaintiffs across the occupational spectrum. The article's author notes that "the flood of cases reflects not just the increased presence of women in the workplace, but also the growing difficulty Americans of all social backgrounds seem to be having in balancing the demands of work and family." While the plaintiffs in about four-fifths of the work-family lawsuits filed have been women, some men have found themselves subjected to stereotypes about not having family responsibilities when they asked for time off to fulfill caregiver duties.

Law professor Joan C. Williams works on legal issues surrounding balancing work and family. In her book, *Unbending Gender*, Williams wrote about options for creating social change to improve the work and life balance and said that lawsuits were not the ideal mechanism. Seven years later however, she suggested that lawsuits were better than nothing. She told the *New York Times* that she "would prefer that Congress pass legislation guar-

anteeing all workers paid sick leave, paid parental leave and access to affordable child care ... but what's happening in public policy in this arena? It took more than a decade to pass the Family and Medical Leave Act, and it's very limited."

AAUW is working on both the legal advocacy and public policy fronts to improve employees' abilities to take time off from work for family obligations because we know employees, families, and businesses all benefit from workplaces that allow employees to balance their personal obligations and job responsibilities. Employees gain job security and a reliable income; family members receive the care they need, and businesses can reduce staff turnover and lower recruitment and training costs as well as improve workers' productivity.

Visit the new FMLA section of LAF's online resource library, <http://www.aauw.org/advocacy/la/lafnetwork/library/FMLA.cfm>, to learn about employee rights and how to enforce the FMLA, to read frequently asked questions, and to find facts and statistics about who takes family and medical leave and how it affects employees and employers. The website also suggests additional resources on the subject.

AAUW is working on passing the Healthy Families Act (S.910, H.R. 1902), legislation that expands beyond the scope of the FMLA. The act would

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FMLA Violations

→ FMLA is enforced by the U.S. Department of Labor.

→ If you feel that your rights to FMLA leave have been denied, you can file a complaint with your local office of the U.S. Department of Labor, Wage and Hour Division.

→ You may file a private civil lawsuit against an employer for violations.

→ Complaints and lawsuits must be filed within two years of the FMLA violation.

require employers to provide seven paid sick days a year for personal illness or to care for a family member to employees

working 30 hours or more each week. Part-time employees would receive a pro-rated number of paid sick days. More

information about this legislation can be found the AAUW website, www.aauw.org.

Case Updates

LAF currently supports eight lawsuits.

This spring, the AAUW Educational Foundation Board of Directors voted to move the direction of LAF's case support away from direct plaintiff support toward support of cases that will have national significance for women in all workplaces. Therefore, while we have continued to work with our current plaintiffs, no new cases have been adopted since this decision.

Pending Cases

Ilon v. The State University of New York, Buffalo, et al.

A hearing took place in April, and the judge ruled in favor of the defendants. Ilon's attorney may file a motion for a new trial.

Jaureguito v. Feather River Community College

Thein v. Feather River

Community College

Wartluft v. Feather River

Community College

Feather River College recently filed motions in both state and federal courts to stay all proceedings until such time that the California State Personnel Board could render a decision on Thein, Wartluft, and Jaureguito's whistle-blower claims. No decision has been made by the board. The plaintiffs opposed the college's motions and asked that the Butte County Superior Court set these matters for trial as soon as possible. The Butte County Superior Court is expected to rule in August. The Title IX claims of all three cases are currently set for trial in April 2009 in federal court.

Mansourian, et al. v. Regents of the University of California, et al.

The parties completed a summary judgment briefing in early April 2008. A

hearing was held in April, and the court ruled that there was not sufficient notice of discrimination. Mansourian's attorney will file an appeal.

Potera-Haskins v. Gamble, Montana State University, et al.

On September 28, 2007, Potera-Haskins received a partial victory in her case. Although the court dismissed her Title VII claims, it allowed her Title IX claims to move forward. A trial date was set for February 1, 2008; however, in early December 2007, the district court unexpectedly vacated the trial date without explanation and stated that a new trial date would be set in the future after pretrial evidentiary motions are heard and ruled upon. A new trial is set for October 20, 2008.

Settlements and Decisions

Schuster v. Berea College

Schuster's attorney filed her motion for appeal in September 2007. In March 2008, a three-judge panel was seated to review and rule on the appeal. They began their review and deliberations in May 2008, and ruled in Schuster's favor in August 2008.

Doe v. Berry College

Doe, a student at Berry College in Georgia, sued the college for sexual harassment and assault in violation of Title IX of the Education Amendments of 1972 and other claims in violation of Georgia state law. In December

2007, the federal court dismissed Doe's claims against Berry College without prejudice.

Brodsky v. Kaleida Health and State University of New York at Buffalo

Brodsky, a medical doctor and tenured full professor at SUNY-Buffalo, sued the university for pay discrimination and retaliation in violation of Title VII and the Equal Pay Act. Brodsky filed suit in federal district court in September 2001. In May 2008, Brodsky settled her case with SUNY-Buffalo and resolved all related litigation.

Chichilnisky v. Columbia University

Chichilnisky, professor of statistics at Columbia University and UNESCO professor of math and economics, sued the university for pay discrimination, retaliation, and breach of settlement agreement in violation of New York state laws in 2000. On June 26, 2008, after a 10-day trial, Chichilnisky settled with Columbia University for an undisclosed amount.

AAUW Members Show Their Support

Members of AAUW of New York from the AAUW of Manhattan, Westchester, and North Shore Branches attended the trial of plaintiff Graciela Chichilnisky in June 2008 to show their support. Reflecting on the unfair treatment of Chichilnisky and other women discriminated against in the workplace, New York State LAF Vice President Mildred DeWitt said, "I intend to get this message out there. We need publicity; we need people to know just exactly how poorly women are being treated and what happens when you actually have the nerve to complain."

Chichilnisky expressed deep gratitude to AAUW for helping her financially and emotionally during the last six years. "Now let's bring this successful ending to AAUW and see how we can use my experience so that other women do not have to go through what I went through," she said.

AAUW Legal Advocacy Fund Major Donors

We extend sincere thanks to the donors whose contributions to the Legal Advocacy Fund, a program of the AAUW Educational Foundation, were received between November 1, 2007 and June 30, 2008.

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(\$5,000 and up)

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**Freida Schurch passed away this year. She was a beloved and devoted member and supporter of AAUW, who worked tirelessly to forward the organization's mission. She was instrumental in the vote that amended AAUW's bylaws to allow graduates with an associate or equivalent degree to become members. Frieda was honored as a Founding Leader at the 2007 AAUW National Convention, and her legacy will continue on with the Freida Schurch American Fellowship, which provides annual stipends for worthy women scholars. She will be missed by all who knew her.*

LAF Plaintiffs Travel to AAUW State Conventions

At state conventions this past spring, AAUW members heard former and current LAF-supported plaintiffs speak about their struggles to fight sex discrimination. The plaintiffs were able to spread awareness among members about LAF's mission and goals and to raise money to support its programs. Members donated more than \$12,000 for LAF programming at seven state conventions.

In Texas, Roderick Jackson spoke on

the topic of protecting the rights of employees to speak up about discrimination without fear of harassment.

Many members expressed their delight at hearing Jackson speak on behalf of the rights of women and girls. In the lawsuit *Jackson v. Birmingham Board of Education*, Jackson sued the Birmingham Board of Education under Title IX of the Education Amendments of 1972, alleging that he was retaliated against for protesting sex discrimination against his girls' basketball

team. The U.S. Supreme Court ruled 5-4 in favor of Jackson, holding that individuals who complain about sex discrimination have a private right of action for retaliation under Title IX.

At the AAUW of Arizona state convention, members were "deeply moved by Beverly Nash's powerful presentation," and inspired by her dedication to women's rights. Despite having her case, *Nash v. Ray L. Belton and the Southern University System*, dismissed, Nash told

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impact all women.”

AAUW Director of Public Policy and Governmental Affairs Lisa Maatz further expanded on the vision for LAF and how AAUW hopes to partner with the organizations represented at the meeting. “We want to find out where AAUW can make a difference,” Maatz said. “We want you to help us understand what cases are in the pipeline, so we can be strategic in applying our support.”

Maatz explained that while AAUW is certainly interested in supporting sex discrimination cases in the workplace, AAUW’s public policy agenda is broader than just that issue, so AAUW staff would be open to learning about and potentially supporting cases beyond sex discrimination as long as they fell within our mission.

Maatz gave examples of the range of ways LAF could partner with organizations engaged in litigation, including signing and/or funding *amicus* briefs, funding expert witness or filing fees in the courtroom, paying plaintiff travel expenses, and providing plaintiffs with emergency funds if they are in a financial crisis due to their lawsuits. Maatz emphasized that AAUW could also lend important nonmonetary support through our 100,000 caring and dedicated members. She noted that members could help draw publicity to a case, participate in rallies, and attend trials to provide moral sup-

port. “We can offer a personal touch on case support through our members. AAUW resources are richer than just money,” she said.

During the discussion portion of the meeting, attendees eagerly asked questions to learn more about how LAF might part-

ner with their organizations and provided valuable suggestions and feedback.

native action cases, as there are several of those pending at the state level. Hayley Gorenberg, deputy legal director for Lambda Legal, said, “You’re challenging us to examine what sex discrimination means and encouraging us to think creatively. It’s lovely to have more resources on hand and additional partnerships in our work.”

D.C. regional counsel for the Mexican American Legal Defense and Education Fund, Peter Zamora, discussed the kinds of issues they focused on that might be relevant to AAUW, including voting rights and education. Judith Schaeffer, legal director at People for the American Way, indicated her interest in working with AAUW as well.

During her concluding remarks, Hallman talked about how she believes organizations need to be “fluid, flexible, and responsive,” and how that is the approach AAUW is taking with LAF.

AAUW wants our partners and our members to weigh in on what we can do to be strategic and responsive to the cases with potential to make a difference. We also want to make our programming flexible and fluid, so we can respond effectively. Attendees were invited to continue to brainstorm how LAF could partner with them on strategic litigation and to send suggestions via e-mail or by phone in the coming weeks.



AAUW Staff with several LAF Luncheon attendees. Left to right (back): Jordana Mosten, Mexican-American Legal Defense and Education Fund; Peter Zamora, MALDEF; Linda Hallman, AAUW; Lisa Maatz, AAUW; Jocelyn Frye, National Women’s Law Center; Marge Baker, People for the American Way; (front) Jill Birdwhistell, AAUW; and Judith Schaeffer, People for the American Way.

Call for Campus Outreach!

AAUW would like to help host several campus outreach events this academic year. Already, AAUW of New York and AAUW of California are planning events in their state. Please contact Holly Kearl at kearlh@auuw.org if you are interested in organizing an outreach event on a campus near you.

LAF Plaintiffs Travel to AAUW State Conventions continued from page 4

members that “she could do no less than to try to change the workplace environment for the female employees about whom she was deeply concerned.”

At the LAF luncheon at the AAUW of New York state convention, Claire Schuster delivered a heart-warming presentation, followed by a question and answer session with AAUW members and their guests. In her lawsuit, *Schuster v. Berea College*, Schuster charged the institution with sex discrimination in pay in violation of the Kentucky Civil Rights Act and with intentional infliction of emotional distress and breach of contract.

Michael Burch spoke to AAUW members in Massachusetts at an LAF dinner during the state convention. He highlighted sex discrimination in athletics and the problems with Title IX. Burch, the former head wrestling coach at the University of California, Davis, sued the Regents of the University of California for retaliation in violation of Title IX of the Education Amendments of 1972 and other federal laws. He reached a final settlement agreement with UC-Davis and received \$725,000.



AAUW members Elizabeth Rielly and Jeanne Clarke with former LAF plaintiff Beverly Nash at the AAUW of Arizona state convention.

In Washington, Lisa Simpson led a workshop and spoke to members at the state convention about her recent lawsuit and how AAUW helped her. One state president wrote in an evaluation, “Branches have a renewed interest in LAF due to Lisa’s talks.”

In the lawsuit, *Lisa Simpson, et al.*

v. University of Colorado, former student Simpson sued the university under Title IX of the Education Amendments of 1972 for failing to remedy the sexually hostile environment on campus that led to her sexual assault and harassment by university football recruits and players. The University of Colorado, Boulder agreed to pay Simpson a \$2.5 million settlement and to hire an on-campus Title IX adviser.


LAF is accepting applications for Plaintiff Travel Grants this fall. Applications are due on October 15. Visit the AAUW website to learn more: <http://www.aauw.org/advocacy/laf/awards/travelgrant.cfm>.

About LAF

The AAUW Legal Advocacy Fund, a program of the AAUW Educational Foundation, 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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