

LAF/UPDATE



Spring 2006

From the Board President



Barbara O'Connor

Every year the Legal Advocacy Fund receives hundreds of calls from individuals, as well as their attorneys and friends, seeking legal advice on sex discrimination issues on campus. We are proud to have a volunteer legal network of more than 300 participants in 48 states and the District of Columbia with whom plaintiffs and potential plaintiffs can consult and receive information. The LAF Legal Resource Referral Network, provided at no charge, is instrumental in helping people make the best decisions about their legal recourse.

LAF network partners include attorneys with expertise in areas such as Title VII of the Civil Rights Act of 1964, sexual harassment, tenure denial, Title IX of the Education Amendments of 1972, pay equity, and pregnancy discrimination. They recognize the serious harm caused by sex discrimination and are sensitive to the very personal nature of many of these complaints. LAF relies on the network to assist as many plaintiffs and potential plaintiffs as possible. In several geographic areas, however, we need additional dedicated attorneys who are willing to serve as a referral.

Help us expand the LAF network by informing friends, colleagues, and family of our search. If you are an attorney in a small city or town, particularly in less populated states, or if you know of an attorney with experience in sex discrimination law, visit www.aauw.org/laf/lafnetwork or e-mail legal-ntwk@aauw.org to learn more.

With just a little help we can make a big difference carrying out the LAF mission. Together let's be accessible to women in all parts of our great nation.

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

Barbara L. O'Connor
President, AAUW Educational Foundation

Also in This Edition

- Latest case updates
- An appeal to the U.S. Supreme Court
- Plaintiff Travel Grants

Vice Chancellor Speaks Out Against Sexual Harassment, Fights Retaliation

Speaking out on behalf of students and staff is part of a vice chancellor's role, so Beverly Ann Nash was understandably shocked when speaking out caused her to lose her job. After a long and successful career with the Florida Department of Education as a senior regulatory administrator, she accepted an offer to become the vice chancellor for student affairs and assistant professor of education at Southern University at Shreveport, Louisiana, and began her new job in January 2002. She expected to shape her division into a model of student affairs.



Just six weeks after Nash began her new position, four women approached her alleging that they had been sexual harassed by male campus police officers (a few months later a fifth woman also made a claim). After contemplating what her appropriate role was in this incident, Nash decided to "fight for the rights and dignity of the women who had come to [her] for help and to stand up for what any student on any college campus should expect—the right to be safe and respected." She took swift action, bringing the complaints to the attention of the chancellor and other administrators, but she felt that the administration "immediately took a 'see no evil, hear no evil' approach to the uncomfortable facts and inconvenient truths." Despite the administration's attitude, Nash filed reprimands for two police officers on behalf of the women.

Soon after speaking out about the women's allegations, Nash began to receive threats of physical harm, including a threatening voice-mail message in which the caller used derogatory sex-based language to tell her she should get out of town. The women continued to report incidents of sexual harassment from campus police officers. The

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university abruptly terminated Nash's contract in October 2002.

When asked about the importance of her case, Nash explained:

My case ... is about women and students who suffer silently at the hands of administrators who feel that they are above the law. What happened to me and to these women represents what happens when the leadership fails to protect its students. More exactly, it points out a failure to support administrators who speak out against abuse and inequity. I fully believe administrators ... have a responsibility to protect and serve that transcends personal prejudices.

LAF has seen an increase in cases like Nash's, in which individuals are retaliated against when they speak out in defense of women who are experiencing discrimination. Unless individuals are willing to challenge a university's behavior, retaliation will become an effective way of silencing those who want to end sex discrimination on campuses. In early 2005, the U.S. Supreme Court held in *Jackson v. Birmingham Board of Education* (also a LAF-supported case) that individuals who complain about sex discrimination have a private right of action for retaliation under Title IX of the Education Amendments of 1972. By stepping forward, Nash is bringing attention to the harm imposed on those who are willing to take a stand for justice. We hope that her actions encourage others to assist women experiencing sex discrimination and the courts reward her efforts.

In her quest to find assistance for the women who were being sexually harassed, Nash found little help available in Louisiana. She realizes that this is the case in many other states as well. When her case is resolved, Nash hopes to use a portion of the award or settlement money to establish a foundation "to help women and girls who have been traumatized by sexual harassment, specifically in states where there is an absence of programs and services for them." **LAF**

Case Updates

The AAUW Legal Advocacy Fund currently supports 19 lawsuits. The AAUW Educational Foundation board has awarded a total of \$32,000 in support of ongoing and new cases.

This winter the board voted to adopt two new cases: deMartin v. New Mexico Highlands University and Schuster v. Berea College. Each case received an initial award of \$5,000.

Lyn deMartin sued New Mexico Highlands University for sex discrimination in pay and retaliation for complaining of sex discrimination in wrongful termination in violation of Title VII of the Civil Rights Act of 1964, among other claims. The former director of the Santa Fe Center of the university, deMartin claims that in July 2003 the university president informed the directors of the university's three centers that they would receive raises. One of the other center directors informed deMartin in September 2003 that he had received a raise. After lobbying for a raise for herself, she discovered in February 2004 that despite her raise, she was making 19 percent less than the other center directors, who were both male. She filed a claim of sex discrimination with the EEOC and the New Mexico Department of Labor Human Rights Division. She was terminated one week prior to the scheduled mediation of her sex discrimination claim.

Read more about this case at www.aauw.org/laf/cases/demartin.cfm.

Claire Schuster sued Berea College for sex discrimination in pay in violation of the Kentucky Civil Rights Act, among other claims. Schuster, an associate professor in the nursing department, learned in spring 2002 that the all-female nursing department had hired its first male faculty member. He was hired directly into the associate professor level at a salary that exceeded the salaries paid to female nursing faculty members even though he did not have the requisite six years at the assistant professor level or any other qualifications that would have justified his higher rank and salary. The dean of faculty indicated that he had negotiated this higher salary, but

the male professor stated that he did not negotiate for the higher salary. Schuster and several other nursing faculty members shared their concerns with the dean, but no action was taken to adjust the pay inequality.

Read more about this case at www.aauw.org/laf/cases/schuster.cfm.

Updates on Other Cases

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

Brotsky's case continues in discovery. Trial is tentatively scheduled for 2007.

Burch v. Regents of the University of California

The university filed a motion for summary judgment. The summary judgment hearing is scheduled for April 2006.

Chichilnisky v. Columbia University

Chichilnisky filed a new complaint with the EEOC on Dec. 23, 2005, alleging further retaliation by the university. The judge from the case was reassigned to another court, and the assignment of a new judge is likely to result in a delay for setting the trial date.

Conney v. The Regents of the University of California

The university filed its appeal brief contesting the original verdict, and Conney's attorney has filed a response. Oral arguments are expected to be scheduled for spring 2006.

Doe v. Berry College

Discovery is scheduled to end in April. Multiple motions are pending to dismiss the various claims and compel discovery.

Ilon v. The State University of New York at Buffalo

Final deadlines have been set for discovery, and Ilon's attorney awaits documents from the university. Ilon's attorney and the university are discussing a settlement negotiation.

Maggio v. Kent State University

At the federal court's request, Maggio's trial has been postponed to April 2006.

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

The case is still in discovery with both the plaintiffs' attorney and the university's attorney filing motions to compel. The class certification hearing is scheduled for spring 2006.

McMahon v. Carroll College

Discovery has been completed, and the college filed a motion for summary judgment. The court refused the university's request for court-ordered silence on the case. A trial date has not yet been scheduled.

Miller, et al. v. Texas Tech University Health Sciences Center

The university decided not to petition the U.S. Supreme Court to review the 5th U.S. Circuit Court of Appeals decision. A date for trial will be set in spring 2006.

Nash v. Ray L. Belton and the Southern University System

Nash awaits a date for oral arguments.

L.R. v. The Trustees of Princeton University

Additional discovery was scheduled for February 2006. The plaintiff continues to wait for the university to respond to document requests.

Simpson, et al. v. University of Colorado

Simpson is awaiting a ruling on the motion to alter or amend as well as a ruling on the order to show cause (as to why the university or its counsel could not be subject to discipline or sanctions for discovery misconduct).

Violand v. George Washington University

The U.S. Court of Appeals for the District of Columbia heard oral arguments Jan. 19, 2006. Violand awaits a decision.

Vuolo v. Board of Trustees, University of the Commonwealth of Massachusetts

Vuolo appealed the lower court's dismissal of her case to the Appeals Court of Massachusetts in October 2003. A date for oral arguments has not been scheduled.

Washington v. Trustees of the California State University and Colleges

Washington filed an appellate brief with the California Appellate Court in July 2005. A date for oral arguments has not yet been set.

Whittaker v. Northern Illinois University

Whittaker petitioned the U.S. Supreme Court for a writ of certiorari.

Settlements and Decisions

Glaser v. Fulton-Montgomery Community College

Glaser sued the college for sex discrimination in the denial of promotion and pay inequality. The district court granted the college's motion for summary judgment in August 2004, dismissing Glaser's suit in its entirety. Glaser filed a notice of appeal to the U.S. Court of Appeals for the 2nd Circuit in fall 2004 but subsequently dropped the appeal, thereby ending her case. LAF provided Glaser \$11,500 in support of her case.

Howard v. Bishop State Community College

Following a four-day trial, a federal jury found in December 2004 that Bishop State Community College violated Title IX by failing to adequately address Howard's complaints of sexual harassment by a former instructor and awarded Howard a total of \$285,000 in damages. The college appealed the jury's verdict to the U.S. Court of Appeals for the 11th Circuit. Howard and the college entered into negotiations and reached a confidential settlement in November 2005. LAF awarded Howard \$5,000 in support of her case.

Johnson v. University of Iowa

Johnson filed a complaint against the university for sex discrimination when it prevented him from using his accrued sick leave for parental leave. The court granted the defendants' motion for summary judgment in its entirety in December 2004, dismissing Johnson's case. Johnson appealed the decision to the U.S. Court of Appeals for the 8th Circuit, which ruled in favor

of the university on Dec. 16, 2005. Johnson decided not to appeal. He continues to work within university channels to have the policy changed. LAF awarded Johnson \$7,000 in support of his case.

Weinbaum v. Cleveland State University

Weinbaum filed a complaint against the university in 2004 alleging sex discrimination in her treatment and the decision to terminate her employment. She entered into settlement negotiations with the university and reached a confidential settlement. A judge approved the settlement in January 2006. LAF contributed \$7,000 in support of her case. [LAF](#)

Make a
**Lasting
Gift
to LAF**

LAF is pleased to announce that its supporters can now join the Legacy Circle, a planned giving program.

You can name LAF as the death beneficiary of your life insurance, bank account, stock account, or retirement plan, in addition to other options.

For more information, contact Gloria Benton in the AAUW Development Office at 202/728-7627 or development@aauw.org.

AAUW Legal Advocacy Fund Major Donors

We extend sincere thanks to the donors whose contributions to LAF, a program of the AAUW Educational Foundation, were received between Jan. 1, 2005, and Feb. 28, 2006:

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Victorine Willingham (WA)
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* Deceased

LAF apologizes for any errors or omissions. Kindly bring them to our attention so we may correct them promptly.



Whittaker Appeals to the Supreme Court

After a long legal journey of more than 15 years, Susan Whittaker has reached the last few steps. On Feb. 20, 2006, she filed a petition for writ of certiorari with the U.S. Supreme Court. Now she must wait for the court to decide whether to hear her case.

following her complaint, her job evaluations turned negative. She was written up as not getting along with others and resisting changes in her assignments, despite contrary comments by other crew members and faculty about her positive attributes and cheery demeanor. The hostile environment took its toll, and in spring 1999 Whittaker began a leave of absence. A few months later, she learned that her position had gone “up for bid” without any notice to her.

Whittaker filed a complaint against the university in 2000 in Illinois state court. In 2001, the defendants removed the suit to federal court. In September 2004 the district court granted the defendants’ motion for summary judgment on all counts, dismissing with prejudice the case in its entirety. Whittaker appealed. On Sept. 21, 2005, the U.S. Court of Appeals for the 7th Circuit upheld the lower court’s decision to grant the university’s motion for summary judgment.

Whittaker’s appeal to the Supreme Court hinges on which previous Supreme Court decision is appropriate to apply to her type of case. According to Whittaker, “Along the way it became apparent that there was a slow change happening in how employment discrimination was being looked at.”

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Plaintiffs Speak at AAUW State Meetings Around the Country

The AAUW Educational Foundation board awarded travel grants to sponsor current and past LAF-supported plaintiffs as speakers at 11 state meetings in 2006.

Plaintiffs will share how they fought against sex discrimination on issues such as Title IX, retaliation, tenure, and pay inequity on their campuses.

| Meeting | Date | Location | Plaintiff | Case Name |
|--------------------------|------------------|-------------------|--|--|
| Pennsylvania | March 31–April 2 | Johnstown | Laura Violand | <i>Violand v. George Washington University</i> |
| North Carolina | March 31–April 2 | New Bern | Ricky Hirschhorn | <i>Hirschhorn v. University of Kentucky</i> |
| Massachusetts | April 8–9 | Marlboro | Arezou Mansourian and atty. Kristen Galles | <i>Mansourian v. Regents of the University of California</i> |
| Nevada | April 21–23 | Reno | Pat Washington | <i>Washington v. Trustees of the California State University and Colleges.</i> |
| Florida | April 21–23 | Sarasota | Claire Schuster | <i>Schuster v. Berea Collage</i> |
| Minnesota | April 28–30 | Red Wing | Kari Lavalli | <i>Lavalli v. Texas State University, San Marcos</i> |
| New York | April 29–31 | Sarasota Springs | Michael Burch | <i>Burch. v. Regents of the University of California</i> |
| Texas | May 19–22 | San Antonio | Beverly Nash | <i>Nash v. Ray L. Belton and the Southern University System</i> |
| Rocky Mountain Region | June 9–11 | Casper, Wyo. | Kathy Sokol | <i>Sokol v. St. Louis Community College</i> |
| Upper Midwest Region | June 9–11 | Grand Forks, N.D. | David Johnson | <i>Johnson v. University of Iowa</i> |
| Southwest Central Region | June 9–11 | St. Louis, Mo. | Lisa Simpson | <i>Simpson, et al. v. University of Colorado</i> |

Visit the LAF Resource Library

If you're looking for information on tenure, sexual assault, and sexual harassment on campus, visit the LAF Resource Library at www.aauw.org/laf/library. Under "issue resources" you'll find research reports, statistics, and explanations of relevant laws; related precedent-setting cases and LAF-supported cases; and links to organizations and government agencies that provide additional resources.

On April 25, 2006, watch for the new pay equity issue resource, which LAF will launch in recognition of Equal Pay Day.

Women must work until April 25, 2006, to match men's average earnings for 2005. In 2004, women earned 77 cents for every dollar earned by men, according to the U.S. Census Bureau. Almost half (47 percent) of LAF's current cases involve claims of pay inequity. The new pay equity issue resource will provide a brief history of pay inequity and the Equal Pay Act and explain the laws prohibiting pay inequity, including the Title VII of the Civil Rights Act of 1964 and state laws. Readers can also explore challenges involving pay equity. [LAF](#)

Whittaker continued from page 5

Up to this point the courts in her case have been applying a three-part test taken from the 1973 Supreme Court decision in *McDonnell Douglas v. Green*. In 1991 Congress modified a section of Title VII of the Civil Rights Act of 1964, and in 2003 the Supreme Court decided *Desert Palace v. Costa*, allowing a less strict evidentiary standard. Whittaker "learned that the courts of appeal have been inconsistent in deciding the application of *Desert Palace v. Costa* to discrimination law suits. [Her] argument is that *Desert Palace* is the better standard and more in tune with the amended Title VII."

Whittaker appealed to the Supreme Court to "promote dignity and respect." She explained, "Initially, I may have only seen the situation in terms of my experience and wanting to make it right, but as the effects of my treatment still linger [and] as others have helped me, I have come to see a bigger picture and it is only right that I take advantage of every opportunity to honor others by making it easier to remove discrimination from the workplace." [LAF](#)

About LAF

The AAUW Legal Advocacy Fund, a program of the AAUW Educational Foundation, provides funding, support, and technical assistance to individuals challenging sex discrimination in higher education and is the nation's largest legal fund focused solely on this issue. Through its recognition of campus programs and individuals and its public education efforts LAF educates campuses and communities about continuing barriers faced by women and the legal rights, policies, and strategies that can help to eradicate sex discrimination in higher education.

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