



ACLU Women's Rights Project 2005 ANNUAL REPORT



 **ACLU** FOUNDATION
AMERICAN CIVIL LIBERTIES UNION WOMEN'S RIGHTS PROJECT

ACLU WOMEN'S RIGHTS PROJECT ANNUAL REPORT 2005

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COVER PHOTOS of Ruth Bader Ginsburg courtesy of
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THE AMERICAN CIVIL LIBERTIES UNION is the nation's premier guardian of liberty, working daily in courts, legislatures, and communities to defend and preserve the individual rights and freedoms guaranteed by the Constitution and the laws of the United States.

THE ACLU WOMEN'S RIGHTS PROJECT is part of the National ACLU. It was founded in 1972 by Ruth Bader Ginsburg, and since that time has been a leader in the legal battles to ensure women's full equality in American society. WRP is dedicated to the advancement of the rights and interests of women, with a particular emphasis on issues affecting low-income women and women of color.

The Women's Rights Project has overall responsibility for implementing ACLU policy in the area of gender discrimination. WRP conducts direct litigation, files friend-of-the-court briefs, provides support for ACLU affiliate litigation, serves as a resource for ACLU legislative work on women's rights, and seeks to advance ACLU policy goals through public education, organizing, and participating in coalitions. WRP has been an active participant in virtually all of the major gender discrimination litigation in the Supreme Court, in Congressional and public education efforts to remedy gender discrimination, and in other endeavors on behalf of women.

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◀ Lenora Lapidus,
Director of the
Women's Rights
Project.

A MESSAGE FROM THE DIRECTOR

The year 2005 marks the anniversary of Justice Ruth Bader Ginsburg's twenty-five years on the bench. Ginsburg founded the ACLU Women's Rights Project in 1972 and led its efforts until she was appointed to the Court of Appeals for the District of Columbia in 1980. During the 1970s, Ginsburg and her staff achieved momentous legal victories in the area of women's rights and helped lay the groundwork for future women's rights advocacy. To honor Justice Ginsburg's twenty-five years on the bench, the ACLU Women's Rights Project dedicates our 2005 Annual Report to this occasion and commemorates Ruth Bader Ginsburg's contributions to the ACLU and to the area of women's rights. In addition to the docket of cases and advocacy, this Report contains an introduction by Anthony D. Romero and Nadine Strossen, an interview with former ACLU Executive Director Aryeh Neier, and a tribute based on recollections from ACLU colleagues of Ginsburg and those who carried on her legacy at the Women's Rights Project.

The Women's Rights Project has followed the path set by Ginsburg over the last three decades as we have played a unique role in the women's movement. We continue to achieve systemic legal reforms through the courts in the area of equality for women. In 2005, we expanded our work in employment (with a particular focus on low wage immigrant women workers and women in non-traditional occupations); violence against women; and criminal justice. We have also infused international human rights frameworks and mechanisms into our advocacy and litigation in each of these areas.

Our employment work focused on removing barriers to women's economic security in a variety of

different spheres. Our low-wage immigrant women workers program tackled labor and sexual exploitation faced by women working in hotels, retail stores, restaurants, and private homes. We litigated cases on behalf of Latina, Asian, and African immigrant women seeking redress for wage violations, poor working conditions, and sexual harassment. As a counterpart to our litigation efforts, we used international human rights mechanisms to seek reforms. For example, we brought to the United Nations Human Rights Commission in Geneva the problems faced by domestic workers employed by UN diplomats with immunity from suit. We have also continued to challenge discrimination against women in non-traditional occupations in our cases on behalf of female and minority public school custodians employed by New York City and female police officers in Suffolk County, New York. By defending the use of affirmative action in hiring practices and the right of women to continue working during their pregnancies, we help women gain access to occupations that they have historically been locked out of. These efforts will continue in the coming year.

In 2005, we greatly expanded our violence against women program by tackling police failure to enforce orders of protection and housing and employment discrimination against victims of domestic violence. In the spring, we coordinated the friend-of-the-court briefs for the Supreme Court case *Town of Castle Rock, Colorado v. Gonzales* in support of Jessica Gonzales, a woman whose children were murdered by her estranged husband after the police failed to arrest him for violating her order of protection. At issue was whether a battered woman

had a right to police enforcement of her protective order. In the wake of the Supreme Court's ruling that Ms. Gonzales does not have such a right, we have begun to explore other ways to ensure that orders of protection are enforced. In our housing discrimination work, we won several victories in cases against public housing authorities and private landlords who attempted to evict female tenants because they were victims of domestic violence. In one of these cases, the court issued a groundbreaking ruling stating that discrimination against a victim of domestic violence can violate the Fair Housing Act. In addition to our litigation and advocacy work, WRP staff have conducted numerous trainings on the rights of victims of domestic violence for advocates, housing attorneys, and community organizations across the country.

Our criminal justice program also had several exciting developments this year. In March, we co-convoked a national conference entitled *Caught in the Net: The Impact of Drug Policies on Women and Families*, at which we brought together lawyers, advocates, judges, public health experts, and formerly incarcerated women to discuss the impact of the war on drugs on women and families. We also raised awareness of these issues through the release of a comprehensive report and a Congressional briefing in Washington, D.C. In the coming year, we will continue to expand these efforts. In addition, this year we launched a new initiative focused on girls in the juvenile justice system, which we will further develop over the next two years.

As we move forward we will confront a new Supreme Court. In 2005, Chief Justice William Rehnquist passed away and Justice Sandra Day O'Connor announced her retirement. Our struggle

for women's rights, and for civil liberties more generally, now faces new challenges before the Court under the leadership of Chief Justice John Roberts.

The Women's Rights Project will continue to explore novel and creative ways to use litigation, legislative advocacy, international human rights law, and public education to advance women's rights in the systematic model started by Ruth Bader Ginsburg. Our progress would not be possible without the continued dedication from our supporters, courageous clients, partners in other women's and civil rights organizations, cooperating law firms, and colleagues in the ACLU National Office, the National Legislative Office, and the state ACLU affiliates. We thank all of you, and we look forward to next year's developments and challenges.



Lenora M. Lapidus, Director

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE RUTH BADER GINSBURG

December 10, 2005

Dear Lenora:

Today is the Fifty-Seventh anniversary of the Universal Declaration of Human Rights, which Eleanor Roosevelt was instrumental in achieving. The Declaration recognizes the “inherent dignity” and the “equal and inalienable rights” of all members of the human family as the foundation for freedom, justice, and peace on earth. The key to realizing the high principles set out in the Declaration, I firmly believe, is society’s recognition of the full citizenship stature and humanity of women. I am impressed by the continuing good work of the ACLU Women’s Rights Project in helping to advance women’s well being in our own country, for we cannot effectively persuade others to appreciate women’s worth and value women’s work unless we do so ourselves.

The annual report shows the Project’s commitment to serving the most vulnerable among women in the USA, people too long forgotten, ignored, left out of the bounty and benefits more fortunate people enjoy. I applaud the Project’s accomplishments and wish all involved in WRP’s efforts the very best in carrying on the vital work of enabling women to realize their full human potential.

Cheers,



Ruth Bader Ginsburg

LEFT TO RIGHT:

- > Anthony D. Romero, Executive Director of the ACLU.
- > Nadine Strossen, President of the ACLU.



The World She Made

BY ANTHONY D. ROMERO AND NADINE STROSSEN

We are honored to celebrate Ruth Bader Ginsburg’s twenty-five years on the bench and to express our appreciation for her role as the founding director of the ACLU’s Women’s Rights Project. Ruth Bader Ginsburg, Associate Justice of the United States Supreme Court, has been a leader and a trailblazer all her life: as a girl growing up in Brooklyn, as a law student at Harvard and Columbia universities, as a law professor and lawyer, and as a judge.

Ginsburg brought this leadership to bear in litigating women’s rights cases on behalf of the ACLU and then becoming the founding director of the ACLU Women’s Rights Project in 1972. During the 1970s, she led the ACLU in many of the legal battles, most often before the Supreme Court, that established the foundation for the current law on sex discrimination in this country.

Justice Ginsburg changed our nation and changed our world as we know it.

Ginsburg was not the first to take up the cause of fighting for women’s rights at the ACLU. Indeed, she stood on the shoulders of many giants, including ACLU co-founders Jane Addams, Emily Greene Balch, Crystal Eastman, and Jeanette Rankin, and later, Dorothy Kenyon and Pauli Murray. But Ginsburg’s pioneering women’s rights litigation as the founding director of the ACLU Women’s Rights Project achieved unprecedented success.

Ginsburg deliberately chose the ACLU as the vehicle for her legal work, rather than an organization with a narrower women’s rights agenda, in large part because she believed that the ACLU would enhance the credibility of the women’s rights cause. Ginsburg has also said that she chose the ACLU because of the integral interconnection between civil liberties and civil rights, including women’s rights.

“I wanted to be a part of a general human rights agenda . . . [promoting] the equality of all people and the ability to be free,” she said.

During her ACLU decade, Ginsburg took part in thirty-four cases before the Supreme Court. She won five of the six cases she argued before the Court either as lead or co-counsel. She charted a litigation strategy for enshrining women’s equality as a matter of constitutional law, relying on the equal protection clause of the fourteenth amendment. Always, she fought to have the Court evaluate claims of gender discrimination under the strictest level of scrutiny, as the Court does for race discrimination claims.

“I wanted to be a part of a general human rights agenda . . . [promoting] the equality of all people and the ability to be free,” RUTH BADER GINSBURG

Ginsburg’s first case on behalf of the ACLU to reach the Supreme Court, *Reed v. Reed*, challenged a state statute’s automatic preference for men over women as administrators of decedents’ estates. In this 1971 landmark ruling, the Supreme Court for the first time held that a law categorically providing for differential treatment of men and women violates the fourteenth amendment’s equal protection clause. The Court had never before struck down a sex-based differential on the ground that it denied a woman the equal protection of the laws.

The next term, in *Frontiero v. Richardson*, the Court invalidated an Air Force policy providing automatic dependents’ benefits to wives of service members but requiring proof of dependency for husbands seeking benefits. In this first case that Ginsburg argued to the Court, eight Justices agreed on the judgment and four subscribed to Ginsburg’s argument that laws differentiating by sex were inherently suspect, warranting the Court’s strictest level of review.

Ginsburg continued to win cases challenging policies that were based on assumptions about men’s and women’s different roles in the family. A 1975 case, *Weinberger v. Wiesenfeld*, resulted in a unanimous Supreme Court decision. When Paula Wiesenfeld died in childbirth, her husband Stephen applied for Social Security survivors’ benefits for himself and their infant son, Jason. Although the boy received children’s benefits, Stephen was ineligible for benefits payable under the law to widowed mothers, i.e., survivors of male wage earners. The Court struck down this differential treatment, thereby converting a mother’s benefit generated by a man’s work into a benefit for either parent based on the spouse’s work.

In 1976, in *Craig v. Boren*, Ginsburg succeeded in persuading the Court to adopt a “heightened scrutiny” standard of review for gender-based classifications. Such a standard made it more difficult for a state to treat women and men differently. Applying this new standard, the Court struck down an Oklahoma statute that allowed young women to purchase 3.2 percent beer at age 18 but required young men to wait until they were 21. As Ginsburg has observed, although the Oklahoma law itself was not so weighty, the new standard adopted for review was significant because it meant that states had to meet a higher burden to justify gender-based laws and therefore fewer such laws would be upheld.

Throughout the 1970s, Ginsburg successfully tackled law after law that treated women as second-class citizens. Laws were rewritten and newly

- > Ruth Bader Ginsburg in 2004.



Collection of the Supreme Court of the United States

interpreted, so as to establish women's right to full partnership with men at work, in the home, and in every sphere of life. Ginsburg's work, and that of other feminist lawyers during this decade, resulted in extraordinary change in women's legal status in the United States.

But Ginsburg did not stop there. Ginsburg was appointed to the United States Court of Appeals for the District of Columbia Circuit in 1980 and to the United States Supreme Court in 1993. After being appointed to the Supreme Court, Associate Justice Ginsburg further advanced her goal of raising the standard under which courts review gender classifications. In 1996, Justice Ginsburg wrote the decision in *United States v. Virginia*, which struck down the male-only admissions policy at the state-supported Virginia Military Institute (VMI). With this decision, Justice Ginsburg took the Court one step further in its exacting review of a state's differential treatment of women and men. Now, from the other side of the Supreme Court bench, Ginsburg's leadership continue to set the standard for equal treatment of men and women.

In all of her work, Ruth Bader Ginsburg has employed intelligence, fierce determination, and a persistence of vision. We are indebted to her and grateful for the leadership she has provided and continues to provide today. ■

Anthony D. Romero is the Executive Director of the ACLU. Nadine Strossen is the President of the ACLU and a professor of law at New York Law School.

◀ Aryeh Neier, former Executive Director of the ACLU.



Aryeh Neier: Reflections on Ruth Bader Ginsburg's Leadership of the ACLU Women's Rights Project

In this interview, Aryeh Neier, former Executive Director of the ACLU, Founding Director of Human Rights Watch, and current President of the Soros Foundations and the Open Society Institute, reflects on his hiring of Ruth Bader Ginsburg to direct the Women's Rights Project and her tenure at the ACLU.

How did you come to know Ruth Bader Ginsburg?

I became the director of the ACLU in October of 1970, and I set about launching a series of specialized projects. One of the issues I particularly wanted to deal with was the question of women's rights. I began asking around who was well qualified to lead a project of that sort, and I was told that there was this outstanding lawyer who was at Rutgers Law School who had brought some cases on behalf of the New Jersey ACLU. And so I arranged to meet Ruth Bader Ginsburg to talk to her about the project, and I was very impressed by her when I met her. At that moment, however, she was undergoing a transition. The women's rights issue had been discovered around that time, and a number of other law schools were suddenly interested in hiring her. Ginsburg was interested in moving to Columbia Law School, in part because of its location. She did not want to give up a potential post at Columbia, so I talked to her about the possibility of working part-time at Columbia and part-time at the ACLU directing the Women's Rights Project. We were able to work out an arrangement where she divided her time between Columbia and the ACLU.

What impressed you most about Ruth Bader Ginsburg during her time at the ACLU?

There never was another circumstance in my tenure at the ACLU when there was as clearly planned a litigation strategy as Ginsburg implemented in the women's rights field. To my knowledge the only litigation strategy that anyone ever implemented that was as clearly developed was what Thurgood Marshall did at the NAACP Legal Defense Fund with respect to school desegregation. That is, what Marshall did was to build precedent upon precedent, not going too far in any one case but gradually leading the Supreme Court to a

- > Aryeh Neier brought Ruth Bader Ginsburg to the ACLU to launch the Women's Rights Project.



series of decisions that then resulted in *Brown*. And Ginsburg did that for the ACLU in the women's right field. In some respects that was more difficult to do in the women's rights field than in the school desegregation field for this reason: school desegregation by its nature involves massive cases and an immense amount of information has to be produced at trial in a school desegregation case. Therefore it wasn't just any attorney who could go in to court with a school desegregation case. On the other hand, in the women's rights field it was much more difficult because there were all these attorneys who were discovering the field and were eager to bring cases. Therefore managing an orderly progression of cases was infinitely more difficult because you had to deal with the other people who were bringing these cases and persuade them why they should conform to your strategy.

Effectively what Ginsburg was trying to do was to get the equivalent of the Equal Rights Amendment, which was being debated at that point in the state legislatures, through litigation. After the ERA had been adopted by Congress but fallen short of the number of states required for ratification, she tried to persuade the Supreme Court to adopt a standard of review in sex discrimination cases that was as strict as the standard applied in race discrimination cases. The case in which she came closest was *Craig v. Boren*, where the Court adopted a mid-level test - more than a rational relationship but less than a compelling state interest. It was her very careful process of inching the Court along that was the best planned legal strategy I saw in my tenure at the ACLU.

The other thing about Ginsburg was that it was a sheer pleasure to read her briefs. They were simply superb pieces of legal argumentation. Ginsburg is a very spare person, and her briefs reflected her personality. The briefs were tough in their language, and you couldn't slip a knife between the arguments. They were so tightly reasoned.

When you think back to the accomplishments of WRP in the 1970s what was the biggest success would you say?

The biggest success was Ginsburg's litigation campaign—how it transformed the law dealing with women's rights. I think it was one of the masterpieces of American "cause litigation." It wasn't one case, it was the cumulative effect from her planning of all the cases she dealt with.

“There never was another circumstance in my tenure at the ACLU when there was as clearly planned a litigation strategy as Ginsburg implemented in the women’s rights field.” ARYEH NEIER

I know she sometimes used male plaintiffs in the cases—did you have conversations with her about those decisions?

Absolutely, and she was very clear about that. One of them for instance, *Frontiero v. Richardson*, involved the husband of a woman in the Air Force denied the same housing benefits that were available to the female spouses of men in the Air Force. Another one, *Weinberger v. Wiesenfeld*, involved the Social Security benefits that were available to a male survivor after his wife died. Ginsburg was intent on showing that it was discrimination per se that was the issue and the particular victim could be male or female. It was very much Ginsburg’s point of view that men took part in the upbringing of children and giving care to others. The sexual stereotypes that said otherwise had to be challenged, and using males who were in the dependent spouse category was an appropriate way to demonstrate that the sexual stereotypes of the era were not valid.

What were your thoughts when she was appointed to the D.C. Circuit Court of Appeals?

I was delighted by that. I thought she would be a very good judge. I would have liked her to continue to be associated with the ACLU, but frankly, having her on the bench was better. It was not surprising to me that she would be appointed.

And what about when she was appointed to the Supreme Court?

In a way that was a little bit more surprising because by that stage there had already been efforts to demonize the ACLU and I thought that that would be a factor with respect to confirmation. But I knew she would make a terrific Justice.

Do you have any closing comments?

Well, I admired her during her time at the ACLU, and if anything, in retrospect, I admire her even more now. She accomplished just an extraordinary amount in her service at the ACLU. One simply could not have asked for more. ■

“The complainants in this case speak for thousands of immigrant women workers throughout the country who are similarly exploited and who are fearful of complaining publicly about their abuse. By exposing illegal sexual discrimination and economic exploitation in cases like these, we hope to encourage more women to come forward and assert their rights.” LENORA LAPIDUS ON *SIERRA V. BROADWAY PLAZA HOTEL*

Docket of WRP Cases and Advocacy Efforts

I. EMPLOYMENT

In order to truly achieve equality for women, the most vulnerable populations of women—poor women, immigrant women, and women of color—must have access to economic opportunity and freedom from discrimination and exploitation. Although women have made great progress in establishing their equal rights under the law in the workplace, in practice, gender bias against women continues to create significant barriers to economic opportunity. Violations of wage and hour laws, gender discrimination and sexual harassment laws, pregnancy discrimination laws, and health and safety laws often force women into conditions of exploitation. The Women’s Rights Project focuses on sectors of low-wage employment where these types of violations are more prevalent to ensure that women’s rights in the workplace are being enforced. Cutting across economic lines, women also face limited ability to acquire and maintain positions in many stable, well-paying jobs in traditionally male fields. Thus, WRP also works to promote economic opportunities for women in non-traditional employment.

Low-Wage Immigrant Women Workers

Low-wage immigrant women are particularly vulnerable to extreme forms of exploitation. Each year, many immigrant women are trafficked into the United States and end up as exploited laborers working in restaurants, factories, and private homes. Many are subjected to sexual harassment and other forms of gender discrimination and forced to do demanding work requiring long hours, for wages well below minimum wage. However, either because of an unfamiliarity with their rights, fear of employer reprisal, or limited job opportunities, low-wage immigrant women are rarely able to enforce their rights. The Women’s Rights Project advocates on behalf of low-wage immigrant women workers and enforces their rights under domestic and international law. Through litigation, collaboration with community organizations that serve immigrant workers, and public educational outreach such as know-your-rights workshops, WRP has taken a dynamic approach to securing the rights of immigrant women workers.

CONTINUED ON PAGE 4



Tribute:

The Legacy of Ruth Bader Ginsburg and WRP Staff

WRP gratefully acknowledges the work of intern Sandra Pullman in researching and drafting this Tribute.

I. THE PIONEER

In the words of Ruth Bader Ginsburg, Supreme Court Justice and founder of the Women's Rights Project at the ACLU, "Women's rights are an essential part of the overall human rights agenda, trained on the equal dignity and ability to live in freedom all people should enjoy."

Ginsburg has been a pioneer for gender equality throughout her distinguished career. While singular in her achievements, she was far from alone in her pursuits and received much support from talented, dedicated women all along the way. Celia Bader provided a strong role model for her daughter at an early age. Ginsburg recalls, "My mother told me two things constantly. One was to be a lady, and the other was to be independent. The study of law was unusual for women of my generation. For most girls growing up in the '40s, the most important degree was not your B.A., but your M.R.S."

Ginsburg attended law school, not originally for women's rights work, but "for personal, selfish reasons. I thought I could do a lawyer's job better than any other. I have no talent in the arts, but I do

Plaintiffs from
*Sierra v. Broadway Plaza
Hotel*:

CLOCKWISE FROM LEFT:

- > Deyanira Espinal.
- > Merisi Peralta and Deyanira Espinal meet with WRP attorney Claudia Flores.
- > Plaintiffs Carmen Calixto and Juana Sierra.



write fairly well and analyze problems clearly.”¹

Although she arrived without a civil rights agenda, the treatment Ginsburg received as a woman in law school honed her feminist instincts. One of only nine women at Harvard Law School in 1956, Ginsburg and her female classmates were asked by the dean why they were occupying seats that would otherwise be filled by men. Despite her discomfort, self-doubt, and misgivings, Ginsburg proved to be a stellar student, making law review at Harvard in 1957, and then again at Columbia Law School, where she finished her studies in order to keep the family together when her husband graduated from Harvard and accepted a job in New York. (Her daughter was born 14 months before Ginsburg entered law school.) This major accomplishment at two top schools was unprecedented by any student, male or female. Upon graduating from Columbia in 1959, Ginsburg tied for first in her class. Still, when she was recommended for a clerkship with Supreme Court Justice Felix Frankfurter by Albert Sachs, a professor at Harvard Law School, Frankfurter responded that he wasn't ready to hire a woman and asked Sachs to recommend a man.

Ginsburg had worked for a top law firm in New York during the summer of her second year in law school. “I thought I had done a terrific job, and I expected them to offer me a job on graduation,” she recalled.² Despite her performance, there was no job offer. Nor was there an offer from any of the twelve firms with which she inter-

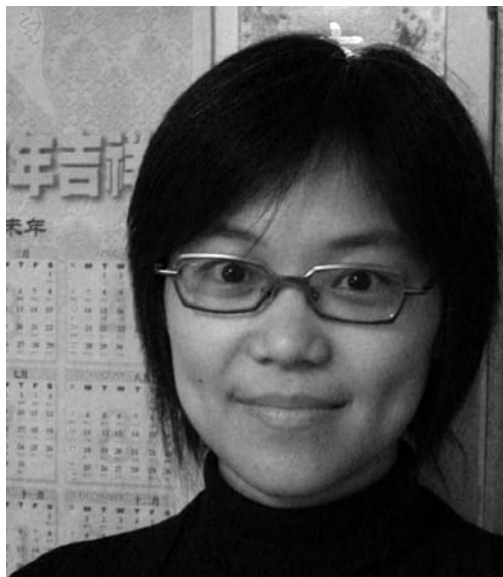
Espinal v. Ramco Stores

Deyanira Espinal, Angela Berise Fritman Peralta, and Maria Araceli Gonzales Flores worked as cashiers and general assistants at the Ramco National Discount Store, a retail store owned by Albert Palacci. The three women were sexually harassed, paid well below the minimum wage, and not paid any overtime. For nearly two years, they were subjected to demands for sex in exchange for raises, physical assault, and retaliation when they rejected the demands. The women were forced to work six and at times seven days a week for as little as \$30 to \$40 a day, and one was forced to cook, shop, and clean for Palacci in his home. On one occasion, Palacci took Peralta and Espinal to his home, ostensibly to clean his house. He then locked the door, removed his clothing, and demanded sexual favors. When the women refused, Palacci physically attacked them. In retaliation for their rejections, he later reduced their work hours and treated them with increased hostility.

The ACLU Women's Rights Project, along with the law firm Outten & Golden, filed a lawsuit on behalf of these three women in federal court in New York. The lawsuit seeks compensation for unpaid wages and discrimination; punitive damages against Palacci; and a court order prohibiting Palacci, as the store's owner, from discriminating or retaliating against employees or job applicants because of their gender or their refusal to submit to his sexual demands. Additionally, the WRP invoked a new provision of the New York City Human Rights Law that provides a remedy for victims of gender-motivated violence. This law permits victims of sexual assault or other gender-based crimes to file civil actions and obtain money damages from their assailants. This is a novel approach, and WRP hopes to set a positive precedent through the enforcement of this law. Over the past year, WRP has been engaged in document discovery, depositions, and settlement negotiations. Defendants agreed to payment on the wage and hour violations. WRP is currently preparing to go to trial on the discrimination claims.

Sierra v. Broadway Plaza Hotel

In another case involving employment law violations and discrimination, the Women's Rights Project represents four Latina women who worked as housekeepers at the Broadway Plaza Hotel in New York City. These women were forced by manager David Ramirez to work shifts that lasted up to 16 hours, seven days a week, with no overtime wages. The hotel failed to pay for all the hours the women worked, and the women were forced to punch in later than they actually arrived and earlier than they actually left. During these shifts they were not permitted to eat, drink, or even go to the bathroom. Ramirez also forced them to work after-hours, cleaning his home and the home of his mother



◀ Wei Chen, of the Chinese Staff and Restaurant Workers Association, which has assisted WRP in *Liu v. King Chef* and *Fang v. Rainbow Buffet*.

without any pay. The women were sexually harassed by Ramirez and were subjected to unwanted touching, name calling, and threats of violence and deportation. When one woman declined these advances, she received more work without pay in retaliation. After seeking help from a community organization, the women were referred to WRP. Along with Boies, Schiller & Flexner, WRP filed a lawsuit on their behalf, seeking monetary compensation for lost wages as well as awards for emotional damage for each woman. WRP is preparing to go to trial early next year.

Liu v. King Chef

The Women's Rights Project, along with the ACLU of New Jersey and Lowenstein Sandler, is finally able to move forward with this case against the owners of a Chinese restaurant in New Jersey that exploited two Fujianese waitresses, Mei Ying Liu and Shu Fang. The women charged that they were kept under the complete control of their employers; were paid no wages for their work; had to pay a daily kickback out of their tips to the restaurant owners; faced gender and ethnicity discrimination; were housed in an overcrowded, vermin-filled apartment; and were threatened with death when they stopped working at the restaurant. In 2003, the New Jersey federal district court awarded a \$3.45 million judgment in favor of our clients. However in June 2004, the district court vacated the judgment and dismissed the case on the ground that plaintiffs had not served the complaint, notwithstanding the fact that three defendants had been served, two had filed answers, and the remaining defendants had willfully evaded numerous attempts at service. WRP appealed this decision and won in 2005, paving the way for the lawsuit to continue. WRP is moving forward with the case and is currently in the discovery phase.

Fang v. Rainbow Buffet

The ACLU Women's Rights Project, the ACLU of New Jersey, and pro bono counsel represented Li Mei Fang and Liping Wang, two Fujianese women who worked as waitresses at Rainbow Buffet, a Chinese restaurant in Fairview, New Jersey. The women were paid well below minimum wage for over 12 hours of work each day, six days a week, with no overtime. Each woman also had to pay a \$15 to \$30 daily kickback to the employer. The women were housed in an employer-provided apartment with squalid living conditions. Additionally, Ms. Fang and Ms. Wang were subjected to sexual harassment by their male co-workers, who touched them inappropriately, made sexual innuendos, and on several occasions physically assaulted them. Upon complaining to the restaurant owner, the women were mocked or ignored. WRP filed charges of sexual harassment and wrongful discharge on the women's behalf with the the U.S. Equal Employment Opportunity Commission in March 2005. In October, WRP filed a law-

viewed; only two gave her a follow-up interview.

In the end, Ginsburg was hired to clerk for Judge Edmund L. Palmieri of the U.S. District Court for the Southern District of New York from 1959 to 1961. She received offers from law firms after that job, but she chose to work on Columbia Law School's International Procedure Project instead, co-authoring a book on Sweden's legal system and translating Sweden's Judicial Code into English.

Continuing in academia, Ginsburg joined the faculty of Rutgers Law School in 1963, but her status as a woman still put her at a disadvantage. When she discovered that her salary was lower than that of her male colleagues, she joined an equal pay campaign with other women teaching at the university, which resulted in substantial increases for all the complainants.

Prompted by her own experiences, Ginsburg began to handle sex discrimination complaints referred to her by the New Jersey affiliate of the American Civil Liberties Union. Ginsburg envisioned that men and women would "create new traditions by their actions, if artificial barriers are removed, and avenues of opportunity held open to them."³ The ACLU Women's Rights Project was born in 1972 under Ginsburg's leadership, in order to remove these barriers and open these opportunities. That same year, Ginsburg became the first woman to be granted tenure at Columbia Law School.

Plaintiffs from *U.S. v New York City Board of Education*:

CLOCKWISE FROM UPPER LEFT:

- Charmaine DiDonato and Mary Kachadourian.
- Janet Caldero and Dawn Ellis.
- Irene Wolkiewicz, Adele McGreal and Marcia Jarrett.



II. THE TRAILBLAZERS

Ginsburg's experiences with sex discrimination inspired her to lead the ACLU's campaign for gender equality, but she was not the first person to see the need for the ACLU to dedicate its efforts to women's rights. Pauli Murray and Dorothy Kenyon, longtime members of the Board of Directors beginning in 1930 and 1965, respectively, had worked to put gender equality work on the ACLU's agenda.

Dorothy Kenyon was appointed to the League of Nations Committee on the Legal Status of Women from 1938 to 1940 and from 1947 to 1950 served as the first U.S. delegate to the U.N. Commission on the Status of Women. A New York City municipal justice from 1939 to 1940, she claimed the title for life. "Judge Kenyon" later wrote the ACLU *amicus* brief in *Hoyt v. Florida*, 386 U.S. 57 (1961), a Supreme Court case that considered (and rejected) a challenge to a state law that required men to serve on juries but excluded women unless they volunteered.

Pauli Murray became an activist by fighting racial discrimination, when she defended an indigent black sharecropper accused of murder, agitated against lynching, and was jailed for her protests as a freedom rider in the 1960s. As Murray explained, "I entered law school preoccupied with the racial struggle and single-mindedly bent upon becoming a civil rights lawyer, but I graduated an unabashed feminist as well." Informed by

suit in New Jersey District Court charging that the restaurant's practices violated federal and state labor laws as well as state tort law. WRP seeks to recover all minimum wages and unpaid overtime compensation, as well as appropriate compensatory and punitive damages for the treatment these women endured.

Chere v. Taye

In cooperation with the ACLU of New Jersey and Seton Hall School of Law, the Women's Rights Project represents an Ethiopian domestic worker who was trafficked to New Jersey and held in conditions of forced labor by her employers. Bela Chere was required to work 70-85 hours a week but never received any payment for her labor. She performed extensive household responsibilities, including serving as primary caretaker for the defendants' toddler, cooking for the family, cleaning and maintaining the home, doing the family's laundry, and cleaning the exterior of the house. She was required to sleep on the floor of the toddler's bedroom and could only eat leftovers from the family's meal or bread and water. She was verbally and sexually abused, denied access to medical care, and coerced into remaining in defendants' unpaid employ. Ms. Chere was only able to escape from the defendants' home when she contacted her relatives in Chicago while the defendants were out of town. Her uncle drove from Chicago to New Jersey to rescue her, and she then sought legal assistance. WRP filed suit against her employers for violations of federal and state labor laws, federal trafficking statutes, the Thirteenth Amendment to the Constitution prohibiting involuntary servitude, and international law prohibiting forced labor and trafficking.

Know Your Rights Trainings

The Women's Rights Project works with local community groups to facilitate trainings that empower women workers to enforce their rights. WRP staff teach participants about their rights under domestic and international law to be free from sexual harassment and discrimination and their legal entitlement to a minimum wage and overtime. They instruct participants on how to file complaints with the Equal Employment Opportunity Commission and other state and local agencies when they believe that their rights have been violated. WRP staff have also provided trainings teaching community groups how to use international fora, such as the United Nations Commission on Human Rights, in their organizing efforts. In these efforts, WRP has collaborated with workers' rights organizations such as Andolan, a South Asian workers' organization, and women's organizations such as Dwa Fanm, a Haitian organization in Brooklyn. In addition to trainings and community education presentations, WRP also publishes a Know Your Rights guide in both English and Spanish and has distributed it to numerous organizations in New York and other states.



◀ WRP staff attorney/Skadden Fellow Carrie Bettinger-Lopez meeting with Dwa Fanm.

Women in Non-Traditional Occupations

U.S. v New York City Board of Education

In 2005, the Women's Rights Project continued to defend a settlement agreement entered to remedy the long-standing discriminatory practices that kept women and people of color locked out of public school custodian positions. In 1996, the Justice Department brought suit against the New York City Board of Education, alleging that the Board had long discriminated against women, African-Americans, Hispanics, and Asians in hiring custodians, by failing to recruit them and by giving civil service tests for the job that discriminated against African-Americans and Hispanics. In 1999, after several years of litigation, the Justice Department and the Board of Education entered into a settlement agreement. At that time, many of the women, African-Americans, Hispanics, and Asians working as custodians were employed only provisionally, meaning they could be fired at any time and they could not compete for various job benefits. The settlement agreement provided that these individuals would all become permanent civil service employees. The settlement agreement also provided them with retroactive seniority. These awards were meant to remedy the effects of the Board of Education's past discrimination. Finally, the settlement agreement provided that if any of its provisions were challenged, the Justice Department and the Board of Education would defend the agreement.

However, when several white male custodians represented by the Center for Individual Rights, a right-leaning legal activist organization, brought just such a challenge, arguing the settlement agreement constituted reverse discrimination, the Justice Department, under the leadership of John Ashcroft, reneged on its promise to defend the individuals it had previously represented. In response, WRP stepped in to protect the settlement agreement. On behalf of twenty-two of the trailblazing female and minority custodians abandoned by the Justice Department, WRP, with the assistance of Hughes, Hubbard and Reed, intervened in the litigation to protect the awards of permanent jobs and seniority. In October 2005, WRP presented its legal arguments to the court, explaining that the settlement agreement in this case was lawful affirmative action. A decision in the case is expected in 2006.

Lochren v. Suffolk County Police Department

In our ongoing effort to eliminate pregnancy discrimination in the workplace, especially in predominately male labor sectors, the Women's Rights Project, along with the New York Civil Liberties Union, continued to litigate this case challenging the Suffolk County Police Department's policy of excluding pregnant

her own experiences as a black woman, she drew connections between the legal status of women and that of African-Americans, using the term "Jane Crow" in her scholarship. She joined the ACLU Equality Committee, where she pushed the organization to focus on sex discrimination and to use the Constitution to challenge it. In 1961, Murray was appointed to the President's Commission on the Status of Women's Committee on Civil and Political Rights, and in 1966, along with Betty Friedan, she was one of thirty co-founders of the National Organization for Women (NOW), which she labeled "the NAACP for women."

Throughout Murray's and Kenyon's careers, opposition to women's rights remained pervasive and powerful. When the Equal Rights Amendment was re-proposed in the late 1940s – having been introduced almost annually since it was initially proposed in 1923 – even the ACLU voted to oppose it. Kenyon and Murray worked intensely behind the scenes and in 1970 convinced the Board to reconsider its regressive position. Ginsburg too was a strong supporter of the ERA, explaining, "The amendment would eliminate the historical impediment to unqualified judicial recognition of equal rights and responsibilities for men and women as constitutional principle...and it would serve as a clear statement of the nation's moral and legal commitment to a system in which women and men stand as full and equal individuals before the law."⁴

Kenyon was also one of the strongest advocates for the establishment of the Women's Rights Pro-

> Sandra Lochren.



ject at the ACLU. At Kenyon's funeral in 1972, just after the WRP was founded, Murray reflected, "I think when future historians assess the important issues of the twentieth century they may well conclude that Judge Dorothy Kenyon was one of the giants who stood in bold relief against the American sky."

Recognizing their efforts on behalf of women's equality at the ACLU and elsewhere, Ginsburg listed both Murray's and Kenyon's names on the groundbreaking brief she authored for the ACLU in *Reed v. Reed*, 404 U.S. 71 (1971), even though Murray and Kenyon did not directly contribute to it. In *Reed*, the United States Supreme Court invalidated an Idaho statute that automatically gave preference to men for appointment as administrator of a deceased person's estate. In so doing, the Court extended the Constitution's Equal Protection guarantee to women for the first time. Ginsburg has said that her credit to Murray and Kenyon was a symbolic gesture to reflect "the intellectual debt which contemporary feminist legal argument owed [them]."⁵

III. GINSBURG'S SUPPORTING CAST

In the early '70s, observes Susan Deller Ross, who joined WRP as a staff attorney in 1975, the ACLU was "lukewarm towards women's rights issues; it took someone of Ginsburg's vision and

officers from short-term "light-duty" assignments, even though those assignments are available to officers injured on the job or under internal affairs investigation.

In September 2004, we filed a motion for class certification arguing that all female officers employed by the Suffolk County Police Department who become pregnant, like our clients, would be forced to exhaust all forms of paid leave, and then take unpaid leave for the duration of their pregnancies. This would result in financial hardship, as well as the loss of seniority and longevity for female officers who become pregnant. In March 2005, the court denied our motion for class certification as well as both parties' motions for summary judgment. The case is scheduled for jury trial in 2006.

Knussman v. Maryland State Police

Kevin Knussman, a former Maryland State Trooper and paramedic, was denied family leave to care for his then-newborn daughter and seriously ill wife. The ACLU of Maryland filed suit in 1995, alleging that the Maryland State Police wrongfully denied Knussman's leave requests solely because of his gender, in violation of the Equal Protection Clause and the Family and Medical Leave Act. The ACLU-MD and WRP prevailed at trial in 1999, securing complete declaratory and injunctive relief, as well as substantial monetary damages. Appeals pursued by the defendants to dodge responsibility for the discrimination and contest payment of attorneys' fees kept the case alive years longer.

Finally, in late April 2005, nearly a decade to the day after filing the original lawsuit and a few months after the "newborn" daughter at the heart of the case celebrated her 10th birthday, the Maryland Board of Public Works approved payment of attorneys' fees to Mr. Knussman, as ordered by the court, thereby putting an end to the case.

Affiliate Work

Gender Discrimination in Insurance

When Massachusetts passed its Equal Rights Amendment decades ago, a commission was formed to recommend changes to all laws to bring the state into conformity with the ERA. Since that time, the ACLU of Massachusetts has been working for the application of gender-neutral policies in health, disability, annuity, and life insurance. Under law, insurance regulated by the federal government—that is, employer-based insurance and pensions—must be gender-neutral. No such prohibition of discrimination exists for other forms of insurance, which are regulated by states. This creates a problem for women because they are not able to purchase life



◀ Ann Palmer, Southwest Airlines Flight Attendant.

insurance at the same price as men. Insurers try to justify this policy with actuarial tables that show that women outlive men. However, 85% of men and women live to the same ages, with about 7% of men dying earlier and 7% of women dying later. The same kind of differentials exist for different races and religions, but it is illegal to discriminate in these cases. Women should not have to live with smaller monthly annuities than men when they have invested the same dollar amount. In a protracted battle, the ACLU of Massachusetts has supported legislation to address these policies. The proposed bill mandates that the same premiums and the same benefits be offered to both men and women.

Gender Stereotyping in the Washington Department of Social and Health Services

In response to the ACLU of Washington's objections, the Washington State Department of Social and Health Services will eliminate a rule that requires licensed family home child care providers immediately to report if they get married, separated, or divorced. This reporting requirement was imposed in addition to a requirement that any changes in the composition of the provider's household be reported. Initially, DSHS asserted the rule was necessary because licensed family home child care providers (who are mostly women) would likely be traumatized if they were going through a divorce and this could jeopardize the safety of the children. The rule appears to be based more on gender stereotyping than on any legitimate concern for the safety of the children, especially since DSHS does not require reporting of other traumatic events in the provider's life such as serious illnesses. The ACLU of Washington will monitor to ensure that DSHS sends a notice of the rule change to all the affected providers.

Southwest Airlines Accommodates Dedicated Flight Attendant's Condition

The ACLU of Maryland succeeded in persuading Southwest Airlines to treat fairly employee Ann Palmer, a female flight attendant who suffers from a medical condition called alopecia, which prevents hair from growing anywhere on her body. Ms. Palmer had previously run into problems with certain supervisors, who insisted she wear a wig to cover her baldness and alleged that her failure to do so violated Southwest's grooming policy. She had suffered discomfort and skin irritation when regularly using a wig. The ACLU-MD asserted in an April 15, 2005, letter that a reading of the grooming rules to require the wig would raise significant gender discrimination issues and requested that the airline clarify its policy as applied to Ms. Palmer. Southwest responded within a week, admitting that Ms. Palmer had been given mixed messages about the airlines grooming rules, and offering a written assurance that that wig would no longer be required. Ms. Palmer is thrilled with her employer's response.

leadership to establish the Women's Rights Project." According to one contemporary observer, the *Reed* opinion was "a call to arms" and Ginsburg was the "General" leading this foray.⁶ Under her guidance, "Troops were assembled, and a strategy for attack was painstakingly planned."⁷

In 1972, as part of this effort, Brenda Feigen was contacted by Mel Wulf, the legal director of the ACLU; Ruth Bader Ginsburg was looking for a co-director for the newly formed Women's Rights Project. "It was a great honor," Feigen remembers. Still, she needed time to consider. Feigen, whose legal expertise had previously proved invaluable in her work as legislative vice president of NOW, had just launched *Ms.* magazine with Gloria Steinem, and she hesitated to leave her fledgling publication. Finally, with a "blessing from Gloria," as Feigen puts it, she joined WRP in late 1972.

The two founding directors sought out an unused area in the ACLU office, where they hung the sign: "WOMEN WORKING." In those early years, there was much work to be done. "We knocked down a lot of barriers for women, not only on the substantive level. We also challenged what type of judicial scrutiny applied to gender discrimination under the Equal Protection Clause of the 14th Amendment," Feigen explains. Kathleen Peratis, who became WRP's director in 1974, agrees that establishing heightened scrutiny for sex classifications under the Equal Protection Clause was perhaps the decade's greatest

► Sharron Frontiero Cohen, plaintiff in *Frontiero v. Richardson*, the first case that Ginsburg argued in front of the Supreme Court.



achievement. Prior to that time, while the government's discrimination based on race was subject to the strictest scrutiny, discrimination based on gender was permissible if any reason at all could be hypothesized for the differential treatment. In *Frontiero v. Richardson*, 411 U.S. 677 (1973), the first case that Ginsburg argued before the Supreme Court, WRP advocated for the application of strict scrutiny to gender discrimination just as the concept applied to race discrimination. Four Justices supported this view, one vote shy of a majority. Through a series of decisions in the wake of *Frontiero*, an intermediate standard of review was established, a standard requiring the government to show that any sex classification it defended had a "substantial relationship" to an "important state interest."

In describing *Frontiero*, which she co-counseled, Feigen expresses great respect for Ginsburg's advocacy. "It was brilliant," she gushes. "I've never heard an oral argument as unbelievably cogent as hers." Ginsburg spoke from memory, citing cases and speaking about women's history without ever turning to her notes or checking any citations. "Not a single Justice asked a single question; I think they were mesmerized by her," Feigen declares.

Ginsburg herself describes the experience as a bit more tumultuous. "I was terribly nervous. In fact, I didn't eat lunch for fear that I might throw up." Yet she eventually found her rhythm. "Two minutes into my argument, the fear dissolved.

II. VIOLENCE AGAINST WOMEN

Violence against women is one of the core focus areas of the Women's Rights Project because it constitutes a significant barrier to women's and families' safety, economic security, and civil rights. As many as 4 million American women experience a serious assault by an intimate partner during an average 12-month period. Domestic violence crosses racial, ethnic, sexual orientation, and socioeconomic lines; however low-income women, women of color, and immigrant women are particularly vulnerable to its effects. Public response to violence against women is far from sufficient, because of institutional sex discrimination and the many misconceptions people hold about victims of domestic violence. Some people think of domestic violence as the woman's problem, not her abuser's. Instead of holding the abuser accountable, some people blame the woman who has experienced violence for the abuse and its consequences. State actors often think of violence against women as a private problem within a household, rather than a criminal activity that must be addressed through law and public policy. These attitudes magnify the effects of domestic violence through actions that punish the victim and reinforce the cycle of violence against women. Battered women can face eviction from their homes, the loss of their jobs, or removal of their children due to the violence. WRP works to remove the barriers that make it difficult for a woman to leave a dangerous relationship and to protect the rights and safety of battered women.

Holding Police Accountable

Town of Castle Rock, Colorado v. Gonzales

In 2005, the Women's Rights Project coordinated the friend-of-the-court effort before the Supreme Court in this case that presented the issue whether a battered woman had a due process right to police enforcement of her protective order. In 1999, a court in Colorado granted Jessica Gonzales a protective order barring her estranged husband, Simon Gonzales, from contact with her and their three daughters, ages seven, nine, and ten, outside of specified visitation periods. Both Colorado's domestic violence mandatory arrest law and the court order required the police to enforce the terms of the order by arresting Mr. Gonzales if he violated it. One month later, Mr. Gonzales kidnapped the three girls from Ms. Gonzales' yard, in violation of the order of protection. Ms. Gonzales reported her daughters missing to the Castle Rock Police Department and was later able to contact Mr. Gonzales on his cell phone, learn his location, and verify that he still had the three girls with him. Despite Ms. Gonzales' numer-



ous calls and visits to the local police station that night informing them that her husband was with the children at a local amusement park, the police failed to investigate the situation, take action to apprehend Mr. Gonzales, or take steps to return the children to their mother. Later that night, Mr. Gonzales pulled up to the police station and opened fire with a semi-automatic handgun he purchased earlier that day. The police shot and killed Mr. Gonzales. Upon searching his truck, they discovered the bodies of his three daughters, whom he had murdered earlier that evening.

In 2000, Ms. Gonzales filed a federal lawsuit against the Town of Castle Rock based on the Police Department's failure to enforce her protective order. Ms. Gonzales argued that under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, she had an entitlement to enforcement of her protective order that the police could not arbitrarily deny. Although she lost at the district court level, the 10th Circuit Court of Appeals ruled that Ms. Gonzales did indeed have the right to sue the Town for its inaction, because the language of Colorado's mandatory arrest statute, coupled with the language contained in Ms. Gonzales' order of protection, mandated the enforcement of such orders. Following this victory, Castle Rock appealed the decision and the United States Supreme Court agreed to hear the case.

WRP, in cooperation with Covington & Burling, filed a friend-of-the-court brief and oversaw the filing of eight other *amicus* briefs with 115 signatories, including domestic violence organizations, women's and children's advocacy organizations, police officer associations, lawyers, and international law scholars. WRP's brief argued that the Police Department's inaction in the face of the protective order had increased the danger to Ms. Gonzales' children. Other *amicus* briefs emphasized the futility of orders of protection that are not enforced by the police, and cautioned that victims might ultimately be less likely to seek such orders if they know their attackers can retaliate against them without fear of legal reprisal.

Despite the arguments made by Gonzales and *amici*, the Supreme Court held that Ms. Gonzales' due process rights under the U.S. Constitution had not been violated because, notwithstanding Colorado's mandatory arrest law and the guarantees of enforcement contained in her order of protection, she had no personal entitlement to police enforcement of her restraining order. Justices Stevens and Ginsburg dissented, asserting that, "the Court gives short shrift to the unique case of [statutes requiring police enforcement] in the domestic violence context." While this decision is a blow to victims of domestic violence, it does not change or diminish existing state laws regarding mandatory or presumptive arrest.

Suddenly, I realized that here before me were the nine leading jurists of America, a captive audience. I felt a surge of power that carried me through."⁸ In the end, Ginsburg seemed physically drained by the effort. As Feigen left the courtroom with her, Ginsburg seemed hardly able to process directions to the airport shuttle, and Feigen gladly escorted her home to New York. Feigen laughs, thinking back on her colleague's behavior. "Literally, her head is in the law, and sometimes in the opera," she remarks of Ginsburg.

Deb Ellis, a WRP staff attorney in the mid-80s, applauds Ginsburg's tactic of occasionally using male plaintiffs in equal protection cases, including *Frontiero*, to demonstrate that sex-based distinctions harm men and women—indeed, entire families. Sharron Frontiero's husband, Joseph, wasn't eligible for spousal benefits from her work in the uniformed forces because he failed to prove economic dependency on his wife, a condition not required for wives of male members to qualify for the same benefits. While some would have focused solely on the injustice such rules work on women, Ginsburg rejected differential treatment based on gender as inherently harmful to all involved.

In *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975), Ginsburg continued to develop this analysis when she successfully argued against a provision in the Social Security Act that denied to widowed fathers benefits afforded to widowed mothers. She made the case that the classification discriminated

➤ Margaret Moses taught a gender discrimination class in conjunction with Ginsburg in the late 1970s.



against working women, whose social security taxes garnered fewer family benefits than the taxes paid for working men. She also argued that the law denied men the same opportunity as women to care personally for their children.

Ginsburg and Feigen practiced an egalitarian approach not only in their legal arguments, but also in their own family lives. “Both of us agreed that we didn’t want to deprive the fathers of our children of the experience of being fathers – or the children of having fathers involved in their daily lives,” Feigen explains. In fact, she recalls Ginsburg’s annoyance one day with officials at her son’s school, who invariably called her at work when he was sick or, more often, in trouble. Ginsburg told them that day that her son had two parents. She would appreciate it if they would alternate calls. That time, it was her husband’s turn.

As a staff attorney from 1976 to 1979, Jill Goodman also remembers Ginsburg negotiating her roles as a lawyer and a mother. On one occasion Ginsburg was doing final edits on a Supreme Court brief the evening before Thanksgiving with an eye on the clock, keenly aware of just when her college-age daughter would be arriving home—obviously eager to see her daughter, but steadfastly committed to finishing the work at hand without compromise.

Margaret Moses, who came to WRP as an attorney in 1978, taught a gender discrimination class at Columbia in conjunction with Ginsburg during her time there. She recalls the example her co-

In fact, Justice Scalia, writing for the majority, explicitly stated that the ruling “does not mean states are powerless to provide victims with personally enforceable remedies... the people of Colorado are free to craft such a system under state law.”

Post-*Gonzales* Activities

In the wake of the Supreme Court decision in *Gonzales*, the Women’s Rights Project has continued working to address the issue of police accountability on the local, state, national, and international levels. On the local level, WRP has worked with domestic violence advocates to examine the effectiveness and impact of mandatory arrest laws in New York City. While the laws hold potential benefits for victims of domestic violence, advocates have also raised concerns about the application and ramifications of these laws in minority and immigrant communities, where residents often live with a heightened police presence. In July, WRP participated in a conference sponsored by the Manhattan Borough President to examine the local impact of New York State’s mandatory arrest laws. ACLU Ira Glasser Fellow and distinguished law professor, Kimberlé Crenshaw gave the keynote address at the conference, and WRP Acting Deputy Director Emily Martin co-led a workshop discussion on the future implications of the *Gonzales* decision. WRP also assisted with creating an annotated bibliography that was distributed at the conference, which included references to statistical and sociological data relating to mandatory arrest laws, data on the effects of such laws in communities of color, and information on the “dual arrest” problem, which arises when both partners are arrested because the police are not able to distinguish between batterer and victim. WRP has also sent Freedom of Information Act requests to local police departments throughout the country in order to collect information on police responses to domestic violence-related calls and the impact of mandatory arrest laws on communities of color. This information will help inform future advocacy strategies and will highlight systemic shortcomings in police protection of domestic violence victims.

WRP has extended this work on issues surrounding mandatory arrest and orders of protection to the state and national levels by researching and collaborating with advocates and state legislators on strategies to mandate enforcement of protective orders by local governments. In July, we submitted written testimony to the Senate in support of the Violence Against Women Act of 2005 (see below), which contains several provisions to enhance law enforcement and community response to domestic violence. In October, Acting Deputy Director Emily Martin and Staff Attorney Carrie Bettinger-López published an article in the *Domestic Violence Report* entitled “*Castle Rock v. Gonzales* and The Future of

Police Protection for Victims of Domestic Violence,” which discussed the *Gonzales* decision and its implications for domestic violence advocacy. WRP is also co-sponsoring a national conference that will take place in March 2006 in Colorado and will convene advocates, attorneys, and academics to discuss the issue of state accountability for failure to protect victims of domestic violence.

In addition, WRP is taking Jessica Gonzales’ case to the international sphere in order to highlight the U.S. government’s failure to hold police accountable for their poor response to domestic violence and to protect victims of such violence, as required by international law. In December, WRP filed a petition before the Inter-American Commission on Human Rights requesting that the Commission review Ms. Gonzales’ case and find that the U.S. failed to protect the rights guaranteed to Ms. Gonzales in the American Declaration on the Rights and Duties of Man, including women’s and children’s rights to state protection from domestic violence, due process, and equal protection of law. The petition incorporated social science data and statistical information on police responses as well as the facts from Ms. Gonzales’ case to demonstrate the widespread problem of inadequate police response to domestic violence calls throughout the country. By bringing Ms. Gonzales’ case before the Inter-American Commission, WRP will also show that her situation is symptomatic of the broader problem of poor police response to violence against women in the Americas.

Moore v. Green

The ACLU of Illinois represents the Illinois Coalition Against Domestic Violence (ICADV), its member organizations, and the Chicago Battered Women’s Network as friends of the court in the case *Moore v. Green*, pending in the Illinois Supreme Court. In this case, the Illinois Supreme Court will decide whether law enforcement officers who wantonly and willfully fail to enforce protective orders issued pursuant to the Illinois Domestic Violence Act can be held liable for their actions. The heart of this case lies in the interpretation and implementation of the Illinois Domestic Violence Act. The Domestic Violence Act, designed to cure the historical indifference of the legal system to domestic violence, imposes civil liability on law enforcement officers who wantonly and willfully fail to enforce protective orders. However, the City of Chicago contends that the Municipal Tort Immunity Act grants local police departments absolute immunity from civil liability. The City of Chicago objected to the ACLU’s request to file an *amicus* brief, but the Illinois Supreme Court decided to allow the brief.

teacher set in the home. For the last class in the fall of 1979, Moses invited all the students over to her apartment for dinner. “Ruth’s husband, Marty, and mine cooked in the kitchen while we taught the class,” Moses reminisces. “It was a nice way to end a gender discrimination seminar!”

IV. EMERGING LEADERSHIP UNDER GINSBURG’S GUIDANCE

Brenda Feigen left WRP in 1974 to pursue full-time advocacy for the Equal Rights Amendment. That same year, Ginsburg joined the ACLU Board of Directors, having become General Counsel in 1973. Though Ginsburg remained heavily involved in WRP’s work until 1980, the original directors had moved on; in their place, Kathleen Peratis took over the helm of WRP.

As director, Peratis continued to find great success in gender discrimination litigation. She recalls that employers were unprepared for such lawsuits and were ill equipped to mount valid defenses. “It was a time when we filed a case and practically got a result in the return mail!” she exclaims. Peratis admits that the tide seemed to be going so strongly in her favor, she once considered a lawsuit against the entire state of Georgia and its employers at all levels for discrimination against women.

In the press, WRP and its new leader’s preeminence in advancing women’s rights was duly

noted. The victory in *Turner v. Dept. of Employment Security*, 423 U.S. 44 (1975), which struck down a law making pregnant women ineligible for unemployment benefits, was covered on the front page of the *New York Times*. Peratis was quoted in the article and described as being pregnant during the litigation. Later, Aryeh Neier, then executive director of the ACLU, remarked, “Only the queen of England and Kathleen Peratis have their pregnancies announced in the *Times*!”

Pregnancy discrimination cases were a key part of WRP’s agenda during this period; however, one of the most successful efforts mounted by WRP began with a setback. In *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976), the Supreme Court rejected the reasoning of WRP’s friend-of-the-court brief that pregnancy discrimination in the workplace was tantamount to sex discrimination. Such discrimination, the Court concluded, did not treat women and men differently; rather, it treated pregnant women differently from non-pregnant persons. After losing that battle, WRP staff attorney Susan Deller Ross helped rally WRP’s supporters to form the Coalition to End Discrimination Against Pregnant Workers. Ginsburg and Ross co-authored a column for the *New York Times*, calling for legislators to mend the law post-*Gilbert*, and they continued lobbying, reporting, and testifying in Congress. The result of their efforts was the passage of the Pregnancy Discrimination Act in 1978, an amendment to Title VII that established that pregnancy discrimination in

Prosecuting Battersers

Davis v. Washington and Hammon v. Indiana

In 2005, two Supreme Court cases presented the question of whether domestic violence victims’ prior statements to police or to 911 operators could be used in criminal domestic violence prosecutions when the victim herself did not testify at trial. The Sixth Amendment guarantees criminal defendants the right to confront their accusers. In a friend-of-the-court brief that recognized both the necessity for a meaningful criminal justice response to domestic violence and the rights of criminal defendants, the Women’s Rights Project argued that the Sixth Amendment’s fundamental guarantee of fairness prevents prosecutors from introducing these statements when they accuse the defendant of a crime and the defendant has not had the opportunity to cross-examine the accuser. Victims of domestic violence often refuse to testify against their abusers, for reasons ranging from fear and intimidation, to economic dependence on an abuser, to ongoing emotional attachments. While this often wholly understandable reluctance to testify does not empower prosecutors to set aside basic constitutional guarantees, advocacy and services that address the underlying reasons domestic violence victims refuse to testify lead many more to cooperate with criminal prosecution. The brief argues that states should provide such advocacy and services, to ensure that abusers continue to be held criminally accountable. The Supreme Court will decide the cases in 2006.

Ending Housing Discrimination Against Domestic Violence Survivors

The loss of economic security is a major obstacle that too often impacts a woman’s ability to leave an abusive relationship. Women’s access to safe and stable housing is crucial to combating domestic violence. Without that, women and their children remain economically dependent upon their abusers who, in turn, use that dependence as a form of coercion. Despite this fact, there are many misguided policies that impede a domestic violence survivor’s access to housing.

A lack of alternative housing often leads women to stay in or return to violent relationships or become homeless. Indeed, domestic violence is a primary cause of homelessness for women and families. In many situations, landlords attempt to evict all members of a household when a violent incident occurs, failing to take into account whether an individual was the victim of violence or the perpetrator. If women know that they may be evicted if their landlord learns about



◀ Susan Deller Ross,
former WRP
staff attorney.

the violence in their home, they will be less likely to make the violence public by seeking help from the police or the courts. Conversely, if the violence does become public and battered women lose housing opportunities, the possibility of homelessness further threatens their safety. For low-income women, housing discrimination on the basis of domestic violence increases this danger, because of the limited availability of public or subsidized housing.

Evicting victims of domestic violence has a disparate impact on women and thus is a form of sex discrimination, which violates state and federal fair housing laws. The Women's Rights Project is working to protect the rights of battered women by fighting these discriminatory eviction policies across the country.

Bouley v. Young Sabourin

The Women's Rights Project won an important legal victory for victims of domestic violence and their fair housing rights in 2005. For the first time ever, a federal court held that discrimination against a victim of domestic violence can violate the Fair Housing Act. This decision was issued in a case litigated by WRP and Vermont Legal Aid challenging housing discrimination against a victim of domestic violence based on sex-role stereotyping. The case involved a landlord's attempted eviction of a woman from her home immediately after the woman had been assaulted in her apartment by her husband. Quinn Bouley called the police after her husband attacked her, and he was subsequently arrested. Ms. Bouley was granted a restraining order that prohibited her husband from entering the home, and she informed her landlord about the order. Her husband never returned to the apartment. A few days later, the landlord, Jacqueline Young-Sabourin, attempted to discuss the violence with Ms. Bouley and encouraged her to seek help in religion. Ms. Bouley explained that her husband was not going to return to the apartment, and also explained that she did not want to discuss her religious beliefs with her landlord, and that she was angered by the inquiries into her religious practices. Immediately after the heated discussion, the landlord issued Ms. Bouley a notice to quit; in this letter, the landlord stated that based on her conversation with Ms. Bouley, it was clear to her that the violence in Ms. Bouley's apartment would continue. Later, the landlord testified that she did not believe that Ms. Bouley had acted like a victim of domestic violence after her husband's arrest.

WRP argued that this attempted eviction constituted illegal gender discrimination; specifically, the landlord unlawfully punished Ms. Bouley for her refusal to conform to the landlord's gender-stereotyped notions of how a victim of domestic violence should behave. The case settled shortly after the district court denied the landlord's motion for summary judgment and issued its ruling

the workplace is unlawful sex discrimination.

During these years, WRP set an example of accommodating working mothers at the office. To balance the competing demands of family and career, women brought their newborn children to work with them. "We established a little day care center in the office for Kathleen [Peratis], who also had a new baby, and me," recalls Susan Deller Ross, who was hired in August 1975 and gave birth that November. College students were hired to look after the infants, and the lawyers would breastfeed during the day. "It was wild," Jill Goodman recalls of the lawyers working with their children by their side. "Now that I've had my own children, I realize how really wild that was." Though Goodman didn't then have any children, she contributed to the day care on occasion. "I can remember taking a stroller out when Susan needed to work," she recalls.

This tradition continued in later years. Joan Bertin gave birth to two children that she describes as "ACLU babies" in her fifteen years with the WRP from 1979 to 1994. She kept a crib and baby's swing in her office and took occasional nursing breaks from round-the-clock depositions. Bertin considered the setup a "very workable compromise." But not everyone at the ACLU shared that point of view. Ross recalls hearing others complain, "If we brought our babies to work, then they should be able to bring their dogs." Nevertheless, Mary Heen, who as a staff attorney in the early 80s occupied the office next

> Laura K. and her son.



door to Bertin and her baby, insists that the arrangement worked out quite well: “For me it was no problem; I love the fact that she was able to do that—but I imagine it was exhausting.”

At work in the bustling ACLU office in the 1970s, WRP staff addressed a host of issues before legislators and administrators as well as in the courts. One of the major battles was over forced sterilizations, particularly for poor women in the South. Many women had been told that they had to undergo surgical sterilization or risk losing their jobs or welfare benefits and were thus coerced into giving up their right to bear children. In the late 1970s, Feigen helped Senator Edward Kennedy’s staff formulate federal regulations on sterilization procedures, specifically establishing consent requirements.

When Joan Bertin arrived at WRP in 1979, sterilization was still a major issue. One of the cases in which she was most emotionally invested involved a lawsuit against American Cyanamid, which had required its female workers to be sterilized to keep their jobs—and later eliminated those very jobs. Bertin worked closely with the women’s union to fight for their rights and the rights of all employees to a safe workplace, securing a favorable settlement out of court. Bertin and WRP continued to remain heavily involved in similar cases, and the issue was ultimately resolved favorably in the Supreme Court. In addition, the ACLU Reproductive Freedom Project was founded as a separate entity to handle

in support of this position. The confidential settlement agreement provided for monetary compensation to Ms. Bouley.

Laura K.

In August 2005, the Women’s Rights Project won a victory for Laura K., a victim of domestic violence whose landlord evicted her from her home without notice at the instruction of her abusive husband. When Laura K. and her husband moved into a privately owned apartment complex in Wayne County, Michigan, in October 2003, the apartment management would not allow her to sign the lease because she was not employed. Thus, only her husband signed the lease as a tenant; she was listed as an “occupant.” A few months later, in March 2004, shortly after Laura K. gave birth to a baby boy, her husband assaulted her in her home. Laura K. sought police assistance, and her husband was arrested. As a condition of his bail, the judge in the case issued a “no contact” order, barring her husband from the family home, and Laura K. informed the management of the apartment complex about the arrest and the court order. Nevertheless, days later, while Laura K. and her baby were at the post office, the apartment complex changed the locks on her apartment at her husband’s request, without any notice to her. She and her baby were left homeless.

According to Laura K., the apartment complex management told her that she had no legal rights to the apartment because she had not signed the lease, and that if she wanted access to the apartment, she should talk to her husband. She was also told that if she tried to gain access to the apartment she would be arrested and that her protective order against her husband was irrelevant. As a result of these actions, Laura K., a recent immigrant to the United States, lost most of her belongings and was forced to seek shelter with friends of her husband’s family.

WRP, in cooperation with the ACLU of Michigan and the Michigan Poverty Law Project, took up Laura K.’s case against the apartment complex, arguing that the apartment complex’s actions in not permitting Laura K. to sign the lease and in evicting her without notice constituted housing discrimination on the basis of sex, in violation of the federal Fair Housing Act and state law. As a result of this intervention, the apartment complex, while consistently denying any wrongdoing, agreed to a monetary settlement, which compensated Laura K. for her lost belongings and emotional distress, and a payment of attorneys’ fees to the WRP. It also agreed to various policy changes explicitly addressing the housing rights of victims of domestic violence and the tenancy rights of all adults living on the property. Finally, its staff will be required to undergo training about fair housing law and domestic violence. Since the settlement, Laura K. has worked with WRP to raise awareness of housing discrimination against

“When the apartment complex managers told me that I could not sign the lease because I did not make any money, and then told me that I had no rights because I had not signed the lease, they really were saying the same thing my husband said that night he attacked me: because I didn’t have a job, I was worthless, and had no rights. I believe that no one should have to go through what I went through and be made homeless because of domestic violence.” LAURA K.

victims of domestic violence. She testified before the United Nations Special Rapporteur on Adequate Housing about her experience as part of WRP’s participation in the United Nations Regional Consultation on Women and the Right to Adequate Housing in North America in October. This Consultation is described in greater detail in the International Human Rights section of the report.

“Linda J.” v. St. Louis Housing Authority

Women’s Rights Project also defends victims of domestic violence living in public and subsidized housing from discrimination and eviction. In 2005, WRP, in cooperation with Legal Services of Eastern Missouri and the ACLU of Eastern Missouri, reached an agreement with the St. Louis Public Housing Authority to prevent the eviction of a woman who is a survivor of domestic violence. The Housing Authority had threatened Linda J. with eviction because her ex-boyfriend had repeatedly harassed her at the residence and had broken her windows numerous times. Every time he broke her windows, she reported the damage to the police and her apartment manager. She also obtained a restraining order and showed this to the apartment manager. Linda J. requested to be transferred to another unit in the complex to conceal herself from her abuser, explaining that she was frightened, but the manager refused, saying she was responsible for her own domestic situation. The manager instead issued Linda J. multiple notices of lease violation and informed her that she would have to pay for the damage caused by her ex-boyfriend. Fearing eviction, she paid for the damage. After her abuser broke her windows a fourth time, the Housing Authority ordered Linda J. to vacate her apartment. At no time, however, did the St. Louis Housing Authority ban the abuser from the apartment complex or file criminal or civil complaints against him for damage to the property.

After WRP and co-counsel intervened, the Housing Authority entered into a conciliation agreement proposed by the U.S. Department of Housing and Urban Development (HUD) that requires the Housing Authority to relocate our client to another public housing unit, refund the money she paid for the broken windows, ban her ex-boyfriend from the property to which she was relocated, and provide domestic violence awareness training to its employees. HUD will monitor the Housing Authority’s compliance with the agreement. It is our hope that the provisions of this agreement will help prevent any future discrimination against victims of domestic violence from occurring in this Housing Authority.

Rubi H.

Some housing authorities permit domestic violence victims to seek emergency transfers to different public housing units. Sometimes, however, a public housing authority endangers victims of domestic violence and places them in a

cases pertaining to women’s reproductive rights and control over their bodies.

Marjorie Mazen Smith joined WRP in late 1976, and though she describes herself as a “jack of all trades” because of the variety of cases she litigated in her sixteen months on staff, two of her major cases dealt with gender restrictions in the United States Navy. In 1977, in *Beeman v. Middendorf*, 425 F. Supp. 713 (D.D.C. 1977), WRP successfully challenged a rule barring women in the customs service from working aboard navy ships. One year later, in *Owens v. Brown*, 455 F. Supp. 291 (D.D.C. 1978), Smith challenged a similar ban that excluded all women from working on navy vessels in any capacity. Ginsburg oversaw Smith’s work, and the two received a summary judgment ruling in their favor from the federal district court. Later, when Smith wrote to congratulate Justice Ginsburg on her appointment to the Supreme Court in 1993, Ginsburg thanked her in writing and included the line: “Recent press reports about the Navy recalled for me the great job you did before Judge Sirica.” Smith was surprised and flattered to hear the praise of her work recalled so many years later. She framed the letter and keeps it to this day.

During this period, in cases representing women in the military and in other nontraditional occupations, such as policing and firefighting, WRP began its work to help women gain entry to traditionally “male” jobs that continues to this day. Kathleen Peratis had a particular interest in

employment-related issues and the protection of working women. One of the many employment discrimination cases she brought at WRP was a challenge to the City of Philadelphia's refusal to hire women as police officers in *Brace v. O'Neil*, 1979 WL 157 (E.D. Pa. 1979). In the case, WRP successfully rebutted the City's assertion that women couldn't do the job.

Susan Deller Ross also worked to champion the rights of women in the workplace, fighting not only for those women who wished to do jobs traditionally held by men, but for the rights of women in traditionally female occupations. In *Christensen v. Iowa*, 563 F.2d 353 (8th Cir. 1977), the University of Northern Iowa's own job evaluation showed that the all-female secretarial workforce's wages should be the same as those of the all-male groundskeepers because the jobs were of equal value to the University. The University nevertheless paid the men more than the women, claiming that the market required them to do so. Ross and Peratis represented the female clerical employees in their sex discrimination lawsuit. Ross's appellate brief to the Eighth Circuit advanced the idea of comparable worth in the workplace, using the employer's own evaluation to argue that the secretaries were in fact entitled to the same pay with the groundskeepers, despite the fact that they performed different tasks. Although WRP lost this case, the influential comparable worth theory was first formulated here.

By the end of Ginsburg's tenure at the ACLU,

catch-22 by requiring unreasonable levels of documentation to prove that violence is occurring in the household. The Women's Rights Project advocated on behalf of Rubi H., a domestic violence survivor and mother of six small children in northern California. After Rubi H.'s estranged husband repeatedly attacked her, she and her children fled to an emergency shelter and obtained a protective order. She then sought emergency transfers from the Housing Authority on two separate occasions, in her attempts to flee her husband and ensure the physical safety of herself and her children. The Housing Authority refused the requests, saying that despite Rubi H.'s protective order and the fact that she had fled to a domestic violence shelter, she had failed to prove that she was in danger from her husband because she did not have a police report documenting her ex-husband's violation of the protective order, and because her husband had not been arrested for violating the order. In fact, Rubi H. had not called the police to report her husband's abusive behavior and violations of the protective order because he had pulled the phones out of the wall and had taken her cell phone away from her; because the local police often responded slowly to domestic violence calls; and because she feared her husband would violently retaliate against her or their children if she reported the violence.

After WRP's intervention in the case, the Housing Authority agreed that its denials of Rubi H.'s transfer requests were inappropriate and cooperated in finding a solution that protected Rubi H.'s safety. Rubi H. and her children were accepted into a domestic violence safe house in a neighboring county that provides long-term support services and assistance with transitioning from the shelter to permanent housing. She and her six children are now living on their own and will be soon qualify under a local program for a permanent subsidized housing voucher that will allow her to continue to live in the area, far from her abuser. Rubi H.'s case demonstrates the danger posed when Housing Authorities demand unreasonable levels of documentation to prove that domestic violence is occurring in the household.

Housing Discrimination in New York City

In 2005, the Women's Rights Project addressed domestic violence-related housing issues on the legislative front as well. WRP, in conjunction with the NYCLU and numerous other domestic violence advocacy groups, civil rights organizations, and legal aid groups, has advocated for the New York City Council's passage of Intro 305-A. This bill would amend the City's Human Rights Law to prohibit housing discrimination against victims of domestic violence and permit victims of domestic violence, sex offenses, and stalking to terminate their current leases with 14 days' notice when necessary for their safety. We are engaged in ongoing discussions concerning the language of the bill with

◀ WRP housing discrimination fact sheet.



domestic violence and housing advocates, the New York City Council Speaker's office, and the New York City real estate lobby, and are awaiting additional hearings on the bill before it goes to the New York City Council for a vote. We hope and expect increased movement on the bill in 2006, once the new Council members and a new Council Speaker take office.

Training Attorneys, Advocates, and Public Housing Authorities on Domestic Violence and Housing

In 2005 WRP staff led many trainings to educate advocates and public housing authorities on fair housing practices and the rights of domestic violence victims. Our staff attorneys have met with legal services attorneys, advocates for the homeless, domestic violence service providers, counselors, and shelter staff to discuss issues related to homelessness and housing discrimination against victims of domestic violence. WRP has presented advocacy strategies that practitioners can use on behalf of clients experiencing housing discrimination, including legislative and community-organizing strategies and potential fair housing litigation against public and private landlords. WRP staff have also distributed a housing discrimination fact sheet that explains why discrimination against domestic violence victims is a form of sex discrimination that violates the Fair Housing Act and lists steps individuals can take to enforce their right to fair housing.

Protecting the Privacy Rights of Domestic Violence Victims

The Department of Housing and Urban Development (HUD) has recently introduced the Homeless Management Information System (HMIS), a database system intended to track homeless individuals who use various services. Participation in this system is required of all homeless service providers who receive certain federal funding associated with certain federal programs. Such providers are required to ask highly personal questions of and collect private information from the recipients of their services and then to include such information in the HMIS database. The system is invasive and places victims of domestic violence at serious risk by creating the potential for abusive partners to locate victims through access to the database. WRP convened a conference call with ACLU affiliates from around the country that are concerned about this system.

The ACLU of Illinois represented the Illinois Coalition Against Domestic Violence (ICADV) in negotiations with the City of Chicago, arguing that the HMIS requirements are in conflict with the protections afforded under the Illinois Domestic Violence Act. The ACLU has successfully negotiated an agreement with the City of Chicago, pursuant to which domestic violence providers will not

her reputation preceded her, recalls Margaret Moses, who came to WRP in 1978 specifically to join her favorite law professor. At the time, the U.S. Attorney's office had also made Moses a job offer, and her prospective boss dismissed the ACLU as a valid alternative. Yet when Moses explained that she was considering the Women's Rights Project because Ruth Bader Ginsburg was one of the four general counsels, she noticed a funny look on his face. "He'd had Ruth as a professor at Rutgers," Moses recalls. "And at that point, I think he understood that I really might turn down the U.S. Attorney's office for the WRP." She did just that. Moses did not regret her decision, as the experience of working with Ginsburg proved to be illuminating. "She was an excellent role model—that combination of being brilliant and working very hard set a high standard to do the very best you could, to try to emulate her," Moses explains.

Isabelle Katz Pinzler, who worked at WRP from 1978 to 1994, arrived toward the end of Ginsburg's tenure and recalls being somewhat intimidated by her at first. She remembers that the staff would work very hard on a brief, but would hand it to Ginsburg labeled "rough draft" because they had learned that even the most thoroughly edited brief would come back as "a sea of red." Jill Goodman also admits that at times "it was scary" working for Ginsburg, describing her as "meticulous" about everything she did. Ginsburg acknowledges that she is, in general, "fussy about the quality of the

product.”⁹ Goodman puts it another way: “Ruth was almost a different species,” she jokes, describing the unbelievable level at which Ginsburg worked.

It was not that Ginsburg did not appreciate their work, Pinzler is quick to explain; rather, Ginsburg taught them to write crisp sentences and get to the heart of a matter. “She taught me so much about using words precisely, to mean exactly what I want them to mean, no more, no less,” agrees Goodman. Overall, Goodman felt she had learned much about the profession from Ginsburg. “She has an aura about her, of intelligence and care—care about the law, and the craft of lawyering, and the trajectory of the law.”

These qualities did not go unnoticed outside the ACLU. In 1980, Ginsburg was appointed a Judge of the United States Court of Appeals for the District of Columbia Circuit, marking the end of her time as an ACLU litigator. More than a decade later, President Clinton nominated her as an Associate Justice of the Supreme Court, and she took her seat August 10, 1993.

WRP was conceived by Ruth Bader Ginsburg to fight for equal treatment of both genders. “The Project was so integral in establishing the principle of equal rights,” asserts Mary Heen. She describes Ginsburg’s vision of “filling the empty cupboard.” The way the WRP founder saw it, the Constitution contained grandly general clauses (Due Process, Equal Protection) that could be used to advance women’s full citizenship stature. Until the 1970s, the document had rarely been

collect individual information in the HMIS system but will instead collect aggregate information. In addition, the affiliate has worked with the City to create written materials and signage to notify those accessing homeless services that they have the option to refuse to have their information entered in the database.

In December, Congress passed the Violence Against Women Act of 2005, which included a provision exempting domestic violence service providers from the most invasive HMIS requirements.

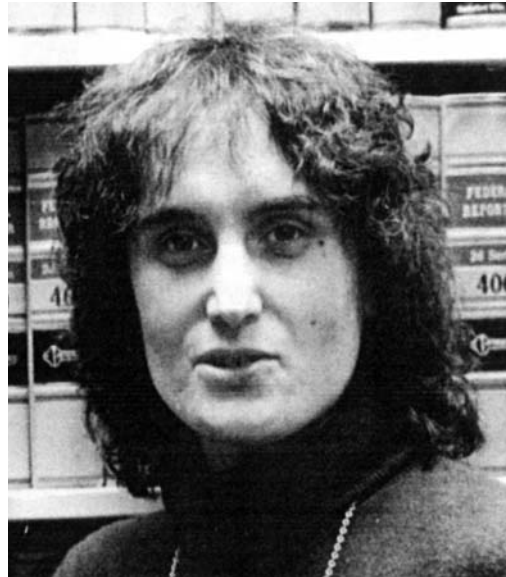
Preventing Employment Discrimination against Victims of Domestic Violence

Women too often face employment discrimination because of their status as victims of domestic violence. In some cases, this discrimination occurs because the employer learns of the violence and penalizes the employee because of the employer’s misconceptions about victims of domestic violence. Abusers often use the workplace as a site of harassment and cause disruptions that can result in the victim losing her job. Restrictive absence policies that do not make allowances for victims of domestic violence also make it difficult for a woman to seek medical assistance or obtain police and court services. The Women’s Rights Project targets discriminatory employment practices that impact victims of domestic violence through litigation, legislative advocacy, and community education.

Sonya Henderson v. New York City Department of Correction

Officer Sonya Henderson is a correction officer with the New York City Department of Correction (DOC) and a victim of domestic violence committed by a co-worker. Her case illustrates the double standards employers often practice and the forms of retaliation they use to punish female employees who assert their rights. One night in March 2005, Officer Henderson was physically assaulted by her ex-boyfriend who is also a correction officer with the DOC. The police subsequently arrested her boyfriend for domestic violence and took away his DOC-assigned weapon. Officer Henderson was taken to the hospital for treatment of her serious injuries and she called in sick to work the next day. Officer Henderson followed the DOC’s medical leave policy of alerting the DOC as to the cause of her injuries and reporting to the DOC every two weeks to be evaluated by a DOC doctor.

Although the DOC is required under its own policies and procedures to investigate the situation when a correction officer is arrested and/or convicted of a



◀ Isabelle Katz Pinzler.

crime, the DOC failed to take such action, and instead retaliated against Officer Henderson after she inquired as to why it had failed to commence any investigations or disciplinary action against her ex-boyfriend. By failing to adhere to its own policies and treating Officer Henderson in a hostile manner, the DOC violated New York City law prohibiting employment discrimination against victims of domestic violence. The DOC's actions illustrated a double standard by which the Department protects the employee who is an abuser and punishes the victim of domestic violence. WRP advocated with the DOC on Officer Henderson's behalf, requesting reasonable accommodations, such as placement in a safe and secure location away from her abuser, information as to the work placement and schedule of her abuser, and permission to attend meetings with her doctors and lawyers for issues related to the domestic violence. Although Officer Henderson is back at work, she continues to experience discrimination and retaliation from the DOC. WRP continues to advocate on her behalf.

Domestic Violence and Employment Trainings

WRP staff have conducted trainings at community organizations about domestic violence and employment discrimination. Staff have also discussed the employment rights of domestic violence victims on Radio Soleil, a Haitian radio station that is broadcast through New York City. WRP will continue this public education on these issues in the coming year.

Protecting the Right to End Violent Relationships

Hughes v. State of Washington

The ACLU of Washington and the Women's Rights Project participated in an important case relating to a woman's right to divorce her husband. Shawna Hughes was denied a divorce from her husband Carlos based solely on the fact that she was pregnant. Ms. Hughes's husband was abusive, and he was ultimately imprisoned for crimes of domestic violence. Concerned that Mr. Hughes would soon be released from prison and fearing renewed violence, Ms. Hughes filed for divorce in April 2004 and several weeks later obtained a default order entitling her to a divorce. Mr. Hughes did not object to the divorce petition. Despite these facts, the Spokane County Superior Court Judge revoked the dissolution decree, after learning from the County Prosecutor's Office that Ms. Hughes was pregnant. In his oral ruling, the judge said that pregnant women could not divorce their husbands until after giving birth. The judge believed he was acting to protect the interest of the future child by ensuring that he or she would not be born out of wedlock. The Spokane County

recognized by courts as relevant to women's claim to equality. But Ginsburg sensed growth potential. By the time Ginsburg took her place on the bench, she had done much to stock the cupboard. WRP was prepared to continue the fight for women's rights into the next decade and beyond.

V. NEW FACES, NEW ISSUES

After the original founder left the ACLU, WRP continued to evolve. Its emphasis broadened from Equal Protection litigation, which was a central focus for Ginsburg, to include more extensive efforts to secure the rights promised women by Title VII and other antidiscrimination statutes.

Isabelle Katz Pinzler and Jill Goodman: Women in the Military

Isabelle Katz Pinzler describes her tenure as the Director of the WRP in the 1980s after Ginsburg's departure as a time for a "consolidation of gains" in the women's rights movement. "It wasn't as dramatic or headline-making as when Ruth was there," she acknowledges. Still, the period was an important time to enforce recently earned rights. "It was a lot of hard work with less glory," Pinzler concludes.

One of the most important cases that Pinzler worked on after Ginsburg left was *Rostker v. Goldberg*, 453 U.S. 57 (1981), which she co-counseled. The issue was whether requiring selective service

registration only of men violated the constitutional guarantee of equal protection. WRP lost the case, and the Supreme Court upheld Congress' prerogative to classify on the basis of gender in selective service registration. Nevertheless, Pinzler believes that time and history have reduced the loss. In today's all-volunteer army, the military can no longer afford to overlook women's contributions. She sees it as a triumph that most people now honor "our men and women in uniform," rather than "our boys."

Jill Goodman also sought women's equal treatment in the military, though she initially approached this work with uneasiness. "I came of age in an antiwar era," she explains. "We weren't just antiwar. We were anti-military. But I learned from our plaintiffs about the role of the military, not just in society, but in the personal lives of citizens." Goodman elaborates, "The military is a remarkable opportunity for many people in this country. It helps them to get out of small towns; to gain education, job training and experience; to serve; and to achieve status in their eyes and the eyes of the world." With a predominately male military that excludes women from combat, "women are deprived of that credential." Goodman describes how the experience of getting to know her plaintiffs, both officers and enlisted women, broadened her perspective. "I've never felt the same way about the military since," she acknowledges.

Prosecutor's Office, acting on behalf of the state, agreed with the judge. State officials asserted that granting the divorce would leave the state unable to pursue the father for support. We submitted a friend-of-the-court brief to the Court of Appeals of the State of Washington arguing that a pregnant woman is entitled to the same rights as any other Washington citizen. The Washington Court of Appeals agreed and held that it is improper to deny a divorce to a woman solely on the basis of pregnancy. The Court ruled that the state cannot deny a pregnant woman the right to file for divorce because the state's Equal Rights Amendment "absolutely prohibits discrimination on the basis of sex."

The Violence Against Women Act

The Violence Against Women Act (VAWA) of 2005 passed Congress in December, reauthorizing VAWA 1994, which expired this year. VAWA 1994 is an effective piece of legislation enacted to end domestic violence, dating violence, sexual assault, and stalking. It dramatically improved the law enforcement response to violence against women (although there remains much room for improvement). VAWA also provided critical services necessary to support women and families in their struggle to overcome abusive situations. VAWA 2005 contains even stronger measures to aid victims of domestic violence, enhancing victims' privacy and immigration protections, expanding housing and economic options, and funding greater services and outreach efforts through a coordinated law enforcement and service provider approach. The Women's Rights Project, in coordination with the National Legislative Office, helped draft fair housing provisions for battered women in public and subsidized housing that were ultimately made law, and submitted a letter and written testimony to the Senate Judiciary Committee highlighting several important provisions of VAWA 2005. We also presented at a Washington, D.C., briefing for housing advocates on the housing provisions that will be included in the bill.

III. CRIMINAL JUSTICE AND LAW ENFORCEMENT

Women In Prison

Nationally, more than eight times as many women are incarcerated in state and federal prisons and local jails than in 1980, making women the fastest growing

segment of the incarcerated population. When all forms of correctional supervision are considered – probation, parole, jail, and state and federal prison – more than one million women are under the control of the criminal justice system. These alarming statistics speak not only to the number of women behind bars, but also to the even larger number of children and family members left behind when their primary caregiver is sent to prison. Women of color are dramatically overrepresented in the criminal justice system due in part to racially targeted law enforcement practices, prosecutorial decisions, and sentencing policies. While in prison, women often experience restricted access to physical and mental health care, and verbal, physical, or sexual abuse at the hands of prison guards. Women are also more likely to experience isolation from their family members because they are often placed in facilities far from their homes due to the fewer number of prisons for women. In addition, phone companies charge excessively high costs for prisoner phone calls making it financially difficult for many women to keep up any regular contact with their children other than through letters. Women also suffer a range of collateral consequences that extend far beyond the prison sentence term itself. Many formerly incarcerated women face the termination of their parental rights and the loss of educational, housing, and welfare benefits once they are released from prison. These policies negatively impact their children and families as well and fuel the cycles of poverty and inequality that women already are more prone to experience. The Women’s Rights Project works to improve the conditions of confinement for women in prison, reform the disparate laws and policies that lead large numbers of women into the criminal justice system, and remove the collateral consequences women face upon their release.

Women and the Drug War

Federal and state drug laws and policies over the past twenty years have had specific, devastating, and disparate effects on women and families. The “war on drugs” has historically targeted low-income people and people of color with police surveillance, racial profiling, and discriminatory arrest and sentencing practices. The disparities continue today, as increasing numbers of women are being arrested and prosecuted for non-violent, drug-related offenses. In fact, the rate of increase of imprisonment of women for drug crimes has far outpaced that of men. The Women’s Rights Project focuses on laws and policies responsible for the growing number of women “caught in the net” of drug law enforcement and the implications for children, families, and communities. Over the past year, we have launched a number of initiatives relating to women and the drug war.

Mary Heen and Deb Ellis: Equal Treatment in Insurance

In a series of cases, WRP relied on Title VII to challenge employer-provided pension plans that required women to pay more than men for the same benefit, or that provided lower monthly benefits to women than to men. These disparities were purportedly justified by women’s longer projected life spans; individual women’s contributions or benefits were calculated based on conclusions about how women on average would fare under such plans. In *Manhart v. Los Angeles Department of Water & Power*, 435 U.S. 702 (1978), a case in which WRP filed a friend-of-the-court brief, the Supreme Court held that a retirement plan that required women to contribute more than men to obtain the same benefit violated Title VII. WRP attorneys challenged the mirror version of this discriminatory arrangement in *Peters v. Wayne State University*, 463 U.S. 1223 (1983); there, women and men paid equal sums into the retirement plan, but women received lower monthly benefits than their male counterparts upon retirement. WRP lost on appeal, but immediately thereafter, the Supreme Court decided *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris* 463 U.S. 1073 (1983)—another case in which WRP had drafted a friend-of-the-court brief—and held that this kind of arrangement violated Title VII. The

> A speaker at the Caught in the Net Conference with the report.



Court reversed the appeals court's decision in *Peters* in light of *Norris*, and the case was resolved favorably soon thereafter. The principles established in these cases required all employer-sponsored insurance and pension plans to treat men and women equally.

Mary Heen is proud of her role in helping to establish this Title VII precedent prohibiting discriminatory employer-provided pension plans. However, Title VII prohibits sex discrimination only on the job. WRP was involved in an effort to pass federal legislation to prohibit private insurers from discriminating in other contexts. But as Heen observes, "We were never successful in public relations with regards to non-employment insurers." Heen identifies the issue as "one huge area still waiting for reform as a matter of principle." Deb Ellis agrees that differential treatment of men and women in private insurance policies was one of the unresolved issues of her tenure at WRP from 1986 to 1989. WRP attempted to use the Equal Rights Amendments in state constitutions to challenge such insurance plans. "We had some success, but not a lot," Ellis recalls. The litigation proved difficult, because in some cases, differential rates benefit women, although in other cases, women are disadvantaged. "The difficulty is that the difference to any one woman is slight—not enough to sue—and the insurance companies are extremely powerful," Ellis explains. Even in 2005, private insurers still commonly use sex-based rates for health and life insurance. "The

Caught in the Net

In March, the Women's Rights Project, along with the ACLU Drug Law Reform Project, the Brennan Center for Justice at NYU, and Break the Chains, published a report entitled, *Caught in the Net: The Impact of Drug Policies on Women and Families*. The report analyzes the causes behind the skyrocketing rates of incarceration for women, including mandatory minimum sentences that base the length of the sentence on the amount of drugs involved in the crime, rather than on the individual's level of involvement in the offense. Drug conspiracy laws also punish people who merely associate with those selling drugs. As a result, women who play peripheral and minimal roles in drug crimes or who merely associate with others involved in drug charges increasingly are punished with excessively harsh prison terms. The report also examines women's patterns of drug involvement and highlights the lack of drug addiction treatment options that meet women's needs. Finally, the report recommends policy changes to minimize the harms.

In conjunction with the release of the report, WRP and our partners held a two-day conference in New York City at which drug law reform advocates, judges, prosecutors, community organizers, health and addiction specialists, attorneys, formerly incarcerated women, and children of incarcerated women participated in a discussion through panels and workshops as well as film and performance presentations to spark reform in this area. Participants formed working groups centered on litigation, legislation, and systems reform to continue working on these issues after the conference. Each group meets regularly to discuss current issues and plan future efforts. WRP is one of the leaders of the litigation working group.

Congressional Briefing on the "Girlfriend Problem"

In June, the Women's Rights Project, the ACLU Drug Law Reform Project, the National Legislative Office, Break the Chains, and partners from the Caught in the Net legislative working group organized a congressional briefing in Washington, D.C., to educate legislators about the impact of drug laws and sentencing policies on women and their families. The briefing focused on the "girlfriend problem," a term referring to the arrest, prosecution, and sentencing of low-level, minimally-involved, or unknowingly involved women for crimes associated with large-scale drug trafficking operations. Judges and prosecutors commonly refer to this phenomenon as the "girlfriend problem" because it often implicates women who are in relationships with drug-involved men and who ultimately serve harsh sentences for despite their own limited involvement in trafficking operations. The briefing was a major success, drawing over 130 people, including staffers and congressional aides. Representatives John Cony-



◀ Jesselyn McCurdy (second from left) of the ACLU National Legislative Office and other participants at the Caught in the Net conference.

ers, Bobby Scott, and Danny Davis made remarks. The briefing also featured moving personal stories from formerly incarcerated women and the children of women in prison, as well as policy recommendations from organizations working on drug sentencing issues.

Less than one month after the congressional briefing, in *U.S. v. Greer*, a Wisconsin federal judge greatly reduced a woman defendant's sentence, citing to the briefing and specifically quoting a briefing paper submitted by WRP and our Caught in the Net partners. In his decision, the judge granted a downward departure for a pregnant 29-year-old mother of two young children who was facing a sentence of 46-57 months for pleading guilty to using a telephone to facilitate cocaine trafficking. The judge instead imposed a sentence of five years probation, explaining that he relied on important considerations such as family responsibilities in his sentencing decisions.

Conditions of Confinement

What I Want My Words To Do To You

In July, the ACLU Women's Rights Project invited renowned playwright, actor, and activist Eve Ensler to host a viewing of her documentary on women in prison for all ACLU staff. Ensler, widely known for creating the Vagina Monologues, worked extensively on issues affecting women in prison. For several years, Ms. Ensler led a writing group for female prisoners in the Bedford Hills Correctional Institute in New York and documented the group's experiences in the film *What I Want My Words To Do To You*. The film provides a moving and honest look into the emotions, experiences, and pasts of fifteen women in the writing group, most of whom were convicted of murder. Through a series of writing exercises, the women tell their stories of how they came to be in prison; many of them were victims of abuse who led difficult lives before their convictions. The film also delves into how each woman deals with the extent of her own culpability and the prospect of spending decades in prison. The end of the documentary features a performance of the women's writing by the acclaimed actors Mary Alice, Glenn Close, Hazelle Goodman, Rosie Perez, and Marisa Tomei held at Bedford Hills for all the prisoners. Following the viewing of the film, Eve Ensler and Gina Sharpe, an attorney and meditation instructor who has worked extensively with women incarcerated at Bedford Hills, led a discussion with ACLU staff. *What I Want My Words To Do To You* has aired on PBS and is being used as an advocacy tool to educate people about the experiences of women in prison and to humanize a population that is at best ignored and at worst demonized. WRP is collaborating with Ms. Ensler to plan future public education events.

principle is important," Ellis maintains. "This is one area of American life where companies are allowed to make sex-based distinctions when distinctions based on race or ethnicity would be unacceptable."

Though Ginsburg no longer had any formal affiliation with the ACLU when WRP litigated these issues in the 80s, she was pleased to see the staff's continuing efforts in pursuit of gender equality. As Heen recalls, "Ruth Bader Ginsburg was appointed to the U.S. Court of Appeals in 1980 before I began as a staff counsel at the ACLU—so I never had the opportunity to work with her. However, she sent me a brief note after seeing a letter to the New York Times I had written arguing for the elimination of sex discrimination in insurance. It was a generous and encouraging thing for her to do, and it meant a lot to me to receive it from her."

A Joint Effort: Pregnancy Discrimination

When Ginsburg became an assistant professor of law at Rutgers Law School in 1963, pregnancy discrimination remained a tremendous barrier to working women. Fearing that her year-to-year contract would not be renewed if her pregnancy showed, she took measures to conceal her state. "I got through the spring semester without detection, with the help of a wardrobe one size larger than mine, borrowed from my mother-in-law," she recalls. She ultimately gave birth before the fall semester began.¹⁰

- Eve Ensler hosted a viewing of her documentary on women in prison for all ACLU staff.



Fighting discrimination on the basis of pregnancy has been an ongoing battle of the Women's Rights Project since its inception, and almost every staff member has been involved at one point. The longest-running case has been *Knox-Schillinger v. TWA*, which began in the 1970s. "Kathleen Peratis left it on my doorstep like a founding," recalls Isabelle Katz Pinzler, who joined WRP in 1978 and later took over as director until 1994. The suit challenged TWA's practice of firing female flight attendants upon learning of their pregnancies. To prove that impending motherhood was not an indicator of incompetence, "we made damn sure the lawyer who appeared in it was pregnant," Pinzler declares. The case dragged on for years and was passed on to whoever was pregnant at the time, since the office always seemed to have someone expecting. In 2003, more than twenty years after it was launched, the case was back in court, to determine TWA's obligations, in view of its bankruptcy, to the flight attendants with whom it had long ago settled. Upon hearing of the delayed resolution, Mary Heen, who had worked as co-counsel on the case, was amazed. "That's more than twice the length of the Odyssey!" she exclaimed. "Let justice be done!"

One of the most contentious women's rights cases, which divided the ACLU, dealt with the rights of pregnant women. In *California Federal Savings and Loan v. Guerra*, 479 U.S. 272 (1987), the question was whether Title VII permitted a

The Conditions of Confinement Committee

The Women's Rights Project continues to participate in the Conditions of Confinement Committee of the Coalition for Women Prisoners, a part of the Women in Prison Project of the Correctional Association of New York. This year the Committee supported a bill that would require the New York State Department of Correctional Services (DOCS) to provide the same number of vocational and educational programs in women's and men's correctional facilities in New York State. Currently, DOCS offers over 30 different vocational programs in male prisons, and only 11 such programs in female facilities. The Committee conducted research identifying the number and type of vocational programs currently offered in women's facilities, the vocational programs that formerly incarcerated women think would have helped them find employment after returning to the community, and the hurdles formerly incarcerated women face when searching for jobs. Although the bill was originally introduced in 1985, this June, due in part to the advocacy efforts of members of the Conditions of Confinement Committee, the bill passed the full Assembly – for the first time in 20 years.

Girls in the Juvenile Justice System

Many pressing issues confront girls and young women in the juvenile justice system. Children placed in juvenile detention and commitment facilities often experience poor living conditions, abuse, isolation, restricted access to health care, and a sub-standard or nonexistent education. With girls making up a growing segment of the juvenile justice population, the Women's Rights Project is focusing special attention on the needs and rights of girls in detention.

This year, Mie Lewis joined WRP as the Aryeh Neier Fellow. During her two-year fellowship, she will split her time between the ACLU and Human Rights Watch. Lewis is devoting her project to girls in the juvenile justice system, and plans to examine the conditions of post-adjudication correctional facilities (sometimes called "commitment facilities" or "placement facilities") where girls serve their sentences. Lewis will interview girls who are currently or were previously detained in juvenile detention facilities in New York state, as well as family members, staff at the facilities, and officials involved in the juvenile justice system to document the living conditions and experiences of the girls and human rights violations they suffer. In the second year of her fellowship, Lewis will develop advocacy and litigation to address these issues.

Gender discrimination in the juvenile justice system is also an area of focus for ACLU affiliates. In gender-segregated juvenile detention facilities the problems

“It is the people responsible for the deplorable conditions surrounding the activities [of women trafficked to the U.S. for prostitution] who should be facing punishment. And under current law, they can. At least three felony statutes - dealing with pandering, harboring prostitution, and deriving support or maintenance from prostitution - could be used against them. Yet it appears that only the women themselves are being charged, just as it is the women themselves who would bear the brunt of the proposed legislation.” ACLU OF RHODE ISLAND ON ENFORCEMENT OF DISPARATE PROSTITUTION LAWS

associated with “separate but equal” systems clearly manifest themselves. In Rhode Island, a bill promoted by the University of Rhode Island to establish a charter school for males after their release from the state facility for juvenile offenders drew objections from the Rhode Island ACLU due to its focus solely on the needs of male offenders. In testimony before legislative committees, the affiliate noted that juvenile female offenders have just as strong an interest in and need for the special assistance that the charter school for males would provide. Legislators appeared to concur, and no action was taken on the bill.

Discriminatory Law Enforcement

Disparate Enforcement of Prostitution Laws

Countering pleas from Providence officials to increase the legal penalties for prostitutes, the ACLU of Rhode Island pointed out that the recent raids of local “spas” that have allegedly been venues for prostitution demonstrate just the opposite. The women who were arrested in these raids were themselves the victims of human trafficking. The women lived in small rooms lined with cots and were locked in their rooms from the outside and not allowed to leave. In a letter sent to state legislators sponsoring the bills to increase penalties for prostitution in the state, the ACLU said: “In light of this tragic situation, it is puzzling, to say the least, to see officials calling for the passage of laws that further punish and victimize these clear victims of an odious practice.” Instead, said the ACLU, “it is the people responsible for the deplorable conditions surrounding their activities who should be facing punishment. And under current law, they can. At least three felony statutes - dealing with pandering, harboring prostitution, and deriving support or maintenance from prostitution - could be used against them. Yet it appears that only the women themselves are being charged, just as it is the women themselves who would bear the brunt of the proposed legislation.” As a result of the affiliate’s lobbying efforts, the bill’s sponsors withdrew the legislation.

Opposing the Criminalization of Intimate Choices

North Carolina’s Cohabitation Statute

The ACLU of North Carolina filed a lawsuit in the state superior court asserting that the 200-year-old state law that makes it a criminal offense for partners of the opposite sex to live together out of wedlock is unconstitutional. The recent United States Supreme Court decision in *Lawrence v. Texas*, which struck down a Texas statute criminalizing homosexual sodomy as a violation of liberty interests under the Due Process Clause of the Fourteenth Amendment, makes clear that this

state to require employers to offer women childbirth leave while requiring no leave for other disabilities. The ACLU of Southern California argued that Title VII permitted this. WRP and the national ACLU disagreed. They asserted that the Pregnancy Discrimination Act’s mandate that pregnancy be treated like any other disability meant that if leave were provided for childbirth, the same entitlement to leave must be extended to all employees temporarily disabled. The Court agreed with the ACLU of Southern California. It held that the Pregnancy Discrimination Act was a floor, not a ceiling, for the rights of pregnant workers and did not prohibit a state from requiring childbirth leave.

Joan Bertin was particularly involved in pregnancy discrimination cases during her tenure from 1979 to 1994 at WRP. She focused on fighting discrimination based on employer assertions that a workplace posed a hazard to any fetus a woman might conceive. This became a very specialized area of litigation, and Bertin spearheaded a nearly twelve-year campaign that resulted in an important victory before the Supreme Court. “We fought tooth and nail on every ground,” Bertin recalls. In *UAW v. Johnson Controls*, 499 U.S. 187 (1991), a case in which WRP filed a friend-of-the-court brief, the Court held that Title VII prohibits employers from keeping women out of jobs that might expose their fetuses to hazardous substances. The key, Bertin believes, was recognizing that the solution to workplace hazards wasn’t to eliminate pregnant work-

“The Supreme Court has made it clear that the government has no business regulating relationships between two consenting adults in the privacy of their own home. North Carolina’s cohabitation law is not only patently unconstitutional, but the idea that the government would criminalize people’s choice to live together out of wedlock in this day and age defies logic and common sense.” JENNIFER RUDINGER, EXECUTIVE DIRECTOR OF THE ACLU OF NORTH CAROLINA

ers, but to eliminate the hazards they faced.

Jackie Berrien arrived at the ACLU in 1989, at the height of WRP’s challenges to employers’ fetal protection policies. She describes a suit against the Odeon restaurant as her “personal favorite.” The case was brought on behalf of a maitre d’ who was removed from her position when her bosses decided they didn’t wish to employ a visibly pregnant woman. In a deposition before the trial, the owners justified their actions by insisting that a pregnant woman shouldn’t be near heat and knives in the kitchen. “It was one of the oddest justifications I’d ever heard,” Berrien notes. “God knows no pregnant woman has ever been exposed to heat and knives in a kitchen!” Immediately after that deposition, the case settled in the woman’s favor.

Berrien herself did much public education work around the rights of pregnant teens in schools, and she hoped to litigate cases establishing these rights. “My gut always told me that those cases existed, young women being forced out of school [because of pregnancy], but we couldn’t identify many.” The good news was that the threat of ACLU litigation was often enough to resolve any such complaints; in general, a phone call to explain the law was sufficient to protect the rights of the pregnant student. Yet for civil rights and civil liberties lawyers looking to set precedent in this area, such easy settlements are not always perfectly aligned with personal and professional agendas. “It was for me a real point of maturing

North Carolina statute is also impermissible. The lawsuit was filed on behalf of Debora Hobbs, an unmarried woman who lost her job as a 911 dispatcher with the Pender County Sheriff’s Office simply because she chose to live with her unmarried boyfriend. In February 2004, shortly after starting her job as a 911 dispatcher for the Sheriff’s Office, Debora Hobbs was advised by her employer that because she was living with her unmarried male partner in violation of state law, she would be required to marry her partner, move out of the house they shared together, or leave her job. The ACLU-NC is challenging this statute on the grounds that this law violates numerous federal and state constitutional rights guaranteed under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution as well as Article I, § 19 of the North Carolina Constitution. The lawsuit asks the Court to declare the law unconstitutional and to issue an injunction preventing it from being enforced in the future.

Challenging the Prosecution of Pregnant Women

The ACLU of Maryland represents a woman prosecuted for reckless endangerment, child abuse, and other criminal charges for giving birth to a baby who had been exposed to cocaine in utero. The ACLU of Maryland moved to dismiss the case on the grounds that the facts alleged – even if proven – do not constitute a crime in Maryland. That argument was rejected by the County Circuit Court, and a conviction was entered. The affiliate immediately appealed the ruling and is seeking expedited review in the Maryland Court of Appeals.

As the ACLU has consistently argued, it is discriminatory and unconstitutional to prosecute pregnant women because the conduct they engage in is or could be harmful to their fetus. Recent studies show that when women fear prosecution or forced medical intervention, they avoid seeking critical prenatal care. Rather than protecting fetuses, punitive and intrusive measures thus have the opposite effect. Instead of punitive criminal laws, pregnant women should be offered educational, social, and medical services that may be necessary to address addiction or other health needs.

IV. EDUCATION

Protecting Title IX

Jackson v. Birmingham Board of Education

This spring marked an exciting reaffirmation of Title IX’s protection for women and girls. The Supreme Court ruled in favor of Roderick Jackson, a girls’ basket-



◀ Kary Moss.

ball coach who was fired for complaining about the unequal treatment of his team. In 2001, Roderick Jackson lost his coaching position after he repeatedly asked school officials if his team could have the same facilities as the boys' team—a regulation-sized gym with basketball rims that weren't bent. In response, Jackson sued the Birmingham Board of Education, alleging that he had been fired because he spoke up about sex discrimination. A district court judge ruled that Jackson could not bring a lawsuit for retaliation under Title IX, which prohibits sex discrimination in federally funded education programs. The U.S. Court of Appeals for the Eleventh Circuit upheld that decision. When the Supreme Court agreed to hear the case, the Women's Rights Project submitted a friend-of-the-court brief on behalf of Mr. Jackson arguing that both Congress and the Supreme Court have repeatedly recognized that effective civil rights enforcement demands protection for those who report civil rights violations. The Supreme Court agreed and in a 5-4 majority opinion authored by Justice Sandra Day O'Connor, the Court stated:

Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by Title IX's private cause of action... Reporting incidents of discrimination is integral to Title IX enforcement and would be discouraged if retaliation against those who report went unpunished. Indeed, if retaliation were not prohibited, Title IX's enforcement scheme would unravel.

The Court's ruling paves the way for Jackson to proceed with his civil lawsuit against the Birmingham Board of Education, charging that his former employers violated his rights under Title IX. Even more importantly, it reaffirms that Title IX not only protects those who suffer sex discrimination directly; it also protects those who speak up on their behalf.

Protecting Gender Diversity in Public Schools

Sex-segregated education is spreading through public schools across the country, spurred in part by the current administration's efforts to encourage public schools to experiment with separate schools and classes for boys and girls. While sex-segregated education is often promoted as a solution to floundering public school systems, research tends to show that single-sex classes and schools do not result in consistent academic benefits. Moreover, sex segregation often arises from false notions and overgeneralizations about how sex relates to brain function, learning styles, and academic abilities. In fact, research shows that in these areas there is far more individual variation within the same sex than between the sexes. Thus, these overgeneralizations tend to deprive students of valuable educational opportunities. Students in single-sex schools are also more likely to embrace damaging gender stereotypes about the opposite sex than those in integrated schools.

as an attorney, recognizing that the most important thing is a favorable outcome for your client, though sometimes that isn't reconciled with what you're trying to do professionally," Berrien concludes.

Berrien points out that at the time of her and Kary Moss's arrival at WRP, there was "an explosion of the crack cocaine trade." As a result, WRP had much work to do addressing the application of drug control policies to pregnant women, as the allegedly unique harm from the drug to a fetus in utero was thought to justify extreme measures infringing on women's rights. Many women were being criminally prosecuted for child abuse or delivery of drugs to a minor due to drug and alcohol addiction during pregnancy. In the mid-80s, Berrien and Moss had published some of the first literature on criminal prosecution of expectant mothers for substance abuse. In *Kentucky v. Welch*, 864 S.W.2d 280 (Ky. 1993), WRP succeeded in persuading the Kentucky Supreme Court to overturn a Kentucky woman's conviction for child abuse when the conviction was based solely on evidence that she had taken illegal drugs while pregnant.

Moss also addressed access to health care for pregnant women. One of her lawsuits challenged a private hospital's refusal to accept pregnant women for drug and alcohol treatment. "We need to stop blaming women for their addictions," Moss insists. She brought in the health care community to work with her, as a national debate emerged on the issue.

- > A student represented by the ACLU in *Cecilia G. v. Antelope Valley Union High School District*.



Years later, the work accomplished by WRP staff and others on this issue continued to have a positive impact. In 2001, in *Ferguson v. City of Charleston*, 532 U.S. 67 (2001), the Court held in an opinion joined by Justice Ginsburg that a public hospital's policy of testing all pregnant patients' urine for cocaine and reporting positive results to the police violated the Fourth Amendment. The hospital had argued that the policy was motivated by a special need to protect the health of the fetus. (WRP and the Reproductive Freedom Project submitted a friend-of-the-court brief in the case.) Berrien notes, "I was struck by how much the Court was rejecting" the hospital's justification even at oral argument. Though the crack cocaine crisis of the late '80s had precipitated many harsh measures against drug users, by that time there was a growing acknowledgment, Berrien explains, that "the line between medical treatment and prosecution was a dangerous one to cross." More people understood that prosecuting pregnant drug users risked driving women away from medical help, and almost all courts that had considered the issue had overturned such prosecutions. Nevertheless, this fight continues. For instance, in 2003, a full decade after the Welch case, WRP attorneys returned to court to successfully defend this precedent when another Kentucky woman was prosecuted for child abuse based on evidence that she had used drugs during her pregnancy.

The Women's Rights Project believes that many of the current experiments with sex segregation in public education violate state and federal prohibitions on sex discrimination. Through advocacy in cooperation with ACLU affiliates, the WRP is seeking to stem the tide of sex segregation in public schools.

In the summer of 2005, the ACLU of Michigan, in cooperation with WRP, was victorious in one such effort when Detroit renounced its intention to become the only public school district in the state to create all-male and all-female high schools. The ACLU of Michigan, in consultation with WRP, had met with school district representatives and urged the district to abandon the single-sex plan, which violated multiple state laws prohibiting gender discrimination in admission to public schools, and instead to create coeducational schools with an emphasis on academic excellence. Detroit Public Schools agreed to drop the single-sex admission requirement. The ACLU of Michigan and WRP are now working to ensure that Detroit Public School abides by this stated policy of nondiscrimination.

In addition, over the past year, the WRP has consulted with ACLU affiliates in Pennsylvania, Ohio, Indiana, and Kentucky, among others, about sex-segregated classes and schools appearing in their states and strategies for responding to these trends. In the coming months, WRP will continue to educate affiliates about these trends and consult and coordinate on relevant responses.

Letter to President Lawrence Summers

Earlier this year, Harvard President Lawrence Summers made troubling comments implying that the under-representation of women in the math and sciences may be due to innate biological differences between men and women. This view ignores overwhelming evidence that the smaller numbers of women in math and science professions are caused by social factors that include sex discrimination and social expectations based on gender stereotypes – not genetics. The Women's Rights Project signed on to a letter from numerous women's rights organizations that called for President Summers to rescind his statements and take the lead in addressing the persistent barriers that limit opportunities for women in these disciplines. President Summers apologized for his remarks and has since created an administrative post with the purpose of examining and reforming Harvard University's hiring practices to promote greater gender equity and educational opportunities for women.

Cecilia G. v. Antelope Valley Union High School District

This ACLU of Southern California case, in which the Women's Rights Project appeared of counsel, challenged a program for pregnant and parenting teens in

“I’m glad we all reached this agreement. Now students who are parents can take college prep classes so they can go to college and their children can have a better life.” “CECILIA,” AN ANTELOPE VALLEY HIGH SCHOOL SENIOR.

Antelope Valley, California, that provided services such as child care and parenting classes only to students who left the regular school system and enrolled in “independent study” courses that in fact provided no instruction at all. The program thus funneled pregnant girls and young mothers into classes providing a substandard education and, the ACLU argued, violated Title IX and the Equal Protection Clause. In 2005 the WRP and the National Women’s Law Center joined with the ACLU of Southern California to argue that Title IX’s prohibition of sex discrimination forbids discrimination against pregnant students, a long-established principle recently called into doubt by a troubling string of Supreme Court decisions narrowing the reach of civil rights laws. Before the court could rule on this issue, however, a final settlement was reached ensuring equal access to educational opportunities for pregnant and parenting teens. The settlement requires the three Antelope Valley schools to provide students with services such as child care and parenting and life skills instruction without denying them access to mainstream classes at their high school.

V. PUBLIC ACCOMMODATIONS

Equal Participation in Social and Civic Clubs

The Women’s Rights Project continues its work to enforce public accommodations laws around the country. In general, these state laws forbid discrimination on the basis of gender in organizations that are not small and exclusive enough to be truly private and require that services and commercial establishments be open to men and women on the same basis. Ensuring women’s access to places like social and civic clubs is crucial, as these sites are where many people forge valuable relationships that help them become leaders in their professions and communities. By challenging the “no girls allowed” mentality, women gain greater opportunities to participate fully in the public sphere with the same supports and advantages as men.

Orendorff v. Elks Lodge

In 2005, the Women’s Rights Project, in cooperation with the New York Civil Liberties Union and New York attorney and former N.O.W. president Karen DeCrow, settled our case on behalf of Bonnie Orendorff. Ms. Orendorff was denied admission to the historically all-male local Elks Lodge in Rome, New York, multiple times between 1999 and 2001 because of the Lodge’s male-only admission policy. Since 1982, Bonnie Orendorff worked as an assistant cook and

Jackie Berrien: Intersectionality

Jackie Berrien explains that when she joined WRP in 1989, “there was a very conscious and deliberate effort to make the Project more overtly and directly responsive to the needs of women of color.” The ACLU’s legal director wanted to advance the organization’s progress on issues of race and poverty, engaging constituencies not traditionally involved with the ACLU. “Now it’s probably a routine part of thinking at the ACLU, but it was not common in the early stages,” Berrien notes. Describing the increased engagement of WRP and the ACLU with questions of racial inequality, Berrien explains, “Some of the groundwork was laid when I was there.”

Berrien, who is today the assistant director of the NAACP Legal Defense Fund, explains, “I was always interested in issues that connected race and gender.” Even in cases with a traditional women’s rights focus, such as WRP’s challenge to the all-male admission policy of the Citadel, a public military college in South Carolina, Berrien was able to apply a unique lens. For instance, she helped draft the comparison of sex segregation and race segregation in education in WRP’s legal briefs. Later, in the legal battles over the all-male admission policy of the Virginia Military Institute (VMI), VMI attempted to defend its exclusionary admissions by arguing that a women’s leadership academy created at another Virginia college constituted a “separate but equal” opportunity for

> Roger and Bonnie Orendorff.



women. Justice Ginsburg authored the opinion in *United States v. Virginia*, 518 U.S. 515 (1996), that rejected this justification, just as similar “separate but equal” arguments had been rejected in *Brown v. Board of Education*. “These parallels were always very interesting to me,” Berrien explains.

While Berrien was at the ACLU, a movement began to create all-male public schools in inner cities, under the assumption that single-sex education would benefit African-American boys and young men. At a roundtable at the National Urban League and in a publication for the Columbia Teacher’s College, Berrien argued against the notion. Rather than a solution to the educational needs for the black community, she saw the concept as a “superficial quick fix” for what she identified as a “broader problem not by any means limited to boys.” The push for single-sex education in inner city school districts continues with renewed strength today.

Sara Mandelbaum: Equal Access to Education

Arriving in 1992, Sara Mandelbaum remained at WRP after Isabelle Katz Pinzler and Joan Bertin ended their 15-year terms. Mandelbaum had definite ideas of what was needed in the area of women’s rights: “I wanted to do cases that could not easily be done by private lawyers.” She explains that the private bar had taken on many Title VII cases against large corporations, because that was where

waitress at the Lodge. While working there, she met her husband, Roger, a long-time member. Over the years, as she worked and socialized at the Lodge, she observed the charitable activities it undertook and the valuable business and professional contacts that the members of the Lodge made, and she wanted to participate in these activities and benefit from these networks too. Although the national Elks organization had amended its constitution in 1995 to allow women to join and although local Elks lodges all over the country had not only admitted women, but had elected them to leadership positions, the Rome Elks Lodge had never admitted a woman. Ms. Orendorff and two other female applicants were rejected, though no male applicant had been rejected for at least twenty years.

WRP brought suit on Ms. Orendorff’s behalf, seeking to require the Lodge to comply with the Elks rules forbidding discrimination on the basis of gender. In 2003, the court rejected arguments by the Elks Lodge that Ms. Orendorff should not be permitted to bring her claim and ruled that the case should go forward. In early 2005, Ms. Orendorff agreed to drop her suit on the condition that the Rome Elks Lodge admit women members on the same basis that they admit men. The Elks Lodge has complied, and women are now serving in leadership positions in the society. Meanwhile, Ms. Orendorff has moved to Florida, where she was greeted as a celebrity by her local Elks lodge and welcomed as a new member.

Corcoran v. German Society Frohsinn

The Women’s Rights Project, in collaboration with the ACLU of Connecticut, continued its challenge to the discriminatory admission policy of the German Society Frohsinn in Mystic, Connecticut, on behalf of Sam Corcoran, a woman who was denied membership. Ms. Corcoran, a regular visitor to the bar operated by the German Society, decided she would like to become a member of the all-male society. She was eager to further explore the networking possibilities gained by membership that would be helpful to her as a small business owner. The club had approximately 200 members and rarely or never rejected membership applications from men. While at one time membership in the club had been limited to individuals of German heritage, that requirement had long been done away with to boost membership. With its large and open membership, the club is not the sort of organization traditionally recognized as private and exempt from the nondiscrimination requirements of the public accommodations laws. Nevertheless, club members refused to give Ms. Corcoran an application because she was a woman. Earlier this year, the case went to trial; unfortunately, the court ruled that the state’s public accommodations law did not cover the German Society. WRP will continue to fight for Ms. Corcoran’s right to club membership during the upcoming appeal.

- ◀ Bonnie Orendorff and friends in front of the Rome Elks Lodge.



Flat Rock Aerie v. Grand Aerie

In a victory for women's equality, in 2005 the National Fraternal Order of Eagles (FOE) agreed to settle an ACLU of Michigan lawsuit by allowing women to become full and equal members. The ACLU of Michigan represented the local Eagles chapter of Flat Rock, Michigan, which had welcomed women as full members for years. The National FOE policy, however, stated that only men could become full members with voting rights, while women who wanted to participate in Eagles activities were relegated to joining the "Ladies' Auxiliary." When the National FOE threatened to revoke Flat Rock's charter because it treated women as equals, the local chapter and three of its members sued. The settlement agreement also required the National FOE to send letters to all 132 chapters and ladies auxiliaries in Michigan informing them that chapters can offer women full membership and privileges.

Equal Access to Athletics

While many cases have been brought under Title IX challenging schools' discriminatory treatment of female athletes or their lack of support for girls' athletics in comparison to boys', only recently have cases been brought to hold a city to its responsibility to provide equal recreational opportunities for male and female athletes. These cases allege violations of the state public accommodations laws as well as the state and federal constitutions. The Women's Rights Project and ACLU affiliates continue to monitor the enforcement of these public accommodations laws to make sure municipalities provide equal opportunities to girls and boys.

Workman v. Spanish Fork

The ACLU of Utah's advocacy on behalf of Candace Workman, a fourteen-year-old female wrestler, resulted in a fantastic outcome. In January 2005, Candace won the Utah State Wrestling Championships and received the State Outstanding Wrestler Award through a majority vote by all the coaches from around the state. She was the only female wrestler to participate in the State Championships and went into the championship round with only one point scored on her in the entire tournament. This victory came after intervention from the ACLU of Utah. In 2004, Candace, a reigning national champion, was barred from entering a wrestling tournament in Spanish Fork, Utah after tournament officials received complaints that some boys were dropping out of the tournament because they were scheduled to wrestle her. The officials placed Candace in its new girls' division; however, there were not enough entrants to comprise a real tournament because only three other girls in the state wrestle at the junior high level. Candace's family turned to the ACLU's Utah affiliate,

large financial settlements could be obtained. Mandelbaum wanted WRP to represent women with few legal resources, women of color, and poor women. When women in Westchester asked her to bring a suit against a country club that denied them golfing rights on a par with men, she took a pass.

Education was a key area for Mandelbaum. She represented teenage girls denied entrance to the National Honor Society because they were pregnant and girls who were told they were too fat to be cheerleaders. And when it came to single-sex education, she rigorously challenged gender-segregated study in public schools. Mandelbaum sought to discredit the widely held belief that men and women are best served by separate academic environments. The cases in the 1990s challenging all-male schools, she explains, were very significant in beginning to rebut this notion.

The most high-profile case brought by WRP in this arena was Shannon Faulkner's against the Citadel, which ended in victory in 1995. Faulkner was a high school student who was initially admitted to the all-male academy based on her qualifications, and later denied entrance when the Citadel realized she was a woman. The highly visible litigation "gave the Project a real association with education cases, which led to other opportunities in that area." During this time period, WRP attorneys also consulted with the U.S. Justice Department in its challenge to VMI's all-male policy and filed friend-of-the-court briefs in support of women's admission. Both cases were ultimately

FROM LEFT TO RIGHT

- > Candace Workman, left, is a reigning national champion wrestler.
- > A member of the City of La Puente Softball League.



successful, and “winning was very, very exciting,” Mandelbaum recalls. In the Supreme Court decision striking down VMI’s all-male admissions, Justice Ginsburg’s opinion rejected the use of social science data that purported to prove that men and women learned differently, data from which VMI was “drawing frightening conclusions,” according to Mandelbaum. For Mandelbaum, an important part of the case was the Supreme Court’s refusal to credit a technique she identifies as one often used by anti-feminists—reliance on “pseudo-science” to justify discriminatory policies.

VI. CONTINUING CAREERS

Beyond WRP, the former staff’s paths have been as varied as their interests while at the Project.

Ruth Bader Ginsburg has been on the federal bench for twenty-five years. In 1993, she became the second woman ever to serve on the United States Supreme Court. Throughout that time she has continued to be a leading voice for gender equality, women’s interests, and civil rights and liberties. Before and since her elevation to the Court, she has been a living illustration of the remarkable power of precise and persuasive legal analysis and has inspired women’s advocates across the country and the world.

Brenda Feigen has published her memoirs, entitled *Not One of the Boys: Living Life as a Feminist*,

which had received prior complaints of girls who were barred from wrestling in other tournaments. In consultation with the Women’s Rights Project, the ACLU wrote a letter to the city demanding that it allow Candace to wrestle in the tournament. The letter argued that it is illegal for a private wrestling club that practices in or uses municipal buildings or municipal funds to discriminate. It also pointed out that undue concern over protecting the physical safety of female wrestlers was not warranted, because there are few differences between young boys and girls in strength, size, or physical ability and the use of weight classes means that girls will wrestle against boys their own size. As a result of the work of the ACLU of Utah and the perseverance of Candace, the city rescinded its discriminatory policy.

California Legislative Reform

In the past five years, the ACLU of Southern California brought lawsuits against three cities – Los Angeles, Montebello, and La Puente – challenging discrimination against girls’ softball programs. In each suit, girls’ softball players alleged the city provided them athletic fields, equipment, and facilities far inferior to those provided to boys’ baseball. Each lawsuit has resulted in a settlement awarding the girls’ softball programs greater access to city facilities on par with boys’ little leagues. Following up on these victories, California’s ACLU affiliates led a successful push for first-of-its-kind state legislation to combat gender discrimination in community youth athletics. The new law makes clear what factors must be considered in determining whether cities or counties are offering equal opportunities to girls in community youth athletic programs, requiring that attention be given to such factors as the facilities and equipment offered to each team. In addition, the law incorporates the 3-prong test from federal Title IX guidance to determine whether a city or county has effectively accommodated the athletic interests and abilities of both sexes. The law advances girls’ ability to excel in athletics in California and to benefit from the host of physical and psychological benefits that flow from playing sports. In 2005, California’s ACLU affiliates worked with coalition partners to ensure that the law was properly implemented.

Pregnant Women’s Participation in Sports

The Women’s Rights Project and the ACLU of Massachusetts successfully dissuaded a health club from forbidding a pregnant member from playing in its coed basketball league. The woman was six months pregnant and had checked with her doctor about any safety issues involved with playing basketball. The doctor told her the fetus was fully protected and that it would be fine for her to play. She joined a team in a coed league run by her health club and after playing in four games, the club told her she could not continue because the members of an opposing team had said they were afraid of injuring her and getting sued. The ACLU of

“By winning State, Candace has accomplished something no other female has! It was an awesome way to end her season after being surrounded by so much controversy. I think it put an exclamation point on the fact that not only should girls be allowed to compete, but they can be successful at it as well.”

EXCERPT FROM A LETTER FROM MONIQUE WORKMAN, MOTHER OF CANDACE WORKMAN TO THE ACLU OF UTAH

Massachusetts consulted with the WRP and sent the health club’s attorney a letter and copy of a WRP Supreme Court brief. As the letter pointed out, the Supreme Court has ruled that it is unlawful sex discrimination to prohibit women from working with batteries based on the notion that if they became pregnant, the lead would harm their fetuses. This ruling stands for the basic proposition that civil rights laws allow individual women to decide what harms they and their fetuses will risk. Furthermore, sex discrimination has historically masqueraded as laws and practices designed to protect women from harm. The health club backed down after receiving the letter and allowed the woman to continue playing basketball.

VI. WELFARE AND POVERTY

Women shoulder much of the responsibility of caring for children and other dependants. As a result, women who are the primary caregivers for their children and provide primary economic support for their families more often face poverty. Poverty is a persistent cause and effect of women’s inequality in our society and intersects with many of the other areas in which the Women’s Rights Project works, including domestic violence and criminal justice. The WRP’s work on welfare seeks to advance core ACLU values, such as privacy, equality, and due process of law, so that women can enjoy their full citizenship rights and break the cycle of poverty.

WRP seeks to achieve economic justice for women through our work on welfare and poverty. The link between poverty, gender, and race is strong, due to forces such as race and class discrimination, gender segregation in employment, the lack of affordable child care, and domestic violence. Women make up the vast majority of adult recipients of welfare programs such as Temporary Assistance for Needy Families (TANF) due in large part to their role as primary caregivers for children. Our work on improving welfare policies is part of the broader goal to address women’s poverty.

TANF Reauthorization

The Women’s Rights Project along with the National Legislative Office monitored proposed reforms to TANF in 2005. The purpose of TANF is to provide assistance to needy families and children and to promote job preparation and work. WRP and the Legislative Office submitted testimony to the Congressional Subcommittee on Human Resources of the House Committee on Ways and Means advocating for reforms that will protect against discrimination and promote equal opportunities for women.

and currently practices entertainment law in Los Angeles.

Kathleen Peratis is currently a partner at the New York law firm Outten and Golden, where she specializes in sexual harassment and employment discrimination cases.

Susan Deller Ross considers her current work for women’s rights in Africa as “going forth in the spirit of the ACLU Women’s Rights Project.” She is Director of the International Women’s Human Rights Clinic at the Georgetown University Law Center, following a stint at the U.S. Justice Department’s Civil Rights Division. Under her guidance, students take cases involving domestic violence, trafficking in women and girls, domestic servitude, sex-based divorce laws, female genital mutilation, and many other cases of institutionalized male supremacy in African nations. Ross describes her students’ work as “just like early sex discrimination cases under our Constitution.”

Marjorie Smith believes that she has been “a general citizen in the area” of women’s rights since leaving WRP. She has worked for the Department of Consumer Affairs, Manhattan Family Court, New York City’s Legal Aid Society, and as a partner in private practice for many years. Today, Smith is an assistant professor at Brooklyn Law School and Assistant Director of the Second Look Program Clinic in charge of prisoner assistance.

Jill Goodman took a job with the Office of Civil Rights in the U.S. Department of Education and then worked for eight years at the New York Attorney General's Office. Today, Goodman works for the New York State Judicial Committee on Women in the Courts, where much of her time is spent addressing violence against women, including domestic violence, sexual violence, and the closely related issues of prostitution and traffick-ing. WRP did not specifically confront these issues during her tenure; however, Goodman says, "I have come to believe they are at the root of the unequal status of women, both as its cause and effect." The WRP agrees, and fighting violence against women is an important part of its agenda today.

After leaving WRP, **Isabelle Katz Pinzler** served in the Department of Justice under President Clinton. She then became special counsel to the NOW Legal Defense and Education Fund and a visiting professor at New York Law School. She recalls thinking about the future of WRP when she was Director and admits that there were times when she did not think that the Project would survive. It was harder to raise money without Ginsburg's fame and credibility attached to WRP. Yet today WRP forges on stronger than ever, led by Lenora Lapidus, who was once a WRP intern under Pinzler. "So that's a little continuity for you," Pinzler points out.

Margaret Moses carried her feminist sensibilities with her when she went to a small private firm. "I

Currently, the program provides assistance only to some needy families while arbitrarily denying benefits to others equally in need, such as immigrant families, people who were convicted of drug offenses, and families that have more children while receiving TANF. Additionally, states have too often failed to provide services to all TANF applicants and recipients in a non-discriminatory manner. Reports indicate that TANF recipients of color face barriers in moving from welfare to self-sufficiency because they receive fewer supportive services and are more likely to be sanctioned for non-compliance with program rules than their white counterparts. States also have often failed to accommodate the needs of recipients with limited English proficiency, disabilities, and other barriers to employment. In addition, states have tended to push women into low-paying, traditionally female jobs rather than training them for higher wage, nontraditional work. By calling attention to these disparities and demanding reforms, WRP is seeking to improve TANF so that it truly assists women and families to achieve economic justice.

Addressing Discrimination in Welfare Programs

WRP is considering possible legal strategies to challenge disparities in TANF administration. A University of Chicago study showed that Wisconsin's TANF (W-2) program often fails to accommodate the needs of women who have disabilities or disabled children. Furthermore, the rate of sanctioning of minorities is significantly higher than the sanctioning of whites for violations of TANF requirements. These findings suggest TANF policies are enforced in a way so as to fall more heavily on women with disabilities and women of color. WRP and the ACLU of Wisconsin are researching claims that would challenge racial disparities and failures to accommodate disabilities in the Wisconsin TANF program.

VII. INTERNATIONAL HUMAN RIGHTS

The ACLU recognizes the importance of international human rights law in fighting for women's rights on a wide spectrum of issues. Incorporating international human rights law into domestic litigation allows the Women's Rights Project to recognize universal human rights principles in our enforcement of women's rights. An international human rights framework also provides advocates with additional instruments and forums to document and challenge discrimination against women. Lastly, by taking our concerns to international governing bodies like the United Nations, WRP is able to hold the United States government accountable in the eyes of the world for violations of these laws and principles. Over the past year, WRP has incorporated these strategies into our work on immigrant women workers' rights, violence against women, and gender discrimination. Our international



◀ The Women's Rights Project met in Washington, DC, with Andolan and CASA workers.

human rights work has been aided by the growing number of ACLU attorneys specializing in human rights. In addition to the three full-time human rights advocates hired by the ACLU last year, in 2005 the Women's Rights Project was joined by Aryeh Neier Fellow Mie Lewis who is sharing her time with Human Rights Watch during her two-year fellowship. Lewis will use human rights strategies in her work on girls in U.S. juvenile detention facilities.

The Human Rights of Domestic Workers

Families in cities throughout the United States, as well as in other parts of the world, hire immigrant women to help them with their domestic chores, including cleaning, cooking, child care, and personal assistance. These domestic workers are particularly vulnerable to discrimination on the basis of their immigration status, their gender, and their race or ethnicity. The unregulated nature of domestic work leaves workers susceptible to exploitation at the hands of their employers. Many domestic workers experience human rights violations including wage and hour abuses, poor or unsafe working conditions, physical and sexual assault, and even trafficking and virtual enslavement. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which became effective in July of 2003, highlights the importance of affirmatively protecting the rights of these individuals. As well, in her report to the United Nations Commission on Human Rights in 2004, the U.N. Special Rapporteur on Migrant Workers specifically called attention to the vulnerability of migrant domestic workers and urged the international community to act to protect their rights. In addition to our litigation efforts on behalf of domestic workers, the Women's Rights Project is advocating for stronger legal protections of domestic workers' rights through international human rights channels.

Diplomatic Immunity Campaign

This year, the Women's Rights Project, in collaboration with Andolan (a South Asian domestic workers organization) and Global Rights (a human rights advocacy group) launched a broad campaign opposing the exploitation of domestic workers employed by diplomats. Unlike other employers, diplomats are generally immune from civil, criminal, and administrative processes in the United States unless the sending countries waive the diplomats' immunity. As a result, certain high-level diplomats are sheltered from the legal repercussions of exploiting employees such as domestic workers. Yet domestic workers, including workers employed by diplomats, too often face a range of civil and human rights violations including the failure to pay minimum wage and/or overtime;

stayed involved in women's rights," she explains, pointing to her work for the Women's Equity Action League in Washington, D.C., Moses worked in private practice and then became a professor at Loyola University of Chicago School of Law. "I've liked it all," she says of her career. "It's all been very good."

Joan Bertin declares, "I'm still a feminist!" She believes that her background as a women's rights advocate benefits her today in her work at the National Coalition Against Censorship.

Mary Heen went into private practice for three years, doing tax work, and completed an L.L.M. at New York University Law School. Today she is a professor at the University of Richmond Law School, teaching tax and feminist legal theory. "I love it," Heen says of teaching. WRP has had an influence on her academic career: "My writings explore the connections between tax policy and social policy—including issues related to work-related child care, welfare-to-work programs implemented through the tax code, and budget policy issues."

Deb Ellis left WRP in 1989 to become Legal Director of the ACLU of New Jersey. She then became Legal Director of the NOW Legal Defense and Education Fund, where in 1992 she argued *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993), before the United States Supreme Court.

> Claudia Flores with advocates from Global Rights, Andolan, and CASA di Maryland at a Washington, D.C., training on diplomatic immunity and human rights.



Today, Ellis is the Assistant Dean for Public Interest Law at NYU Law School, where she teaches Sex Discrimination Law. She believes the challenge now is to make the gains of the women's movement real for women with the least resources, an effort she is glad to see the current WRP pursuing on several fronts.

Kary Moss left WRP when she had her first child; she decided she'd like to start a family in a "calmer environment." She and her husband moved back to Michigan to be near her family. Today she is the executive director of the ACLU of Michigan. She believes that the biggest threat to women's rights is "the public perceptions that the struggle is over."

Jackie Berrien departed from WRP in May 1992 because, she "was interested in getting a chance to do more trial-level work." At the Voting Rights Project of the Lawyers' Committee for Civil Rights, "I got it—a ton of it!" Today Berrien is the assistant director of the NAACP Legal Defense Fund, and she looks back fondly on her time at the WRP.

Sara Mandelbaum left WRP to stay home full-time with her two children. "I love practicing law and doing women's rights work," she acknowledges, "but there are a lot of other things in life." Describing her current pursuits in art and child rearing, she comments, "I'm exercising the right side of my brain." Mandelbaum is pleased with her work at

physical, sexual or psychological abuse; denial of medical care; and in some cases forced labor and trafficking rising to the level of modern-day slavery.

For example, WRP represents Swarna Vishranthamma, a domestic worker who was exploited and abused by her employer, the First Secretary of the Kuwaiti Mission to the United Nations. For four years, Ms. Vishranthamma was forced to work seven days a week, 18 hours a day, and was paid drastically below minimum wage with no overtime compensation. She was also physically and sexually abused, repeatedly threatened, and verbally assaulted. Her employers confiscated her passport, threatened her with arrest should she try to leave her job, and cut her off from almost all contact with her family and friends. Finally, she was able to escape from her employers' home despite her fears of retaliation. Andolan, Global Rights, and WRP are now urging the international community to establish effective supervisory mechanisms that protect migrant domestic workers employed by staff of international institutions and provide a system for complaints and redress so that domestic workers, such as Ms. Vishranthamma, will have an opportunity to seek justice for violation of their rights.

In March, members of WRP, Andolan, and Global Rights traveled to Geneva for the 61st session of the United Nations Commission on Human Rights (UNCHR) to bring attention to the exploitation of migrant workers by U.N. diplomats. The UNCHR sets standards for governments on how to protect and promote human rights. It also serves as a place where countries, non-governmental organizations, and human rights advocates from around the world can voice their concerns over human rights abuses. WRP submitted a statement to the UNCHR calling for further investigation into the exploitation and abuse of migrant domestic workers employed by diplomats and U.N. staff and for the adoption of supervisory mechanisms to prevent and redress such abuses. Such reforms include ensuring that domestic workers employed by diplomatic staff receive and sign a copy of a written contract in their native language detailing the nature and terms of their employment; that the U.N., international organizations, embassies, and consulates adopt codes of conduct on the recruitment of migrant domestic workers; and that all member states ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families without reservation. In Geneva, WRP also co-hosted a side panel on domestic workers and diplomatic immunity featuring the U.N. Special Rapporteur on Migrant Workers to further educate members of the international community.

Beijing + 10

This year marked the tenth anniversary of the U.N. General Assembly's adoption of the Beijing Platform for Action, which committed signatory nations to advance



the goals of equality, development, and peace for all women. In March, the U.N. Commission on the Status of Women reconvened in New York City at the Beijing + 10 conference to consider current challenges and forward-looking strategies for the advancement and empowerment of women and girls. The Women's Rights Project participated in the meetings and, with Andolan and Global Rights, hosted a side panel on the human rights of migrant and immigrant domestic workers.

The panel highlighted specific organizing and advocacy strategies to protect migrant and migrant domestic workers and improve their conditions of employment. Panelists, including lawyers from WRP and the ACLU Human Rights Working Group, presented audience members with tools such as using international fora as part of organizing efforts and incorporating human rights approaches into existing domestic worker advocacy. The panel also addressed the implications of labor trafficking and forced labor on labor organizing and obstacles faced by litigators and workers in the domestic court system. This panel was attended by domestic workers and advocates from around the world.

Domestic Workers and the Inter-American Commission on Human Rights

The Women's Rights Project signed onto a document submitted to the Inter-American Commission on Human Rights (IACHR) seeking human rights protections for domestic workers employed by international civil servants. The IACHR's mission is to defend human rights in the Americas by investigating petitions that allege violations of the American Convention on Human Rights. The IACHR can make recommendations to the members of the Organization of American States (OAS), including the United States, to adopt measures that would protect human rights. In the submission, WRP recommends several measures to help remedy violations of domestic workers' human rights by international civil servants. These measures include requiring member states to disseminate a code of conduct regarding civil servants' employment of domestic employees; requiring international civil servants to submit to the OAS a work contract written in a language understood by the domestic worker that complies with host country labor laws and is signed by both parties; requiring international civil servants to submit records of wages and benefits received by a domestic worker to the OAS annually; and creating a complaint procedure for domestic workers who believe their contracts have been violated or who allege human rights violations by their employers. The submission also makes recommendations for supervisory mechanisms and systems of redress for domestic workers employed by diplomatic staff.

Domestic Workers' Human Rights Tribunal

In October, the Women's Rights Project participated in a Domestic Workers

WRP. "We made our contributions to moving in the right direction—we leave it to people after us to keep it up." ■

ENDNOTES:

¹ATHENA International, *Ruth Bader Ginsburg*, at <http://www.athenafoundation.org/award/bios/ruth.html>.

²ELINOR PORTER SWIGER, *WOMEN LAWYERS AT WORK* 51, 58 (1978).

³KENNETH M. DAVIDSON, RUTH BADER GINSBURG, & HERMA H. KAY, *SEX-BASED DISCRIMINATION: TEXT, CASE, AND MATERIALS* xii-xiii (1974).

⁴*Id.* at 116.

⁵AMY LEIGH CAMPBELL, *RAISING THE BAR: RUTH BADER GINSBURG AND THE ACLU WOMEN'S RIGHTS PROJECT* (2003).

⁶SWIGER, *supra* note 2, at 51.

⁷*Id.*

⁸*Id.* at 52.

⁹*Id.* at 64.

¹⁰ATHENA INTERNATIONAL, *supra* note 1

- Laura K. and Emily Martin at the UN Consultation on Women and Housing in North America.



Human Rights Tribunal, held in New York City and sponsored by Domestic Workers United and Global Rights. The Tribunal assembled a judicial panel of distinguished advocates for social change, including WRP Director Lenora Lapidus, who listened to the testimonies of caregivers, children and employers and their calls for domestic workers' rights. The judges issued recommendations for protections of domestic workers' rights. The Tribunal sought to shed light on the impact of the legacy of exclusion and discrimination that domestic workers have faced.

Domestic Violence and the Inter-American Commission on Human Rights

The Women's Rights Project continues to fight for Jessica Gonzales, despite our loss in the Supreme Court. (See *Violence Against Women*, above.) In June, the Court ruled that victims of domestic violence do not have a due process right to police enforcement of orders of protection against their abusive partners. Thus, no constitutional remedy exists for Ms. Gonzales, whose estranged husband kidnapped and then murdered their three daughters when police failed to take the actions required by law to enforce her order of protection.

WRP is taking Ms. Gonzales' case to the international arena in order to highlight the U.S. government's unwillingness to hold police accountable for their failure to protect victims of domestic violence. In December, WRP filed a petition before the Inter-American Commission on Human Rights (IACHR) requesting review of Ms. Gonzales's case. The petition describes the widespread problem across the country of police failure to enforce legal protections for victims of domestic violence. WRP urges the IACHR to conclude that the U.S. failed to protect Ms. Gonzales's rights under the American Declaration on the Rights and Duties of Man. By bringing Ms. Gonzales's case before the IACHR, WRP can demonstrate the wider problem of inadequate police response to violence against women in the Americas.

U.N. Consultation on Women and Housing in North America

In October, the Women's Rights Project was an organizer of and participant in the U.N. Consultation on Women and Housing in North America, led by the U.N. Special Rapporteur on Adequate Housing. This regional consultation, which addressed the housing rights of women in the United States and Canada, was one of a series of consultations with advocates, organizations, and experts

“The lack of alternative housing can make it all but impossible for women to escape abuse and achieve independence, even when their lives and the lives of their children are in danger. We urge the U.N. Special Rapporteur to begin a global conversation on the obstacles to adequate housing faced by women not only in developing countries, but right here in the United States as well.” EMILY MARTIN

that the Special Rapporteur has held around the world to gain international insight into the problems women face in finding and keeping adequate housing. These consultations will serve as a basis for his final report and recommendations to the UNCHR on women and housing.

The impact of violence against women on women’s housing rights was a primary focus of the consultation and the subject of testimony submitted by WRP to the Special Rapporteur. WRP client Laura K., on whose behalf we recently settled a domestic violence housing discrimination complaint, was one of the eighteen women from the United States and Canada who personally testified before the Special Rapporteur, telling her story of being locked out of her home with her infant by her landlord at the instruction of her abusive husband. In addition, two other WRP clients who were evicted or threatened with eviction because they were the victims of domestic violence submitted written testimony describing their experiences, and WRP submitted organizational testimony addressing the impact of violence on women’s housing and the inadequate housing of immigrant domestic workers abused and exploited by their employers. Additionally, WRP attorney Emily Martin led a training session for housing lawyers and advocates describing litigation strategies for addressing housing dislocation caused by violence against women. WRP will continue to work as part of the consultation coordinating committee in producing an official report on women and housing issues.

Prostitution and Public Health

Open Society Institute v. USAID and DKT International v. USAID

In November, the Women’s Rights Project filed friend-of-the-court briefs in two cases opposing a U.S. government policy that ties the hands of public health service providers and those who work with them in the global fight against AIDS. The policy, issued by the United States Agency for International Development (USAID), limits government funding for HIV/AIDS prevention and education to organizations that have a policy “explicitly opposing prostitution.” The policy is so extreme that fund-receiving non-governmental organizations (NGOs) are forbidden from engaging in any speech or activity that could be perceived as insufficiently opposed to sex work. Moreover, they are forced to adopt an organization-wide policy that restricts them from using their own private funding to engage in such speech or activities. The U.S. government’s position on this issue conflicts with international consensus that public health is compromised by practices that stigmatize and alienate communities at high risk for contracting HIV/AIDS.

“Combating the spread of HIV/AIDS and caring for those infected with the virus is the global public health challenge of the century. The current U.S. government policy shackles those trying to rise to the challenge, and prevents them from saving lives.” CLAUDIA FLORES

WRP filed a friend-of-the-court brief on behalf of numerous public health organizations in two cases challenging this restriction. WRP argued that the compelled adoption of the USAID policy statement is a violation of the First Amendment and could have a devastating effect on public health. Requiring NGOs that work primarily with health and social services to take a political stance opposing sex work thwarts their ability to approach sex workers, a community at high risk of HIV/AIDS, in a non-judgmental and non-moralistic fashion. Those already infected will be discouraged from acknowledging their condition and seeking treatment because of a fear of being shunned or abused. Those in high-risk communities will not seek out information or medical care or may fail to take precautions that stem the spread of HIV/AIDS for fear of stigmatization. WRP will continue to advocate on behalf of the plaintiffs and public health providers and monitor progress of both cases.

New York City Human Rights Initiative

Locally, the Women’s Rights Project, in collaboration with the NYCLU, Amnesty International, the Urban Justice Center, Legal Momentum, and the Women of Color Policy Network, is a co-convenor of the New York City Human Rights Initiative. The initiative drafted New York City legislation based on the principles of the Convention on the Elimination of All Form of Discrimination Against Women (CEDAW) and the Convention on the Elimination of Racial Discrimination (CERD). These international human rights treaties affirm the necessity of eliminating all forms of gender and racial discrimination throughout the world. The New York City ordinance would be unique because of its particular focus on the intersectionality of gender and race. In 2004, this groundbreaking legislation was introduced in the New York City Council. In 2005, we continued to advocate for its passage by educating community groups, city council members, and others about its importance.



◀ Women's Rights Project Staff: FRONT ROW (left to right) Namita Luthra, Lenora Lapidus and Emily Martin. BACK ROW (left to right) Caroline Bettinger-Lopez, Claudia Flores, Shanti Hubbard and Joshua Riegel.



NEW STAFF

Mie Lewis

As the 2005-07 Aryeh Neier Fellow at Human Rights Watch and the Women's Rights Project of the ACLU, Mie Lewis conducts research and advocacy concerning the conditions of confinement experienced by girls in juvenile correctional facilities, especially in the areas of resident safety, health, and education. By collecting first-hand accounts of rights violations from young women held in commitment facilities, and through documentary research and interviews with state officials and other stakeholders, Mie brings to light conditions in facilities that are otherwise invisible to the public. She will draft a report documenting abuses and will use this information to effect policy reform through litigation and advocacy.

Previously, as a New Voices fellow at Asian Pacific Islander Legal Outreach in San Francisco, Mie represented survivors of human trafficking and Asian immigrant survivors of domestic violence in administrative proceedings, immigration court, and state court litigation. Mie advocated for her clients' rights as immigrants and workers, and established an innovative program providing culturally and linguistically appropriate legal and social services to survivors of human trafficking. As a New Voices fellow, Mie also conducted federal and state legislative advocacy, as well as community outreach and education, concerning legislation affecting the rights of immigrants.

Mie served as a judicial law clerk to the Honorable Judge Susan Y. Illston of the United States District Court for the Northern District of California, and also completed a clerkship at the Legal Advisory Section of the International Criminal Court, Office of the Prosecutor. Mie earned her B.A. from Oberlin College in 1997, and a J.D. with distinction from Stanford Law School in 2000.



Joshua Riegel

Joshua Riegel joined the staff of the Women's Rights Project as a legal secretary in November 2005. He comes to us from The Library of The General Society of Mechanics & Tradesmen, a non-profit membership library that specializes in the building trades, where he was the assistant to the Director and Historian of the Library. Joshua earned a B.A. (2002) in American history and cultural anthropology and a M.A. in Women's History from Sarah Lawrence College in May 2004. For his master's thesis, he used *Black Power: The Politics of Liberation in America* (1967) by Stokely Carmichael and Charles V. Hamilton to explore how black nationalisms often espouse visions of the future free from oppression and inequity, yet they invariably construct queer and feminine aberrations that fall outside of the purview of these imaginings. The essay foregrounds a discussion of the radicalization of the civil rights movement and illuminates how notions of racial and class separatism were increasingly parlayed into discourses of sex and sexuality.

During his time in college, Joshua worked as a peer educator at Global Kids, Inc., as an intern at the Brennan Center for Justice at NYU, and as a marketing and publicity intern for Verso Books. While a student at Sarah Lawrence College he developed a foundation in community organizing and activism. He was his class president for two years, helped found a peer-mentoring program for students of color, and helped design a summer leadership program that focused on issues of activism, politics, and community development on campus and abroad. He also helped plan the Annual Women's History Month Conference and was the editor and chief of *Dark Phrases*, Sarah Lawrence College's journal written by students, faculty, staff, and alumnae/i of color for two consecutive years. He was named Sarah Lawrence College's Barbara Wallace Cornwall Scholar from 1999-2002. Joshua is currently working to publish his thesis and hoping to start participating in academic conferences and panels.

PROJECT SUPPORTERS

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