A large, light blue, stylized number '30' is centered on the page, serving as a background for the text.

1971-2001

*Celebrating  
Thirty Years*

**WOMEN'S  
RIGHTS  
PROJECT  
ANNUAL  
REPORT  
2001**

An **ACLU** Report

**Women's Rights Project  
Annual Report 2001  
1971 – 2001: Celebrating 30 Years**

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## GREETINGS FROM THE DIRECTOR

I am delighted to offer these greetings at the close of my first year as Director of the Women's Rights Project. The year 2001 was important in many ways. This year, the staff of the WRP changed significantly, with my hiring as well as the hiring of two new staff attorneys. In addition, the ACLU National Legislative Office hired a new legislative counsel for women's rights. 2001 also marked the thirty-year anniversary of the Project. This Annual Report celebrates and commemorates the gains made over these three decades since the WRP was founded by Ruth Bader Ginsburg, and the Supreme Court for the first time recognized that the United States Constitution prohibits discrimination against women. At the same time, this Report looks forward to the challenges that lie ahead and the strategies the WRP must employ to ensure that all women regardless of race, ethnicity, or economic status can attain true equality. Finally, the year 2001 will always be remembered for September 11, the day we suffered horrific terrorist attacks on our country. This Report honors the brave women who served as police officers and firefighters in the rescue efforts that day, and reaffirms the need to protect civil liberties and to fight against gender, racial, and ethnic profiling, even in times of national crisis.

In her Foreword to this Annual Report, Justice Ginsburg discusses some of the early goals and victories of the Women's Rights Project from its founding in 1971. As Director of the WRP, she set her sights high: to ensure equal treatment for women as a constitutionally guaranteed right. After laying the groundwork for this premise as a litigator in the 1970s landmark Supreme Court cases, *Reed v. Reed*, *Frontiero v. Richardson*, *Weinberger v. Weisenfeld*, and *Craig v. Boren*, in 1996, Ruth Bader Ginsburg, now Associate Justice of the Supreme Court, placed the capstone on this legal structure with her decision in *United States v. Virginia*, in which the Court struck down the all-male admissions policy at the state-sponsored military academy known as VMI. With this decision, the Court for the first time articulated the heightened standard of review as requiring the government to demonstrate an "exceedingly persuasive justification" for any laws or actions that differentiate on the basis of gender. The Women's Rights Project was there throughout this long struggle, developing the legal theories, writing the briefs, and arguing the cases before the Supreme Court. The Timeline of Supreme Court Decisions that runs throughout this Annual Report highlights these important women's rights cases and illustrates the Project's thirty-year commitment to this effort to bring about full equality for women.



Lenora Lapidus

A look at the cases brought during these three decades demonstrates the progress we have made, but also the battles that we must continue to wage. For example, in one of the WRP's early cases, *Weinberger v. Weisenfeld*, then-Professor Ginsburg successfully argued that a provision of the Social Security Act providing for gender-based distinctions in the award of social security benefits – whereby benefits to care for a child were provided to widows with minor children but not to widowers – was unconstitutional. In arguing this case on behalf of Stephen Weisenfeld, whose wife had died in childbirth delivering their son, Jason, Professor Ginsburg established not only that gender discrimination harms men as well women, but also that true equality will prevail only when men are seen as equal partners in parenting and family obligations and women are seen as equal colleagues in the workforce. This struggle to create an environment that supports men and women in their efforts to balance work and family obligations continues today. In *Knussman v. State of Maryland*, the ACLU of Maryland and the WRP represent Kevin Knussman, a Maryland state trooper who was denied family medical leave upon the birth of his daughter, although the state police allow women to take leave upon the birth of a child. In this case, notwithstanding the mandate of the Family Medical Leave Act, requiring employers to provide leave to any employee to care for a newborn or newly adopted child (as well as to care for a seriously ill family member or for oneself when suffering a serious illness), the state applied sex-role stereotypes to decide that mothers, but not fathers, were entitled to take leave to care for an infant.

A further example of our ongoing efforts to ensure that men and women have opportunities to participate fully in both work and family life is our challenge to the Suffolk County police department's new "light duty" policy. This department, which has a long history of sex discrimination, previously allowed any officer who was temporarily physically unable to perform the full range of police duties to seek a light duty position, and the majority of these assignments were requested and filled by women, mostly for short-term pregnancy-related reasons. In 2000, the department adopted a new policy that allowed light duty positions to be filled only by officers injured on the job. As a result of the change in policy, our plaintiffs, four female police officers who wished to work in non-patrol positions during their pregnancies, were left with no option but to take unpaid leave. These officers all served in the police department for many years, winning commendations for their service. Like most of their fellow police officers, they are of childbearing age. Unlike their male counterparts, however, as a result of the discriminatory policy, their ability to serve as police officers and protect their communities was compromised by their desires to have families. This case advances two important priorities for the Project: finding ways for individuals to balance work and family

## GREETINGS FROM THE DIRECTOR

obligations and breaking down stereotypes about men's and women's proper roles in society, which includes helping women to advance in traditionally male occupations.

In addition to working to ensure that the law recognizes men and women as equal players in both work and family life, chief among the battles we must continue to wage is the fight to ensure that *all* women benefit from the legal victories we have achieved – particularly low-income women and women of color. A major goal of the Women's Rights Project is to make these rights a reality for women (and girls) in every stratum of society. Women, especially single mothers, are at disproportionate risk of poverty, as a result of their caregiving responsibilities and the continuing obstacles facing women seeking high-wage employment. Women and children are also the vast majority of recipients of Temporary Assistance for Needy Families (TANF), and thus are the ones primarily affected by the welfare program's punitive policies and due process failures. As a result, poverty and welfare are women's issues, and a high priority for the WRP. For example, we are currently challenging punitive welfare "reform" measures, such as child exclusion policies that deny welfare benefits to any child born into a family already receiving aid. These child exclusion laws, or "family caps," unfairly punish an innocent child for the conduct of his or her parent, denying the child necessary support because his or her parents are poor and have been unable to become self-sufficient. Further, child exclusion policies infringe on women's right to privacy in decision-making about whether to have children and attempt to coerce poor women not to have additional children. The Project is currently litigating a challenge to New Jersey's child exclusion policy and will participate in efforts to overturn Nebraska's policy as well.

Further, we are fighting on behalf of poor women who are being evicted from their subsidized housing because they are victims of domestic violence. In 2001, we helped set an important precedent against such discrimination in a settlement agreement on behalf of Tiffanie Alvera, a woman whose landlord attempted to evict her from her home based on a "zero tolerance for violence" policy under which all members of a household are evicted if there is any violence in the apartment. Under the terms of the settlement, the management company will stop applying its "zero-tolerance" policy to innocent victims of domestic violence in the five states (Arizona, California, Hawaii, Nevada, and Oregon) where it owns or operates hundreds of housing facilities. In coordination with our network of ACLU affiliates, we are now working to identify such practices in other subsidized housing buildings – especially in the states included in the settlement agreement – and to use the *Alvera* litigation as a model to remedy discrimination nationwide.

The ACLU's unique structure enables the Women's Rights Project to be influential in bringing about broad-based, nationwide systemic change. Because the ACLU has staffed affiliate offices and chapters in every state in the country, we are aware of problems facing women, on the ground, in every region of the United States. Further, we are able to develop strategies to confront these problems and then implement the strategies locally throughout the country. The *Alvera* litigation is a perfect example: while litigating this case, we heard numerous anecdotes of similar evictions of victims of domestic violence from public housing due to "zero tolerance" policies across the country. The legal claims, evidence, court papers, and ultimate settlement that we developed in *Alvera*, now provide a basis for us to replicate this litigation elsewhere in the country. Further, our ACLU affiliates and their contacts with low-income housing and domestic violence advocates in their communities provide us with direct access to the women who need our representation as well as attorneys who can serve as local counsel.

As we move forward, we plan to harness these resources of the ACLU's vast network even more in an attempt to reveal and redress the problems facing "invisible" women – low-income women, women of color, domestic violence victims, contingent workers, and women in prison. In addition to expanding legal rights to reach all women, we are also seeking to expand the bases from which these rights derive. For example, we are working to develop ways to use international human rights norms in domestic litigation.

Following in the footsteps of the amazing women who have directed the Women's Rights Project over the past three decades – beginning with Ruth Bader Ginsburg – is not an easy task. But I take up this mantle with eagerness and pride. I am honored to have the opportunity to lead the ACLU's fight for women's equality – through our work at the Project, our collaboration with ACLU affiliates all across the country, and our support of the Washington National Office's public policy efforts – as we chart the course for the 21st Century. With the help of all our supporters, I am confident that we will succeed.

*Lenora M. Lapidus*

Lenora M. Lapidus  
Director



## FOREWORD

### The ACLU Women's Rights Project 1971-2001: Reflections on 30 Years

by Ruth Bader Ginsburg

Associate Justice, Supreme Court of the United States

Co-Founder and First Director of the Women's Rights Project

I am pleased to introduce this 30-year report of the ACLU Women's Rights Project. As the report demonstrates, the Project is today in vigorous pursuit of women's rights' permanent placement on the human rights agenda. Much has changed in the years since the ACLU launched the WRP and became a leading player in the effort to equalize rights and opportunities for women and men. The progress made during the past three decades has been exhilarating. Yet, as the report shows, much work remains to be done. The discrimination the WRP encounters and opposes today is less blatant, more subtle, and therefore more difficult to uncover and end. But the WRP's staff has the spirit and dedication needed to continue the effort to bring the ideal of equality down to earth in diverse human endeavors.

In the 1960s and 1970s, our starting place was not the same as that of advocates seeking the aid of the courts in the struggle against racial discrimination. Jurists in those not so ancient days regarded differential treatment of men and women not as malign, but as operating benignly in women's favor. Judging was, for most of those years, an almost exclusively male preserve. Men on the bench, also at the bar, generally considered themselves good husbands and fathers. Women, they thought, had the best of all possible worlds. Women could work if they wished; they could stay home if they chose. They could avoid jury duty if they were so inclined, or they could serve. They could escape military duty, or they could enlist.

Our mission was to educate decision makers in the nation's legislatures and courts. We strived to convey to them that something was wrong with that perception of the world. As Justice Brennan wrote in a 1973 Supreme Court opinion, reciting lines from the ACLU brief: "Traditionally, [differential treatment on the basis of sex] was rationalized by an attitude of 'romantic paternalism' which, in practical effect put women, not on a pedestal, but in a cage." We kept firmly in mind the importance of knowing our audience and playing



Ruth Bader Ginsburg pictured in 1977, when she was Director of the ACLU Women's Rights Project

photo courtesy of the Supreme Court of the United States

to that audience – largely men of a certain age. Speaking to that audience as though addressing one's "home crowd" could be counterproductive. We sought to advance judges' understanding that, yes, their own daughters and granddaughters could be disadvantaged by the way things were.

The 1970s cases in which I participated under ACLU auspices all rested on the same fundamental premise: that the law's differential treatment of men and women, typically rationalized as reflecting "natural" differences between the sexes, historically had tended to contribute to women's subordination – their confined "place" in a man's world. The arguments addressed to the courts were designed to reveal and to challenge the assumptions underpinning traditional sex-specific rules, and to move the Supreme Court in the direction of a constitutional principle that would impel heightened, thoughtful review of gender classifications.

Before 1971, the Supreme Court had never acted favorably on a woman's complaint that she had been denied equal protection by a state or federal law. In some states, women were not

called for jury service on the same basis as men until the end of the 1970s, while in others, parents were required to support sons three years longer than daughters, and Louisiana retained its husband is "head and master" of the community rule until the start of the 1980s. Women's work attracted fewer social security benefits for their families than did men's work, certain occupations remained off limits to women, and women were forced to leave their jobs when their pregnancy began to show.

The issues we litigated early on now seem quaint. A prime example, then-Legal Director Mel Wulf and I wrote the briefs for appellant Sally Reed in the turning point gender discrimination case, *Reed v. Reed*, decided in 1971. Sally and her estranged husband Cecil had separately applied to be appointed administrator of their dead son's estate. Sally filed her application first. The Idaho law at issue provided that when two or more persons were "equally qualified" to administer a death estate, "males must be preferred to females." In our briefs, we argued that the state of Idaho should not be permitted to resort to administrative convenience as a reason for preferring men. We urged, and the Supreme Court held, that "[g]ender . . . is an unconstitutional proxy for . . . competence." Reed marked the



photo courtesy of Jason Wiesenfeld

Justice Ginsburg with Stephen and Jason Wiesenfeld (see next page)

first time in United States history that the high court struck down a sex-based differential on the ground that it denied a woman the equal protection of the laws.

The next term we prevailed in *Frontiero v. Richardson*. The complainant was an Air Force officer, Sharon Frontiero, who was dismayed to discover that she could not gain dependent's benefits for her husband on the same terms that her male colleagues gained those benefits for their wives. Eight Justices agreed on the judgment in *Frontiero*, released in April 1973. Four subscribed to my argument – the first I presented orally at the Court – that laws differentiating by sex were inherently suspect, warranting strict scrutiny, the same standard the Court applies to claims of racial discrimination.

One of the 1970s cases nearest and dearest to my heart, *Weinberger v. Wiesenfeld*, resulted in a unanimous Supreme Court judgment two terms later. 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. There were three opinions in *Wiesenfeld*, but all concluded that the gender-based distinction was unconstitutional. The Supreme Court's 1975 judgment effectively converted a mother's benefit generated by a man's work into a parent's benefit that human work secured.

At last in 1976, in *Craig v. Boren*, the Court adopted a "heightened scrutiny" review standard for gender-based classifications. 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. It was a silly law, mercifully terminated. The Court drew several lines from the ACLU's friend of the Court brief. We were glad to have had a part in promoting "heightened" review, though we wished the pronouncement had been made in a more weighty case.

The 1970s, we can see in retrospect, were years of extraordinary change in the legal status of women in the United States. The idea that discrimination on the basis of sex was a burden, not a privilege, undermined laws and customs in virtually every sector of American life, from the workplace to schools to intensely private matters of



Justice Ginsburg with co-counsel and plaintiffs in *Craig v. Boren*

photo courtesy of Curtis Craig

sexuality. As laws were rewritten and freshly interpreted, feminist lawyers, if exhilarated, were also exhausted by the constant pressure of work. But the goal kept us going. It was to end women's second-class citizenship, to establish women's right to full partnership with men at work, in the home, everywhere humans interact.

Move forward with me now to June 25, 1996. The Supreme Court that day released its judgment in *United States v. Virginia*, holding unconstitutional the male-only admissions policy of the state-supported Virginia Military Institute (VMI). (Some 26 years earlier, the ACLU had been instrumental in opening to women the University of Virginia's Charlottesville campus.) As I read the summary of the opinion aloud in Court, I looked across the bench to Justice O'Connor, when I referred to her pathmarking opinion in the 1982 case, *Mississippi University for Women v. Hogan*, a decision holding unconstitutional the exclusion of qualified men from a highly-regarded state school of nursing. The exclusion, Justice O'Connor observed, tended to "perpetuate the stereotyped view of nursing as a job for women only." Instead of advancing women's welfare, Justice O'Connor recognized, this occupational reservation may in fact have helped to hold down wages in the nursing profession.

Justice O'Connor, in 1982, close to the end of her first year as the first woman on the Supreme Court, had announced the *Mississippi University for Women* opinion for a Court that divided 5-4. The vote in 1996 in the *VMI* case was 7-1, with the Chief Justice writing a concurring opinion in support of the judgment. What occurred in the years intervening from 1982 to 1996 to make the *VMI* decision not a close call?

Public understanding had advanced so that people could perceive that the *VMI* case (like the *Citadel* case the ACLU was then litigating) was not really about the military. Nor did the Court question the value of single-sex schools. Instead, *VMI* was about a state that invested heavily in a college designed to produce business and civic leaders, that for generations succeeded admirably in the endeavor, and that strictly limited this unparalleled opportunity to men.

What caused the Court's understanding to dawn and grow? Judges do read newspapers and are affected not by the weather of the day, but by the climate of the era. Since the start of the 1970s, Supreme Court Justices, in common with judges on other courts, have become increasingly aware of a sea change in United States society – in the work women do, and the family care men have slowly started to share. The Justices' still imperfect but ever evolving enlightenment has been advanced by the briefs filed in Court, the women lawyers and jurists they nowadays routinely encounter, and perhaps most deeply by the aspirations of the

women, particularly the daughters and granddaughters, in their own families and communities.

I am proud of the ACLU for establishing the Women's Rights Project in 1971, and count it my good fortune to have participated in its formative years. Apart from my current job, the decade I spent working with the ACLU was the most satisfying time of my life. We made great strides in those years, but the large challenge lies ahead.

That challenge, I believe, is to make and keep our communities places where we can tolerate, even celebrate, our differences, while pulling together for the common good. "*E Pluribus Unum*" – of many, one – is the main challenge. It is my hope for our country and world.

Every good wish for the Project's next decades. May all associated with the WRP thrive in the continuing pursuit of equal justice for all humankind.



# Cases, Investigations, and Related Activities

## Violence Against Women

*Alvera v. CBM Group, Inc.*

In 2001, the Women's Rights Project undertook important new efforts fighting discrimination against domestic violence victims as a form of sex discrimination. In a victory for victims of domestic violence everywhere, a property management company agreed in November to end housing discrimination against battered women.

The agreement settled a lawsuit brought by attorneys from the Women's Rights Project and others on behalf of Tiffanie Alvera, a woman whose landlord had attempted to evict her from her home because she was the victim of domestic violence. The landlord, the C.B.M. Group, had a "zero-tolerance for violence" policy under which all members of a household – including victims – were evicted if there was any violence in the apartment. Applied in this manner, such a policy works only to blame the victim for her injuries. While Ms. Alvera's case was the first to challenge such policies, reports indicate that similar evictions are happening at public housing around the country.



An article that appeared in the New York Times about the *Alvera* case

# TIMELINE OF MAJOR SUPREME COURT DECISIONS ON WOMEN'S RIGHTS

## 1971

**Reed v. Reed**, 404 U.S. 71 (1971). In the Women's Rights Project's first case before the United States Supreme Court, the Court relies on a brief written by Columbia Law School Professor Ruth Bader Ginsburg, the Project's first director, and rules for the first time ever that a law that discriminates against women is unconstitutional under the Fourteenth Amendment. The Court rules unanimously that a state statute that provides that males must be preferred to females in estate administration denies women equal protection of the law.

**Phillips v. Martin Marietta**, 400 U.S. 542 (1971). The Supreme Court rules that an employer violates Title VII when it refuses to hire women with young children while hiring men who are similarly situated.

## 1973

**Frontiero v. Richardson**, 411 U.S. 677 (1973). In this case, initially filed by the Southern Poverty Law Center, and the

first argued before the Supreme Court by Professor Ginsburg, the Court strikes down a federal statute that



photo courtesy of Sharron Frontiero Cohen

Sharron Frontiero Cohen

automatically grants male members of the uniformed forces housing and benefits for their wives, but requires female members to demonstrate the "actual dependency" of their husbands to qualify for the same benefit. Four Justices conclude that laws differentiating by sex are inherently suspect and subject to strict judicial scrutiny, as are those differentiating by race.

***Pittsburgh Press v. Pittsburgh Commission on Human Relations***, 413 U.S. 376 (1973).

The Supreme Court holds that employers' use of sex-segregated "Male Help Wanted" and "Female Help Wanted" columns and newspapers' publication of these columns is illegal, because sex-segregated columns enable employers to express unlawful gender preferences. On behalf of the Women's Rights Project, Professor Ginsburg co-authors an *amicus* brief in the case.

Ms. Alvera, 24, welcomed the settlement, calling it "a happy ending to a difficult struggle."

Ms. Alvera was assaulted on August 2, 1999 by her husband in their Seaside, Oregon home. She went to the hospital, and he was jailed. That day, Ms. Alvera obtained a temporary restraining order against him, which she gave to the manager of Creekside Village Apartments. The 40-unit complex for low-income tenants is owned by the C.M.B. Group and subsidized by the United States Department of Agriculture's rural development program.

Two days later, Ms. Alvera received a notice to vacate the apartment within 24 hours. The notice said, "You, someone in your control, or your pet, has seriously threatened immediately to inflict personal injury, or has inflicted substantial personal injury upon the landlord or other tenants," and specified an assault by her husband. The management group claimed that the policy applied to Ms. Alvera although she was the victim, not the perpetrator, of the violence.

Ms. Alvera tried to have her husband taken off the lease and requested a move to a one-bedroom apartment, since she would now be a single-person household. But the resident manager refused to accept her rent, and, until a lawyer became involved several months later, refused to give her a one-bedroom apartment.

"It wasn't my fault," said Ms. Alvera. "I'd gotten the restraining order. My face was badly battered, and it was two or three months before it healed. I lost lots of hours of work, which meant lots of hours of pay. I didn't feel like I could go looking for a new place to live."

The lawsuit claimed that by seeking to evict Ms. Alvera because she was a victim of domestic violence, the C.B.M. Group illegally discriminated against her on the basis of sex. Since the vast majority of domestic violence victims are women, applying the "zero-tolerance" policy to victims of domestic violence has a disparate impact on women, and thus constitutes sex discrimination under the Fair Housing Act.

It is particularly difficult for low-income women who are dependent on subsidized housing to find stable living arrangements, and it becomes even more difficult when they are in the crisis of domestic violence. As a result, policies like C.B.M. Group's increase the risk that victims of domestic violence will either become homeless or suffer the violence without reporting it to the police, because they fear losing their homes.



Although the case involved one woman, under the terms of the settlement the management company will stop applying its “zero-tolerance” policy to innocent victims of domestic violence in the five states (Arizona, California, Hawaii, Nevada, and Oregon) where it owns or operates hundreds of housing facilities. The settlement agreement will be a model for ending discriminatory evictions of victims of domestic violence in housing facilities throughout the country.

The settlement should send a message to housing managers nationwide that applying “zero-tolerance for violence” policies to victims of domestic abuse is discriminatory and will be challenged. Specifically, the settlement agreement requires the C.B.M. Group – the managers of Ms. Alvera’s apartment complex – to not “evict, or otherwise discriminate against tenants because they have been victims of violence, including domestic violence” and to revise accordingly all employee manuals with respect to current eviction proceedings. In addition, C.B.M. Group employees will be required to participate in education about discrimination and fair housing law. The property managers also agreed to provide compensatory damages to Ms. Alvera.

The agreement is in effect for five years and the federal government will monitor the company to ensure that it is complying with the terms of the Consent Decree. The case was initially filed by the U.S. Department of Justice after the Department of Housing and Urban Development (HUD) investigated the matter and determined that Ms. Alvera’s rights had been violated. Ms. Alvera intervened in the case, represented by attorneys from the Women’s Rights Project, Legal Aid Services of Oregon, Oregon Law Center, and NOW Legal Defense & Education Fund.



Tiffanie Alvera

Associated Press photo

## 1974

***Geduldig v. Aiello***, 417 U.S. 484 (1974). On behalf of the Women’s Rights Project, Professor Ginsburg co-authors an *amicus* brief that argues that laws discriminating on the basis of pregnancy make gender-based distinctions and should be evaluated under heightened scrutiny. The Court holds that a disability insurance program that denies benefits for disabilities resulting from pregnancy is not unconstitutional, as it does not involve discrimination on the basis of gender, but discrimination between pregnant and non-pregnant persons.

***Kahn v. Shevin***, 416 U.S. 351 (1974). In this Women’s Rights Project case, originally filed by the ACLU of Florida, the Court holds that a Florida statute granting widows, but not widowers, an annual five hundred dollar exemption from property taxes is constitutional because the purpose of the statute is to close the gap between men and women’s economic situations and there is a substantial relationship between this purpose and the exemption.

***Corning Glass Works v. Brennan***, 417 U.S. 188 (1974). The Supreme Court for the first time considers an Equal Pay Act claim based on an employer paying women less than men for the same work. It determines that the wage difference between Corning’s female day inspectors and male night inspectors violates the Equal Pay Act. Professor Ginsburg, on behalf of the Women’s Rights Project, authors an *amicus* brief.

## 1975

**Weinberger v. Weisenfeld**, 420 U.S. 636 (1975). Professor Ginsburg, on behalf of the Women's Rights Project, successfully argues that a provision of the Social Security Act providing for gender-based distinctions in the award of social security benefits is unconstitutional. In this case, the Court holds that the government cannot provide child-in-care benefits to widows with minor children and not to widowers, since such a provision discriminates against working women, whose families receive fewer protections as a result of their social security taxes than do men, and against widowers, who need such benefits in order to devote themselves to their children.

**Cleveland Board of Education v. LaFleur**, 414 U.S. 632 (1975). The Supreme Court holds that it is unconstitutional for public employers to require women to take unpaid maternity leaves after the first trimester of pregnancy because of a conclusive presumption that pregnant women are no longer able to work, since such policies impinge on women's due process rights. On behalf of the Women's Rights Project, Professor Ginsburg co-authors an *amicus* brief in the case.

**Taylor v. Louisiana**, 419 U.S. 522 (1975). The Supreme Court invalidates a Louisiana statute that allows women to serve as jurors only when they expressly volunteer, which has the practical effect of almost entirely eliminating women from juries, and requires states to call men

## Next Steps

The Women's Rights Project will continue to litigate on behalf of domestic violence victims evicted from their homes. In 2001, the WRP reached out to ACLU affiliates across the country asking them to be on the look-out for this growing problem. We asked them to contact their local legal services offices and domestic violence advocacy groups to inquire whether advocates have heard about similar problems facing victims of domestic violence in their states. The initial outreach efforts are already bearing fruit, and the WRP is currently in contact with several attorneys around the country who are wrestling with the same problem. The *Alvera* case will be a valuable model in further litigation designed to ensure that landlords cannot doubly victimize battered women.

The ACLU will also continue to undertake efforts to address this problem on the legislative front, pressing Congress and the Department of Housing and Urban Development (HUD) to make clear that federal law does not permit landlords to discriminate against victims of domestic violence.

## Other Developments

This year, the Women's Rights Project worked with other ACLU lawyers, as well as a private attorney representing several domestic violence advocacy organizations, in preparing two *amicus* briefs in *Rucker v. Davis*, which the Supreme Court will hear in 2002. *Rucker* challenges a HUD policy that permits housing authorities to evict a tenant whenever any member of the tenant's household or any of the tenant's guests is alleged to have engaged in drug activity, even if the tenant could not have known about the conduct or prevented it, and even if the conduct occurs off HUD premises. The case thus raises the issue whether an innocent tenant may be evicted based on the behavior of someone else, the same issue that the Project is addressing in the domestic violence eviction cases.

The Women's Rights Project also joined in an *amicus* brief in *Schieber v. City of Philadelphia*, a case before the U.S. Court of Appeals for the Third Circuit, seeking a legal remedy on behalf of a serial sexual predator's victim, who was murdered when the police inadequately responded to a 911 call.

Finally, the WRP worked with the Michigan affiliate on proposed state legislation governing domestic violence prosecutions. We reviewed the legislation to ensure that it provided adequate protections for victims of domestic violence as well as defendants charged

with such offense. We also assisted the Rhode Island affiliate in proposing state legislation to protect domestic violence victims from eviction.

## Poverty and Welfare

Women, especially single mothers, are at disproportionate risk of poverty in this country, as a result of both their caregiving responsibilities and the continuing obstacles facing women seeking high-wage employment. Women and children are also the vast majority of recipients of Temporary Assistance for Needy Families (TANF), and thus are the ones primarily affected by the welfare program's punitive policies and due process failures. As a result, poverty and welfare are women's issues, and a focus of the Women's Rights Project's energies. This year, in addition to litigating against a subsidized housing authority discriminating against a domestic violence victim, described above, the Project engaged in multiple investigations and participated in various cases addressing the needs and rights of poor women.

### Fighting Child Exclusion Policies

Under the federal welfare reform law passed in 1996, states now have the option of denying welfare benefits to any child born into a family already receiving welfare. States that adopt this option in an attempt to force poor women to have fewer children treat children differently based on the circumstances of the family into which they were born, and families who have a child while receiving welfare grow steadily poorer. These child exclusion laws, also called "family caps," unfairly punish the innocent child for the conduct of his or her parent, denying the child necessary support because his or her parents are poor and have been unable to become self-sufficient. This policy is akin to those adopted earlier in this country, by which children were denied benefits because their parents were not married or because their parents were not legal residents. These policies were held unconstitutional. Child exclusion policies also infringe on women's right to privacy in making decisions about whether to have children. These policies attempt to coerce poor women not to have additional children. As a result, research has shown that in at least one state with a child exclusion policy – New Jersey – women on welfare are more likely to seek abortions as a result of the policy.

and women to jury service on an equal basis.

***Stanton v. Stanton***, 421 U.S. 7 (1975). The Supreme Court rules that a law setting the age of majority for women at eighteen and for men at twenty-one, based on the assumption that women need less education and preparation for adulthood than do men, is unconstitutional.

***Turner v. Department of Employment Security***, 423 U.S. 44 (1975). In this Women's Rights Project case, the Supreme Court invalidates a state regulation making pregnant women ineligible for unemployment benefits for twelve weeks before birth and six weeks after birth regardless of their capacity to work.

## 1976

***Craig v. Boren***, 429 U.S. 190 (1976). The Supreme Court adopts a "heightened scrutiny"

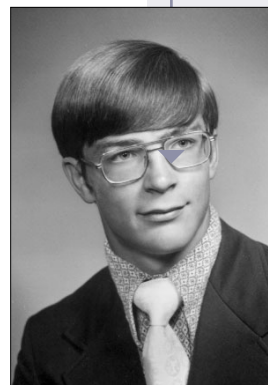


photo courtesy of Curtis Craig



photo courtesy of Carolyn Whitener

Curtis Craig and Carolyn Whitener, plaintiffs in *Craig v. Boren*

standard of review to evaluate legal distinctions on the basis of gender, which requires that a gender-based legal distinction

bear a substantial relationship to an important governmental interest. This conclusion is based in part on a Women's Rights Project *amicus* brief written by Professor Ginsburg. The Women's Rights Project works closely with the plaintiffs' attorney in the case.

***Regents of the University of California v. Bakke***, 429 U.S. 953 (1976). On behalf of the Women's Rights Project, Professor Ginsburg co-authors an *amicus* brief to the Court successfully defending affirmative action in public higher education.

***General Electric Co. v. Gilbert***, 429 U.S. 125 (1976). Professor Ginsburg, on behalf of the Women's Rights Project, authors an *amicus* brief to the Court, arguing that the exclusion of pregnancy-related conditions from a private employer's disability plan violates Title VII. The Court again concludes that pregnancy-based discrimination is not sex discrimination. Congress will override this decision in 1978, through passage of the Pregnancy Discrimination Act.

## 1977

***Califano v. Goldfarb***, 430 U.S. 199 (1977). In this Women's Rights Project case, argued by Professor Ginsburg, the Supreme Court invalidates gender-based distinctions in the payment of social security survivor benefits, finding these distinctions to be based on archaic assumptions regarding women's dependency.

In 2001, the Women's Rights Project participated in efforts to overturn state child exclusion policies. Along with the NOW Legal Defense and Education Fund, the ACLU of New Jersey, and the New Jersey law firm Gibbons, Del Deo, Dolan, Griffinger & Vecchione, the Project is counsel in *Sojourner v. New Jersey Department of Human Services*, a class action challenge to New Jersey's child exclusion policy. We argue that the policy violates state constitutional rights by discriminating against children arbitrarily, based only on the circumstances of their birth. In addition, the suit argues that the policy unconstitutionally coerces women's reproductive decisions.

The experiences of the named plaintiffs in the case, Angela B. and Sojourner A., vividly demonstrate the hardships caused by these policies. Angela B. is the mother of four children, two of whom were born while she was receiving welfare assistance and who are therefore excluded from New Jersey's welfare program. Because her two youngest daughters do not receive welfare benefits, the family consistently runs out of food before the end of the month and must rely on food pantries and other charitable sources to eat. They have unstable housing, living in shelters, with relatives, and with friends, and Angela B. worries constantly about being homeless. Sojourner A. is the mother of two children, one of whom does not receive welfare benefits because she was born while the family was receiving assistance. Because of her experience trying to raise two children with benefits meant to support only one, Sojourner A. had an abortion when she became pregnant again while still receiving assistance. This year, the WRP appealed the trial court's judgment for New Jersey and is currently waiting for the appeals court to schedule arguments.

In the coming year, the Project will also assist in the fight against Nebraska's child exclusion policies. In 2001, Nebraska Applesseed, a public interest organization, successfully sued the state of Nebraska on behalf of low-income, disabled mothers, arguing that applying a child exclusion policy that denied welfare benefits to newborn babies in families where the parent received disability benefits because she was unable to work was illegal under state law. Because the Nebraska child exclusion was meant to be a work incentive, the court held, it was inappropriate to apply the child exclusion rule to families where the parent could not work. Nebraska has appealed this decision, and in 2002, the Women's Right Project will file an *amicus* brief on behalf of the low-income disabled mothers, urging the appeals court to uphold the decision of the lower court and order Nebraska to provide benefits to children of disabled mothers.

## Reforming Welfare “Reform”

In 1996, lawmakers made sweeping changes in the nation’s welfare program. The Aid to Families with Dependent Children (AFDC) program was abolished, and in its place the TANF program was created. Under TANF, low-income individuals are only allowed to receive welfare for five years in their lives and welfare recipients are required to participate in work activities as a condition of receiving benefits. Individuals who fail to fulfill these work requirements or to comply with other program rules can lose their benefits as punishment. Most of the details about who will receive benefits, what sort of benefits they will receive, and the procedural protections ensuring that the welfare program is administered fairly are left up to the states.

Since 1996, in part because of the new requirements under TANF and in part because of the booming economy in the years that followed, the welfare rolls fell sharply, but analysis showed that the poorest families in the country became even poorer after welfare reform, that few individuals leaving welfare left poverty, and that many of those remaining on the rolls faced severe barriers to finding employment and were likely to face dire need when they hit their five-year time limit and lost benefits. In addition, advocates from across the country reported that in many states, needy families who sought benefits were being discouraged from seeking assistance and given misinformation about the availability of benefits, while many welfare recipients were losing their benefits because of arbitrarily enforced rules and mistakes in administration. Other researchers and advocates have reported racial and gender discrimination in the provision of assistance.

In 2001, the WRP in cooperation with the ACLU Reproductive Freedom Project, the Immigrants’ Rights Project, and the National Legislative Office, entered into initial conversations with the Administration about what is wrong with the current welfare program and how to fix it. TANF will be reauthorized in 2002, meaning that Congress will pass a new law funding the program and setting out its requirements. In preparation for this reauthorization, the U.S. Department of Health and Human Services sought comments in the fall of 2001 on the successes and failures of the current TANF program. The comments submitted by the ACLU addressed the need for the reauthorized TANF program to provide assistance without discriminating against recipients; to provide special assistance to recipients with special needs; and to help women receiving welfare obtain training for high-paying jobs, even if this means training them for jobs that are usually held by men. The comments also discussed the need to craft a welfare program that does not violate the separation of church and state, that respects recipients’ rights to



photo by Penny Weaver, courtesy of the Southern Poverty Law Center

Kim Rawlinson

***Dothard v. Rawlinson***, 433 U.S. 321 (1977). The Supreme Court invalidates Alabama’s height and weight requirements for prison guards that have the effect of excluding the vast majority of female candidates, finding that these requirements violate Title VII. However, the Court upholds Alabama’s exclusion of women from many jobs as prison guards in all-male maximum security prisons, finding that in such an environment, women could present a security risk. Professor Ginsburg, on behalf of the Women’s Rights Project, co-authors an *amicus* brief in the case.

***Coker v. Georgia***, 433 U.S. 584 (1977). The Supreme Court holds that Georgia’s statute allowing a sentence of death for a convicted rapist is cruel and unusual punishment in violation of the Eighth Amendment. On behalf of the Women’s Rights Project, Professor Ginsburg co-authors an *amicus* brief opposing the imposition of the death penalty on a convicted rapist because

historically, convicted rapists were sentenced to death as a result of the idea that a woman was a man's property and because the severity of such a sentence meant that often police would refuse to charge men with rape and juries would refuse to convict men of rape.

***Nashville Gas Co. v. Satty***, 434 U.S. 136 (1977). The Court finds that an employer's policy of denying accumulated seniority to employees returning from pregnancy leave violates Title VII in the absence of proof of business necessity of such a practice. The Women's Rights Project co-authors an *amicus* brief.

## 1978

***Los Angeles Department of Water and Power v. Manhart***, 435 U.S. 702 (1978). On behalf of the Women's Rights Project, Professor Ginsburg co-authors an *amicus* brief for this case in which the Supreme Court holds that requiring female workers to make larger pension fund contributions than their male counterparts violates Title VII since Title VII prevents employers from basing personnel policies on assumptions about differences between men and women as groups.

## 1979

***Duren v. Missouri***, 439 U.S. 357 (1979). On behalf of the Women's Rights Project, Professor Ginsburg successfully argues to the Supreme Court that a state statute exempting women from jury duty upon their request vio-

make decisions about their own family relationships, and that requires states to make fair rules for administering benefits and to give applicants and recipients full and accurate information about these rules. In the coming year, the ACLU will continue to work for a reauthorized welfare program that doesn't just cut recipients from the welfare rolls, but helps to lift them out of poverty, and does so while respecting the privacy and dignity of low-income families.

## Next Steps

In 2002, in addition to continuing to fight child exclusion policies and pushing for improvement in the TANF program, the Women's Rights Project will investigate allegations that Child Protective Services in multiple states are targeting low-income parents and removing children from their homes on the basis of flimsy accusations or on the basis of the parents' poverty alone, while failing to provide ways for parents to dispute such charges and get their children back. The Project may also work to help welfare recipients and other low-income families gain access to child care. Finally, the Project will continue to work to develop litigation protecting the legal rights of welfare recipients, who are predominately women.

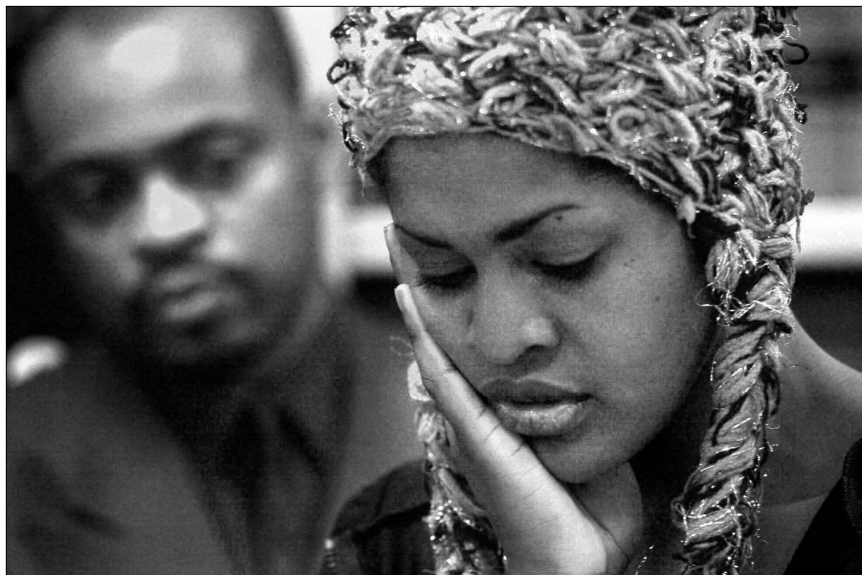
In the coming year, in addition to its work for victims of domestic violence who are evicted from subsidized housing, the Project also plans to turn its attention to the issue of sexual harassment of women by public housing managers, and will coordinate efforts to address this problem with the Department of Justice Civil Rights Division. Like discrimination on the basis of domestic violence, sexual harassment in public housing presents women with an unacceptable choice, in this case between accepting sexual intimidation and harassment or losing what may be their only affordable housing option; and like discrimination on the basis of domestic violence, sexual harassment of women by public housing managers violates federal law. In March 2001, the ACLU and other civil rights groups jointly sent a letter to HUD Secretary Martinez, welcoming proposed regulations addressing sexual harassment in public housing, noting that case law has demonstrated the need for such specific HUD guidance, and urging HUD to continue to support these regulations, with certain modifications.

The Project may also update a booklet created by WRP several years ago, entitled "The Fair Housing Act – A Guide for Women and Advocates," which addressed housing discrimination on the basis of sex or familial status, *i.e.*, discrimination that affects women specifically because they are women, because they are pregnant, or because they are mothers.

## Criminal Justice and Law Enforcement

### Racial and Gender Profiling

Along with the ACLU of New Jersey, the ACLU Legal Department, the New York Civil Liberties Union, and the New Jersey law firm Lowenstein Sandler, the Women's Rights Project is counsel in *Bradley v. U.S. Customs Service*, a federal lawsuit charging the U.S. Customs Service with racial and gender profiling. The case was filed in response to claims by the agency that the humiliating physical search of a young African-American woman at Newark Airport was nothing more than a routine "patdown."



Associated Press photo

Yvette Bradley

Yvette Bradley, an advertising executive in her early thirties, said that as she and her sister arrived at Newark Airport from a vacation in Jamaica, they, along with other black women on the flight, were singled out for searches and interrogation by Customs agents. Ms. Bradley was led to a room at the airport and instructed to place her hands on the wall while an officer ran her hands and fingers over every area of her body, including her breasts and the inner and outer labia of her vagina. The search did not reveal any drugs or contraband.

"Inside that Customs office, I experienced one of the most humiliating moments of my life," Ms. Bradley said of the search.

Filmmaker Spike Lee, for whom Ms. Bradley worked, issued a statement expressing that he was "outraged and saddened" by Ms. Bradley's experience, "not only on her behalf but on behalf of all

lates a defendant's Sixth and Fourteenth Amendment rights to be tried by a jury drawn from a fair cross-section of the community.

***Orr v. Orr***, 440 U.S. 268 (1979). On behalf of the Women's Rights Project, Professor Ginsburg authors an *amicus* brief for this case, in which the Supreme Court invalidates statutes providing that husbands, but not wives, may be required to pay alimony upon divorce and thus casts off the assumption that wives are dependent upon their husbands for financial support but husbands are never dependent on wives.

***Califano v. Westcott***, 443 U.S. 76 (1979). On behalf of the Women's Rights Project, Professor Ginsburg authors an *amicus* brief that helps persuade the Supreme Court to invalidate a program for unemployment benefits under the Aid to Families with Dependent Children program. The program provides benefits to families with unemployed fathers, but not to those with unemployed mothers, and the Court rules it is therefore unconstitutional because of its presumption that fathers are primary breadwinners while mothers' employment is secondary.

***Personnel Administrator of Massachusetts v. Feeney***, 442 U.S. 256 (1979). In a challenge to legislation that unquestionably burdens women disproportionately to men by providing a lifetime employment preference for state government jobs to veterans, who are overwhelmingly male, the Court concludes that such a prefer-

ence is not unconstitutional, since it was adopted "in spite of" rather than "because of" its harmful effect on women.

## 1980

***Wengler v. Druggists Mutual Insurance Co.***, 446 U.S. 142 (1980). The Court strikes down a state law denying widowers worker's compensation benefits upon the work-related death of their wives unless they prove dependency or incapacity, while granting widows such benefits automatically. Professor Ginsburg, on behalf of the Women's Rights Project, co-authors an *amicus* brief in the case.

**HIGHLIGHT:** Professor Ginsburg is appointed to the United States Court of Appeals for the District of Columbia.

## 1981

***Kirchberg v. Feenstra***, 450 U.S. 455 (1981). This Supreme Court case is the first to invalidate a law that gives a husband the right to control marital property without his wife's consent. Feenstra's husband signed a promissory note mortgaging their marital home to his attorney without telling his wife, pursuant to a Louisiana statute that gave husbands the exclusive right to dispose of community property. The Supreme Court overturns the Louisiana law as an abridgement of married women's constitutional rights under the Equal Protection

African-American women who have come to expect and fear this humiliating treatment."

After the lawsuit was filed, Customs Service officials publicly stated that they were taking steps to end the practice of racial profiling. Then-Customs Commissioner Raymond Kelly said in news interviews that the agency was increasing supervision of officers who conduct the searches in airports, training them in cultural differences, and tracking the race and gender statistics of those they search. But while these remedies are important first steps, the searches are so offensive and widespread that independent judicial supervision is necessary to ensure that the appropriate reforms are implemented.

Statistics bear this out. According to a March 2000 General Accounting Office report, black women were nine times more likely than white women to be X-rayed after being frisked or patted down, yet black women were less than half as likely to be found carrying contraband as white women.

Nevertheless, in *Bradley*, the District Court granted the U.S. Customs Service's motion to dismiss. On November 7, 2001, the Project filed an appeal to the Third Circuit.

The Women's Rights Project is also litigating *Hurn v. U.S. Customs Service*, a second racial and gender profiling case against U.S. Customs for an illegal strip search of an African-American woman at Newark Airport. In this case, Patricia Hurn, an African-American woman, was returning from a vacation in Jamaica when she was forced to submit to an intrusive body search. In a room in the airport, a Customs Inspector patted down Ms. Hurn over her clothing and then instructed Ms. Hurn to remove her clothing, including her underwear. No contraband was found. Ms. Hurn was then ordered to display the lining of her pantiliner to two Customs Inspectors. Again no contraband was revealed. The Inspectors then ordered Ms. Hurn, who was completely nude, to face the wall, spread her legs, and touch her toes while they looked between her legs for contraband. None was found.

Ms. Hurn then dressed and caught her connecting flight to Ohio. Upon reaching Ohio and being received by her sister, Ms. Hurn recounted the humiliating ordeal. As a result of the non-routine, intrusive search, Ms. Hurn suffered extreme emotional distress, for which she has sought psychiatric treatment.

This case raises the same legal claims as *Bradley*, and is currently pending in the District Court. The same lawyers working on *Bradley* are litigating *Hurn*.



## Sexual Abuse of Women Prisoners

Over the past several years, reports of male guards' systemic and persistent sexual abuse of female inmates, including sexual harassment, assault, and rape, as well as retaliation against inmates who complain about such treatment, have been documented by the United States Department of Justice, the United Nations Commission on Human Rights, Amnesty International, and Human Rights Watch. Recently, Amnesty International USA issued a report calling for restrictions on the role of male corrections officers in female prisons. In 2001, the Women's Rights Project did research on and consulted with the ACLU National Prison Project and the Michigan affiliate on the issue of male corrections officers sexually abusing female inmates at prisons throughout the United States.

The Michigan affiliate submitted an *amicus* brief in *Everson v. State of Michigan Dept. of Corrections*, a case brought by male and female corrections officers challenging an MDOC policy assigning only female corrections officers to housing units and transportation duties at three correctional facilities housing female inmates. This policy was adopted as a condition of a settlement agreement between the MDOC and plaintiffs in two class action lawsuits – one brought by several female inmates who alleged that the pattern of abuse violated their state and federal civil rights and one filed by the Department of Justice, which similarly alleged pervasive sexual misconduct against Michigan's female prisoners by male staff.

The ACLU of Michigan's *amicus* brief supported the policy and argued that the female-only assignments did not violate Title VII because the policy is reasonably necessary to protect the female inmates' physical safety, rehabilitation, and privacy and does not affect the corrections officers' pay, seniority, or opportunities for promotion. The necessity for gender-specific assignments was supported by the history of sexual abuse at the Michigan prison, MDOC's inability to control prison staff's sexual abuse by other means, and the special psychological needs of female inmates who before incarceration have suffered from sexual abuse by men. These same factors might not exist in all prisons – housing women or men – and in those cases gender-specific assignments would not necessarily be justified.

### Next Steps

The National Prison Project held a conference in October on ending prisoner rape and harassment of female inmates, which Women's Rights Project staff attended. Working with the National

Clause of the Fourteenth Amendment.

***County of Washington v. Gunther***, 452 U.S. 161 (1981).

In this case, in which the Women's Rights Project submits a key *amicus* brief, the Court holds that individuals can show illegal gender-based wage discrimination under Title VII even when no member of the opposite sex holds a nearly identical job. This case is important for combating wage discrimination, given continued patterns of gender segregation in employment.

***Rostker v. Goldberg***, 523 U.S. 57 (1981). The Supreme Court holds that mandatory draft registration for men only does not violate the Constitution. In this case, in which the Women's Rights Project serves as co-counsel for plaintiffs challenging the gender-based requirement, the Court holds that in questions of military service, special deference is accorded to Congress to make such gender-based distinctions.

**HIGHLIGHT:** Sandra Day O'Connor becomes the first woman to serve on the United States Supreme Court.

## 1982

***Mississippi University for Women v. Hogan***, 458 U.S. 718 (1982). The Supreme Court rules that it is unconstitutional for a state to provide a nursing school for women only, since there is no important governmental interest in perpetuating

women's over-representation in the nursing field.

## 1983

**Arizona Governing Committee v. Norris**, 463 U.S. 1073 (1983). The Court holds that a state pension plan that allows employees to choose retirement benefits from one of several companies, all of which pay women lower benefits than men, violates Title VII. The Women's Rights Project authors an *amicus* brief.

**Newport News Shipbuilding & Dry Dock Co. v. EEOC**, 462 U.S. 669 (1983). In this case the Supreme Court acknowledges that the Pregnancy Discrimination Act establishes that discrimination based on a woman's pregnancy is, on its face, discrimination because of sex, and thus supercedes Gilbert. The case is brought by male employees who claim that the employer's health plan, which covered pregnancy-related services for female employees more fully than for spouses of male employees, discriminates on the basis of sex. The Court holds that such differentiation is indeed discrimination forbidden under Title VII.

## 1984

**Roberts v. United States Jaycees**, 468 U.S. 609 (1984). The Women's Rights Project co-authors an *amicus* brief in this case, urging the Supreme Court to affirm the state decision to strike down the Jaycees' policy of excluding women under state public accommodations law. The

Prison Project, the WRP is currently investigating several instances involving sexual abuse of incarcerated women. As these investigations develop, we may file suits where appropriate.

## Disparities in Services for Incarcerated Women and Girls

Social scientists have identified numerous disparities in programs and services available to women prisoners and girls in detention compared to those available to their male counterparts. Women and girls have fewer placement options available to them. There are fewer correctional facilities for women and detention centers for girls and the ones that do exist are often in remote locations. As a result, women and girls are often confined in facilities farther from their families and social ties. Once in those facilities, women and girls have less access than men and boys do to educational and vocational training, healthcare services, and work release programs. These services and programs are essential to rehabilitation. Without access to education, skills training, or adequate healthcare, women and girls are less equipped to succeed after incarceration or detention and thus more likely to re-enter the criminal justice system.

While the Women's Rights Project has heard anecdotally about these disparities from various ACLU affiliates including Maryland, Virginia, Pennsylvania, Texas, Wyoming, and New York, reform is hampered by a lack of data.

In an effort to begin collecting the necessary data, the Women's Rights Project, along with the ACLU Legal Department and the Juvenile Rights Division of the Legal Aid Society, submitted a proposal to New York University's Robert F. Wagner School of Public Service Capstone Program to research the needs of girls in the juvenile justice system in New York State, and the services and facilities available to meet those needs. In September, our proposal was accepted. The purposes of the research project are: (1) to identify and quantify disparities in the services and facilities that are provided by the New York State Office of Children and Family Services (OCFS) to boys and girls; (2) to identify the needs of the female resident population, some of which may be unique to girls; and (3) to formulate concrete recommendations for improvement.

In New York State, children who are adjudicated as juvenile delinquents in Family Court or convicted as juvenile offenders in Supreme Court are sent to facilities operated by OCFS or to private facilities with which OCFS contracts. Information we have gathered so far indicates that OCFS does not provide girls with the same types of services it provides to boys. Through the Wagner students' research, including interviews with girls currently and previously in

detention, their parents or guardians, staff at the detention facilities, juvenile court judges, and experts in juvenile justice, as well visits to these facilities, we will obtain the necessary data, and be better equipped to pursue reform strategies designed to improve services for girls and eliminate disparities that exist.

Working with the ACLU of Pennsylvania, the ACLU of Pittsburgh Chapter, and the Juvenile Law Center, the WRP and the ACLU Legal Department are also investigating gender-based disparities in the juvenile justice system in Pennsylvania, where we have heard that similar problems exist. We will replicate the research tools developed by the Wagner students in New York and apply them to collect data in Pennsylvania.

## Other Developments

Working with the ACLU's National Prison Project and Capital Punishment Project, the WRP is investigating the growing number of cases involving women on death row and developing strategies to combat the unique problems these inmates face. To gather information about their conditions of confinement, we are developing a questionnaire to send to all women on death row asking about their circumstances, and submitting requests pursuant to state freedom of information laws to all facilities housing women on death row requesting data on the services available to these inmates.

## Employment Discrimination

### Supreme Court Cases

#### *Chevron U.S.A., Inc. v. Echazabal*

The ACLU recently filed an *amicus* brief in the Supreme Court in *Chevron U.S.A., Inc. v. Echazabal*, a case in which the Ninth Circuit held that an employer cannot defend against an Americans with Disabilities Act (ADA) claim for discriminatory failure to hire by arguing that the position sought by the employee would have endangered the employee's health. Our *amicus* brief argues that the Ninth Circuit interpreted the ADA correctly and consistently with broad principles undergirding the civil rights laws. Although the case does not directly raise issues of gender discrimination, the Women's Rights Project is particularly concerned about this case because a reversal could spill over and be used as a basis for limiting the protections of Title VII, particularly for women who have

Court does so, holding that the Jaycees's exclusionary practices are not protected by the First Amendment and that Minnesota has a compelling interest in ending sex discrimination.

#### ***Hishon v. King & Spalding***,

467 U.S. 69 (1984). The Supreme Court finds that partnerships, such as the respondent Atlanta law firm, are "employers" subject to Title VII's prohibition against sex discrimination, and that Title VII requires the law firm to consider women for partnership. The Women's Rights Project co-authors an *amicus* brief in this case.

## 1986

#### ***Meritor Savings Bank v. Vinson***, 477 U.S. 57 (1986).

The Supreme Court holds that sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title VII.

## 1987

#### ***California Federal Savings & Loan Association v. Guerra***

479 U.S. 272 (1987). In this case, an employer seeks a declaration that a state law requiring employers to provide pregnancy leave and reinstatement is preempted by the Pregnancy Discrimination Act's requirement that pregnancy be treated like other disabilities. The Court holds that the Pregnancy Discrimination Act does not prohibit practices favoring pregnant women, and in any case, employers are free to provide comparable benefits to other

disabled employees. The Women's Rights Project files an *amicus* brief.

***Wimberly v. Labor & Industrial Relations***

***Commission***, 479 U.S. 511 (1987). The Supreme Court holds that a Missouri statute denying unemployment benefits to claimants who leave work "voluntarily" and "without good cause" attributable to work or to the employer can be applied to workers who leave because of pregnancy and is not preempted by a federal law that provides that no state can deny unemployment benefits to an individual solely on the basis of pregnancy. The ACLU Women's Rights Project filed an *amicus* brief.

***Johnson v. Transportation Agency, Santa Clara***, 480 U.S. 616 (1987). In this Title VII case brought by a male employee who was passed over for promotion in favor of a female employee with a lower test score, the Supreme Court holds that an employer can take sex into account in such situations if it does so pursuant to an affirmative action plan meant to remedy the underrepresentation of women in traditionally sex-segregated jobs.

## 1989

***Price-Waterhouse v. Hopkins***, 490 U.S. 228 (1989). In this Title VII case, the Supreme Court holds that when gender discrimination plays a part in an employer's decision about an employee, an employer may still avoid Title VII liability if it proves that other reasons played a large enough role in

been denied opportunities "for their own good." In our *amicus* brief we argue that one of the important purposes of federal civil rights law is to maximize the ability of protected individuals to participate fully in society and to have the same freedom to make decisions about where to work and how to live that everyone else has.

The plaintiff in this case, Mario Echazabal, worked for many years at the coker unit of the Chevron refinery as an employee of various contractors. In 1992, he applied to work directly for Chevron in the same unit. Chevron offered him the job contingent on the results of a pre-employment physical examination. When the examination showed Mr. Echazabal's liver was releasing certain enzymes at a higher than normal level, Chevron concluded that his liver might be damaged by exposure to the solvents and chemicals in the unit and rescinded the offer. Mr. Echazabal continued to work in the coker unit as an employee of the contractor and again applied to Chevron in 1995. Again he was offered the job contingent on a physical examination, and again Chevron eventually rescinded the offer because Mr. Echazabal's liver might be damaged by work in the unit. This time, Chevron also instructed the contractor to remove Mr. Echazabal from his position at the refinery.

Mr. Echazabal brought suit against Chevron, arguing that it had discriminated against him on the basis of his disability. Chevron defended against the suit on the ground that work in the coker unit presented a direct threat to Mr. Echazabal's own safety. The Ninth Circuit held that the ADA only permitted such a defense when a disabled individual presented a direct threat to the safety of others. The Ninth Circuit also held that Chevron could not argue that because of the risk of damage to his liver, Mr. Echazabal was not qualified for the position, concluding that an employer could not define the "essential functions" of a job to go beyond the performance of particular job functions and include performance of the job without a risk to one's own health.

The Ninth Circuit's decision rested on the express language and legislative history of the ADA, as well as the general principles that underlie the ADA and other federal employment discrimination laws. Those principles, the Court said, protect the freedom of individuals to weigh the risks and benefits of particular employment and to make their own decisions regarding the jobs they will take, rather than entrust these decisions to employers. In support of the last point, the Court relied on the Supreme Court's decisions in *UAW v. Johnson Controls* and *Dothard v. Rawlinson*, which hold that women may not be excluded from jobs based solely on employers' concerns about their health and safety or the health and safety of children they might conceive. The WRP is concerned that the deci-

sion in this case could implicate the continuing meaning of *Johnson Controls*, a case we played a central role in winning.

### *Pollard v. E.I. Dupont Nemours Company*

In 2001, along with other civil and women’s rights groups, the ACLU signed onto an *amicus* brief in the Supreme Court in *Pollard v. E.I. Dupont Nemours Company* raising the issue whether “front pay” – prospective relief awarded by courts in employment discrimination cases under Title VII – is a form of “compensatory damages” that is subject to dollar caps. On June 4, in a unanimous decision authored by Justice Clarence Thomas, the Court held, as we had argued, that it is not.

The plaintiff, Sharon Pollard, one of only a few women working in the historically male manufacturing plant of E.I. du Pont de Nemours and Company in Tennessee, had sued after she was sexually harassed for several years by co-workers and supervisors who repeatedly taunted her for doing “men’s work” and for holding a supervisory position over certain men.

### *Swierkiewicz v. Sorema*

On November 17, the ACLU joined an *amicus* brief drafted by the National Employment Lawyers Association in *Swierkiewicz v. Sorema*, a Title VII case. The question in this case is whether an employment discrimination plaintiff must do more in his complaint than put his employer on notice of his discrimination claims, *i.e.*, whether he must also plead specific facts showing that at trial he can make out a *prima facie* case of discrimination.

This case is important because the Second Circuit opinion below raised the bar for an employment discrimination plaintiff requiring him or her to be much more specific at the initial stage of filing a complaint than other plaintiffs are required to be by the Federal Rules. If the lower court decision is affirmed, it will be much easier for an employer to dismiss a valid lawsuit and more difficult for an employee to seek and obtain redress for discrimination he or she suffered.

### *Equal Employment Opportunity Commission v. Waffle House*

On May 25, the ACLU joined the National Employment Lawyers Association and the Trial Lawyers for Public Justice in filing an *ami-*

the decision that it would have made the same decision in the absence of discrimination. The Women’s Rights Project coauthors a major *amicus* brief in the case. The *Hopkins* holding will be partially amended by Congress in the Civil Rights Act of 1991, which provides that an employee proves a violation of Title VII when she shows that discrimination plays any part in an employment decision, but may only receive damages if the employer fails to show that it would have made the same decision even in the absence of discrimination.

## 1990

### *Yellow Freight System, Inc. v. Donnelly*, 494 U.S. 820 (1990).

The Supreme Court holds that state courts, as well as federal courts, can hear Title VII claims. The case involves a woman who sought employment as a dock worker and was repeatedly passed over in favor of male candidates, though the company had assured her that it would hire her as soon as a position became available.

### *University of Pennsylvania v. EEOC*, 493 U.S. 182 (1990).

This case involves a claim by a Wharton Business School professor who was denied tenure that the reason for the denial was the negative evaluation of a department chairman who had sexually harassed her; the professor denied tenure argues that her qualifications were equal to or better than the five male professors who were granted tenure. The Supreme Court holds that universities have no common law or First Amendment privilege to with-

hold peer review materials relevant to charges of race or sexual discrimination in tenure decisions.

## 1991

***United Auto Workers v. Johnson Controls***, 499 U.S. 187 (1991). The Women's Rights Project authors an *amicus* brief that helps persuade the Supreme Court that Title VII forbids employers from adopting fetal-protection policies preventing fertile women from working in jobs that entail exposure to lead or other toxins that might harm a fetus. The case holds that women must be allowed to make their own decisions about pregnancy and dangerous work, and as long as women can perform their jobs, employers may not exclude them from certain kinds of work based on expressions of concern for children they might conceive.

## 1992

***Franklin v. Gwinnet County Public Schools***, 503 U.S. 60 (1992). The Supreme Court holds that Title IX supports a claim for monetary damages. In this case the high school student seeking damages claims she was sexually harassed and abused by her teacher and coach and that administrators were aware of the harassment and abuse but took no action to stop it and encouraged her not to press charges against the teacher.

*cus* brief in the Supreme Court in the case *Equal Employment Opportunity Commission v. Waffle House, Inc.*, arguing that an employer cannot force its workers to waive their right to seek EEOC representation in pursuing discrimination claims. The Supreme Court recently issued a decision holding that an arbitration agreement between an employer and an employee does not limit the remedies that the EEOC may seek if it sues the employer.

## Women Police Officers and Firefighters

Women police officers and firefighters played an important role in rescuing victims from the September 11, 2001 attacks. The Women's Rights Project has long fought on behalf of women who hold these traditionally male jobs to ensure their full equality in these important and honored professions. Some of our recent such activities are described below.

### *Lochren, MacDermott, O'Brien, and Mennella v. County of Suffolk and Suffolk County Police Dept.*

On June 7, the Women's Rights Project, along with the New York Civil Liberties Union and the New York law firm Rosen Leff, filed a lawsuit on behalf of three Suffolk County, New York female police officers who were forced off their jobs when they became pregnant. The officers had sought "light-duty" assignments, which were denied.

The Suffolk County Police Department (SCPD) has a long history of sex discrimination and has been operating under a federal Consent Decree for a number of years. The three plaintiffs, all of whom are patrol officers, are among a small number of women officers employed by the SCPD. In the past, all officers were permitted to work light duty at desk and administrative posts. The majority of light duty assignments were requested and filled by women, although women constituted less than 10 percent of the SCPD. Seventy-five percent of those requests were for pregnancy-related reasons, and were held, on average, for fewer than six months.

In April 2000, the SCPD changed the light duty policy to ban officers who incurred a medical condition or injury off the job from filling these positions. The new policy stated that "any . . . officer who suffers an off duty injury, condition or illness that prevents him or her from performing full police duties will not be allowed to work until such time as said officer is able to perform full police duties."

Notwithstanding the new policy, the SCPD permitted officers who already held light duty assignments as a result of conditions incurred off duty to remain in these positions. These officers included men with long-term disabilities such as heart conditions and blindness. By definition, though, after the policy was in effect nine months, no pregnant female officer would fall within this “grandfathered” group. As a result of the change in policy, the three plaintiffs, who wished to work during their pregnancies, were left with no option but to take unpaid leave for the duration of their pregnancies.

The Complaint in this case alleged that denying plaintiffs light duty assignments, while providing these assignments to other employees with medical conditions incurred on or off the job, constitutes intentional discrimination and imposes a disparate impact on women, in violation of Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, and the New York State Human Rights Law.

On October 12, we filed an Amended Complaint, adding a fourth plaintiff – another female police officer who had similarly been denied light duty when she became pregnant. The Complaint also added allegations concerning the consequences of the new light duty policy, which forced our clients to use up their vacation and sick time and then take unpaid leave. In particular, the Complaint alleged that the excessive amount of sick leave used by the plaintiffs during their pregnancies – when they would have otherwise been working light duty if allowed – was counted against them in consideration of promotion, job transfer, seniority, and longevity.

All of the plaintiffs – Sandra Lochren, Sarah MacDermott, Patricia O’Brien, and Kelly Mennella – have served on the SCPD for many



Sandra Lochren

photo courtesy of Sandra Lochren

## 1993

**Harris v. Forklift Systems**, 510 U.S. 17 (1993). The Supreme Court holds that a person does not have to prove psychological damage in order to prevail in a sexual harassment suit, but can win based on evidence of conduct that would reasonably be perceived to be hostile and sexually abusive.

**HIGHLIGHT:** Ruth Bader Ginsburg becomes the second woman to serve on the United States Supreme Court.

## 1996

**United States v. Virginia**, 518 U.S. 515 (1996). Justice Ginsburg delivers the opinion of the court, ruling that the all-male Virginia Military Institute’s (VMI) discriminatory admissions policy violates women’s equal protection rights and ordering the school to admit women or forfeit its government funding. The Women’s Rights Project participates in this case as *amicus* and as advisor.

**M.L.B v. S.L.J.**, 519 U.S. 102 (1996). The Supreme Court holds that a state may not deny a parent the right to appeal termination of parental rights because poverty prevents her paying for the record; the state must supply the record itself.

## 1998

***Oncala v. Sundowner Offshore Services***, 523 U.S. 75 (1998). The Supreme Court unanimously holds that Title VII prohibits same-sex sexual harassment. The case involves a male offshore oil rig worker who was subjected to sex-related humiliating actions by male co-workers and physically assaulted in a sexual manner by two male co-workers and a supervisor. The Women's Rights Project co-authors an *amicus* brief in the case.

***Faragher v. City of Boca Raton***, 524 U.S. 775 (1998). The Supreme Court holds that when a harassing supervisor with authority over an employee takes a "tangible employment action" against the employee, the employer is strictly liable for the supervisor's action under Title VII. The Women's Rights Project co-authors an *amicus* brief in the case.

***Burlington Industries v. Ellerth***, 524 U.S. 742 (1998). In this sexual harassment case, a companion to *Faragher*, the Court again holds that an employer is automatically subject to vicarious liability for an actionable hostile environment created by a supervisor when tangible employment action is taken. If no such "tangible employment action" has taken place, the employer may claim that it exercised reasonable care to prevent and correct promptly any sexually harassing behavior and that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective

years, winning commendations for their service. Like most of their fellow police officers, they are of childbearing age. Unlike their male counterparts, however, as a result of the SCPD's discriminatory policy, their ability to serve as police officers and protect their communities has been compromised by their desires to have families.

Officer Lochren said that she was disheartened to learn about the SCPD's change in light duty policy. "In a job where it's all about respect for your supervisors, the sudden change in policy was a blatant show of disrespect for female officers," Officer Lochren said. "It made me feel like I wasn't a valuable employee just because I chose to have a family." The consequence of forced leave is especially difficult, she noted, "in a day and age where economically both spouses have to work to make ends meet."

The County is seeking to have the case dismissed and the court will likely hear argument on the County's motion in winter 2002. The Project is simultaneously beginning to prepare for a possible trial in this case. In the alternative, the WRP is also discussing settlement of the lawsuit and is currently preparing a proposed Consent Decree to submit to the County.

### *Lanning v. Southeastern Pennsylvania Transportation Authority*

In October, the Women's Rights Project and the ACLU of Pennsylvania joined an *amicus* brief drafted by the National Center on Women and Policing and the Women's Law Project, in *Lanning v. Southeastern Pennsylvania Transportation Authority*, a Title VII employment discrimination case that is before the U.S. Court of Appeals for the Third Circuit.

The case involves a challenge to an entry-level standard imposed by the Southeastern Pennsylvania Transportation Authority (SEPTA), the Philadelphia transit police department. That standard, which requires applicants to run 1.5 miles in 12 minutes, discriminates against female applicants and is neither job-related nor consistent with business necessity.

In 1997, plaintiffs and the Department of Justice (DOJ) filed separate lawsuits against SEPTA; the two cases were consolidated. The District Court entered judgment in favor of SEPTA, but the Third Circuit reversed and sent the case back to the District Court. In 2000, when the case went before the District Court again, the court again held that the test did not violate Title VII. Plaintiffs appealed.

DOJ, however, now under the Bush Administration, notified the Third Circuit that it was dropping its appeal, and a spokesman stat-



ed that DOJ now believes that the test is important for public safety. Once DOJ flipped sides, plaintiffs and the civil rights community thought it was critical to amass strong *amicus* support. Because this case is important specifically and because it allows the Project to continue to focus generally on women and policing, the Women's Rights Project is part of that *amicus* effort.

## Other Developments

Along with the ACLU Reproductive Freedom Project, the WRP consulted with the ACLU of the National Capital Area about a District of Columbia Police and Fire Department policy that requires all female applicants to take a pregnancy test and prohibits the hiring of any applicant who is pregnant. Rookie firefighters apparently were also told that they would be fired if they became pregnant and that they could not take medical leave for pregnancy. After the affiliate had conversations with the city attorney, the Police and Fire Departments rescinded their policy. The Project is following up with the Departments and gathering information about their current policy with regard to pregnancy tests as well as light duty or leave during pregnancy.

The Project is also monitoring a similar situation in Florida and gathering information about their police and fire department pregnancy policies.

## Next Steps

The Women's Rights Project will continue to investigate the problems facing women in policing, firefighting, and other non-traditional employment. As part of its broader goal of promoting women's opportunities in non-traditional occupations, the Project is investigating women's entry into and advancement in fields such as rescue work, construction, and plumbing. Working with the Massachusetts affiliate, the WRP is investigating claims of unequal training and employment opportunities for women in the plumbers' union. Specifically, women have complained that they do not receive adequate training in their apprenticeships, are discriminated against and held to a higher standard than men when they seek the necessary skills to perform certain tasks, and are denied equal opportunities for job placement upon completion of their apprenticeships.

opportunities provided by the employer.

***Gebser v. Lago Vista Independent School District***, 524 U.S. 274 (1998). The Supreme Court makes clear the circumstances under which schools are liable for damages when a teacher sexually harasses a student. The Court holds that under Title IX, a school is liable for damages when a school official with knowledge of the teacher's harassment and authority to take corrective action acts with deliberate indifference to the teacher's conduct.

## 1999

***Saenz v. Roe***, 526 U.S. 489 (1999). The Supreme Court holds that California's one-year residency requirement for individuals seeking full welfare benefits is an unconstitutional violation of individuals' right to travel, as protected by the Fourteenth Amendment.

***Davis v. Monroe County Board of Education***, 526 U.S. 629 (1999). The Supreme Court rules that school districts may be liable under Title IX for student-to-student harassment if they are aware of the problem and act with "deliberate indifference" rather than try to resolve it. The Women's Rights Project participates as an *amicus*.

***Miller v. Albright***, 523 U.S. 420 (1999). The Supreme Court upholds different rules for unmarried citizen fathers versus those for unmarried citizen mothers who wish to transmit

citizenship to their foreign-born, out-of-wedlock children. The Women's Rights Project co-authors an *amicus* brief in the case.

***Kolstad v. American Dental Association***, 527 U.S. 526 (1999). In this sex discrimination case, the Supreme Court holds that a court may grant punitive damages to a woman alleging sex discrimination in violation of Title VII even if she does not show that the employer's conduct was "egregious" or "outrageous." Because it is the employer's state of mind that is relevant, she must only show that the employer acted with malice or with reckless indifference to the lawfulness of his action. The Court also holds that an employer will not be vicariously liable for the discriminatory decisions of its managerial agents in cases where the decisions are contrary to the employer's good faith efforts to comply with Title VII. The Women's Rights Project joins in an *amicus* brief.

## 2000

***United States v. Morrison***, 529 U.S. 598 (2000). In this case brought under the civil rights remedy provision of the Violence Against Women Act, which permits victims of gender-motivated violence to sue their attackers under federal law, the Supreme Court holds that: (1) the Commerce Clause does not provide Congress with authority to enact the civil rights remedy provision of VAWA, and (2) the enforcement clause of the Fourteenth Amendment does not provide

## Sex Role Stereotypes

The Women's Rights Project has long been committed to dismantling gender stereotyping, whether applied to women or men. Toward that end, the WRP is co-counsel with the ACLU Lesbian and Gay Rights Project and the ACLU Legal Department in *Oiler v. Winn Dixie*. In this case, we represent Peter Oiler, who was fired from his job as a truck driver for Winn Dixie supermarket in Louisiana because he cross-dressed off the job. Mr. Oiler's firing was based on gender stereotyping and not on any legitimate job-related reason. As a result, it was unlawful sex discrimination prohibited by Title VII.

"I was fired from one of America's largest grocery store chains because I am transgendered – they said my behavior was harmful to the company's image," said Mr. Oiler. "To be told that after 21 years with the company felt like a knife in my chest. I showed up for work on time, did a good job and followed all the rules, but I was fired because I cross-dress off-duty. We lost our health insurance, and nearly had our home foreclosed. The unbearable stress took, and still takes, a toll on our health and continues to affect our 24-year marriage."

The case is currently in discovery, and we recently filed a motion for summary judgment.

## Other Employment Cases

### *Knox-Schillinger v. TWA*

The Women's Rights Project represented Linda Knox-Schillinger and a class of TWA flight attendants in a pregnancy discrimination case that challenged TWA's policy of requiring all pregnant flight attendants to take a mandatory unpaid leave of absence immediately upon becoming pregnant. The case settled in 1995 and as part of the settlement agreement, TWA agreed to give members of the class of flight attendants ten travel vouchers for each pregnancy they had during the period when the unlawful mandatory unpaid leave policy was in effect. These travel vouchers could be used by the flight attendants or their family members to travel anywhere in the world at any time during their lives. Approximately 2000 class members each received on average 25 travel vouchers under the settlement agreement.

In January 2001, TWA declared bankruptcy and announced that American Airlines had offered to purchase it. In the purchase agreement, American refused to honor the flight attendants' travel vouch-

ers. In March, the Women's Rights Project appeared in Bankruptcy Court in Wilmington, Delaware, to object to the purchase with respect to American's refusal to continue the voucher program. Several other objectors appeared as well, challenging other aspects of the proposed purchase. Notwithstanding these objections, the Bankruptcy Court granted permission for the sale to go forward.

The Project appealed the Bankruptcy Court's decision, arguing that American should not be relieved of its obligation to continue to honor the travel vouchers awarded as part of the pregnancy discrimination settlement as a result of its purchase of TWA. The District Court ruled against the flight attendants and the WRP appealed to the Third Circuit. That appeal is currently pending.

### *Weigmann v. Glorious Foods*

The Women's Rights Project filed this major class action on behalf of hundreds of underpaid women who work in the catering industry. Glorious Foods had discriminated against women by hiring only or disproportionately more male staff for its higher paying, more prestigious assignments. In 1997, the WRP settled the case for monetary damages and injunctive relief requiring the company to hire men and women in proportion to their numbers on the company's active wait list. In 2001, the Project continued to monitor and disburse thousands of dollars in compensation to the class of women and to enforce the strict injunctive relief ordered by the court.

## Parenting and Employment

Essential to women's advancement in the workplace is employers' accommodation of the parenting and other family responsibilities of female and male employees. Employers must assist employees in balancing work and family obligations. For true equality to become a reality, men must be given an equal opportunity to share in family life just as women must be given an equal opportunity to advance in their careers.

Beginning with the 1975 case *Weinberger v. Wiesenfeld*, in which the Supreme Court struck down gender-based distinctions in the award of social security benefits – which previously had been awarded to widows, but not to widowers, to care for young children – the Women's Rights Project has fought for equal treatment for mothers and fathers.

In a major victory in November, a federal appeals court ruled in *Knussman v. State of Maryland* that the Maryland State Police

Congress with the authority to enact the civil rights remedy.

***Reeves v. Sanderson Plumbing Products, Inc.***, 530 U.S. 133 (2000). The Court holds that a jury may in some circumstances find gender discrimination in violation of Title VII based on evidence that the reasons an employer gives for an employment decision are untrue, even in the absence of any direct evidence of discrimination. The Women's Rights Project participates as *amicus*.

## 2001

***Ferguson v. City of Charleston***, 121 S. Ct. 1281 (2001). In this case involving a South Carolina hospital that tests pregnant women for substance abuse and reports positive results to the police, the Court holds that pregnant women cannot be subject to warrantless, suspicionless searches simply because they are pregnant. The Women's Rights Project co-authors an *amicus* brief in this case.

***Pollard v. E.I. Dupont Nemours Co.***, 121 S. Ct. 1946 (2001). The Women's Rights Project joins an *amicus* brief in this case in which the Supreme Court holds that "front pay" – a form of prospective relief awarded by courts in employment discrimination cases under Title VII – is not a form of "compensatory damages" subject to dollar caps. The plaintiff, Sharon Pollard, one of only a few women working in the historically male manufacturing plant of E.I. DuPont de Nemours and

Company in Tennessee, sued after she was subjected to sexual harassment for several years by co-workers and supervisors who repeatedly taunted her for doing "men's work" and for holding a supervisory position over certain men.

could not escape liability for their discriminatory treatment of a male state trooper who was denied leave from work to care for his newborn baby. The police department had claimed that the trooper, Kevin Knussman, was not entitled to leave because the department limited parental leaves of absence to "mothers only." The decision by the Fourth Circuit Court of Appeals was an important step toward gender equality in America.



Associated Press photo

Kevin Knussman leaves court with his family

**Nguyen v. INS**, 121 S. Ct. 2053 (2001). The Women's Rights Project co-counsels this case challenging one of the few remaining statutes explicitly discriminating on the basis of gender. The law at issue automatically deems out-of-wedlock children born overseas to be United States citizens when their mothers are citizens, but requires affirmative steps acknowledging paternity before the child is 18 to establish the child's citizenship if only the father is a citizen. Voting 5-4 the Court holds the law to be constitutional, over a strong dissent by Justice O'Connor.

"What the court said is that government officials who knowingly discriminate based upon gender will no longer be permitted to escape responsibility by hiding behind the cloak of official immunity," said Deborah A. Jeon, an ACLU of Maryland staff attorney, who was one of the attorneys representing Mr. Knussman.

In addition to rebuffing the Maryland Police, the appeals court sent the case back to the District Court for retrial as to the amount of damages to be awarded to Mr. Knussman. In 1999, Mr. Knussman was awarded \$375,000 by a jury, which found, in a landmark verdict, that the Maryland Police's intentional gender discrimination violated the Fourteenth

Amendment of the United States Constitution and the Family and Medical Leave Act (FMLA). Because the court's order sending the case back to the lower court was ambiguous as to the issues to be retried, the ACLU of Maryland and the WRP filed a motion for clarification that is currently pending before the Fourth Circuit.

"For us, this case has never been about the money," said Mr. Knussman, who has been a stay-at-home dad since his retirement in July 1999, following a 23-year career as a state trooper. "It is about taking a stand for family values, and for holding the government responsible when it violates employees' constitutional and civil rights."

Trooper Knussman's ordeal began in 1994, when he requested several weeks of leave from his job as a police flight paramedic to care for his newborn daughter and his wife, who had suffered life-threatening pregnancy complications.

Maryland State Police personnel manager Jill Mullineaux and other police commanders acting at her direction contended that only women could qualify for parental leave, because only women can breastfeed a baby. Mullineaux told Knussman that as a man he was ineligible for childrearing leave unless his wife was “in a coma or dead.” Mr. Knussman was ordered to return to work, and told that if he did not obey he would be reported as AWOL, a firing offense.

In its own investigation, the Maryland State Police’s Fair Practices Office found that Mullineaux’s conduct toward Mr. Knussman was wrongful, but the department suppressed this ruling until long after its issuance, when it was turned up in the litigation.

“My family and I are fortunate to have been able to bring public attention to the issue of family leave and the imperative for equal treatment of men and women with respect to child care benefits,” said Mr. Knussman. “That, in turn, has assisted thousands of public safety personnel. It’s very gratifying to hear from troopers and others that our efforts have enabled them to take more time to meet family needs.”

In rejecting the Maryland State Police’s attempts to assert immunity, the court’s majority said: “Government classifications drawn on the basis of gender have been viewed with suspicion for three decades . . . [G]ender classifications that appear to rest on nothing more than conventional notions about the proper station in society for males and females have been declared invalid time and again by the Supreme Court.”

The case was filed in 1994 by the ACLU of Maryland. The Women’s Rights Project, with former Senior Staff Attorney Sara Mandelbaum, later joined in the lawsuit.

### Other Developments

The Women’s Rights Project is currently monitoring and providing advice on several cases challenging the validity or application of the FMLA in courts throughout the country and may file briefs in some of these cases.

The Maryland affiliate recently filed a petition for *certiorari* in the Supreme Court in *Montgomery v. State of Maryland*. The case involves a lawsuit filed by Sheila Montgomery, an employee at Eastern Correctional Institution (ECI), a prison in Maryland. From September 22, 1999 to November 8, 1999, Ms. Montgomery took a leave of absence from work to recuperate from surgery. Before leaving, Ms. Montgomery was the principal aide to the Warden at ECI. Upon returning, however, she was assigned to the position of



Ginsburg with daughter Jane, summer 1965

photo courtesy of the Supreme Court of the United States

secretary in the prison's maintenance department, at the same salary and with the same benefits as she had received in her previous position. The FMLA states that upon return from leave an employee must be restored to his or her previous position or "an equivalent position with equivalent employment benefits, pay, and other terms



Steven Wiesenfeld with son Jason

and conditions of employment." Ms. Montgomery brought suit because her new position was substantially different from and inferior to her former position: it was entirely menial and clerical, and had less job security.

The petition for *certiorari* raises two legal questions (1) whether a state can reassert a defense of immunity that it had earlier expressly withdrawn and (2) whether a general allegation that an employee's new duties after FMLA leave are substantially different from and inferior to her former duties is enough to state a

claim for relief, even when she also raised specific allegations that a court found insufficient. The petition argues that the Fourth Circuit erred by affirming the District Court's ruling on immunity even though the state had withdrawn this defense, and by finding that Ms. Montgomery had not stated a claim under the FMLA.

In *Lizzie v. Washington Metropolitan Area Transit Authority* (WMATA), the Women's Rights Project and the ACLU of Maryland consulted with the attorney handling another FMLA case in the Fourth Circuit. The case was brought on behalf of a mechanic who suffered from serious health conditions. The employer doubted the veracity of plaintiff's medical conditions, believing that he had falsified these conditions to extend his summer vacation, and fired him. A WMATA employee who was unaware of the termination retroactively designated plaintiff's absences as "approved FMLA leave."

The plaintiff sued, arguing that his supervisors had failed to provide him with adequate information about his rights under FMLA and that his termination was unwarranted. The lower court ruled in favor of WMATA because it found that although Congress intended to remove states' immunity by passing the FMLA, Congress went

beyond its authority in doing so. The court denied WMATA's claim, however, that the individual supervisors were immune from suit.

The Fourth Circuit affirmed in part and reversed in part. It affirmed the District Court's conclusions that WMATA was immune from suit. However, it reversed the court's holding that supervisors were not immune. The Supreme Court recently denied the plaintiff's petition for *certiorari*.

## Pregnancy and New Reproductive Technologies

### *Ferguson v. City of Charleston*

The ACLU filed an *amicus* brief in this case, in which the Supreme Court held that pregnant women cannot be subject to warrantless, suspicionless searches simply because they are pregnant.

At issue in *Ferguson v. City of Charleston* was a South Carolina public hospital's policy that subjected pregnant women to surreptitious drug screens of their urine, the results of which were turned over to law enforcement authorities. Under the program, 30 women were arrested, 29 of whom were African-American.

In its decision, issued in March, the Supreme Court recognized that pregnant women have as great a right to privacy, bodily integrity, and autonomy as other free adults. The decision underscored that women do not become wards of the state or forfeit their constitutional rights when they become pregnant. In the majority opinion, Justice John Paul Stevens dismissed the state's argument that drug testing pregnant women falls under the "special needs" exception of the Fourth Amendment's protection against unreasonable searches and seizures.

Furthermore, the Court insisted on the importance of confidentiality in the medical context, noting that "the reasonable expectation of privacy enjoyed by the typical patient undergoing diagnostic tests in a hospital is that the results of those tests will not be shared with nonmedical personnel without her consent." Accordingly, the Court's opinion will shape the growing debate about the need to protect medical information in general in this country.

This decision is especially important to low-income women who disproportionately use public hospitals where the risk of collaboration with law enforcement is greatest. Intertwining medical care with law enforcement not only violates pregnant women's constitutional

rights and the confidentiality of the doctor-patient relationship, it also deters them from seeking prenatal care.

In the past several years, states have increasingly intruded into the lives of pregnant women, policing their conduct in the name of protecting fetuses. Pregnant women have been forced to undergo unwanted cesareans; ordered to have their cervixes sewn up to prevent miscarriage; incarcerated for consuming alcohol; and detained for failing to seek medical care.

Fortunately, in many of these cases the invasive state actions have been rescinded by higher officials or rejected by the courts. Unfortunately, many of these corrective actions came too late to prevent unwarranted suffering and to protect women from being deprived of their rights.

The Supreme Court's ruling in *Ferguson* will help prevent such intrusions into the lives and rights of pregnant women. It sent a clear message that even a conservative Court is not willing to allow the serious erosion of basic constitutional rights in the name of the "war on drugs."

### *J.B. v. M.B.*

On August 14, the New Jersey Supreme Court ruled unanimously that a woman could prevent her ex-husband from having the couple's frozen embryos implanted in another woman. Upholding the right not to procreate, the court said that the embryos could be destroyed or remain frozen at the clinic where they were created, but could not be used by the ex-husband in a future relationship of his own, or donated to another infertile couple, over the ex-wife's objection. The ACLU of New Jersey appeared as *amicus* in the case at all stages, and Lenora Lapidus, then Legal Director of the New Jersey affiliate, argued the case on appeal.

### Other Developments

The Women's Rights Project has long been concerned about discrimination faced by pregnant high school students. For example, in 1998, the Project, along with the ACLU of Kentucky, filed a lawsuit against Grant County School District for denying National Honor Society membership to two teen mothers because of their pregnancies. The settlement, which came after a federal judge ordered the school district to allow Somer Chipman Hurston and Chasity Glass to become Honor Society members,



provided that the school was barred from discriminating on the basis of gender or pregnancy. The settlement agreement established that the Women's Rights Project would monitor the National Honor Society's selection process at Grant County High School in Kentucky for five years.



Chasity Glass



Shawn Hurston and Somer Chipman

The WRP is also concerned about discrimination against pregnant or parenting students by school counselors and teachers, who often encourage the students to leave mainstream schools for alternative schools. Such specialized schools, if they exist, often fail to provide equal educational opportunities to pregnant or parenting students. Often pregnant or parenting teens simply drop out of high school. The Women's Rights Project is investigating complaints of discrimination against pregnant and parenting teens in high schools in North Carolina, Illinois, and New York, as well as elsewhere in the country. In 1999, through the WRP's grants-to-affiliates program, we provided seed money to these three ACLU affiliates to investigate compliance with Title IX of the Education Amendments Act prohibiting discrimination based on pregnancy and parenting.

With the assistance of our grant, the ACLU of North Carolina researched Title IX as well as state laws and regulations that govern the rights of pregnant students in public schools. The WRP has reviewed and edited a handbook that the affiliate is preparing on these issues, which will be distributed to students. In addition, the affiliate sent a Public Records Act request to every school system and to all the alternative school programs in North Carolina that serve pregnant students requesting policies and information about how students are referred to alternative schools and the quality of these

## TIMELINE OF WOMEN'S RIGHTS LEGISLATION

### 1963

Congress passes the Equal Pay Act, the first federal law to prohibit wage discrimination on the basis of sex.

### 1964

Congress passes Title VII of the Civil Rights Act of 1964, prohibiting employers from making employment decisions on the basis of race, color, religion, sex, or national origin.

### 1972

Congress approves the Equal Rights Amendment (ERA) to the United States Constitution. President Nixon signs it and sends it to the states for ratification.

Congress passes Title IX of the Educational Amendments Act, prohibiting discrimination on the basis of sex in schools and educational programs that receive federal funds.

### 1978

Congress passes the Pregnancy Discrimination Act, making clear that discrimination on the basis of pregnancy is discrimination on the basis of sex under Title VII and making it

school programs. The affiliate also developed and disseminated a survey to several Adolescent Parenting Program Coordinators throughout the state to be completed by pregnant and parenting teens about how they were treated in the schools during their pregnancies.

The Project is working with the ACLU of North Carolina staff as they review and analyze the documents received, follow up with the alternative schools to obtain additional information, and determine what should be done next. In addition, the Project plans to use the Public Records Act request as a model, along with additional material, to send to all affiliates so that they can collect similar data about possible discrimination against pregnant and parenting teens in their states. The Project has already sent it to the ACLU of Southern California and is working with them to develop a similar request to use in Los Angeles County.

The WRP is also consulting with the Oklahoma affiliate on a complaint received from a woman whose insurance policy covers pregnancy-related care only for married women. The Massachusetts affiliate addressed a similar issue several years ago. The Project is gathering more information about the facts and researching the legal issues raised by such insurance practices.

Finally, the WRP, along with the Lesbian and Gay Rights Project and the Reproductive Freedom Project, has consulted with the Connecticut affiliate about legislation concerning assisted reproductive technology, with a focus on protecting the rights of parties to gestational or surrogacy arrangements. In 2000, the affiliate quashed efforts to enact such legislation out of concern about the civil liberties implications of many of the provisions. They are now interested in suggesting amendments to the proposed legislation that would protect the parties involved. The WRP is consulting with them in this process.

## Education

### *Litman v. George Mason University*

Annette Litman was a student at George Mason University when she began to be sexually harassed by one of her professors. She complained to the University, but found that after she complained, other professors in the department were unwilling to work with her. After she wrote an angry email to some of these professors, they brought charges of sexual harassment against her. As a result, she was ultimately expelled, while the professor she initially complained of went unpunished. In 2001, a federal trial court in Virginia threw out her

claim that the University had unlawfully retaliated against her for making a sexual harassment complaint, finding that while the law prevented the school from retaliating against students complaining of sexual harassment, it did not provide students with any right to enforce this rule in court. Under the court's ruling, a student's right to be free from retaliation when protesting against a school's gender discrimination is essentially meaningless. In coming to this conclusion, the court relied on the recent Supreme Court decision in *Alexander v. Sandoval*, which holds that individuals have no right to sue to enforce federal regulations barring programs that receive federal funds from undertaking activities that have a disparate impact on racial minorities, because only statutes passed by Congress, and not administrative regulations, can give individuals the right to go to court to enforce their rights.

The Women's Rights Project joined in an *amicus* brief prepared by the National Women's Law Center appealing this decision to the U.S. Court of Appeals for the Fourth Circuit. The brief argues that the right to be free from gender discrimination necessarily includes the right to be protected from retaliation for complaining of gender discrimination, and since the law is clear that a student can sue in court to enforce the first right, she must also be allowed to sue in court to enforce the second.

### The Virginia Military Institute

In 1996, the Supreme Court of the United States, in an opinion written by Justice Ginsburg, ordered the Virginia Military Institute (VMI) to end its 157-year-old discriminatory policies and begin to admit women. The Court found that the exclusion of women from VMI was unconstitutional and that women had every right to participate in the rigors of the military education provided by VMI if they so desired. This year, the Project learned that VMI was planning to adopt a policy that would make pregnancy grounds for dismissal from the academy, despite federal law that prohibits schools from discriminating against students based on pregnancy or parenthood. While the policy technically punishes both female students who become pregnant and male students who impregnate someone, in actuality it is clear that women, whose pregnancies will be readily apparent, will be harmed by this policy while male students will be unscathed unless they affirmatively report the pregnancies of their partners. As Kent Willis, the Executive Director of the ACLU of Virginia pointed out, "Unless VMI plans to track the sexual partners of its cadets, the fair implementation of this policy is not possible." The Women's Rights Project and the ACLU of Virginia warned the Board of Visitors of VMI that implementation of the proposed policy could result in legal action against the school or the with-

illegal for employers to discriminate against women based on pregnancy, childbirth, or pregnancy-related conditions.

## 1982

The ERA narrowly fails to gain ratification by the necessary 38 states. However, many states adopt Equal Rights Amendments to their constitutions.

## 1991

The Civil Rights Act of 1991 becomes law, effectively overriding several recent Supreme Court decisions that placed new obstacles in the paths of plaintiffs seeking relief from discrimination under Title VII.

## 1993

The Family and Medical Leave Act becomes law, providing employees with 12 weeks unpaid leave to care for a newborn, a newly adopted child, a seriously ill family member, or the employee's own serious illness.

drawal of federal funds. The Project is monitoring the school's actions in response to this warning and, if necessary, will undertake legal action on this issue.

## Girls and Sports

Two of the most important advances made in educational equity in recent decades are the new opportunities for girls in sports and their increased participation in athletics. Studies indicate that girls who play sports are more self-confident than those who do not and are far less likely to engage in drug use or face unintended pregnancies. The Women's Rights Project is dedicated to protecting the advances girls have made in athletics and continuing to press for progress in recognizing girls' rights to receive the same opportunities and encouragement to participate in sports as boys. To this end, the Project is currently investigating various complaints regarding inferior playing fields provided to girls' teams in comparison to boys' teams by towns and schools, and expects to participate in litigation on this issue in the coming year.

## Girls and Vocational Education

One reason for the persistent pay gap between men and women and the persistence of women's poverty is the segregation of employment by gender. While more and more women have entered the labor market in recent decades, most women still work in female-dominated industries, where wages are typically lower than those in jobs most commonly held by men. In order to end this disparity, it is crucial for girls and women to receive the training necessary to enable them to compete for higher-wage, traditionally male jobs. The Women's Rights Project is investigating the availability of training for high school girls in such trades, including shop, auto mechanics, and computers.

## Discrimination in Public Accommodations

### *Orendorff v. Elks Lodge No. 96*

For years, women were systematically excluded from clubs and organizations where men forged valuable relationships that helped them become successful in their professions and influential in their communities. Public accommodations laws, forbidding discrimina-

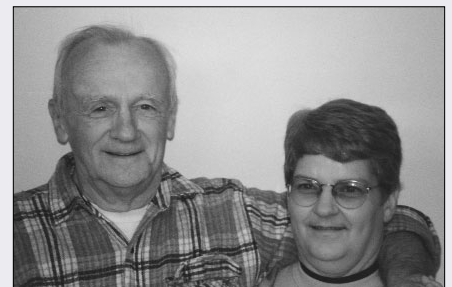
## DISCRIMINATION IN PUBLIC ACCOMMODATIONS

tion on the basis of sex in organizations that are not small and exclusive enough to be truly private, began to change this and to open valuable opportunities for women to participate fully in their communities with the same supports and advantages as men. Many pockets of discrimination remain, however, and this year the Women's Rights Project worked to open the doors of one more organization to women.

Since 1982, Bonnie Orendorff worked as an assistant cook and waitress at the local Elks Lodge in Rome, New York. It was while working at the Lodge that 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 as a result of their involvement in the Elks, and wanted to participate in these activities and benefit from these networks. She felt she in turn could help the Lodge by donating her time and services to assist in the kitchen, at parties, or whenever needed.

Despite the fact that in 1995 the national Elks organization had amended its constitution to allow women to join the Elks, and despite the fact that since then local 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. Nevertheless, Ms. Orendorff and two other women applied for membership in March 1999. Although she and the other women were both properly sponsored and approved by the investigatory committee, they were rejected for membership. Not a single male applicant who had been properly sponsored and approved by the investigatory committee had been denied membership at the Lodge for at least twenty years. Ms. Orendorff and the other two women reapplied for membership again the next year, and were again rejected. The Exalted Ruler of the Lodge, recognizing the vote to be discriminatory on the basis of gender in violation of Elks rules, called for a revote, at which once again Ms. Orendorff and the other two women applicants were rejected.

No one at the Lodge ever gave any reason for rejecting these applicants other than the fact that they were women. Indeed, columns in the Lodge newsletter acknowledged the Lodge's policy of barring women. When a new Exalted Ruler was elected shortly after the last discriminatory vote against Ms.



Roger and Bonnie Orendorff



Bonnie Orendorff and friends in front of the Rome, NY Elks Lodge

Orendorff, his first column in the newsletter closed with a definition of fraternity as “men of the same class, profession, or tastes,” with the word men underlined. Ms. Orendorff’s husband resigned from the Rome Lodge and joined the Elks Lodge in a neighboring town that did not discriminate against women. Ms. Orendorff was invited to join this and other lodges as well, but she chose to pursue her application to the Rome lodge.

Ms. Orendorff filed a complaint with the New York State Division of Human Rights. The complaint was dismissed because of a provision in state law permitting benevolent orders like the Elks to discriminate on the basis of gender. But in August, the Women’s Rights Project, with the New York Civil Liberties Union and cooperating attorney Karen DeCrow, brought suit in court on Ms. Orendorff’s behalf. The lawsuit seeks an order requiring the Lodge to comply with the Elks rules forbidding discrimination on the basis of gender. The suit also argues that the state law exception allowing benevolent orders to discriminate while forbidding such discrimination by other similar clubs is unconstitutional because it encourages and protects discrimination against women. The case was recently argued. We are waiting for a ruling from the court.

“I have high hopes that this case will turn out wonderfully for me and all women,” Ms. Orendorff said. “I have every intention of becoming an Elk of the Rome Lodge.”

## Discrimination in Immigration

### *Nguyen v. INS*

On June 11, the Supreme Court upheld one of the few remaining federal statutes that still explicitly discriminates on the basis of gender. At issue in the case was whether an out-of-wedlock child born overseas to only one American parent can become an American citizen more easily if the mother is American than if the father is American. Plaintiffs, an American father and his Vietnamese-born son, challenged a provision of an immigration law that provides that if the mother is the citizen, the child is deemed an American citizen at birth, but a citizen-father in the same circumstances must take affirmative steps to acknowledge paternity, such as obtaining a sworn statement or court order, before the child turns 18. The ACLU, along with NOW-LDEF and other attorneys, represented the plaintiffs.

The Supreme Court identified two government interests that it found were sufficient to sustain the law. The first is the government’s inter-

est in assuring that the parent seeking to transmit citizenship is, in fact, the child's biological parent; the second is the government's interest in assuring that parent and child at least have the opportunity to develop an actual relationship.

The Court overlooked, however, that both of those interests could be served through requirements that do not discriminate between men and women. Genetic testing makes it possible to establish with absolute certainty who is the father. And, in fact, in this case the father, not the mother, had raised the son from childhood to adulthood.

In a strongly worded dissent, Justice Sandra Day O'Connor stated, "No one should mistake the majority's analysis for a careful application of this court's equal-protection jurisprudence concerning sex-based classifications." She called the decision an "aberration" and "deviation" from the Court's scrupulous examination of sex discrimination. The majority opinion, she said, "may itself simply reflect the stereotype of male irresponsibility that is no more a basis for the validity of the classification than are stereotypes about the 'traditional' behavior patterns of women."

### *Lake v. Reno/Ashcroft*

Working with the ACLU Immigrants' Rights Project, the WRP is counsel in this case, which raises the same issue as *Nguyen*: a father's right to establish his child's citizenship on the same basis as a mother under the immigration laws. We won in the Second Circuit and the government appealed to the Supreme Court. The Court held the case pending resolution of *Nguyen*. On June 18, the Court granted the petition for a writ of *certiorari*, vacated the judgment, and remanded the case to the Second Circuit for further consideration in light of *Nguyen*.

## New Staff at the Women's Rights Project

In 2001, several new staff members joined the Women's Rights Project.

### Lenora M. Lapidus, Director

On March 1, Lenora Lapidus became the new Director of the Women's Rights Project. For five years before joining the WRP, Ms. Lapidus served as the Legal Director of the American Civil Liberties Union of New Jersey, where she developed a substantial legal docket on a broad range of civil liberties issues, including women's rights. Ms. Lapidus is a 1990 graduate, *cum laude*, of Harvard Law School, and a 1985 graduate, *summa cum laude*, of Cornell University. During law school, she was an editor for the *Harvard Civil Rights-Civil Liberties Law Review*, served as Intake Director for the Harvard Legal Aid Bureau, and was a member of the Harvard Women's Law Association. Her first job in the legal field, during the summer after her first year of law school, was an internship in the ACLU Women's Rights Project. As an undergraduate, Ms. Lapidus was a member of the College Scholar Program – a competitive interdisciplinary major – and completed a concentration in Women's Studies. Her honors senior thesis was a study of the tactics used by the National Organization for Women from its inception in the late 1960s through the early 1980s. Between college and law school, Ms. Lapidus spent two years as a Research Assistant at the Henry Murray Research Center at Radcliffe College, where she collected and analyzed archival materials on women and social change. During this time, she also served as Vice President for Public Relations for the Boston Chapter of the National Organization for Women.

After graduating from law school, Ms. Lapidus served as law clerk to the Honorable Richard Owen, in the United States District Court for the Southern District of New York. From 1992-94, she was a Staff Attorney Fellow at the Center for Reproductive Law and Policy in New York City, where she litigated abortion rights cases throughout the country. She then served as the 1994-96 John J. Gibbons Fellow in Public Interest and Constitutional Law, at Gibbons, Del Deo, Dolan, Griffinger & Vecchione, in Newark, New Jersey, where she litigated cases involving a broad range of issues, including welfare reform, HIV testing, battered women's self-defense, termination of parental rights, affordable housing, prisoners' rights, and capital punishment. In addition to her litigation and public policy experience, Ms. Lapidus has taught *Gender and the Law*, *Procreation and the Law*, and *Women and Public*



photo by Dennis Hong

Lenora Lapidus speaking to a student group at Yale Law School about the need to extend civil rights to low-income women and women of color



*Policy* as an adjunct professor. She has published articles and a book chapter on reproductive rights, capital punishment, and child custody, and along with other WRP staff, is currently writing the Fourth Edition of *The Rights of Women*. Ms. Lapidus has served on several committees and boards of directors, including the Sex and Law Committee and the Civil Rights Committee of the Association of the Bar of the City of New York, the New Jersey Supreme Court Task Force on Bias Against Lesbians and Gay Men in the Courts, and Essex-Newark Legal Services. In 2001, she was awarded the Wasserstein Fellowship by Harvard Law School, for outstanding public interest attorneys.

### **Namita Luthra, Staff Attorney**

In September, Namita Luthra joined the WRP as a staff attorney. She previously worked in the Office of the Appellate Defender in New York, where she argued several criminal appeals. Before joining the Appellate Defender, in 1996-1997, she served as a Karpatkin Fellow in the ACLU Legal Department. Ms. Luthra graduated from the University of Pittsburgh School of Law in 1996 and from Byrn Mawr College in 1991. She volunteered at the ACLU of Pittsburgh throughout law school and worked one summer as an intern at the Women's Rights Project. She also served as the director of the law school's Feminist Law Forum. Ms. Luthra has worked extensively with Sakhi, a New York-based organization that assists South Asian women with domestic violence and other problems.



Emily Martin and Namita Luthra in front of the Supreme Court

### **Emily Martin, Staff Attorney**

Also in September, Emily Martin began work as a staff attorney at the WRP. Ms. Martin graduated from Yale Law School in 1998 and from the University of Virginia, with highest distinction, in 1995. She clerked in the U.S. District Court for the Eastern District of Virginia, then received a Georgetown Women's Law and Public Policy Fellowship to work as an attorney at the National Women's Law Center, and then completed a clerkship with Judge Feinberg on the U.S. Court of Appeals for the Second Circuit. During law school, she was a summer intern at the ACLU Legal Department and at the National Women's Law Center, served as a teaching assistant in Jed

Rubinfeld's Constitutional Law class, and was the student director of Community Legal Services Clinic at the Jerome Frank Legal Services Organization in New Haven, Connecticut. Before attending law school, Ms. Martin worked with the West Virginia Women's Commission.

## Other Developments



LaShawn Warren

### LaShawn Warren, Legislative Counsel

The ACLU National Legislative Office hired LaShawn Warren as legislative counsel in June. Ms. Warren is responsible for analyzing the civil liberties implications of federal legislation relating to women's rights, voting rights, and affirmative action. Her duties include: preparing and delivering testimony on pending legislation before Congressional committees; researching and drafting legislative memoranda on federal bills and proposed administrative rules and regulations affecting civil liberties; lobbying members of Congress and their staff to support ACLU positions on pending legislation; conducting in-depth civil liberties briefings for congressional and Executive Branch staff; participating as the ACLU representative in meetings of *ad hoc* legislative coalitions; and working with national and local media. She previously worked as a Legislative Analyst for the Seattle City Council and as an Assistant Attorney General in Olympia, Washington. Ms. Warren graduated from Howard University School of Law in 1996 and from Savannah State College, *magna cum laude*, in 1993. During law school, she served as Co-Editor in Chief for the *Howard Scroll: The Social Justice Law Review*, was a member of the Howard Law National Moot Court Team, was a member of the Academics Committee, and served as President of the Christian Legal Society. Also while in law school, she was a legal intern with the National Coalition to Abolish the Death Penalty and with the Center for Constitutional Rights' Voting Rights Office.

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