ACLU WOMEN'S RIGHTS PROJECT 2008 REPORT

ACLU FOUNDATION
AMERICAN CIVIL LIBERTIES UNION

WOMEN'S RIGHTS PROJECT

2008 ACLU Women's Rights Project Report

[R]ecognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

— UNIVERSAL DECLARATION OF HUMAN RIGHTS PREAMBLE

In memory of Todd Drew
(May 13, 1967 – January 15, 2009),
who, as in years past, played an integral role in making
this year's report a reality and whose passion for and commitment
to civil rights and liberties is an example to us all.

PUBLISHED
January 2009

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When will our consciences grow so tender that we will act to prevent human misery rather than avenge it?

— ELEANOR ROOSEVELT

In the face of a struggling economy, two wars, and eight years in which the Constitution has been severely undermined, the ACLU Women's Rights Project celebrates this year's historic election and we stand in solidarity with the American electorate's call for a renewed commitment to our fundamental values of democracy, equality, and opportunity. In January 2009, President-Elect Barack Obama, our nation's first African-American President, will be joined by a record number of women serving in Congress and an unprecedented number of high-ranking women and people of color appointees who are committed to a progressive vision for social change.

As we look to a new Administration and Congress, we are faced with the possibility of a new era, one in which civil rights, civil liberties, and human dignity are respected and compassion attends our civic responsibilities, policy making, and engagement with others, in this country and in the broader international community. With a spirit of unity, WRP plans to continue pursuing an affirmative agenda that brings together individuals whose hearts and minds are committed to economic and racial justice and gender equity, and to hold our elected officials and governments accountable to this mandate for change. In this effort, we are committed to making meaningful connections between various and often disparate movements for social justice to more effectively and meaningfully push for policies that impact and improve the lives of the most marginal populations in our society. We do so with the hope that from these new alliances and connections will arise

the new voices, visions, and visibility of women leaders in low-income communities and communities of color. Only when the most vulnerable in our society gain access to the political process and feel empowered to assert their rights and affect change in their communities, will we be able to wholly eradicate systemic barriers to equality and fully recognize the human dignity of *all* people and communities.

On December 10, 2008, WRP and advocates around the world celebrated the sixtieth anniversary of the adoption of the Universal Declaration of Human Rights, the foundational document of the United Nations and, indeed, of a commitment to human rights around the globe. In the wake of the horrors of World War II, the Universal Declaration was created by a newly constituted Commission on Human Rights to ensure that *never again* would the world see such devastation. As a leading advocate for social justice and the Commission's chairperson, Eleanor Roosevelt was instrumental in guiding a group of eminent jurists in the creation of the Universal Declaration and imparting it with its foundational balance of civil and political rights on the one hand, with economic, social, and cultural rights on the other. In the United States, we have certainly come a long way in the fight for gender equality, but sixty years after the Universal Declaration defined the contours of the rights to which every human being is entitled, we continue to see the discriminatory treatment and systemic oppression of women and girls. In light of 2008's historic election and WRP's longstanding commitment to freedom and opportunity, the 2008 Women's Rights Project Report celebrates the Universal Declaration's affirmative principles and aspirational vision for the future. As the Declaration asserts, "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." In the year to come, WRP will continue to advocate for women's full political, civil, and cultural participation in society to ensure that all women share equally in the promise of liberty.

Lenora M. Lapidus, Director
ACLU Women's Rights Project
January 2008

EXECUTIVE SUMMARY

WRP employs a dynamic approach to women's rights advocacy aimed at securing gender equality and ensuring that all women are able to lead lives of dignity. Harnessing the power of civil rights and civil liberties law, and international human rights norms, WRP advocates on behalf of the most marginalized communities to end the structural oppression of women and girls. Through an integrated program that combines litigation, legislative advocacy, and public education, WRP advocates on behalf of poor women, women of color, and immigrant women who face discrimination and other systemic barriers to equality, with a particular focus on economic justice and employment, equal educational opportunities, ending violence against women, and addressing the needs of women and girls in the criminal and juvenile justice systems. Cutting across our four main programmatic areas, we apply international human rights norms and integrate novel human rights strategies into our advocacy to ensure women's and girls' full equality and participation in society.

In 2008, WRP faced many challenges and won a number of significant victories for gender equality. Our employment work largely centered on advocacy to ensure that the most vulnerable women, namely poor women, women of color, and immigrant women, are able to work free from discrimination and in safe working environments. We continued our efforts to ensure that domestic workers who have been trafficked and held in slavery by their diplomat employers are able to enforce their rights in federal court. We also continued to defend the legality of broad affirmative action policies put in place by the New York City Department of Education to remedy a history of discriminatory hiring of custodians. In a victory for equal opportunity, WRP, along with the ACLU Racial Justice Program and the respective ACLU affiliates, also successfully defeated anti-affirmative action ballot initiatives in Missouri and Oklahoma.

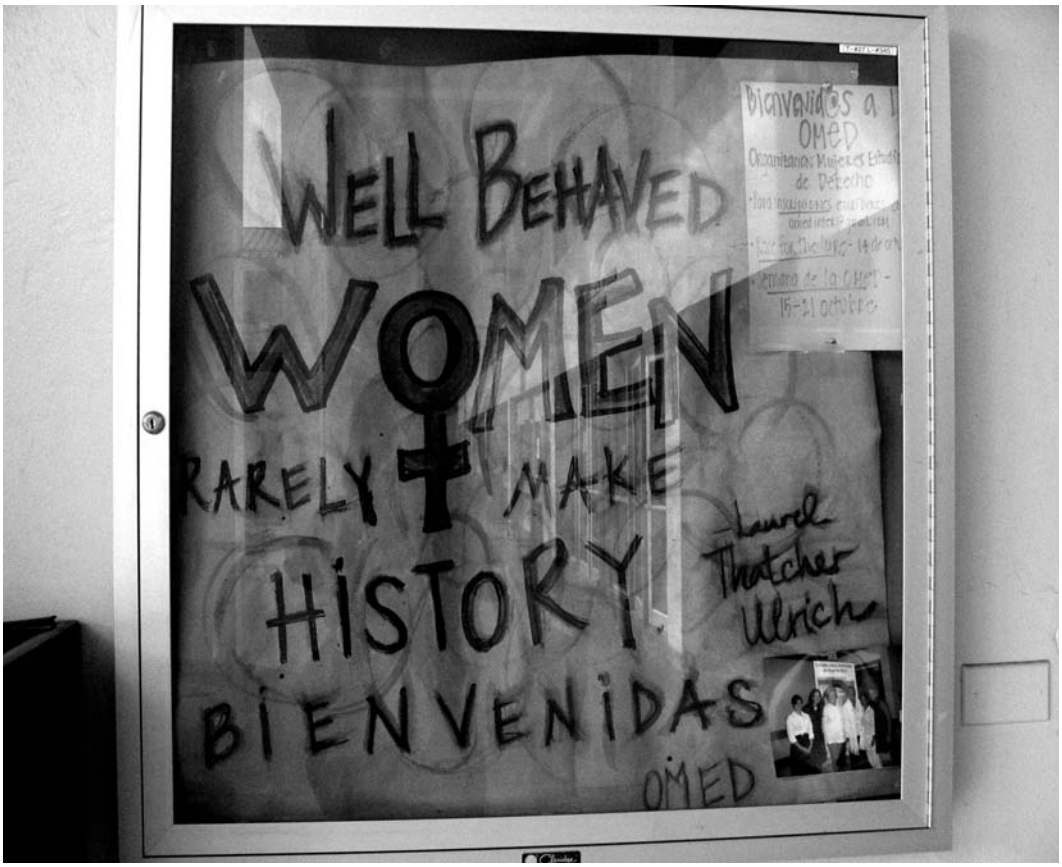
WRP is committed to ensuring that cycles of violence against women do not continue in the form of discrimination against survivors of domestic violence, sexual assault, and stalking. In 2008, in partnership with a number of ACLU affiliates and a broad coalition of advocates, WRP worked to raise awareness about the housing needs of domestic violence survivors and the discrimination they face. We pushed the U.S. Department of Housing and Urban Development to properly implement the fair housing provisions of the Violence Against Women Act. We also were successful in gaining broad policy changes at a private Detroit-area property management company. The company agreed not to evict or discriminate against tenants because they have been victims of domestic violence and the new policy includes early-lease termination and relocation provisions for victims of intimate partner violence who are taking steps to ensure their safety. WRP also continued in its advocacy to ensure that federal, state, and local governments take affirmative steps to protect women from gender-motivated violence and hold police accountable for properly enforcing domestic violence orders of protection.

In 2008, WRP worked to preserve and promote Title IX of the Education Amendments' goal of gender equality in educational opportunity. This year, WRP, in close partnership with a number of ACLU affiliates, worked to stem the growing trend of sex-segregated public education. In May 2008, WRP and

the ACLU of Kentucky took over representation of plaintiffs in a class action lawsuit that challenges a Kentucky school district's policy of segregating its students by sex, which exposes girls and boys to learning environments that are fundamentally unequal. The lawsuit also names the U.S. Department of Education as a defendant and challenges the 2006 Department of Education regulations that purport to authorize schools to adopt such policies. In addition to this litigation, WRP has collaborated with ACLU affiliates in Alabama, Georgia, Kentucky, Michigan, Massachusetts, New Jersey, and Florida to address this trend through public education initiatives, open records requests, and legislative and executive advocacy. We also supported efforts to ensure that colleges and universities take steps to rectify gender-motivated violence on campus.

WRP conducted broad advocacy in 2008 to ensure that when women and girls are imprisoned, they are held in humane conditions and afforded psychological services and other programming integral to their rehabilitation and eventual re-entry into society. In Texas, we partnered with the ACLU Human Rights Program, the ACLU National Prison Project, and the ACLU of Texas to bring a federal class action suit on behalf of girls held in the state's youth prison to challenge the prison's use of solitary confinement and invasive and traumatizing strip and pat searches. In partnership with the ACLU of New Jersey, we were successful in getting a group of women prisoners transferred out of a men's prison where they were not receiving services and programming appropriate to their needs and we will continue to advocate for meaningful assurances that the New Jersey Department of Correction will not again arbitrarily transfer women to a men's prison. In close collaboration with several ACLU affiliates across the country, we also launched a broad advocacy initiative that seeks to address the consequences for women, especially poor women and women of color, of criminal convictions or prior arrests. Additionally, we were able to secure a policy change in San Bernardino County, California, that provides specific accommodations for Muslim women to wear religious head coverings in accordance with their religious beliefs while detained and/or held in local jails.

There are many challenges ahead of us, but with the strength and vision of the intrepid women that have led the way in the path toward justice before us, WRP will continue to explore novel ways to use litigation, legislative advocacy, human rights strategies, and public education to advance gender equality. Our work is made possible by our courageous clients and the unyielding dedication of our supporters, our partner women's and civil rights organizations, cooperating law firms, and colleagues in the ACLU National Office, the Washington Legislative office, and the state ACLU affiliates. We sincerely thank all of you, and look forward to the many developments and challenges in the year to come.



Poster at the Interamerican University Law School in San Juan, Puerto Rico, which hosted a conference held by WRP and the ACLU of Puerto Rico on the Violence Against Women Act's housing protections

Advancing Economic Justice *and* Equal Employment Opportunities

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work … to protection against unemployment … [to work] without any discrimination … [and] to equal pay for equal work.

UNIVERSAL DECLARATION OF HUMAN RIGHTS ARTICLE 23

Economic opportunity is the bedrock of personal autonomy and for this reason the ACLU Women's Rights Project seeks to ensure that all women – especially low-wage women of color – have equal access to employment and fair workplace treatment. Our advocacy to ensure economic opportunity and personal independence for women includes a broad strategy to end gender discrimination, sexual harassment, and workplace exploitation by strengthening affirmative action policies and practices, working to guarantee healthy and safe working conditions, and challenging the undervaluing of "women's work." WRP is committed to ensuring that immigration status is not used by employers to discriminate against women workers or to deprive them of their right to fair and equitable treatment in the workplace and proper remuneration for their labor. WRP also challenges the extreme exploitation of women in the form of labor trafficking and forced servitude and seeks to ensure that victims of trafficking are able to enforce their rights. Additionally, we advocate for the removal of barriers to economic and employment opportunities for the growing number of women with criminal records.

DIPLOMATIC IMMUNITY and DOMESTIC WORKER EXPLOITATION

The ACLU Women's Rights Project has particular interest in fields of employment where women are a majority of the workforce because far too often these sectors are under-regulated, workers in these occupations are not extended the same workplace protections as are employees in other types of employment, and women workers are typically paid less than men working in comparable jobs. This is especially true in the field of domestic labor, such as with in-home caregivers and house cleaners. Within this field a subset of domestic workers – namely, the domestic employees of foreign diplomats to the United States – often suffer extreme exploitation rising to the level of slavery and are unable to enforce their rights because of diplomatic immunity.

Notwithstanding the federal government's commitment to combat trafficking in persons – a modern manifestation of slavery – for far too long, policy-makers in Washington, D.C., have ignored the plight of domestic workers who, lured with the promise of economic opportunity, are trafficked to the United States by their diplomat employers.

The Trafficking Victims Protection Act (TVPA) defines trafficking in persons as "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." Notwithstanding the federal government's commitment to combat trafficking in persons – a modern manifestation of slavery – for far too long, policy-makers in Washington, D.C., have ignored the

plight of domestic workers who, lured with the promise of economic opportunity, are trafficked to the United States by their diplomat employers. Traffickers typically target victims, the vast majority of whom are women and children, who are disproportionately affected by severe poverty, lack of access to educational opportunities, chronic unemployment and underemployment, and lack of economic opportunity in their home countries. Human trafficking is a problem of epic proportions and international scope. At least 700,000 people are trafficked within or across international borders each year and approximately 50,000 women and children are trafficked into the United States each year alone.

The United States Department of State issues special non-immigrant employment visas – more than 3,000 every year – so that ambassadors, foreign diplomats, consular officers, and employees of international organizations can bring their nannies and other household employees into the United States. Once here, these domestic workers too often become slaves in the household, unaware of their rights and forced to work against their will. Not only does the government continue to issue these visas without proper oversight and without providing domestic workers with any measure of education about their rights, but when a domestic worker seeks to enforce her rights, the Department of State has repeatedly construed the Vienna Convention on Diplomatic Relations to cloak diplomats with immunity from both criminal prosecution and civil suit. The Vienna Convention is an international treaty that, among other things, sets out the privileges and immunities enjoyed by diplomatic missions across the world. In effect, diplomatic immunity construed in this way and without consideration of the egregiousness of the conduct, shields diplomats' treatment of their domestic workers from judicial review and thus these workers are left in a legal vacuum with few, if any, options for legal recourse.

This is hardly a case of a few rogue diplomats exploiting their domestic employees. A July 2008 report by the U.S. Government Accountability Office identified 42 individuals in possession of non-immigrant employment visas who have alleged that foreign diplomats have abused them in the last eight years. Through our own work, partnerships with other organizations, and media reports, WRP is aware of more than 60 such cases, and the total number of incidents is likely much higher because of underreporting due to victims' isolation and fear of contacting law enforcement and the government's failure to adequately track such allegations. The loophole in U.S. policy that exempts diplomats from accountability for exploiting their domestic workers not only violates the TVPA, the very statute enacted to stop trafficking in persons, but it flies in the face of the Thirteenth Amendment's prohibition of slavery and involuntary servitude and international human rights norms prohibiting slavery and slavery-like practices. In this way, the Department of State facilitates and is complicit in enabling the trafficking of humans with respect to domestic workers who are imprisoned and exploited by their diplomat employers.

Sabbithi v. Al-Saleh (D.D.C.)

In the summer of 2005, Major Waleed Al Saleh, a Kuwaiti diplomat, and his wife, Maysaa Al Omar, brought three Indian women to the United States to live and work as domestic workers in their home in McLean, Virginia. These three women, Kumari Sabbithi, Joaquina Quadros, and Tina Fernandes, all come from backgrounds of severe poverty and have families in India who rely on their financial support, so when the Al Saleh family offered them jobs and the potential for economic opportunity in the United States, the choice was clear for each of them.

Once Ms. Sabbithi, Ms. Quadros, and Ms. Fernandes arrived in the United States, things were very different than what they had been promised. They were subjected to extreme abuse by the Al Saleh family and forced to engage in backbreaking work for long hours with little time for repose; they were often not allowed to eat or to use the restroom during work hours and were frequently deprived of food altogether. The women were forced to work every day from 6:30 or 7:00 a.m. until late in the night, sometimes as late as 1:30 a.m., for a salary of approximately $250 to $350 a month. The women, however, never received any of the money, as it was sent directly to their families in India, leaving the women penniless. They were also subjected to persistent threats and verbal and physical abuse, including one particularly violent incident in which Ms. Sabbithi was knocked unconscious after being thrown against a kitchen table by an enraged Mr. Al Saleh. The diplomats strictly prohibited the women from contact with the outside world – although two of them were allowed one hour off a month to attend church services – and the family confiscated the women's passports. Finally, in the winter of 2005, fearing for their lives and without any other options, each of the women individually fled the diplomat's household.

"These hard-working women must be able to enforce their constitutional and human rights to be free from slavery and they deserve to have their case heard in federal court."

– Araceli Martínez-Olguín, WRP Staff Attorney

In January 2007, WRP and the ACLU Human Rights Program, in cooperation with Dechert LLP, filed suit against Mr. Al Saleh and Ms. Al Omar for trafficking Ms. Sabbithi, Ms. Quadros, and Ms. Fernandes to this country and forcing them to work as domestic servants and childcare providers against their will in slavery-like conditions. Further, the suit alleges that the diplomats subjected the women to physical and psychological abuse and paid them meager wages in violation of federal and state law, the Constitution, and international law. The suit seeks to expand the exception to diplomatic immunity for commercial activity, and employs a novel legal theory to hold the State of Kuwait liable for the abuse the women suffered at the hands of its diplomat. The lawsuit puts Kuwait and every other country that is granted the privilege of bringing domestic workers to the United States on notice that they cannot turn a blind eye to the abuses perpetrated by their agents. "Unscrupulous diplomats who abuse their

employees cannot hide behind the cloak of diplomatic immunity and avail themselves of the protections of the Vienna Convention any longer," said WRP Staff Attorney Araceli Martínez-Olguín. "These hard-working women must be able to enforce their constitutional and human rights to be free from slavery and they deserve to have their case heard in federal court."

Shortly after we filed our complaint in January 2007, the Department of Justice initiated a criminal investigation of Mr. Al Saleh and Ms. Al Omar for forced labor, involuntary servitude, and trafficking violations. In October 2007, we learned that based on the evidence obtained during the criminal investigation, the U.S. Department of Justice asked the U.S. Department of State to request that Kuwait waive Mr. Al Saleh's immunity from criminal prosecution. Kuwait declined to waive immunity, but Mr. Al Saleh and his family were sent back to Kuwait.

In 2008, we continued litigation against the diplomat, his wife, and Kuwait. In March 2008, the judge denied without prejudice the individual defendants' motion to dismiss on diplomatic immunity grounds. The court solicited the Department of State for a statement on its position as to whether trafficking constitutes a commercial activity, and thus an exception to diplomatic immunity. The Department of State filed its statement in July 2008, asserting that a diplomat's employment of a domestic worker is not a "commercial activity" under the Vienna Convention, but rather, an activity incidental to the diplomatic assignment, to which immunity attaches notwithstanding conduct that amounts to slavery in violation of the Thirteenth Amendment, international norms, and the Trafficking Victims Protection Act. Shortly after the Department of State filed its statement, the individual defendants again moved the court to dismiss the lawsuit, invoking diplomatic immunity. We briefed our opposition to the renewed motion to dismiss and the individual defendants replied. We now await ruling on the motion. In August 2008, we were finally successful in serving the complaint on Kuwait by way of diplomatic channels. In November, Kuwait filed a motion to dismiss the lawsuit arguing improper service and immunity under the Foreign Sovereign Immunity Act. We recently briefed our opposition to this motion.

In addition to the immediate litigation, WRP in 2008 met with high-ranking representatives from the U.S. Department of State in hopes of crafting some measure of a remedy for Ms. Sabbithi, Ms. Quadros, and Ms. Fernandes. In September, WRP staff met with Mark P. Lagon, Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, and Mark B. Taylor, Senior Coordinator, Reports and Political Affairs, both from the U.S. Department of State, to discuss compensation for our clients. We highlighted more general issues regarding the exploitation of domestic workers by foreign diplomats and the problem of diplomatic immunity. We also discussed the possibilities of collaborating on possible legislative and diplomatic briefings to educate policymakers about the unenforceability of domestic workers' civil rights and the failure of the United States government to protect these workers from forced servitude.

WRP joined DAMAYAN Migrant Workers Association, CASA de Maryland, and other domestic worker organizations at a rally calling for justice for Marichu Baoanan and all domestic workers trafficked by diplomats.

Baoanan v. Baja (S.D.N.Y.)

In October 2008, WRP was joined by Boat People SOS, Casa of Maryland, Inc., DAMAYAN, and a number of other domestic worker advocacy organizations in filing a friend-of-the-court brief in support of Marichu Baoanan, a Filipina domestic worker who brought a federal lawsuit against her diplomat employer earlier in the year. Ms. Baoanan was a nurse and a small business owner in the Philippines, but when hardship befell her, she decided to migrate to the United States in pursuit of economic opportunity.

In January 2006, Ms. Baoanan was brought to New York City by Lauro Baja, Jr., Philippines Ambassador to the United Nations (from 2003-2006), with the promise that Mr. Baja's wife, Norma Baja, would help Ms. Baoanan eventually find employment as a nurse. Upon Ms. Baoanan's arrival, the Bajas alleged a substantial debt, confiscated her passport, and subjected her to three months of involuntary servitude, forced labor, and physical and psychological abuse. The Bajas forced Ms. Baoanan to work for 18 hours a day, seven days a week, without so much as a single day off. For three months of work –including cleaning the Baja's five-story, eight-bedroom Manhattan townhouse; cooking; doing the laundry; and providing medical care for Ms. Baja and childcare for the Bajas then-five-year-old grandson – she was paid a mere $100. The Bajas only allowed Ms. Baoanan to eat their leftover food scraps, and they verbally humiliated her, often calling her "stupid" and "slow." They also prohibited her from using the telephone and only allowed her to leave the family home if accompanied. In April 2006, a Good Samaritan connected Ms. Baoanan with victim services and after being informed of her rights, she escaped the Baja home.

Once free, Ms. Baoanon filed a civil lawsuit against Mr. and Ms. Baja and their adult daughter. The complaint also names Labaire International Travel, Inc., the travel and employment agency that helped facilitate the visa process and collected fees. Labaire also provided temporary housing for Ms. Baoanan and coordinated her travel to the United States. During the relevant time, Ms. Baja was president and her daughter was vice president of Labaire.

The judge presiding over the case ordered the parties to brief the effect of Mr. Baja's diplomatic immunity. WRP filed a friend-of-the-court brief arguing that human trafficking, like the historical global slave trade, is highly profitable and that diplomats who traffic domestic workers are part of a global,

commercial, and profitable industry that uses force, fraud, and coercion to exploit workers for personal profit. Our brief argues that, by engaging in activity that is profitable to the diplomat, and neither part of a diplomat's official functions nor incidental to a diplomat's everyday life (the standard articulated by courts that have considered the "professional or commercial activity" exception to immunity), diplomat-traffickers forgo their right to diplomatic immunity from civil suit. The brief also argues that the commercial activities exception to diplomatic immunity must be interpreted in a manner consistent with established precedent that the employment of laborers by embassies or foreign missions necessarily constitutes a commercial activity under the commercial activities exception to the Foreign Sovereign Immunities Act (FSIA). FSIA is the federal statute that establishes and sets limits on how a foreign nation or its agent may be sued in a U.S. court. When viewed in light of FSIA, the commercial activities exception to immunity under the Vienna Convention cannot shield exploitative and discriminatory conduct from judicial review. We presently await a ruling on the defendants' motion to dismiss.

Federal Legislative Advocacy to Restore the Rights of Domestic Workers Employed by Diplomats

WRP has taken a multifaceted approach in seeking to ensure that the civil rights of domestic workers are honored and to help prevent violations of their rights at the hands of their diplomat employers. Our legislative advocacy to this end began in 2007 when Congress began considering the reauthorization of the TVPA. WRP viewed this as an opportunity to work with Congress to ensure that domestic workers employed by diplomats are better protected from abuse. WRP and the ACLU Washington Legislative Office (WLO) worked closely to draft model legislation that mandates preventative and remedial measures to ensure that domestic workers employed by foreign diplomats are informed of their rights in the United States, have access to assistance, and have the ability to seek compensation for abuses suffered at the hands of their diplomat employers. Most importantly, the model legislation would provide civil remedies for domestic workers who have been exploited, trafficked, or subjected to forced labor by their diplomat employers.

In anticipation of the reauthorization process, in 2007, WRP partnered with the Washington Legislative Office to submit written comments to the Senate Judiciary Subcommittee on Human Rights and the Law at its hearing "Legal Options to Stop Trafficking." Additionally, WRP and WLO conducted a number of visits to Capitol Hill, engaging in conversations about proposed solutions with staffers on the House Judiciary Committee, Senate Judiciary Committee, Senate Foreign Relations Committee, and Senate Appropriations Committee. In late 2007, the House passed HR 3887, The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, but disappointingly the bill's specific provisions to remedy diplomatic immunity issues were weak and insufficient.

In May 2008, the U.S. Senate introduced S. 3061, a bill of the same name as the House bill, that would

Domestic workers, advocates, and activists march to the United Nations building in New York in protest of diplomatic immunity for abuse and exploitation of domestic workers.

reauthorize the TVPA. As a result of discussions between the ACLU and the Senate Foreign Relations Committee, the Senate bill greatly improves upon the December 2007 House bill by offering additional, key protections to domestic workers employed by foreign diplomats under non-immigrant working visa programs. In recognition of the considerable improvements incorporated into the Senate version of the bill, in July 2008, the Washington Legislative Office sent a letter to the Senate Judiciary Committee commending the leadership of Senators Joe Biden, Sam Brownback, and Dick Durbin in their laudable efforts to improve the plight of domestic workers who are trafficked by foreign diplomats into the U.S. Additionally, the letter applauds the Committee's decision to exclude from the Senate bill provisions that would redefine prostitution as sex trafficking and discussed the ACLU's concerns about the efforts by some to conflate prostitution and sex trafficking.

On December 10, 2008, the 60th Anniversary of the Universal Declaration of Human Rights, WRP was pleased to learn that both houses of Congress passed a compromise bill, which would take great strides towards preventing the abuse, exploitation and trafficking of domestic workers employed by foreign diplomats in the United States. The law contains specific provisions to enhance their protection by ensuring that domestic workers are made aware of their rights in this country directly by consular officers who will be trained on U.S. labor standards and separately from their employers. It also requires a diplomat to have a contract with a domestic worker containing terms regarding the conditions of employment. It mandates that the State Department suspend the issuance of visas to a particular mission

when the department receives credible evidence that a worker was exploited or abused and the mission tolerated the conduct. It further institutes mandatory recordkeeping on diplomats and domestic workers by the State Department, including allegations of trafficking or abuse. The legislation also requires that several compensation approaches be studied and evaluated so that workers may receive appropriate compensation when their employment contracts are violated. "This is a significant achievement," said ACLU Legislative Counsel Vania Leveille. "With their visas, domestic workers were assured by the State Department that they would be protected by the laws of the United States. Instead, they found themselves exploited and enslaved. This new legislation makes clear that the trafficking and enslavement of domestic workers by diplomats within the U.S. will no longer be tolerated." The bill was signed by President Bush on December 23, 2008.

PERSONAL ACCOUNT OF OTILIA LUZ HUAYTA, DOMESTIC WORKER FROM BOLIVIA AND PETITIONER TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

My name is Otilia Huayta. I came to this country also with my daughter. Her name is Carla Wara. I arrived in this country on October 28, 2005. I came with a woman diplomat. We signed the employment contract back in Bolivia; we didn't do it here in the United States.

Once I arrived here in this country, my ex-employer told me that my contract was just figurative; that it didn't mean anything. My salary was $200 a month. My daughter also received a salary of $15 a month for taking care of their little girl.

They mistreated me psychologically. They caused me great harm. They yelled at me, they yelled at my daughter. They were always bossing her around, telling her she should or shouldn't do certain things.

My workday schedule was from 7:00 in the morning and didn't end until 11:30 or 12:00 at night.

Food was very scarce. Because they were a family of eight, they always counted the food so there was enough for eight people. That is, eight pieces of chicken, or fruit, or bread, or any other kind of food. The food was always counted. They didn't account for us. There was no bread for us. And most of all for Carla. She could never bring a good meal to school. Her lunches were very poor. People noticed this at her school.

My room, where I lived, was a hallway where people came in and out of the house. The bad thing that I didn't like, that made me very afraid, was that the son of my employer always walked around through the hallway half naked. I had a great fear of him.

I left – well actually I was rescued by CASA of Maryland – on June 2, 2006. My lawyer, Alexis, and the police came. Everyone. They all came. The diplomats refused to give me my things back, not even my passport. My boss had kept my passport at her work.

It was something very painful, hurtful... I have felt very bad because of all the things that happened.

Petitioner Otilia Luz Huayta and her daughter Carla

Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats (Inter-Am. C.H.R.)

In 2007, WRP and the ACLU Human Rights program, together with the University of North Carolina School of Law Immigration/Human Rights Clinic and Global Rights, began working together to bring international attention to the fundamental failure of the U.S. government to ensure the civil and human rights of domestic workers who are enslaved by diplomats. In November 2007, the ACLU and its coalition partners – together with five domestic workers from Argentina, Bolivia, Bangladesh, Indonesia, and Zimbabwe and three organizations that provide services to domestic workers (Andolan, Break the Chain Campaign, and CASA of Maryland) – filed a petition before the Inter-American Commission on Human Rights (IACHR) asking the Commission to hold the United States accountable for abuses the petitioners suffered at the hands of their diplomat employers. Established in 1959 under the auspices of the Organization of American States (OAS), the IACHR, which sits in Washington, D.C., is expressly authorized to examine allegations of human rights violations by all countries in the Western Hemisphere, including the United States. The IACHR is also authorized to conduct site visits to observe the human rights conditions in all 35 member states of the OAS and to investigate specific allegations of violations of multi-national human rights treaties.

One petitioner, Otilia Luz Huayta, a citizen of Bolivia, came to the United States with her 12-year-old daughter Carla to work as a live-in domestic worker for a Bolivian diplomat and her family in their suburban Maryland home. When Ms. Huayta arrived, the diplomat confiscated her passport and forbade her from leaving the house alone or using the telephone. In violation of the employment contract between Ms. Huayta and the diplomat, Ms. Huayta was forced to work 16 hours a day without a break and was paid a mere $200 per month for this work. The diplomat also deprived Ms. Huayta and Carla of adequate food. In fact, it was when Carla's school teacher noticed that Carla was bringing lunches of just bread and water to school that the teacher grew concerned about Carla's home life. When Ms. Huayta began to pass notes through her daughter to Carla's concerned teacher, the teacher sought assistance for them. In June 2006, the police and attorneys from CASA of Maryland rescued Ms. Huayta and her daughter from these deplorable and slave-like conditions.

With the assistance of CASA of Maryland, Ms. Huayta formally denounced her employer and submitted a written report to the U.S. Department of State, Immigration and Customs Enforcement, and the Montgomery County Police Department. Ms. Huayta also requested assistance and intervention from the Bolivian Embassy and with the support of the embassy, her employer agreed to an informal settlement of her unpaid wages on the condition that Ms. Huayta not reveal the diplomat's name. Because diplomatic immunity would make a federal lawsuit against her employer unlikely to succeed, Ms. Huayta was forced to settle her case outside the legal structure, without due process or any assistance from the U.S. government. Although the settlement does not come close to making Ms. Huayta whole for the harms she suffered, it was the only option she had. What is worse is that this settlement, a pale version of justice, is much more than most victims of trafficking by diplomats receive as compensation for the harms they have suffered.

In the name of the five named petitioners and the thousands of domestic workers they represent, the petition calls on the U.S. government to live up to its obligations under the American Declaration on the Rights and Duties of Man to ensure that no class of workers can be subjected to human rights abuses in this country with impunity. The petition is currently pending a decision by the Commission regarding its admissibility.

PROTECTING the WORKPLACE RIGHTS of LOW-WAGE IMMIGRANT WOMEN WORKERS

Low-wage immigrant women toil in jobs that are crucial to our economy, yet these workers and the work they perform remain undervalued and overlooked. Often, these women work in jobs where few, if any, workplace protections exist to guarantee fairness in pay and treatment, such as in small retail stores and restaurants, in nail salons, in private homes, in packing plants, and on farms. The women who occupy these jobs generally come from impoverished backgrounds, lack access to educational opportunity, and speak little English, so even when there are protections in place, these women often lack familiarity with U.S. law and law enforcement authorities. In this way, the race, ethnicity, and social status of these workers make them particularly vulnerable to discrimination and degrading treatment. Their gender, in combination with these various intersecting factors, makes them a specific target for gender discrimination, sexual harassment and assault in the workplace, and other forms of exploitation. Further, in an era of rising anti-immigrant sentiment and policies, immigration status has been used in state and federal courts to limit the enforceability of these women's right to work in safe and harassment-free environments. In 2008, WRP continued its advocacy to restore the rights of undocumented immigrants and to guarantee that all women have access to justice so as to ensure that unscrupulous employers are not able to use immigration status to exploit an already vulnerable group of women and prevent them from enforcing their constitutional and human rights in the workplace.

AMPARO – DEFENDING THE RIGHTS OF WOMEN FARMWORKERS

Since 2007, the Women's Rights Project has been partnering with the ACLU of Washington (ACLU-WA), the Northwest Justice Project, and Columbia Legal Services on the AMPARO Project to advocate for farmworker women in Washington State. "Amparo" is the Spanish word for "support."

The mission of the AMPARO Project is to eliminate workplace sexual harassment and sex discrimination experienced by women agricultural workers in Washington State. The goals of the project are (1) to identify the legal issues that create barriers to women achieving economic justice in the agricultural labor force and to provide legal representation when appropriate in priority cases, and (2) to educate and empower women about their right to be free from sexual harassment and sex discrimination in the workplace and create a sustained awareness of strategies to address the adverse impacts of sexual harassment and discrimination of women in the agricultural workplace.

The AMPARO Project began as a discussion among local advocates about the fact that few farmworker women were seeking legal assistance to address sexual harassment, although in a survey of farmworker women in California, 90% said that sexual harassment is a major problem. Following the lead of similar projects around the country, Washington advocates set out to tackle the language and cultural barriers that make farmworker women less likely to report sexual harassment. Advocates around the country have discovered that once they begin the conversation, conduct public education, and offer culturally relevant support, women begin to speak out.

In 2007, WRP and the ACLU-WA had the opportunity to join other advocates to conduct community education and outreach on the subject of sexual harassment of farmworkers and low-wage workers in the Yakima Valley. WRP teamed up with farmworker women from two local organizations, Entre Mujeres and Amigas Unidas, and learned more about the situations faced by these workers. We learned that, while sexual harassment is a serious problem affecting women in both agricultural fields and packing plants in the Yakima Valley, many workers and community advocates did not know that such behavior was against the law. As the women interviewed learned more about their rights, they began to share stories of harassment that had happened to them or women they know.

In 2008, WRP and the ACLU-WA, as members of the AMPARO Project, continued to engage in targeted community outreach and education for farmworker women and has trained legal advocates on how to assess sexual harassment cases. We also helped create and make available public education materials, including public service announcements and *novelas* (dramatizations) that have aired on local radio stations. AMPARO is in the process of drafting a curriculum to be used during "house meetings" – small informal gatherings of farmworkers for educational purposes – and in other worker-friendly venues. In addition, AMPARO is collaborating with regional representatives of the U.S. Equal Employment Opportunity Commission to address the rampant sexual harassment and sex discrimination that farmworker women face.

Petition Alleging Violations of the Human Rights of Undocumented Workers by the United States of America (Inter-Am. C.H.R.)

As part of our advocacy on behalf of low-wage immigrant women workers, WRP, along with the ACLU Human Rights Program, the ACLU Immigrants' Rights Project, the National Employment Law Project, and the University of Pennsylvania School of Law Transnational Legal Clinic, advanced a novel advocacy strategy to seek redress in an international forum for undocumented immigrants whose constitutional and human rights were rendered unenforceable because of their immigration status. In November 2006, the ACLU and its coalition partners filed a petition urging the Inter-American Commission on Human Rights to find the United States in violation of its universal human rights obligations by denying equal rights and remedies to millions of undocumented immigrants and thus failing to protect them from exploitation and discrimination in the workplace. The petition was submitted to the Commission on behalf of the United Mine Workers of America, AFL-CIO, Interfaith Justice Network, and six immigrant workers who are representative of the six million undocumented workers in the United States labor force. The petition is pending a decision regarding its admissibility.

ADVANCING IMMIGRATION REFORM and WORKER'S RIGHTS in CALIFORNIA

In 2008, the ACLU of Southern California (ACLU-SC) continued to work with local and national organizations to push for humane immigration reform that includes a path to citizenship, the right of immigrants to reunite with their families, and the protection and rights of immigrants in the workplace. The ACLU-SC recognizes that immigrant women face unique challenges as they struggle to survive and provide for themselves and their families. Immigrant women fear being fired from their jobs due to discrimination based on their immigration status and fear that their family will be split apart as a result of deportation.

This year, the ACLU-SC worked on behalf of U.S. Immigration and Customs Enforcement raid victims, helping them with legal representation and family support. ACLU-SC field office and legal teams worked long hours to ensure that family members knew their rights, location of family members, and how to get in touch with family members at various Southern California detention centers. The ACLU-SC continues to fight vigorously for the reunification of families.

Locally, the ACLU-SC continues its partnership with organized labor to secure dignity and respect for hotel workers, a workforce primarily made up of women of color, in their fight to organize and receive fair compensation and workplace benefits. Historically, management in these companies uses the threat of deportation based on immigration status as a way to intimidate employees and coerce them into not enforcing their workplace rights.

PROTECTING SAFETY-NET PROGRAMS for WOMEN and FAMILIES

Opposing budget cuts to safety-net programs for the poor, elderly, and disabled is a priority for the ACLU of Southern California's economic justice campaign. Historically, cuts to safety-net programs such as welfare and Medicaid have affected women and their families at disproportionate rates. In 2008, the ACLU-SC continued to play a leadership role in a statewide coalition organized to oppose budget cuts to vital safety-net programs such as CalWORKs (California's welfare-to-work program for working families), health and human services programs such as MediCal and Healthy Families, assistance for low-income elderly and disabled people (SSI/SSP), and social service programs for immigrants.

This year, the ACLU-SC planned, organized, and implemented Sacramento lobbying days, which brought together hundreds of low-income parents and advocates to call on legislators to reject the Governor's proposed budget cuts to California's welfare-to-work program and programs for the elderly, disabled, and poor. In addition, the ACLU-SC planned and participated in lobby visits with state legislators and their staffs around the Southern California region, organized community forums and public education events, and worked with local and statewide media to highlight these unfair budget cuts that would have affected thousands of families statewide. These coordinated efforts were successful in stopping policy changes that would have pushed thousands of women and children statewide into homelessness, but due to severe budget shortfall predictions for next year, the ACLU-SC's fight for women's rights and access to services continues.

WOMEN in NON-TRADITIONAL OCCUPATIONS / AFFIRMATIVE ACTION in EMPLOYMENT

For far too long, men have almost exclusively occupied the most lucrative and valued jobs in our society. In recognition of this fact, WRP has worked to break down barriers for access to employment opportunity and has advocated for equal pay for equal work. We also recognize that by providing hardworking women and men of color with unprecedented access to employment opportunities, affirmative action policies have been critical tools in redressing the harmful effects of past and ongoing discrimination. Though numerous Supreme Court rulings have confirmed the importance and value of affirmative action to the social fabric of modern America, affirmative action policies in employment, state contracting, and education are under attack. In 2008, WRP continued the ACLU's longstanding commitment to advancing affirmative action policies in employment by advocating for women and people of color who dared to enter into and be successful in jobs from which they were historically excluded. We also worked to ensure that the decision to have a family is never used as an excuse to deprive workers of a fair workplace.

(*See Section Six,* Advancing a Meaningful Equality*, to learn more about WRP's additional advocacy to protect affirmative action policies in employment and other settings.*)

Janet Caldero, Intervenor-Cross-Appellant in *United States v. New York City Board of Education*

United States v. New York City Board of Education (2nd Cir.)

In 2008, WRP, in partnership with The Dontzin Law Firm LLP, appealed a trial court decision that sharply limited the scope of affirmative action measures put in place by the New York City Board of Education to remedy a history of discriminatory hiring and recruitment policies and practices.

In 1996, under the Clinton administration, the U.S. Justice Department brought suit against the New York City Board of Education, alleging that the Board had long discriminated against women, African-Americans, Latinos, and Asian-Americans by failing to recruit them as custodians and by giving discriminatory civil service tests. In New York City public schools, custodians function as building managers and often supervise large staffs. These are high-paying management-level positions with civil service benefits and protections. "When I first began to work as a custodian in 1992, I was one of about ten women in a workforce of close to 900," said Janet Caldero, one of the women represented by WRP in this matter. "Before I became a custodian, I had worked in public schools for over a decade as a secretary and then eventually a handyman. In all those years, I had not seen a single female custodian. At the time I began to do this work, there were also only about 35 Black custodians, 30 Hispanic custodians, and four Asian custodians in the entire public school system in New York City, one of the most diverse cities in the world."

In 1999, the Justice Department and the Board of Education entered into a settlement agreement. At that time, many of the women, African-Americans, Latinos, and Asian-Americans working as custodians were employed provisionally, meaning they could be fired at any time and they could not compete for various other employment benefits. The settlement agreement provided that these individuals would all become permanent civil service employees. It also provided them with retroactive seniority. Finally, it guaranteed that if any of its provisions were ever challenged, the Justice Department and the Board of Education would defend the agreement and the awards it provided.

Shortly after the settlement, a small group of white male custodians, represented by the Center for Individual Rights, challenged the agreement, arguing it constituted reverse discrimination. In an astounding and chilling turn in policy, in 2002, the Justice Department, under the leadership of Attorney General John Ashcroft, reneged on its promise to defend many of the women and minority custodians whose interests it had championed during the previous six years of litigation, leaving their job security hanging in the balance.

EXCERPTS FROM JANET CALDERO'S REMARKS at the June 2008 ACLU Membership Conference in Washington, D.C., on a panel entitled, "Affirmative Action: Fighting to Preserve Equal Opportunity for Women & People of Color"

My name is Janet Caldero, and I work as a custodian in a public school in Queens. In New York City, custodians are the building managers for public schools. They are responsible for supervising a staff that maintains the physical plant and the heating and cooling in each school building. These are good-paying management jobs with civil service protections, and I am proud to do the work I do. I am especially proud to be one of the few women in New York City doing this work.

As a result of the 1999 agreement settling the discrimination case the Justice Department had brought against the Board of Education [see case summary of *United States v. New York City Board of Education* on page 25], I received retroactive seniority, which allowed me to transfer to a larger school and increased my salary about $9,000 per year. In general, the awards allowed women and minorities to move up in the profession. As a result, those of us on the job were more visible, and I think it sent a message to other women and minorities that they could do this work too.

Then, in 2002, long after the settlement had been signed, I learned that the Justice Department had changed its position and was no longer defending parts of the settlement in the face of objections from a small group of white male custodians who claimed that the settlement discriminated against them as white men.

For the past six years, we have been fighting back as the Justice Department has actively attacked its own settlement agreement in court. We have had to live with the possibility that we might lose our seniority and be returned to smaller schools or have our salary reduced.

If I lost my seniority [and the salary that it has allowed me to earn], I would have to sell my house because I would no longer be able to afford to live where I do now. I have also talked to the other women who received awards under the agreement, who have found the Justice Department's switch in position to be extremely stressful and frightening. Over the years, many have feared that, if the settlement agreement were found to be illegal, they would lose their permanent positions and have to start over in their careers.

I am told that my case raises important legal issues, and I admit I don't fully understand them. But what I do understand is that this is a hard job for a woman to get and a hard job for a woman to do, because too many people feel that women aren't up to doing the work and so I have to prove myself again and again, to fellow custodians, new principals, and contractors who do not believe that I am a custodian.

Though we are still only a handful, there are more women custodians today. It remains difficult for women to get this job because others take for granted that women cannot perform the job's duties. However, I believe that having more women serve as custodians reduces the commonness of that attitude, and makes it more likely that women will be hired, allowing us the opportunity to compete on equal terms.

In response, WRP intervened to protect the settlement agreement and the affirmative action measures it put in place. On behalf of 22 of the female and minority custodians abandoned by the Justice Department, we entered the litigation to maintain the awards of permanent jobs and seniority. In October 2005, WRP argued before the court that the settlement agreement was lawful. In September 2006, the judge issued a decision stating that the permanent appointments and retroactive seniority awarded to female custodians did not violate the Constitution or Title VII of the Civil Rights Act of 1964 – the federal law the prohibits workplace discrimination on the basis of race, color, religion, sex and national origin – though the women cannot rely on their retroactive seniority in the event of layoffs in the custodial workforce. Because race-based affirmative action is held to a higher standard than gender-based affirmative action, the court held that men of color who did not take one of the discriminatory examinations could keep their jobs but would lose the seniority they received under the agreement. In August 2007, the court held an evidentiary hearing on a motion for reconsideration that WRP filed with respect to the relief for our male clients of color.

In May 2008, WRP was disappointed to learn that the court denied our motion for reconsideration. The court found that African-American, Latino, and Asian-American male beneficiaries who did not take one of the challenged civil service examinations cannot be considered victims of discrimination and thus the relief they received from the settlement agreement in the form of the awards was unlawful. In August, the district court entered its final judgment to this effect. In November 2008, we appealed portions of that judgment and moved to stay the portion of the judgment stripping our male clients of seniority they have earned on the job over the past eight years. We are hopeful that upon consideration of this matter the United States Court of Appeals for the Second Circuit will reverse the lower court's findings and in doing so both protect the awards received by our male clients and underscore the legality of the broad affirmative actions measure put in place by the New York City Board of Education to remedy past wrongs.

Lochren v. County of Suffolk (2nd Cir.)

Because court-awarded attorneys' fees are critical to the ACLU's and other public interest organizations' ability to engage in important work, in June 2008, in partnership with the New York Civil Liberties Union, Outten & Golden LLP, and Leon Friedman, WRP filed an appeal of an attorneys' fees decision in a pregnancy discrimination case brought against the Suffolk County Police Department on Long Island, N.Y. We argued that the lower court erred in awarding hourly rates that prevail in the United States District Court for the Eastern District of New York rather than prevailing rates in the Southern District of New York, where plaintiffs' counsels' offices are located. The attorneys' fees award was the result of a federal jury finding that the Department's policy of barring pregnant officers from short-term limited duty assignments during their pregnancies discriminated against female police officers.

This challenge originated in 2001 when six women who were employed as police officers by the Suffolk County Police Department, which had long been under a federal consent decree arising out of

allegations of discrimination against minorities and women, brought suit against the Department for pregnancy discrimination. The county had a policy requiring all officers to wear bullet-proof vests and gun belts while on patrol, but the Department acknowledged that it did not provide vests or belts that properly fit during pregnancy, thus exposing officers to greater danger when they are pregnant than at other times in their career. Additionally, for many years, the Department provided limited duty assignments to all officers with medical conditions that prevented them from engaging in potentially confrontational patrol duties, whether the medical condition arose on the job or not. Female officers frequently sought light duty assignments during their pregnancies. In 2000, as the number of women police officers had grown to about ten percent of the force, the Department adopted a new policy barring light duty assignments for all officers suffering from injuries or temporary conditions incurred off the job, including pregnancy, yet continued to provide limited duty assignments to officers with on-the-job conditions. In violation of its own policy, the Department continued to provide light duty assignments to officers with conditions other than pregnancy that arose off the job. Because of the new policy and its discriminatory enforcement, women were forced to take extended leaves during their pregnancies while many other officers with comparable off-the-job conditions were permitted to work limited duty assignments. Essentially, female police officers were faced with the stark and untenable choice between their career and having a family.

After five years of litigation, in June 2006, in an important victory for women in law enforcement everywhere, a federal jury found that the Department's policy barring pregnant officers from short-term limited duty assignments during their pregnancies discriminated against all women officers at the department. The jury found that the policy violated Title VII and the New York Human Rights Law, which broadens Title VII to include sexual orientation, marital status, disability, and military status. Shortly after the conclusion of the trial, and based on negotiations with us, the Department instituted a new policy guaranteeing that any pregnant officer who requests a limited duty position will be provided it for the duration of her pregnancy. The court entered a consent decree and also granted us an attorneys' fees award.

Prater v. Detroit Police Department (E.D. Mich.)

As was evident in *Lochren*, women continue to have their rights threatened by unfair and unlawful pregnancy policies. In October 2008, the ACLU of Michigan, in partnership with the Law Offices of Deborah L. Gordon, PLC, and in consultation with WRP, filed a federal lawsuit on behalf of five Detroit police officers who were forced to go on unpaid leave after becoming pregnant.

In 2004, the Detroit Police Department (DPD) changed its light duty policy in a way that disqualified pregnant officers from hundreds of desk and other non-patrol jobs that would have enabled them to continue working for much of their pregnancies. Because of this change, many female Detroit police officers have been left with no alternative but to conceal their pregnancies out of fear of temporarily losing their jobs. One plaintiff, Officer Angelica Robinson, had been working a desk job for five years in the Crime

Analysis Division of the DPD and was forced out of her job when she became pregnant until after she gave birth, even though the pregnancy in no way interfered with her daily responsibilities on the job. Another plaintiff, Officer Sha-Mar Woods, was forced to go on welfare when the DPD sent her home because of her pregnancy. "No woman should have to choose between starting a family and being able to provide for that family," said Officer Tisha Prater, the lead plaintiff in the case. "Through this lawsuit, I hope to be the voice for dozens of mothers and expectant mothers who have had to deal with this unfair policy."

"No woman should have to choose between starting a family and being able to provide for that family."

- Plaintiff Sha-Mar Woods

The lawsuit asks the court to strike down the policy as illegal under Title VII and in violation of the Fourteenth Amendment's guarantee that no state actor may deny equal protection under the law. It also asks that the court award the plaintiffs an unspecified amount in damages.

Keefe v. Caledonia County, Vt., Sheriff's Department (D. Vt.)

The ACLU of Vermont (ACLU-VT) brought a federal lawsuit in the United States District Court for the District of Vermont on behalf of Michelle Poleo-Keefe who was fired from her job as an administrative assistant with the Caledonia County Sheriff's Department based on her ex-husband's affiliation with the motorcycle club Hells Angels. The ACLU-VT argued that the Department's firing of Ms. Poleo-Keefe violated her due process rights as well as her right of association. In August 2008, upon recommendation by a federal magistrate judge, the court found that the Sheriff's Department had indeed violated Ms. Poleo-Keefe's right to due process. The court left the right of association claim for decision by trial, which has yet to be scheduled.

Challenging Pregnancy Discrimination in the New York National Guard

WRP, in partnership with the New York Civil Liberties Union (NYCLU), was successful in advocating for a change in New York National Guard policy with respect to state active duty mission and pregnancy. New York National Guard member Tammy Sullivan was released (and thereby effectively fired) from her state active duty mission patrolling John F. Kennedy International Airport in Queens, N.Y., after she refused to sign a "Statement of Understanding" acknowledging that every 90 days she must submit to a pregnancy test and that if she were ever to become pregnant while on state active duty, she would be removed from her mission and be stripped of any associated workplace benefits, including healthcare coverage. After Ms. Sullivan and other members of the Guard contacted WRP about this policy in February 2008, WRP and the NYCLU traveled to Albany in June 2008 to meet with New York Governor David A. Patterson's

WRP STAFF ATTORNEY ARIELA M. MIGDAL INTERVIEWED TAMMY SULLIVAN, one of the women who contacted the ACLU about the New York National Guard's pregnancy testing policy, after the Guard agreed to eliminate the policy.

How long have you been a member of the National Guard?
I've been a member of the New York [National] Guard for about a year and a half, and before that I was in the Mississippi National Guard, so total time spent in the National Guard is four years.

What kind of positions have you had there?
I work as a broadcast journalist one weekend a month and we do two weeks' training in the summer. That's what I was doing before I started working [on a state active duty mission] at the [J.F.K.] airport.

When did you first encounter the Guard's pregnancy testing policy?
I started working at the airport full-time, and after working there for a few weeks, they asked me to take a pregnancy test. They told it me it was the standard procedure that all of the women had to take a pregnancy test every three months.

Did they tell you what would happen if you became pregnant?
They said that any women that become pregnant are allowed to finish out their [work] term – the terms are three months – and then they would be released from state active duty. Which is basically saying that they would be fired.

Tell us about the form they wanted you to sign.
The form that they wanted us to sign was called a "Statement of Understanding" and it said that if you became pregnant while you were on state active duty, you would be released from duty, you would be given no medical benefits, and your position would not be guaranteed once you either terminated the pregnancy or carried to term and then wanted to come back.

Did you agree to take the pregnancy test and sign the form?
I did take the pregnancy test, but I decided not to sign the form; it's basically asking me to choose between a job and a pregnancy. I did not think that was fair, and I also thought that the pregnancy testing in and of itself was a violation of my privacy and they really had no right to know whether I was pregnant or not.

Why did you decide to speak out and get in touch with the ACLU?
After speaking to a lot of the women there, [I realized that] most of the women thought that it was an unfair practice and no one was really sure what to do. I think that a few people had tried to get it changed in the past, but they weren't really sure who to talk to or what to do or anything. I just felt like it was wrong and something needed to be done.

I think that it's important for us to speak out if we feel that there's something going on that we don't agree to. We as soldiers, that's what our roles are, that's what we're fighting for; we're fighting for the freedom to be able to stand up for ourselves and to speak out against something that we think is unfair.

How do you feel about the fact that the Guard has agreed to stop requiring women to take the pregnancy test and they've decided to change the form so that it's not just for women, but it's gender-neutral?
I think that it's great. I think that it shows that they're willing to work with us and they're willing to recognize that there was an inequality there that needed to be fixed. I think that it's great they're willing to take responsibility for that.

Deputy Secretary for Public Safety to discuss our concern that the New York Department of Military and Naval Affairs' policy unfairly discriminates against women serving on state active duty missions in the Guard. We advocated that women applicants or soldiers should not be required to sign any statements of understanding that male soldiers do not have to sign; that women soldiers should not be subjected to pregnancy tests at any time, much less every 90 days; that the Guard change the policy so that pregnant women who can no longer perform active duty assignments have the option of performing light duty assignments; that women remain eligible to have their orders automatically renewed after they have a child; and finally, that when female soldiers are pregnant and recovering from giving birth, their families do not lose their healthcare coverage.

In September 2008, in a partial victory, we were pleased to learn that the Guard would eliminate its policy of mandatory pregnancy testing for women on state active duty, and would also eliminate the statement of understanding regarding pregnancy, replacing it with a gender-neutral form to be signed by both men *and* women indicating understanding that remaining on state active duty is contingent upon the soldier being capable of performing the training and tasks of the mission. Women will no longer be singled out and removed from their mission simply because they are pregnant, although presumably nearly all women who are pregnant will eventually be unable to perform the duties, at least for a short time, and will have to leave the active duty task force in order to give birth. Because no provisions were made to preserve benefits for soldiers and their families when they are not on active duty, their families will still lose their healthcare benefits while they are on leave. The Guard informed WRP that light duty positions do not exist within the state active duty mission for pregnant or disabled soldiers. Though the Guard's remedial measure is a step in the right direction, it falls short of a fair policy with respect to temporary disabilities and pregnancy. WRP remains concerned that the policy continues to disproportionately affect female members of the National Guard because the absence of light duty jobs will increase the amount of time a pregnant soldier will be out of work due to pregnancy and because women, but not men, will continue to lose health benefits for their families when they have children. WRP and the NYCLU will continue advocating in 2009 to resolve the remaining problems with the policy.

STRENGTHENING TITLE VII

Title VII and its prohibition of employment discrimination based on race, color, religion, sex, and national origin, was passed into law as part of the Civil Rights Act of 1964, a hard-won and crowning legislative victory of the American civil rights movement. Since its passage, Title VII has been instrumental in safeguarding the workplace rights of women in everything from ensuring equal pay for equal work, to guaranteeing fair pregnancy policies and a workplace free from sexual harassment and assault. Yet in recent years, Title VII has come under attack and conservative courts have rolled back many of the critical protections Title VII provides. In the 2007 case, *Ledbetter v. Goodyear Tire & Rubber Company,*

Inc., the U.S. Supreme Court severely undermined the equal pay provisions of Title VII and overturned decades of established precedent in ruling that employees can only file a wage-discrimination complaint within 180 days of when the initial payroll decision was made, even if the employee only recently learned of the pay discrimination and even though the discriminatory decision has ongoing effects with every paycheck. After the decision, Congress moved to pass legislation that would undo the damage inflicted on Title VII by the Supreme Court. Although the bill previously stalled in the Senate, we are hopeful that this will be one of the first bills passed by Congress and signed by President Obama in 2009.

Title VII's prohibition against retaliation must protect employees like Ms. Crawford who participate in their employer's internal investigations of sexual harassment and other forms of discrimination.

In 2008, WRP worked with the ACLU Washington Legislative Office as it led the fight to restore Title VII and ensure that its guarantees are construed as broadly as possible so as to allow all women access to economic opportunities critical to their advancement in society. WRP also supported efforts to ensure that Title VII's protections against retaliation are strong and that courts properly certify Title VII classes so as to recognize the common interests of current and past employees who seek to bring about policy changes to remedy discriminatory employment practices. Finally, in 2008, WRP, in partnership with ACLU affiliate offices across the country, initiated a broad campaign to address the employment consequences for women, especially poor women and women of color, of past criminal convictions or prior arrests.

(*See Section Four,* Reforming the Criminal and Juvenile Justice Systems*, to learn more about WRP's advocacy using Title VII to challenge barriers to employment for women with criminal records.*)

Crawford v. Metropolitan Government of Nashville and Davidson County, TN (U.S.)

In April 2008, WRP and the ACLU National Legal Department joined the National Women's Law Center's friend-of-the-court brief in support of petitioner, Vicky Crawford, a woman who was fired from her job after she participated in her employer's internal investigation of sexual harassment and other discrimination she and several of her co-workers alleged against a high-level employee of the Metropolitan Government of Nashville and Davidson County. After the investigator's report left Ms. Crawford's allegations unresolved, Ms. Crawford found herself under investigation for charges that she alleges are false, and she was ultimately fired from her job. Ms. Crawford sued her former employer, charging that firing her within months of her participation in its investigation of the high-level employee's behavior constituted illegal retaliation under Title VII. The United States Court of Appeals for the Sixth

Circuit affirmed the lower court's grant of summary judgment, and concluded that Ms. Crawford's statements about the sexually inappropriate conduct did not amount to "opposition" to illegal conduct that is protected by Title VII. The court also found that under Title VII, Ms. Crawford had no protection from retaliation for "participation" in her employer's internal investigation because the investigation occurred before any charges had been filed with the Equal Employment Opportunity Commission, the federal agency charged with enforcing Title VII.

The brief argues that to be effective, Title VII's prohibition against retaliation must protect employees like Ms. Crawford who participate in their employer's internal investigations of sexual harassment and other forms of discrimination and that this protection is of critical importance in the context of sexual harassment. The brief also argues that the Sixth Circuit's ruling stands in the way of any effective mechanisms for internal resolution of harassment and discrimination by providing a disincentive for coming forth to report such behavior. Oral argument took place in October 2008, and we now await the court's ruling.

Dukes v. Wal-Mart Stores, Inc. (9th Cir.)

In 2001, female employees of Wal-Mart Stores, Inc., represented by Equal Rights Advocates, brought a Title VII class action suit against the retail chain alleging sex discrimination and seeking changes in the company's policy, compensation for lost pay, and punitive damages. The lawsuit alleges that female employees of Wal-Mart are routinely denied advancement and training opportunities, paid less than men for the same or comparable work, steered to lower wage departments, subjected to a sexually hostile work environment, and retaliated against when they attempt to address sex discrimination. The district court certified the class with modifications. On cross-appeals, in December 2007, the Ninth Circuit upheld the class certification but held that class members who were no longer employed by Wal-Mart at the time the complaint was filed do not have standing to pursue relief in the form of policy changes. The plaintiffs petitioned for rehearing on the issue and the defendants petitioned for a rehearing *en banc* (by all judges on the court) with regard to certification of the class more generally.

WRP joined with the NAACP Legal Defense & Education Fund and other civil rights and women's rights organizations to file a friend-of-the-court brief in support of the Plaintiffs' petition for rehearing for the limited purpose of revisiting the portion of the December 2007 opinion that found no standing for those class members no longer employed by Wal-Mart at the time the federal complaint was filed. The brief argues that the lower court's finding is at odds with Supreme Court and Ninth Circuit precedent on class actions. It also argues the finding runs contrary to the purpose and intent of Title VII, overlooks the common interests that many current and former employees share, and diminishes the ability of the Equal Employment Opportunity Commission to fulfill its role in promptly resolving discrimination charges containing class claims. Therefore, the brief argues, the lower court erred when it assessed the standing of

individual class members to seek policy change, rather than finding that the class as a whole has standing to seek such relief so long as at least one named plaintiff has standing. Further, the brief argues that the Court's limitation on standing also creates an unwarranted incentive for employers to retaliate against employees who file discrimination charges by eliminating employees with standing to obtain relief in the form of policy change. We now await the Ninth Circuit's decision on the rehearing.

ADVOCATING for EQUAL PAY for EQUAL WORK in CALIFORNIA

In 2008, the ACLU of Southern California supported the "Equal Pay for Women Bill," Assembly Bill No. 437, a bill introduced by California Assembly Member Dave Jones, which would clarify the meaning and effect of existing state law regarding statutes of limitation for suing for wage discrimination, by rejecting the interpretation given to federal law in the *Ledbetter* case. Disappointingly, the bill was vetoed by Governor Arnold Schwarzenegger.

DEFENDING WOMEN'S RIGHT to JUSTICE and FAIR EMPLOYMENT PRACTICES in RHODE ISLAND

In 2008, the Rhode Island General Assembly unanimously passed a bill promoted by the ACLU of Rhode Island (ACLU-RI) to make clear that would-be plaintiffs have three years, rather than one year, to bring suit under the Rhode Island Civil Rights Act, an important state law prohibiting discrimination in employment and other settings on the basis of sex and other protected categories. The bill was introduced in response to a recent Rhode Island Supreme Court ruling in a sex discrimination case, in which the court concluded in a three-to-two vote that complainants have only one year to bring suit under the R.I. Civil Rights Act, even though the default statute of limitations for virtually all other personal injury actions in Rhode Island is three years. In advocating for the bill, the ACLU-RI noted that a brief statute of limitations is particularly troublesome in the context of discrimination claims because it can often take time for an employee or job applicant to realize that adverse action taken against her or him may have been based on an illegal, discriminatory factor such as race or sex. Despite the bill's bi-partisan passage in the General Assembly, Rhode Island Governor Donald L. Carcieri vetoed it, claiming it was detrimental for business. The ACLU-RI is advocating for the General Assembly to override the governor's veto.

In an unfortunate setback for women's equality, the Rhode Island Commission for Human Rights authorized Rhode Island College (RIC) to discriminate on the basis of sex when hiring for two housekeeping positions at the College's recreation center. When RIC first made a request earlier in the year to consider sex a bona fide occupational qualification for these positions on the ground that it was necessary for the regular operation of the business, the Commission unanimously rejected the request

after hearing testimony from the ACLU-RI against the proposal. RIC justified its request by claiming that it could not "close off part of the men's or women's locker rooms for routine maintenance/cleaning during the course of [their] 16 hours of operation." The ACLU-RI argued that the RIC had failed to justify its request with any concrete evidence or information about why alternatives to discriminatory hiring practices were not available to address legitimate privacy concerns. The Commission initially agreed, ruling that the "evidence presented [by RIC] simply is insufficient to meet the decidedly heavy burden of showing that there are no reasonable alternatives to sex-based hiring." RIC sought a rehearing, at which the ACLU-RI again testified. Although RIC presented virtually no new evidence at the rehearing, the Commission ended up reversing its position by a two-to-one vote.

Ending Violence Against Women *and* Girls

Everyone has the right to life, liberty and security of person.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

UNIVERSAL DECLARATION OF HUMAN RIGHTS ARTICLES 3 AND 5

Despite widespread recognition of the harm caused by intimate partner abuse to our society, domestic violence continues to affect individuals in every racial, ethnic, religious, and age group, and it is overwhelmingly a crime against women. In the United States, one in every five women suffers nonfatal violence at the hands of an intimate partner each year. Women are also far more likely than men to be murdered by their partners and to be the victims of rape. Every year approximately 1,400 women – nearly four every day – die as a result of domestic violence and 132,000 women report having been a victim of rape or attempted rape. While women at all income levels experience domestic violence, poor women experience domestic violence at higher rates than women with higher household incomes.

Violence against women and girls in the form of domestic violence, sexual assault, and stalking can have devastating consequences that far outlive the violence itself. Many survivors face consequent economic hardship, displacement or even homelessness, and diminished educational opportunity. Though civil orders of protection can be a significant tool in helping to decrease the risk of further violence, sometimes police officers – holding fast to outmoded and paternalistic understandings of domestic violence as a "private matter" – do not provide meaningful enforcement of protective orders, even in states with mandatory arrest laws. This, in turn, conveys to batterers that they can act with impunity and women who hold these protective orders are further endangered by a false sense of security. Survivors of domestic violence are also discriminated against in the workplace by employers who punish them for taking time off from work as they take steps to protect themselves and their families and heal from the physical and psychological wounds of being battered. Moreover, some landlords and public housing authorities believe they can ensure safety on their properties by evicting domestic violence survivors and their families and refusing housing to women who have experienced violence in the past.

The ACLU Women's Rights Project strives for a world in which women and girls thrive and live free from violence, a world where no woman or girl has to face the persistent specter of suffering violence because of her gender. In 2008, WRP worked to eliminate gender-based violence by ensuring that survivors of violence are not discriminated against with regard to housing, employment, educational opportunities, or police responsiveness, and by advocating for governments to take proactive measures beyond mere punitive measures so as to stop the cycle of violence once and for all.

(*See Section Three,* Guaranteeing Equal Educational Opportunity, *to learn more about WRP's advocacy to ensure that schools are held responsible for meaningfully responding to sexual harassment and assault in public school settings.*)

ENDING HOUSING DISCRIMINATION AGAINST SURVIVORS of DOMESTIC VIOLENCE

When women flee domestic violence and take steps to protect themselves and their children from further violence, they are frequently forced to leave their homes, often with nowhere else to turn. For years, advocates have known that domestic violence is a leading cause of homelessness for women and children. Housing instability and a lack of safe and affordable housing options heightens the risks for women experiencing domestic violence, as a lack of alternative housing often leads women to stay in or return to violent relationships. Landlords also turn victims of domestic violence out of their homes because of violence perpetrated against them. In fact, many housing authorities and private landlords, in an attempt to combat crime, have adopted "zero tolerance for crime" policies and taken up the practice of evicting survivors of domestic violence, sexual abuse, or stalking. Relying on stereotypes about battered women – particularly, that if a women experiences domestic violence it is because she is inciting it or allowing it to happen – these policies discriminate in that they unfairly penalize survivors of violence for the crimes perpetrated against them.

In 2008, WRP continued to push for the U.S. Department of Housing and Urban Development (HUD) to properly and meaningfully implement the fair housing provisions of the Violence Against

(back row, left to right) Milagros Benezario-Fuentes, Administrative Assistant, ACLU of Puerto Rico; William Ramírez, Executive Director, ACLU of Puerto Rico; Selene W. Kaye, WRP Advocacy Coordinator; Eva Prados-Rodríguez, Legal Counsel, ACLU of Puerto Rico; Josué González-Ortíz, Staff Attorney, ACLU of Puerto Rico
(front row, left to right) Sandra S. Park, WRP Staff Attorney; local domestic violence and sexual assault advocates from Coordinadora Paz para la Mujer

Women Act (VAWA), the federal statute that grants explicit protections to victims of domestic violence, dating violence, and stalking who live in public housing or Section 8 subsidized housing.

In conjunction with a cross-section of ACLU affiliates, WRP has worked closely with communities around the country to raise awareness about the discrimination that domestic violence survivors who live in public housing often face. Throughout the year, we conducted several trainings and informational sessions on the protections the Fair Housing Act provides and on the recently enacted anti-discrimination provisions in VAWA. More than 400 community members in total – including Public Housing Authority (PHA) residents, lawyers, and housing and domestic violence advocates – participated in these trainings held in Puerto Rico in January 2008, Florida in April 2008, and Michigan in June 2008. In November 2008, WRP trained more than 150 advocates and attorneys from across the country through a webinar focused on the housing rights of domestic violence survivors. As a result of these sessions, we learned firsthand the needs of this vulnerable group and, in turn, were able to provide valuable information to survivors themselves and to the service providers who work with them.

Most notably, in Puerto Rico – home to the second-largest public housing authority in the United States and its territories and to 80 municipal housing authorities – WRP and the ACLU of Puerto Rico organized three day-long conferences in San Juan and Mayaguez. Many PHA residents and survivors of domestic violence participated, and acknowledged they knew little of the protections afforded them by VAWA. Not only did the conferences provide advocates with information, but during the afternoon advocacy workshops, participants had the opportunity to apply the information provided in the morning training sessions to their own communities and strategize about how to bring about meaningful reforms. Residents expressed to us the challenge of finding housing in a place where demand for subsidized housing is high and little attention is paid to domestic violence survivors by PHAs. The conferences were a tremendous opportunity to interact directly with survivors and housing and domestic violence advocates, share information, and engage new constituents in our activism around this issue. WRP and the ACLU of Puerto Rico also met with Puerto Rican government officials to encourage PHAs to enforce VAWA's requirements and raised VAWA compliance at public hearings. We will continue to monitor the situation in Puerto Rico and advocate for continued protections for domestic violence survivors in public housing.

In April 2008, WRP and the ACLU of Alabama organized a coalition of housing and domestic violence organizations – including the Alabama Coalition Against Domestic Violence, Legal Services of Alabama, Inc., and the YWCA of Central Alabama – to advocate with the Housing Authority of the Birmingham District, one of the largest public housing authorities in the state, to address the housing needs of domestic violence survivors. We were pleased to learn that the Housing Authority has since begun stricter enforcement of VAWA's housing provisions and has engaged in educating its staff regarding the housing needs of domestic violence survivors, including requiring staff to take seriously all claims of domestic violence, dating violence, and stalking and to provide meaningful guidance to tenants on maintaining their housing. The Housing Authority also stated that it will move survivors to public

housing sites or Section 8 housing to assist them in promoting their VAWA rights. Such changes will help hundreds of women retain housing and remain safe.

At the federal level, in March 2008, WRP and the ACLU Washington Legislative Office called on Congress to examine HUD's failure to fully and broadly implement the fair housing rights of victims of domestic violence contained in VAWA. As a result, the House Financial Services Committee and Senate Banking, Housing, and Urban Affairs Committee included a focus on VAWA implementation in their recent HUD oversight hearings.

WRP also met with the HUD Assistant Secretary for Fair Housing, Kim Kendrick, to request that the Fair Housing office play a role in VAWA enforcement, and she agreed to provide information to the HUD field offices regarding the intersection between VAWA and fair housing laws. We also filed a request under the Freedom of Information Act – a federal statute that generally provides that any person or organization has the right to request access to federal agency records or collected information – with HUD and some of its local offices in order to obtain further information about the extent of federal VAWA implementation.

As a follow-up to our broad advocacy efforts, in August 2008, we met with Bessy Kong, Deputy Assistant Secretary, Office of Policy, Programs and Legislative Initiatives, and other senior staff at the Office of Public and Indian Housing (PIH), a division of HUD that oversees public and Section 8 voucher housing. We discussed multiple problems with VAWA implementation, including HUD's approval of PHA plans that do not comply with VAWA, inadequate notice of VAWA rights to tenants, and continuing housing denials and evictions of domestic violence survivors. At the meeting, PIH staff agreed to issue instructions to PHAs and update HUD staff regarding VAWA's planning requirements. We plan to collect more detailed information regarding housing discrimination faced by survivors to provide to PIH staff, as they were unaware that survivors were losing their housing as a result of the crimes committed against them. We are pleased that we were able to bring this issue to the attention of PIH officials and that they have agreed to take these steps, and in 2009 we will continue to monitor PIH's implementation progress.

In September 2008, WRP and the Washington Legislative Office submitted comments to HUD regarding its plans to streamline the planning requirements imposed on public housing authorities. We argued that some of the streamlining measures would undercut the obligations required of public housing authorities by VAWA and could result in the approval of PHA plans that do not fully account for the housing needs of domestic violence survivors.

We also raised the housing needs of American Indian and Alaska Native survivors of violence with the recently convened federal Violence Against Indian Women Task Force. In August 2008, we authored a letter supported by the National American Indian Housing Council and the National Law Center on Homelessness & Poverty to the Task Force, highlighting the lack of housing resources and legal protections for indigenous domestic violence survivors.

Lewis v. North End Village (E.D. Mich.)

In February 2008, WRP and the ACLU of Michigan were able to successfully settle and attain broad policy change in a sex discrimination suit brought on behalf of a survivor of domestic violence who was evicted from her home by her landlord based on the violence against her. WRP and the ACLU of Michigan brought suit against a Detroit landlord after the management company evicted Tanica Lewis, a domestic violence survivor, and her two young daughters from their home based on a policy that holds tenants responsible when their "guests" create a disturbance or damage the property, including tenants who are victims of domestic violence being harassed by their abusers. In early 2006, Ms. Lewis ended a relationship with her boyfriend, Reuben Thomas, who had never lived with her, and obtained a protective order after he continually harassed and stalked her. She informed the management company of the order, which required Mr. Thomas to stay away from her, her daughters, and their home. In March 2006, however, while Ms. Lewis was at work, Mr. Thomas broke the windows to her home and smashed in her front door. When Ms. Lewis learned of the vandalism, she immediately reported the incident to the police and to the management company, at which point the management company issued Ms. Lewis and her two young daughters an eviction notice. "When I reported the domestic violence, first to the police and then to my housing manager, I thought I was making myself and my children safer. Instead, my landlord threw us out of the apartment and we had nowhere to go," said Ms. Lewis. "I hope other women in private housing who are brave enough to come forward about their abusers don't suffer the same way."

"When I reported the domestic violence, first to the police and then to my housing manager, I thought I was making myself and my children safer. Instead, my landlord threw us out of the apartment and we had nowhere to go . . . I hope other women in private housing who are brave enough to come forward about their abusers don't suffer the same way."

– Plainifft Tanica Lewis, *Lewis v. North End Village*

Our lawsuit, filed in 2007, charged that the management company's policy of evicting victims of domestic violence for the acts of their abusers constitutes sex discrimination in violation of the federal Fair Housing Act and Michigan's Civil Rights Act.

Under the 2008 settlement, the management company agreed not to evict or discriminate against tenants because they have been the victims of domestic violence, dating violence, sexual assault, or stalking, whether or not the abuser is residing in the tenant's household. The management company will also offer early lease termination and relocation to tenants who have been the victims of such abuse and

TANICA LEWIS'S PERSONAL ACCOUNT of her case against her management company and the resulting settlement

Being evicted as a single mother because of domestic violence was devastating to me. I felt that people were against me. I did not have anyone to turn to.

Mr. Thomas – my ex-boyfriend – and I had broken up January 2006. I was tired of his controlling behavior. Mr. Thomas would insult me and behave in an overprotective manner. I felt intimidated by him. He used manipulation to control me and my children.

After we broke up, he called me at work eight to ten times a day. When I was home he would call my house every hour and sometimes would just show up. Threats were made. I was very terrified. Several police reports were made. I went to obtain a personal protection order against him. I would go to work at different times so that Mr. Thomas would not know my schedule. He would come to my job and security would have to escort him off their property. I had to become anonymous.

In March 2006, Mr. Thomas came over to my apartment and caused over $500 worth of damage. I was at work at the time. After I found out about the damage, I contacted my leasing manager, Ms. Waters, and told her I had a personal protection order against Mr. Thomas and what he had done. Ms. Waters seemed to be understanding when I spoke with her. She said she would send maintenance over to board up the windows and fix the door. I was so afraid that I went over to my parents' house to stay for a couple of days, but a day later Mr. Thomas called and said that he would kill me. The police were called and I was advised to go to a shelter. While staying at the shelter, I had my father go check on the apartment and get my mail. I had received a letter from my leasing company saying that I was being evicted because Mr. Thomas was considered to be my guest even though I had a personal protection order against him. Life could not get any worse for me. If I had known that I would be evicted, I would never have told them; I would have just paid for the damage myself. This would have been much easier and cheaper for me.

The eviction created enormous difficulties for me. Before, I lived only five minutes from my job, but after I moved, I had to drive over 45 minutes to get to work. I had to change my daycare provider to accommodate my new schedule. I had to pay over $200 more in rent each month. I had to be more dependent on my parents.

I want to share my story because someone may be going though a similar situation and this may be something that they need to hear in order for them to find the help that they need. This story may also be informative to landlords so that they will know that it is illegal to evict someone because of domestic violence. It is terribly stressful being a victim and then being evicted.

I filed this lawsuit because I felt that it was wrong for the management company to evict me when I was the victim of violence. I feel great now because they adopted new policy changes that can help other women or men in the situation that I was in, so they won't have to go through the things that I went through.

(from left to right) Michael Steinberg, Legal Director of the ACLU of Michigan; Plaintiff Tanica Lewis; and Sandra S. Park, WRP Staff Attorney

need to leave their homes to ensure their safety. In this way, the settlement goes beyond the federal VAWA fair housing requirements and serves as an exemplary model for landlords and property management companies throughout the country. The settlement also requires the management company to turn over eviction records and tenant complaints to the ACLU for the next seven years so that we can monitor compliance with the new policies. In addition, Ms. Lewis received monetary compensation and attorneys' fees were awarded.

In July 2008, we received the first settlement compliance report from the management company and were pleased to learn that the company had taken a number of steps to accommodate survivors of domestic violence. In the compliance report, the management company reported on its implementation of its new domestic violence policy (which also covers dating violence, sexual assault, and stalking and provides for early termination of a lease and the option of relocating to another property managed by the company if a tenant needs to flee violence) and indicated that ten properties throughout Detroit managed by the company have accepted the early lease termination and relocation provisions. This means that there are now over 500 units available to tenants who need to relocate for safety reasons. We commend Management Systems and North End Village for recognizing that landlords should not punish women for the criminal acts perpetrated against them. We hope that this settlement encourages other private housing companies to enact proactive policies that comply with federal law and help rather than harm women.

ENDING SEXUAL HARASSMENT in HOUSING

Poor women, who are economically vulnerable and have few resources, are at particular risk of sexual harassment by housing managers, who assume they will not be held accountable for their behavior. Faced with few affordable housing options, poor women are too often the targets of landlords and rental agents who exploit these women's vulnerability by demanding sex as a condition of housing. In 2008, WRP continued to advocate for the rights of economically disadvantaged women and to challenge sexual harassment of these women by their landlords.

Boswell v. GumBayTay (M.D. Ala.)

In February 2007, U.S. District Judge Keith Watkins ordered Jamarlo GumBayTay, an agent of Elite Real Estate Consulting Group, to immediately stop his sexual harassment of Yolanda Boswell and to cease any attempt to evict her. Holding her housing over her head, the defendant repeatedly tried to coerce Ms. Boswell into having sex with him with the threat of raising her rent or evicting her if she did not acquiesce. When Ms. Boswell refused Mr. GumBayTay's sexual advances, he raised her rent. In partnership with the ACLU of Alabama, Legal Services of Alabama, and the Central Alabama Fair Housing Center, WRP brought suit in federal court on behalf of Ms. Boswell under the federal Fair Housing Act to challenge the harassment of low-income women by unscrupulous landlords who know these women have few if any other housing options. We moved for a default judgment against Mr. GumBayTay and the owner of the property, neither of whom responded in a timely fashion to Ms. Boswell's complaint. Though Judge Watkins denied our motion as to Mr. GumBayTay, in October 2007, he found the owner of the property to be in default and ruled that the owner was disqualified from participation in the lawsuit and that if Mr. GumBayTay were ultimately found to be liable, judgment would be entered against the owner holding him vicariously liable for the harms suffered by Ms. Boswell.

In July 2008, we moved for summary judgment against Mr. GumBayTay in hopes of attaining restitution for Ms. Boswell. We also moved for disciplinary sanctions against defense counsel based on his grossly unprofessional and menacing behavior toward Ms. Boswell (*e.g.*, repeatedly calling her a "crack whore" without basis in legal pleadings) and her counsel. Indeed, in August 2008, the magistrate judge issued a report and recommendation on a discovery dispute in this case in which he characterized defense counsel's conduct as the most appalling he had ever seen in his years in practice or on the bench, and intimated that entry of default judgment for plaintiff on all counts may be an appropriate sanction. We await the district court's decision as to our summary judgment motion and motion for disciplinary sanctions.

Since filing the lawsuit, the ACLU of Alabama and the Central Alabama Fair Housing Center have identified many other women who were similarly sexually harassed by Mr. GumBayTay. WRP was pleased

to learn that in July 2008, as a result of this investigation of the property agent, the U.S. Department of Justice Civil Rights Division filed a separate suit against Mr. GumBayTay and several owners of other properties he managed based on his sexual harassment of 12 additional women.

ADVOCATING for FAIR HOUSING LEGISLATIVE PROVISIONS in CALIFORNIA

In 2008, the ACLU of California Legislative Office initially supported but ultimately withdrew its support of Assembly Bill No. 2052. The ACLU endorsed the bill's provision that allows for a tenant or household member who is a survivor of domestic violence, sexual assault, or stalking to terminate a residential lease early. The ACLU withdrew its support, however, when the bill's author disappointingly accepted amendments that changed the general definition of "nuisance" in landlord-tenant law to provide that a person who commits an act of domestic violence, sexual assault, or stalking against another tenant on the premises shall be presumed to have committed a nuisance on the premises. The amendment raised safety concerns for victims of violence by giving batterers an added incentive to force victims to stay silent about the abuse, as well as due process concerns by failing to specify the evidentiary standard that would give rise to the presumption. Further, the amendment is unnecessary, as landlords in California have existing authority to evict perpetrators of domestic violence who threaten the safety of other tenants.

POLICE and GOVERNMENTAL RESPONSE to DOMESTIC VIOLENCE

Victims of domestic violence can seek civil protective orders, sometimes called restraining orders, in every state in the United States. Protective orders can also be issued in criminal court when an abuser is being prosecuted. Protective orders generally prohibit the abuser from harming or contacting the holder of the order. Protective orders can also address child custody and visitation, possession of a joint residence, payment of child support or spousal support, and the like. Protective orders are important tools for keeping survivors of domestic violence safe, but the order itself does not guarantee security. In fact, one study found that protective orders are violated in 67 percent of rape cases, 50 percent of physical assault cases, and 69 percent of stalking cases. Because protective orders are often violated, women who obtain them depend on the police to protect their safety and the safety of their family.

A pervasive attitude persists in many police departments that domestic violence is a private matter, to be dealt with behind closed doors.

To reduce the prevalence of domestic violence and ensure the safety of domestic violence survivors

who are taking steps to protect themselves and their families, many states have passed laws requiring police officers to take certain measures, including arresting the abuser, when a protective order is violated. Yet a pervasive attitude persists in many police departments that domestic violence is a private matter, to be dealt with behind closed doors. Consequently, many officers do not treat domestic violence with the seriousness they would other comparable violent crimes. In some instances, obtaining a protective order may lead a batterer to retaliate against the victim; thus, when police fail to properly and meaningfully enforce protective orders, they increase danger to the victim by potentially exposing her to further violence.

In 2008, WRP continued its advocacy to ensure that police officers enforce domestic violence protective orders and that they are held accountable when they fail to do so. Beyond questions of redress, we continue to use novel strategies to advocate that federal and state governments take affirmative steps to end the cycle of violence and guarantee the human right of all women and children to live free of violence.

Gonzales v. United States, State of Colorado (Inter-Am. C.H.R.)

In June 2005, the U.S. Supreme Court ruled that victims of domestic violence do not have a due process right to police enforcement of orders of protection against their abusive partners and dismissed Jessica Lenahan's case (at the time she was known as Jessica Gonzales, her former married name). Ms. Lenahan had filed suit against the Police Department of Castle Rock, Colorado, after her three daughters were kidnapped by her estranged husband and then subsequently killed when the police failed to take the appropriate actions required by Colorado law to enforce her order of protection.

In an unprecedented step, WRP and the ACLU Human Rights Program took Ms. Lenahan's case before the Inter-American Commission on Human Rights in order to highlight the U.S. government's unwillingness to hold police accountable for their failure to protect victims of domestic violence and the U.S. court's refusal to provide a remedy. In December 2005, we filed a petition before the Commission requesting review of Ms. Lenahan's case. The petition describes the widespread problem of police failure to enforce orders of protection for victims of domestic violence. We urged the Commission to conclude that the United States failed to protect Ms. Lenahan's fundamental rights under the American Declaration of the Rights and Duties of Man. By bringing Ms. Lenahan's case before the IACHR, we also sought to demonstrate the broader problem of inadequate police response to violence against women in the Americas.

In March 2007, the Commission held a hearing on the petition's admissibility, at which Ms. Lenahan and her attorneys from WRP, the ACLU Human Rights Program, and the Columbia Law School Human Rights Clinic, testified. "I am grateful to the Inter-American Commission on Human Rights for allowing me this opportunity to tell my story," Ms. Lenahan testified before the Commission. "It is a courtesy I was

SNAPSHOT FROM THE ACLU BLOG OF RIGHTS, blog.aclu.org
December 9, 2008
Posted by Lenora M. Lapidus, Director, ACLU Women's Rights Project

REALIZING THE UDHR REQUIRES ENDING VIOLENCE AGAINST WOMEN

The 60th anniversary of the Universal Declaration of Human Rights (UDHR) is an opportunity to remind our government, particularly the incoming new administration and Congress, of its duty to protect the human rights of its people — an obligation it signed up for when it voted for the UN General Assembly's adoption of the UDHR's 30 articles in 1948.

Arguably the most basic and fundamental right outlined in the Declaration is Article 3: *Everyone has the right to life, liberty and security of person*. And yet victims of gender-based violence across the country (and throughout the world) are denied this right on a daily basis: every day more than three women are killed by their intimate partners in the United States, and many more are assaulted, raped, trafficked, stalked, and otherwise abused. Clearly, the government cannot prevent every act of violence committed by individuals, but it must do everything in its power to protect women's safety.

Unfortunately, the government has abdicated much of its responsibility for the human rights violations women suffer in the form of violence — and that is why advocates must turn to the UDHR and other international human rights mechanisms to remind the United States that it has an affirmative obligation to ensure that everyone can enjoy the right to *life, liberty and security of person*.

This is exactly what Jessica Lenahan (formerly Gonzales) did in 2005 when the U.S. Supreme Court ruled that the police of Castle Rock, CO had done nothing wrong when they refused, despite her repeated pleas for help over a ten-hour period, to enforce the court-issued protective order she had obtained against her estranged husband. Jessica's husband kidnapped their three daughters in violation of the court order and, after no effort by the police to locate them, the night ended tragically with the deaths of all three girls. Not accepting the Supreme Court's decision as the end of the line, Jessica and her advocates petitioned the Inter-American Commission on Human Rights (IACHR) to find that her human rights had been violated by both the police's inaction and the courts' denial of a remedy. The IACHR's governing document, the American Declaration on the Rights and Duties of Man, like the UDHR, holds the government to a higher standard of accountability for protecting women from gender-based violence than does U.S. domestic law. Jessica has given testimony at two hearings before the IACHR, and the Commission is expected to issue its findings and recommendations in 2009.

Sixty years ago the United States government adopted the UDHR, and yet it continues to turn a blind eye to human rights abuses occurring every day within its borders. Women, children, immigrants, people of color, and poor people in particular have been neglected by the government, often with the dismissive attitude that the government is not responsible for ensuring their rights. But we cannot let the government forget that it endorsed the rights set forth in the UDHR, and that it is obligated to uphold them or those rights will become meaningless. On this 60th anniversary, we must hold the U.S. government to its highest aspirations and ensure that the rights set forth in the UDHR are fully realized.

Celebrate the UDHR at 60 with the ACLU. Visit www.udhr60.org.

not granted by the judicial system of my home country, the United States. I brought this petition because I want to prevent the kind of tragedy my little girls and my entire family suffered from happening to other families." In June 2007, the Commission declared in a landmark decision that Ms. Lenahan's case could proceed, rejecting the U.S. government's position that the American Declaration on the Rights and Duties of Man does not create positive governmental obligations to protect women from domestic violence. The decision holds the U.S. to well-established international standards on state responsibility to exercise "due diligence" to prevent, investigate, and punish human rights violations and protect and compensate victims of domestic violence. The Commission also found that Ms. Lenahan had exhausted all domestic legal avenues available to her.

"I brought this petition because I want to prevent the kind of tragedy my little girls and my entire family suffered from happening to other families."

– Petitioner Jessica Lenahan, *Gonzales v. United States, State of Colorado*

In October 2008, Ms. Lenahan came one step closer to justice, when she, her counsel, and an expert on police practices argued the merits of her case before the Commission. We focused on the facts of June 22 and 23, 1999, when her daughters were abducted by Mr. Gonzales and eventually killed, and the failure of the police to respond adequately to Ms. Lenahan's pleas for help that night. We also described the lack of a thorough investigation into the deaths of her three children. We argued that the government failed to meet its affirmative obligation to exercise due diligence

Petitioner Jessica Lenahan and the delegation to the Inter-American Commission on Human Rights

EXCERPTS FROM JESSICA LENAHAN'S TESTIMONY
before the Inter-American Commission on Human Rights on October 22, 2008 in Washington, D.C.

In March of 2007, I appeared for the first time before this Commission. I told you the story of how, in 1999, my estranged husband Simon Gonzales violated a restraining order given to me by a Colorado court and then kidnapped my three daughters. In that restraining order the judge concluded that my children and I were at risk. If the terms were not followed, the restraining order specifically directed the police to arrest Simon. The police basically ignored the restraining order. I told you how I called and met with the Castle Rock police *nine* times over a ten-hour period. I begged them to find my daughters, bring them to safety, and arrest my husband. And I told you how my cries for help fell on deaf ears. As I spent the night in a total panic, the police went to dinner, looked for a lost dog, and tended to an illegally-parked car. The safety of my girls seemed to be the last thing on their minds.

I described to you the final horror of that night, when at 3:30 in the morning, I learned that my girls had been murdered and that Simon had been killed in a shootout with the police. The girls' bodies were found in Simon's pickup truck, which had been sprayed with police bullets. Afterwards, I was detained in a room for 12 hours and interrogated, as if I played a role in my babies' deaths.

The truck Simon was driving was destroyed just weeks after the tragedy. When I asked to see my daughters' bodies several times before the funeral, the authorities refused. I was treated like a criminal rather than a mother living her worst nightmare. I felt so deceived. I'd grown up thinking that my government was bound by the law, and that it was just and fair. But all of a sudden when I needed help most, the government turned its back on me and my family.

As I told this Commission in March 2007, everyone – the media, the coroner, the District Attorney's office – officially concluded that Simon had killed the girls, but no one ever gave me proof of this. All I know is that their bodies contained multiple bullet wounds of different sizes, shot at different angles. Were those bullets from Simon's gun, or the police officers', or both? There has been no accountability for the totally inadequate investigation into my daughters' deaths.

I turned to the United States courts to seek justice, to hold the police accountable for illegally ignoring and demeaning me and my children in our time of need. But in 2005, the United States Supreme Court threw out my case. The Court denied me a fair trial and the justice of revealing the truth of my tragedy. And in silencing me, the Court also sent a message to police officers all over this country that they can ignore their responsibilities to enforce restraining orders, and that they can get away with it. I fear that this means that women and children with restraining orders are now more vulnerable to violence than before. A restraining order isn't worth the paper it's printed on if the police won't enforce it.

The years after the tragedy have been hell.

Every day I face the reality that my daughters are truly gone. Forever. Sometimes I wonder: what would Rebecca, Katheryn, and Leslie be doing if they were alive today?

I lost three children that night, my son lost his three sisters, and my parents lost three grandchildren. We all have to live with that loss, as well as the pressures that the tragedy has placed on our own relationships and lives.

The fact that I still do not know what happened is why I am here. I deserve answers. I deserve to know the truth. I want to know: Who killed my daughters? Where did they die? And when did they die? I want to know why the police ignored my calls for help. I've been asking these questions for nine long years. How long will it take for you to help me discover the truth?

I know that I cannot bring my children back from that night. Nothing will ever fill the emptiness that I feel when I remember my daughters and the great lives they might have lived.

What I can do, however, is be a voice for the voiceless – for women who are promised protection in America, and then denied it the moment they are in danger.

As a Latina and Native woman, as a mother, and as a domestic violence survivor, I ask the Commission to hold the United States government, the State of Colorado, and the Town of Castle Rock accountable for violating my human rights, and my children's human rights. I want the federal government to put more time and resources into ensuring that domestic violence victims receive the protection they need, and into creating accountability mechanisms for law enforcement so that no other mother will be left asking these questions. I want to see police departments improve their training programs on how to deal with domestic violence so that no other child will die so traumatically elsewhere in the face of tragic indifference from the police. I want to see local and state governments improve their victim assistance programs so that domestic violence victims will have the resources they need to become financially, emotionally, and physically independent.

I brought this case with the hope that I could help change the system and make things safer for women and children. This month, October, is Domestic Violence Awareness Month in the United States, and I hope that my presence here today raises awareness about the severity of domestic violence crimes and the fact that law enforcement all over the country is not protecting victims. I want to bring a message to women like myself that there is a better future and that we can work together to create much-needed change.

(from left to right) Steven M. Watt, ACLU Human Rights Program Senior Staff Attorney; Jessica Lenahan, Petitioner; Lenora M. Lapidus, WRP Director; Julie B. Ehrlich, WRP Fellow; Araceli Martínez-Olguín, WRP Staff Attorney

to protect Ms. Lenahan and her children from this vicious act of violence. Columbia University professor Jeffrey Fagan testified about best practices for police response to domestic violence. Ms. Lenahan again had an opportunity to testify at length to the Commissioners about the ways in which the government had violated her human rights by failing to arrest Mr. Gonzales, failing to conduct a thorough investigation of the events of that night, and failing to provide her with a remedy for the horrible atrocity she suffered as a result.

Following the hearing, the parties were given an opportunity to submit post-hearing observations. We expect the Commission to issue its findings and recommendations in 2009 and we are hopeful that Ms. Lenahan will finally be offered some measure of justice and that we will be able to use the recommendations to advocate for changes in police policies and state laws nationwide to better protect women from violence.

Sturgeon v. Bratton (Cal. Ct. App.)

The ACLU of Southern California intervened in a lawsuit challenging the implementation of the Los Angeles Police Department's (LAPD) Special Order 40, the LAPD policy that bars police from stopping, interrogating or detaining people based solely on their immigration status. The ACLU-SC represents Los Angeles-based community groups that advocated for day laborers and victims of domestic violence. Special order 40 was enacted in 1979 in order to ensure that all residents in the city feel safe and comfortable when reporting a crime regardless of their immigration status. Police experts throughout the country agree that victims and witnesses are much less likely to cooperate with police if they fear they will be questioned about their immigration status.

In September 2006, the judge granted the ACLU's motion for permissive intervention. In March 2008, the ACLU-SC and the LAPD filed motions for summary judgment, and in a victory for sound public policy that ensures that victims of or witnesses to crime are not fearful of reporting crimes because of their immigration status, the court granted summary judgment upholding Special Order 40 in June 2008 and the case was accordingly dismissed. The plaintiff has since filed a notice of appeal seeking review as to the lawfulness of Special Order 40.

ENDING EMPLOYMENT DISCRIMINATION AGAINST SURVIVORS of DOMESTIC VIOLENCE

Economic independence is a crucial factor in eradicating violence against women in the form of domestic violence, sexual assault, and stalking. Affording survivors of domestic violence and sexual assault economic independence is a key step toward enabling them to protect themselves and their families

from further violence. Similarly, an employee should be able to report sexual assault on the job without fear of reprisal or loss of her job. In 2008, WRP continued its advocacy to protect the employment rights of victims of gender-motivated violence and in 2009, we will continue to advocate for state laws and local ordinances that recognize the complexity of gender-based violence and protect the employment rights of survivors to ensure that they are not re-victimized by punitive employment policies.

Simmonds v. New York City Department of Correction (S.D.N.Y.)

In October 2005, a co-worker brutally sexually assaulted Danielle Simmonds, a New York City correction officer, while she was on the job. Ms. Simmonds reported the assault and the New York City Department of Correction (NYCDOC) failed to adhere to its own procedures governing correction officer assaults on fellow officers. Furthermore, NYCDOC retaliated against Ms. Simmonds after she inquired why no investigation or disciplinary action had been taken to punish her assailant. In response to her inquiry, Ms. Simmonds was treated with hostility and suspicion by her supervisors and was subject to multiple disciplinary actions. NYCDOC also failed to take steps to ensure that Ms. Simmonds was safe from any

(from left to right) WRP Staff Attorney Araceli Martínez-Olguín and Plaintiff Danielle Simmonds

possible reprisals by her assailant and failed to provide Ms. Simmonds with reasonable accommodations that employers are obligated to provide to victims of sexual assault, domestic violence, or stalking under the New York City Human Rights Law. WRP filed Equal Employment Opportunity Commission charges on behalf of Ms. Simmonds in April 2006 and filed a complaint in federal court in July 2006 seeking to hold NYCDOC responsible for its unfair and discriminatory treatment of Ms. Simmonds based on her status as a survivor of gender-motivated violence.

In an affirmation of the rights of women to work free from the threat of sexual assault, in August 2007, District Court Judge Naomi Reice Buchwald of the United States District Court for the Southern District of New York entered a $95,001 judgment against NYCDOC. Subsequently, in September 2008, the judge awarded WRP and cooperating firm Steptoe & Johnson LLP almost $80,000 in attorneys' fees and costs, bringing to a close two years of litigation against the city.

Utilizing a provision of the New York City Human Rights Law that provides for a victim of domestic violence, sexual assault, or stalking to bring a civil action against her perpetrator, we named Ms. Simmonds' assailant as a defendant in this action along with NYCDOC. In December 2008, Judge Buchwald awarded Ms. Simmonds fees and costs incurred while litigating the case against her assailant.

Guaranteeing Equal Educational Opportunity

Everyone has the right to education … [and this] [e]ducation shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.

UNIVERSAL DECLARATION OF HUMAN RIGHTS ARTICLE 26

Education is a key tool for people to advance their social and economic circumstances and to ensure that today's youths have greater opportunities than their parents did. Access to education expands horizons and opens doors and thus is one of the most effective ways to secure full equality between men and women in society. In 1972, federal lawmakers recognized this fact by passing Title IX of the Education Amendments of 1972. While perhaps best known for its requirement that schools provide girls with equal athletic opportunities, the promise of Title IX applies more generally to all educational programs that receive federal funding, and to all aspect of a school's educational system: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." At the time of its enactment, Title IX was an unprecedented effort to end the ubiquity of sex discrimination in education and for over 35 years it has been the lynchpin in efforts by advocates to establish, protect, and advance gender equity in public schools. Since the enactment of Title IX, the ACLU Women's Rights Project, in close partnership with ACLU affiliates across the country, has made significant inroads in promoting Title IX's guarantee of gender equality in educational opportunity.

Yet, in recent years, Title IX has come under attack. Under the administration of President George W. Bush, the U.S Department of Education, the branch of the federal government primarily responsible for providing guidance as to the proper implementation of Title IX, has issued new regulations with respect to sex-segregated education that raise serious constitutional concerns and strike at the core principles of Title IX aimed at remedying a history of gender discrimination in our public school systems. Women and girls also continue to have their right to a quality education diminished by schools that fail to take seriously allegations of peer-on-peer sexual harassment and assault.

In 2008, WRP advocated to restore and strengthen the protections guaranteed by Title IX so as to ensure equal access to educational opportunity and resources for *all* students. We also continued in our efforts to hold schools responsible for fostering an educational environment free from sex discrimination in the form of gender-based violence.

STEMMING the TIDE of SEX-SEGREGATED PUBLIC EDUCATION

In recent years, many public school districts have introduced programs that allow for expanded use of single-sex education, often presenting these programs as a panacea to, what is in some cases, generations of failed schools. This trend sharply accelerated after October 2006, when the U.S. Department of Education announced new Title IX regulations that have made it easier for public schools to implement single-sex classrooms. Proponents of sex-segregated education often stress that the voluntariness of sex-segregated educational programs is crucial to avoiding legal liability for sex discrimination, but when training, instruction, and resources differ based on the sex of the student, there is no meaningful way for a boy to opt-into a girls' educational program or vice versa – thus, separation by sex is never *truly*

voluntary. Moreover, if history has shown us anything, it is that difference breeds inequality. It was in response to this history of deep inequality that Title IX was born.

In addition to being unlawful, the dominant rationale behind sex-segregated academic programs is harmful to all children. These programs are often based on controversial pop-scientific theories about how girls' and boys' brains develop in fundamentally different ways and reinforce disturbing and outmoded gender stereotypes. For example, some proponents of sex-segregated schools tell teachers that boys need a competitive and confrontational learning environment, while girls can only succeed if they work cooperatively and are not placed under stress. Some proponents assert that when establishing authority, teachers should not smile at boys because boys are biologically programmed to read this as a sign of weakness. Although these ideas are hyped as "new discoveries" about brain differences, they are, in fact, only dressed up versions of old stereotypes. These are but a few examples of the troubling and absolutist assumptions about sex differences that underlie this growing educational movement. These are not theories espoused by pedagogical outliers; in fact, one of the leading sex-segregation training organizations, The Gurian Institute, based in Colorado Springs, Colorado, claims that it has trained over 35,000 teachers in more than 2,200 schools and districts in the United States.

"It is precisely because segregation denies individuals the right to make their own choices that we as a society have rejected it as an educational model . . . It is deeply troubling that the Department of Education has chosen to turn back the clock on this progress."

– Emily J. Martin, WRP Deputy Director

Creating sex-segregated schools and classrooms is a wrongheaded diversion of much needed resources from initiatives that have been proven to improve the education of both boys and girls – such as reduced class sizes, increased teacher training and professional development, teaching practices rooted in individuated learning styles, and greater parental involvement. Moreover, sex-segregated classes fundamentally deprive students of important preparation for the real un-segregated world of work. Rather than offering choice, sex-segregated programs limit the education of both boys *and* girls.

Our public schools should be a sanctuary where the lessons of democracy are taught and opportunity is shared equally. The future of our youth is too valuable to subject it to the radical experiment of sex-segregated public education. "It is precisely because segregation denies individuals the right to make their own choices that we as a society have rejected it as an educational model," said Emily J. Martin, Deputy Director of the Women's Rights Project. "It is deeply troubling that the Department of Education has chosen to turn back the clock on this progress."

A.N.A. v. United States Department of Education (W.D. Ky.)

In May 2008, WRP and the ACLU of Kentucky filed an amended complaint on behalf of five families in a previously filed federal class-action suit. The lawsuit challenges the lawfulness of a Kentucky school district's policy of segregating its students by sex and thus exposing girls and boys to learning environments that are fundamentally unequal and in violation of the Fourteenth Amendment, Title IX, the Equal Educational Opportunities Act, and Kentucky sex equity law. In our amended complaint, we included the U.S. Department of Education as a defendant. We argue that the Title IX regulations issued by the Department of Education in 2006, which encourage school districts to segregate students by sex, are unlawful.

According to the Department of Education's own comprehensive review in 2005 of available research about the pros and cons of sex-segregated public education, no strong evidence exists that sex-segregated instruction is beneficial to students or improves their education. Nevertheless, the Department of Education issued regulations in October 2006 that, for the first time in 30 years, allowed public schools to segregate students by sex. In doing so, it broke with over 20 other federal agencies that continue to have regulations on the books forbidding such segregation, which apply to many public schools including

(back row, left to right) Selene W. Kaye, WRP Advocacy Coordinator; Frankie Anthony; Jeffrey Anthony; William E. Sharp, ACLU of Kentucky Staff Attorney; Michael Aldridge, ACLU of Kentucky Executive Director
(front row, left to right) Araceli Martínez-Olguín, WRP Staff Attorney; Carol Anthony; Stacey Anthony; Stephanie Storms; Dr. Christia Brown, Professor of Developmental Psychology, University of Kentucky

Breckinridge County Middle School. Nevertheless, in the wake of the Department of Education's actions, a growing number of public school districts across the country have created single-sex programs.

The Breckinridge County School District instituted sex-segregated classrooms in its middle school in 2003, shortly after the U.S. Department of Education announced its intention to loosen federal restrictions on sex-segregated education. Although in previous years parents were given the option of whether to participate in sex-segregated classes, in the 2007-2008 school year, students were assigned to all-male, all-female, or coeducational classes with no input from the students or parents. Only after parents complained did the school notify parents – several weeks later – that they could opt out of the segregated classes. However, because in at least some instances the available coeducational classes were not equal to the sex-segregated classes, parents who would otherwise have preferred that their children benefit from the diversity of a coeducational setting could not remove their children from the same-sex classes without sacrificing the best instruction available for their children. In addition, when the best class in a particular subject was a single-sex class, students of the opposite sex were excluded from participating in the best education the school had to offer.

Compounding the problem further, the Breckinridge County School District has hired as a consultant David Chadwell, Director of Single-Sex Initiatives in the South Carolina Department of Education and board member of the National Association for Single Sex Public Education – one of the leading organizations that advances questionable "brain science" theories that sex segregation is necessary because boys' and girls' brains are fundamentally too different to benefit from similar instruction styles.

Stacey, Carol, and Frankie Anthony

SNAPSHOT FROM THE ACLU BLOG OF RIGHTS, blog.aclu.org
May 30, 2008
Posted by Nikki Anthony

COMING TO WASHINGTON TO TALK ABOUT EQUALITY

My name is Nikki Anthony and I just finished eighth grade at Breckinridge County Middle School in Kentucky. The ACLU is representing me, my younger sister, and five other students in a case against our school district and the U.S. Department of Education because our rights are being violated by my school segregating students by sex. I was raised in a house where rights are very important, and I was told, "If you don't stand up for your rights then they will be taken away." People in the United States don't tolerate segregation by sex in everyday life, and yet they want us to tolerate it in our school system when we are supposed to be learning what being free really is.

For this reason my family and I are attending the ACLU Membership Conference this June in Washington, D.C., our Nation's capital. Most people look at the capital as a place that keeps our country held together and that's the way that it should be. Our capital is the seat of justice and equality in our Nation – *equality* being the key word. Separating students into different groups based on sex is wrong, and it doesn't make things equal for all students. Our society is not based on your gender, and the schools are supposed to prepare us for when we enter the real world. How does separating students by sex prepare us for society when society is not segregated that way?

One day before school started last summer, I went into the school to find out who my teachers were and I was happy with those results. All the trouble started when I found out that I had five all-girls' classes, and my parents and I had no say in what kind of classes I was put in. The past two years that I was at Breckinridge County Middle School, we were given the choice to be in "gender-specific" or coeducational classes. My family and I had always chosen coeducational classes, but this year my rights and my fellow students' rights were taken away because we no longer had the right to choose.

The even bigger problem is that the all-girls' classes and the all-boys' classes are supposed to be equal, but that's not the way it worked at my school. The all-girls' math class that I was in was much more advanced than the all-boys' math class. The other part of this problem is that the single-sex classes were the only Algebra I classes in the eighth grade; there wasn't a coeducational class to match the single-sex classes like there is supposed to be. We were offered the chance to switch into a new coeducational class but our teacher told us that the class would not move as fast as the all-girls' math class. Most of the students, including me, were afraid to switch because we would not be moving at a pace that would challenge us and allow us to learn at our capability level.

My family and I are so excited about coming to Washington, D.C., for the ACLU Membership Conference. We can't wait to meet other people who care about civil rights as much as we do. I am hoping to meet other young people who care about human rights. This trip means a lot to me and my family; we can't wait to tell our story. I am also very excited to learn about the other types of rights the ACLU fights for!

Listen to a podcast of Nikki, her father Frankie, and sister Stacey, talk about their case at www.aclu.org/sexsegregation.

In his writing and on his website, Mr. Chadwell urges teachers to treat boys and girls very differently – for example, allowing boys to talk loudly in class and insisting that girls remain quiet; encouraging boys, but not girls, to toss balls while answering questions; and giving boys, but not girls, time limits for academic tasks.

Frankie Anthony, whom the ACLU is representing, has two daughters who attend(ed) Breckinridge County Middle School. He wants the best education possible for his daughters and is deeply concerned about the school's sex-segregated program. His older daughter, Nikki, is a talented math student and was assigned to an all-girl math class at the beginning of the 2007-2008 school year. "I think my daughters will be less prepared to succeed in the world if they can't socialize, compete, and work together with boys in school, but I couldn't take my daughter out of the girls' math class without compromising her education, because it was the best math class in the school. At the same time, boys didn't even have the option to be in her math class," said Mr. Anthony. "Real life doesn't put boys in one room and girls in another," added Nikki. "I don't think it's fair that the smartest boys in my grade can't take math with me or that I can't take English with them."

In July 2008, the ACLU filed a Motion for Class Certification and we await a ruling on this motion. In August 2008, the court denied the Breckinridge County Defendants' motion to dismiss, allowing our case to proceed against the County Defendants. In September 2008, we filed our response to the Federal Defendants' Motion to Dismiss and await the court's decision.

In October 2008, WRP and the ACLU of Kentucky hosted two public-education forums, one in Breckinridge County and one in Louisville, at which attorneys, education and psychology experts, and community members dialogued about the rise of single-sex education in Kentucky public schools. In 2008, WRP also collaborated with local affiliate offices in Alabama, Georgia, Michigan, Massachusetts, New Jersey, and Florida to address these trends through public education efforts, open records requests, and legislative and executive advocacy.

ENSURING a LEARNING ENVIRONMENT FREE from SEXUAL HARASSMENT

Under Title IX, discrimination on the basis of sex has been interpreted broadly to include sexual harassment, rape, and sexual assault if the harassment or assault is "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit." Courts have generally found that even a single instance of rape or sexual assault by another student meets this threshold. A primary or secondary school, college, or university that receives federal funds may be held legally responsible when it *knows about* and is *deliberately indifferent to* sexual harassment or assault in its programs or activities whether committed by a faculty member, staff, or student against a student. In other words, according to the U.S. Supreme Court, a school becomes liable for sex discrimination when the school's response to the harassment "is clearly unreasonable in light of the known circumstances."

Given that women and girls are much more likely to be the victims of sexual harassment or assault, ultimately, when a school does not take steps to rectify gender-motivated violence on campus, the school perpetuates a hostile educational environment and the critical opportunity that education affords to women and girls to get ahead in life is unfairly hindered if not foreclosed altogether.

J.K. v. Arizona Board of Regents (D. Ariz.)

In February 2008, WRP and the ACLU of Arizona, on behalf of a number of other leading women's rights and legal advocacy organizations, submitted a friend-of-the-court brief in support of the plaintiff in opposition to the Arizona Board of Regents' Motion for Summary Judgment.

In 2004, plaintiff J.K., a student at Arizona State University (ASU), was raped in her dormitory room by a fellow ASU student and athlete, whom ASU administrators had arranged to admit but failed to supervise adequately, despite knowing firsthand that he had engaged in repeated egregious sexual harassment at ASU prior to his admission in the fall. Indeed, J.K.'s assailant's harassment of women at ASU during the Summer Bridge program for incoming first-year students was so intolerable that ASU took the unusual step of expelling him from the program and evicting him from ASU dorms. However, he was re-admitted to ASU and to the dorms a few weeks later without the necessary precautions to protect women at ASU from further harassment by this individual.

The ACLU's brief argued that ASU had actual knowledge of the assailant's harassment of students and staff other than the plaintiff and that this put ASU on notice that he was a risk to others. The brief also argued that ASU's conduct in readmitting the assailant to ASU without implementing precautionary measures amounts to deliberate indifference to this student's history of harassing women living and working at ASU, and that accordingly, ASU is liable under Title IX for the student's rape of J.K. Further, the brief argued that ASU's indifferent response following J.K.'s rape, which included allowing her assailant to remain at ASU for two months and refusing to crack down on a culture of violence, provides an independent basis for liability.

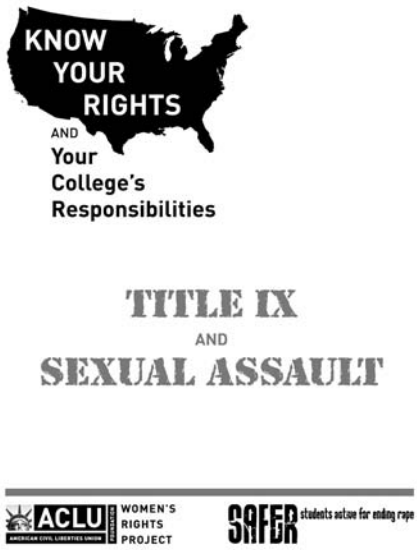
Oral argument was held in August 2008 and in September 2008, WRP was pleased to learn that United States District Judge Mary Murguia denied ASU's motion for summary judgment. Citing the ACLU's brief and relying on statements ASU made in its response to the ACLU's brief, Judge Murguia held that ASU's "actual knowledge" of the harassment of others made it aware of the risk the harassing student posed to others like J.K. The court also held that J.K. would have the chance at trial to prove that ASU's response to the harassing student's known misconduct was "clearly unreasonable."

This case follows on the heels of a victory for women won in a similar suit, *Simpson v. University of Colorado*, where WRP also served as a friend of the court. This suit was brought by two women who alleged that while they were students at the University of Colorado (CU), they were sexually assaulted by CU football players and recruits. They sued the university to hold it liable for sexual harassment but lost in

the trial court. On appeal, the U.S. Court of Appeals for the Tenth Circuit ruled in favor of the two women and reversed the lower court's summary judgment and remanded the case for further proceedings. Shortly thereafter, CU settled the case and agreed to pay the two women $2.5 million in damages, to hire a new counselor for the Office of Victim's Assistance, and to appoint an independent, outside Title IX advisor. This sweeping victory sends the clear message that when federally-funded educational institutions do not implement meaningful measures to rectify and prevent the sexual harassment of students, they unfairly deny women and girls equal educational opportunity.

Partnering with SAFER to Bring About Greater Accountability for Sexual Violence in Schools

In 2008, in collaboration with the Maine Civil Liberties Union, the ACLU of Washington, and SAFER, a national non-profit organization committed to empowering students to hold colleges accountable for sexual assault on campus, WRP created a fact sheet entitled, "Title IX and Sexual Assault: Know Your Rights and Your College's Responsibilities." The fact sheet explains how Title IX's prohibition of discrimination on the basis of sex can apply to sexual assault and harassment on college campuses. It outlines case law on this matter and the steps that campus activists can take to hold their schools responsible for preventing sexual violence. We have created a national version and two state versions (Washington and Maine) of the fact sheet, which include specific information about state laws that apply. SAFER and the ACLU have and will continue to distribute the fact sheets to hundreds of college students to educated them about their rights and how they can engage their campus officials in taking proactive steps to guard against sexual assault on campus and to prevent backlash against victims who have the courage to come forward.



PROTECTING the RIGHT TO JUSTICE for SURVIVORS of PEER-ON-PEER GENDER-MOTIVATED VIOLENCE

In 2008, the ACLU supported efforts to ensure that victims of gender-motivated violence in educational settings can enforce their rights in federal court.

Fitzgerald v. Barnstable School Committee (U.S.)

This case presents the question of whether a plaintiff can pursue sex discrimination claims in an educational context under both Title IX and the Equal Protection Clause through 42 U.S.C. § 1983. Section 1983 is a statutory provision of the Civil Rights Act of 1871, also known as the Ku Klux Klan Act of 1871. This act was originally passed in the years following the American Civil War. Its main purpose was to protect African-Americans from the Ku Klux Klan's vigilantism by providing a civil remedy for the inhumane abuses committed against African-Americans during that era. Section 1983 does not itself create new civil rights; rather, it provides a mechanism through which individuals can access federal courts to hold state actors liable for civil rights violations. As such, Section 1983 is a powerful tool through which individuals can enforce the fundamental rights and liberties guaranteed to all in the U.S. Constitution.

The case at bar involves a young girl who was repeatedly sexually harassed on the school bus by a peer. Unhappy with school officials' lack of responsiveness, her parents felt they had no choice but to take her off the school bus and withdraw her from her physical education class so as to prevent any further interactions with her harasser. The family then brought a federal lawsuit against the Barnstable School Committee (BSC) under Title IX and the Equal Protection Clause. The trial court held that in passing Title IX, Congress meant to provide a comprehensive remedy for sex discrimination in education and thus that the plaintiffs could not also bring an Equal Protection claim against the school under Section 1983. It also concluded that the school could not be held liable for maintaining a sexually hostile environment because BSC's response to the harassment was not unreasonable, given that her peer did not subject the plaintiff to further sexual harassment after officials learned about the harassment.

In 2007 WRP and the ACLU of Massachusetts, on behalf of several local and national women's rights organizations, filed a friend-of-the-court brief for the appellants before the U.S Court of Appeals for the First Circuit arguing that the plaintiffs should have been permitted to present both their Title IX claims and their Constitutional claims. The brief also argued that the trial court ignored both that the school's inaction presented the girl's family with the stark choice of pulling their daughter out of school programs or exposing her to further harassment, and that the school district created and perpetuated a hostile environment through its dismissive response to her allegations.

In October 2007, the First Circuit affirmed the trial court's decision, holding that bringing a claim under Title IX precludes plaintiffs from bringing claims under Section 1983 for constitutional violations.

The court found that plaintiffs' Equal Protection claim was "virtually identical" to their Title IX claims and that "Congress saw Title IX as the sole means of vindicating the constitutional right to be free from gender discrimination perpetrated by educational institutions." The Court also affirmed summary judgment against the plaintiffs on their Title IX claims, finding that the defendants in this case responded reasonably to the reported harassment. The plaintiffs petitioned the Supreme Court for a writ of *certiorari* and the Supreme Court granted the petition on the question of whether Title IX precludes constitutional claims brought under Section 1983 against the school district.

In August 2008, WRP and the ACLU National Legal Department, in partnership with the National Women's Law Center and joined by 39 other education, civil rights, and women's rights advocacy organizations, submitted a friend-of-the-court brief to the Supreme Court arguing that the statutory protection against sex discrimination that Congress enacted in Title IX was intended to expand upon, not limit, the right of equal protection enshrined in the Constitution and made enforceable through Section 1983. The brief argues that a high bar must be met before the Court concludes that Section 1983 is unavailable to remedy violations of the Fourteenth Amendment, in light of Section 1983's history as a statute intended to enforce that Amendment. The brief further argues that the scope of Title IX's protections differs from constitutional protections and that legislative history indicates that Congress did not intend for Title IX to bar constitutional claims brought under Section 1983. The Supreme Court heard oral argument in December 2008 and we expect the Court's decision in Spring 2009. We are hopeful that the Supreme Court will overturn the First Circuit's rolling back of an individual's ability to enforce her constitutional civil rights while also enforcing her right to educational opportunity under Title IX.

ENSURING GENDER EQUITY in ATHLETICS

Tying the Score for Female Athletes in Washington

Since 1972, Title IX has banned discrimination against females in school and college athletic programs, but Title IX does not apply to city leagues and private sports programs and facilities. Girls and women in these leagues are frequently relegated to the worst-maintained fields, the most undesirable practice or play times, and the least experienced referees. In some areas, females are even denied the opportunity to form teams.

In 2008, the ACLU of Washington (ACLU-WA) received a one-year grant from the national Women's Sports Foundation to improve education about and awareness of Title IX and gender equity issues in secondary schools and community recreation leagues. Together, the ACLU-WA and the national Women's Sports Foundation launched a "Tying the Score" campaign to ensure that female athletes receive equal treatment in school sports programs. The campaign features information sessions to improve awareness, identify concerns, and provide solutions about gender equity in athletics. To this end, in August 2008, the

ACLU-WA contracted with education equity advocate Linda Mangel to conduct informational sessions and workshops for school administrators, parents, and the sports community throughout Washington on the requirements of Washington gender equity laws. The project will also organize public support for state policy changes to require gender equity in community park and recreation leagues.

In addition to meeting with federal and state education officials, the U.S. Department of Education, and the Office of Superintendent of Public Instruction, information sessions have been scheduled with the Washington Interscholastic Activities Association, Vancouver Coaches Institute, Washington Human Rights Commission, and Washington State School Directors Association. Many state agencies do not have the capacity or funding to carry out Title IX enforcement, much less public education and outreach, so the ACLU-WA is pleased to be able to conduct this advocacy in partnership with the Women's Sports Foundation to further make gender equity a lived reality on Washington's playing fields. "Parents, students, and coaches should insist on equality for female athletics. It is nothing less than the law, and nothing less than what female athletes deserve," said Ms. Mangel.

"Parents, students, and coaches should insist on equality for female athletics. It is nothing less than the law, and nothing less than what female athletes deserve."

– Linda Mangel, education equity advocate

In addition to these public education initiatives, in 2009, the ACLU-WA will support state legislation to provide protections against discrimination in local and regional sports programs and facilities so that *all* athletes can benefit from community sports regardless of their gender. The measure would hold local agencies to Title IX's anti-discrimination protections, ensuring that resources are distributed equitably. The ACLU-WA is working with the National Organization for Women and the Northwest Women's Law Center on these legislative efforts.

Thomka v. Massachusetts Interscholastic Athletic Association (Mass. Super. Ct.)

In a victory for female athletes, the ACLU of Massachusetts (ACLUM) prevailed in a case in Hampden County Superior Court in February 2008. The court found that the Massachusetts Interscholastic Athletic Association (MIAA) rule and practice that prohibits girls from participating as individuals in the fall tournament violate the state Equal Rights Amendment. In doing so, the court ruled that Lindsey Thomka, whose high school team just missed qualifying for the statewide finals, should be allowed to compete as an individual, just as a male student would be allowed to do. The ACLUM participated in the trial and hearings as a friend of the court in support of Ms. Thomka and is thrilled with the court's findings. The MIAA has since filed a motion to vacate the judgment, which the ACLUM opposed and which remains under advisement, as well as a notice of appeal.

Reforming *the* Criminal *and* Juvenile Justice Systems

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

No one shall be subjected to arbitrary arrest, detention or exile.

UNIVERSAL DECLARATION OF HUMAN RIGHTS ARTICLES 5 AND 9

Women and girls are incarcerated at alarming rates in the United States. Nationally, there are now more than eight times as many women incarcerated in state and federal prisons and local jails as there were in 1980. With more than one million women behind bars or otherwise under the control of the criminal justice system, women are the fastest growing segment of the incarcerated population; indeed, women's rate of incarceration has increased at nearly double the rate of men's since 1985. Women now account for seven percent of the population in state and federal prisons.

With the number of women and men involved in the criminal justice system continuing to grow, an increasing number of human rights documentation efforts addressing the conditions of facilities in which they are held have contributed to a nascent but growing recognition that the people incarcerated in jails and prisons in the United States often suffer from abusive and inhumane treatment and neglect. Evidence suggests that the trauma experienced by prisoners is particularly harmful to women, given that the majority of female prisoners have histories of physical and sexual violence. In fact, it is estimated that 90 percent of incarcerated women have experienced violence in their lives prior to incarceration and this violence often plays a significant role in their involvement with the criminal justice system.

Over the past 20 years, the "war on drugs" has caused a significant increase in the number of women incarcerated in the United States and limited their access to adequate drug treatment. In the year 2000, 40 percent of criminal convictions leading to incarceration of women were for drug crimes. Draconian drug laws have clearly had a disproportionate impact on the incarceration rate of women, but it is important to recognize that these laws do not affect all women equally. Even though women of color use drugs at rates equal to or lower than white women, women of color are far more likely to be unfairly targeted by "get-tough-on-drugs" laws and policies, leading to a gross overrepresentation of women of color in U.S. prisons and jails. In 1997, 44 percent of Latina women and 29 percent of African-American women incarcerated in state prison were convicted of drug offenses, compared to 23 percent of white women, and 26 and 24 percent of Latino and African-American men, respectively.

Furthermore, upon leaving prison and re-entering the world of work and family responsibilities, many women become caught in a web of collateral consequences stemming from their criminal convictions. Policy-makers have instituted provisions at the federal, state, and local levels that limit the resources available to people with criminal histories. Barriers to obtaining transitional financial assistance, housing, educational loans, and employment opportunities and to reuniting with their children stymie the reintegration of increasing numbers of women once they leave prison and try to gain a foothold in life.

We have also witnessed increased policing in schools and the consequent criminalization of behavior that used to result in detention or in some cases suspension from school. Punishment has come to replace education in many schools in the country. Again, race plays an important factor in which youth become court-involved and the level of severity of this involvement. A study published by the National Council on Crime and Delinquency found that African-American and Hispanic youths are treated more punitively than their white peers charged with comparable offenses. African-American youth with no prior

criminal record were six times more likely to be incarcerated than white youth for similar offenses. Once incarcerated, youth are too often abused and neglected rather than being rehabilitated. This is particularly disconcerting when considering that an increasing proportion of the children being put behind bars are girls, who, like their adult women counterparts, have experienced extremely high rates of abuse prior to their incarceration.

In 2008, the ACLU Women's Rights Project advocated to address the ways in which the criminal and juvenile justice systems violate the rights of women and girls. Such violations include punishment of gender-specific activity, such as pregnancy; over-incarceration of marginalized women and girls; discriminatory treatment in confinement; denial of appropriate reentry services; and imposition of additional penalties and barriers after they have served out their sentences.

IMPROVING CONDITIONS of CONFINEMENT for INCARCERATED WOMEN and GIRLS

In 2008, WRP broadly advocated to ensure that when women and girls are imprisoned, they are held in humane conditions and afforded medical and psychological services and other programming and services appropriate to their needs and to the rehabilitation process.

Ending the Shackling of Prisoners During Childbirth

In the United States, where one in 100 people is behind bars and where women represent the fastest-growing segment of the incarcerated population, the inhumane and dangerous practice of shackling women during childbirth continues to affect thousands of women each year. In a victory for women incarcerated in federal prisons, in October 2008, the Bureau of Prisons, the federal agency charged with overseeing all federally-run prisons and over 201,000 incarcerated individuals, changed is policies to prohibit the shackling of pregnant inmates in all but the most extreme circumstances. This was a victory hard-won by advocacy groups like the Rebecca Project for Human Rights who have tirelessly advocated for this policy change.

This new policy represents a sea change of policy in the United States, where the shackling of pregnant women during transport, labor, and even delivery has long been routine in jails and prisons. Currently, only California, Illinois, and Vermont have enacted laws restricting the practice of shackling pregnant women. By contrast, international human rights bodies have repeatedly expressed concern about policies that permit the shackling of pregnant women. But this is only the beginning. Although some state and local prisons look to the Bureau of Prisons in considering their own policies, state and local prisons are not subject to the new federal policy. Additionally, the U.S. Immigration and Customs Enforcement agency,

which increasingly detains immigrant women who have never committed a crime – a violation of international human rights norms in its own right – has refused to end the use of restraints on detained pregnant women.

Shackling is just one of the many dangerous and inhumane practices that pregnant women face in prison. Far too many women lack access to adequate prenatal care and other physical and mental healthcare, and in nearly all facilities throughout the country, newborns are almost instantly separated from their mothers – a practice that experts stress denies children crucial bonding time with their mothers.

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WRP, along with the ACLU National Prison Project, Reproductive Freedom Project, and Washington Legislative Office, has joined the Rebecca Project to form the Mothering Behind Bars Coalition to work together to end the practice of shackling pregnant women during transport, labor, delivery, and post-delivery and to address other problems faced by mothers in state prisons and jails and immigration facilities.

Nelson v. Norris (8th Cir.)

In May 2003, Shawanna Nelson was sent to the McPherson Correctional Facility, a women's prison in Newport, Arkansas after she was convicted of a non-violent crime. At the time, she was five months pregnant. When Ms. Nelson went into labor, authorities from the Arkansas Department of Correction (ADOC) transported her to a hospital where she was handcuffed and shackled to the delivery table with an 18-inch leg chain as she gave birth to her baby. Only upon the doctor's request were the restraints removed by ADOC authorities. In 2004, Ms. Nelson brought a civil suit against ADOC alleging that she experienced extreme and unnecessary mental anguish and suffered long-term, possibly irreparable, physical pain and suffering as a result of being shackled while she was in labor.

In June 2007, U.S. District Judge James M. Moody allowed Ms. Nelson's suit against ADOC Director Larry Norris and Guard Patricia Turnesky to proceed on constitutional grounds, rejecting claims of qualified immunity, a doctrine that in many instances shields government agents from liability for violating an individual's civil rights. In July 2008, the U.S. Court of Appeals for the Eighth Circuit reversed the trial court's decision. The Eighth Circuit held that the prison's policy allowing for the shackling of Ms. Nelson during labor was constitutional and, even if the policy was deemed unconstitutional, the defendants were immune from liability. In August 2008, Ms. Nelson's private counsel filed a petition for rehearing *en banc* with guidance from WRP, the ACLU National Prison Project, and the ACLU Reproductive Freedom

Project, and in August 2008, the appeals court agreed to rehear Ms. Nelson's case. Elizabeth Alexander, the ACLU National Prison Project's Director, argued the rehearing before the Eighth Circuit *en banc* in September 2008 on behalf of Ms. Nelson. We now await the court's ruling.

Ending the Use of Punitive Solitary Confinement and Routine Searches in Girls' Prisons

There are currently more than 14,000 girls incarcerated in the United States, a number that has been rapidly increasing in recent decades. Most of these girls are arrested for minor, non-violent offenses and probation violations. Locked up under the guise of rehabilitation, girls nationwide – the vast majority of whom have previously been sexually and/or physically abused – are subjected to physical, psychological, and sexual abuse, including solitary confinement and routine strip searches. Meanwhile, they are denied the mental healthcare, education, and social services that are crucial to their rehabilitation. Far from helping them cope with the trauma they have suffered or providing assistance necessary to their successful reentry into society, youth prisons re-traumatize girls and further impede their rehabilitation, often propelling them into further cycles of self-destruction and recidivism.

**CARLEY,* A 17-YEAR-OLD GIRL AT BROWNWOOD,
TALKS ABOUT THE INVASIVENESS OF STRIP SEARCHES,
to which she and the other girls at Brownwood were frequently subjected, especially before and after being subjected to solitary confinement in a unit called "security." After WRP filed suit challenging the excessive strip-searching of girls, the practice was abandoned.**

You instantly get strip-searched when you go to security, to make sure you don't have any contraband to hurt yourself, tag walls with, or anything you're not supposed to have on your person. We're not allowed to have anything unless it's just a schedule for class, but other than that we're not supposed to have anything on us. Every time a person goes to security they'll be strip-searched, every time somebody comes back from visitation they'll be strip-searched, when something's missing on dorm they'll be strip-searched.

How does it feel to be strip-searched?

Wrong. Because it's always a different female staff. It's like, take everything off, squat, cough. It's cold, it's dirty in security, it's dirty in the dorms, exposing your body to all that. And staff are looking, and some people are modest. Strip-searching is not designated to one certain or a couple certain female staff; it's just any female staff.

**Pseudonym*

K.C. v. Nedelkoff (W.D. Tex.)

Brownwood State School is a "high security" youth prison located in central Texas and operated by the Texas Youth Commission (TYC), the state's juvenile corrections agency. Brownwood serves as the reception site for all girls committed to TYC custody, and nearly all girls in custody in Texas are confined there. Brownwood holds approximately 150 girls who have been sent there for offenses ranging from school-related disciplinary infractions to minor property offenses and more serious offenses.

Girls at Brownwood are regularly placed in punitive solitary confinement in oppressively cold concrete cells, empty except for a metal slab intended for use as a bed. Solitary confinement is imposed for the most minor behavioral issues, and for self-harm or expressing a desire to commit self-harm. A term of solitary confinement can be brief or can last for days, weeks, or even months. Upon entering or exiting solitary confinement and on other occasions when they have not left the facility – for example, when they finish a work assignment within the prison – girls are subject to invasive and traumatizing strip searches or pat searches. When girls resist being searched, guards regularly use physical force, pepper spray, handcuffs, and leather straps to force them into compliance. These tactics are also used on severely traumatized girls who are being monitored for suicidal feelings in response to actual or threatened

KEESHA* A 16-YEAR-OLD GIRL AT BROWNWOOD, TALKS ABOUT THE PUNITIVE "SUICIDE ALERT" ("SA") PROCEDURE, designed to monitor girls who have expressed suicidal feelings.

On the SA program, you sleep in the living area – bare mattress, thin sheet. Staff are out there; they usually have male staff during late night. You don't wear your bra at all whatsoever unless you have visitors. You sleep out there in the living room.

In security you have to eat with your fingers if you're on SA. They don't give you anything to eat with, just your fingers. Like if you have jelly, you're eating like a dog basically if you're on SA.

You have to be in staff's view at all times. You have to be an arm's length away from them and if you're not, they send you to security. They do strip searches on SAs. Like after school to make sure [you] didn't bring anything to cut [yourself] with. You don't get shoelaces; they make you wear shoes without any laces, or you get Velcro shoes.

Why do they strip-search every day after school?

Because they say they have to. Only female staff do strip searches, which I'm thankful for. But at night [SAs] wear shorts, shirt, without a bra – you don't get that much privacy. We're in our rooms with the doors locked, where we have blankets to cover us up. But [SAs are] out there with just one blanket, bare mattress, lights on continuously. Thank God I haven't been on SA.

**Pseudonym*

KEESHA TALKS ABOUT PHYSICAL RESTRAINT PROCEDURES IN SOLITARY CONFINEMENT, in which girls are left tied up on the floor for hours and are often injured.

In security if you act up, they tie you on the ground. They use leather restraints – they're like handcuffs, but they're not – and they put a belt around you right here. They make you lie on the floor with your hands behind your back tightened in that leather restraint and it's very tight. It cuts all my circulation off; that's why I have poor circulation. Sometimes if you act up, they'll use the metal restraints, which are like handcuffs on your ankles. You lie on the floor for like four hours and then after that four hours they ask you, "Is there anything we can do to get a commitment [to comply with the behavioral program] from you to get off the floor?" They make us wait 30 minutes, we [make] another commitment, then they make us wait 30 more minutes until we make our third commitment.

If we don't agree to get on the floor, they bring the shield in, kind of like the police shield. I remember one time I wasn't doing anything and I was just sitting in there and they said, "You need to get on the floor," and I was like, "Why do I need to get on the floor?" They came in with the shield and rammed me against the wall, and then they threw me on the floor and I got my chin busted open. I had to get four stitches from that and I got my tooth chipped too. After they rammed me, they put me on the floor. When they restrain you – it's not even really a [proper] restraint – they hold your arms behind your back in a crisscross and if you don't stay still they push your arms up to where it hurts real bad. Several girls have gotten broken bones from it.

If you don't comply with the restraint, up here [at Brownwood] they use pepper spray on you. Sometimes even if you comply with it, they still spray you. Sometimes if you're on the carpet, they just keep pushing you to get your compliance and you get carpet burns on your face.

If you're on suicide alert when they restrain you, they put a helmet on you. You can't even breathe out of the helmet and you're crying out telling them it hurts and they say, "Well, we don't care. Until we get your compliance, you're not going to get out of the restraint." I know some of the staff will get on top of you; even male staff will get on top of you and restrain you, their whole body on top of you. They used to do that to me and I used to try and kick my leg up to get them off me because it's uncomfortable for male staff [to be on top of me]. Male staff are the ones that mainly do the restraints; they don't let the females, I guess they think they're weak or something.

When they restrain you, are you lying face down or face up?

Face down. Face is on the floor, it's like you can't even breathe; your nose is up against the concrete. If you go down there to security, you'll see blood on the wall; it's not clean at all.

If you don't comply, they'll leave you in the leather restraints until you comply. I remember one time I was in it for three days – I had not used the restroom, I couldn't eat or anything. They don't let you eat, you don't shower, you don't do anything while you're in it.

An incarcerated girl

instances of self-harm. Many of the girls subjected to this inhumane treatment report psychological effects including suffering flashbacks to childhood rapes and feeling degraded, humiliated, and afraid. "Throwing children into cold, bare solitary confinement cells is profoundly damaging, especially to children who previously have been abused," said WRP Staff Attorney Mie Lewis. "The ACLU has closely monitored developments in the Texas Youth Commission over the last year, and although we see some improvements, TYC's reliance on solitary confinement has to stop."

In partnership with the ACLU National Prison Project, the ACLU Human Rights Program, the ACLU of Texas, Dechert LLP, and private attorney Deborah LaBelle, WRP filed a class action lawsuit on behalf of five girls held at Brownwood. The complaint charges that TYC subjects the girls to unwarranted solitary confinement, routine strip searches, and brutal physical force in violation of the girls' rights under the Fourth, Eighth, and Fourteenth Amendments, as well as international standards protecting children from abuse and prohibiting torture and other forms of cruel, inhuman, or degrading treatment or punishment. After the suit was filed in June 2008, Brownwood abandoned its use of strip searches, replacing them with less invasive, but still troubling and potentially traumatizing pat searches. "The link between psychological trauma and delinquent behavior is well established," said Lisa Graybill, Legal Director of the ACLU of Texas. "Instead of helping girls learn to cope with their experiences, TYC is re-traumatizing them through the use of solitary confinement, strip searches, and pat searches. TYC must do better, for the sake of our clients and all children in the state's custody."

We filed an amended complaint in September 2008 and a renewed motion for class certification in December 2008.

Ensuring that Women Are Not Subject to Inhumane Treatment Based on Their Gender

New Jersey, like many other states, incarcerates an ever-growing number of women, yet has failed to plan adequately for the housing and rehabilitation of women prisoners. Between 1977 and 2004, the number of women in prison in New Jersey grew by 717 percent to a total of 1,470. Over-incarceration is a national problem that often results in prisoners being treated unfairly and inhumanely while in prison. In 2008, WRP continued its advocacy to protect women prisoners from sex discrimination and other violations of their fundamental rights.

Jones v. Hayman (N.J. Super. Ct. Ch. Div.)

In March 2007, the New Jersey Department of Corrections (NJDOC) abruptly transferred 41 women, many of whom were classified as medium security and were model prisoners, from New Jersey's sole women's prison to the New Jersey State Prison (NJSP). NJSP is a "supermax" men's prison holding over 1,800 male prisoners. As a result of the transfer, the women were stripped of programming and services appropriate to their needs and were subjected to lock-down conditions virtually identical to those in disciplinary segregation. They were subjected to conditions far more oppressive and restrictive than those of the male prisoners at NJSP, including confinement in their cells for up to 22 hours a day, denial of basic movement within the prison, and denial of access to the prison law library, the prison school, and basic hygiene items. Under these conditions, the women's mental and physical health rapidly deteriorated, fights broke out, and suicide attempts occurred.

In December 2007, WRP and the ACLU of New Jersey filed a lawsuit challenging the transfer and the subsequent discriminatory treatment of the women prisoners. The lawsuit charges that by subjecting the women to more repressive conditions than men in the same prison, NJDOC is violating the state constitution's guarantee of equal protection and the New Jersey Law Against Discrimination. The lawsuit also alleges that some aspects of the department's treatment of the women prisoners are so extreme that they violate New Jersey's constitutional ban against cruel and unusual punishment.

The outside of New Jersey State Prison; Mie Lewis, WRP Staff Attorney

PLAINTIFF PROFILES IN *JONES V. HAYMAN*

Kathleen Jones is a 39-year-old mother of four. When her husband was diagnosed with congestive heart failure and hospitalized, Kathleen was forced to leave her much-loved job as a Certified Nurse's Aide to be by his side and to care for their children, resulting in insurmountable financial problems. In 2003, Kathleen was incarcerated on robbery charges. At Edna Mahan Correctional Facility, New Jersey's only prison for women, Kathleen gained a sense of fulfillment from her work in the optical program, cleaning and fixing donated eye-glasses for the underprivileged in developing countries.

In March 2007, Kathleen and 40 other women prisoners were abruptly transferred from the women's prison to lockdown conditions in a men's supermax prison known as New Jersey State Prison. During the transfer, Kathleen was strip-searched in front of male and female guards, one of whom held a video camera. When Kathleen asked why a video camera was being used, she was told, "for training purposes," suggesting that the footage of Kathleen and the other women naked would be viewed by an untold number of prison guards.

After the transfer, which she calls "the abduction," Kathleen had a distressing lack of contact with her children because there were no special visiting programs for children in the men's prison. Like other women prisoners confined in New Jersey State Prison, Kathleen was barred from using the prison library and worried how she would carry out her challenge to her conviction. "I feel like all these months, since being here, I could have been studying case law," she lamented. Despite the hardship Kathleen has endured, she remains up-beat, fearless, energetic, and confident – qualities she attributes to her Christian faith.

Sylvia Flynn is a 65-year-old mother and cosmetologist who for years owned and ran her own salon, the Klip 'n' Kurl. She was incarcerated in 2001 for killing her husband, who for years had abused her physically and emotionally. Since Sylvia began her sentence, she has maintained an exemplary disciplinary record. At the Edna Mahan Correctional Facility, Sylvia participated in 22 certificate-granting programs. After completing a 5000-hour apprenticeship in upholstery, she worked as an upholsterer and taught upholstery to other women prisoners. She also worked as a hairdresser, her life-long passion and profession.

Although Sylvia is a medium-security prisoner and has a flawless disciplinary record, she was transferred to the New Jersey State Prison in March 2007. At the men's prison, Sylvia requested permission to continue teaching and working but was denied work both as an upholsterer and as a cosmetologist. After the transfer, Sylvia was held in near-constant isolation and had little physical and mental stimulation, all of which caused her health to rapidly deteriorate. Worse yet, prison authorities painted over the windows of the women's cells to prevent men and women prisoners from seeing one another. The near-total darkness of her cell had a devastating affect on Sylvia. In an interview she said, "You don't know whether it's night or day. I used to sit at the window and watch the stars and the moon. Now, it's like I'm in a cave."

In February 2008, as a result of ACLU advocacy and in an act of resounding solidarity with the women prisoners, the Newark City Council passed a resolution calling on NJDOC to immediately end its policy of incarcerating women in the men's facility and to return the women to the women's prison. The resolution also called for the conditions under which the women were held to be improved immediately. Newark was the second city to take up the women's cause; in December 2007, the Elizabeth City Council passed a similar resolution, urging NJDOC to treat women prisoners fairly.

In March 2008, evidence emerged that James Drumm, Assistant Administrator of NJSP, had offered women prisoners reductions in their disciplinary sentences in exchange for making false statements describing conditions as better than they were. After one prisoner told the ACLU about the offer, she was beaten by a prison guard, according to her sworn statement and those of three other women prisoners. In later statements to the court, women prisoners described a campaign of intimidation intended to punish and silence women who spoke out against NJDOC. Other sworn statements of women prisoners described bullying and intimidation carried out by the Special Investigations Division, the internal affairs unit of NJDOC. We moved for sanctions against the defendants for witness tampering, retaliation, violation of court rules, and violations of attorney-client privilege. In yet another victory for these women, in July 2008, NJDOC agreed to withdraw the statements obtained by Mr. Drumm from the record and to provide the ACLU with further evidence concerning the alleged official misconduct. Additionally, at a court hearing in April 2008, corrections officials agreed to withdraw medical and psychiatric evidence that the ACLU charged had been collected in violation of court rules and ethical standards.

"We and many community members have asked NJDOC for a viable plan to house women prisoners and meet their needs, but they have not produced one."

– Julie B. Ehrlich, Women's Rights Project Fellow

In July 2008, in three separate opinions, the New Jersey Superior Court granted the plaintiffs a preliminary injunction prohibiting NJDOC from transferring any more women prisoners to NJSP for the duration of the case. The court also granted the women's request to pursue their claims as a class action. Finally, the court denied a motion by NJDOC, brought on five separate legal grounds, to dismiss the women prisoners' complaint, and also rejected NJDOC's motion to dismiss the case. The rulings amounted to a sweeping victory for the women prisoners.

In September 2008, after these rulings by the court and revelations of misconduct during the course of the litigation, NJDOC transferred all of the women prisoners out of the men's prison and back to the women's prison. While we were pleased with this victory, we will continue to litigate this case with the goal of obtaining a court order barring such violations from ever happening again. In November 2008, we argued against NJDOC's motion to dismiss, asserting that the case was not moot because NJDOC had not provided any meaningful guarantee that future unlawful transfers would not occur. "We and many community members have asked NJDOC for a viable plan to house women prisoners and meet their

needs, but they have not produced one," said Women's Rights Project Fellow Julie B. Ehrlich. "We will therefore continue to fight for the rights of women prisoners and to challenge unconstitutional conditions and arbitrary transfers."

Challenging Sex Discrimination at a City Jail in Kirkland, WA

The Kirkland City Jail – an all-male facility – provides inmates with the opportunity to participate in a work-release program where they are permitted to go to their place of employment during the day and then return to the jail at night. A convicted female who was eligible for work-release was not extended the same opportunity as male inmates, but instead was sent to a remote jail and required to cover her own incarceration costs in order to serve out her sentence. Men serving in work-release at the Kirkland City Jail incur lower incarceration costs than the women who are forced to use remote jails. In 2008, upon learning of this unequal and unfair treatment, the ACLU of Washington sent a letter to the city's attorney and police chief asking the city to remedy this illegal gender discrimination. Discussions exploring a resolution of the problem are ongoing.

Advocating for Humane Conditions in Los Angeles Jails

Over the last year, the Jails Project of the ACLU of Southern California has advocated on behalf of the more than 2,200 women incarcerated in jails throughout Los Angeles. The ACLU-SC Jails Project has helped these women get access to medical and mental healthcare, and appropriate prenatal and pregnancy care. The ACLU-SC has also worked to ensure access to clean facilities and out-of-cell time.

Specifically, the ACLU-SC has focused on improving the conditions in the women's intake area. Women had been languishing in the intake area for days at a time before getting a bed assigned to them. Through ACLU-SC advocacy, the Sheriff's Department has created a separate wing for women who need to see a doctor during intake so that, while they wait to complete processing, they will have a clean and safe place to sleep. The ACLU-SC continues to monitor conditions in this newly created area.

The ACLU-SC Jails Project also assists mothers, wives, and daughters of inmates in navigating the LA County jail system with regard to medication, visitation, and other issues that their loved ones face while in jail.

CHALLENGING DISCRIMINATORY CRIMINAL PROSECUTIONS

WRP is committed to ensuring that whenever punitive measures are taken, they are not based on stereotypes that unfairly target a person because of her or his gender.

In re: a Juvenile (Mass.)

In partnership with the ACLU Reproductive Freedom Project and the ACLU of Massachusetts, WRP filed a friend-of-the-court brief with a single justice of the Supreme Judicial Court of Massachusetts on behalf of an underage boy who was prosecuted for statutory rape and indecent assault and battery after he engaged in non-coercive sexual activity during a game of "truth or dare" with three girls. The girls involved do not face similar charges. The brief argues that where no force or coercion by the boy was found by the trial court, targeting the boy for prosecution on the assumption that he was an aggressor in the encounter could amount to unlawful gender discrimination. The brief recounts a long history of sex-stereotyping in statutory rape prosecutions and the harms such stereotypes inflict on girls and women. The brief concludes that it is therefore crucial that the district attorneys' office disclose information sought by the boy's lawyers about prosecution trends in Massachusetts, so as to permit the trial judge to assess whether gender discrimination is present. Our brief also argues that the criminal prosecution of adolescents for engaging in voluntary sexual activity with peers threatens minors' health by discouraging them from seeking appropriate sexual healthcare and accurate sexual health information.

In September 2008, we were pleased to learn that the single justice of the Massachusetts Supreme Court affirmed the trial court's order that information concerning prosecution trends be disclosed to the boy's lawyers. In October 2008, the prosecuting attorney appealed the single justice's ruling to the full Supreme Court. We filed a new friend-of-the-court brief in support of the boy being unfairly prosecuted. The case was recently argued and we await the court's decision.

CHALLENGING the COLLATERAL CONSEQUENCES of CRIMINAL CONVICTIONS

In close partnership with ACLU affiliates across the country, WRP is currently developing a broad advocacy initiative that seeks to address the consequences for women, especially poor women and women of color, of criminal convictions or prior arrests. At its worst, these collateral consequences bar a growing number of women from accessing public assistance, due to the federal ban on Temporary Assistance for Needy Families and food stamp programs for persons with certain felony drug convictions. So too can these policies disqualify women from eligibility for certain housing programs, professional licensing,

various employment opportunities, voting, and loans to pursue educational advancement and other types of training. They can also prevent women from reuniting with their children.

In particular, this initiative has focused on barriers to employment for women with arrests or convictions in their pasts. Such women often experience employment discrimination by employers (who frequently conduct background checks or simply refuse to hire anyone with a conviction), as well as statutory bars to employment in certain fields. The Equal Employment Opportunity Commission (EEOC) has held, following some court decisions, that discrimination against people with convictions or arrests can violate Title VII of the Civil Rights Act of 1964 because bans on hiring people with convictions or arrests have a disproportionate impact on people of color as a result of the racial inequities of the criminal justice system. The EEOC issued similar policy statements in the 1980s, but Title VII has rarely been used in court since then to challenge discrimination based on criminal records.

During the past two decades, discrimination against people with criminal histories has become a serious problem, and due to the continued gross overrepresentation of people of color in the criminal justice system, this is especially true for poor people of color, particularly growing numbers of women. The number of women with convictions, especially low-level "war on drugs" convictions, has skyrocketed. In fact, a record number of women are now in prison, as WRP and the ACLU Drug Law Reform Project's 2005 report, *Caught in the Net: The Impact of Drug Policies on Women and Families,* documents. At the same time, criminal records have become easily available online, and employers can download them for a minimal fee. These reports are often riddled with errors and it is nearly impossible to correct all copies of a report that contains incorrect information, or records that should have been sealed or expunged. When ex-felons cannot get a job, they cannot successfully rebuild their lives, regain custody of their children, and avoid re-incarceration. For these reasons, the ACLU is developing advocacy to fight employment barriers for people with convictions with a particular focus on women of color.

In October 2008, WRP, in conjunction with the ACLU of Washington, the National Employment Law Project, Columbia Legal Services, and the Northwest Justice Project, met with regional EEOC officials and state, county, and municipal civil rights officials to discuss the problem of employment discrimination against people with criminal convictions. WRP has also conducted trainings for legal services providers and advocates on the under-utilized EEOC policy statements, both in Seattle, in conjunction with the ACLU of Washington and other advocacy groups, as well as at a national conference of legal aid lawyers, in cooperation with other national advocates in November 2008.

Ensuring Fair Employment Practices at City College of San Francisco

At the urging of the ACLU of Northern California (ACLU-NC) and two other civil rights organizations, in September 2008, the Board of Trustees of the City College of San Francisco adopted a policy establishing that job applicants with past drug-related criminal convictions will be given full consideration in the hiring process if they prove that they have engaged in rehabilitation efforts for at least five years. The change in policy is a shift away from City College's past practice of rejecting all applicants with drug convictions on their records. "This new policy will allow the College to draw on a wider, more diverse, pool of job applicants and to hire the most qualified people, including those who can show students that hard work and education can overcome youthful mistakes," said ACLU-NC Staff Attorney Michael Risher.

The policy change came in response to a January 15, 2008 letter to then-Chancellor Philip R. Day, Jr. from the ACLU-NC, the Women's Employment Rights Clinic of Golden Gate University School of Law, and the All of Us or None project, outlining concerns that the college's blanket rejection of applicants violated the Education Code and the Due Process Clause of the California Constitution and discriminated against poor people and people of color who are often overrepresented in the criminal justice system. Given that the number of incarcerated women is growing at an alarming rate and that draconian drug policies often disproportionally affect women who have committed low-level drug offenses, this change in policy potentially benefits an increasingly large number of prospective female job applicants. City College serves the very communities in which people often face tremendous challenges and need second chances and opportunities for advancement. This change in policy is an important step in opening up employment opportunities for people who have turned their lives around.

"This new policy will allow the College to draw on a wider, more diverse, pool of job applicants and to hire the most qualified people, including those who can show students that hard work and education can overcome youthful mistakes."

– Michael Risher, ACLU of Northern California Staff Attorney

The new policy establishes a Committee on Rehabilitation and states affirmatively that the Committee "shall recommend employment eligibility of an applicant if there is sufficient evidence of rehabilitation at least five years." The policy sets out a number of ways that applicants may provide evidence of rehabilitation, including proof of completion of a professional treatment or counseling program; proof of community work, schooling, or self-improvement efforts; and/or a letter from an employer or health professional with knowledge of the applicant's rehabilitation efforts. Similar policies are in place in other state agencies, including the California Commission on Teacher Credentialing and the California Department

of Real Estate, and at agencies that grant professional licenses to nurses, psychologists, dentists, and opticians, among others. Nearly 30 years ago, the California Supreme Court, in holding that a criminal record should not automatically disqualify a person from teaching California's youth, wrote that, "The teacher who committed an indiscretion, paid the penalty, and now seeks to discourage his students from committing similar acts may well be a more effective supporter of legal and moral standards than the one who has never been found to violate those standards." The ACLU-NC was particularly pleased with City College's decision to bring its policies in line with the California Supreme Court's ruling.

Advocating for Economic Opportunities for Those With Prior Criminal Records in California

In 2008, the ACLU of California Legislative Office supported Assembly Bill No. 2423, a bill introduced by California Speaker of the Assembly Karen Bass. This bill, which was signed into law, requires that when a person is denied a license for employment by specific boards governed by the Department of Consumer Affairs – including the Boards of Vocational Nursing and the Board of Barbering and Cosmetology – she or he must receive, if applicable, a specified statement of reasons for denial and, if applicable, a copy of the applicant's criminal record if the applicant submits a written request for it. In addition, the bill requires that these boards give applicants provisional licenses, request that the applicant provide proof of court dismissals, and that special consideration be given to applicants whose past convictions have been dismissed.

Additionally, in 2008, the ACLU of California Legislative Office supported Assembly Bill No. 1996. The bill would have removed the ban on food stamps for persons convicted of certain drug-related felonies, and would instead require proof of completion of, participation in, or enrollment in or placement on a waiting list for a government-recognized treatment program, or other evidence acceptable to the Department of Social Services that the individual is no longer using illegal substances. Disappointingly, Governor Arnold Schwarzenegger vetoed the bill.

PERFORMING ACTIVISM: "ANY ONE OF US: WORDS FROM PRISON"

In our fourth year of partnership, WRP and ACLU affiliates collaborated again in 2008 with V-Day – the global movement to stop violence against women and girls, founded by playwright Eve Ensler – to educate the public about the civil rights of incarcerated women and battered women. The ACLU of Rhode Island and the ACLU of Southern California each co-sponsored local performances of "Any One Of Us: Words from Prison," a collection of personal narratives written by incarcerated and formerly incarcerated women about their experiences with the criminal justice system. The play brings to light the intersections of personal, institutional, and systemic violence as it comes to bear on the lives of incarcerated women, with the ultimate goal of impacting policy, laws, and treatment of women and girls in prison.

WRP assisted the ACLU-RI and ACLU-SC in creating educational program materials that were distributed at the events, highlighting the many rights violations that incarcerated women and girls face in Rhode Island and California, and providing action steps for audience members to get involved and information about local organizations who provide services to victims of violence and incarcerated and formerly incarcerated women. Following the March performance in Providence, RI, WRP Staff Attorney Mie Lewis spoke to the audience about the inherent abusiveness of prison and the importance of changing the way that the government and other institutions respond to violence against women.

Both the Providence and Los Angeles performances of "Any One Of Us" were part of local productions of "Until the Violence Stops" – a two-week festival of theater, art, spoken word, and community events that premiered in New York in 2006 and was replicated in Ohio and Kentucky in 2007. WRP and ACLU affiliates will continue to partner with V-Day in 2009 to bring this important public education vehicle to more audiences nationwide.

Protecting freedom *of* religion *and* belief *for* Muslim women

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom … either alone or in community with others and in public or private, to manifest [her] religion or belief in teaching, practice, worship and observance.

UNIVERSAL DECLARATION OF HUMAN RIGHTS ARTICLE 18

Religious freedom is a fundamental human right that is guaranteed by the First Amendment's Free Exercise and Establishment clauses and by numerous international human rights documents. It encompasses not only the right to believe (or to not believe), but also the right to express and to manifest religious beliefs. These rights are fundamental and should not be compromised by political processes, majority votes, or prejudices of any sort, including the recent tide of anti-Muslim sentiment that has swept this country following the tragic events of September 11, 2001.

Muslim women are a fast-growing segment of the United States population that reflects the breadth of this country's racial, ethnic, and multicultural heritage and includes United States-born Muslims of diverse ethnicities, immigrants from many countries and regions, and converts from various backgrounds. Many Muslim women, although by no means all, practice *hijab* in accordance with their religious beliefs: these women may wear a headscarf, also known as *hijab* or *khimar*, and loose-fitting clothing when they are in public and when they are in the presence of men who are not part of their immediate families. Some women additionally cover much of their face with a covering known as *niqab*. Muslim women, like all people in the United States, have the fundamental right to practice their religion. They also have the right to be treated equally and the right not to be discriminated against or harassed because of their religion, their gender, or perceptions about their nationality or ethnicity.

Because of their heightened visibility, Muslim women who wear hijab face particular exposure to discrimination and increasingly have been targets for harassment in the aftermath of September 11.

Notwithstanding legal protections, Muslim women who wear hijab sometimes face infringements on their rights to equal treatment and freedom of religion and belief. They have been harassed, fired from jobs, denied access to public spaces, and otherwise discriminated against because they wear hijab. Because of their heightened visibility, Muslim women who wear hijab face particular exposure to discrimination and increasingly have been targets for harassment in the aftermath of September 11. While it is difficult to obtain accurate statistics about discriminatory incidents, reported instances of discrimination appear to be on the rise.

Though these infringements happen in a variety of contexts, including at work, at school, in law enforcement contexts, and in public places, a number of employers and correctional settings have demonstrated that it is possible to recognize and accommodate the right to wear religious clothing, including headscarves. Police forces in the nation's three largest metropolitan areas – New York, Los Angeles, and Chicago – and in Cook County, Illinois, the second largest county in the country, have accommodated officers who wish to wear religious clothing. The Montgomery County Fire Department in Maryland accommodated a Muslim firefighter who chose to wear a headscarf while on duty. And Correctional systems including the Federal Bureau of Prisons and the Kentucky and New York state correctional departments have policies in place accommodating inmates who wear head-coverings for

religious reasons.

WRP is committed to ensuring that Muslim women are free to exercise their fundamental right to freedom of religion and belief and to be treated with equality and fairness at all times.

Medina v. County of San Bernardino (C.D. Cal.)

In a victory for Muslim women who choose to wear religious head-coverings, San Bernardino County in California agreed in November 2008 to institute policies that accommodate the First Amendment right to wear religious headscarves while in jail. The agreement was reached after WRP, in partnership with ACLU of Southern California and the ACLU Program on Freedom of Religion and Belief, sued San Bernardino County in U.S. District Court in December 2007 on behalf of Jameelah Medina, a Muslim woman from Rialto, California who was forced by county sheriff's deputies to remove her hijab while in custody in San Bernardino County's West Valley Detention Center. The suit charged the County and relevant officials with burdening Ms. Medina's religious practices in violation of federal and state statutory and constitutional law. "We're very pleased that San Bernardino County has agreed to changes that respect people's religious beliefs while still keeping the jails safe. One of our country's core values is the freedom to practice our religion," said WRP Staff Attorney Ariela M. Migdal. "That freedom doesn't go away even when one is in jail or prison."

Plaintiff Jameelan Medina

Under the settlement agreement, the county agreed to adopt a policy to accommodate women who wear headscarves for religious reasons. Under the new policy, women who are arrested will not be required to remove religious head-coverings in the view of male officers and will be provided with temporary headscarves to wear while they are in custody. The county will also train police officers on the new policy and has designated a point-person to handle any disputes or complaints that arise regarding the policy's proper implementation.

Ms. Medina was arrested at the Pomona station of Metrolink's commuter rail system in December 2005, for having an invalid train pass. She was taken to the West Valley Detention Center in Rancho Cucamonga for processing. Despite her repeated requests to keep her head covered during her day-long incarceration, Medina was forced to remove her hijab in the presence

of men she did not know and to remain uncovered for much of the day. Although Ms. Medina's religiously motivated practice is to wear the hijab whenever she is in public and whenever she is around men who are not part of her immediate family, officials at the San Bernardino county jail took away her hijab and refused to allow her even to cover her head with her thermal undershirt. Ms. Medina was seen by male officers without her hijab and she felt humiliated and violated as a result of the experience. "I'm happy that other women in jail will no longer be humiliated by being forced to take off their hijabs in front of strange men," said Ms. Medina. "For a long time I struggled over doing anything about what happened to me because I was embarrassed about being arrested and put in jail, but I finally decided that doing something about the injustice was far more important."

"For a long time I struggled over doing anything about what happened to me because I was embarrassed about being arrested and put in jail, but I finally decided that doing something about the injustice was far more important."

– Plaintiff Jameelah Medina,
Medina v. County of San Bernardino

With this change in policy we are pleased that San Bernardino has come in line with other law enforcement agencies across the country, including federal prisons, in having procedures that allow Muslim women to wear the hijab while in custody. In tandem with the lawsuit, Ms. Medina has engaged in public education on the issue, discussing it at conferences, in the media, and on blogs, sparking fruitful discussions of Muslim women's rights in a number of different human rights and feminist forums.

One week after we settled Ms. Medina's case, we were pleased to learn by way of a local news outlet that, in light of the settlement reached in *Medina*, Sheriff's Department officials in neighboring Orange County began reviewing their own policy as to whether women should be allowed to wear religious head-coverings while in custody. We are hopeful that, notwithstanding *Khatib* (see below), presently pending before the U.S. Court of Appeals for Ninth Circuit, Orange County will take affirmative steps to uphold the constitutional freedoms of detained women and that other counties throughout California will follow suit.

Khatib v. Orange County Sheriff's Department (9th Cir.)

In September 2007, the ACLU of Southern California filed suit on behalf of Souhair Khatib, a practicing Muslim, who was forced to remove her hijab when she was taken into custody at an Orange County courthouse holding facility. Ms. Khatib lives in Anaheim with her husband and two young children. She came to the United States from Lebanon in 1999, and has since become a U.S. citizen. In accordance with her religious beliefs, Ms. Khatib wears a hijab whenever she is in public and she does not permit any

MY HIJAB, MY RIGHT
By Jameelah Medina

I know it is difficult for some to understand why a piece of cloth on someone's head can have so much importance. But the hijab is more than a piece of cloth for those of us who wear it. For me it is a privilege to be able to wear the hijab, and it is a daily reminder of my faith. It is a way for me to be in charge of my own femininity and to make an active decision about what I choose to cover and what I choose to let people see.

I started wearing the hijab when I was about 19 years old. Hijab was completely my own choice. I know we sometimes assume or hear about girls who are forced to wear the hijab; however, my family and my community never pressured me to don the hijab. After 9/11, I took off my hijab because of harassment I was facing, but after a couple of years, I put it back on.

I think it is difficult for people to understand how a woman can view her hair and neck as sexual parts of her body similar to her genitalia. However, this is how I feel about my hair and neck. Throughout history and literature, the hair of a woman is sensualized – the longer it is, the better and the sexier. The woman's neck has also been eroticized and touted as an erogenous zone in literature and even in films. I did not want to be sensualized and eroticized; I just wanted to be human. I wanted to be free from unwanted advances from men, and I also wanted to create my own empowerment as the gatekeeper of my own body, not a slave to mainstream standards of beauty, not subject to rampant body image and self-esteem issues. With all this said, it all goes back to maintaining my sense of privacy and not making public what I perceive as intimate.

As I studied hijab more, I realized that my ideas of hijab as a tool of domestication, oppression, and subjugation of women were coming from the human mind that inserted patriarchy into Islam for selfish needs. I had to distinguish between cultural Islam and real Islam. I learned to understand hijab in the context of Islam while excluding patriarchal arguments from my mind. It was a difficult task to weed the patriarchy out of my understanding of Islam, but once I did this, I saw the divine wisdom in hijab and I felt empowered and deeply moved to wear it.

Hijab is something very personal to me and I do not think it should be worn by every woman; we each have our own truth.

In December 2005, when I was arrested and taken to jail for having an invalid train pass, I was forced to remove my hijab in front of male deputies at the West Valley Detention Center. I felt completely naked. It was as if they forced me to remove all of my clothing. For me, wearing clothes without my hijab is just as meaningless as wearing a hijab without any clothes on – either way, I feel exposed. The humiliation and indignation I experience are the same that a non-Muslim woman would feel if she were forced to take off her shirt and bra and walk around topless in public where men are present. No woman should have to experience this even if she has been arrested. The forcible removal of a woman's hijab in front of men should be just as unacceptable as the compulsory removal of a woman's shirt and bra in front of men.

In this country, we are supposedly free to practice our religion, and we do not check our federally protected rights at the jailhouse door. Or better said, we *should* not be forced to relinquish those rights,

especially when they can be so easily protected by having certain policies in place. When I told the deputy that I could not take off my hijab, there should have been a policy that would allow her to check my hair in private. At the airport, I am always taken into a private room or behind a curtain, where two or three female TSA agents have me unpin my hijab, they check my hair, and I put my hijab back on. But because there was no such policy in place at the jail, I was forced to remain uncovered for approximately 12 hours and to be seen uncovered by male deputies. During this time I was also hyper-aware of the presence of male voices in my proximity, and felt utterly vulnerable.

Once I became aware that my rights had been violated, I had no choice but to seek justice for the wrong that was done; I had to do it for myself and for every other woman who has ever and will ever be put in that unnecessary situation. I know that it had to be me that went through it because another woman may not have come forward in the end due to lack of support, English skills, or other resources. I also feel that this situation has re-awakened the activist in me. I was very politically active in college, but apathy gripped me. Now, I am back to writing my congressman, assemblywoman, newspaper editors, TV stations; signing petitions; and back out on the streets participating in protests and other calls to action. I am so thankful that the ACLU was able to take the case and fight to safeguard the religious rights of women. As a result, San Bernardino County will implement new policies that protect women's rights, and I hope that all jurisdictions will follow this example.

Jameelah Medina is a 30-year-old African-American woman, born and raised in Southern California, and has been a practicing Muslim her entire life. Jameelah is a self-published author and is pursuing her Ph.D. in education at Claremont Graduate University. She works as a business trainer, writes poetry and spoken word, and draws designs for clothing. She lives in San Bernardino County with her husband.

In addition to her activism around this case, Jameelah is an activist on many other issues. In June, she was one of 80 women selected from more than 3,000 applicants for a three-day leadership training program for women, co-sponsored by *O, The Oprah Magazine* and The White House Project, a national nonprofit group dedicated to getting women into positions of power. Jameelah's project proposal was a program for at-risk African-American and Latino youth who have been involved in race-related violence at their high schools.

In November, Jameelah was invited to speak at an ACLU Human Rights Program workshop entitled, "Keeping Your Faith in Post 9/11 America: Religious and Ethnic Discrimination and Human Rights." Jameelah is also active on issues surrounding domestic violence, and is planning to start a local ACLU chapter at her university.

physical contact with men who are not part of her immediate family.

When Mr. and Ms. Khatib pled guilty to misdemeanor charges, they were sentenced to probation and community service. They appeared in court to ask for an extension of time to complete the service, but probation was revoked and they were immediately placed in custody. Despite her pleas, the sheriffs' deputies ordered that Ms. Khatib remove her hijab. Crying, Ms. Khatib convinced the deputies to allow her to wear it until she passed the men's cells. She then removed her hijab, replacing it with a vest she was wearing. Later in the day she was called again to appear in front of the judge. She was ordered to take the vest off her head, and was ashamed to see her brother-in-law in the courtroom among a number of other men; he had never seen her without the hijab. The judge granted an extension of time to complete the community service and reinstated her probation. Ms. Khatib remained in the jail for processing without her hijab and in view of male inmates and deputies. Despite repeated requests, she was not allowed to wear her head-covering until she was released from the building.

On behalf of Ms. Khatib, the ACLU-SC filed claims in federal court under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment to redress the violation of Ms. Khatib's right to exercise her religious beliefs.

In March 2008, U.S. District Judge David O. Carter ruled that RLUIPA does not apply to courthouse holding facilities. In August 2008, the ACLU-SC filed a notice of appeal seeking review by the U.S. Court of Appeals for the Ninth Circuit of the lower court's ruling on Ms. Khatib's RLUIPA claim and its applicability to courthouse holding facilities.

Webb v. City of Philadelphia (3rd Cir.)

In January 2008, WRP joined the ACLU of Pennsylvania and the ACLU Program on Freedom of Religion and Belief, along with a number of leading Muslim advocacy organizations, in filing a friend-of-the-court brief in support of Officer Kimberlie Webb, a police officer who was denied the right to wear her hijab underneath her hat and tucked into her shirt while at work.

Officer Webb lost at the trial court on summary judgment with the court holding that allowing her to wear her hijab would create an undue hardship for the City by damaging the Police Department's culture of cooperation, *esprit de corps*, hierarchical structure, and authoritative and neutral image. Our brief to the Court of Appeals for the Third Circuit argued that the Police Department's policy must be viewed in the context of modern police and military practices. When viewed in this way, the City's assertion that permitting Officer Webb to wear her hijab would interfere with departmental goals fails, as a matter of law, to establish the requisite hardship to rebut Officer Webb's claims for religious accommodation. Oral argument was held in September 2008 and we now await a ruling.

FRAMING RELIGIOUS and ETHNIC DISCRIMINATION as an ISSUE of HUMAN RIGHTS

In November 2008, the ACLU Human Rights Program and the ACLU of Michigan held a two-day workshop, Keeping Your Faith in Post 9/11 America: Religious and Ethnic Discrimination and Human Rights," for social justice and community advocates on how to use human rights strategies and mechanisms to address religious and ethnic discrimination and related human rights abuses. The workshop addressed a range of issues including religious and ethnic profiling; discrimination in public places by government agencies based on religious dress; ensuring religious freedom including meeting one's Zakat obligations, the Islamic principal of giving a percentage of ones income to charity; and other issues facing Muslims and other religious minorities perceived to be Muslims or Arabs. As a part of this workshop, WRP client Jameelah Medina discussed the intersection of women's rights, religious freedom, and discrimination as she experienced them and WRP Director, Lenora M. Lapidus, spoke about discrimination against Muslim women as a human rights violation.

In addition to the human rights training and our litigation efforts, WRP also provided consultation to several ACLU affiliates, including the ACLU of Georgia and the ACLU of Delaware, during the year regarding the rights of Muslim women.

(from left to right) Imam Mohammad Ali Elahi of the Islamic House of Wisdom in Dearborn Heights, MI; Imam Hassan Al-Qazwini of the Islamic Center of America in Dearborn, MI; Plaintiff Jameelah Medina

Making Equality Real

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language religion, political or other opinion, national or social origin, property, birth or other status.

All are equal before the law and are entitled without any discrimination to equal protection of the law.

UNIVERSAL DECLARATION OF HUMAN RIGHTS ARTICLES 2 AND 7

In 2008, the ACLU Women's Rights Project continued to advocate for gender equality in public accommodations and for the legality of state agencies to take affirmative steps to afford women and people of color equal access to opportunities in employment, contracting, and education, for true equality flows from equality before the law and from fairness in opportunity. ACLU affiliate offices also advocated in a broad range of situations to ensure gender equity is a reality throughout the United States.

PROTECTING AFFIRMATIVE ACTION

More than 40 years ago, President Lyndon B. Johnson, who signed into law the Civil Rights Act of 1964 and the Voting Rights Act of 1965, described affirmative action as a vital tool in the struggle to provide all Americans, irrespective of their gender or race, with equal opportunity. "This is the next and more profound stage of the battle for civil rights," President Johnson asserted. "We seek … not just equality as a right and a theory, but equality as a fact and as a result." Recognizing that decades of legally-sanctioned segregation and state-sponsored second-class citizenship had barred women and people of color from partaking in many of the opportunities others took for granted, President Johnson, Dr. Martin Luther King, Jr., and other civil rights leaders of the time knew it was the government's responsibility to act affirmatively to correct this history of inequality. Their vision and the programs and policies that were born from it opened the doors to opportunity for countless minorities and women who had theretofore been excluded, allowing them a fair chance to compete and ultimately to succeed in society.

> *"We seek … not just equality as a right and a theory, but equality as a fact and as a result."*
>
> – U.S. President Lyndon B. Johnson

We have come a long way since the American civil rights movement, and many Americans feel that the utility of affirmative action has run its course. Opportunities for women and people of color have expanded, and many believe that the unequal conditions that once justified affirmative action no longer exist. Sadly, this is just not true. Millions of Americans continue to experience race and gender barriers to accessing quality education, government contracting, and employment opportunities. Existing laws help to prevent outright discrimination on the basis of race and gender, but they alone are not enough to create equal opportunities for every American and meaningful levels of representation for women and people of color.

Affirmative action programs – including targeted outreach and recruitment efforts, the use of non-traditional criteria for hiring and admissions, mentorship programs, and training and apprenticeship opportunities – are tailored to fit specific instances where race and gender must be taken into account in order to provide fair and equal access to racial minorities and women. These programs recognize and

strive to correct the structural barriers to equality that continue to deprive many individual Americans from accessing opportunity. Affirmative action helps ensure equal access to opportunities and brings our nation closer to the ideal of giving *everyone* a fair chance. In 2008, WRP worked to ensure that race- and gender-conscious policies remain viable tools in the struggle to provide all Americans with equal opportunity, to promote diversity in academic and professional settings, and to give each and every one of us a fair chance to compete and succeed.

Asher v. Carnahan (Mo. Ct. App.)

The Missouri Civil Rights Initiative (MoCRI), the local affiliate of Ward Connerly's American Civil Rights Institute, put forward a state ballot initiative for the November 2008 election designed to outlaw affirmative action programs for women and minorities in Missouri. The initiative would have amended the Missouri State Constitution to ban affirmative action programs on the ground that they provide "preferential treatment" to women and minorities. In order to clarify the misleading language in the initiative, the Missouri Secretary of State properly drafted ballot language to fairly and clearly alert voters that the purpose of the initiative and the consequences of their vote should the initiative pass would be to prevent equal opportunity programs that consider race or gender.

In July 2007, MoCRI brought suit to challenge the Secretary of State's ballot language. In December 2007, WRP, the ACLU Racial Justice Program, the ACLU of Kansas and Western Missouri, and the ACLU of Eastern Missouri filed a friend-of-the-court-brief in support of the Secretary of State's ballot language. Our brief argued that the Secretary of State's language appropriately described the initiative and should not be derailed by MoCRI's intentional misappropriation of the terminology of the Civil Rights Movement to confuse voters into unwittingly supporting the initiative. In January 2008, the court modified the Secretary of State's ballot language in some respects. While we disagreed with the court's decision to modify the Secretary of State's language, we were pleased that the court – like the Secretary of State – recognized that the true purpose of Connerly's initiative was to end current and ban future affirmative action programs in Missouri. MoCRI appealed the court's findings and in August 2008, the Missouri Court of Appeals dismissed the appeal and sent the case back to the lower court with instructions to vacate its decision on the grounds that it had improperly modified the Secretary of State's ballot language. In the end, MoCRI failed to gather enough signatures for certification and the initiative did not appear on the November 2008 ballot in Missouri.

In December 2008, the Missouri Secretary of State's Office announced that it had approved MoCRI's renewed initiative for circulation. If passed, the initiative would amend Missouri's state Constitution to ban equal opportunity programs instituted by state and local governments. In response, WRP, in partnership with the ACLU Racial Justice Program, the ACLU of Eastern Missouri, and cooperating attorney Arlene Zarembka, filed suit to challenge MoCRI's latest attempt to rewrite Missouri's Constitution. The lawsuit,

filed in the Circuit Court of Cole County, charges that the anti-affirmative action ballot initiative proposed by MoCRI should not be circulated for signatures because the initiative itself violates the Missouri Constitution by seeking to trick and defraud Missouri voters in attempting to ban an array of equal opportunity programs. The lawsuit argues that the initiative purposefully confuses voters by forcing them to vote on multiple issues in a single proposition (in violation of the Missouri Constitution), and that the initiative's language attempts to intentionally mislead voters into believing it upholds equal opportunity programs while its true intent is to end them. "This is just the latest attempt to deceive the voters of our state into rolling back important programs that ensure that women and racial and ethnic minorities have fair notice of opportunities and are given an equal chance to compete for them," said Anthony E. Rothert, ACLU of Eastern Missouri Staff Attorney. "Missouri voters weren't fooled by this deception before, and they won't be fooled by this latest effort to perpetrate fraud against them."

In Re: Initiative Petition No. 387 (Okla.)

In September 2007, the Oklahoma Civil Rights Initiative (OkCRI), the Oklahoma affiliate of the American Civil Rights Institute, filed Initiative Petition No. 387, State Question No. 737 (IP 387) with the Office of the Secretary of the State of Oklahoma. In December 2007, the requisite signatures for the initiative were delivered to the Secretary of State. IP 387 sought to amend the Oklahoma Constitution to ban affirmative action programs for women and minorities.

In February 2008, the Secretary of State published a report to the Supreme Court of Oklahoma certifying the signature count for IP 387. However, in her report, the Secretary of State noted "an unprecedented situation where large numbers of duplicate names and addresses were discovered well into the signature counting process by the SOS." Despite the Secretary of State's findings, in February 2008, the Supreme Court issued an order holding that the signatures on the petition appeared numerically sufficient to satisfy the signature requirement and ordered the Secretary of State to publish notice of the filing of IP 387.

In March 2008, on behalf of ten local protestants, WRP, the ACLU Racial Justice Program, the ACLU of Oklahoma, and the NAACP Legal Defense Fund filed with the Oklahoma Supreme Court an objection to the signature count and a protest to IP 387 itself. In the objection, we alleged irregularities and questionable practices in the collection of signatures by OkCRI.

In April 2008, OkCRI unexpectedly filed a motion to withdraw its own initiative stating that it did not want to "waste [the] Court's efforts nor taxpayer money … when [it was] reasonably certain that [the initiative would] fail to garner to requisite number of signatures." Though the Oklahoma Supreme Court has not issued a ruling on OkCRI's motion to withdraw IP 387, we are pleased that this misleading ballot initiative was not put before the voting public.

Missouri and Oklahoma are not the only states where Mr. Connerly sought to advance the interests of the big construction companies for whom he lobbies by introducing ballot initiatives that would end

affirmative action measures in public education, contracting, and employment. Local affiliates of Mr. Connerly's American Civil Rights Institute also set out to put anti-affirmative action initiatives on the 2008 ballot in Colorado, Nebraska, and Arizona. In addition to misleading voters about the intentions of these anti-affirmative action initiatives, the local affiliates paid professional petition circulators who engaged in a variety of fraudulent practices to collect enough signatures to place these initiatives on the ballot.

Because of legal challenges like those the ACLU was involved with in Missouri and Oklahoma, Mr. Connerly was successful in getting anti-affirmative action initiatives on the ballot in only Colorado and Nebraska. Though disappointingly his measure passed in Nebraska in November 2008, the ACLU was pleased to learn that, in a resounding vote for equality, voters in Colorado voted down Mr. Connerly's anti-affirmative initiative.

ENSURING EQUALITY IN PUBLIC ACCOMMODATIONS

In 2008, WRP advocated for gender equality in public accommodations.

Corcoran v. German Society Frohsinn (Conn. Super. Ct.)

In a victory for gender equality, in February 2008, a Connecticut Superior Court ruled that a local social club could no longer ban women from membership. The ruling came in a lawsuit filed by WRP and the ACLU of Connecticut on behalf of Sam Corcoran, who was denied membership in the German Society Frohsinn, Inc. because she is a woman. The court upheld an appellate court's ruling that the social club was a public accommodation – not a private club – and subject to Connecticut's civil rights laws banning discrimination. This case was about nothing less than the equal opportunity guaranteed by law – social clubs like these provide vital networking opportunities for small business owners like Sam Corcoran and it was unfair that she be denied these opportunities simply because she is a woman.

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The German Society, located in Mystic, Connecticut, has a licensed bar on the lower level and a hall on the upper level. Women had long been allowed inside the club as long as they were escorted by a

man, yet they were barred from becoming members themselves. Ms. Corcoran, a small business owner in Mystic and a regular visitor to the club, was eager to explore the networking possibilities available through membership in the 200-member club and attempted to gain admission, but the club refused to give her an application because she is a woman.

However, the organization has only ever rejected one adult male applicant in memory and had long ago abandoned any requirement of German heritage. When the case went to trial in 2005, the lower court erroneously ruled that the club was exempt from the state's public accommodation law, which forbids public clubs from discriminating against applicants on the basis of sex, race and other criteria. The ACLU appealed the decision, and the appellate court sent the case back to the Superior Court, which found that because the single criterion for membership to the club was being male, it qualified as a public club.

In April 2008, the ACLU and cooperating firm Zeldes, Needle & Cooper were successful in settling the case. The German Society agreed to admit Ms. Corcoran as a member, to change its admission policy so as to treat men and women equally, and to pay Ms. Corcoran damages and attorneys' fees.

Advocating for Fair Admissions Policies at Yankee Stadium

In July 2008, WRP, in partnership with the New York Civil Liberties Union, sent a demand letter to the management of Yankee Stadium in the Bronx, NY, in response to a policy that discriminates against male patrons in that it permits women to carry "small women's purses or backpack purses," while men are prohibited from carrying similar items into the Stadium. This differential treatment allows female patrons privileges in their access to the Stadium that male patrons are denied, and thus constitutes facial sex discrimination in public accommodations in violation of New York State's and New York City's human rights laws. The letter demands that the Stadium adopt a gender-neutral policy and conduct trainings with staff to ensure that the policy is properly implemented. We await a response from the manager.

PROTECTING the RIGHTS of NURSING MOTHERS

In 2008, the Rhode Island General Assembly enacted a law that gives women the right to express breast milk in public places. The ACLU of Rhode Island helped draft the final language of the bill and successfully pushed for strong civil remedies for violations of the law, including awards of attorneys' fees to prevailing parties.

Similarly, following advocacy by the ACLU of Indiana, in February 2008, Indiana Governor Mitch Daniels signed Senate Bill No. 219 into law, which requires worksite accommodations for nursing mothers. The law provides that the state and political subdivisions (1) shall provide reasonable paid breaks for an employee to express breast milk for her infant child, (2) must make reasonable efforts to provide a private

space in close proximity to the workplace for expression of the milk, and (3) must make reasonable efforts to provide cold storage for the milk. The law applies to businesses that employ 25 or more people.

ADVANCING GENDER EQUALITY in MARRIAGE

Buday v. California Department of Health Services (C.D. Cal.)

Michael Buday and Diana Bijon were married in August 2005. In a decision that was deeply personal to Michael and Diana, Michael chose to take Diana's last name after they were married. When Michael attempted to fill out the marriage license form, he was surprised to learn that the form provides a space for a woman to choose her husband's last name, but it had no such option him to choose Diana's last name. When Michael inquired further with the California Department of Health Services about how he could change his last name, he was told he would have to post a notice in the newspaper and pay $300 to change his name. Staff at the Department of Motor Vehicles (DMV) also refused to allow Michael to change his name on his driver's license.

The ACLU of Southern California filed suit in federal court on the couple's behalf in December 2006, alleging gender discrimination in violation of the Equal Protection Clause of the 14th Amendment. In addition to the lawsuit, working with legislative staff in Sacramento, the ACLU affiliates of California successfully sponsored a bill in 2007 that requires gender-neutral provisions for changing one's name upon marriage. The bill also extends the law to name changes for domestic partners and goes into effect in 2009.

In 2008, a settlement was finally reached in the lawsuit, which institutes statewide changes in the marriage application and licensing process to remedy gender inequity and requires training for DMV personnel. The settlement agreement also provides attorneys' fees. In a victory for Michael and Diana, and for gender equality more generally, a new driver's license was issued to Michael and the married couple are now legally known as the Bijons.

ADVANCING EQUALITY in VIRGINIA

In 2007, Patricia M. Arnold, a pioneer woman aviator and longtime supporter of the ACLU, left the bulk of her estate to the ACLU of Virginia Foundation to establish the Patricia M. Arnold Memorial Fund. The purpose of the fund, according to Ms. Arnold's will, is "to combat through all legal means, the pervasive and powerful sexual bias and sexual discrimination against women found to exist in the State of Virginia." Having determined that the corpus of the Patricia M. Memorial Fund will provide revenues for approximately three-quarters of a full time staff position, in 2008, the ACLU of Virginia established the

Patricia M. Arnold Women's Rights Project, which will employ a full time director, paid in part by The Patricia M. Arnold Memorial Fund through the ACLU Foundation of Virginia and in part from general operating revenues of the ACLU of Virginia, Inc.

We are excited by the opportunity Ms. Arnold's gift provides to expand the capacity of the ACLU of Virginia to ensure gender equality throughout Virginia. The director of the Patricia M. Arnold Women's Rights Project will develop strategies and implement programs for protecting and advancing the equal rights of women in Virginia, using public education, legislative advocacy, litigation, and other tools at the disposal of the ACLU of Virginia.

ADVOCATING for GENDER-NEUTRAL INSURANCE ANNUITIES in MASSACHUSETTS

Thirty years after the Massachusetts Equal Rights Amendment became law, the ACLU of Massachusetts was successful in helping to enact part of the insurance reform recommended by a commission set up to ensure that other Massachusetts laws comport with the amendment. In 2008, ACLUM celebrated the signing of a bill that make annuities gender-neutral, meaning that women can now purchase annuity policies in Massachusetts at the same price as men and access the same benefits. Gender-neutral insurance reform has been an ACLUM goal for many years and we are pleased that it has finally become a reality.

Annuities provide guaranteed monthly payments to those who purchase them. Because of the decline in defined benefits offered by many employers, and the greater use of 401(k)-type plans, retirees who do not want to manage their own investments sometimes buy annuities. Until now, a man and a woman purchasing the same policy for the same price had different monthly payouts. Women received an average of six percent less of a payout than men. Insurers based these payments on actuarial tables that show women living longer than men. These tables, however, also show that 86 percent of men and women live to the same ages. The ACLUM argued that basing payouts on a group identity constitutes discrimination, that actuarial differences based on race and religion are illegal, and that actuarial differences based on sex should be similarly outlawed.

The ACLUM has proved successful in advocating for fairness in health insurance policies, and now annuities, and has set its goal for 2009 on seeking to establish parity in disability and life insurance policies.

Advocating *for* Fair Public Health Policies

Everyone has the right to a standard of living adequate for the health and well-being of [herself] and of [her] family, including … medical care … and necessary social services, and the right to security in the event of … sickness.

UNIVERSAL DECLARATION OF HUMAN RIGHTS ARTICLE 25

The ACLU Women's Rights Project is committed to advancing effective and fair public health policies for women, and in 2008, we continued to challenge the federal government's restriction of U.S. health organizations' ability to work inclusively to end the global HIV/AIDS epidemic. We also advocated for legislation that would guarantee paid sick leave for employees to recover from illness or to care for a sick family member.

Alliance for Open Society International, Inc. v. United States Agency for International Development (S.D.N.Y.)

In 2005, WRP filed a friend-of-the-court brief in support of a lawsuit brought by Alliance for Open Society International (AOSI) against the United States Agency for International Development (USAID). The suits challenge the constitutionality of a federal requirement that U.S.-based organizations receiving government funding for HIV/AIDS programs under the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 must adopt a policy explicitly opposing prostitution. In our brief, filed on behalf of more than 25 public health organizations, WRP argued that this provision not only violates the First Amendment rights of the organization but results in bad public health policy in the struggle against HIV/AIDS because it threatens to unravel relationships with sex workers that relief organizations have worked hard to build and that are necessary to reduce the transmission of HIV/AIDS. Political agendas should never limit critical funding needed to end the global devastation caused by the AIDS pandemic. The anti-prostitution pledge requirement only serves to further stigmatize high-risk populations and put more lives at risk. Moreover, this policy is completely at odds with efforts to effectively prevent the spread of HIV/AIDS and to treat those who suffer from it.

Political agendas should never limit critical funding needed to end the global devastation caused by the AIDS pandemic.

Many organizations working to curb the spread of HIV/AIDS reach out to commercial sex workers to distribute condoms and offer education on safe-sex measures. While the organization represented in this challenge does not endorse prostitution, it is essential that it maintains its ability to engage in proven, effective HIV prevention methods with at-risk populations. Signing an official pledge to oppose prostitution would undermine AOSI's prevention and treatment efforts. Furthermore, USAID's policy is at odds with the United States' own HIV/AIDS policies. Premier federal agencies working to stem the spread of HIV/AIDS in the United States, including the Centers for Disease Control and Prevention, have found that excluding vulnerable groups like sex workers profoundly hinders the success of prevention efforts. Denying USAID funds to organizations that do not sign the anti-prostitution pledge is in direct contradiction to this long-held public health principle, and threatens to corrode the progress that has been made to end HIV/AIDS transmission throughout the world.

The district court ruled in favor of AOSI and the government appealed to the U.S. Court of Appeals for the Second Circuit where, in 2006, WRP, along with Covington & Burling LLP, again submitted a friend-of-the-court brief supporting the lower court's decisions and again emphasizing the public health impact of the policy. In November 2007, the Court issued a Summary Order sending the case back to the lower court for reconsideration in light of a newly promulgated USAID policy requiring recipient organizations to set up legally and physically separate entities so as not to compel speech with private funds.

In addition to our role as friend of the court, in May 2008, WRP and the Washington Legislative Office coordinated the ACLU's efforts in submitting comments to the U.S. Department of Health and Human Services on a proposed rule to implement the pledge requirement, arguing that as applied to U.S. individuals and entities, the requirement that non-governmental organizations receiving federal funds must have a "policy explicitly opposing prostitution and sex trafficking" is a fundamental restriction on free speech.

We were pleased to learn in August 2008 that the trial court judge in the Southern District of New York ruled that, notwithstanding USAID's new policy, the Leadership Act's restrictions on speech are too burdensome to survive constitutional scrutiny, and thus left in place its May 2006 injunction against USAID's policy. This injunction was also extended to the member organizations of InterAction, the largest alliance of U.S.-based humanitarian organizations, and to the U.S.-based members of Global Health Council, a preeminent public health membership organization.

SUPPORTING the FEDERAL HEALTHY FAMILIES ACT

In the U.S. today, nearly half (48 percent) of private sector workers do not have a single paid sick day to use for themselves or to care for a family member. Given that women are most often caretakers in their families, the lack of paid sick leave disproportionately affects women, particularly low-income women. For this reason, in March 2008, the ACLU signed onto a letter spearheaded by the National Partnership for Women and Families in support of the Healthy Families Act to be delivered to Congress. The Healthy Families Act is a groundbreaking piece of legislation that would guarantee seven days of paid sick leave to recover from an employee's own illness or care for a sick family member for employees who work 30 or more hours a week and would apply to all businesses employing more than 15 employees. It would also guarantee part-time workers a pro-rata number of paid sick days. Much like the Family and Medical Leave Act, this bill creates a routine gender-neutral employment benefit for all employees and thereby recognizes the

Given that women are most often caretakers in their families, the lack of paid sick leave disproportionately affects women, particularly low-income women.

reality that both men and women have family responsibilities that must be balanced with their work, that women and men should be treated as equals in the workplace, and that their family responsibilities should be equally supported. The bill is currently in committee before the Senate and the House of Representatives, respectively.

EXPANDING ACCESS to HEALTHCARE in CALIFORNIA

The healthcare system in the United States is broken. That fact is no more apparent than in the state of California where more than 6.7 million people are currently uninsured. That is more than one in five people, and millions more face rising costs that can result in a loss of coverage or in inadequate coverage that does not meet their health needs. Racial and ethnic minority groups continue to experience major disparities in their health access, treatment, and outcomes as compared to whites. Uninsured women especially suffer from the highest rates of untreated illness. In California, there is a growing opportunity to pass legislation that would expand quality, affordable healthcare access to all, which the ACLU of Southern California believes is a basic right.

This year, the ACLU-SC continued its participation in two coalitions, the "Having Our Say" Communities of Color Coalition and the "It's *Our* Healthcare" Campaign, to advocate for quality, affordable, and accessible healthcare for every Californian. The first is an *ad hoc* coalition of organizations representing communities of color around the state united to push forward and help influence healthcare reform and ensure that the voice of immigrants and communities of color are not left out of the healthcare reform debate. As a coalition member, the ACLU-SC helped to develop messaging and advocacy pieces to ensure that all Californians have quality healthcare, regardless of income, immigration status, or other social barriers, and that a sustainable healthcare system in California is built. The ACLU-SC also organized and participated in legislative visits with key California legislators to engage them on the need for healthcare reform and reached out to media to promote the "Having Our Say" Coalition's goals and educate them about the current healthcare reform debate. "It's *Our* Healthcare" is a coalition of organizations representing healthcare consumers, patients, and families, including groups representing seniors, workers, and California's diverse communities that are leading the efforts for quality, affordable healthcare for every Californian, focused on framing what real, comprehensive reform really is. The ACLU-SC's work as a steering committee member of this broad statewide coalition focused on building community support for and involvement in the campaign, organizing public education events, reaching out to local media outlets, and empowering local networks and the community at-large to engage in the ongoing health policy dialogue.

Legislatively, the ACLU-SC advocated for passage of the California Universal Healthcare Act (SB 840) by engaging in coalition-building efforts and direct public education with community members, organizing public events and legislative visits, and continuing the dialogue for real, comprehensive healthcare reform. The fight for universal healthcare access will continue in 2009.

Bringing Human Rights Home

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

UNIVERSAL DECLARATION OF HUMAN RIGHTS ARTICLE 28

In the words of Ruth Bader Ginsburg, Supreme Court Justice and co-founder of the ACLU Women's Rights Project, "Women's rights are an essential part of the overall human rights agenda, trained on the equal dignity and ability to live in freedom all people should enjoy." Since its founding, WRP has worked to bring about the full promise of equality and human dignity for all. In pursuit of this goal, we have integrated a human rights framework into our litigation and other advocacy in order to bring the United States into line with international norms that recognize a set of rights inherent to all members of the human family. Further, we have petitioned international human rights tribunals not only to hold the United States accountable for its affirmative obligations to honor and protect human dignity for all, but also to shape international jurisprudence to address meaningfully the lived experience of the most vulnerable women in our country.

"Women's rights are an essential part of the overall human rights agenda, trained on the equal dignity and ability to live in freedom all people should enjoy."

– Ruth Bader Ginsburg, U.S. Supreme Court Justice

INTERNATIONAL CONVENTION on the ELIMINATION of ALL FORMS of RACIAL DISCRIMINATION

In February 2008, a delegation from the ACLU – including representatives from WRP, the ACLU Human Rights Program, the ACLU Racial Justice Program, ACLU affiliates from Illinois, California, Texas, and Louisiana, and an ACLU client – went to Geneva, Switzerland to testify before the United Nations' Committee on the Elimination of Racial Discrimination (CERD) in response to a flawed United States government report that seriously understated the persistence of racial discrimination in the U.S. The CERD Committee is an independent group of internationally recognized human rights experts that oversees compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), a treaty signed in 1966 and ratified by the U.S. in 1994. ICERD prohibits discrimination on the basis of race and specifically requires state parties to report on their records with regard to the intersection of race- and gender-based discrimination. All levels of the U.S. government are obligated to comply with the treaty's provisions, which require countries to review national, state, and local policies, and to amend or repeal laws and regulations that create or perpetuate racial discrimination. The treaty also requires countries to take positive measures, including affirmative action measures, to redress racial inequalities. The U.S. government submitted its periodic report on its compliance with ICERD in April 2007.

In December 2007, in response to the government's report, the ACLU released a "shadow report" highlighting pervasive institutional, systemic, and structural racism in the United States. The ACLU

SNAPSHOT FROM THE ACLU BLOG OF RIGHTS; blog.aclu.org
March 7, 2008
Posted by Lenora M. Lapidus, Director, ACLU Women's Rights Project

U.N. BODIES CONDEMN VIOLATIONS OF NATIVE, MINORITY, AND IMMIGRANT WOMEN'S RIGHTS IN THE U.S.

On the eve of the celebration of the 98th Annual International Women's Day, the international human rights community is sending a clear message to the United States government that it needs to step up and put an end to violence against and exploitation of immigrant women, Native-American women, and women of color.

Today in Geneva, the Committee on the Elimination of Racial Discrimination (CERD) and the U.N. Special Rapporteur on the Human Rights of Migrants, Dr. Jorge Bustamante, both issued reports denouncing the U.S.'s record on human rights and highlighting numerous egregious violations. Both CERD and the Special Rapporteur issued a number of recommendations pertaining specifically to women, recognizing the compound forms of discrimination faced by women who are racial and ethnic minorities, undocumented immigrants, live in marginalized communities, and work in undervalued professions.

Of particular concern to CERD were the extraordinary rate of sexual violence against Native-American women and female migrant workers, especially domestic workers, and the U.S.'s denial of justice to these women. In its concluding recommendations, the Committee outlined specific actions for the government to take, on which it must report the next time it appears before the committee. The Committee censured the government for its failure to address workplace discrimination faced by undocumented migrant women – who are routinely subjected to dangerous working conditions, excessive work hours, and wage violations – noting with concern that recent Supreme Court decisions have further eroded protections for vulnerable workers. The committee also drew attention to the racial disparities in access to healthcare, as evidenced by the elevated rates of HIV infection and maternal mortality rates among women of color, and similar disparities in the criminal justice system.

In his report, the Special Rapporteur expressed concern about the employment and health abuses suffered by migrant workers, including domestic workers, whose advocates he met with during his fact-finding mission to the U.S. in 2007. The Special Rapporteur denounced the U.S.'s immigrant detention policies and facilities and called for the implementation of "gender-specific detention standards that address the medical and mental health concerns of migrant women who have survived mental, physical, emotional or sexual violence." Both the Special Rapporteur and CERD made reference to the plight of victims of human trafficking, among the most vulnerable of whom are domestic workers employed by diplomats.

The ACLU and other organizations have participated in reviews of the U.S. by international human rights mechanisms in order to shine a spotlight on the ways in which the U.S. government has repeatedly refused to acknowledge and address systemic racism, sexism, and discrimination against immigrants. In December, the ACLU published a report entitled, *Race & Ethnicity in America: Turning a Blind Eye to Injustice*, in response to the U.S. government's whitewash report to CERD, which swept under the rug the dramatic effects of widespread racial and ethnic discrimination in this country.

We applaud CERD and the Special Rapporteur for drawing attention to critical women's rights issues on the eve of International Women's Day and at the outset of Women's History Month, and urge the U.S. government to pay heed to the recommendations of these international experts.

documented the U.S. government's failure to fully comply with ICERD in numerous substantive areas affecting racial and ethnic minorities, including where race and gender intersect in the lives of women of color. The report examines policies and practices at the federal, state, and local levels that place a disproportionate burden on vulnerable populations, including women, children, incarcerated persons, immigrants, and non-citizens. The ACLU's report, *Race & Ethnicity in America: Turning a Blind Eye to Injustice*, details setbacks in the pursuit of racial and ethnic equality, including the government's attack on affirmative action and courts' curtailment of civil rights. The report finds that discrimination in America permeates education, employment, the treatment of migrants and immigrants, law enforcement, access to justice for juveniles and adults, detention and incarceration, the death penalty, and the many collateral consequences of incarceration including the loss of political rights. The report also documents how inadequate police enforcement of domestic violence protective orders exposes women, in particular women of color, to grave harm, and discusses exploitation suffered by domestic workers who are trafficked to the United States and held in conditions of servitude by foreign diplomats.

In February 2008, along with 125 representatives of other U.S. non-governmental organizations, the ACLU took park in a week of advocacy that included briefings to the CERD Committee, a briefing by the U.S. delegation, meetings with United Nations Special Rapporteurs, and meetings with advocates. In early March 2008, the CERD Committee issued a strongly-worded critique of the United States' record on racial discrimination and urged the government to make sweeping reforms to policies affecting racial and ethnic minorities, women, and immigrants in this country. Among the CERD Committee's recommendations to the United States were that the United States address the problem of violence against indigenous, minority, and immigrant women – including migrant domestic workers – and that it ensure the rights of undocumented immigrant workers.

UNITED NATIONS SPECIAL RAPPORTEUR on the HUMAN RIGHTS of MIGRANTS

Also in Geneva, on the same day the CERD Committee issued its concluding observations and recommendations to the United States, the U.N. Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, presented a report on the injustices faced by migrants and immigrants in the U.S. He denounced the United States' detention policies and facilities that fail to meet international standards and that afford few protections for the rights of migrant workers. In his report, Mr. Bustamante voiced concern about employment and health abuses suffered by migrant workers. Among the various recommendations made by the Special Rapporteur was a specific recommendation that the United States establish standards for addressing the mental and medical health needs of migrant women who have been the victims of mental, physical, or sexual abuse.

In 2007, as part of Mr. Bustamante's three-week fact finding mission to the United States – in which

he visited a detention center in Arizona and met with migrant communities and government officials in California, Arizona, Texas, Georgia, Florida, New York, and Washington, D.C. – WRP partnered with the ACLU Human Rights Program and the ACLU Immigrants' Rights Project to shed light on human rights violations suffered by migrant women. WRP collaborated with a broad coalition to bring to Mr. Bustamante's attention abuses suffered by immigrant women whose rights are limited and who are denied remedies based on their immigration status, the violence against and exploitation and trafficking of domestic workers, and the problems of diplomatic immunity.

SUPPORTING the NEW YORK CITY HUMAN RIGHTS INITIATIVE

WRP, in collaboration with the ACLU Human Rights Program, the New York Civil Liberties Union, Amnesty International, the Urban Justice Center, Legal Momentum, and the Women of Color Policy Network, is a co-sponsor of the New York City Human Rights Initiative. We drafted New York City legislation based on the principles of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which the U.S. has not ratified, and the International Convention on the Elimination of All Forms of Racial Discrimination. These international human rights treaties affirm the responsibility that governments have to eliminate all forms of gender and racial discrimination in their countries. Similar ordinances have been forwarded in cities around the nation, particularly in response to the U.S. failure to ratify CEDAW. The New York City ordinance would be unique because of its particular focus on the intersectionality of gender and race. In 2004, this groundbreaking legislation was introduced in the New York City Council. In March 2008, the legislation was reintroduced and a hearing may be scheduled for Spring 2009.

WRP STAFF

NEW STAFF

Araceli Martínez-Olguín joined WRP in her new capacity as a staff attorney in 2008. Ms. Martínez-Olguín came to the ACLU as the Women's Rights Project Fellow in September 2006. Prior to her fellowship, she clerked for the Honorable David Briones of the U.S. District Court for the Western District of Texas for two years. She received her J.D. from the University of California, Berkeley School of Law (Boalt Hall) in 2004, and her A.B. from Princeton University in 1999. During law school she served as an academic support tutor for property law, a research assistant to Prof. Haney Lopez editing a manuscript on racism, a summer associate at Morrison & Foerster LLP, a law clerk for the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, and an extern to Judge Thelton E. Henderson of the U.S. District Court for the Northern District of California. Ms. Martínez-Olguín also served as an Articles Editor for Berkeley's *La Raza Law Journal* and was an active member of the Coalition for Diversity and Berkeley's La Raza Law Students Association. Between college and law school, Ms. Martínez-Olguín taught bilingual kindergarten through Teach for America in the Oakland Unified School District.

Julie B. Ehrlich joined WRP this year as WRP's new Women's Rights Project Fellow. Ms. Ehrlich is a 2008 graduate *magna cum laude* of New York University School of Law, where she received the Maurice Goodman Memorial Prize for Outstanding Scholarship and Character, the John Perry Prize for exemplifying the values of civil rights and civil liberties, and an Arthur Garfield Hays Civil Liberties Fellowship. At NYU, Ms. Ehrlich was an editor of the *Review of Law & Social Change*, in which she recently published an article entitled, "Breaking the Law by Giving Birth," and a research assistant to several professors. She has held internships at the Center for Reproductive Rights, the Brennan Center for Justice, the Correctional Association's Women in Prison Project, National Advocates for Pregnant Women, and the

ACLU's Reproductive Freedom Project. Ms. Ehrlich currently serves on the Board of Directors of Law Students for Reproductive Justice. She received her B.A. *cum laude* in 2003 from Yale University, where she received the Anthony M. Schulte Award for community service and the John C. Schroeder Award for her commitment to social justice, and was a President's Public Service Fellow and a Mellon Research Fellow.

Risha K. Foulkes joined WRP this year as a Skadden Fellow. Ms. Foulkes is a 2008 graduate of Rutgers School of Law - Newark, where she was a Dean's Merit Scholar and received numerous academic awards, including induction into the Order of the Coif, the Eagleton Institute Fellowship in Politics and Government, and the Peggy Browning Fund Fellowship in Labor Rights. While at Rutgers, Ms. Foulkes worked in the Urban Legal Clinic, served as President of Law Students for Reproductive Justice, edited the Rutgers Race and Law Review, and co-founded the law school's Human Rights Forum. Prior to law school, Ms. Foulkes was the Deputy Director of Development at the Guttmacher Institute in New York, where she worked on state, national, and international law and public policy issues related to reproductive health and rights. Ms. Foulkes has extensive experience in women's and immigrants' rights advocacy, having also worked at the New York Association for New Americans; interned at the Equal Employment Opportunity Commission, the National Employment Law Project, Legal Momentum, and the Women's Commission for Refugee Women and Children; and volunteered at several community-based organizations. Ms. Foulkes holds an M.A. in Latin American Studies from the University of Cambridge and a B.A. in Cultural Anthropology from the University of Chicago, both with high honors.

Aliya Hana Hussain joined WRP in 2008 as a legal administrative assistant. Ms. Hussain recently graduated with honors from the London School of Economics and Political Science with an MSc in Gender, Development, and Globalization. Her studies focused on sexual violence, nationalism, economic development, and immigration. She received her undergraduate degree from Vassar College, where she co-founded and edited the *Vassar History Review* and served as the academic intern for the Vassar History Department, coordinating departmental events. Ms. Hussain earned the Virginia Swinburne Brownell Prize for Excellence in History while at Vassar, and she was also selected to be a student scholar in the Ford Scholars Program, through which she collaborated with a faculty member on an original research project.

Eliza W. Reshefsky joined WRP in 2008 as a legal administrative assistant. Ms. Reshefsky received her B.A. *magna cum laude* from the Gallatin School of Individualized Study at New York University, where her studies focused on art history, gender studies, and photography. Prior to joining the ACLU, Ms. Reshefsky worked as the Marketing and Events Manager for a boutique marketing firm where she created, coordinated, and oversaw all merchandising programs. Ms. Reshefsky loves to travel and most recently spent six weeks in Kashmir where she helped launch "Trekking for Trees," a rural ecotourism initiative designed to employ timber smugglers as trekking guides in the Himalayas. Ms. Reshefsky is also a freelance photographer.

(back row, from left to right) Mie Lewis, Staff Attorney; Emily J. Martin, Deputy Director; Joshua David Riegel, Paralegal; Risha K. Foulkes, Skadden Fellow; Aliya Hana Hussain, Legal Assistant; Selene W. Kaye, Advocacy Coordinator

(front row, from left to right) Julie B. Ehrlich, WRP Fellow; Araceli Martínez-Olguín, Staff Attorney; Ariela M. Migdal, Staff Attorney; Lenora M. Lapidus, Director; Eliza W. Reshefsky, Legal Assistant; Sandra S. Park, Staff Attorney

Thank You

The Women's Rights Project could not accomplish all that it has without the generous support, assistance, and guidance of our distinguished Advisory Committee, our legal interns, our cooperating attorneys and partner organizations, and our foundation and corporate supporters.

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The American Civil Liberties Union

The American Civil Liberties Union is the nation's premier guardian of liberty, working daily in courts, legislatures, and communities to defend and preserve the individual rights and freedoms guaranteed by the Constitution and the laws of the United States.

The Women's Rights Project

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

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

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