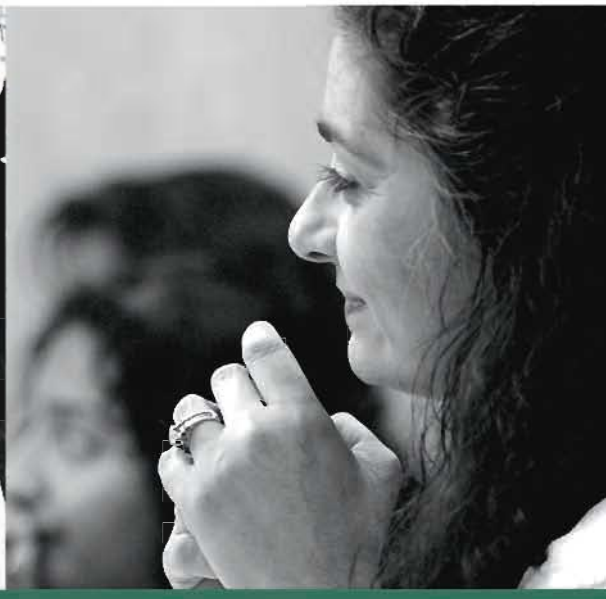
ACLU WOMEN'S RIGHTS PROJECT 2007 REPORT



ACLU FOUNDATION
AMERICAN CIVIL LIBERTIES UNION

WOMEN'S RIGHTS PROJECT

ACLU WOMEN'S RIGHTS PROJECT
2007 REPORT

"...the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields."

—Convention on the Elimination of All Forms of Discrimination Against Women

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WRITTEN BY

Joshua David Riegel

EDITED BY

Lenora M. Lapidus

WOMEN'S RIGHTS PROJECT STAFF

Lenora M. Lapidus, Director

Emily J. Martin, Deputy Director

Claudia M. Flores, Staff Attorney

Mie Lewis, Staff Attorney

Ariela M. Migdal, Staff Attorney

Sandra S. Park, Staff Attorney

Araceli Martínez-Olguín, Staff Attorney/WRP Fellow

Jennie Pasquarella, Staff Attorney/Kroll Family Human Rights Fellow

Selene W. Kaye, Advocacy Coordinator

Joshua David Riegel, Paralegal

Lori Tay, Legal Assistant

COVER PHOTOGRAPHS

FROM LEFT: Siti Rina Aisah, petitioner to the Inter-American Commission on Human Rights; rally participant holds sign at demonstration in front of the New Jersey State Prison; Jessica Lenahan, petitioner in *Gonzales v. United States, State of Colorado* before the IACHR

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INTRODUCTION

A MESSAGE FROM THE DIRECTOR

The ACLU Women's Rights Project (WRP) takes a dynamic approach to women's rights advocacy; through novel litigation strategies, legislative advocacy, public education and community outreach, we endeavor to systematically end discrimination against women and girls and to challenge the obstacles that prevent women and girls from participating fully in all aspects of society. In light of these goals, in 2007, WRP advanced our four, distinct but interrelated, programmatic areas with many exciting developments and several key victories. We continued to advocate for equal employment opportunities; the eradication of violence against women and discrimination against survivors of violence in the areas of housing, employment and governmental services; equal educational opportunity; and reducing rates of incarceration and improving conditions of confinement for girls and women. Cutting across these focus areas, we continue to integrate groundbreaking human rights strategies and principles into our advocacy.

Because economic opportunity is the wellspring from which many other rights flow, in 2007, our employment work largely centered around advocacy to ensure that the most vulnerable women, namely poor women, women of color, and immigrant women, are able to work free from discrimination in safe working environments. This year we brought suit on behalf of three Indian women who were trafficked to the United States by a Kuwaiti diplomat and his wife, and who were forced to work as domestic servants. In November 2007, we petitioned the Inter-American Commission on Human Rights on behalf of six individual female petitioners who were each, under the auspices of diplomatic immunity, denied a remedy when they sought restitution in federal court

for wage and hour claims and forced servitude at the hands of their diplomat employers. In addition to our litigation efforts, we worked closely with our Washington Legislative Office to lobby for an amendment to the Trafficking Victims Protection Act that would mandate preventative measures and provide a civil remedy for victims of trafficking by foreign diplomats. In 2007, we also continued to advocate for fair and equitable pay decisions for women, particularly in light of the Supreme Court's disappointing ruling in *Ledbetter v. Goodyear Tire & Rubber Company, Inc.* And we continued our efforts on behalf of women who work in traditionally male-occupied jobs.

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. This year we achieved a significant victory in a judgment against the New York City Department of Correction for sex discrimination against a Correction Officer who was sexually assaulted by a fellow Correction Officer while on the job. We also won a preliminary victory in the case of Jessica Lenahan (formerly Gonzales), whose domestic violence protection claims were rejected by the Supreme Court, after she sought to hold the police accountable for not enforcing her order of protection. In the first decision of its kind, the Inter-American Commission on Human Rights ruled in October 2007 that the U.S. was bound by the American Declaration on the Rights and Duties of Man, and the case would go forward. In 2007, we also advocated for fair housing practices with respect to survivors of violence.

In 2007, WRP continued work to preserve and promote Title IX of the Education Amendments' goal of gender equity in educational opportunity. This year, we conducted affirmative outreach in Ohio and South Carolina to insert a critical perspective into the dialogue on the growing trend in sex-segregated education. We also advocated on behalf of female students who, because their schools did not respond meaningfully to their sexual harassment by peers, suffered diminished educational opportunities.

In 2007, we expanded our advocacy in the areas of juvenile and criminal justice in exciting ways. We had great success in initiating crucial reforms in the juvenile justice systems of New York and Texas with respect to conditions of confinement for girls. In December 2007, we brought suit against the New Jersey Department of Corrections. This class action lawsuit seeks to challenge the conditions of confinement for women who were transferred from the state's women's prison to a maximum security men's prison and unfairly stripped of conditions and services appropriate to

their needs, and are now subject to virtual lock-down conditions. We also conducted advocacy to challenge the unfair practice of criminally prosecuting drug-dependent women who are pregnant.

Throughout the year, we at the ACLU Women's Rights Project have worked to ensure that *all* women—regardless of immigration status, access to wealth, familial responsibility, prior criminal record, or status as a survivor of intimate violence—are able to live lives of dignity and worth, as only then can our humanity as a society be fully realized. In light of our many achievements in 2007 and to ensure that all women are able to share in the promise of liberty, WRP continues to fight for women's full political, civil, and cultural participation in society.

Lenora M. Lapidus
Director of the ACLU Women's Rights Project

ENSURING EMPLOYMENT RIGHTS AND ECONOMIC OPPORTUNITY

Many women continue to toil in the least desirable jobs, are routinely denied adequate wages and promotions and are sexually harassed in the workplace. The ACLU Women's Rights Project (WRP) is committed to ensuring that our nation's most vulnerable women, poor women, immigrant women and women of color, are able to lead lives of economic self-sufficiency and are able to provide for themselves and their families. Whether in courts, in legislatures or on the streets, WRP has engaged novel advocacy strategies to ensure that all women, regardless of race, ethnicity and wealth, are free to work unhindered by their gender and to enjoy equal access to meaningful employment opportunities. In 2007, WRP continued its broad advocacy to advance women's right to work free from discrimination and abuse based on citizenship status, the traditional undervaluing of "women's work," sexual harassment and discrimination in pay decisions and workplace benefits, and extreme exploitation in the form of human trafficking. We have made tremendous gains in establishing women's equal rights under the law in the workplace, but until all women are able to assert their workplace and human rights without fear of reprisal, our work continues.

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ASSERTING THE WORKPLACE RIGHTS OF LOW-WAGE IMMIGRANT WOMEN WORKERS

The lives of low-wage immigrant women workers are affected by a constellation of factors that make them particularly vulnerable to illegal discrimination in the workplace. Often, these women work in jobs where few workplace protections exist to guarantee workplace fairness, such as in small retail stores and restaurants, in private homes and on farms. In addition to performing their work in under-regulated segments of the economy, they often lack exposure to and familiarity with United States law and law enforcement authorities and increasingly, undocumented immigrant women's rights are limited by their immigration status. Moreover, the women who occupy these jobs generally come from impoverished backgrounds, lack formal education, and speak little English. Their race, ethnicity and social status make these workers vulnerable to racial discrimination and degrading treatment. Their gender, in combination with these various other factors, makes them a specific target for gender discrimination, sexual harassment and assault in the workplace.

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

As a 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 Transnational Legal Clinic, has sought redress from the Inter-American Commission on Human Rights (IACHR) to hold the U.S. responsible for denying equal rights and remedies to undocumented laborers in the U.S. 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 on-site visits to observe the human rights conditions in all 35 member states of the OAS and to investigate specific allegations of violations of human rights treaties.

In November 2006, we filed a novel petition urging the IACHR to find the United States in violation of its human rights obligations by failing to protect millions of undocumented workers from exploitation and discrimination in the workplace. The petition was submitted to the IACHR on behalf of the United Mine Workers of America, AFL-CIO, Interfaith Justice Network and six immigrant workers who each were unsuccessful in their attempts to assert their workplace rights and

who are representative of the six million undocumented workers in the United States.

Melissa L., is a Chinese national who worked at a business in New Jersey from the end of 2003 until the summer of 2004. During the course of her employment she was repeatedly sexually harassed by several of her co-workers. Although she followed company procedure and informed the management and the management had at times witnessed the harassment firsthand, the managers took no action. The harassment eventually became so unbearable that Melissa felt she had no other option than to quit her job. She subsequently filed a civil suit alleging employment discrimination under state and federal law, but before she had her day in court, she was forced to settle the case for far less than she was due because of a concern that, due to her immigration status, it was unlikely she would prevail in court.

> By not protecting undocumented workers, the government is sending the message to employers that they can abuse and harass immigrant women, and that our lives are not as valued as other workers.
>
> —Melissa L., petitioner to IACHR

Melissa's story illustrates how the lack of a remedy for undocumented workers has a particularly chilling effect in the lives of immigrant women, leaving them vulnerable to workplace exploitation and unsafe working conditions. "By not protecting undocumented workers, the government is sending the message to employers that they can abuse and harass immigrant women, and that our lives are not as valued as other workers," said Melissa. "No woman should be allowed to be exploited against her will, no matter what her citizenship status is."

The petition to the Inter-American commission is pending a decision regarding its admissibility.

Espinal v. Ramco Stores (S.D.N.Y.)

In a resounding affirmation of immigrant women's right to work without fear of sexual assault and harassment, in September 2006, a federal jury found Albert Palacci, the defendant and owner of Ramco and National Discount stores on Dyckman Street in upper Manhattan, liable for sexually assaulting and harassing three of his female employees. Mr. Palacci refused, however, to pay the women what the jury granted them as compensation for the harms they suffered. In August 2007, after a year of negotiations and court proceedings, the parties agreed to resolve all

Plaintiffs in *Espinal v. Ramco Stores:* Deyanira Espinal, Angela Berise Fritman Peralta and Maria Araceli Flores

outstanding matters in the case for immediate payment of $750,000 in damages and attorneys' fees. After three years of litigation, our clients were finally vindicated for the severe abuse they endured at the hands of a ruthless employer who thought he could continually harass them merely because they are immigrant women.

The three women, Deyanira Espinal, 39, Angela Berise Fritman Peralta, 24, and Maria Araceli Gonzales Flores, 24, worked as cashiers and general assistants at Ramco for varying periods of time from 2002 to 2004. During their employment, they were subjected to severe sexual harassment including demands for sex in exchange for raises. When these demands were rejected, Mr. Palacci retaliated by physically assaulting the women. Moreover, each woman was forced to work six or seven days a week for as little as $30-$40 a day; one was also forced to work as Palacci's personal cook and maid. On one occasion, Mr. Palacci took Ms. Peralta and Ms. Espinal to an abandoned apartment in Brooklyn, ostensibly to clean it. He then locked the door, stripped off his clothes and demanded sexual favors. When the women refused his advances, Mr. Palacci erupted in a violent rage and tried to physically force them onto a bed. In further retaliation, he reduced their work hours and treated them with increased hostility on the job. Mr. Palacci also kept a bed in the basement of one of his stores and told the women it was there so that he could have sex with them.

WRP hopes that the resolution of this case will not only provide restitution for our clients but will also give courage to other immigrant women who are in similar oppressive and illegal work situations to come forward and assert their right to work free from harassment and assault. Far too often, out of

economic necessity, immigrant women find themselves in exploitative work situations but are afraid to take any action. Through our efforts, we hope to persuade the public that regardless of where one is from, everyone has the right to work in a safe and fair environment.

ADVOCATING FOR THE HUMAN RIGHTS OF FARMWORKING WOMEN

"We used to buy our slaves, now we rent them," is an infamous and shocking quotation attributed to the head of a nationwide grower of citrus, vegetables, sugarcane, and other produce. The quotation was shared with a small group of advocates who were given a tour of Immokalee, Florida, by Jeannie Economos and other members of the Farmworkers Association of Florida. The advocates, including several members of WRP, had come from all across the country to participate in a workshop entitled, "Working Hands: Immigrant Workers and Human Rights," sponsored by the ACLU Human Rights Program, the ACLU of Florida, the Coalition of Immokalee Workers, the National Employment Law Project and the Farmworkers Association of Florida in November 2007. To set the stage for two days of presentations and panel discussions about how to implement a human rights framework in addressing the array of abuses and violations that immigrant workers face, participants were given a glimpse into the world of migrant farmworkers—the trailer camps they live in (where they pay $400 per week for a dilapidated trailer and are forced to cram 10 to 12 people per trailer), the fields they work (where growers pay them $1 per 80-pound bag of oranges they pick), and the places they gather to organize, including the trailer that houses the low-power community radio station started by the Coalition of Immokalee Workers.

Ms. Economos and her colleagues illustrated the web of abuse and exploitation in which farmworkers become trapped. One family has a monopoly on housing in Immokalee, allowing them to charge outrageous rates for trailers with substandard conditions, while there are so few inspectors for the region that housing complaints filed by the Farmworkers Association of Florida go mostly unanswered. Exposure to pesticides in the fields—crop dusters sometimes spray while people are at work in the fields—have resulted in an astonishing array of health problems in workers: lupus, diabetes, arthritis, kidney failure, congestive heart failure, to say nothing of the autism, learning disabilities and severe birth defects seen in the children of farmworkers. But workers have no redress as toxicologists repeatedly insist that there is no clear connection between chemi-

TOP LEFT: Chandra Bhatnagar, Staff Attorney with the ACLU Human Rights Program, and WRP Staff Attorney Claudia M. Flores participate in Burger King rally

TOP RIGHT: Staff Attorney Claudia M. Flores participated on a panel at the "Working Hands" conference

BOTTOM LEFT: Trailer that houses farmworkers in Immokalee, FL

cal exposure and health issues. Workers are sometimes transported in locked panel trucks with no windows or doors, and are not told where they are working or the name of their employers, so that they cannot file complaints. With the threat of arrest and deportation held constantly over their heads, farmworkers—the majority of whom are undocumented immigrants—are coerced into submitting to abusive and exploitative conditions and discouraged from seeking help from authorities.

On the one hand, sexual harassment is used as a tool of economic oppression, while at the same time economic vulnerability is used as a form of gender oppression.

Grassroots approaches to advocating for humane working conditions and living wages were presented during the conference, alongside legal and policy mechanisms within the international and regional human rights systems. Panelists applied human rights approaches to various issues including guestworker abuse, health and safety violations, interference with the right to organize and wage violations. WRP Staff Attorney Claudia Flores, speaking on a panel on gender discrimination and sexual harassment of women workers, pointed to the double hammer that immigrant women in this country face: on the one hand, sexual harassment is used as a tool of economic oppression, while at the same time economic vulnerability is used as a form of gender oppression. Ms. Flores underscored the potency of concepts in international human rights law, such as the principle of equality and non-discrimination, which makes it the responsibility of the government to protect and enforce the basic rights of these women workers. She outlined the availability of specific mechanisms for implementing human rights principles, including the American Declaration on the Rights and Duties of Man, which imposes binding obligations on the United States, and the United Nations Special Rapporteurs on Violence Against Women and on Migrant Workers, and emphasized the importance of calling on the United States to ratify the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

The central theme of the workshop was the need to incorporate affirmative human rights principles in all forms of advocacy in order to challenge the division of society into two classes of people: those who have papers and those who do not; women who enjoy equal rights, and women who do not. Two of the primary groups of exploited workers on whose behalf WRP works – farmworkers and domestic workers—represent the same two fields of work that have been performed

by an underclass of workers in this country since slavery was legal. In 2008, WRP plans to further our advocacy efforts on behalf of these two groups of women workers as a part of our goal to ensure that all women are free to work free of abuse and discrimination, so that they may achieve economic self-sufficiency.

PROTECTING THE RIGHTS OF UNDOCUMENTED IMMIGRANT WOMEN IN SEXUAL HARASSMENT CASES

In November 2007, WRP and the National Employment Law Project collaborated in publishing a litigation guide entitled *No Free Pass to Harass: Protecting the Rights of Undocumented Immigrant Women Workers in Sexual Harassment Cases*. The guide is intended as a tool for effective litigation of sexual harassment claims brought on behalf of immigrant women workers. With the guide, we aim to provide information for legal advocates with respect to the most important issues that may arise and special considerations to be taken when representing undocumented immigrant women who are particularly vulnerable to workplace exploitation due to their immigration status.

ADVANCING IMMIGRATION REFORM AND WORKERS' RIGHTS IN CALIFORNIA

The ACLU of Southern California (ACLU-SC) continues to work with local and national organizations to push for humane immigration reform that includes a path to citizenship, the right for 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 and are often disproportionately affected by wrongheaded immigration policies; undocumented immigrant women fear being fired from their jobs due to their immigration status and fear that their family will be split apart as a result of deportation. For these reasons they are especially susceptible to workplace exploitation.

This year, the ACLU-SC together with immigrant rights, faith-based, economic justice organizations and labor groups marched and lobbied to advocate for family reunification and respect and dignity for immigrant workers. The ACLU-SC also held workshops throughout

Southern California for organizations and community members on what they should do if there is a raid in their workplace or if an immigration agent knocks on their door.

Locally, the ACLU-SC continues in its partnership with organized labor to secure dignity and respect for hotel workers, primarily women of color, in their fight to organize and receive fair compensation and benefits. Historically, management in these companies threaten job security by using immigration status as a way to intimidate and disempower their employees. The ACLU-SC continues in the fight to protect these workers' rights.

ENSURING THAT DIPLOMATIC IMMUNITY DOES NOT ALLOW FOR DOMESTIC WORKER EXPLOITATION

> *"These domestic workers, predominantly women, came to America to make an honest living and to provide for themselves and their families, and instead they found themselves enslaved. This problem has existed for years and it's time that our government stopped ignoring the anguish these women suffer."*
>
> —ACLU Legislative Counsel Vania Leveille

Unlike other employers, foreign diplomats are generally immune from civil, criminal and administrative processes in the United States unless the sending countries waive the diplomats' immunity. As a result, certain high-level diplomats are sheltered from the legal repercussions of exploiting their employees, including domestic workers. This problem is further complicated because along with immunity from suit, the United States gives the employees of foreign missions and international organizations the privilege of bringing household and childcare workers into the U.S. on special A-3 and G-5 visas. Each year, more than 3,000 A-3 and G-5 visas are issued. Because of a lack of oversight and accountability, the visa program works in tandem with diplomatic immunity to enable diplomats to traffic and exploit these workers with impunity.

As defined by the Trafficking Victims Protection Act of 2000 (TVPA), a federal statute passed by Congress to prevent modern-day slavery and the trafficking of human beings and as a means to punish their abusers, trafficking in persons is "the recruitment, harboring, transportation, provision, or obtaining of a person for labor services" through the use of force, fraud, or deception to perform labor exacted through physical, mental or legal coercion. Traffickers coerce

their victims into performing labor through a variety of means, including, but not limited to, physical abuse, psychological abuse and threats, and isolation and confinement. The State Department estimates that up to 17,500 people are trafficked into this country each year, but experts agree that this is a gross underestimate.

In recent years, foreign diplomats have perpetrated some of the worst trafficking abuses reported in the United States. Domestic workers, including workers employed by diplomats, too often face a range of civil and human rights violations including failure to pay minimum wage and/or overtime; physical, sexual or psychological abuse; denial of medical care; and in some cases forced labor and trafficking rising to the level of modern-day slavery. Media reports of severe abuse and exploitation by diplomats of their domestic workers in the United States have become increasingly commonplace. Yet, without exception, none of these diplomat traffickers has been brought to justice through criminal prosecutions and no domestic workers have succeeded in holding the diplomats civilly accountable. The U.S. Department of State routinely asserts that diplomatic immunity shields diplomats from criminal or civil jurisdiction in the United States. As a result, their victims are unprotected and unable to seek the restitution and redress provided by the TVPA. The effect of diplomatic immunity is that, under the cover of foreign relations, diplomat employers can enslave their workers notwithstanding constitutional, statutory, and international prohibitions on slavery, and without repercussion.

The U.S. Department of State routinely asserts that diplomatic immunity shields diplomats from criminal or civil jurisdiction in the United States. As a result, their victims are unprotected and unable to seek the restitution and redress provided by the TVPA.

In 2007, WRP continued to work to expand its broad campaign to challenge diplomatic immunity and use novel advocacy strategies to raise awareness about this issue.

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

In the summer of 2005, Kumari Sabbithi, Joaquina Quadrosa and Tina Fernandez, three Indian women, were brought to the United States under false pretenses by Major Waleed Al Saleh, a diplomat of Kuwait, and his wife Maysaa Al Omar, who were living in McLean, Virginia. The women were subjected to physical and psychological abuse by the Al Saleh family and forced to work against their will.

All three women came from severely impoverished families and communities in rural India. During the period of their employment by Al Saleh and his wife, they each bore significant financial responsibilities to provide crucial support to their children, husbands, parents and extended families back in India. Constantly reminded of these responsibilities, these women endured working every day from 6:30 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. Further, the women never received any of the money as it was sent directly to their families. They were subjected to threats and verbal abuse, including one particularly violent incident in which Ms. Sabbithi was knocked unconscious after being thrown against a counter by an enraged Mr. Al Saleh. The women were often not allowed time to eat or to use the bathroom. The women had their passports confiscated and they were forbidden from interacting with the outside world. "I was scared of my employers and believed that if I ran away or sought help they would harm me or maybe even kill me," said Ms. Sabbithi, who now lives in New York City. "I believed that I had no choice but to continue working for them even though they beat me and treated me worse than a slave."

In a rare unguarded moment during the winter of 2005, one of the women approached a man who lived in the neighboring house, in desperation. Despite language barriers, he promised to help them seek assistance if they could escape. Over the next five months the women each fled the Al Saleh household and with the neighbor's help contacted services for victims of trafficking.

In early 2007, WRP and the ACLU Human Rights Program, in cooperation with Dechert LLP, charged Mr. Al Saleh and his wife with trafficking the three women and forcing them to labor as domestic workers against their will and under slavery-like conditions. Because of difficulties holding foreign diplomats liable, this litigation employs a novel strategy in that it seeks to hold not only the diplomat but also the nation of Kuwait accountable for the abuse the women suffered at the hands of its diplomat employee. Kuwait has a longstanding and serious problem with abusing domestic workers, especially migrant domestic workers. According to the 2005 State Department

Country Report on Human Rights for Kuwait, "The physical and sexual abuse of foreign women working as domestic servants was a problem.... Runaway servants, including those alleging physical or sexual abuse, often sought shelter at their country's embassy pending repatriation or a change in employer. Of an estimated 450,000 domestic servants in the country, an estimated 800 women were reported to be in informal shelters run by source country governments on any given day during the year."

Shortly after we filed our complaint in January 2007, the Department of Justice initiated a criminal investigation of the Defendants in our case for forced labor, involuntary servitude and trafficking violations. In early August, after we completed all briefing on the Defendants' motion to dismiss on diplomatic immunity grounds, we moved to stay the civil case until the conclusion of the criminal investigation and any prosecution. In October, we learned that, based on the evidence obtained during its criminal investigation, the Department of Justice asked the Department of State to request that Kuwait waive Mr. Al Omar's immunity from prosecution. Kuwait declined to waive the immunity and returned Mr. Al Saleh and his family to Kuwait. The diplomat and his wife are now ineligible for reentry into the United States. We are continuing the litigation against the diplomat and his wife and against the country of Kuwait.

Mabel Gonzalez-Peredes, plaintiff in *Gonzalez Paredes v. Vila* and petitioner to the Inter-American Commission on Human Rights

Gonzalez Paredes v. Vila (D.D.C)

WRP, Break the Chains Campaign, Casa of Maryland and Global Rights submitted a friend-of-the-court brief in a case on behalf of Lucia Mabel Gonzalez Peredes, a domestic worker, who sought to hold her diplomat employer liable for federal wage and hour violations. Our brief argued that the employment relationship between diplomats and domestic workers is a commercial activity within the exception to immunity under the Vienna Convention on Diplomatic Relations, and the commercial activities exception should be interpreted in a manner consistent with U.S. policy and international obligations to eradicate trafficking and severe labor abuses and to provide a remedy for victims of such abuses. Notwithstanding the arguments raised by the plaintiff and in our brief, in March 2007, the Court granted the defendants' motion to dismiss holding that the defendants were immune from suit.

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 October 2007, WRP joined the Coalition to Support Domestic Workers in a rally and march from the U.S. Department of State to the Organization of American States (OAS), in Washington, D.C., to call international attention to exploitation of domestic workers by unscrupulous diplomat employers who are shielded from judicial oversight by diplomatic immunity. "Today, we say to the United States government: enough is enough," WRP Staff Attorney/Kroll Family Human Rights Fellow Jennie Pasquarella proclaimed to a crowd of activists, domestic workers, and staff from advocacy organizations gathered in front of the OAS. "There can be no blank check for slavery." The marchers included domestic worker activists, the Bolivian Ambassador to the OAS Reynaldo Cuadros, City Councilman Marc Elrich of Montgomery, the AFL-CIO, CASA of Maryland, the National Asian Pacific American Women's Forum, Global Rights, and other partner organizations who are committed to ending modern day slavery in the U.S. in the form of forced labor and unchecked exploitation of domestic workers.

The rally also served as an occasion to publicly announce, bring attention to and garner support for WRP's plan to appeal to the international community to shed light on the U.S.'s refusal to provide a remedy to victims of trafficking perpetrated by diplomats. In early November 2007, WRP, the ACLU Human Rights Program, the University of North Carolina School of Law Human Rights Clinic and Global Rights, together with six domestic workers from Chile, Argentina, Bolivia, Bangladesh, Indonesia and Zimbabwe, filed a petition before the Inter-American Commission on Human Rights (IACHR) asking the Commission to hold the U.S. accountable for the abuses they have suffered at the hands of their diplomat employers.

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. Each of the six individual petitioners was employed as a domestic worker in the home of a diplomat living in the United States. The petitioners entered the United States with employment contracts promising lawful wages and working conditions, but diplomatic immunity made such contracts unenforceable and meaningless.

One of the individual petitioners, Raziah Begum, a national from Bangaldesh, was enslaved in the Manhattan apartment of a Bangladeshi diplomat. For two and a half years, she was only permitted to leave the apartment on a few occasions, denied a day of rest, and paid nothing




TOP, LEFT TO RIGHT: Raziah Begum, Siti Rina Aisah, Otilia Luz Huayta and Susana Ocares, petitioners to the Inter-American Commission on Human Rights

BOTTOM, LEFT TO RIGHT: Jennie Pasquarella, WRP Staff Attorney/ Kroll Family Human Rights Fellow; Vania Leveille, ACLU Legislative Counsel; Selene W. Kaye, WRP Advocacy Coordinator; and Claudia M. Flores, WRP Staff Attorney, participate in a rally in front of the Organization of American States in Washington, DC

directly. Ms. Begum's employers went so far as to make her sleep on their daughter's floor without as much as a mattress or blankets of any kind. On those occasions when there were overnight guests in the apartment, her employers made her sleep under the dining room table, huddled up against the wall, so that their guests would not see her. "I never felt like a human being in my employers' home," said Ms. Begum. "They treated me as they would treat a dog. Not the way people in America treat their dogs, but the way people in Bangladesh treat stray dogs on the street. They treated me as a piece of property. They tried to deny me my dignity." Ms. Begum represents the thousands of domestic workers who have experienced similar situations of abuse and exploitation, but who cannot claim any remedy for such abuses because of diplomatic immunity.

ADVOCATING FOR EFFECTIVE FEDERAL TRAFFICKING LEGISLATION

Our campaign to challenge diplomatic immunity does not end in the courts. In 2007, Congress considered legislation reauthorizing the Trafficking Victims Protection Act (TVPA). WRP saw this as a unique opportunity to work with Congress to ensure victims of trafficking by foreign diplomats are protected from abuse. WRP and the ACLU Washington Legislative Office drafted legislation that would mandate preventative and remedial measures to ensure that domestic workers employed by foreign diplomats know their rights in the U.S. and have access to assistance. The legislation will also create civil remedies for those domestic workers who have been exploited, trafficked, or subjected to forced labor by their diplomat employers. In December 2007, the House of Representatives passed a bill with language that addresses the problem of diplomatic immunity in the context of trafficking. A similar bill will be introduced in the Senate.

As part of our legislative initiative, in March 2007, WRP and the Washington Legislative Office submitted written comments to the Senate Judiciary Subcommittee on Human Rights and the Law at its hearing "Legal Options to Stop Trafficking." In May 2007, Senator Richard J. Durban of Illinois, with the assistance of WRP, requested an investigation by the Government Accountability Office of the State Department's handling of the diplomatic guest worker visa program and diplomats' abuse of domestic employees. In January and July 2007, WRP also participated in two high-level meetings with personnel from various arms of the State Department, Department of Justice,

Immigration and Customs Enforcement, and the Federal Bureau of Investigations. The Washington Legislative Office and WRP's lobbying efforts resulted in a small victory in July 2007, when the Senate's Appropriations Bill for 2008 for the Department of State, Foreign Operations and Related Programs was introduced and included the following language:

> **Trafficking- The Committee recommendation includes $4,215,000 for the Office to Monitor and Combat Trafficking in Persons, an amount equal to the request, and recommends that the Office increase monitoring and enforcement of Department regulations related to the treatment and protection against abuse of A-3 and G-5 visa recipient domestic workers.**
>
> **The Committee encourages the Department to take all necessary action to ensure the fair treatment of domestic staff at foreign embassies located in the United States.**

In an effort to gather more information about the State Department oversight of diplomatic visa privileges and further develop our advocacy around the issue, in August 2007, WRP submitted a Freedom of Information Act (FOIA) request to the U.S Department of State requesting information on the Department's policies and procedures with regard to handling A-3 and G-5 visas for domestic workers employed by diplomats and the staff of international organizations. We are still awaiting responsive documents.

ADVOCATING FOR STATE TRAFFICKING LEGISLATION

In March 2007, WRP and the Maine Civil Liberties Union (MCLU) submitted written testimony to the Joint Committee on the Judiciary of the Maine Legislature commenting on LD 461: An Act to Implement the Recommendation of the Human Trafficking Task Force. The bill would create criminal penalties for human trafficking under the state law. WRP and the MCLU urged the legislature to include a civil remedy in the bill and to more clearly and narrowly define trafficking and forced labor. The committee revised the bill in accordance with the suggestions contained in the ACLU's comments and the bill has been carried over to the next legislative session for further consideration.

INTERPRETING THE FAIR LABOR STANDARDS ACT

Long Island Care at Home, LTD v. Evelyn Coke (US Sup. Ct.)

In certain fields of employment, where women are the majority of the workforce, fewer employment protections exist to guarantee workplace fairness. This is true for domestic workers. The 2007 Supreme Court decision in *Long Island Care at Home, LTD v. Evelyn Coke*, a case in which the Supreme Court had the opportunity to set the record straight and demand that home-health aides are paid fairly for their work, was a disappointing blow to workplace fairness for women.

Evelyn Coke brought a suit challenging the U.S Department of Labor's interpretation of the Fair Labor Standards Act that commercial enterprises are not obligated to provide minimum wage and overtime to home health care workers. For 20 years, Ms. Coke, a 73-year-old Jamaican immigrant, cared for her clients in their homes, bathing them, cooking for them, helping them dress and administering their medications. This backbreaking work has left Ms. Coke herself hobbled and feeble. In many ways, Ms. Coke is representative of the vast majority of home care attendants who are disproportionately female and of racial and ethnic minority groups. There are currently 1.4 million home care attendants in the United States, an overwhelming majority of whom are women of color.

The Fair Labor Standards Act guarantees covered workers a minimum wage and overtime. In 1974, Congress amended the Act to expand its coverage. The Labor Department nonetheless claimed that the 1974 amendments excluded domestic workers employed by commercial enterprises from the FLSA coverage that had previously applied. The appellate court rejected that interpretation as untenable, and the friend-of-the-court brief submitted to the Supreme Court by WRP and other civil rights groups agreed. The brief also highlighted how the Labor Department's interpretation reinforces the historic discrimination suffered by domestic workers, who are disproportionately female and minority. The brief was authored by the Brennan Center for Justice and the Urban Justice Center and supported by WRP and a number of other advocacy organizations. Much to WRP's disappointment, in June 2007, the Supreme Court reversed the Second Circuit's decision and found that the Labor Department had the authority to exclude this group of workers from FLSA wage and hour coverage.

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 harmed women and their families disproportionately.

The ACLU-SC continues 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, SSI/SSP (assistance for low-income elderly and disabled people) and social service programs for immigrants.

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 the 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 even harsher budget shortfall predictions for next year, the ACLU-SC's fight for women's rights and access to services continues.

FURTHER ADVOCACY FOR PAY EQUITY

The Maine Civil Liberties Union (MCLU) is an active member of the Women's Leadership Action Coalition (WLAC), which is made up of organizations that work on women's issues at the state and local level. In May 2007, the MCLU participated in WLAC Day at the State House, during which women from around the state gathered at the Capitol to lobby their legislators on issues such as wage equity.

ADVANCING THE RIGHTS OF WOMEN IN NON-TRADITIONAL OCCUPATIONS AND PROTECTING AFFIRMATIVE ACTION IN EMPLOYMENT

> ***"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."***
>
> —Janet Caldero, client in *U.S. v. New York City Board of Education*

U.S. v. New York City Board of Education (E.D.N.Y.)

This year, WRP continued to advocate for the legality of affirmative action measures in a case that has been before the court for over ten years. In 1996, the Civil Rights Division of the U.S. Department of Justice brought a federal lawsuit against the New York City Board of Education, alleging that the Board had long discriminated against women, African-Americans, Hispanics and Asians in hiring custodians, by failing to recruit them and by giving civil service tests for the job that discriminated against African-Americans and Hispanics. In 1999, the Justice Department and the Board of Education entered into a settlement agreement. At that time, many of the women, African-Americans, Hispanics, and Asians working as custodians were employed only provisionally, meaning they could be fired at any time and they could not compete for various job benefits. The settlement agreement provided that these individuals would all become permanent civil service employees. It also provided them with retroactive seniority. Finally, it guaranteed that if any of its provisions were challenged, the Justice Department and the Board of Education would defend the agreement.

Shortly after the parties entered into the settlement agreement, several white male custodians represented by the Center for Individual Rights challenged the agreement, arguing it constituted reverse discrimination, and in 2002 the Justice Department, under the leadership of 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 and began to attack the very awards it had won. It has continued this attack to this day. "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," said Janet Caldero, a client in this lawsuit. "Those who received permanent employment under the agreement have worried about losing their jobs."

Following the Department of Justice's reversal of its position, WRP intervened to protect the settlement agreement. On behalf of twenty-five of the female and minority custodians abandoned by the Justice Department, we sought to maintain the awards of permanent jobs and seniority. 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, 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. WRP immediately sought reconsideration of the judge's decision to strip many African-American and Hispanic male custodians of their seniority.

In August 2007, the court heard oral testimony in an evidentiary hearing on WRP's motion for reconsideration and we have since filed post-argument briefs. We expect a final decision shortly. Thereafter, in all likelihood, various aspects of the court's ruling will be appealed by one or more of the parties and we will litigate the case before the Second Circuit. WRP is litigating this case in cooperation with Orrick, Herrington & Sutcliffe LLP.

Amid the ongoing controversy initiated by the Justice Department's unprecedented midterm dismissal of seven United States Attorneys under the leadership of the former Attorney General, Alberto Gonzales, in December 2006, WRP contributed to the national conversation about the Department of Justice in important ways. In June 2007, "Dan Rather Reports" featured two of our clients in this case in an episode entitled, "A Question of Rights," which focused on the Justice Department's politicization of the Civil Rights Division and its failure to appropriately and robustly enforce civil rights under the current administration. In a 20 minute segment, two of our clients, Janet Caldero and Marianne Manousakis, described the betrayal they felt when the Justice Department abandoned them and began to attack the broad affirmative action measures the Justice Department, under the Clinton Administration, had won to remedy New York City's previous discrimination in recruitment and hiring. Ms. Caldero and Ms. Manousakis also described the many challenges of being a woman in a male-dominated profession.

Additionally, in September 2007, WRP and the ACLU Washington Legislative Office submitted testimony to the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the

Committee on the Judiciary before the U.S. House of Representatives in an oversight hearing on the Employment Section of the Civil Rights Division of the Department of Justice. WRP set out the potential consequences of the position the Department of Justice has taken in attacking the settlement agreement for both the individuals whose interests are at stake in this case and for civil rights enforcement generally. We also described the necessary safeguards to prevent the Civil Rights Division from harming the individuals that it previously undertook to protect. Ms. Caldero also testified before the Subcommittee. In testifying as to how the Justice Department turned on her and other similarly situated custodians, she described how in 1992, the year she began to work as a custodian, she was one of approximately 10 women in a workforce of nearly 900. "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 you have to prove yourself again and again," testified Ms. Caldero. "I understand that the Justice Department came to me saying that the United States government wanted to change this. I trusted the Justice Department and helped it as much as I could, and then it betrayed and abandoned me and many others. I understand that this was unjust and unfair and I hope that no one else ever has to go through this experience."

I understand that this was unjust and unfair and I hope that no one else ever has to go through this experience.

—Janet Caldero, client in *U.S. v. New York City Board of Education*

INTERPRETING TITLE VII

Though women have made significant gains in pay equity, the fact remains that women are still discriminated against in the workplace by unfair pay practices. According to census data released in August 2007, women earned 76.9% of men's earnings in 2006. When comparing the median earnings of full-time, year-round workers, women earned $32,515 while men earned $42,261. Yet these numbers become even more stark when broken down by race. The median earnings for women of color continue to be lower, in general, than earnings for men as a whole and women considered generally. In 2006, the earnings for African American women were 71.8% of men's earnings and Latinas earned 59.6% of men's earnings. While Asian American women's

earnings were 93.0% of men's earnings, the proverbial "glass ceiling" is still a very real thing that negatively impacts women's ability to lead lives of economic independence.

Ledbetter v. Goodyear Tire & Rubber Company, Inc. (US Sup. Ct.)

In 2007 the Supreme Court issued a ruling addressing when a plaintiff may bring an action under Title VII of the Civil Rights Act of 1964, the federal statute that prohibits employment discrimination based on race, color, religion, sex and national origin, alleging illegal pay discrimination when the disparate pay is the result of intentionally discriminatory pay decisions made years earlier.

Lilly Ledbetter was 60 years old and nearing the end of her almost 20 year career at Goodyear's tire assembly plant in Gadsden, Alabama, when in 1998, on the eve of her retirement, she discovered that her annual salary was lagging $15,000 behind one of her male colleague's salary. In fact, she was being paid less than all her male counterparts in the tire assembly department, including recent hires with far less on-the-job experience. Less than a month after finding out about the pay disparities, Ms. Ledbetter filed charges with the U.S. Equal Employment Opportunity Commission, the federal agency charged with enforcing equitable employment practices, and subsequently filed a federal lawsuit in hopes of recovering the wages she rightfully deserved. Ms. Ledbetter prevailed at the district court level, but the United States Court of Appeal for the Eleventh Circuit reversed the trial court's findings and dismissed her complaint.

Departing from precedent, the Court of Appeals held that a Title VII plaintiff alleging wage discrimination can only challenge salary decisions made within 180 days of her complaint, and cannot challenge the ongoing effect of pay decisions made more than 180 days prior. Along with a broad coalition of civil rights groups, WRP joined in a friend-of-the-court brief that argued that the lower court's arbitrary cut-off was unjustified under Title VII and would perpetuate the persistent gender gap in wages and salary.

In late May 2007, a Supreme Court split by the thinnest of margins—5 to 4—affirmed the judgment of the Court of Appeals in holding that Ms. Ledbetter did not file her discrimination charge in a timely manner as specified by Title VII. Writing for the majority, Justice Alito described the opinion as one easily decided on the statute "as written" and explained that the Court has previously held that the time for filing a charge of employment discrimination begins when the dis-

criminatory act occurs—this rule applies to any "'[d]iscrete ac[t]' of discrimination, including discrimination in 'termination, failure to promote, denial of transfer, [and] refusal to hire.'" Thus, because pay setting is a discrete act that occurs at a particular point in time, Ms. Ledbetter's Title VII claim could not be allowed to proceed because the initial decision to pay her a lower salary was made more than 180 days prior to her complaint, though she continued to receive lower pay checks for many years following that decision. The Court made no exception for a plaintiff who does not discover that she is being paid less than her male colleagues until months or years after the initial discriminatory decision is made. Admonishing the majority, Justice Ginsburg read her dissenting opinion from the bench: "In our view, the Court does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination." Justice Ginsburg also reminded the Court that the same denial of relief would also apply to anyone alleging discrimination based on race, religion, age, national origin or disability.

> In our view, the Court does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination.
>
> —Supreme Court Justice Ginsburg

WRP applauded the House of Representatives' decision to restore federal protections from pay discrimination that were undermined by the Supreme Court's adverse decision in *Ledbetter* when it passed the Lilly Ledbetter Fair Pay Act of 2007 in July 2007. The Act would amend Title VII to make clear to courts that the 180-day statute of limitations applies to every instance of a discriminatory paycheck rather than only initial discriminatory pay decisions. The ACLU Washington Legislative Office has played an active part in the coalition pushing for the bill. That same month, the Senate introduced a similar bill, the Fair Pay Restoration Act, companion to H.R. 2831, Lilly Ledbetter Fair Pay Act of 2007, on which there has yet to be a vote. President Bush has threatened to veto the legislation should it reach his desk.

The ACLU has also been active on the state level to rectify the employment protections stymied by the *Ledbetter* decision. The ACLU of California Legislative Office has lobbied actively for Assembly Bill No. 437, a bill introduced by Assembly Member Dave Jones (D) to the California Legislature after the decision in *Ledbetter* came down. This bill clarifies that in California, the

timeline for alleging wage discrimination begins again with each new payment of a discriminatory wage, and that other similar or related instances of wage discrimination may be challenged without filing another complaint. The bill was not sent by the legislature to the Governor this year, and thus becomes a two-year bill. We are hopeful that action will be taken on this bill with the start of the legislative session again in January 2008.

PROTECTING AGAINST WORKPLACE DISCRIMINATION ON THE BASES OF FAMILIAL STATUS IN CALIFORNIA

California Senator Sheila Kuehl (D) introduced Senate Bill 836 to the California Senate. This bill would have added familial status to the list of prohibited bases for discrimination under the Fair Employment and Housing Act. The bill recognized that California's diverse population has a variety of familial obligations that should not subject them to discriminatory treatment in the workplace. Many women often find themselves in the role of "caretaker" for different family members, and so would have been positively impacted by this bill. In a disappointing loss for women's equality in the workplace, Governor Arnold Schwarzenegger returned the bill unsigned with a note that stated that the term "familial status" was too ambiguous and would have generated "endless litigation" in an attempt to define the term, and would interfere with an employer's ability to make personnel decisions.

ENDING VIOLENCE AGAINST WOMEN AND GIRLS

Violence against women and girls, in the form of domestic violence, sexual assault and stalking, is a problem of pandemic proportions. In the United States, between one and five million women suffer nonfatal violence at the hands of an intimate partner each year. Domestic violence affects individuals in every racial, ethnic, religious and age group at every income level, but it is overwhelmingly a crime perpetrated against women. In fact, women are five to eight times more likely to be the victims of domestic violence than men. Women are also far more likely to be murdered by their partners: approximately one-third of the women murdered in the U.S. each year are killed by an intimate partner.

As staggering as these statistics are, violence against women and girls not only causes harm directly, but also imposes collateral consequences that can be devastating. Survivors of domestic violence are often discriminated against in the workplace by employers who, based on outmoded stereotypes about domestic violence and the women who experience it, punish women for taking time off from work to attend court dates and doctors' appointments as they recover from being battered. Housing instability and a lack of safe and affordable housing options also heightens the risk of women experiencing domestic violence. Moreover, sometimes landlords and Public Housing Authorities believe that they can ensure safety on their properties by keeping domestic violence survivors out. Unfortunately, even though police enforcement of civil protective orders can significantly decrease the risk of further violence, sometimes police do not provide meaningful enforcement of them. Believing that domestic violence is a "family matter," many police officers still do not take domestic violence seriously and consequently fail to enforce civil orders of protection or make required arrests, even in states with mandatory arrest laws. When police fail to enforce protective orders, this sends a message to abusers that there are no consequences for their actions and women who hold these protective orders are further endangered by a false sense of security.

In 2007, the ACLU Women's Rights Project continued to work toward the elimination of gender based violence by ensuring that survivors of violence are not discriminated against with regard to housing, employment, public benefits and police responsiveness. We also continued

advocating for governments, both state and federal, to take proactive measures to protect survivors of domestic violence, sexual assault and stalking.

ENSURING POLICE AND GOVERNMENT RESPONSIVENESS TO DOMESTIC VIOLENCE

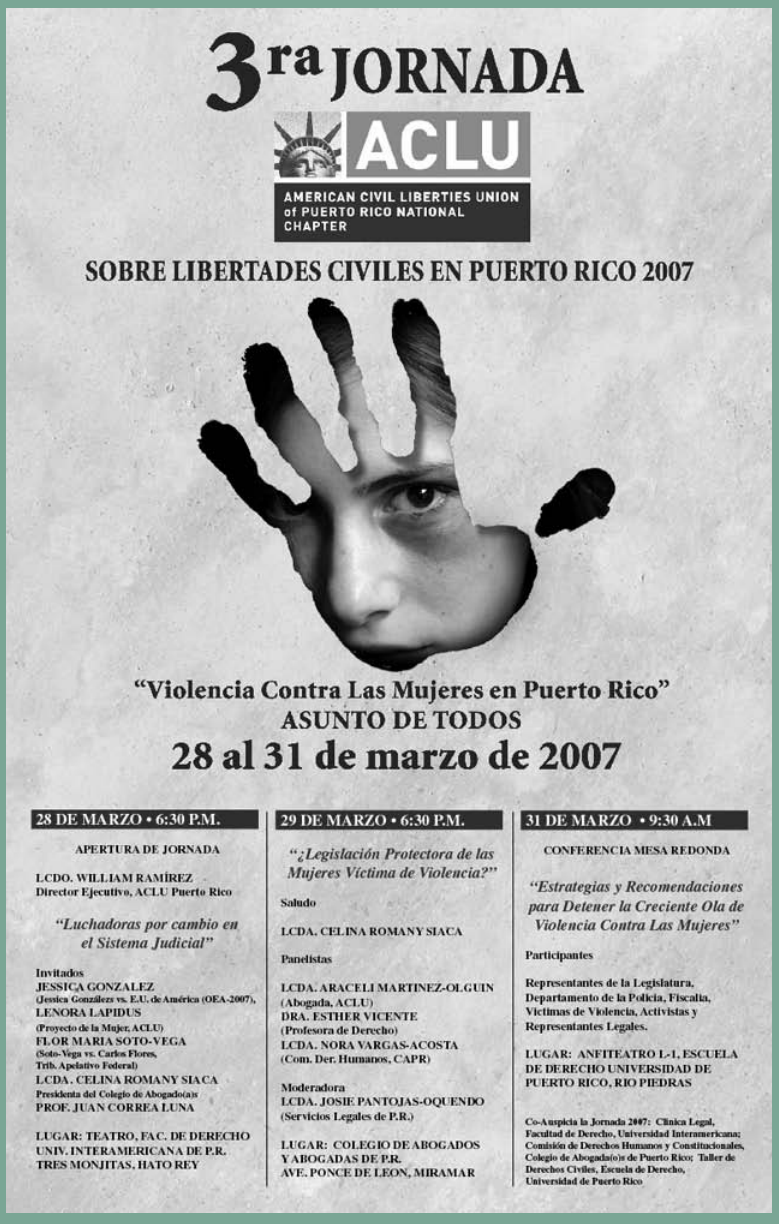
> *"I can't lose three children and not do something about it. This is the only way I know to make that right. All I can do is give this my best, to try to change the system, to make the world a little bit safer."*
>
> —Jessica Lenahan, petitioner in *Gonzales v. United States, State of Colorado*

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

Jessica Lenahan (formerly Gonzales), whose three young daughters, Rebecca, Katheryn, and Leslie, were kidnapped by her estranged husband and killed, and whose domestic violence protection claims were rejected by the U.S. Supreme Court, came one step closer to justice in 2007. In the first decision of its kind, the Inter-American Commission on Human Rights (IACHR) ruled in October 2007 that the U.S. is bound by the American Declaration on the Rights and Duties of Man and her case can go forward. "This is an historic decision," said Lenora M. Lapidus, Director of WRP. "It sends the message, loud and clear, that the United States is subject to and must enforce the international legal protections for victims of domestic violence."

WRP, the ACLU Human Rights Program and Columbia Law School's Human Rights Clinic took Ms. Lenahan's case to the international arena in order to highlight the U.S. government's unwillingness to hold police accountable for their failure to protect victims of domestic violence. In December 2005, we filed a petition before the IACHR requesting review of Ms. Lenahan's case. The petition describes the widespread problem of police failure to enforce legal protections for victims of domestic violence. In the petition, we urge the IACHR to conclude that the U.S. failed to protect Ms. Lenahan's rights under the American Declaration of the Rights and Duties of Man. By bringing Ms. Lenahan's case before the IACHR, we hope to demonstrate the wider problem of inadequate police response to violence against women in the Americas.

In March 2007, the Commission convened for a hearing on admissibility. The hearing was an historic occasion as it was the first time that a petition had been filed against the U.S. for violations related to domestic violence. It was also the first time since the children were kidnapped and murdered in 1999 that Ms. Lanahan was afforded an opportunity to testify before a tribunal about



TOP RIGHT:
Jessica Lenahan, petitioner in *Gonzales v. United States, State of Colorado* speaks with advocates about her testimony before the IACHR

MIDDLE RIGHT:
From Left: Emily J. Martin, WRP Deputy Director; Steven Watt, Staff Attorney with the ACLU Human Rights Program; Lenora M. Lapidus, WRP Director; Jessica Lenahan; Caroline Bettinger-López, cooperating counsel; and Araceli Martínez-Olguín, WRP Staff Attorney/WRP Fellow in front of the Organization of American States

BOTTOM RIGHT:
Jessica Lenahan speaks with advocates

her experiences. "I brought this petition to the Inter-American Commission on Human Rights because I have been denied justice in the United States," Ms. Lenahan told the Commission. "It's too late for Rebecca, Katheryn, and Leslie but it's not too late to create good law and policies for others. Police have to be required to enforce restraining orders or else these orders are meaningless and give a false sense of security. We need to hold the U.S. government accountable." Because her federal court action was thrown out on a motion to dismiss, Ms. Lenahan had never previously had the opportunity to tell her story in front of an adjudicating body. In its recent finding, the IACHR also found that Ms. Lenahan had successfully exhausted all domestic legal avenues available to her.

In July 2007, Allen & Overy LLP submitted a friend-of-the-court brief to the Commission on behalf of 29 organizations dedicated to the protection of women and children from domestic violence. The brief underscores the importance of this case throughout the Americas.

When the IACHR fully considers the case, it will decide whether the U.S. and the state of Colorado violated Ms. Lenahan's and her children's human rights, specifically the rights to life, non-discrimination, family life/unity, due process, and to petition the government, as well as the rights of domestic violence victims and their children to special protections.

> I brought this petition to the Inter-American Commission on Human Rights because I have been denied justice in the United States.
>
> —Jessica Lenahan, petitioner in *Gonzales v. United States, State of Colorado*

In Ms. Lenahan's quest for justice, she has come to epitomize victims of domestic violence in the United States who all too often face resistance from law enforcement. The recent reauthorization of the federal Violence Against Women Act included a provision for funding of "Jessica Gonzales Victim Assistants," individuals dedicated to liaising between victims of domestic violence and law enforcement. The positions are named in recognition of Ms. Lenahan's tragedy. States that receive these grants can use some of the money to fund the positions, but few states, including Colorado, have availed themselves of the option. "The IACHR's ruling will help victims of domestic violence across the Americas," said Ms. Lapidus. "They now can seek redress for abuse when their own countries' police departments and government agencies fail to help them."

WRP continues to use Ms. Lenahan's case to advocate for police accountability to ensure

that orders of protection for survivors of domestic violence are taken seriously. In March 2007, WRP participated in the second annual post-*Gonzales v. Castle Rock* state accountability conference entitled "Battered Mothers and Witnessing Children: Failure to Protect and Conceptions of State Responsibility" sponsored by the University of Denver Sturm College of Law. At the conference, Staff Attorney/WRP Fellow Araceli Martínez-Olguín and Ms. Lenahan appeared on a panel entitled "Violence Against Mothers: Do the Courts and Police Protect?" During the panel, Ms. Lenahan recounted her experience with the local police's failure to enforce her protective order and the federal courts' failure to provide her a remedy, as well as her opportunity to testify before the Inter-American Commission on Human Rights. Ms. Martínez-Olguín then spoke about our use of human rights mechanisms to fight for police accountability toward the victims of domestic violence.

Also in March 2007, WRP staff and Ms. Lenahan traveled to Puerto Rico to participate in the Third Annual Congress on Civil Liberties, which was organized by the ACLU of Puerto Rico. The Congress focused on the issue of violence against women in Puerto Rico, and included Puerto Rican legislators, public prosecutors, and police department officials, as well as leaders of community organizations, law students and victims of domestic violence, including Ms. Lenahan, who shared her story during a public forum attended by more than 150 people. During the conference, Senator Lucy Arce, a member of the Puerto Rico Senate, read into the record a resolution that the Senate had unanimously adopted honoring Ms. Lenahan's courage in seeking to hold the police accountable for protecting women from domestic violence. Overall, the conference was a huge success in bringing widespread public attention to the problem of domestic violence and police accountability, as well as our novel use of international human rights strategies to address this problem.

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

The ACLU of Southern California (ACLU-SC) 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 advocate for victims of domestic violence and day laborers. 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 county agree that victims and witnesses are much less

likely to cooperate with police if they fear they will be questioned about their immigration status.

One of the groups the ACLU-SC represents in this matter is Break the Cycle, a community organization that engages, educates and empowers youth ages 12-24 to build lives and communities free from dating and domestic violence. In written testimony submitted to the Court, the executive director of Break the Cycle wrote:

> Many domestic violence victims who ask Break the Cycle for assistance are hesitant to take legal action. Many of these victims have not contacted any other person or agency for help because of the fear of involving law enforcement. For undocumented residents, this fear is compounded by the fear of being deported.
>
> In Los Angeles County, a large portion of the youth we serve are Latino. In 2005, 58% of the youth we educated about dating and domestic violence were Latino. Of the young victims of domestic violence we represented in 2005, about 70% were Latinas and many of them (between 10% and 35%) self-identified as undocumented residents. Many more of the youth who contact us for help have undocumented residents as important members of their households, including parents or guardians.
>
> One undocumented client of Break the Cycle was repeatedly victimized by her ex-boyfriend. She never sought police help because of her immigration status. Her abuser also threatened to kidnap and hide their young son from her custody. After Break the Cycle helped her to file a legal case against her abuser, he threatened to use her undocumented status against her. She was afraid and extremely hesitant to continue seeking legal help for fear of being arrested by law enforcement at the courthouse and subject to deportation. Because Break the Cycle was able to explain the benefits of Special Order 40, she did complete her legal case. Had she not completed the case, she and her son would still be subject to harm and intimidation by her abuser.

The ACLU-SC is currently engaged in discovery with a trial date scheduled for June 2008.

GUARDING AGAINST ABUSE OF POLICE AUTHORITY

When police officers perpetrate excessive and unnecessary violence, women may second guess whether to call the police when they are in danger. In 2007, the ACLU brought a lawsuit against an abusive police officer to send a clear message that when police officers are violent toward women, they undermine their primary responsibilities to serve and protect.

Morelli v. Webster (D.Me.)

In May 2007, the Maine Civil Liberties Union (MCLU), in cooperation with Murray, Plumb & Murray, filed suit in United States District Court for the District of Maine on behalf of Rosanna Morelli against South Portland Police Sergeant Steven Webster. The complaint alleges that Mr. Webster used excessive force to detain Ms. Morelli when she was not under arrest, thus violating her rights guaranteed under the Fourth and Fourteenth Amendments.

One day, Ms. Morelli, an exotic dancer, was dispatched by her employer to a local hotel to dance for a client. When she arrived at the appropriate hotel room, the client propositioned her for sex. After she refused his advances and left his hotel room, Mr. Webster, along with a fellow officer and two cadets stopped Ms. Morelli in the hallway, informed her she not was free to leave and refused to let her exit the hotel. Ms. Morelli correctly pointed out that she did nothing illegal and that there were no grounds on which to arrest her. Though Mr. Webster openly agreed that there were no grounds for arrest, he again informed her that she was not free to leave. Feeling threatened and afraid, Ms. Morelli tried to move past the officers at which point Mr. Webster grabbed her by her wrist, pulled violently and then shoved her against the wall and pinned her there, gripping her upper arms tightly enough to leave visible bruises. After Mr. Webster questioned her and finally released her, Ms. Morelli drove herself to the hospital for emergency treatment and was subsequently diagnosed with a partially torn right rotator cuff, in addition to severe contusions on her arms.

The MCLU expects to go to trial in early 2008.

ENDING EMPLOYMENT DISCRIMINATION AGAINST VICTIMS OF SEXUAL VIOLENCE

Affording survivors of domestic violence, sexual assault and stalking economic independence is a crucial step toward enabling them to protect themselves and their families from further violence. In light of this, an employee should be able to report sexual assault on the job without fear of reprisal or the threat of losing her job. In 2007, WRP continued its advocacy to ensure sexual violence by co-workers does not go unchecked and that women are able to work without being discriminated against based on their status as survivors of domestic violence or sexual assault.

Simmonds v. NYC Dept. of Correction (S.D.N.Y.)

In August 2007, WRP obtained a judgment against the New York City Department of Correction (DOC) on behalf of twenty-nine-year-old Danielle Simmonds, a New York City correction officer who claimed that the DOC discriminated against her and subjected her to a hostile work environment after she reported an on-duty sexual assault by a co-worker. "We are pleased to announce a resolution that provides our client a measure of justice. It is imperative that victims of domestic violence, sexual assault and stalking be able to report their experiences to their employers without being retaliated against," said Staff Attorney/WRP Fellow Araceli Martínez-Olguín. The $95,001 judgment resolves a lawsuit filed by WRP, in partnership with Steptoe & Johnson LLP, in federal district court. Ms. Simmonds' lawsuit is one of several harassment and discrimination lawsuits pending against the DOC.

After Ms. Simmonds reported that she was sexually assaulted by a fellow officer while on the job, the DOC failed to adhere to its own procedures governing correction officer assaults on fel-

LEFT: Danielle Simmonds, plaintiff in *Simmonds v. NYC Dept. of Correction*
RIGHT: Danielle Simmonds with Staff Attorney/WRP Fellow Araceli Martínez-Olguín

low officers. The DOC failed to investigate the incident or punish the perpetrator in any meaningful way. Furthermore, the DOC retaliated against Ms. Simmonds after she inquired why no investigation or disciplinary action had been taken against her assailant. When she spoke out against the DOC's negligence, she was retaliated against further. The DOC also stripped her of several discretionary benefits after she took time off from work as a result of the assault and thereby failed to provide her with the reasonable accommodations that employers in New York City are obligated to provide to victims of sexual assault or domestic violence under the New York City Human Rights Law. "I am disappointed that the department continues to discriminate against victims of sexual assault, and hope that other women correction officers come forward to enforce their rights," said Ms. Simmonds. "It's not an easy thing to do, but it's important."

> It is imperative that victims of domestic violence, sexual assault and stalking be able to report their experiences to their employers without being retaliated against.
>
> —Araceli Martínez-Olguín, WRP Staff Attorney/WRP Fellow

WRP filed charges with the U.S. Equal Employment Opportunity Commission on behalf of Ms. Simmonds in April 2006 and filed a complaint against the DOC and Ms. Simmonds' assailant in the Southern District of New York in July 2006. We currently await a default judgment against Ms. Simmonds' assailant who did not respond to our complaint and summons in a timely fashion.

ADVOCATING FOR FEDERAL EMPLOYMENT PROTECTIONS FOR SURVIVORS OF VIOLENCE

The NYC Human Rights Law is important in that it ensures that survivors of domestic violence, sexual assault and stalking are not discriminated against in the workplace. Because there are no comparable federal statutory employment protections for a survivor of domestic violence, the level of protection guaranteed to survivors in the workplace varies according to where they live. In April 2007, WRP and the ACLU Washington Legislative Office submitted written testimony for a hearing regarding domestic violence held by the Subcommittee on Employment and Workplace Safety of the U.S. Senate Committee on Health, Education, Labor, and Pensions. The testimony

urged Congress to enact comprehensive federal legislation—such as the previously introduced Security and Financial Empowerment (SAFE) Act—to address the obstacles to employment and economic security caused by intimate partner violence and other forms of violence against women. In our testimony, we advocated particular steps to promote the employment opportunities of survivors of violence, including but not limited to provisions for emergency leave, unemployment insurance eligibility, reasonable employment accommodations and protection from employment and insurance discrimination. Following the hearing, bills in the House and Senate were introduced.

CHALLENGING HOUSING DISCRIMINATION AGAINST SURVIVORS OF DOMESTIC VIOLENCE

> *"We have seen time and time again that evictions of domestic abuse victims are based on gender stereotypes that teach us that women who experience domestic violence must be allowing it to happen. It is time for the courts to step in and send a message to landlords that we will not stand by as they throw women out on the street because they are victims of domestic violence."*
>
> —Emily J. Martin, WRP Deputy Director

Relying on "one-strike" rules instituted to combat crime, many housing authorities and management companies have taken up the practice of evicting survivors of domestic violence, sexual abuse and stalking. These evictions are often based on gender stereotypes about battered women, namely, that if a woman is experiencing domestic violence, it is necessarily her fault, because she must be inviting it or allowing it to happen. Not only does eviction cause further trauma for survivors of intimate-partner violence, but because most domestic violence victims are women, those policies and practices that discriminate against victims of domestic violence have an unlawful disproportionate impact on women.

WRP continued to advocate for fair housing practices across the country in 2007 to ensure that survivors of violence are not threatened with homelessness as a result of the violence they have suffered.

Tanica Lewis, plaintiff in *Lewis v. North End Village*, and Staff Attorney Sandra S. Park

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

WRP and the ACLU of Michigan brought a sex-discrimination suit on behalf of Tanica Lewis, whose landlord wrongfully evicted her from her home after her former partner vandalized her apartment. The management company refused to revise a policy that evicts all tenants whose "guests" create a disturbance or damage the property, including tenants who are victims of domestic violence. "Unfortunately, women, who are too often victims of domestic violence, get caught up unwittingly in the efforts of landlords to control crime," said Kary Moss, Executive Director of the ACLU of Michigan. "We hope that our intervention will help lead to greater insight by landlords into this very serious issue."

Last year, Ms. Lewis, a mother of two, ended her relationship with Reuben Thomas, who did not live with her, and obtained a protective order after he harassed and stalked her. She informed her management company of the order that prohibited Mr. Thomas from entering the property. 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 her an eviction notice. The ACLU complaint charges that the management company's policy of evicting victims of domestic violence constitutes sex discrimination in violation of the federal Fair Housing Act and Michigan's Civil Rights Act.

WRP is currently engaged in settlement negotiations.

ADVOCATING FOR HOUSING PROTECTIONS IN MASSACHUSETTS

WRP continues to give trainings around the country on the protections the Fair Housing Act provides against discrimination on the basis of domestic violence and on the recently enacted fair housing provision in the federal Violence Against Women Act (VAWA). The trainings cover the recent changes to VAWA that specifically impact the rights of tenants in private and federally subsidized housing, including the protections victims have from discrimination in the application process and from discriminatory evictions. WRP is working with ACLU affiliates and advocates to ensure implementation of the provisions on the ground by advocating with public housing authorities to adopt new policies to better protect the rights of domestic violence survivors.

Too often landlords and rental agents try to exploit low-income women who have few affordable rental options by demanding sex as a condition of housing.

In June 2007, WRP and the ACLU of Massachusetts submitted written testimony to the Joint Committee on Housing in the Massachusetts Legislature in support of Senate Bill No. 755. The bill would ban housing discrimination against victims of domestic violence, rape, sexual assault and stalking.

FIGHTING SEXUAL HARASSMENT AND HOUSING

Housing managers continue to take advantage of economically vulnerable women, comfortable in the knowledge that they will rarely ever be held accountable. Too often landlords and rental agents try to exploit low-income women who have few affordable rental options by demanding sex as a condition of housing. In 2007, WRP continued to develop litigation to challenge the prevalence of women being sexually harassed by their landlords to send the message that this form of exploitation and sex discrimination is never acceptable.

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 stop his sexual harassment of Yolanda Boswell and any actions to evict her. Holding her housing over her head, Mr. GumBayTay 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 unlawfully raised her rent. In partnership with the ACLU of Alabama, Legal Services of Alabama, The Central Alabama Fair Housing Center and Grainger Legal Services, LLC, WRP brought this lawsuit under the federal Fair Housing Act. We have moved for a default judgment against Mr. GumBayTay, who did not respond to our complaint and summons in a timely fashion.

By exposing illegal sexual harassment in cases like this, WRP hopes more women will feel empowered to come forward and assert their rights. This and similar lawsuits also put property owners on notice that they are responsible for the behavior of their managers and employees.

Lytwyn-Rodrigues v. Far Realty (HUD)

In partnership with the Fair Housing Justice Center, WRP represented three women who had been sexually harassed by the superintendent of their building in Queens, NY. We represented the women in an administrative proceeding before the United States Department of Housing and Urban Development (HUD) and in a settlement negotiation spurred by an investigation by the New York Attorney General's Office. WRP won a preliminary victory in October 2007 when the New York State Division of Human Rights, the administrative body charged with enforcing the New York City Human Rights Law, issued findings for each of our three clients stating that there is probable cause to believe the women were discriminated against by Far Realty. This law prohibits discrimination in housing based on age, race, national origin, gender, sexual orientation, marital status, disability, military status, and other specified classes to ensure that "every individual . . . has an equal opportunity to participate fully in the economic, cultural and intellectual life of the State." The three women will now be represented by private counsel as they pursue bringing a civil suit.

INTERPRETING A MARRIAGE AMENDMENT

State v. Carswell (Ohio)

In July 2007, the Ohio Supreme Court issued a decision in the first case requiring it to interpret the 2004 marriage amendment to the Ohio Constitution with regard to its relevance in the context of domestic violence. The Ohio domestic violence statute defines those "living as a spouse," which it further defines as persons who are cohabitating, as a protected class. When the unmarried defendant was prosecuted for battering his girlfriend, he alleged as his defense that the 2004 marriage amendment prohibited recognizing any legal status approximating the design, quality, significance or effect of marriage, thus barring his prosecution for domestic violence as someone living as a spouse. The trial court agreed, but its decision was overturned by the state's intermediary appellate court. In partnership with the ACLU of Ohio and the Lesbian Gay Bisexual Transgender Project, WRP filed a friend-of-the-court brief in the case.

In a 6-1 decision issued in July 2007, the Ohio Supreme Court held that Ohio's marriage amendment does not negate the applicability of Ohio's domestic violence laws to unmarried couples. According to the Court, the term "person living as a spouse" merely identifies a particular class of persons for the purposes of domestic-violence statues. It does not create or recognize a legal relationship that approximates the design, qualities, or significance of marriage, as prohibited by the marriage amendment. WRP praises the Court's findings in what is a clear victory for survivors of domestic violence in Ohio.

PROMOTING EQUAL EDUCATIONAL OPPORTUNITY

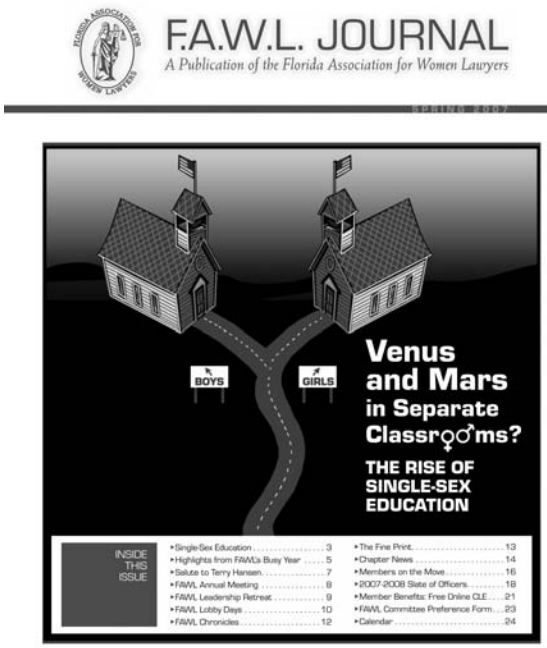
On June 23, 1972, Title IX of the Education Amendments, an unprecedented effort to end rampant sex discrimination in education, became the law of the land. While most famous for its requirement that schools provide girls with equal athletic opportunities, the law applies to all educational programs that receive federal funding, and to all aspects of a school's educational system. Title IX is the lynchpin of thirty-five years of efforts to promote and establish gender equity in schools.

The ACLU Women's Rights Project was established in 1972, the same year Title IX went into effect, and has been fighting for women's equality and empowerment ever since. In close partnership with ACLU affiliates throughout the United States, WRP has garnered huge successes in preserving and promoting Title IX's goal of gender equity. Yet, under the current administration, the U.S. Department of Education, the branch of the federal government responsible for providing guidelines for the proper implementation of Title IX, has issued new guidelines with respect to athletic opportunity and sex-segregated schooling that raise serious civil rights concerns and, in fact, undermine the very principles of Title IX enacted to end gender inequity in our public school systems.

COMBATING SEX DISCRIMINATION IN THE FORM OF SEX-SEGREGATED EDUCATIONAL PROGRAMS

> *"It's 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

In October 2006, the U.S. Department of Education released new regulations making it easier for public schools across the country to institute sex-segregated classes and programs. WRP decried these regulations as a significant threat to students' rights to equal educational opportunities. For over a generation, Title IX has opened doors to educational opportunity by prohibiting sex discrimination in the form of sex segregation in public schools. The new regulations,



Cover of the Spring 2007 *F.A.W.L. Journal* that features an article by WRP Deputy Director Emily J. Martin entitled "Venus and Mars in Separate Classrooms? A Report on the Rise of Single-Sex Education in Florida and Around the Country"

however, adopt a through-the-looking-glass interpretation of Title IX and invite school districts to illegally segregate their classrooms and schools based on the flimsiest of educational theories about hardwired differences between boys and girls. In response to these new regulations, school districts across the nation have introduced programs that allow for expanded use of single-sex education in public schools.

Advocates of sex-segregated schools offer pseudo-scientific workshops to prepare public school teachers to teach sex-segregated classes. There, teachers learn about alleged brain differences between boys and girls. According to some of these influential advocates: when establishing authority, teachers should not smile at boys because boys are biologically programmed to read this as a sign of weakness; they should only look boys in the eyes when disciplining them; girls should not have time limits on tests or be put under stress because unlike boys, girls' brains cannot function well under these conditions; and girls do not understand mathematical theory well except for a few days a month when their estrogen is surging.

Although these ideas are hyped as "new discoveries" about brain differences, they are, in fact, only dressed up versions of old stereotypes that WRP has worked to systematically dispel over the years. Though different school districts create sex-segregated programs for different reasons —poor academic performance and failing schools ranking high among them—it is clear that sex-

segregating students is no panacea. In fact, the opposite is true. Creating sex-segregated schools and classrooms is a radical misdirection of time and effort that diverts resources from initiatives that are long proven to ameliorate the educational success of boys and girls alike, such as reducing class sizes and increasing teacher training and professional development. Moreover, these sex-segregated classes deprive students of important preparation for the real, coeducational world of work. Rather than offering choice, sex-segregated programs limit the educational opportunity of girls *and* boys.

Michelle Selden, plaintiff in our 2006 sex-segregated education challenge in Louisiana, *Selden v. Livingston Parish School Board*

On the heels of our 2006 victory in Louisiana, where we filed and the next day settled a federal lawsuit against a middle school that planned to segregated its students by sex in all academic classes, in 2007 WRP continued to work with ACLU affiliates across the country to stem the tide of sex-segregated public schools currently spreading across the nation. In addition, working with Belden, Russonello & Stewart, a public opinion research firm, and in cooperation with the ACLU Racial Justice Program and the ACLU Communications Department, WRP conducted ten focus groups in five cities across the country to test the winds on sex-segregated education and to develop the strongest arguments against such programs.

Advocacy in Ohio

In July 2007, WRP and the ACLU of Ohio began an investigation into a proposal by the Cleveland Municipal School District to create five sex-segregated schools. In response to the proposal, the ACLU of Ohio issued a public records request to the school district asking for any documents pertaining to the procedures and protocols that will be implemented at the schools, as well as any information on how the district came to the decision to implement these schools. The materials provided by the school district were conspicuously light on details, so we are soon to file a second records request to gain a comprehensive understanding of the rationale behind instituting these changes.

In concert with the legal investigation, the ACLU has engaged a public education campaign in Cleveland as a way to meaningfully express our concern about sex-segregated educational

programs in Ohio. The ACLU of Ohio has participated in meetings with affected communities and stakeholders, identified partners to collaborate with and created website content on the issues. In September 2007, WRP Staff Attorney Araceli Martínez-Olguín participated in a discussion with local ACLU members about sex-segregated schools and their civil liberties implications.

Advocacy in South Carolina

Most recently, WRP and the ACLU of South Carolina initiated affirmative outreach in South Carolina as a way to affect public opinion in a state where sex-segregated educational programs have taken root at an alarming rate. In late September 2007, the ACLU placed an op-ed in the *Spartanburg Herald-Journal*, a South Carolina newspaper, that urges parents to look with a discerning eye at school programs that seek to teach girls and boys differently. Given that South Carolina is a national leader in implementing single-sex schools and classrooms, and has gone so far as to appoint "a director of single-gender initiatives," the first such appointee in the nation, WRP decided it was crucial to insert a critical voice into the public dialogue about educational reform in South Carolina.

Advocacy in Michigan

In a blow to educational equity in 2006, Michigan revised its civil rights laws to permit schools to offer sex-segregated classes and school districts to create single-sex schools. However, as a result of efforts by the ACLU of Michigan, WRP, and others, important safeguards were included that ensure that equal coeducational opportunities were offered in such circumstances and that participation in any such program would be voluntary. WRP consulted with the ACLU of Michigan in its efforts to introduce legislation to ensure greater accountability for sex-segregated public schools in the state and to resist legislative amendments that would reduce necessary protections against discrimination in such programs. In 2007, the ACLU worked to ensure that these protections not be weakened and to introduce requirements for evaluation of any such programs, with the consequence that they cease should they fail to meet their goals.

PROTECTING ATHLETIC OPPORTUNITY FOR GIRLS

Sex-segregated educational programs are not the only way that the Department of Education has rolled back the guarantees of Title IX. In 2005, with no notification or opportunity for public comment, the Department of Education issued new guidelines that lowered the bar for steps schools must take to show that their athletics programs comport with Title IX. These new guidelines allow schools to simply send an email survey to students asking them about their interest in athletics and count a failure to respond to the email as evidence of lack of interest in playing sports. This new "clarification" threatens to reverse the enormous progress women and girls have made in sports equity since the enactment of Title IX. It invites schools to disavow their commitment to athletic equity and exposes schools to liability for illegal sex discrimination with respect to unequal access to school resources.

In March 2006, WRP and the ACLU of Washington endorsed a public policy guide published by the Women's Sports Foundation, entitled *Increasing Sport Equity & Physical Activity Participation: A Women's Sports Foundation Policy Guide*. The manual is a guide for implementing local and state laws and public policies that help increase youth and adult sports and physical activity participation and promote gender and disability equity in school and recreational athletics programs.

In April 2007, the ACLU signed on to a letter to members of Congress urging them to cosponsor the High School Athletics Accountability Act (HR 901). This important bill will significantly expand the ability of schools, students, parents, and the public at large to improve gender equity on athletic playing fields and to realize the promise of Title IX of the Education Amendments of 1972. The bill would require high schools to report basic information on the number of female and male students in their athletics programs and the expenditures made for their sports teams. This information will allow schools to evaluate whether and where in their athletics programs inequities are occurring and will provide students and parents the information necessary to assist their schools in remedying disparities that may be limiting equal access to athletics opportunities.

A companion bill, the High School Sports Information Collection Act, has been introduced in the Senate. WRP is hopeful that with this legislation, Congress will renew the promises of Title IX.

ENSURING THAT EDUCATIONAL INSTITUTIONS TAKE STEPS TO END PEER-ON-PEER VIOLENCE

When educational institutions do not implement meaningful measures to rectify and prevent the sexual harassment of students, a form of sex discrimination, they deny women and girls equal educational opportunity. WRP recognizes that violence against women and girls in schools is a serious problem with potentially life-long effects. We therefore work to ensure that peer-on-peer sexual violence does not impinge upon women's and girls' ability to enjoy one of our most fundamental rights, the right to a quality education.

Simpson v. University of Colorado (D. Colo.)

In August 2006, the WRP and the ACLU Racial Justice Program, joined by the ACLU of Colorado, the National Association for the Advancement of Colored People, the NAACP Legal Defense and Educational Fund, Inc., Legal Momentum, the National Partnership for Women and Families and many other leading civil rights and women's rights organizations filed a friend-of-the-court brief in this matter on behalf of the appellants Lisa Simpson and Anne Gilmore. Ms. Simpson and Ms. Gilmore 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 for sexual harassment, but lost in the trial court. On appeal, the ACLU brief argued that the University is liable under Title IX for the sexual assault of Ms. Simpson and Ms. Gilmore because the University was on notice of a pattern of sexual assault and harassment in the football program and acted with deliberate indifference to the ongoing culture of hostility and abuse of women.

WRP was elated to learn that in September 2007 the U.S. Court of Appeals for the Tenth Circuit found for the appellants and reversed the trial court's summary judgment and remanded the case for further proceedings. The appellate court found that there was sufficient evidence to suggest that the University of Colorado "had an official policy of showing high school football

> When educational institutions do not implement meaningful measures to rectify and prevent the sexual harassment of students, a form of sex discrimination, they deny women and girls equal educational opportunity.

recruits a 'good time' on their visits to the CU campus," it "failed to provide adequate supervision and guidance to player-hosts chosen to show the recruits a 'good time'," and that "the likelihood of such misconduct was so obvious that CU's failure was the result of deliberate indifference" and thus Ms. Simpson and Ms. Gilmore's suit should proceed. The unequivocal language of the Tenth Circuit sends a clear message to educational institutions that it is the responsibility of the institution to ensure that every student has equal educational opportunity and that female students are harmed when an institution acts with deliberate indifference to reports of a hostile environment.

Following this ruling from the Court of Appeals, in December 2007, the University of Colorado settled the case and agreed to pay Lisa Simpson $2.5 million, hire a new counselor for the Office of Victim's Assistance and appoint an independent, outside Title IX advisor. The advisor will be available to all individuals reporting sexual harassment or assault, will address concerns with CU's response to complaints and will review and make recommendations to CU regarding compliance with Title IX.

Fitzgerald v. Barnstable School Committee (1st Cir.)

In a disappointing loss in a Title IX case before the U.S. Court of Appeals for the First Circuit, in which WRP and the ACLU of Massachusetts filed a friend-of-the-court brief, the Court found a school was not liable for the sexual assault of one student by a peer of hers although it was so severe that it resulted in her being removed from her physical education classes and in her missing school with increasing frequency for fear of further harassment.

This case presented the question of whether a school district can be held liable for deliberate indifference to sexual harassment under Title IX when it failed to take affirmative steps upon learning that a five-year year-old girl had been repeatedly and severely sexually harassed by a schoolmate on the school bus, forcing her parents to intercede to stop the harassment.

One morning in early February 2001, Jacqueline Fitzgerald, a kindergarten student,

informed her parents that when she wore a skirt to school an older student on her school bus would bully her into lifting her skirt. The Fitzgeralds immediately called the principal of Jacqueline's school to report the allegations. Yet to the Fitzgeralds' consternation, the school did nothing to punish the student who continued to harass Jacqueline but rather suggested that Jacqueline take a different school bus to school, in essence punishing Jacqueline for the abuse she suffered. To prevent further incident on the school bus, the Fitzgeralds resorted to driving Jacqueline to and from school themselves. Although her parents' actions ensured that there were no further incidents aboard the school bus, Jacqueline had several other unsettling interactions with her abuser as the school year progressed. One incident occurred during a mixed-grade gym glass that resulted in Jacqueline's withdrawal from gym class. Unnerved by the school's seeming indifference, the Fitzgeralds brought a federal lawsuit against the school district and the school's superintendent in April 2002.

The trial court ignored the fact that the school's inaction placed before the girl's family the stark choice of pulling their daughter out of school programs or exposing her to further harassment.

WRP and the ACLU of Massachusetts filed a friend-of-the-court brief for the appellants in this case. When the Fitzgeralds brought suit against the Barnstable School Committee (BSC) under Title IX and the Equal Protection Clause, the district court concluded that, as a matter of law, no jury could find the school liable for maintaining a sexually hostile environment because BSC's response, or lack thereof, to the harassment was not unreasonable, given that the plaintiff was not subjected to further sexual harassment by her peer after officials learned about the harassment. Our brief argued that the trial court ignored the fact that the school's inaction placed before the girl's family the stark choice of pulling their daughter out of school programs or exposing her to further harassment. Moreover, it contravened established civil rights law, which recognizes that schools deny girls and women equal opportunity when they show deliberate indifference to known harassment.

In October 2007, WRP was disheartened to learn that the First Circuit affirmed the trial court's decision, finding that "The defendants in this case responded reasonably to the reported harassment—and this is all that the law requires." The court stated that "schools and school offi-

cials face a daunting challenge in maintaining a safe, orderly, and well-disciplined environment," but then went on to say that "Title IX does not make an educational institution the insurer of a student's safety or of a parent's peace of mind." The Court further emphasized that the "deliberate indifference" standard that must be demonstrated for a Title IX claim to succeed is more than showing that the school's response was less than ideal. Instead it requires demonstrating that the institution's response was clearly unreasonable in light of what it knew. WRP is concerned that the Court's decision in this matter could be construed to insulate schools from liability for peer-on-peer harassment and assaults in a wide range of cases.

GUARANTEEING THE RIGHT TO EDUCATION FOR TEENAGE MOTHERS

In 2007, WRP advocated for the rights of girls to pursue an education rather than be pushed out of public schools into alternative schools or, in some cases, juvenile prisons because they are parenting or are soon to be mothers.

A.C. (M.D.Pa.)

WRP, in partnership with the ACLU of Pennsylvania and the Harrisburg Civil Law Clinic at Widener University School of Law, recently resolved a lawsuit on behalf of A.C., a sixteen-year-old student in Pennsylvania who is the mother of a two-year-old son and sometimes was absent from school because she had to attend doctors' appointments for her son or to care for him when no other childcare was available. The school district refused to excuse her parenting-related absences, even when presented with notes from her health-care provider, and repeatedly criminally prosecuted A.C. and her mother for violation of Pennsylvania's compulsory schooling laws. WRP brought suit against the school district seeking declaratory and injunctive relief and damages to redress violations of the student's right to parent under the Fourteenth Amendment, Title IX, and the Equal Rights Amendment to the Pennsylvania Constitution.

REFORMING THE JUVENILE AND CRIMINAL JUSTICE SYSTEMS

There is growing recognition that people incarcerated in U.S. jails and prisons often suffer from abusive treatment and neglect. This fact is particularly disconcerting considering that women and girls are being imprisoned at alarming rates. 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, increasing from 12,300 in 1980 to 182,271 in 2002. Evidence suggests that the trauma of imprisonment only further mars the lives of incarcerated women, a majority of whom have experienced physical and sexual violence before incarceration. In fact, it is estimated that 90% of incarcerated women have experienced violence in their lives before incarceration.

Draconian drug laws also have a disproportionate impact on women, and in particular women of color. Women of color use drugs at a rate equal to or lower than white women, yet they are far more likely to be affected by current drug laws and policies. In 1997, 44% of Hispanic women and 29% of African American women incarcerated in state prison were convicted of drug offenses, compared to 23% of white women, and 26% and 24% of Hispanic and African American men, respectively. These racially disparate effects are the result, in significant part, of racially targeted law enforcement practices, prosecutorial decisions and sentencing policies. The selective testing of pregnant women of color for drug use as well as heightened surveillance of poor mothers of color in the context of policing child abuse and neglect exacerbate these racial disparities.

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. With disturbing frequency, children are being incarcerated and deprived of meaningful educational opportunities and appropriate mental health services. Once incarcerated, children face many problems. Youth are placed in juvenile facilities ostensibly to be rehabilitated. When they instead are abused and neglected, rather than being cared for and nurtured, something is profoundly wrong. Yet, media stories and public debate about troubled children tend to focus on the delinquent behaviors of and state responses to boys. However, an increasing proportion of the children being put behind

bars are girls. In New York State, for instance, the proportion of girls taken into custody has grown from 14 percent in 1994 to over 18 percent in 2004.

The ACLU Women's Rights Project is committed to reducing rates of incarceration for marginalized women and girls. In 2007, WRP continued to challenge the ways in which the criminal justice and juvenile justice systems discriminate against women and girls by unfairly punishing gender based activities, such as pregnancy and mothering, violating women's and girls' basic human rights and constitutional liberties while in confinement, and denying opportunities as a result of conviction.

FIGHTING THE CRIMINALIZATION OF PREGNANCY AND DRUG ADDICTION

In the last few years, there have been a troubling number of criminal prosecutions of pregnant women who use drugs while pregnant. Imposing criminal sanctions on women who continue pregnancies in spite of drug dependency contradicts broadly accepted principles of law and is ineffective in halting drug abuse. In fact, when pregnant women are threatened with incarceration if they should seek help for their drug dependency, what is at stake are the therapeutic relationships between women and their health care providers. The criminalization of drug dependency while pregnant deters access to important health care services. At the root of WRP's advocacy to end the prosecution of drug dependent mothers is the core belief that drug use during pregnancy is a health issue that should be addressed by health professionals, not by punitive policies and criminal courts and that the jailing of pregnant women for drug and alcohol use endangers rather than promotes fetal and maternal health. These prosecutions turn a blind eye to the fact that the majority of state courts have concluded that similar prosecutions in those states violate state laws, undermine public health and contravene constitutional principles of due process and privacy.

State of New Mexico v. Martinez (N.M.)

When Cynthia Martinez gave birth to her daughter in January 2003, the infant's urine tested positive for traces of cocaine. During an interrogation by a detective of the Hobbs Police Department, Ms. Martinez admitted using cocaine a few days before the baby's birth. The State charged Ms. Martinez with felony child abuse for permitting "a child under 18 years of age, to be

> Drug use during pregnancy is a health issue that should be addressed by health professionals, not by punitive policies and criminal courts ... the jailing of pregnant women for drug and alcohol use endangers rather than promotes fetal and maternal health.

placed in a situation that may endanger the child's life or health."

WRP, in cooperation with the ACLU Reproductive Freedom Project and the ACLU of New Mexico, authored a friend-of-the-court brief on behalf of Ms. Martinez. The brief argued that the application of a child abuse statute to prenatal conduct profoundly burdens women by subjecting them to disproportionate and discriminatory policing by effectively criminalizing drug use and drug addiction of pregnant women, but not men. It also argued that the New Mexico Equal Rights Amendment's (ERA) guarantees of gender equality go beyond overt gender classifications to require searching judicial scrutiny to differential treatment that burdens, restricts, or punishes women for their ability to bear children. The brief argued that when the burden consists of criminal prosecution and the deprivation of the fundamental right of liberty, the keenest judicial vigilance is required.

WRP was elated to learn that less than one week after the New Mexico Supreme Court heard oral arguments in May 2007, the Court threw out the State's appeal. In short, the Court decided it never should have taken the appeal from the State in the first place. Thus, the lower appellate court's finding, that New Mexico's child abuse statutes do not apply to the relationship between a mother and her fetus and that to interpret the statutes so as to apply would violate Ms. Martinez's due process rights, is final and stands as good law. In finding for Ms. Martinez, the New Mexico judiciary joined 20 other state appellate courts that have concluded that child endangerment laws do not allow states to prosecute pregnant women for behavior the state believes could harm fetuses.

State of Oklahoma v. Hernandez (Okla. Dist. Ct.)

For the first time in Oklahoma history, state officials brought first-degree murder and criminal child neglect charges against 28-year-old Theresa Hernandez, a drug-dependent woman who suffered a stillbirth. The prosecution, calling her a "meth mom," alleges the child was stillborn due to Ms. Hernandez having taken illicit drugs.

Defense counsel filed a motion to dismiss, but before it was decided, Ms. Hernandez accepted a guilty plea of second-degree murder in September 2007, for which she is facing 15 years in prison. WRP, the ACLU Reproductive Freedom Project, Legal Momentum, the National Women's Law Center and Ingraham & Associates, PLLC, submitted a friend-of-the-court brief on behalf of Ms. Hernandez in hopes that the Court would consider the many important legal, constitutional and policy implications of this prosecution when sentencing Ms. Hernandez, who has already been in jail for three years awaiting trial. Our brief sets forth the longstanding history of discrimination against women, particularly pregnant women, that impermissibly has fueled constitutional violations such as the prosecution of Ms. Hernandez based on discriminatory stereotypes about women and pregnancy. We are hopeful that the Court will consider how this prosecution unlawfully threatens the rights of due process and equal protection under the law when calculating a sentence for Ms. Hernandez.

FIGHTING CHILD ENDANGERMENT LAWS IN IOWA

In a significant victory, the ACLU of Iowa was once again successful in its lobbying efforts to stop a bill introduced in the Iowa General Assembly that would have established a child endangerment offense for any woman whose newborn tested positive for illicit drugs or alcohol.

CHALLENGING OVER-INCARCERATION AND CONDITIONS OF CONFINEMENT FOR YOUTH IN JUVENILE PRISONS

> *"Once you get into the system, it's kind of hard to get out."*
>
> —Janine K., incarcerated girl

Girls in juvenile justice systems across the country experience over-incarceration and deeply problematic conditions of confinement. WRP is working to reform juvenile justice through human rights documentation and a range of advocacy strategies.

Advocacy in New York State

Over the past year, WRP took advantage of the great momentum generated by our September 2006 report, co-produced with Human Rights Watch, *Custody & Control: Conditions of Confinement in New York's Juvenile Prisons for Girls*. The report documents excessive force and overuse of a brutal restraint procedure, sexual abuse and lack of educational, medical and psychological services at two high security facilities for girls run by the Office of Children and Family Services (OCFS). The report further highlights the lack of oversight at the facilities.

As a result of the report, the New York Office of the Inspector General commenced an investigation into the two facilities. In coordination with the New York Civil Liberties Union, we are continuing to advise the Inspector General on the problems faced by girls and to make suggestions about the best way for the investigation to be conducted; our work has given us access to sources and information the Inspector General does not yet have. In coalition with various juvenile justice advocates, we also worked to promote legislation to establish an Office of the Child Advocate to oversee the facilities.

WRP also succeeded in reforming the OCFS "use of force" policy to limit the use of a "restraint" procedure in which girls are forcibly held face-down against the floor, their arms pin-

WRP Staff Attorney Mie Lewis (second from right) spoke about juvenile detention policy in New York at the 2007 Nanette Dembitz Lecture sponsored by the Family Court and Child Welfare Committee of the New York County Lawyers' Association

ioned against their back. The accepted "use of force" standard, promulgated by the American Correctional Association and consistent with international human rights norms, restricts the use of force against confined children only to the rare emergency when a child is violent or self-destructive and all other means of control have failed. OCFS policy as it stood prior to our advocacy permitted force to be used in a far broader range of circumstances, thereby permitting abuse of incarcerated children. As a result of our advocacy, the use of force policy has been drastically narrowed. Yet even the new policy is not in complete compliance with human rights norms and professional standards, and in 2008 we will continue our advocacy with the newly appointed commissioner of OCFS to press for further reform. Because many incarcerated girls experienced physical and sexual abuse prior to their incarceration, we are especially concerned that they not be re-traumatized while incarcerated.

We have also urged OCFS to comply with regulations requiring citizen oversight of OCFS facilities and to establish an independent review board. In response, the existing but grossly understaffed OCFS Office of the Ombudsman has been augmented with additional staff, and the OCFS Commissioner informs us that the work of establishing a citizen review board has begun. Although our advocacy efforts and those of our community partners have already resulted in significant improvements, we continue to monitor the situation at OCFS.

Advocacy in Texas

We have already begun replicating our successes in New York in other states. In recent months, the Texas Youth Commission (TYC), the state juvenile corrections agency holding 4,000 youths, has been roiled by revelations of severe abuse of children held in its juvenile prisons and an official cover-up of the abuse. The resulting political upheaval created an opportunity for administrative and legislative advocacy on behalf of incarcerated girls that reaches beyond seeking remedies for egregious individual violations to reforming the underlying structure of a system that puts punishment before treatment.

In response to the various controversies involving TYC, earlier this year the Texas legislature introduced a reform bill making profound changes to TYC. Early drafts of the bill, however, included no mention of the hundreds of girls in TYC custody. In May 2007, WRP, in close partnership with the ACLU of Texas, proposed an amendment to the bill requiring TYC and the Texas

WRP Staff Attorney Mie Lewis conducting an interview with a girl detained at a Texas Youth Commission facility

Juvenile Probation Commission to review and document inequalities between the facilities, services, and treatment offered to girls and those offered to boys. According to the amendment, TYC and the Probation Commission are required to create a plan to address any gender inequalities and to report to the TYC's governing body and the Texas legislature about progress made toward gender equity. WRP was successful in ensuring that the ACLU's amendment was incorporated into the TYC reform bill, which was passed by the Texas state legislature, signed by Governor Rick Perry and is now law.

Continuing to work closely with the ACLU of Texas, WRP also secured unprecedented access to juvenile prisons to conduct intensive fact-finding into the conditions of confinement experienced by girls in TYC custody. During May 2007, WRP travelled to each of the TYC facilities where girls are held. We observed daily life in the facilities, conducted in-depth interviews with over seventy incarcerated girls, and met with TYC administrators and staff. In May 2007, WRP released its preliminary report, *A Blueprint for Meeting the Needs of Girls in TYC Custody*. The report contains findings from the investigation and recommendations for reform. WRP briefed the Texas Youth Commission Conservator, Acting Executive Director and new Chief Ombudsman on the report, including its key findings:

- Girls in TYC custody are very likely to have experienced abuse prior to their placement; they need, but are not receiving, the individualized counseling necessary to cope with childhood disadvantage, familial abuse, and psychological damage;

- Major aspects of TYC, including its range of available placements for girls, its institutional culture, and its rehabilitative programming, fall short of meeting the needs of girls; and

- The ongoing disadvantage experienced by girls in TYC custody calls for the immediate appointment of a girls' advocate within the agency.

In response to our findings, TYC appointed a high-level administrator responsible for advocating for the interests of girls in custody. Additionally, and again in response to WRP's advocacy, a dedicated girls' advocate was appointed within the newly-created TYC Office of the Ombudsman. The positive response to WRP's work continues. Upon the *Blueprint*'s release, a working group on girls' needs and programming in TYC was assembled in July 2007. The make-up of the group is diverse, including administrators and child care staff at TYC's primary youth prison for girls, employees from TYC parole and quality assurance programs, central office education, treatment and corrections specialists, TYC's ombudsman, health services staff, TYC volunteers and currently incarcerated girls.

The group chose the following issues from those identified in the ACLU report as priorities and focused on developing more equitable services for girls in TYC custody: providing individualized attention and counselling opportunities for girls; the importance of family involvement in counselling and providing opportunities for familial interaction; providing opportunities for the development of independent living skills; providing both traditional and non-traditional vocational opportunities; and providing health issues education. Additionally, the group chose to focus on several requirements of the TYC reform legislation, namely, providing access on campus to advocacy and support groups and providing access to needed educational and counseling services related to teen pregnancy, physical and sexual abuse, and alcohol and drug abuse.

In spite of these reforms to TYC, our work in Texas continues. We are currently processing and analyzing the copious interview data we collected during our research mission and will likely issue subsequent reports highlighting specific issues of concern. In addition, when we were informed by local advocates that TYC administrators and policymakers are overwhelmingly ignorant of the fundamentally important right of incarcerated children to rehabilitative services, we created a public education document detailing the state, national, and international sources of law establishing the special status and rights of confined children. The document is in its final stages and is scheduled for wide release within Texas shortly.

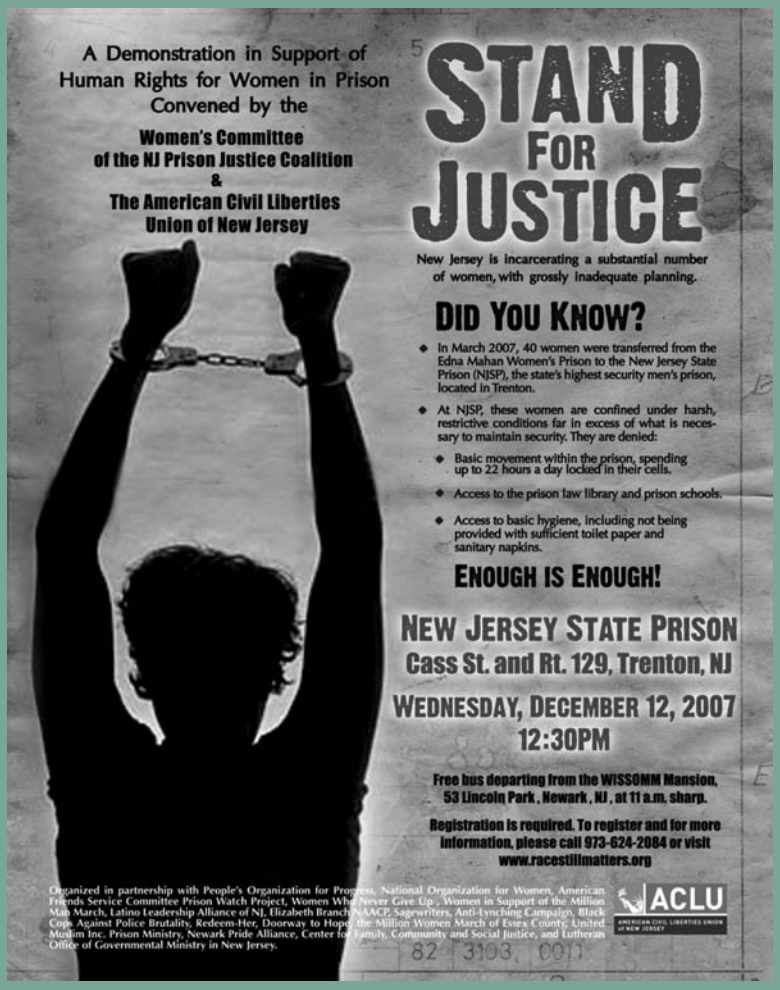
As in all of WRP's work, the involvement of directly affected communities is central to our juvenile justice advocacy. We made contact with a formerly incarcerated young woman through local advocates, trained her in human rights norms and documentation methods, and hired her as a research assistant for our TYC investigation. Our research assistant provided us with valuable help, and gained experience, self-confidence and concrete skills along the way.

CHALLENGING CONDITIONS OF CONFINEMENT FOR INCARCERATED WOMEN

Jones v. Hayman, (N.J. Super. Ct.)

In March 2007, the New Jersey Department of Corrections (NJDOC) abruptly transferred forty-one 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 "super-max" men's prison holding over 1,800 male prisoners. With the transfer, the women, many of whom had experienced sexual and physical abuse prior to and in some cases during their incarceration, were stripped of conditions and services appropriate to their needs, and are now subject to virtual lock-down conditions. At NJSP, the transferred women are confined to a small section of the prison and are denied access to the vast majority of educational opportunities and other services available to male prisoners. Under these oppressive conditions, the women's mental and physical health has rapidly and alarmingly deteriorated.

In December 2007, WRP and the ACLU of New Jersey filed a class action lawsuit challenging the transfer and the subsequent treatment of the women prisoners as violations of their due process and equal protection rights and their right to be free from cruel and unusual punishment. In addition, we argue that the transfer to unnecessarily restrictive, inhumane and physically and psychologically damaging conditions is contrary to the laws and policies of New Jersey and the New Jersey Department of Corrections' mandate to rehabilitate prisoners for the protection of the public. "These women prisoners are getting a raw deal simply because they're women," said WRP Staff Attorney Mie Lewis. "Through this lawsuit, we intend to ensure that the Department of Corrections meets basic legal standards and provides opportunities for rehabilitation to *all* prisoners, regardless of gender."



TOP RIGHT: WRP Staff Attorney Mie Lewis and Ed Barocas, Legal Director at the ACLU of New Jersey, at "Stand for Justice" rally

BOTTOM RIGHT: View of the New Jersey State Prison, the facility where plaintiffs in *Jones v. Hayman* are currently held

(Both photographs courtesy of Eliza Reshefsky)

PROTECTING RELIGIOUS LIBERTY WHILE DETAINED

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

> *"In this country, we have the right to practice our religion even when we are in jail or prison. San Bernardino County didn't give Jameelah Medina any reason for forcing her to remove her headscarf, and there is no good reason."*
>
> —Ariela M. Migdal, WRP Staff Attorney

In December 2005, Jameelah Medina was arrested and brought to a county jail in California, where a correctional officer required her to remove her hijab, the headscarf she wears as a practicing Muslim. 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 during the day she spent in jail before being released. Ms. Medina was seen by male officers without her hijab, and she felt humiliated and violated as a result of the experience. The officers never offered Ms. Medina an explanation for forcing her to remove her hijab. "I tried to tell the officer not to make me remove it because it is part of my religion," said Ms. Medina. "Even after the officer had searched me and found nothing, she would not give me back my scarf. I felt humiliated, exposed."

In the aftermath of her arrest and release, Ms. Medina read about a case that the ACLU of Southern California brought on behalf of another Muslim woman who was forced to remove her hijab while in a California county jail. Reading about this case gave Ms. Medina the courage to come forward and assert her right to the free exercise of her religion. In December 2007, WRP, the ACLU Program on Freedom of Religion and Belief and the ACLU of Southern California brought suit on behalf of Ms. Medina against San Bernardino County and relevant officials for burdening her religious practice in violation of federal and state law and the Constitutions of the United States and the State of California. While the Federal Bureau of Prisons and a number of other states have correctional policies permitting Muslim women to wear a hijab while in jail or prison, San Bernardino County does not. Ms. Medina is hopeful that her actions will bring about change so that other women are not deprived of their religious freedoms the way she was.

WORKING TO END THE WAR ON DRUGS

In 2007, the ACLU of Ohio launched its first of a four part lecture series called, *Incarceration Nation*, which examines the impact of the War on Drugs with special emphasis on women, students, African American and Latino males, and other related issues including sentencing disparities and racial profiling. The ACLU's first program featured Brenda Valencia Aldana, a drug reform advocate and victim of mandatory minimum drug sentencing from Miami, Florida. At the age of 19, Ms. Aldana was sentenced to 13 years in prison. She had driven her roommate's stepmother, who did not have a driver's license, to Palm Beach County where the woman met with a man who sold her seven kilos of cocaine. Ms. Aldana was not involved in the transaction in any way and did not know that it was taking place, nor had she ever met the other people charged with the crime. Nevertheless, she was prosecuted on a charge of conspiracy.

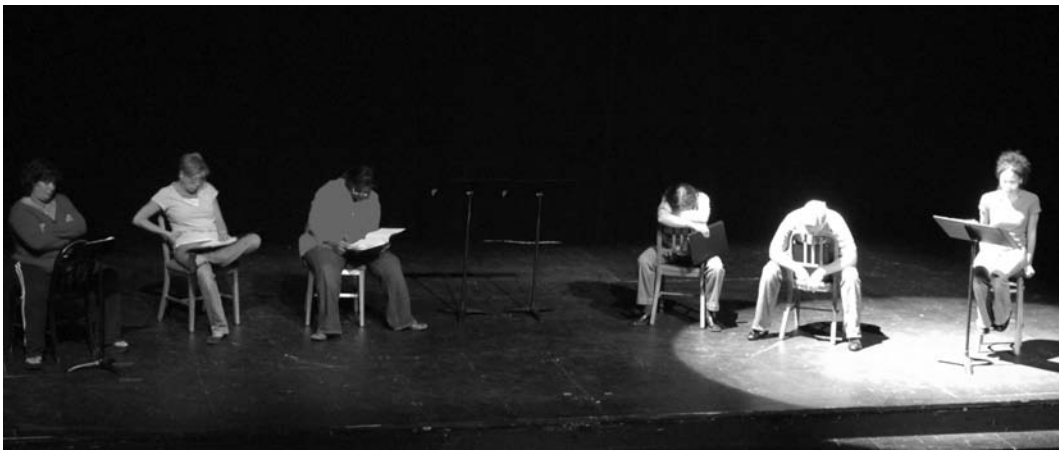
We are hopeful that in sharing the story of Ms. Aldana and others who have been unfairly incarcerated due to broad drug conspiracy provisions and mandatory minimums, more people will come to understand how these laws are counterproductive in combating crime and disproportionately harm women and families.

WORKING TO END OVER-POLICING IN SCHOOLS

In September 2007, the Maine Civil Liberties Union (MCLU) and attorneys for Winslow High School announced that the school had agreed to clarify its student search policy to prohibit strip searches by school staff members. The MCLU approached the school earlier this year after hearing from a female student who had been required to remove all her clothing from the waist up during a search for drugs. Students' lockers, cars, and backpacks are often subject to search, but the MCLU expressed concern about students being required to remove clothing. The school agreed that such searches will not be conducted by school administrators or staff members.

SPEAKING OUT

This year, the ACLU continued our collaboration with V-Day, the global movement to end violence against women founded by playwright Eve Ensler. In the summer of 2007, the ACLU of Ohio and the ACLU of Kentucky partnered with V-Day and WRP in producing two performances of "Any One of Us: Words From Prison" in Ohio and Kentucky, respectively. The performances used staged readings of stories by incarcerated women across the country to spotlight the connections between violence against women and incarceration. A major goal of the performances was to promote action and further involvement by audience members through educational materials and fact sheets prepared and distributed by WRP and the local affiliates at the events. These performances were part of "Until the Violence Stops: North East Ohio" (June 2007) and "Until the Violence Stops: Kentucky" (August 2007), each a two-week festival of theater, art, spoken word, performance and community events that demanded the end to violence against women and girls.



"Any One of Us: Words From Prison" performed as part of "Until the Violence Stops: North East Ohio"

ADVANCING EQUALITY

ENSURING EQUALITY IN PUBLIC ACCOMMODATIONS

In 2007, WRP continued to advocate for gender equality in public accommodations.

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

WRP won a victory for women's equality when in February 2007 an appeals court in Connecticut overturned the verdict of a state trial court that had determined that a social club had not discriminated against a Connecticut woman to whom it denied membership solely because she is a woman.

WRP, in partnership with the ACLU of Connecticut, brought a lawsuit to challenge the discriminatory admissions policy of the German Society Frohsinn in Mystic, Connecticut, on behalf of Sam Corcoran, a woman who was denied membership because of her gender. Ms. Corcoran, a regular visitor to the bar operated by the German Society, decided she would like to become a member of the all-male society. She was eager to further explore the networking possibilities gained by membership that would be helpful to her as a small business owner. The club had approximately 200 members and never rejected membership applications from men. While at one time membership in the club had been limited to individuals of German heritage, that requirement had long been abandoned to boost membership. With its large and open membership, the club is not the sort of organization traditionally recognized as private and exempt from the nondiscrimination requirements of the public accommodations laws. Nevertheless, club members refused to give Ms. Corcoran an application because she was a woman.

In 2005, the case went to trial, and the court ruled that the state's public accommodations law did not govern admission to the German Society. In February 2007, the appeals court found that the trial court erred when it applied federal public accommodations law rather than the more expansive standard under state law, and thus sent the case back to the lower court for a new trial. With attorneys from Zeldes, Needle & Cooper, PC, serving as trial counsel, the case went back before the lower court in October. We are still awaiting a final ruling.

Broadhurst v. American Pool Players Association (Colo. Civ. Rights Div.)

The ACLU of Colorado brought a complaint on behalf of Jackie Broadhurst, a prominent female pool player, against the American Pool Players Association's (APPA) new policy that excludes women from playing in its competitions. The APPA sponsors pool competitions throughout the country, including venues in Colorado. In the past, women were permitted to compete in the men's division; however, under a regulation recently promulgated by the APPA, women are now excluded from the men's division. The ACLU of Colorado initiated a complaint with the Colorado Civil Rights Division, the government agency responsible for enforcing Colorado's statute that prohibits gender discrimination in places of public accommodation. The ACLU of Colorado brought this complaint in cooperation with King & Greisen, LLP.

PROTECTING AFFIRMATIVE ACTION PROGRAMS IN MISSOURI

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

Using the language of "preferential treatment," the Missouri Civil Rights Initiative (MoCRI), an organization that seeks to undo and prevent future affirmative action programs for women and minorities in Missouri, has introduced a ballot Initiative, scheduled for the November 2008 election, that would amend the Missouri State Constitution to bar such programs. In each state where a similar initiative has passed, it has been cited as the basis for dismantling a broad range of affirmative action measures, from college admissions programs to programs requiring data collection and reporting, targeted outreach, mentoring and development of women and minorities. In order to clarify the misleading language put forth in the Initiative by MoCRI, the Secretary of State properly drafted ballot language that fairly and clearly alerts voters to the purpose of the Initiative and the consequences of their vote should the Initiative pass.

In July 2007, MoCRI brought suit to challenge the Secretary of State's ballot language. In December 2007, WRP joined the ACLU Racial Justice Program and the ACLU of Eastern Missouri in filing a friend-of-the-court brief in support of the Secretary of State's ballot language. Our brief argues that the Secretary of State's language appropriately describes the Initiative and should not

be derailed by MoCRI's attempt to roll back advances in gender and race equality in the United States by intentionally misappropriating the terminology of the American Civil Rights Movement to confuse voters into unwittingly supporting the initiative.

ADVOCATING FOR A GENDER DISPARATE IMPACT STATUTE IN ILLINOIS

The ACLU of Illinois, with the assistance of WRP, drafted language for and crafted the advocacy strategy to support Senate Bill 1467, which amends the Illinois Civil Rights Act of 2003 to ban gender discrimination by units of government in Illinois. At present, only race, color and national origin are protected under the Act. The bill passed both chambers by unanimous votes and currently awaits the Governor's signature. If signed into law, gender discrimination claims could be brought under either disparate treatment or disparate impact theories. In other words, the law would allow for challenges to policies that are discriminatory on their face but would also allow for suit to challenge policies that, even if not discriminatory as written, disproportionately harm women in their implementation. Moreover, the bill preserves "catalyst" attorney's fees allowing a plaintiff to recover litigation fees and costs when the suit serves to change a defendant's conduct.

ADVOCATING FOR GENDER-NEUTRAL INSURANCE

The ACLU of Iowa helped support HF 495 before the Iowa General Assembly. This is a bill that would have prohibited discrimination in the business of insurance on the basis of gender and would have made remedies and penalties applicable. Unfortunately, this bill did not make it out of the Subcommittee on Commerce.

ADVANCING GENDER EQUALITY IN MARRIAGE

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

When Michael Buday and Diana Bijon were married in August 2005, Mr. Buday chose to take his wife's last name, but the marriage license application had no option for him to change his name. The form clearly provided a space for women to choose their husband's last name. Instead, Mr. Buday was told he would have to post a notice in the local newspaper and pay $300 to change his name. Staff at the Department of Motor Vehicles also refused to allow him to change his name on his driver's license. The ACLU of Southern California filed suit on behalf of the couple, alleging gender discrimination in violation of the Equal Protection Clause of the 14th Amendment. Working with legislative staff in Sacramento, the ACLU affiliates of California jointly sponsored a bill in 2007 to require gender-neutral laws for changing one's name upon marriage. The bill also extends the law to name changes for domestic partners. In an exciting victory, the law goes into effect in 2009. The lawsuit is now in the final stages of settlement.

SUPPORTING PUBLIC HEALTH

WRP is committed to advancing effective public health policies for women, and in 2007, we continued our challenge to the federal government's policy of illegally restricting the ability of U.S. health organizations to end the global HIV/AIDS epidemic.

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

DKT International v. United States Agency for International Development (D.C. Cir.)

WRP filed friend-of-the-court briefs in support of the Alliance for Open Society International (AOSI) and DKT International in two lawsuits brought by AOSI and DKT respectively against the United States Agency for International Development (USAID). These suits challenge the constitutionality of a U.S. government requirement that U.S. organizations receiving government funding for HIV/AIDS programs adopt a policy explicitly opposing prostitution. In our briefs filed on behalf of more than 25 public health organizations, we argued that this provision not only violates the First Amendment rights of the organizations but results in bad public health policy in the struggle against HIV/AIDS because it threatens to unravel relationships that relief organizations have worked hard to build with sex workers and that are necessary to reduce the transmission of HIV/AIDS. "It is shameful that the Bush administration would value its political agenda over human lives," said Staff Attorney Claudia Flores. "Rather than saving lives, this global gag rule will put

> It is shameful that the Bush administration would value its political agenda over human lives... Rather than saving lives, this global gag rule will put women and girls at serious risk of infection and death. This policy is completely at odds with efforts to prevent the spread of HIV/AIDS and to treat its victims.
>
> —Claudia M. Flores, WRP Staff Attorney

women and girls at serious risk of infection and death. This policy is completely at odds with efforts to prevent the spread of HIV/AIDS and to treat its victims."

Many organizations that work to prevent the spread of HIV/AIDS often reach out to commercial sex workers to distribute condoms and offer education on safe-sex measures. While the organizations represented in this legal challenge do not endorse prostitution, it is essential that they maintain their ability to engage in proven, effective HIV prevention methods with at-risk populations. Signing an official pledge to oppose prostitution could lead to further stigmatization of this high-risk population and would undermine prevention and treatment efforts. Additionally, those already infected will be discouraged from acknowledging their condition and seeking treatment because of a fear of being shunned or abused. Others will not seek out information or medical care or may fail to take precautions that stem the spread of HIV/AIDS for fear of stigmatization.

Moreover, 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 isolating vulnerable groups like sex workers profoundly affects prevention efforts. Denying all funds from the USAID to organizations that do not make the pledge is in direct contradiction to this long held public health practice, and threatens to corrode the progress that has been made to end HIV/AIDS.

The district courts in both cases ruled in favor of the plaintiffs and the government appealed. In 2006, WRP, along with Covington & Burling LLP and 25 public health and human rights organizations, submitted friend-of-the-court briefs in both cases supporting the lower court decisions and again emphasizing the public health impacts of the policy. In a disappointing loss, in February 2007, the D.C. Circuit reversed the district court's favorable ruling for DKT International. DKT International sought a rehearing en banc which was denied in May 2007. Oral arguments before the Second Circuit were held in June 2007 and in November 2007, the court issued a Summary Order sending the case back before the lower court for reconsideration in light of a newly promulgated USAID policy.

EXPANDING ACCESS TO HEALTHCARE IN CALIFORNIA

The health care 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's 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 basic health needs. Racial and ethnic groups continue to experience major disparities in their health access, treatment, and outcomes compared to white people. 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 health care access to all.

This year, ACLU-SC joined two coalitions: the "Having Our Say" Communities of Color Coalition and "It's Our Healthcare" Campaign to expand through legislative advocacy quality, affordable and accessible health care to 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 health care reform and ensure that the voice of immigrants and communities of color are not left out of the health care reform debate. As a coalition member, the ACLU-SC helped to develop messaging and public education pieces to ensure that all Californians have quality health care, regardless of income, immigration status or other social barriers, and that a sustainable health

> Racial and ethnic groups continue to experience major disparities in their health access, treatment, and outcomes compared to white people. Uninsured women, especially, suffer from the highest rates of untreated illness.

care system in California is built; organized and participated in legislative visits with target California legislators to engage them on health care reform needs; and reached out to media to promote the "Having Our Say" Coalition's goals and educate them about the current health care reform debate. "It's Our Healthcare" is a coalition of organizations representing health care 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, first focused on framing what real, comprehensive reform is. The ACLU-SC's work as a steering committee member of this broad statewide coalition focused on building community support/involvement in the campaign, organizing public education events, conducting outreach 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 continued to advocate for passage of the California Universal Healthcare Act (SB 840) by engaging in coalition building efforts, direct public education with members and community members, organizing public events and legislative visits, and continuing the dialogue for real, comprehensive health care reform.

The ACLU affiliates of California also jointly advocated for Access for Infants and Mothers Program Amendments (AB 1328). This bill, had it not been vetoed, would have removed the unconstitutional 6-month residency requirement from the Access for Infants and Mothers program, which ensures that eligible pregnant women have access to timely, vital medical care. The residency requirement penalizes women who move to California from another state due to natural disaster or to escape domestic violence, among other reasons, and are in need of medical care during their pregnancies. Governor Schwarzenegger vetoed the bill, stating that the 6-month California residency had been in place since the inception of the program and that removal of the requirement would prove financially burdensome to the state.

ENSURING A WOMAN'S RIGHT TO BREASTFEED

In July 2007, the New York Civil Liberties Union (NYCLU) announced the settlement of a discrimination claim against Fossil, Inc., arising from an incident in which a woman was harassed for attempting to breastfeed her infant son while on a shopping trip in the company's Manhattan showroom. New York's civil rights law provides that a mother has a right to breastfeed her baby "in any location, public or private, where the mother is otherwise authorized to be."

Upon learning about this incident, the NYCLU sent a letter to the company in February 2007, outlining Lass King's claims that she was told to leave the showroom in August 2006 after she started breastfeeding her eight-week-old son, Cody, and that she was later told she was

banned form the showroom. As part of the settlement, the company issued a policy affirming that it allows breastfeeding in all Fossil stores and showrooms, and has agreed to educate and train its staff on the policy. The company has also apologized to Ms. King and agreed to compensate her for the mistreatment. "Public health experts and the law agree that families who choose to breastfeed their children should be able to do so whenever and wherever necessary," said Galen Sherwin, Director of the NYCLU's Reproductive Rights Project. "We hope that bringing attention to these incidents will help improve corporate policies, educate the public, and ultimately remove barriers to breastfeeding."

The NYCLU brought this challenge in cooperation with Paul, Weiss, Rifkind, Wharton & Garrison LLP.

ADVOCATING FOR WOMEN'S RIGHTS AS HUMAN RIGHTS

"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, Supreme Court Justice and Founder of the Women's Rights Project

WRP Director Lenora M. Lapidus addresses violence against women in a global context as part of the 2007 Edward V. Sparer Public Interest Law Forum at Brooklyn Law School (Photograph courtesy of Brooklyn Law School)

From documenting human rights violations in juvenile prisons for girls, to ensuring government accountability for domestic violence, to working to end the extreme exploitation of domestic workers in the form of forced labor, the ACLU Women's Rights Project has continued to integrate novel human rights strategies into its many advocacy efforts in 2007. Also in 2007, WRP has worked to ensure United States compliance with human rights norms and has participated in a broad coalition movement to advocate for federal and state governments to affirmatively ensure that all women are free to enjoy their basic human rights in the United States.

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-convener of the New York City Human Rights Initiative. The Initiative drafted New York City legislation based on the principles of the Convention on the Elimination of All Form of Discrimination Against Women (CEDAW) and the Convention on the Elimination of Racial Discrimination (CERD). These international human rights treaties affirm the necessity of eliminating all forms of gender and racial discrimination. The proposed New York City ordinance is 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. We continue to advocate for its passage by educating community groups, city council members, and others about its importance in ensuring women's full political and civil enfranchisement in New York City.

ADVOCATING FOR THE TREATY FOR THE RIGHTS OF WOMEN, CEDAW

In concert with the ACLU Human Rights Program, the ACLU Reproductive Freedom Project and the ACLU Washington Legislative Office, WRP has joined a coalition of advocacy organizations dedicated to the ratification of the Treaty for the Rights of Women (officially known as the U.N. Convention on the Elimination of All Forms of Discrimination Against Women or CEDAW) and is working to gain grassroots support for the ratification of the treaty. The primary goal of CEDAW is to eliminate discrimination against women, to promote the rule of law, and to advance respect for human rights throughout the world. CEDAW recognizes that discrimination against women violates principles of equal rights and human dignity and is an obstacle to the participation of women, on equal terms as men, in the political, social, economic, and cultural life of their countries. It defines discrimination as any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, of human rights and fundamental freedoms. To date, 185 countries have ratified the Treaty. We hope that the U.S. will soon join this group.

Our first grassroots action took place in 2007. During the week of Mother's Day we asked ACLU and coalition activists to contact their U.S. Senators and urge them to support ratification of CEDAW. We also distributed a CEDAW toolkit to aid in this effort.

ENSURING U.S. COMPLIANCE WITH THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, CERD

In April 2007, the United States released a report on its compliance with the U.N. International Convention on the Elimination of all Forms of Racial Discrimination (CERD). Working closely with the ACLU Human Rights Program and the ACLU Racial Justice Program, WRP helped draft a preliminary rejoinder to the U.S. report that includes a discussion of women's rights issues relevant to, though largely excluded from, the U.S. report. We subsequently worked with the ACLU Human Rights Program and ACLU Racial Justice Program, as well as several ACLU affiliates, to write an ACLU shadow report on U.S. failure to address racial discrimination in this country. *Turning a Blind Eye to Justice: Race and Poverty in America*, the ACLU shadow report was released in December 2007, and on December 10, International Human Rights Day, the ACLU held a Day of Action, during which affiliates engaged in advocacy across the U.S. to spotlight the government's ongoing failure to address racial discrimination in this country. The CERD Committee will review U.S. compliance with CERD in Geneva, in February 2008, and the ACLU will send a delegation to participate in that process. WRP also worked with a broad coalition of civil rights and human rights activists in writing a larger coalition shadow report. WRP served as part of the gender working group and the health disparities working group and sought to ensure that the shadow report addressed the experiences of women of color.

UNITED NATIONS SPECIAL RAPPORTEURS

With increasing frequency, WRP has appealed to various United Nations special rapporteurs to raise international attention to women's human rights violations in the United States.

Special rapporteurs are individuals whose mandate is to address either specific country situations or thematic human rights issues in various parts of the world. A special rapporteur will receive information on a specific allegation of a human rights violation and will then send urgent appeals or letters of allegation to governments asking for clarification on the issue. Special rapporteurs also carry out country visits to further investigate the state of human rights for a particular nation. Special rapporteurs then issue public reports containing their findings and recommendations.

Special Rapporteur on Violence Against Women

WRP, in conjunction with the ACLU Human Rights Program, has worked with the UN Special Rapporteur on Violence Against Women on a number of issues. We first met with the Special Rapporteur in Geneva in 2005 during the meeting of the Human Rights Commission (now Council), and discussed sexual abuse and exploitation of domestic workers, housing and employment discrimination against victims of domestic violence, and police accountability for protecting women from domestic violence.

In July 2006, WRP Director Lenora M. Lapidus and WRP client Jessica Lenahan (formerly Gonzales) met with the Special Rapporteur in Geneva, at which time she agreed to take up Ms. Lenahan's case, including sending a confidential communication to the U.S. demanding the government respond to the violations of Ms. Lenahan's rights. In 2005, the U.S. Supreme Court had rejected Ms. Lenahan's domestic violence protection claims after her three young daughters were kidnapped by her estranged husband and killed when the police failed to enforce her civil order of protection. In February 2007, we

WRP Staff Attorney Mie Lewis participates in a panel discussion as part of our advocacy efforts on behalf of incarcerated girls at the 51st annual meeting of the United Nations Commission on the Status of Women

again met with the Special Rapporteur at the United Nations in New York, and she informed us that the US had not responded to her confidential communication but that she nevertheless would include her communication on behalf of Ms. Lenahan in her annual report. This report, including paragraphs about Ms. Lenahan, was published on the UN website in Spring 2007.

In March 2007, WRP along with the Human Rights Program and ACLU affiliates from Oklahoma, Delaware, Michigan and Puerto Rico conducted advocacy on behalf of incarcerated girls at the 51st annual meeting of the United Nations Commission on the Status of Women. Although the Commission's meeting concerned violence and discrimination against girls, early discussion by the Commission failed to recognize girls who are in conflict with the law and in state custody as a particularly vulnerable group. WRP and the Human Rights Program organized an NGO event paralleling the Commission's hearings in which a panel of experts, including a formerly incarcerated teenaged girl, highlighted human rights abuses experienced by incarcerated girls around the world and engaged participants in a discussion of human rights strategies. In addition, by advocating with national delegations to the Commission and with the Special Rapporteur, WRP succeeded in convincing the Commission to include three provisions in the Commission's final report relating specifically to girls in state custody. As a result of the ACLU's advocacy, the Commission also broadened its definition of vulnerable groups of girls to include girls in custody.

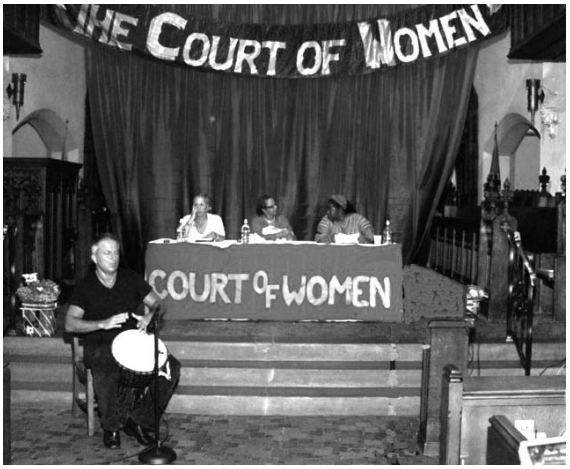
Special Rapporteur on the Rights of Migrants

WRP partnered with the ACLU Human Rights Program and the ACLU Immigrants' Rights Project to help plan a visit to the United States by the Special Rapportuer on the Rights of Migrants in April-May 2007. WRP specifically collaborated on efforts within the ACLU and with the broader coalition to bring to the Special Rapporteur's attention human rights violations against undocumented immigrant women workers 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.

In May 2007, WRP joined advocates and domestic workers from Global Rights, Casa of Maryland, Boat People SOS and Break the Chains, for two meetings in Washington D.C.: one meeting addressed abuses suffered by domestic workers, particularly those employed by diplomats with immunity from suit, and the second addressed labor trafficking. We provided the Special Rapporteur with extensive public education materials that we prepared on these issues.

UNITED STATES SOCIAL FORUM

The U.S. Social Forum, held in Atlanta in late June 2007, brought together grassroots organizers, activists, service providers, and non-governmental organizations who are stakeholders in a number of movements for social justice in the U.S. It provided a space for building relationships, for advocates and activists to share experiences and strategies and to bring new insight and energy to one another's work and included plenaries, workshops and cultural events.



The Court of Women at the United States Social Forum

WRP Staff Attorney Claudia M. Flores, and Chandra Bhatnagar, a staff attorney with the ACLU Human Rights Program, participated in a panel discussion on the use of human rights mechanisms and strategies to advance worker's rights. Ms. Flores also participated in a three-day National Household/Domestic Workers Meeting of community organizations advocating for the rights of these workers. The meeting was organized to initiate a discussion among various domestic worker community organizations about the possibility of participating in a national campaign to spotlight the various ways these workers are discriminated against in the workplace.

This year's Social Forum also featured a human rights tribunal, a formal, but unofficial, venue where governments were "put on trial" for the human rights abuses they perpetrated, allowed to happen, or promoted. Three "judges" presided over The Court of Women and heard testimony during three sessions: Violence Against Women, the U.S. Criminal (In)Justice System and the Hurricane Katrina/Gulf Coast Crisis, with issues of immigration running through the three substantive areas. WRP Director Lenora M. Lapidus, read testimony on behalf of WRP client Jessica Lenahan (formerly Gonzales) during the Violence Against Women session and played audiotaped testimony on behalf of girls incarcerated at Texas Youth Commission facilities during the U.S. Criminal (In)Justice System session. The goal of this and similar human rights tribunals is that they are a way to keep women's human rights abuses in the public view and to educate the public about the continuing denial of women's human rights.

STAFF

LEFT TO RIGHT:

Front Row: Sandra S. Park, Lori Tay, Lenora M. Lapidus, Ariela M. Migdal, Joshua David Riegel

Back Row: Ariceli Martínez-Olguín, Selene W. Kaye, Mie Lewis, Claudia M. Flores

Not Pictured: Emily J. Martin, Jennie Pasquarella

NEW STAFF

Sandra S. Park, *Staff Attorney*

Prior to joinging WRP, Ms. Park spent four years at the Legal Aid Society, Bronx Neighborhood Office, first as a Skadden Fellow and then as a Staff Attorney, providing comprehensive legal services to immigrant domestic violence victims in the areas of immigration, family, matrimonial, and public benefits law. Prior to joining Legal Aid, Ms. Park clerked for the Honorable Alvin K. Hellerstein, in the United States District Court for the Southern District of New York. During law school, she interned at the Urban Justice Center, Family Violence Project; the Center for Reproductive Rights; the NYU Immigrant Rights Clinic; the Welfare Law Center; South Brooklyn Legal Services; Legal Momentum; Debevoise & Plimpton; and Cleary, Gottlieb. She also served as a Teaching Assistant for Professor Sylvia Law's Constitutional Law course. Prior to law school, Ms. Park worked at the Brennan Center for Justice, focusing on judicial independence issues.

Ms. Park received her J.D. *magna cum laude* from NYU School of law in 2002, and her A.B. *magna cum laude* from Harvard University in 1997. She has published a law review article entitled, *Working Towards Freedom from Abuse: Recognizing a "Public Policy" Exception to Employment-at-Will for Domestic Violence Victims*, and has written a paper entitled, *For a World Without Bases: The Okinawan Feminist Movement Against U.S.-Japan Alliance Politics and Militarization*. While in law school, Ms. Park received several honors including Order of the Coif, Arthur Garfield Hays Civil Liberties Fellowship, and Robert Marshall Fellow and served as Executive Articles Editor for the NYU Annual Survey of American Law. She is a member of numerous bar associations, advisory councils and coalitions.

Ariela M. Migdal, *Staff Attorney*

Ms. Migdal most recently worked as an independent contractor writing appellate briefs with the D.C.-based law firm Kellogg, Huber, Hansen, Todd, Evans, & Figel, P.L.L.C. while living in Israel and in New York. Prior to that, she clerked for Justice Stephen Breyer on the Supreme Court of the United States and for Judge Harry T. Edwards on the D.C. Circuit Court of Appeals. Ms. Migdal also worked as a law clerk at the Nazareth office of the Israel Public Defender. During law school, she completed the NYU Immigrant Rights Clinic and held internships at Perkins Coie, the Environment and Natural Resources Division of the U.S. Department of Justice, and the National Employment Law Project. She also served as a Teaching Assistant for Professor Richard Stewart's Torts course. Prior to law school, Ms. Migdal held an internship at the Government Accountability Project, focusing on issues of worker health and safety at the Hanford nuclear facility in Eastern Washington.

Ms. Migdal received a J.D. from NYU School of Law in 2001, where she received honors including the Maurice Goodman prize for outstanding scholarship and character, Order of the Coif, and Pomeroy Scholar, and served as Articles Editor for the Law Review. She published a Note in the Law Review entitled *RCRA in the Workplace: Using Environmental Law to Combat Dangerous Conditions in Sweatshops*, which was awarded the Rubin prize for best note on public, commercial, or international law. Ms. Migdal also received an M.A. in 1998 with distinction in Social Anthropology from London University, School of Oriental and African Studies, and an A.B. in 1996 from Harvard University.

Selene W. Kaye, *Advocacy Coordinator*

Ms. Kaye previously worked at Urban Pathways, a not-for-profit community based services agency that addresses problems faced by homeless people. During her time at Urban Pathways, Ms. Kaye conducted research and an economic analysis of city, state, and federal housing and homelessness policies, and submitted recommendations to the New York Department of Homeless Services and the Deputy Mayor for Health and Human Services. She also designed an independent research study on the experience of homeless women at a drop-in center in New York City. In addition, Ms. Kaye worked as an advocate and counselor for survivors of domestic violence at Safe Horizon's Queens Criminal and Supreme Court Program, a victim assistance agency that provides support, prevents violence, and promotes justice for victims of crime and abuse, their families and communities. Ms. Kaye also provided social work services at the Amsterdam Nursing Home and served as a field organizer with Green Corps, Field School for Environmental Organizing.

Ms. Kaye is a 2007 graduate of Columbia University School of Social Work, where she co-founded the Feminist Caucus in order to call attention to the responsibility that social workers have to advocate for gender equality. At Columbia, she co-led the Coalition Confronting Racism and developed the Poverty Initiative in order to explore the ways in which racism and poverty intersect with sexism and gender oppression, with a particular focus on human rights violations in the wake of Hurricane Katrina. Ms. Kaye received her B.A. *magna cum laude* in 2001 from Harvard University, where she studied social anthropology and wrote an honors thesis entitled, "Beyond Structured Choices: Women Constructing Selfhoods in Beijing." She has maintained contact with her alma mater and serves as a mentor for recent graduates pursuing careers in public service, through the Harvard Center for Public Interest Careers.

Lori Tay, *Legal Assistant*

Lori Tay comes to WRP from F.E.G.S. WeCARE Bronx, which works to ensure that public assistance applicants and recipients with medical and/or psychiatric conditions have an opportunity to transition from welfare to work, where she worked as a program assistant. Ms. Tay has also worked at the Immigrants' Center at City College and has interned at the Kigali Institute for Science and Technology in Rwanda. In December 2008 Ms. Tay will graduate from City College with a bachelor's degree in international relations and is currently working on her senior thesis, entitled "The Role of Women in Third World Development in Post-Conflict Society: Rwanda."

THANK YOU

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

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Carly S. Grant
Heidi Hengel
Adrienne Fowler
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Dorothy Smith

WRP COOPERATING COUNSEL

Caroline Bettinger-López, Columbia Law School Human Rights Clinic
Caroline M. Brown, Covington & Burling LLP
Monica D. Cliatt, Widener University Law School Harrisburg Civil Law Clinic
Faith Rochelle Cooper, Central Alabama Fair Housing Center
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Lara E. Romansic, Steptoe & Johnson LLP
Catherine J. Rosato, Dechert LLP
Peter Rosenblum, Columbia Law School Human Rights Clinic
Pamela Sah, Fair Housing Justice Center
Cynthia Soohoo, Columbia Law School Bring Human Rights Home Project
Rebecca Smith, National Employment Law Project
Susannah C. Vance, Covington & Burling LLP
Reid K. Weisbord, Dechert LLP
Deborah M. Weissman, University of North Carolina School of Law Human Rights Clinic

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ABOUT US

The ACLU

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

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

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