

LAF/UPDATE



Winter 2005

From the Board President



Barbara O'Connor

This *LAF Update* marks the first issue published since the Legal Advocacy Fund (LAF) became a program of the AAUW Educational Foundation. Ensuring that women have equal opportunities in higher education is the centerpiece of AAUW's long history and the AAUW Educational Foundation remains at the forefront of education and equity through its fellowships and grants, special awards, and focused research. I am proud to expand this legacy to include the support of individuals challenging sex discrimination on campus through LAF programs.

Since its inception in 1981, LAF has become the largest fund for supporting sex discrimination litigation in higher education. In that time, LAF has played a role in many important and visible cases in the American courts regarding sex discrimination on campus. LAF's ability to lead the fight for gender equity in higher education, as well as to proactively engage in activities with like-minded partners, has been critical to its past success and is critical to its future. The board of directors of the AAUW Educational Foundation is committed to ensuring that LAF continues to lead the way, and thrive, in all of its programmatic efforts.

This newsletter edition features two cases recently adopted by the Educational Foundation Board of Directors to receive LAF support. In California, female wrestlers and their coach are asking the court to enforce Title IX so that female athletes are provided with equal opportunities to play sports—even when those sports might be considered “nontraditional” for their sex. In New Jersey, a female professor of chemical engineering has sued Princeton University for sex discrimination in the denial of her tenure. Both cases represent the continuing challenges we face to keep doors open for women in higher education.

Looking ahead, I know that we have much more to do to combat sex discrimination in higher education and support systemic change. Thank you to all who help us continue to fight for what is right. I look forward to working with you during the next two years.

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

Barbara L. O'Connor
President, AAUW Educational Foundation

Also In This Edition

- Latest case updates
- Female Wrestlers Sue UC Davis
- Collegiality Claims Mask Sex Discrimination

Chemical Engineer Challenges Tenure Decision

The field of chemical engineering, like most fields of science, continues to be dominated by men. Women often find it difficult to move into the higher levels of the field regardless of their talents and interests. In 1997, Professor Russell began a three-year appointment as an assistant professor in Princeton University's chemical engineering department. Russell was on tenure track—though only one other woman had ever been promoted to tenure within that department. Despite her excellent scholarship, teaching, and service, Russell believes that the chairman of the department did not want her to receive tenure. The chairman, she asserts, treated her worse than her male colleagues and failed to handle student complaints about her in accordance with university policy. He then used these complaints to interfere with her tenure review. The faculty, comprised of 13 men and two women, voted to deny Russell tenure. She pursued all the appropriate avenues in challenging the decision but has still not received a decision from the university president. Russell has left the university for other opportunities and filed a lawsuit. The following interview looks at what working in the field of chemical engineering means to Russell and examines why her case is so important.

Q: How did you become interested in chemical engineering?

A: *I have always enjoyed puzzles in math and science, and I was fortunate to have a number of role models who encouraged my studies in chemical engineering. This background has given me the fundamental understanding of a broad range of physical science disciplines and has opened a number of doors to exciting research areas*

Q: What are the rewards to pioneering a field for women?

A: *The main reward is having the opportunity to learn and teach about interesting concepts and exciting findings.*

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Collegiality Criterion Used Against Women Faculty

Faculty members being evaluated for tenure, promotion, renewal, and other employment benefits are typically judged on their performance in the areas of teaching, scholarship, and service. These three areas are generally accepted as the primary functions performed by faculty, although each college and university may assign differing weight to each area. More recently, faculty members have been judged on an additional criterion: collegiality. The criterion of collegiality—which has been used by administrations, as well as department chairs and faculty members serving on promotion and tenure committees—considers a faculty member's working relationships with other faculty and students.

Unfortunately, as collegiality becomes more prevalent in faculty evaluations, it arguably has become the most easily abused criterion and too frequently has been used to deny qualified female faculty opportunities to advance in their academic careers. A lack of collegiality can be applied to any faculty member whose demeanor, personality, academic interest, or political beliefs clash with those of other faculty members or administrators. This criterion, therefore, can mask sex discrimination otherwise

prohibited under Title VII of the Civil Rights Act of 1964, as well as analogous state laws.



While the issue of collegiality—and its role in faculty employment decisions—has received little attention to date, the concern that it provides a loophole in the fight against discrimination is real. The American Association of University Professors (AAUP) examined the issue and, in 1999, found that “collegiality has not infrequently been associated with ensuring homogeneity, and hence with practices that exclude persons on the basis of their difference for a perceived norm.” AAUP concluded that “an absence of collegiality ought never, by itself, constitute a basis for non-reap-

pointment, denial of tenure, or dismissal for cause.”

Although courts have agreed with critics that the collegiality standard can not be used as a mask for discrimination, courts also have recognized collegiality as a valid, nondiscriminatory basis upon which institutions can make employment decisions, even though most colleges and universities do not specifically list collegiality as a criterion. In the face of a lawsuit, courts tend to give deference to the expertise of colleges and universities in assessing the qualifications of faculty members, thus, women faculty attempting to prove that lack of collegiality is being used as a cover for sex discrimination face an uphill battle in the courts.

The issue of collegiality is central to a case currently supported by LAF. In *Washington v. Trustees of the California State University and Colleges, et al.*, Washington has alleged that she was denied tenure on the basis of her sex and race combined. Faculty within her department declined to recommend her for tenure and the chair of the department seconded the faculty's recommendation, commenting negatively on Washington's collegiality. In the

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Q: What were your accomplishments at Princeton?

A: I started a research and educational program in environmental chemical engineering, raising grants from a record-breaking number of private and federal agencies. I mentored over thirty undergraduate and graduate students, establishing a thriving research group. My work established an important interdisciplinary bridge with other environmental research on campus, initiating a number of interdisciplinary collaborations.

Q: What have you been working on at UC San Diego?

A: I have created and taught three new courses, supervised several graduate, undergraduate and visiting students, and undertaken field work on the U.S. East Coast, Mexico, and Seattle. In collaboration with my students and col-

leagues, I have published over a dozen papers. I have expanded our laboratory to include new instrumentation for chemical analysis and cleanroom facilities, and I have ongoing measurement programs at several national research facilities. I have also coordinated admissions for our graduate program, joined the scientific board of an international environmental program and a leading journal, and served as an author of a congressionally-mandated study of recent policy changes.

Q: Why is it important to you to fight the way Princeton has treated you? What has kept you going during your legal challenge?

A: I am concerned that the unfair practices used in my case would become a precedent that would be harmful to the careers of other women. It is unfortunate

that the University appeals committee failed to investigate discrimination even after finding a serious problem in the way my case was treated by two administrators, leaving no choice other than a legal challenge. Since the promotion review system is a cornerstone of university structure, it is part of my obligation as a member of the academic community to work to fix its shortcomings. When institutions hold this system to the high standards of learning on which it was founded, I believe science and engineering will become fields in which scholarly contributions are valued independent of gender.

Read more about this case on the AAUW website at <http://www.aauw.org/laf/cases/lr.cfm> **LAF**

LAF currently supports 21 lawsuits. The AAUW Educational Foundation Board has awarded a total of \$38,687 in support of ongoing and new cases. The Marguerite Rawalt Legal Defense Fund provided \$10,500 in 2005 to ongoing cases.

This fall, the board voted to adopt two new cases: *Nash v. Ray L. Belton and the Southern University System* and *L.R. v. Princeton University*. Each case was given an initial award of \$5,000.

Beverly Ann Nash sued the Southern University System (SUSLA) for retaliation in violation of Title IX of the Education Amendments of 1972, among other claims. Nash, former vice chancellor of student affairs and assistant professor of education at the university, claims that in the months following her appointment in 2002 at least five women came to her with allegations that they were sexually harassed by male SUSLA police officers. Nash brought these allegations to the attention of the university's chancellor and also filed written reprimands regarding two specific police officers on behalf of the women. In July 2002, Nash was notified that SUSLA intended to renew her contract in both her administrative and faculty positions; however, in October 2002, without prior warning, Nash was relieved of her administrative position and reassigned solely to her faculty position, effective immediately.

Read more about this case on the AAUW website at www.aauw.org/laf/cases/nash.cfm

L.R. sued Princeton University for sex discrimination in the denial of tenure, retaliation for complaining of sex discrimination, and other claims under New Jersey state law.

Please read more about her case on the AAUW website at www.aauw.org/laf/cases/lr.cfm

Updates on Other Cases

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

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

Burch v. Regents of the University of California

Discovery is closed. The university filed a motion for summary judgment that will not be heard until all documents are turned over to the plaintiff pursuant to an order from the District Court.

Chichilnisky v. Columbia University

Chichilnisky's case is currently in discovery, which is expected to conclude before the end of 2005. A trial date has not been set.

Conney v. The Regents of the University of California

The defendants appealed the trial court's decision in favor of Conney to the Court of Appeal of California in December 2004. In March 2005, the parties attended a voluntary settlement conference, which was unsuccessful.

Doe v. Berry College

The case is moving into discovery. The individual alleged to have sexually assaulted Doe has counterclaimed against Doe and sued Berry College.

Glaser v. Fulton-Montgomery Community College

In fall 2004, Glaser filed a notice of appeal to the federal appellate court challenging the lower court's order granting FMCC's motion for summary judgment. The appeal is pending.

Howard v. Bishop State Community College

The college appealed the jury's verdict in favor of Kimberly Howard to the federal appellate court. A date for oral arguments has not yet been scheduled. Howard and the college are attempting to negotiate a settlement.

Ilon v. The State University of New York at Buffalo

Discovery is nearing completion in Ilon's case.

Johnson v. University of Iowa

The federal appellate court heard oral arguments Sept. 13, 2005, on whether to reverse the lower court's summary judgment.

Maggio v. Kent State University

Trial in Maggio's case is scheduled to begin Jan. 17, 2006.

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

The case is currently in discovery, which is scheduled to end December 2005.

McMahon v. Carroll College

Discovery has been completed. The college filed a motion for summary judgment. A trial date has not yet been scheduled.

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

On Aug. 15, 2005, the federal appellate court issued its decision regarding King-Miller's disability discrimination claim and held that Texas Tech is not entitled to Eleventh Amendment immunity. The case was remanded to the District Court. This decision clears the way for Miller's sex discrimination suit, which had been held in abeyance, to proceed.

Simpson, et al. v. University of Colorado

In March 2005, the District Court granted the University of Colorado's motion for summary judgment with prejudice, dismissing the plaintiffs' case in its entirety and ordering the plaintiffs to pay the university's costs. The plaintiffs have filed a Motion to Alter or Amend Judgment or for Relief from Judgment.

Violand v. George Washington University

The case is awaiting a date for oral arguments in the university's appeal of the trial court's decision in favor of Violand.

AAUW Legal Advocacy Fund Major Donors

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

In October 2003, Vuolo appealed the court's decision dismissing her case to the Appeals Court of Massachusetts. A date for oral arguments has not been scheduled.

Washington v. Trustees of the California State University and Colleges

In July 2005, Washington filed her appellate brief with the California Appellate Court. The university filed its response in November 2005. A date for oral arguments has not yet been set.

Weinbaum v. Cleveland State University

The case is in discovery.

Whittaker v. Northern Illinois University

On Sept. 21, 2005, the federal appellate court upheld the lower court's decision to grant the university's motion for summary judgment. Whittaker will appeal to the U.S. Supreme Court. [LAF](#)

Collegiality continued from page 2

decision dismissing her case, the judge stated that although the evidence may show that Washington's colleagues did not like her, "[a] personal grudge or resentment can constitute a legitimate, nondiscriminatory reason for an adverse employment decision. Plaintiff's perception of a discriminatory motive is not evidence of a discriminatory intent." Washington has appealed the court's ruling.

This example of a case questioning the collegiality criterion points to a troubling theme—women who do not “fit in” will not be successful in academia. To prevail in these cases, faculty women will need to demonstrate to the courts that their gender is at the heart of the denial of employment opportunities. They must accomplish this in a legal system that takes a hands-off approach to academic decisions and is only just beginning to grapple with the concept of gender stereotypes and how they factor into employment decisions made about women. [LAF](#)

We extend our sincere thanks to the 2005 donors whose contributions to LAF, a program of the AAUW Educational Foundation, were received as of Oct. 31, 2005.

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* Deceased

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

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Women in Wrestling: Competing in a Nontraditional Sport

Wrestling was a passion for Arezou Mansourian, Lauren Mancuso, Nancy Chiang, and Christine Ng. The four women decided to pursue academic degrees at the University of California-Davis specifically because coach Michael Burch allowed and encouraged women to be a part of the school's varsity wrestling program. In 2000, the university administration informed Coach Burch that female wrestlers would no longer be able participate in the wrestling program. The women, with the assistance of Coach Burch, petitioned university officials to reinstate women into the program.

When their meetings did not lead to results, the female wrestlers filed a sex discrimination complaint with the U.S. Department of Education's Office for Civil Rights (OCR). Burch was an outspoken supporter of the female wrestlers and subsequently UC Davis failed to renew his contract despite the program's winning record during his leadership. The OCR investigation of the female wrestlers' sex discrimination complaint was never completed and in 2003, the women filed a Title IX lawsuit in federal court claiming the university had violated Title IX of the Education Amendments of 1972. Burch also filed a Title IX lawsuit in federal court alleging retaliation for his support of the female wrestlers.

Kristen Galles, attorney for the female wrestlers as well as for Burch, hopes that this case will highlight that schools can not eliminate athletic opportunities for women without providing them with alternate athletic opportunities. When women are denied access to a varsity sport, they are denied access to more than just the game. They lose academic tutors, medical and athletic training services, insurance, athletic scholarships, and even college admission consideration. Further, this case involves a sport that most people associate primarily with males. Women and girls who pursue wrestling must overcome public perceptions about what sports activities are appropriate for females. Yet, women have wanted to participate so much that they have endured harassment and joined boys'



and men's programs. Although their interest in the sport clearly exists, these women are challenged constantly to prove their desire to play and compete, while male wrestlers interest in the sport goes unquestioned.

Currently, there is no case law under Title IX defining what it means for a school to have a history and continuing practice of adding women's teams in order to comply with Title IX's mandate to provide equal athletic opportunities. (See side bar for information on Title IX athletic requirements.) This case has the potential to establish that precedent and make clear that schools must continue to add women's teams until they reach equity. In 2003, the OCR clarified that eliminating men's opportunities is not the same as adding women's opportunities. Unfortunately, that is exactly what UC Davis has done in an attempt to comply with Title IX. Schools should not be able to claim that hurting men helps women.

Despite the obstacles, many women have found ways to compete in wrestling. They have created the United States Girls' Wrestling Association and the California Women's Wrestling Association, among others. But schools can not be let off the hook. Imagine what a boost women's wrestling would receive if a major university like UC Davis took its obligation to provide equal athletic opportunities seriously and offered the sport to both male and female participants. In bringing this case, these female wrestlers strongly and publicly demonstrate their interest in the sport and are demanding their right to fully participate in it. [LAF](#)

Title IX and Women's Sports

Title IX of the Education Amendments of 1972 sets the stage for expanding and improving women's opportunities and experiences in education. Specifically, the law states "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." One area that greatly changed as a result of Title IX is women's opportunities in sports. In 1971, only 30,000 women competed in intercollegiate athletics, but by 2001, 150,916 women were competing—an increase of 403 percent. In spite of this positive change, women still lack equal opportunities to compete in intercollegiate athletics and many times have had to look to the courts to enforce their right to equal athletic opportunities.

Title IX requires educational institutions to offer male and female students equal opportunities to participate in sports. There are three wholly independent ways schools can show that students of both sexes are provided equal opportunities to participate in athletics under Title IX. Schools can show that: (1) the percentages of female and male athletes are about the same as the percentages of male and female students enrolled in the school, or (2) the school has a history and continuing practice of expanding opportunities for the underrepresented sex, or (3) the school is fully and effectively meeting the interests and abilities of the underrepresented sex. These criteria are commonly referred to as the three-part test. A school that can meet any one part of this test will be considered in compliance with Title IX's athletic participation requirements. [LAF](#)

Meet the 2005 PIE Award Winners



The AAUW Legal Advocacy Fund presented the 2005 Progress in Equity Award to Northeastern University's Connections program during a Nov. 16 ceremony at the university's campus in Boston. Connections, supported by Northeastern's College of Engineering, strengthens the pathways for women and girls to pursue careers in engineering and science through mentoring support, educational development programming, and scholarships. The program was presented a \$5,000 stipend to further its success.

A collaboration between Northeastern University and the Patriot's Girl Scout Council, Connections was initially funded by the National Science Foundation (NSF). In addition to the programming offered to middle- and high-school-aged girls and college women, Connections recently began working with Simmons College on a survey that examines why some women choose to stay home rather than work when they have children.

More than 50 people attended the ceremony and several AAUW members and university representatives were present. Speakers included Pamela Collins, who represented the AAUW Educational Foundation Board of Directors; Rick Scranton, associate dean of the College of Engineering; Ahmed Abdelal, provost and senior vice president for academic affairs; Sara Wadia-Fascetti, Connections program director, associate vice provost for faculty advancement, and associate professor of civil engineering; and Rachelle Reisberg, assistant program director, Women in Engineering. [LAF](#)

About LAF

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

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