

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## GRAWA PRESIDENT'S MESSAGE

### Decade a whirlwind for women

Last week we raised our glasses and toasted the end of 2009. We also launched the start of a new decade — the second decade in the second millennium. (Anyone remember stockpiling batteries and potable water in preparation for Y2K?)

As I began to ponder this month's column, I thought about women's advancements over the last decade. Doubtless, there were many important women who changed the face of our country and began meaningful national conversations about critical women's issues. That said, coming up with a definitive list of advances was challenging. Important strides were made over the last 10 years for sure, but not as many as some would have liked to have witnessed.

My reflections are by no means an exhaustive sociopolitical study of the decade but, in recounting the details, I hope it will serve as both a reminder of the good work done and a call to action.

The first federal Violence Against Women Act was passed in 1994, landmark federal legislation that generally provided for protection, legal relief and dedicated funding for victims of sexual assault, stalking, elder abuse, trafficking, and domestic and dating violence. In 2000 and in 2005, the law not only was reauthorized, but enhanced. The 1994 version of VAWA created a federal civil cause of action for victims of gender-motivated violence, such as sexual violence and intimate partner abuse. In 2000, however, the U.S. Supreme Court dealt a blow to anti-violence advocates and victims by holding that provision unconstitutional and striking it down in *U.S. v. Morrison* (529 U.S. 598). Despite the setback, VAWA is widely considered one of the most effective pieces of legislation ever enacted to help end abuse, sexual, offenses and stalking. It has dramatically improved law enforcement's, and the criminal and civil justice system's response to violence against women and provided critical services necessary to support families as they contend with these crimes. VAWA is set to be reauthorized again in 2011 with the drafters closely examining the pitfalls and progress over the last decade.

In 2000, New York enacted the Sexual Assault Reform Act, which created comprehensive changes in the state's laws regarding rape, sexual assault and child sexual abuse. In addition to creating new crimes, the law also heightened protections for victims of sex offenses — including child victims — and increased and strengthened consequences for offenders. The law also enshrined statutorily a statewide sexual assault forensic examiner

program and a rape crisis intervention and prevention program.

New York also passed the Hate Crimes Act in 2000, landmark legislation that makes the commission of certain specified crimes punishable as "hate crimes" when committed in whole or substantial part because of a belief or perception regarding the victim's gender, sexual orientation, race, color, national origin and other factors.

In 2001, Hillary Clinton not only became the first female U.S. Senator to represent New York, but she also became the first First Lady to run for and, ultimately, achieve such a status in public office.

The year also witnessed passage of New York's own Uniform Child Custody Jurisdiction and Enforcement Act. Among other important provisions relating to interstate jurisdiction in child custody matters, the law also provided an expedited procedure for enforcement and specific protection for domestic violence victims in those cases.

New York's class-action lawsuit of *Nicholson v. Scopetta* is credited with affecting national policy regarding child protective services practice of removing children from battered mothers. The case was litigated heavily throughout the first half of the decade.

The federal district court case enjoining the practice as unconstitutional and illegal was decided in 2002 as *Nicholson v. Williams*, 203 FSupp2d 153 (EDNY 2002).

The Second Circuit affirmed the district court (344 F3d 154) in 2003, but prior to determining whether the child welfare practices violated state law, they sought further interpretation from the New York Court of Appeals by certifying three questions of law. That court issued its decision in October 2004 and, in a strongly-worded, unanimous decision (3 NY3d 357), held, among other rulings, that victims of domestic violence who are beaten in the presence of their children are not neglectful parents *per se*. The case has changed the legal landscape as well as the national conversation regarding the charging of domestic violence victims with "failure to protect" their children when they themselves are subjected to violence and abuse.

In 2006, Katie Couric left NBC's Today Show to become the first female anchor of the nightly news on CBS. I heard recently that the venerable Dianne Sawyer soon will follow suit on ABC. Having female anchors finally moved into such prominent positions was long overdue.

New York passed the most comprehensive and toughest sex

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## *Continued ...*

and labor trafficking law in the country in 2007. Human trafficking is a violation of human rights, a widespread form of modern day slavery that sees human beings bought and sold like commodities so their owners can profit through their labor or sexual exploitation. Although anyone can be victimized by the crime, regardless of age or gender, women in particular face sexual exploitation and labor trafficking as domestics, hotel house-keeping and sweatshop workers at high rates. Sadly, New York is acknowledged to be a leading entry, transit and destination point for trafficking victims. The law holds traffickers accountable and helps victims to rebuild their lives.

In 2007, Nancy Pelosi became the first woman Speaker of the U.S. House and is second in the line of presidential succession, following Vice President Joseph Biden. That also makes Pelosi the highest-ranking female politician in U.S. history.

In a retreat from decades of precedent, the U.S. Supreme Court's decisions in *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood Federation of America* (127 S.Ct. 1610), upheld the first ever federal ban on an abortion procedure. The ban outlaws certain second trimester abortions and has no exception for cases in which a woman's health is in danger.

In the later part of the decade, and for the first time in our nation's history, the world watched two very different women running robust presidential and vice-presidential campaigns on both the Democratic and Republican tickets. Regardless of one's political views or opinions of the respective candidates and their platforms, it undeniably was thrilling to see women finally competing squarely with other male politicians. Despite such advancements, both Hillary Clinton and Sarah Palin were subjected to sexist treatment both in the mainstream media and from constituents.

After New York lost Hillary Clinton to President Obama's diverse cabinet in 2009, another woman, Kirsten Gillibrand, was plucked from the U.S. House and appointed to serve out the term as our Senator. The second woman to serve New York as Senator, Gillibrand will seek formal election to the seat this year.

Also in 2009, Second Circuit judge Sonia Sotomayor became the first Latina to serve on the U.S. Supreme Court, and the third woman to serve as a justice. Alternatively, when New York's Commission on Judicial Nomination advanced its 2008 list of nominees to replace first female Chief Judge Judith S. Kaye, all seven nominees were men, and most were white. The shocking omission drew fierce criticism of the fairness of the judicial selection process for women and minorities from Gov. Paterson, members of the state Senate and many others.

Nine days after assuming office in 2009, the first bill President Obama signed into law was the Lilly Ledbetter Fair Pay Act, which amends the Civil Rights Act of 1964 by clarifying that the 180-day statute of limitations for filing an equal-pay lawsuit regarding pay discrimination resets with each new discrimina-

tory paycheck. The law was a direct federal legislative response to the U.S. Supreme Court's ruling in *Ledbetter v. Goodyear Tire & Rubber Co.* (550 U.S. 618), which held that the statute of limitations for presenting an equal-pay lawsuit began at the date the pay was negotiated and agreed upon, not at the date of the most recent paycheck. The decision in *Ledbetter* had been criticized both a setback for women and for civil rights.

As Congress debated health care reform in 2009, the issue of women's meaningful access to comprehensive reproductive health care and abortion services was hotly debated. The debate will continue well into 2010.

From 2000 through the close of 2009, the state Legislature passed more than 120 laws addressing numerous aspects of sexual abuse, intimate partner violence, as well as child and elder abuse. The aggregate of those legal reforms has continued to shape our state's legal response to violence against women. In 2009, New York watched unhappily as Sen. Hiram Monserrate was convicted of misdemeanor-level assault of his girlfriend. He presently retains his legislative seat while a Senate committee contemplates a response to his criminal domestic violence conviction.

Women's participation in the workforce today is at historically high rates. The Shriver Report states that women presently comprise half of all U.S. workers and mothers now are the primary breadwinners and co-breadwinners in two-thirds of American homes. That good news is tempered by other studies regarding women in the legal profession, however. According to the ABA Commission on Women in the Profession's 2008 report, women comprise only 31.6 percent in the legal profession. The study also determined that, of women in private practice, a mere 18.3 percent become partners while 45.1 percent work as associates. Female general counsel in Fortune 500 corporations comprise only 18.4 percent and, of those, more than 90 percent are Caucasians. Statistics from the U.S. Bureau of Labor indicate that women lawyers' weekly salaries in 2006 averaged only 77.5 percent of male lawyers. The National Survey from the National Association of Women Lawyers published in October 2009 confirms those findings, and underscores that women are significantly under-represented in the upper levels of law firms. The large majority of women who start as associates in firms do not advance to equity partnership, and even fewer become law firm leaders. The survey also found, alarmingly, that women lawyers working part-time were disproportionately terminated during our current economic downturn.

As the 2000s close, we were witness to some major ups and downs in women's advancement. Much remains to be done in the years to come.

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