

THE DAILY RECORD

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

GRAWA PRESIDENT'S MESSAGE

Women's History Month challenges our vision of the future

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Daily Record Columnist

If education is a building block of social change, then history is a tool required to craft that change.

History provides perspective as to how we arrived at this point, this time, this platform, from which we dive into the future.

"Women's History Month" may sound to some as though it is just another one of those designated days or weeks or months that few people pay attention to, and perhaps it is. Officially designated in 1987, "Women's History Month" grew out of a grass roots movement in Sonoma County, Calif., in 1978, which recognized that women were not included in the formal history taught in U.S. schools. Until that time, formal history primarily comprised of political history. As women were entirely excluded from the political process until they received the right to vote in 1920, and largely excluded from direct participation in the political process even after winning suffrage, their contributions were not recognized by the traditional canons of American history.

Struggles of women in law

The struggle for women to reach parity with men under the law in this country has, in historical terms, only recently received marked success.

Due to the lack of contemporaneous documentation, it is difficult to research. Margaret Brent is the first reported woman lawyer who came to America in 1638, yet it took another 230 years for Arabella Mansfield to become the first attorney to join a licensed bar in the United States in 1869. However, in 1873, the U.S. Supreme Court held that states may statutorily deny women the right to practice law. Even in the absence of statutory prohibitions, some state courts denied women admission to the bar. Notably, *Matter of Goodell*, 39 Wis. 232 (Wis. 1875), states at length why women are unfit to practice law, among them that "[i]t would be revolting to all female sense of ... innocence ... that woman should be permitted to mix professionally in all the nastiness of the world which finds its way into courts of justice" and "[d]iscussions are habitually necessary in courts of justice, which are unfit for female ears."

In 1890, women lawyers who practiced in the United States, with or without a license, numbered 120, according to an article published that same year by Lelia Robinson, who relied on correspondence and news

clippings to make her tally. These women fought disenfranchisement under law such that many were not legally allowed to enter into contracts on the basis of gender, much less vote. They also fought social stigma, impractical corsets, enormous logistical problems, lack of access to formal training and debate among themselves over how best to proceed.

Women eventually earned the right to practice law, and to attend law school. However, the first federal law prohibiting sex discrimination, the Equal Pay Act, was not passed until 1963.

It took until 1971 for the U.S. Supreme Court to rule favorably, for the first time, in favor of a woman claiming discrimination on the basis of gender under the law. The historical struggles of women in the law in the United States were succinctly summarized by the U.S. Supreme Court in *U.S. v. Virginia*, 135 L. Ed. 2d 735 (1996): "[O]ur Nation has had a long and unfortunate history of sex discrimination. ... Through a century plus three decades and more of that history, women did not count among voters composing 'We the People'; not until 1920 did women gain a constitutional right to the franchise. And for a half century thereafter, it remained the prevailing doctrine that government, both federal and state, could withhold from women opportunities accorded men so long as any 'basis in reason' could be conceived for the discrimination."

Today, statistical and anecdotal evidence demonstrate that much work remains before parity between the genders in this country will be realized. New York State Chief Judge Judith S. Kaye, has noted that, "[e]ven in this day of breathtaking scientific and technological progress, the historic separation and inequality of the two spheres continues. As Chief Judge of the State of New York, I had a poignant reminder of this phenomenon recently when I dropped in at a Park Avenue club in Manhattan to meet a friend, and was told that no women are allowed in the dining room. Much as I resent such experiences, the reminder is a useful one for those who may believe that the battles were all fought and won for us ... 100 years ago," see Judith S. Kaye, "How to Accomplish Success: The Example of Kate Stoneman," 57 Alb. L. Rev. 961, 968-969 (1994).

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History may be a reflection of society, but the law should not be.

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Justice demands a blind eye be cast towards gender, as well as other classifications such as race and religion.

Prejudices and stereotypes are not a valid source of law. If all citizens refuse to accept time-bound stereotypes, parity is not only possible, but inevitable. Women's History Month gives us the opportunity to consider and celebrate the struggles of our country's recent history against prej-

udice and injustice. Instead of viewing the designation as just one of many designated dates on the calendar, consider Women's History Month a challenge to envision what we would like written into our nation's history in the years to come, as we continue to carry the torch forward towards liberty and justice for all.

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