


Making Strides:

How Women Are Gaining Under the Law and in Service to It

Edited by Susan L. Harper, Ferve Ozturk, and the Committee on Women in the Law



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CWIL would like to recognize and express our appreciation to the *CWIL Journal* Task Force Committee members, including Task Force Chairs **SUSAN L. HARPER, FERVE OZTURK**, and members **DENISE BRICKER, MARILYN FLOOD**, past CWIL Chair **ELLEN G. MAKOFSKY, NIKKI ADAME WINNINGHAM** and staff liaison, NYSBA General Counsel **KATHY BAXTER**. We would also like to thank **KATHERINE MOSTACCIO**, our fearless editor; **DAVID C. WILKES, NICHOLAS J. CONNOLLY, DAN MCMAHON, KATHRYN CALISTA**, and the entire *Journal* editorial board and staff for their support.



We are delighted to welcome you to the first NYSBA *Journal* devoted to issues impacting women. The Committee on Women in the Law (CWIL) conceived, launched and coordinated this special *Journal* edition with the outstanding support of the NYSBA's editors and leaders in honor of our 30th anniversary, our steadfast work advancing women's rights and their status in the profession, as well as furthering critical legislation and policy in New York State and the country.

We Have Come a Long Way

The birth of the modern day women's rights movement started on July 19-20, 1848, at the First Women's Rights Convention in Seneca Falls, New York. More than 300 women and men attended the historic gathering, organized by Elizabeth Cady Stanton and Lucretia Mott, to address women's social, economic and political rights. The delegates' grievances and demands were detailed in a Declaration of Sentiments, signed by more than 100 women and enlightened men, including Frederick Douglass.¹ It opened with the following powerful words: "*We hold these truths to be self-evident: that all men and women are created equal.*"²

Many of the issues they called out in the Declaration involved women's political disenfranchisement, which in turn impacted women and their families socially and economically. These included not having the right to vote or participate in the legislature, and not having a say in laws that impacted them, such as divorce and child custody. Moreover, the delegates called out issues of economic injustice impacting women, not being able to participate in professional opportunities in medicine and law, to name a few, and in particular complained of poor pay for the sort of jobs that were open to them.³

It would take women 69 years to secure the right to vote in New York State in 1917, and three years later, or in 1920, when the 19th Amendment was ratified so that women could vote in national elections. While Stanton, Mott and even Susan B. Anthony did not live to see or celebrate the fruits of their labor, trailblazing and strategic leaders of the major women's associations of their time, along with legions of members and organizers, deep-pocketed women and men who supported them, and courageous politicians, helped bring home the New York victory.⁴ This year New Yorkers celebrate the 100th Anniversary of women gaining this sacred right and we honor this important anniversary in this *Journal* with remarks from

the 77th Lieutenant Governor of New York State, Kathy C. Hochul, President of the New York State Senate, Chair of the Regional Economic Development Councils and New York State Women's Suffrage 100th Anniversary Commemoration Commission. Since the pivotal Seneca Falls Convention, women, along with many male champions, continued to work to break down political, social, economic and gender barriers throughout our nation, including in New York, when Kate Stoneman was the first woman to pass the New York State Bar in 1885 and was admitted to practice a year later, after the Legislature passed a bill allowing all qualified applicants, regardless of gender, to be admitted.⁵

Awe or Pause?

Imagine the foremothers' awe (and pause) if they could witness the progress and stalemates of today's women. Women make up half of all law school graduates; they hold 104, or 19.4 percent, of the seats in the United States Congress and 21 percent of the seats in the U.S. Senate.⁶ Women are law firm partners, practice leaders, chairpersons of firms, and members of all levels of the judiciary. Married and single women can own their property and possess rights in connection with divorce and child custody, points of great contention the delegates raised at the First Women's Rights Convention.

The vision of a world where women and men achieve equality in all spheres of life has been a driving motivation for the Committee over the years.

However, as far as women have progressed, women's advancement is moving at what many have described as a glacier's pace. As we report on in this *Journal*, through timely and thought-provoking articles authored by leading lawyers and advocates in their practice areas, women on a whole still face hurdles due to pay disparity, a lack of a nationwide paid leave policy, sexual discrimination, domestic violence, and tragically, sexual exploitation, through modern day human trafficking, and virtual exploitation through the internet. Can an Equal Rights Amendment give U.S. women the needed protections and teeth to be truly equal? Special contributor and lifelong champion of women's rights, United States Congresswoman Carolyn Maloney, lays out the case here for us to revisit and consider.

Turning to women in law firms, recent research conducted by CWIL's Best Practices Committee found that while women in law are making some encouraging and exciting strides, significant challenges remain. The New York City Bar Association's 2015 Diversity Benchmarking Report, for example, found that "women partners at signatory firms reached 19.7%, the highest level since the City Bar began tracking diversity data in 2004," and have "showed notable gains in representation on firm management committees and among practice group heads . . ."⁷ However, on close inspection, many of these gains have not translated to all women: "white women make up 85% of all women partners and minority women make up less than 3% of all partners at signatory firms."⁸ On an encouraging note, it was found that minority lawyer representation increased at signatory firms in the areas of Special Counsel and on leadership bodies, such as management committees and practice group heads.⁹

The report further revealed that gender and race impact partnership tracks: "white men represented 77% of all equity partners at signatory firms," while "minority and women partners continue to be concentrated at the income partner level," rather than as equity partners.¹⁰ Search firm Major, Lindsey & Africa surveyed 2,100 law firm partners across the United States and found that there is a 44 percent pay differential between female and male partners in compensation.¹¹ In fact, the *New York Law Journal* and other legal publications have reported an increasing number of lawsuits filed by women attorneys alleging gender bias, often over pay inequity. Origination credit, Major, Lindsey found, is cited as a key contributing factor for the pay disparity.¹² How do we move women's roles forward in the profession? One group of diversity and inclusion consultants provides their insights here on how law firms can improve these efforts. Also, former Chairs and special task force members of NYSBA's Commercial and Federal Litigation Section discuss current initiatives to advance women's role in the courtroom.

CWIL: A Champion for Women for Over 30 Years

In light of these statistics, the NYSBA Committee on Women in the Law has championed to advance women's rights, advocating for and effecting change in the home, workplace, and court system domestically and abroad. Since our establishment 30 years ago in 1986, CWIL has been charged with the responsibility of identifying, studying and making recommendations to address gender bias and law-related issues affecting women. The Committee proposes legislation; the adoption and implementation of policy by the Executive Committee and House of Delegates of the New York State Bar Association, and other actions to ensure the fair treatment of women under law and the full participation of women in the administration of justice and as equal members of the legal community. The Committee is a standing com-

mittee of the Association as designated by the House of Delegates in 1989.

The CWIL conducts studies and develops recommendations; comments on and proposes legislation; drafts model policies on women's issues; presents educational programs and publications; raises awareness of women's issues; and coordinates its work with other Committees and Sections of the Association as well as other organizations addressing gender-related legal issues. The Committee also presents two keystone MCLE programs each year that feature topics of particular relevance to women attorneys and presents the prestigious Ruth G. Schapiro Award and Kay Crawford Murray Award to honor members of the Association who have made extraordinary efforts to advance diversity and address the concerns of women. In addition, in 2014, the Committee presented a Report and Recommendation to the Executive Committee of the NYSBA recommending steps NYSBA could take to increase participation by women attorneys.

In connection with this report, the Committee created a New York State Woman Attorney's Trailblazer Exhibit and presented Trailblazer Awards to the three living Trailblazers honored in the exhibit. This exhibit features women who fought discrimination and gained a foothold in a range of careers: among them the first woman admitted to the New York State Bar, the first African-American woman judge, the first woman elected district attorney, the inaugural head of New York's Civil Rights Bureau, and the first woman judge of New York's highest court, as well as the New York State Bar Association's first woman president. Awards were presented to the exhibit's living trailblazers at the June 2015 New York State Bar Association House of Delegates meeting in Cooperstown, New York. The exhibit was featured around New York State, including at the Capitol in Albany and at many law schools, and was featured in NYSBA's Fall 2015 *Women's Community Journal*. Given the success of the exhibit, in 2017, the Committee, will be preparing an exhibit to commemorate the 100th Anniversary celebration of the women's right to vote.

Our Story, Our Achievements for Women

The Committee was appointed in 1986 as the Special Committee on Women in the Courts to study and help implement the findings of the New York State Task Force on Women in the Courts. Under the leadership of its chair, Ruth G. Schapiro, the Special Committee prepared an extensive report recommending legislative proposals concerning domestic violence; alimony and support; matrimonial law; surveying the treatment of women lawyers and women court employees; and suggesting initiatives by NYSBA to combat gender discrimination.

After gaining standing committee status, the Committee set to work to implement the recommendations set forth in the 1986 report. We have been active in advocating for

change for family, health and safety issues; gender equity; international issues, and Association leadership.

Family, Health and Safety Issues

In 1990, the CWIL developed a model childbirth and parenting leave policy. In 1992, we prepared a resolution supporting initiatives to combat breast cancer. Three years later, in 1995, the Committee set out a model policy on alternative work arrangements. In 2009, the Committee prepared a report opposing the "Stupak" amendment of the Affordable Care Act, which would have limited access to health care for family planning. In 2010–2014, the CWIL prepared various memoranda in support of legislation concerning pay equity and pay transparency. In 2014–15, the Committee also prepared and presented an extensive report and recommendation in support of a proposed federal paid leave bill, the Family and Medical Insurance Leave Act (S. 786). After several presentations, the report was adopted by the Association in a unanimous vote of NYSBA's Executive Committee and supported by the House of Delegates. Paid leave was also made a 2016 NYSBA Legislative Priority and the Association has been lobbying Congress to pass the Act. And now New York is only one of five states in the country to have its own Paid Leave Law, which our fellow committee member, Sheryl Galler, introduces to readers in this issue.

The Committee has also strongly supported efforts to increase the safety and privacy of women in the workplace and beyond. In 1992, the Committee developed a model sexual harassment policy for law firms. In 2006, we reviewed and endorsed state legislation to extend the statute of limitations in rape cases. And in 2016, to address the exploitation of women and girls personally and professionally on the internet, CWIL prepared a memo supporting legislation to combat so-called "revenge porn." We are pleased to include an article focusing on this subject by one of the leading lawyers blazing the trail in this evolving area, our fellow committee member, Carrie Goldberg.

Gender Equity

The vision of a world where women and men achieve equality in all spheres of life has been a driving motivation for the Committee over the years. In 2002–2003, the CWIL performed an extensive Gender Equity Study. In 2005, the Committee endorsed state legislation to adopt a state Equal Rights Amendment. The Committee has also advocated for pay equity, preparing a report supporting the New York State Fair Pay Act in 2011. The Committee's efforts have been integral to the Governor's signing legislation important to women such as the Equal Pay Act in 2015, an important piece of the Women's Equality Act.

International Issues

The Committee has also looked beyond the borders of New York State and the country to advise on issues

of importance to women across national lines. In 1994, NYSBA prepared a resolution calling for ratification of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. The Committee had also formed a subcommittee to study the issue of sex trafficking, and it prepared a resolution in 2006 endorsing legislation to address abuse of women in trafficking.

NYSBA Leadership

The Committee has historically been mindful of the powerful role NYSBA can play to advance issues of importance to women, and has advised the Association on these matters. In 1993, the Committee prepared a report on participation levels of women in NYSBA, and prepared a supplemental report five years later discussing ways to enhance participation by women in NYSBA. As women attorneys' participation increased in the state bar, in 2014, the Committee prepared a report outlining initiatives for the Association to recruit, retain, and tap leadership potential from women members.

Help Be Part of Change

In more than 30 years as an extension of the New York State Bar Association, the Committee on Women in the Law has helped effect true and lasting change for women in New York State. We are looking forward to continuing the fight to make critical progress for women in the years to come and greatly appreciate the support of our fellow members of the bar and leaders who have helped

make these advancements happen. As we move forward, we encourage you to join our steadfast efforts to help us continue to address the gender barriers impacting women today and tomorrow. ■

If you are interested in joining the Committee, please email the Committee's NYSBA liaison Kathy Baxter, kbaxter@nysba.org, for an application for the 2018-19 NYSBA year.

1. First Women's Rights Convention, National Park Service, www.nps.gov/wo/learn/historyculture/the-first-womens-rights-convention.htm.
2. *Id.*
3. *Id.*
4. Susan Ingalls Lewis, *Women Win the Right to Vote in New York State*, <https://sites.newpaltz.edu/nyrediscovered/2013/11/06/women-win-the-right-to-vote-in-new-york-state>.
5. For more on Kate Stoneman, visit Albany Law School's Kate Stoneman tribute page at <http://www.albanylaw.edu/katestoneman/Pages/news.aspx>.
6. Center for American Women and Politics, Eagleton Institute of Politics, Rutgers University, www.cawp.rutgers.edu/women-us-congress-2017/.
7. Diversity Benchmarking Report 2015, New York City Bar Association, at 2-3, http://documents.nycbar.org/files/NYC_Bar_2015_Diversity_Benchmarking_Report.pdf.
8. *Id.*
9. *Id.*
10. *Id.*
11. Elizabeth Olsen, *A 44% Pay Divide for Female and Male Law Partners, Survey Says*, New York Times, Oct. 12, 2016, www.nytimes.com/2016/10/13/business/dealbook/female-law-partners-earn-44-less-than-the-men-survey-shows.html?_r=0.
12. *Id.*

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