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Women's work

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WOMEN'S WORK

Jobs, the law, and a century of redefining "differences." Legal scholar **Stephanie M. Wildman** offers a take on the big picture.

In 1982, when Lillian Garland, a receptionist at a West Los Angeles branch of California Federal Savings and Loan, took maternity leave to have a baby, she didn't plan on spending several months away from work. But Garland suffered complications; the doctor delivered her daughter by Caesarean section and prescribed three months' leave.

When Garland sought to return to work at Cal Fed, the bank told her that her job had been filled; no other positions were available. Garland, a single mother and now unemployed, couldn't pay the rent on her apartment and was evicted. She agreed to let the father take care of their infant daughter; then she lost custody of the child.

But Garland was a fighter. She sued to regain custody. And she sought to enforce her right to maternity leave, which was guaranteed by California law. "Women should not have to choose between being a mother and having a job," she told *Time*.

Her employer, joined in a suit by the U.S. Chamber of Commerce and the Merchants and Manufacturers Association, argued that the federal Pregnancy Discrimination Act preempted the state legislation, prohibiting treatment of pregnancy leave as a special case. Workers with other temporary disabilities had no guarantee that a job would await them when they returned; the same rule should apply to pregnant women.

In 1987, the U.S. Supreme Court decided otherwise. In a 6-3 ruling, the court explained that the federal law only prevented discrimination *against* pregnant women; the Court said federal law did not prohibit states from giving favorable treatment to pregnant workers.

Garland had already returned to the savings and loan—briefly—and then gone to work in real estate by the time the Supreme Court heard her case. In the years

following this decision, Congress passed the Family and Medical Leave Act, providing for unpaid leave nationally. Yet the United States has a long way to go on the road to achieving a family leave policy that ensures equality in the workplace. And Garland's story is just one example of the struggles by courageous women that led to dramatic changes in the role and status of women in U.S. society in the past century.

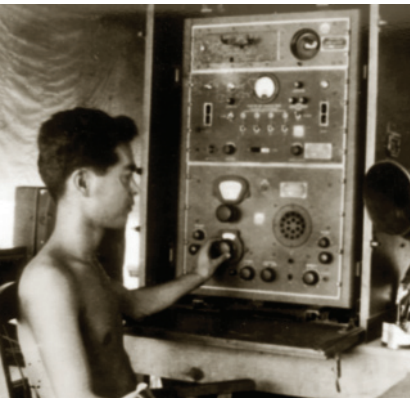
THE CENTER OF HOME

The same year that Santa Clara established its law school, California suffragists won the right to vote. Nine years later, the 19th Amendment extended that right across the country. Changes in women's citizenship signaled the beginning of this era of struggle and progress toward women's full democratic participation.

But for women of all races, ethnicities, sexual orientations, and different degrees of wealth, struggles to use the legal system to recognize equality have been an uphill battle for most of the century. Even recognition of the *existence* of sex discrimination was problematic for decades. Take the case of Gwendolyn Hoyt, which was argued before the Supreme Court in autumn 1961—just weeks after Santa Clara University began admitting women as undergraduates.

Hoyt had been convicted by an all-male jury in Florida of murdering her husband with a baseball bat. In her appeal, she argued that she had a right to women on her jury. Florida allowed women on juries at the time—but only if they volunteered for service. Men were automatically registered. As a result, not many women served on juries.

In a unanimous decision, the Court ruled against Hoyt, holding that a reasonable basis existed for classifying men and women differently and excusing women from jury service. "Woman is still regarded as the center



1942

Japanese-American law student (and future judge) **Wayne Maseo Kanemoto J.D. '42** is interned by the U.S. government at a converted horse-racing track in Santa Anita. It is there that he receives his diploma from SCU; with support from the University, he is permitted to take the bar under military escort in Los Angeles. He later serves with the U.S. Army in India and Burma.

1943

Law school closes for WWII.



What becomes a J.D.?

There are some 10,000 Santa Clara law alumni today. Likewise, there are myriad paths they've followed. There's California Supreme Court Chief Judge **Ed Panelli '53, J.D. '55** and California Appeals Court Associate Justice and former California State Senator **Charles Poochigian J.D. '75**. Immigration attorney **Zoe Lofgren J.D. '75** now serves in the U.S. House of Representatives. Likewise, in South Korea, **Hae-Suk Suh J.D. '88** has served in the National Assembly. **Al Ruffo '31, J.D. '36** co-founded the San Francisco 49ers and led as mayor of San Jose. **Peter McCloskey J.D. '80** and **Alan Tieger J.D. '75** have tackled grim global issues at the International Criminal Tribunal for the Former Yugoslavia in The Hague. **Carrie Dwyer '73, J.D. '76** is now executive vice president, corporate counsel, and corporate secretary for Charles Schwab & Co. **Catherine Sprinkles J.D. '73** (of McPharlin, Sprinkles and Thomas LLP) created the Santa Clara Women Lawyers network. And **Thomas Romig J.D. '80** served as Judge Advocate General for the U.S. Army. At santaclaramagazine.com, follow links to their stories and more.

of home and family life," wrote Justice John Marshall Harlan.

A WOMAN WALKS INTO A BAR

In the workplace, legal challenges began reshaping the landscape from the outset of the century: Advocates for women litigated the validity of laws guaranteeing minimum wages and maximum hours. In a 1908 victory hailed by Progressives, in the case *Muller v. Oregon*, the Supreme Court prevented employers from requiring overtime work of women. Louis Brandeis, then a counsel for the State of Oregon, cited social science support for women's "differences" in urging protection for them. But those "differences" were also used to justify unequal treatment of female workers, in essence "protecting" them out of jobs—such as in a 1948 decision, *Goesaert v. Cleary*, that upheld a Michigan statute preventing women from bartending, unless they were related to a male bar owner.

But it was when a woman stood before the bar—not behind it—that a true watershed moment for women and the law came, in 1971: Future U.S. Supreme Court Justice Ruth Bader Ginsburg argued an appeal before the Court on behalf of Sally Reed, who was denied the right to serve as the administrator for her son's estate after he committed suicide. Probate law in Idaho, where Reed lived, automatically gave preference to her estranged husband, Cecil, when it came to serving as administrator. The Court ruled that the Idaho law violated the 14th Amendment's equal protection clause, which prohibited arbitrary discrimination.

Before this period, sex discrimination claims had simply not been taken seriously by the U.S. Supreme Court. In the decades that followed, litigants frequently leveraged that reasoning to change laws that had excluded women from occupations and public service based on stereotyped roles—and to counter claims that "women are different."

Air Force Lieutenant Sharron Frontiero faced this kind of discrimination, which would not let her care for her family in the same way that military men could. The U.S. Air Force provided male officers an allowance and medical benefits for spouses; official policy denied a female service member these benefits, unless she could

prove that her income covered more than one-half of her husband's expenses. Frontiero fought this unfairness all the way to the U.S. Supreme Court. In 1973 the Court ruled in her favor, striking down the sex-based classification for allocating benefits.

So, much has changed—and much remains to be done. The inclusion of a prohibition against sex discrimination in Title VII of the 1964 Civil Rights Act led the U.S. Supreme Court to consider women's ability to have a child and remain employed, as Lillian Garland's story shows. Title VII litigation has also established a woman's right to be evaluated on her merits as a worker rather than on whether she comports with a stereotypical female role, wearing the "right makeup" and hairstyle. Law now protects a woman so she can perform her job without fear of rampant sexual harassment—or retaliation for complaining about it.

"Sex discrimination" has become part of legal vocabulary, yet that simple phrase fails to capture the breadth and depth of women's challenges, using law, to become equal participants in democracy in the United States. In the workplace and throughout society, Santa Clara Law and its graduates will be voices in the struggles and debates for the next century.

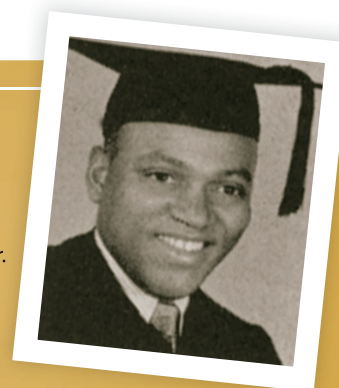
Some material in this article is adapted from *Women and the Law Stories* (Foundation Press, 2010), edited by Elizabeth M. Schneider and Stephanie M. Wildman.

1947

Law school reopens; 88 percent of enrolled students are veterans; 30 percent are married. A popular club is the Law Wives Club.

1952

First African American to graduate from SCU Law, **Aurelius "Reo" Miles**—a decorated World War II veteran who lost a leg during the war.



1955

SCU President **Herman J. Hauck, S.J.**, petitions the Jesuit Provincial in San Francisco to allow women to attend the Santa Clara School of Law after receiving "two or three applications each year lately from qualified women students." The petition is successful.