



WILS Connect

A publication of the Women in Law Section of the New York State Bar Association

Women in Law Section's Statement on
the Supreme Court's Decision in *Dobbs*
Overturning *Roe v. Wade*

Understanding the Current State of Title
IX's Application to Sexual Harassment
Allison E. Smith and Nicholas A. Smarra

NYSBA's Ukraine Task Force: From the
Rule of Law to the Rules of War
Deborah H. Kaye

WILS Connect

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Submission Guidelines

WILS Connect welcomes the submission of articles of timely interest to members of the Section in addition to comments and suggestions for future issues. For ease of publication, articles should be submitted via e-mail to tmazur575@gmail.com. Accepted articles fall generally in the range of 1-10 typewritten, double-spaced pages. Please use endnotes in lieu of footnotes. All submissions for consideration to be published in *WILS Connect* should use gender-neutral terms where appropriate or, alternatively, the masculine and feminine forms may both be used. Please contact Terri Mazur, Chair of the Reports, Surveys & Publications Committee, regarding further requirements for the submission of articles. Information on submission of articles can also be found online at nysba.org/womeninlaw.

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If you have written an article you would like considered for publication in *WILS Connect*, or have an idea for one, please contact the Chair of the Reports, Surveys, and Publications Committee:

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Articles should be submitted in electronic document format (pdfs are NOT acceptable), along with biographical information.

REQUEST FOR ARTICLES

Message From the Chair

One of my nephews is about to graduate from college and join the “real” world, with all that means in 2022. So he has “real world” workplace questions: Can I take time off for religious holidays? What happens if I get sick? He addressed his questions to me because, in addition to being an awesome aunt, I’m an employment lawyer.

In responding, I told my nephew the story of Edith Spivak, one of the first women graduates of Columbia Law School. When Edith graduated in 1932, law firms refused to hire her because she was female and Jewish. They weren’t subtle about it. Edith eventually took a job as a law clerk but was fired after her honeymoon because, according to her boss, a married woman’s place was in the home and her duty was to raise a family.

“So she sued him, right?” my nephew asked.

“Umm, no,” I told him. “The laws in those days didn’t protect her against employment discrimination.”

And then I thought, “How awesome.”

How awesome that my nephew and hopefully, his peers, accept without question that women in the workplace have equal rights under the law. How awesome that they accept without question that the courts will protect those rights. How awesome that they see women who are leaders in law, medicine, sports, politics, and business, and—soon—as four justices of the United States Supreme Court.

I was feeling optimistic. I looked forward to watching Judge Ketanji Brown Jackson being sworn in as the U.S. Supreme Court’s first Black woman justice. And I looked forward to celebrating the 50th anniversary of Title IX, the federal civil rights law that expanded women’s rights.

And now? The U.S. Supreme Court has issued its decision in *Dobbs*, overturning *Roe v. Wade*. Personally, I was appalled by the decision. I spent days feeling angry. And, like many of you, I had questions. What did the decision mean for New Yorkers and persons from other states? How would it affect health care providers? Are other rights at risk? How can I engage in the renewed fight for reproductive health care rights?



Sheryl B. Galler

The Women in Law Section is my source for answers and action. Within minutes after the Court released its decisions in *Dobbs*, we were on a videoconference call with leaders of NYSBA to coordinate our response. Since then, we issued a public statement decrying the decision for eliminating a fundamental right of women and childbearing persons. We held an open virtual meeting with a licensed clinical social worker to help us manage our grief and trauma. We have been gathering resources that answer our questions about rights and protections under New York State law. We scheduled webinars with experts who can help us understand what *Dobbs* means for reproductive freedom and other civil rights. We are amplifying the voices of activists and sharing news on how we can help.

We will continue these efforts while continuing to educate and advocate on so many other fronts. We will continue the fight for equal pay, for national paid family and medical leave, for voting rights, and for protections against domestic violence and sexual harassment, and for so much more. These rights were important before the Supreme Court’s decision in *Dobbs*. They are even more important now.

In this issue, you will read about some of what we do. Our General Counsels Committee presented advice from industry leaders on how to foster a culture of belonging and how to advocate for our own career success. Our Gender Issues Committee guided us on creating inclusive spaces. Our Programming Committee co-sponsored webinars by women trailblazers in law and leaders in diversity in international arbitration. Our Emerging Lawyers Committee created a mentorship program. Our Legislative Affairs Committee helped draft a new state law establishing a hotline for reporting workplace sexual harassment. Our Section participated in a series of programs to assist law students in making the transition from school to practice. And Section members have been working with the NYSBA Ukraine Task Force to support our Ukrainian colleagues and assist refugees.

You will also read an interview with NYSBA’s new president, Sherry Levin Wallach. And you will read about Title IX, which reminds us that the only way to advance women’s rights is to expand, not retract, civil rights.

If you have been reading my messages in this journal, then you know what makes me cry: people coming together as a team, pitching in, and joining forces. Watching and listening to my colleagues in the Women in Law Section jump into action, in response to *Dobbs* and on so many other projects, makes me cry. They are brilliant, dedicated, passionate and hard-working. I am fortunate to know them and to work with them.


They know, and we know, that we may not reach our goals in a year or 10 years or even a generation. We may be pushed backward as we try to move forward. But as the ancient Talmudic saying goes: “You are not obligated to complete the task, but neither are you free to desist from it.” We cannot throw in the towel. We must do the work. As we do, we take inspiration from pioneers and trailblazers such as Ms. Spivak, who went on to serve with distinction as an attorney in New York City’s Law Department for 70 years. Thanks to them,

we can look at how far we’ve come and what we can accomplish. Thanks to them, we can think: “How awesome.”

We look forward to connecting with you!

Warm regards,
Sheryl

Sheryl B. Galler is Chair of the Women in Law Section. She has been a member of NYSBA since 1994 and a member of WILS and its predecessor, CWIL, since 2012. Galler is also the Chair-Elect of NYSBA’s Labor and Employment Law Section and a member of the LELS Executive Committee. She practices employment law in New York City.



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Message From the Co-Editors

Fifty years ago, on June 23, 1972, the landmark Title IX law took effect, prohibiting sex-based discrimination in any school or other educational program that receives funding from the federal government. In honor of this anniversary, the current edition of *WILS Connect* features articles examining Title IX from a variety of angles, including Title IX's sexual harassment regulations, the role of the Title IX coordinator, the interplay of Title IX and New York State's "Enough Is Enough" law and criminal law in addressing sexual misconduct on college campuses, and personal reflections by two authors on how Title IX impacted their lives.



Terri A. Mazur

We were all set to commemorate just this Title IX milestone when Russia invaded Ukraine. We could not ignore this crisis nor the impact the war has had on Ukrainians. *WILS* has been actively involved in NYSBA's efforts to assist Ukrainians in this war and we have included several articles about those efforts, including the participation by *WILS* Chair Sheryl Galler, *WILS* Chair-Elect Kim Wolf Price, and *WILS* Champions Committee Co-Chair Deborah Kaye on NYSBA's Ukraine Task Force.

In this issue we are also fortunate to present an interview with the new NYSBA President, Sherry Levin Wallach, and a member spotlight interview of the Gender Issues Committee Chair Pamela Bass, who was an NCAA Division 1 basketball coach before she pursued a career specializing in higher education law and high school and collegiate sports law. We feature articles on the growing trend of women founding their own law firms, the increasing opportunities for women in Alternative Dispute Resolution (ADR), the historic confirmation of Judge Ketanji Brown Jackson as the first Black woman Supreme Court justice, and the path taken by one of the few female attorneys practicing in New York City in the 1950s. Last, but not least, we share highlights and photos from *WILS*' many cutting-edge webinars, programs, award ceremonies and virtual networking events over the past few



Margaret O. Sowah

months. If you missed any of our CLE programs, we invite you to access them on demand from the NYSBA website.

We would like to thank all of our featured authors and contributors, *WILS*' Reports, Surveys and Publications Committee, and everyone who helped with editing and proofreading. We especially thank NYS-

BA's professional staff members, Alyssa Colton, Section Publications Coordinator, and Lori Herzing, Publications Design Manager, for their invaluable work producing and publishing this issue.

We hope you enjoy reading these articles about subjects and events that are important to our Section members and to advancing women in the legal profession. As always, we welcome your suggestions and feedback. We also invite and encourage you to take an active role in our Section! Please contact Section Liaison Ernesto Guerrero (eguerrero@nysba.org) if you are interested in contributing to future issues of *WILS Connect* or joining *WILS* or any of our committees.

Warm regards,

Terri A. Mazur

Margaret O. Sowah

Member Spotlight: Pamela D. Bass

By Terri A. Mazur

Pamela D. Bass is an attorney at Thomas, Drohan, Waxman, Petigrow & Mayle, LLP. Her practice is primarily focused on providing counsel to public school districts, institutions of higher education, and municipalities in the Hudson Valley area. She serves clients on all aspects of education law, Title IX, labor and employment, and sports law as it relates to educational institutions. She graduated with honors from Brown University, has an M.Ed. from the University of Texas, and received her J.D. degree from the University of Connecticut School of Law. Bass is a member of the NYSBA Women in Law Section Executive Committee.



Pamela D. Bass

Q: I understand Title IX and sports have been significant factors in your life. Can you tell us about this?

A: I grew up with Title IX. Title IX was passed in 1972 when I was a young girl. Between 1975 and 1978 regulations were finally adopted implementing Title IX and allowed fathers to be supportive for their daughters in a new way. I grew up in a Milwaukee suburb and sports were a big part of my life growing up. My parents supported my love of sports and my dad was a strong champion for me participating in sports. I was the only girl on the YBA basketball team through the YMCA and the only girl playing on our local Little League baseball team. After Title IX became law, my dad encouraged me—and it was well received by the Milwaukee Bucks—for me to be the first girl to attend the Milwaukee Bucks basketball camp. Title IX created more opportunities for girls in sports and especially in high school and college. In high school, I played basketball and volleyball and did track and field. I went to Brown University and was fortunate enough to have the opportunity to play basketball. When I was in first grade, I had to write what I wanted to be when I grew up and I said I wanted to be a professional basketball player. However, I realized that was not going to happen, but I loved sports and wanted to stay involved in sports.

Q: Did you decide to pursue a career in sports?

A: Yes, I did. While I loved playing basketball, I knew I wanted to coach and so I decided to apply to graduate schools. I had encouragement from Arlene Gorton, who was a champion for women's sports at Brown University. I wanted to get a master's degree in sports management or athletic administration. I remember getting goose bumps when I received a call from Jody Conradt, the Hall of Fame coach at the University of Texas. It was an easy decision to pursue my master's degree at the University of Texas at Austin. I was a graduate intern with the women's basketball program. While at UT, I was privileged to have Dr. Donna Lopiano, who served as the Director of Intercollegiate Athletics for Women, as one of my professors. Due

to the leadership of Dr. Lopiano and Coach Conradt, Texas became arguably the premiere women's athletics program in the country. Once I graduated with my master's in education in athletic administration, I worked for 19 years in higher education and intercollegiate athletics, serving as head and assistant coach for women's basketball at a number of NCAA Division I colleges and universities. My first job as an assistant coach for women's basketball was at Providence College in Rhode Island for three years, then I moved to the University of Illinois-Chicago. Next, the University of Hartford hired me as an assistant coach for women's basketball, and then Yale University, followed by five years as an assistant coach at my alma mater, Brown University. In 2006, I became the head coach at Longwood University in Virginia for a year, before being hired as the head coach for women's basketball at Colgate University, where I stayed for four years.

Q: When did you decide to pursue a career in law and why?

A: While I was an assistant coach at Brown, around 2002, although I loved coaching, I really did not see myself retiring as a coach. I thought law could be interesting with my skill set and I considered going to law school. I did not, however,

apply to law school at that point. A mentor advised me to follow my dream of becoming a head coach first, noting that I would gain invaluable experience that would help me practicing law. When I left Colgate, I decided to go to law school. I went to University of Connecticut Law School and graduated in 2015. I was very interested in combining my love of sports and education into a legal career and connected with Dean Darcy Kirk, who was a great advisor and helped me select a curriculum that would achieve my goal of practicing sports law and higher education law. I was also very interested in negotiation and dispute resolution and started the University of Connecticut School of Law Negotiation and Dispute Resolution Society, which is still in existence. In fact, with the drive of Professor Jessica Rubin, who served as our advisor, the club was able to compete in negotiation competitions sponsored by the American Bar Association, Villanova University and Fordham University. In addition to serving on the Moot Court Board and being an editor with the *Insurance Law Journal*, I was also the co-president of the Entertainment and Sports Law Association during law school.

Q: Where do you practice? Please tell us about your law practice.

A: Through Dean Kirk, I was fortunate to connect with a law school alumna, Melissa Knapp, who practices employment and labor law for school districts. Melissa, who is now a partner in the firm, provided a connection for me with the partners at Thomas, Drohan, Waxman, Petigrow & Mayle. The firm focuses on education law, labor and employment law and municipality law. I had the opportunity to summer at the firm in 2014, and then joined the firm as an associate when I graduated law school. I have spent my entire legal career there. My practice focuses on education law, including labor and employment law. I handle sports law matters for kindergarten through 12th grade and college, day-to-day student matters and Title IX issues. I counsel public school districts, institutions of higher education, and municipalities in the Hudson Valley area.

Q: What is your favorite thing about practicing law?

A: I really enjoy negotiation work, trying to get a resolution. In addition, I like to explore interesting issues and think out of the box to best assist our clients.

Q: Do you miss coaching basketball?

A: Yes! I miss the strategy and working with the students. But I use the skills I learned in coaching every day in practicing law. As a coach, you have to listen; you must be a good listener and a good communicator. I have to communicate the law and options in an understandable way.

Similarly, in basketball you are always strategizing to maximize your strengths and mitigate your weaknesses. In the law,

we often use the same concept in negotiating or establishing an argument.

In basketball you are planning two to three passes or plays ahead, whereas in the law you are working on the short-term issue, while at the same time being mindful about the impact it could have long term or in the larger scheme of your client's operation.

Q: How did you get involved with WILS?

A: When I was starting out practicing as a lawyer, I saw that NYSBA was looking for help on committees. I met Susan Harper, who then was one of the co-chairs of the Committee on Women in the Law (CWIL) and she encouraged me to get more involved with CWIL. I met the other women on CWIL and found them to be very welcoming and encouraging. I was active first with CWIL and now with its successor, the Women in Law Section, ever since. It is always great to be part of a team. I am always learning from the people who belong to WILS. It gives me perspective and insight into other areas of the law and issues impacting women. WILS also has provided me with networking opportunities and the chance to meet people who practice in other areas of the law. It is great to have people you can reach out to who practice in other areas with questions or who can help you understand something.

Q: Tell us about the WILS Gender Issues Committee, which you chair.

A: The Gender Issues Committee is focused on bringing to the forefront issues based on gender that are important not only to women, but all lawyers. Our goal is to help educate and make people more aware of the current and cutting-edge issues impacting society based on gender.



Terri A. Mazur is the immediate past Chair of the Women in Law Section and co-editor of *WILS Connect*. Her practice has focused on complex financial services, securities and antitrust litigation. She was a partner in Mayer Brown's commercial litigation practice for most of her career and founded and chaired the firm's Women's Initiatives Committee. She was also a partner at Arnold Porter Kaye Scholer and Greenberg Traurig.

Women in Law Section's Statement on the Supreme Court's Decision in *Dobbs* Overturning *Roe v. Wade*

June 24, 2022 will forever be etched in our memories as the day our fundamental rights as equal citizens were taken away from American women and all childbearing persons. The majority's decision in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. ___ (2022), for the first time in U.S. history chooses to use the Constitution to limit rather than expand civil rights. *Dobbs* overturns the landmark case *Roe v. Wade*¹ which, almost 50 years ago, recognized a woman's constitutional right to abortion. The Court also overrules *Planned Parenthood of Southeastern Pa. v. Casey*,² which had affirmed *Roe* as *stare decisis* in 1992, and thus overturns a super-precedent.

The Supreme Court's disastrous decision will unleash and inflict irreparable harm on the lives of girls, women, childbearing persons, men, and all persons in the United States, as well as on the rule of law.

Although there have been no substantial changes in the law or facts, other than the composition of the Court since *Roe* was decided, the majority's decision erases five decades of precedent relied upon by Americans. It also undermines the Court's standing as a non-political branch of government. Even Chief Justice Roberts recognizes that the majority goes too far when he says: "None of this, however, requires that we also take the dramatic step of altogether eliminating the abortion right first recognized in *Roe*." *Dobbs*, 597 U.S. ____ (Roberts, C.J., concurring in judgment), slip op. at 5.

The majority's decision is an attack on the constitutional rights and lives of women and all childbearing persons. It intentionally disregards the importance of women's autonomy over their lives, physical selves, and well-being. It takes away from women and all childbearing persons the right to make decisions about their own bodies, reproductive freedom, and health care. It subverts women's status as equal citizens under the law and the right to privacy and liberty under the 14th Amendment. Make no mistake: without body autonomy, there is no equality. As the dissenting justices state: "[O]ne result of [the] decision is certain: the curtailment of women's rights, and of their status as free and equal citizens."³

Dobbs allows states to ban abortion, even without exceptions to protect the life and well-being of the mother and even in cases of rape or incest. Within weeks, women and childbearing persons in at least 21 states will be subject to

such laws. Some laws will go as far as to criminalize health care decisions by persons seeking abortions and the conduct of anyone who assists them, including medical professionals, parents, and loved ones. This is taking place even though a majority of Americans support a woman's right to choose, including in states where abortion has been strictly curtailed.⁴

No woman or childbearing person should be deprived of their right to decide whether to bear a child or their right to access safe reproductive care. No one should be forced to continue a pregnancy when their own life is at stake. No victim of a crime should be forced to continue a pregnancy resulting from rape or incest. No one should be subject to arrest or criminal prosecution based on the choices they make regarding their own healthcare. No one should be subject to arrest or criminal prosecution in the case of a miscarriage. No one should have to resort to unsafe or back-alley abortion methods. And yet, this is now the new reality for millions of Americans.

We live in a nation where there is no safety net for families. We have no universal health care, no universal child care, and no nationwide paid family or medical leave. Millions of women and their partners have relied upon *Roe* and *Casey* for family and life planning and for health care decisions. Against this backdrop, the majority fails to recognize that forced pregnancies increase maternal mortality rates, which already are exceptionally high for women of color in the United States.⁵ Forced pregnancies resulting from child rape and incest are likely to result in an increase in forced marriages, poverty, and ongoing abuse, effectively ending those girls' childhoods and futures. Forced pregnancies not only adversely impact women and girls, but their family members, partners, children, and communities.⁶

Furthermore, the purported bases for the majority's decision have no place in modern-day American jurisprudence. Among the rationale cited by the Court as "deeply rooted in history" are a 17th century jurist who supported marital rape and had women executed for witchcraft, and 19th-century statutes that criminalized abortion at a time when women were disenfranchised and had no say in choosing elected representatives or jurists, and when, in many states and territories of the United States, Black women were enslaved.⁷

The majority also fails to acknowledge that some religions recognize and permit women to access abortions.⁸ Thus, the

decision would deprive persons of religious freedom by preventing them from making decisions about their health and families based on their religious beliefs and tenets. At least one lawsuit has been filed objecting to the impact of state anti-abortion laws on religious freedoms.⁹

The decision is a harbinger for the Court's next actions involving individual rights and privacy. This decision has far-reaching and disastrous consequences for our country, imperiling the privacy and freedoms we have earned and cherish, including rights regarding contraception, sex, and marriage.¹⁰ The majority takes great pains to assert that this decision is limited to abortion. But Justice Thomas shows us how the Court might in fact roll back the rights we have gained under *Griswold*, *Lawrence*, and *Obergefell*.¹¹

We are grateful that New York State in 2019 enacted the Reproductive Health Care Act codifying *Roe v. Wade* into New York law. We applaud the New York Legislature and Governor Kathy Hochul for recently enacting six bills expanding abortion access and protecting health care providers and those traveling to New York State for abortion services.

We recognize, however, that these laws and rights are at risk if Congress were to pass a federal law banning abortion. That is why we need to act now.

The Women in Law Section of the New York State Bar Association urges members of Congress from all parties to pass federal legislation protecting freedom of choice and the rights of women, and to block any federal abortion ban. We also continue our strong support for proposed equal rights amendments to the U.S. and New York State Constitutions, and we urge legislative bodies to pass such amendments once and for all.

Opinions expressed herein are those of the Women in Law Section and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

Endnotes

1. 410 U.S. 113 (1973).
2. 505 U.S. 833 (1992).
3. *Dobbs*, 597 U.S. ____ (Breyer, Sotomayor, Kagan, J.J., dissenting), slip op. at 4; *see also id.* at 12 (“The Constitutional regime we enter today erases the woman’s interest and recognizes only the State’s (or the Federal Government’s).”).
4. *See, e.g.*, <https://news.yahoo.com/cbs-news-poll-americans-react-130011112.html> (published June 26, 2022); <https://www.houstonpublicmedia.org/articles/news/health-science/2022/05/04/424672/poll-shows-majority-of-texas-voters-would-oppose-overturning-roe-v-wade/> (published May 4, 2022).
5. *See* Center for Disease Control, *Maternal Mortality Rates in the United States, 2020*, at <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2020/maternal-mortality-rates-2020.htm>.
6. *See Unintended Pregnancy and Its Adverse Social and Economic Consequences on Health System: A Narrative Review Article*, at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4449999/> and *Economic Burden of Unintended Pregnancy in the United States*, <https://www.rtihs.org/publications/economic-burden-unintended-pregnancy-united-states>.
7. Appendices A and B of *Dobbs* cite laws of states and territories dating from 1825-1919. Women were not permitted to vote in 49 of the 50 states and territories when those laws were enacted and, in many of those states and territories, slavery was still in full force at the time those laws were enacted.
8. *See* <https://www.nbcnews.com/news/us-news/religions-support-abortion-rights-leaders-are-speaking-rcna27194> (“Some religions support abortion rights. Their leaders are speaking up”).
9. <https://www.npr.org/2022/06/15/1105229512/florida-abortion-law-synagogue-lawsuit-15-weeks>.
10. The dissent, co-authored by Justices Breyer, Sotomayor, and Kagan, set forth the stark result of this decision: “Whatever the exact scope of the coming laws, one result of today’s decision is certain: the curtailment of women’s rights, and of their status as free and equal citizens.” *Dobbs*, 597 U.S. ____ (Breyer, Sotomayor, Kagan, J.J., dissenting), slip op. at 4. They spell out the brutal consequences to women and childbearing persons: “from the very moment of fertilization, a woman has no rights to speak of. A state can force her to bring a pregnancy to term, even at the steepest personal and familial costs.” *Id.* at 2.
11. *Dobbs*, 597 U.S. ____ (Thomas, J., concurring), slip op. at 3.

Interview: NYSBA President Sherry Levin Wallach

By Kimberly Wolf Price

The Women in Law Section is proud to work with the leadership of the New York State Bar Association on issues, legislation, and programs critical to advancing women both within the legal profession and in our communities. Sherry Levin Wallach, who took office as NYSBA's 125th president on June 1, 2022, is the first woman to serve as president since WILS expanded its presence within NYSBA from a committee to a section. WILS Chair-Elect Kim Wolf Price sat down with President Levin Wallach just before she took office to learn more about her background, her path to the presidency and her plans for the year ahead. Below is an excerpt of that conversation.



Sherry Levin Wallach

KWP: I want to start out by thanking you, Sherry, for taking time to speak with me.

The Women in Law Section is truly looking forward to working with you as NYSBA President.

SLW: Please know that I appreciate this opportunity to talk to you. And I always look at the wonderful programming [WILS does]. I try to attend the programs. I'm always happy to do whatever I can to support the Section, because I think it's so important.

KWP: Thank you. We appreciate that! My first question to you is, are you excited to start your tenure as president of NYSBA?

SLW: Yes, absolutely.

KWP: What excites you about this role?

SLW: I would say you caught me at a good time because I'm in Albany [for] three days to make committee and task force appointments and finalize my plans for the coming year. As I walk around this building, I remember being in here as a young lawyer and being almost intimidated by the grandeur of the association and thinking about what incredible leaders the past presidents of the New York State Bar Association have been. [L]ooking at their pictures along the walls and thinking, wow, what an accomplishment. It's almost surreal to me, because, I have aspired to it for a long time. I so admired the position and I believe that my modesty will help me stay grounded and true to our membership. I think

it's really important to remember that the point of being president of this association is to be a voice for our members and to support our membership. This is about our profession. It's not about me; it's about the team membership creates. I am honored to have been chosen to be that voice. I am so excited to be that voice and to carry forth the issues while being a part of shaping the future of our association and profession.

KWP: That's fantastic. I truly really appreciate that, and I have to say I've always looked at those pictures, too. And I am excited to add another woman to that wall.

SLW: I was hoping you were going to say you aspired to that, too, because we need to keep mentoring more women leaders!

KWP: I think I'll work on WILS Chair-Elect and Section Chair first. It is a great feeling walking into [the NYSBA] building, with all that history. It must be exciting to be there as you plan and prepare for your presidency.

SLW: It is. I remember when former Chief Judge [Judith] Kaye's portrait was finished and the decision was made to hang it in the Great Hall, for not only was she a phenomenal attorney, leader, trailblazer, and chief judge, but that it is important to have a portrait of a woman leader on the wall of our Great Hall.

KWP: That is very important and, yes, she was actually a great example of being active in bar associations, because she was always active, so I guess that leads me to my next question for you. You have been active in NYSBA throughout your career. You just talked about what drew you to the role of president, being the voice of the members and the profession. What was your path to the NYSBA presidency? What Section or committee roles first got you hooked on bar service?

SLW: My first Section and my first active involvement was the Young Lawyers Section. I was asked to be a district representative. I was working in the Bronx district attorney's office at the time. In that role, I was putting on networking programs . . . [and] what really drew me in was the relationships I was making and the opportunities that were being presented to me. I developed relationships with attorneys and

judges from all around the state. And, after that, it was the mentoring. I coached mock trial teams as an ADA and taught at the NITA program at Hofstra Law from the early days of my career. I love teaching and being a mentor. And through NYSBA, I have been lucky to have great mentors. I rose through the ranks of the Young Lawyers Section and then a colleague asked if I would be interested in being appointed to the NYSBA Membership Committee, where I met and began to work closely with many past presidents and Executive Committee members, including some of my mentors, Past Presidents Kate Madigan and Glenn Lau Kee. It was there where my active membership blossomed. Since then, I have held many roles. I became very involved with the Criminal Justice Section, as criminal justice is my passion and main area of practice. After opening my small law firm with my partner Andrea Carrapella Rendo and diversifying our work to personal injury and general civil litigation, I joined the Trial Lawyers and the Torts, Insurance, and Compensation Law Sections. As I rose through the ranks of leadership in the Criminal Justice Section to Chair, I also applied for the nomination for member at large on the NYSBA Executive Committee, as I felt it would give me an opportunity to expand my knowledge of the laws and issues facing our profession. Each of the roles that I held taught me more about leadership and the New York State Bar Association. When I chaired the Criminal Law Section, I loved getting involved in the legislative initiatives. I learned so much. I was part of the work that went into supporting raise the age, issues around wrongful convictions, sealing of criminal convictions, discovery reform, alternatives to incarceration and re-entry. All things that were of great importance to me and my areas of practice. I found it to be incredibly exciting and rewarding.

KWP: What were some of the things you had to consider as you took on new positions and higher levels of leadership?

SLW: Like anyone, you have to consider where you are in your career and your life along with each opportunity, can you manage it and, for me, I was lucky enough that things kind of just fell into place as I came up on the possibility of the NYSBA presidency. My kids were going to be of ages that would allow me the freedom that I would need to work hard, long hours and travel. I also knew when I took the job at the Legal Aid Society [of Westchester County] as deputy executive director that I would not only be in the right place with my career, but that I had a boss who would support me.

KWP: That is great. I think the roles and relationships that are built—in our profession and through NYSBA service—are so critical to helping to guide our careers.

SLW: Oh, absolutely. In fact, when I closed my solo practice, it was someone I met through bar service, a fellow NYSBA House of Delegates member, the now Honorable James Hyer,

who helped me get my next role as of counsel to the firm where he was a partner.

KWP: I want to circle back to your start in bar service. You were at the Bronx DA's office. Often, private firms have the funding and encourage bar participation. But you started getting involved when you were working for the government. Can you talk about that?

SLW: Having been at the Bronx DA's office in the 1990s, which is where I started, the DA was Rob Johnson who was always supportive of community outreach and bar association work. Although I made the financial commitment to bar membership on my own, DA Johnson and I had a common mission to support our communities. One of the things that helped me land the job as an ADA in the Bronx was that, during law school, I was deeply involved in community outreach and focused on helping the homeless. One of the reasons I went to the office of Robert T. Johnson was because of his commitment to justice and to the betterment of the community. His support of bar participation allowed me to build it into my career as a habit. It was and always has been part of who I am as a lawyer. The membership renewals would arrive, and paying the bill was a no brainer to me because I was so involved and committed.

KWP: That's a good point. Starting with bar service early in your career helps you learn how to build it into your day.

SLW: Yes. I just did it—I made the commitment, and it was because of those early relationships that I formed and because of the support I was given. I like to tell the story of my first NYSBA Annual Meeting. I was on the escalator with Ken Standard, who was the NYSBA president then, and I thought “wow, that's the bar president” and I went up and introduced myself. He was of course gracious and nice. As a young lawyer, I kind of felt like I had met a movie star.

KWP: Because this is a large association with so many talented attorneys, I can absolutely see feeling that way! This is good advice for young lawyers or new lawyers—start making bar service a habit and then that's how you figure out how to have the time, isn't it?

SLW: Yes, well, that's exactly right and that's what I tell young lawyers all the time and those who I mentor through this organization. Mentoring is a key part of my involvement. I mentored young lawyers, and particularly women who are starting families and many have shared with me their concerns of how to balance volunteer work in the bar with their other obligations. I explain that they don't have to give it up completely, they just need to find the right balance and give as much as they can give at each point in time. One thing I do say is just to never give up their membership because the time will come when they can and will do more.

KWP: That's a very good point. Let's shift a bit. Will you talk briefly about one or two of the initiatives you'll focus on during your term?

SLW: I am happy to. I will be "Investing in the Future of Our Profession." As for the specifics, I think most people know that I'm not particularly secretive about my plans; I think the best secret I've kept about my plans with the Bar Association was the entertainment for the April House of Delegates dinner.

I think it's important to be transparent when you are a leader. One of the issues I am passionate about, and have been working on for years, is equality of the rights of our citizens who are residents of the U.S. territories. I'm creating a task force on the U.S. territories to, among other things, focus on inherent problems in the language used in, and the jurisprudence of, the line of Supreme Court cases known as the "insular" cases. The racist language used in these cases when referring to the residents of the U.S. territories has created a basis for racism in our country today, and these decisions have created a second-class citizenship status. These cases have a lot to do with equal protection and affect many of our New York residents and New York lawyers because we have such a high population of people who either were born in the territories, who were raised in the territories and moved here or have family in the territories. I also want to look at criminal justice issues, including modernization of criminal practice and improving criminal justice systems. I will be forming a task force to explore mental health and trauma impacted representation, as well as one on emerging digital currencies.

KWP: And within the association?

SLW: To focus on membership, membership, membership, membership! Young lawyer membership [and]... law student engagement. These are particularly important to me as they are the future of our profession. I am also focused on inclusion of diverse people and ideas—being fully informed. It is paramount that we have all the different points of view and hear the different arguments and perspectives. We, as women, bring a very important unique perspective to any discussion. I'm encouraged to see many more women leaders in my home county, in the Bronx where I started practice and in many other locations, and in our state with our governor, her chief counsel and the chief judge of the New York State Court of Appeals.

KWP: It's so important for young women to see role models. To see themselves in leadership—with all of the intersectional ties of identity, isn't it?

SLW: Exactly. This reminds me of a great story that I just heard the other day. A friend of mine was driving in her car with her daughter, who's seven or eight years old. They were

coming back from an event on Long Island, where I was raised. My friend happened to mention, "Sherry's from here" to her daughter. They started talking and somehow it came out that I was a lawyer and her daughter from the backseat says, "a lawyer, I thought all lawyers were men, Mommy." And that was just a couple weeks ago. So, my friend said not only is she a lawyer, but she's the deputy executive director of all the Legal Aid Society of Westchester County and going to be the president of the New York State Bar Association. I was proud to be used as an example for her daughter of what women can and do accomplish. While this story is apropos of our conversation on women in leadership, it also illustrates that we still have a long way to go!

KWP: We are having our conversation at the beginning of Well-Being Week in Law—and you mentioned issues of mental health earlier. What role can bar membership play in issues of well-being for attorneys?

SLW: Bar membership provides a space to be amongst people who are feeling similar feelings, for similar reasons, and then you develop camaraderie that you can rely upon. I'm not saying it should take the place of some other resources, but I think it's a really important aspect of well-being, and we at the New York State Bar Association have an incredible lawyers' assistance program that has helped guide so many in our profession through their battle with addiction.

KWP: Any final thoughts you'd like to share?

SLW: It all goes back to dedication, education, membership, and diversity, and all of these words that are so important to our profession and association. We have to remember it will take work, but we have to persevere. As long as we work together, take time to listen, are considerate of all views and are flexible, we will continue to lead the profession, the country and the world in law. And we have to be supportive of our colleagues, the profession and to those attorneys coming behind us. We must continue to blaze a trail.



Kimberly Wolf Price, a member of the Executive Committee of NYSBA's Women in Law Section (WILS) and currently Chair-Elect of WILS, will become Section Chair on June 1, 2023. She is the Attorney Professional Development and Diversity Officer at Bond Schoeneck King.

Hofstra Law Student Receives NYSBA's Inaugural Ruth Bader Ginsburg Memorial Scholarship

By David Howard King, NYSBA Staff



Then-NYSBA President **T. Andrew Brown** and **Sierra Sanchez**, recipient of the inaugural Ruth Bader Ginsburg Memorial Scholarship.

ED NOTE: *This article first appeared at NYSBA.ORG on April 2, 2022.*

The New York State Bar Association presented Sierra K. Sanchez with the inaugural Ruth Bader Ginsburg Memorial Scholarship during its House of Delegates meeting at the New York Hilton Midtown in Manhattan on April 2, 2022.

Sanchez, a second-year law school student at Hofstra, has distinguished herself through impeccable scholarship and a commitment to advancing women of color in law. Sanchez ranks first in her class and has received many academic honors. She is a member of the Hofstra Law Review and is involved in the arts and ballet.

The \$5,000 scholarship was presented by NYSBA's Women in Law Section, Committee on Annual Awards and Committee on Civil Rights. Created in 2020 after the death of Justice Ginsburg, the scholarship is designed to honor Justice Ginsburg's principles while encouraging brilliant law students. The award honors a law student who, through written submission, research project, or an exemplary internship, externship, or pro bono service, honors Ginsburg's legacy. The deans of New York's 15 law schools submitted one student each for consideration.

NYSBA President T. Andrew Brown noted that he was particularly impressed by Sanchez's co-founding of the Women of Color Collective at Hofstra Law, which seeks to create a supportive environment for women of color at the law school. Sanchez also described how she relied on dance and other creative endeavors to lift her spirits and to challenge preconceived notions about women of color.

"Ms. Sanchez embodies the change we need to see in the legal profession," Brown said. "She fought against the odds to become a successful student at a well-respected law school, worked to make a place for others like her and academically outperformed her peers. I look forward to seeing Ms. Sanchez's contribution to our profession."



Sierra Sanchez during her acceptance speech.

Understanding the Current State of Title IX's Application to Sexual Harassment

By Allison E. Smith and Nicholas A. Smarra



I. Introduction

On May 6, 2020, the United States Department of Education (the “Department”), under the Trump administration, issued final regulations regarding educational institutions’ obligations under Title IX concerning sexual harassment (the “2020 Regulations”). The 2020 Regulations sought to set forth clear legal obligations for how educational institutions receiving federal financial assistance (“recipients”) respond to allegations of sexual harassment.¹ While their efficacy may be debated, the Trump-era Department of Education’s final regulations mark decades of development in case law and federal policy addressing sex-based discrimination in federally funded educational settings and how sexual harassment is treated under that framework. This article aims to provide an overview of how sexual harassment has been defined under Title IX historically and highlights some of the significant changes resulting from the 2020 Regulations.

II. Title IX’s Passage and Early Developments

Title IX was passed by Congress on June 23, 1972, and provides as follows:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education pro-

gram or activity receiving Federal financial assistance.²

Despite the broad language in Title IX, many questions remained open concerning how these protections would be enforced and what exactly fell within the meaning of “discrimination on the basis of sex.” Seven years after its enactment, the United States Supreme Court in *Cannon v. University of Chicago*, 411 U.S. 677, 704 (1979), held that, although not explicitly provided for in the statute’s language, Title IX contained an implied private cause of action.

Determining that Title IX conferred a private remedy set the path for the continued development of Title IX’s protections and impact on educational institutions. The continued development can be seen in *Alexander v. Yale University*, 631 F.2d 178 (2d. Cir. 1980), and *Davis v. Monroe County Bd. of Educ.* 526 U.S. 529 (1999). These cases laid the foundation for the legal understanding of what “sexual harassment” meant under Title IX and when a Title IX recipient may be held liable for a Title IX violation.

In *Alexander v. Yale University*, five female students who previously attended Yale University sued Yale under Title IX and alleged injuries that were “the result of a pattern, practice, and policy of [Yale University], its officers, agents, and employees of neglecting and refusing to consider complaints of sexual harassment of women students seriously, with the ef-

fect of actively condoning continued sexual harassment of female students by male faculty members and administrators.”³

Although all of the plaintiffs’ claims were eventually dismissed for several reasons, including that their graduation made their claims moot, the Second Circuit did agree with the lower court that, of all the claims presented, one plaintiff’s assertion that her course instructor conditioned her receiving a certain grade on her engaging in sexual conduct with him could form a basis for a claim of sex discrimination under Title IX.⁴ Therefore, despite the outcome of the plaintiffs’ particular claims, the *Alexander* case helped lay the foundation for expanding Title IX protections to cover quid pro quo sexual harassment.⁵

The development of Title IX’s applicability continued in *Davis v. Monroe County Bd. of Educ.* 526 U.S. 629, 635 (1999). The *Davis* case is significant as the Court directly addressed the issue of when a Title IX recipient may be liable for student-on-student sexual harassment. In *Davis*, the petitioner sued the Monroe County Board of Education, alleging that her fifth-grade daughter had been the victim of sexual harassment by another student in her class. The alleged harassment included the student making vulgar comments to the petitioner’s daughter and a series of incidents that ultimately led to the student being charged with and pleading guilty to sexual battery. The petitioner alleged that, despite both her and her daughter informing various school officials of the alleged sexual misconduct, months went by, and the school took little to no action to address the situation.⁶ Additionally, the petitioner pointed out that when these events occurred, the Board of Education had neither trained its personnel to respond to peer sexual harassment nor established any form of policy on the issue.⁷

The Monroe County Board of Education did not dispute much of the petitioner’s argument. Instead, it took the position that the Board of Education can only be liable for damages under Title IX for its own misconduct and that the petitioner was seeking to hold it liable for a student’s actions.⁸ However, the Board’s argument misinterpreted the nature of the petitioner’s claim. As the Court clarified, the petitioner attempted to “hold the Board liable for its own decision to remain idle in the face of known student-on-student harassment in its schools.”⁹ Accordingly, the question before the Court was “whether a district’s failure to respond to student-on-student harassment in its schools can support a private suit for money damages.”¹⁰

The Court answered in the affirmative, holding that in certain limited circumstances, an institution’s “deliberate indifference¹¹ to known acts of harassment—amounts to an intentional violation of Title IX, capable of supporting a private damages action when the harasser is a student rather

than a teacher.”¹² The Court placed several limiting conditions on an institution’s liability for being deliberately indifferent to known acts of harassment, including that to be liable, the recipient must be in “substantial control” over both the harasser and the environment in which the harassment occurs.¹³ Additionally, a Title IX recipient would not be liable for damages unless its deliberate indifference “subjects its students to harassment,” meaning that it, “at a minimum, cause[s] [students] to undergo harassment or make[s] them liable or vulnerable to it.”¹⁴

The Court in *Davis* went on to articulate the following standard for when a Title IX recipient may be held liable for student-on-student sexual harassment:

[F]unding recipients are properly held liable in damages only where they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the [recipient].

The articulation of the standard for Title IX liability in *Davis* sets the stage for the continued development of Title IX case law and policy spanning over two decades and involving four separate presidential administrations, ultimately coming full circle in the 2020 Regulations.

III. Subsequent Guidance from the United States Department of Education’s Office for Civil Rights (OCR)

Outside of judicial opinions, much of the developments in Title IX have been through guidance documents instead of issuing formal regulations under rulemaking procedures. In 2001, OCR released the “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, and Third Parties” (“2001 Guidance”).¹⁵

The 2001 Guidance clarified that the Department’s definition of sexual harassment adopted in a prior guidance document was consistent with the *Davis* case despite the words being different.¹⁶ The definition of sexual harassment adopted by OCR was “conduct of a sexual nature is sufficiently severe, persistent, or pervasive to limit a student’s ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment.”¹⁷ OCR noted that both the Court in *Davis* and the Department’s guidance intended to capture the same concept, i.e., whether harassment is actionable under Title IX turns on the “constellation of surrounding circumstances, expectations, and relationships.”¹⁸ OCR goes on to indicate that “the more severe the conduct, the less the need to show a repetitive se-

ries of incidents”—thus the definition of sexual harassment under OCR’s 2001 Guidance only requires a showing that the sexual harassment was severe *or* pervasive, not both. OCR also clarified the standard by which it would evaluate a recipient’s response to a claim of sexual harassment. Instead of the “deliberate indifference” standard used by the Court in *Davis*, OCR stated that “[a] school has a responsibility to respond promptly and effectively to sexual harassment.”¹⁹ Although there appears to be a discrepancy between the two standards, OCR explained that:

[e]ffectiveness has always been the measure of an adequate response under Title IX [e]ffectiveness is measured based on a reasonableness standard. Schools do not have to know beforehand that their response will be effective. However, if their initial steps are ineffective in stopping the harassment, reasonableness may require a series of escalating steps.²⁰

Whether the deliberate indifference standard is consistent with the prompt and effective standard remains to be seen. However, the phrasing of “prompt and effective” would appear to set a standard for educational institutions to strive towards, whereas the “deliberate indifference” standard seems to set a floor for an institution’s response to an allegation of sexual harassment.²¹

In 2011, the Department of Education released a “Dear Colleague” letter specifically focusing on sexual violence as a form of sexual harassment prohibited under Title IX (the “2011 Letter”).²² The 2011 Letter clarified that sexual violence, including rape, sexual assault, sexual battery, and sexual coercion, were all forms of sexual harassment covered by Title IX.²³ OCR reiterated that the conduct need only be severe *or* pervasive to constitute sexual harassment, noting that a single instance of rape is sufficiently severe to create a hostile environment.²⁴

OCR also clarified *when* a Title IX recipient must respond to alleged sexual harassment, noting that:

Title IX protects students in all the academic, educational, athletic, and other programs of the school, whether those programs take place in a school’s facilities, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.²⁵

Unlike in *Davis*, OCR’s 2011 Letter did not require that a recipient have actual knowledge to impose an obligation

to respond to allegations of sexual harassment. OCR made clear that “[i]f a school knows *or reasonably should know* about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.”²⁶

Generally, opponents of the prior OCR guidance’s position against the use of cross-examination during Title IX hearings cite instances where individuals accused of Title IX violations were not able to challenge the complainants’ version of events.²⁷ Such commenters assert that cross-examination is an important part to restore due process and fairness to a system in which being accused is the same as being proven guilty.²⁸ Proponents of restricting cross-examination in Title IX hearings assert that conducting trial-like cross-examination will only act to exacerbate a survivor’s PTSD, anxiety, and depression.²⁹ Additionally, since no other student misconduct warrants a trial-like hearing, making a hearing like this only applicable to Title IX violations singles out sexual misconduct complainants with procedures designed to intimidate and undermine their credibility, leading to such claims being viewed with disproportionate suspicion.³⁰

The 2011 Letter marked the culmination of several decades of Title IX developments as it relates to sexual harassment and would continue to serve as the Department’s guidance on the issue until September 22, 2017, when the Trump administration rescinded the letter and implemented an interim guidance document while it began the rule-making process to create binding regulations – i.e., the 2020 Regulations.³¹

IV. The 2020 Regulations

A. Policy Objectives

The 2020 Regulations represent a pendulum swing away from the expanded broader enforcement of sexual harassment under the Obama-era Dear Colleague letters towards the more limited standard espoused by the Supreme Court in *Davis v. Monroe County Board of Educ.* The Department of Education sought to clarify that it was “not simply codifying the [*Davis*] framework.”³² Instead, the Department believed that it was adapting the framework “to the administrative enforcement context.”³³ Additionally, in issuing the 2020 Regulation, the Department sought to advance several policy objectives, including:

respect for freedom of speech and academic freedom, respect for complainant’s autonomy, protection of complainants’ equal education access while respecting the decisions of State and local educators to determine

appropriate supportive measures, remedies, and disciplinary sanctions, consistent with constitutional due process and fundamental fairness, and clear legal obligations that enable robust administrative enforcement of Title IX violations.³⁴

B. What is Sexual Harassment Under the 2020 Regulations?

Unlike the cases and guidance documents that preceded it, the 2020 Regulations identified three distinct categories of actions that could constitute sexual harassment, which seemingly narrowed the applicability of Title IX and recipients' obligations to respond to sexual harassment.³⁵ Those categories are: (i) an *employee* of a Title IX recipient conditioning the provision of aid, benefits, or services on an individual's participation in unwelcome sexual conduct (i.e., *quid pro quo*); (ii) unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's educational program or activity; and (iii) sexual assault, dating violence, domestic violence, and stalking as defined under the Clery Act and the Violence Against Women Act.³⁶

The main break in the sexual harassment definitions between the prior guidance documents and the 2020 Regulations is the standard of what amounts to a "hostile environment." The 2020 Regulations rejected the 2001 Revised Guidance's assertion that the "severe, pervasive or objectively offensive" standard is consistent with the "severe, pervasive, and objectively offensive" standard found in *Davis*.³⁷ In rejecting the "severe, pervasive, or objectively offensive" standard, the Department now effectively requires that an individual allege that sexual harassment was severe and objectively offensive and also establish a pervasive pattern of such conduct.

C. A Recipient's Obligation To Respond to Allegations of Sexual Harassment

i. When a Recipient Must Respond

The 2020 Regulations changed *when* recipients' obligations are triggered. Specifically, recipients must have "actual knowledge" of the alleged sexual harassment wherein the recipient has "jurisdiction" to address the conduct.³⁸

Under the 2020 Regulations, a recipient must respond to allegations of sexual harassment when it has "actual knowledge" of the alleged sexual harassment.³⁹ This marked a significant departure from the 2011 Letter negligence-like standard wherein a recipient had an obligation to respond if it knew or reasonably should have known about the sexual harassment allegations.⁴⁰ The actual knowledge standard does not allow for the possibility of inferring a recipient's knowl-

edge of alleged sexual harassment from the circumstances. Instead, the recipient must, in fact, know about the allegations.

Whether a recipient meets the actual knowledge standard depends on who has been made aware of the alleged sexual harassment and whether the setting is an elementary/secondary school or a postsecondary setting.⁴¹ Under the 2020 Regulations, if any employee in an elementary/secondary school environment becomes aware of sexual harassment allegations, the recipient has actual knowledge.⁴² The Department's reasoning for imputing actual knowledge on the recipient when any employee has been made aware of the alleged sexual harassment was that elementary/secondary schools act *in loco parentis* concerning authority over, and responsibility for, their students.⁴³

On the other hand, in a postsecondary setting, if a Title IX coordinator or any official who has authority to institute corrective measures on behalf of the recipient becomes aware of sexual harassment, the recipient has actual knowledge.⁴⁴ The Department noted that since the concept of *in loco parentis* does not apply in a postsecondary setting, this standard allows postsecondary recipients to decide which of their employees must, may, or must only with a student's consent, report sexual harassment to the recipient's Title IX coordinator.⁴⁵

The recipient must also have "notice" to impute actual knowledge and trigger their Title IX response obligations.⁴⁶ A recipient has notice if any of the individuals discussed above: (i) witnesses sexual harassment firsthand; (ii) hears about an allegation of sexual harassment from any source; or (iii) receives a complaint about sexual harassment by any means (e.g., written, verbal, electronic).⁴⁷

In addition to actual knowledge, to trigger a recipient's obligation to respond to alleged sexual harassment, the alleged conduct must have occurred in a setting wherein the recipient has substantial control over both the respondent (i.e., the person accused of sexual harassment) and the context in which the alleged sexual harassment occurred.⁴⁸ An example of a context not under the recipient's control could include an incident between two students at a local restaurant. Additionally, if the alleged perpetrator is, for example, a member of the outside community or a student visiting from another college, no response obligations are triggered.

Further, the 2020 Regulations make clear that for a recipient to have an obligation to respond to an allegation of sexual harassment, the complainant was: (i) in the United States; and (ii) trying to access the recipient's educational program or activity at the time of the alleged sexual harassment.⁴⁹ For example, if sexual harassment were to occur during a study abroad program or international school trip, a recipient would have no Title IX obligation to respond.⁵⁰

ii. How Must a Recipient Respond to an Allegation of Sexual Harassment?

Once a recipient has actual knowledge that alleged sexual harassment occurred in its jurisdiction, the 2020 Regulations require the recipient to respond promptly and without deliberate indifference.⁵¹ As in the *Davis* case, the deliberate indifference standard means that the recipient is required to act in a way that is “not clearly unreasonable.”⁵² To meet this standard under the 2020 Regulations, Title IX coordinators should be mindful that such a response must provide equitable treatment to both the complainant and the respondent.⁵³

Equitable treatment of both the complainant and the respondent is a recurring theme throughout the 2020 Regulations. This is a shift from the previous regulations and guidance, which, as previously mentioned, were seen to be favoring the complainant. At a basic level, it requires that the recipient offer “supportive measures” to both parties and follow an appropriate grievance procedure before imposing disciplinary sanctions against a respondent.⁵⁴ Supportive measures are individualized services designed to restore or preserve equal access to a recipient’s educational program or activity.⁵⁵ The Department’s focus on equity is again prominent in that supportive measures cannot be disciplinary or punitive and must be provided without a fee or charge.

Another significant change in the 2020 Regulations concerning *how* a recipient must respond to allegations of sexual harassment is the fact that now the complainant has the sole discretion to file a formal complaint. This means that once a recipient receives notice of sexual harassment by a third party, and the Title IX coordinator reaches out to the alleged victim, the recipient only has to continue to follow its Title IX grievance procedures if the victim chooses to file a formal complaint.⁵⁶

iii. Availability of Cross-Examination

The 2020 Regulations significantly overhauled the grievance procedure that recipients are required to implement, resulting in a detailed, if at times cumbersome, resolution process for addressing claims of sexual harassment. Some of the most significant changes in the 2020 Regulations are that the parties are able to: (i) inspect and review all relevant evidence directly related to the allegations; and (ii) through an advisor, cross-examine the other party and any witness during a hearing, or, participate in a question and answer process.⁵⁷ These items represent the administration’s effort to provide both parties equal access to information and the opportunity to present their side of the story.

The Department asserts that affording the parties the ability to inspect and review all relevant evidence directly related to the allegations during the investigation phase “will improve the grievance process for all parties” by affording participants

important due process rights.⁵⁸ Critics of this revision expressed concerns that allowing respondents to hear the complainant’s evidence (including the identity of the complainant’s witnesses) could result in intimidation or retaliation against the complainant and their witness, thereby discouraging complainants from moving forward with bringing formal complaints.⁵⁹ The Department’s response to these concerns centered on the fact that retaliation is prohibited under the regulations and that the identities of the parties and witnesses are kept confidential, subject to certain exceptions.⁶⁰

The availability of cross-examination represents a significant shift in policy for the Department. Prior guidance had taken the position that “allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment.”⁶¹ Therefore, opponents of allowing cross-examination view it as an effective method of discouraging complainants from moving forward with bringing a Title IX complaint.⁶² In the 2020 Regulations, the Department asserts that allowing cross-examination was essential to an adjudication’s truth-seeking purpose.⁶³ That said, the Department did recognize that cross-examination may re-traumatize complainants. Therefore, some safeguards have been put in place, including that cross-examination is conducted only by the party advisors and not directly or personally by the parties themselves, and, at a party’s request, the live hearing must occur with the parties in separate rooms with technology enabling participants to see and hear each other.⁶⁴ Additionally, the Department recognized that a hearing process may be more difficult in the elementary or secondary school context and, therefore, has provided school recipients at those levels the option to allow the parties to submit interrogatories to the opposing party, as well as any witnesses, instead of a formal hearing process.⁶⁵

V. Post-Trump Title IX Developments and Conclusion

The change in the presidential administration shortly after the Title IX regulations went into effect posed a fair amount of uncertainty on how the Biden administration would address the 2020 Regulations. In July 2021, the Biden administration released a question and answer addressing the 2020 Regulations, which was focused on clarifying that recipients may take steps beyond what the regulations require.⁶⁶ The Biden administration has decided to pursue formal rule-making to replace its predecessor’s regulations.⁶⁷

While at the time of writing this article it is not clear what the specific focus of the Biden administration’s Title IX proposed regulations will be, history may provide useful insight. In 2014 during the Obama administration, the White House Task Force to Protect Students from Sexual Assault

(co-chaired by the Office of the Vice President), released a report addressing sexual assault.⁶⁸

As part of its report, the task force identified several areas it sought to address including: (i) giving survivors more control through confidential victim advocates and revamped reporting and confidentiality protocols; (ii) providing support to institutions via sample comprehensive sexual misconduct policies; (iii) providing more specialized trainings to help school officials and investigators better understand how sexual assault occurs, how it is perpetrated, and how victims may respond both during and after an assault; (iv) developing new investigative and adjudicative protocols using a single trained investigator instead of an adversarial hearing process; and (v) providing comprehensive support, such as rape crisis centers and collaborating with local law enforcement.⁶⁹ The priorities highlighted in the task force's report may foreshadow the approach one could expect from the forthcoming Biden administration Title IX regulatory scheme.

Regardless of how the Title IX regulations are changed in the future, what is clear is that this area of the law has become a political football subject to the perspective of the particular political party in the White House. This is most clearly seen in the 180-degree change in many significant components of Title IX, including the definition of sexual harassment, the standard by which a recipient must respond, and the aspects of the grievance procedure concerning cross-examination. The current state of affairs concerning Title IX policy is that recipients and Title IX coordinators must be continually apprised of changes to the law or risk unknowingly being caught in the pendulum's swing.



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Endnotes

1. See 85 FR 30030 (2020).
2. Title IX does not apply to certain institutions such as educational institutions of religious organizations with contrary religious tenets. See 20 U.S.C. § 1681.
3. *Alexander v. Yale University*, 631 F.2d 178, 181 (2d. Cir. 1980).
4. *Id.* at 184.
5. See, e.g., *Lipsett v. University of Puerto Rico*, 864 F.2d 881 (1st Cir.,1988) (citing *Alexander* as an example of “quid pro quo” sexual harassment under Title IX); *Moire v. Temple University School of Medicine*, 613, F. Supp. 1360, 1366-67 (“[h]arassment of a student by tying academic advancement to submission of sexual pressures constitutes sex discrimination in education, because such treatment demeans and degrades women”).
6. The petitioner alleged that: (i) no disciplinary action was taken by the school; (ii) no effort was made to separate her daughter from the student; (iii) she was told by the principal that he guesses he will “have to threaten [the student] a little bit harder”; and (iv) the principal questioned the petitioner on why her daughter “was the only one complaining” about the student’s conduct despite other girls in the class allegedly being subject to the same misconduct. *Davis v. Monroe County Bd. of Educ.* 526 U.S. 629, 635 (1999).
7. *Id.*
8. See *id.* at 640-41 (noting that the government’s “enforcement power may only be exercised gains a funding recipient . . . And [the Court] has not extended damages inability under Title IX to parties outside the scope of this power.”).
9. *Id.* at 641.
10. *Id.* at 639.
11. The Court goes on to indicate that a recipient acts deliberately indifferent when its response (or lack thereof) to harassment is “clearly unreasonable in light of the known circumstances.” *Id.* at 648.
12. *Id.* at 643.
13. *Id.* at 644-45.
14. *Id.*
15. The 2001 Guidance supplemented a previous guidance entitled “Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties.” See Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, I (2001).
16. See *id.* at v-vi (2001).
17. *Id.* (emphasis added).
18. *Id.* at vi.
19. *Id.* at 9.
20. *Id.* at vi.
21. See, e.g., Catharine A. Mackinnon, *FEATURE: In Their Hands: Restoring Institutional Liability for Sexual Harassment in Education*, 125 Yale L.J. 2038, 2080 (indicating that the deliberate indifference standard gives institutions wide latitude and noting that effective action is seldom required of a school).
22. Office for Civil Rights, U.S. Dep’t of Educ., Dear Colleague Letter: Sexual Violence 3 (Apr. 4, 2011) (“2011 Letter”).
23. *Id.* at 2.
24. *Id.* at 3 (“The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment.”).
25. *Id.* at 3-4.
26. *Id.* at 4.

27. 85 FR 30312.
28. *Id.*
29. *Id.* at 30315.
30. *Id.* at 30314.
31. Office for Civil Rights, *Q&A on Campus Sexual Misconduct* (2017).
32. 85 FR 30033.
33. *Id.*
34. 85 FR 30035.
35. 34 CFR §106.30.
36. *Id.*
37. 85 FR 30035.
38. *See id.*; *see also* 34 CFR § 106.44(a) (discussing the substantial control requirement).
39. 34 CFR § 106.44(a).
40. *See* 85 FR 30041.
41. 34 CFR § 106.30 (a) (definition of “actual knowledge”).
42. The sole exception to this requirement is when the only employee that knew of the sexual harassment was the employee accused of such conduct. *See* 34 CFR §106.30.
43. 85 FR 30483.
44. 34 CFR §106.30.
45. *Id.* at 30040.
46. 34 CFR §106.30.
47. 34 CFR § 106.8.
48. 34 CFR § 106.44(a) (discussing the substantial control requirement).
49. *Id.*
50. Although the 2020 Regulations’ pullback on a recipient’s obligations to respond to sexual harassment, other sources may provide alternative avenues to impute responsibilities on educational institutions. Even though alleged conduct falls outside the scope of Title IX, such conduct may violate the institution’s code of conduct or various state laws. *See, e.g.*, N.Y. Education Law § 11 (defining harassment as the creation of a hostile environment by conduct or verbal threats, intimidation or abuse that has or would have the effect of (1) reasonably and substantially interfering with a student’s educational performance, opportunities or benefits; or (2) would reasonably be expected to cause a student to fear for his or her physical safety.).
51. 34 CFR § 106.44(a).
52. *Id.*
53. *Id.*
54. *Id.*
55. *See* 85 FR 30045; *see also* 34 CFR § 106.30.
56. 85 FR 30194.
57. 34 CFR § 106.45.
58. 85 FR 301294.
59. *Id.*
60. *Id.*
61. *See* 2011 Letter, *supra*, note 41 at 12.
62. 85 FR 30057.
63. *Id.* at 30069, 30133.
64. 85 FR 301294.
65. The option to use interrogatories instead of a hearing is not available to postsecondary institutions. The Department noted the option to use interrogatories was available to elementary and secondary education students was to recognize that students in that setting tend to be under the age of majority and certain procedural rights generally cannot be exercised effectively. *See id.* at 30052.
66. Office for Civil Rights, *Questions and Answers on the Title IX Regulations on Sexual Harassment*, 3 (2021).
67. Politico, *White House, Biden Administration Expects to Unveil Title IX Proposals in April*, <https://www.politico.com/news/2021/12/15/title-ix-proposals-april-524871> (April 21, 2022).
68. White House Task Force To Protect Students From Sexual Assault, *Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault* (2014).
69. *Id.* at 11-15.



Committee on Attorney Professionalism

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The Role of the Title IX Coordinator

By Allison E. Smith and Cassidy Allison

In general, Title IX applies to educational institutions who receive federal financial assistance from the Department of Education.¹ The purpose of Title IX is to prevent discrimination based on sex in educational programs.² Obligations that arise from Title IX cover many areas, including but not limited to athletics, admissions, treatment of LGBTQI+ students, employment, and sex-based harassment.³ In 2020, there were significant changes to the role of a Title IX Coordinator when dealing with sexual harassment complaints.

The 2020 regulations for sexual misconduct under Title IX provide a detailed outline of the role of the Title IX Coordinator (“Coordinator”) as it relates to sexual misconduct, including their obligation to ensure that the educational institution’s community is knowledgeable about how to report a Title IX complaint, and the steps they have to take during the formal complaint process.⁴ First, the regulations explain that the educational institution must name at least one employee to serve in the role of “Title IX Coordinator.”⁵ If the educational institution chooses to do so, they can name more than one Title IX Coordinator, which may be advantageous in a larger institution.⁶ The Coordinator is responsible for coordinating compliance with all of the responsibilities included in the Title IX regulations.⁷

The first role of the Coordinator in a sexual assault complaint, as outlined in the recent amendments, is the obligation to ensure knowledge of how to make a Title IX complaint and to ensure employees receive the proper training.⁸ It is the responsibility of the Coordinator to ensure that all applicants, participants, students and employees have notification of and are able to contact the Coordinator 24/7 by having access to their contact information including their name, title, office address, email address, and telephone number.⁹ This information should be readily accessible for an individual, such as being listed clearly in each student/employee handbook and listed on the institution’s website. Ideally, the Coordinator’s contact information should be in multiple places that are easily visible and accessible and not buried deep within the subpages of the educational institution’s website. It is best practice to have this information listed on the homepage, and if not there, then no more than one click away.

Next, regarding training, it is the role of the Coordinator to ensure that all employees are properly trained to help eliminate sex discrimination/harassment and understand when the district is deemed to be on actual notice.¹⁰ Also, the Coordinator should ensure that all parties participating

in Title IX investigations are properly trained on their role in order for them to fulfill their responsibilities and understand their duties, such as the definition of sexual harassment, how to conduct an investigation and the grievance process.¹¹

Most importantly, when an educational institution has actual knowledge of sexual harassment, the Coordinator must promptly contact the alleged victim and explain the process for filing a formal complaint.¹² This is sometimes referred to as an intake meeting. During the meeting, the Coordinator must review the grievance procedures and the educational institution’s policy on how to file a formal complaint.¹³ Further, the Coordinator must offer the potential complainant supportive measures. Supportive measures may be provided even if the individual does not choose to file a formal complaint. If the Coordinator does not respond promptly by scheduling this initial meeting or does not discuss all the required elements during the intake meeting, the educational institution could be found to be acting in a manner that is “deliberately indifferent,” exposing the institution to legal liability.¹⁴

Once the initial meeting takes place, the Coordinator is responsible for receiving the formal complaint, if filed, and must then act on the complaint in accordance with their grievance procedure.¹⁵ If a formal complaint is filed, the Coordinator must provide the appropriate notification to both the complainant and the respondent.¹⁶ During the notification of the parties, the Coordinator must review the situation to see if any further supportive measures must be put into place for either the complainant or respondent and explain the procedure to both parties.¹⁷

The Coordinator must also create and coordinate the Title IX team, which includes the investigator, decision-maker, facilitator of informal resolution and the appeals decision maker.¹⁸ The Coordinator should not be the same person as the investigator.¹⁹ It is highly recommended in the Department of Education’s guidelines that no two individuals hold more than one role in the Title IX process, which means that it is recommended that the Coordinator also not be the facilitator of informal resolution or the appeals decision maker.²⁰ The idea behind the Coordinator not serving in these roles is because the Coordinator is the individual who initially takes the complaint and offers supportive measures to the complainant.²¹ It is their duty to avoid the appearance of bias in favor of the complainant during the investigation because the Coordinator’s position should be neutral and oversee that the educational institution does not discriminate on the basis of sex.

Educational institutions may opt to have individuals rotate through these roles for different complaints, depending upon the type of investigation, whether there are employees or students involved, and how many investigations are taking place at the same time. For example, a director of human resources may be the best choice as investigator when the complaint is employee versus employee, but a dean of students may be better suited if the complaint is student versus student.

Once the investigation begins, the Coordinator should be kept informed of its status, although the Coordinator does not need to be provided all details of the investigation, and is responsible to coordinate any remedy if there is a finding of responsibility.²² The Coordinator is also responsible for the mandatory dismissal of a formal sexual harassment complaint at any stage of the process if the conduct alleged in the formal complaint would not constitute sexual harassment even if proven to have occurred, the conduct occurred outside the jurisdiction of Title IX, or if the alleged conduct did not occur during an education program or activity.²³ Further, the Coordinator is responsible for permissive dismissal of a formal sexual harassment complaint at any stage of the process if the complainant withdraws their complaint, if the respondent is no longer affiliated with the educational institution, or if evidence is unavailable.²⁴

With these new changes to the Title IX process, adding these specific obligations to the role of the Title IX Coordinator can help ensure that the educational institution follows

all proper procedures and avoids a situation where it could be found that the educational institution acted deliberately indifferent to a Title IX sexual misconduct complainant. It is the Coordinator’s job to follow a process free of bias and to avoid conflicts of interest.

Endnotes

1. U.S. Department of Education, Title IX and Sex Discrimination, August 2021, https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html.
2. *Id.*
3. *Id.*
4. Questions and Answers Regarding the Department’s Final Title IX Rule, Sept. 4, 2020, <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-20200904.pdf>
5. The United States Department of Justice, Federal Coordination and Compliance Section, <https://www.justice.gov/crt/federal-coordination-and-compliance-section-152#:~:text=The%20Title%20IX%20coordinator%20has,IX%20and%20the%20implementing%20regulations>.
6. National Federation of State High School Associations, The Title IX Coordinator: Roles and Responsibilities, April 27, 2021, <https://www.nfhs.org/articles/the-title-ix-coordinator-roles-and-responsibilities/>
7. *Id.*
8. *Id.*
9. Clery Act; 20 U.S.C. § 1092.
10. Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school. 34 C.F.R. § 106.30.
11. 34 C.F.R. § 106.45 (b)(1)(iii).
12. 34 C.F.R. § 106.44(a).
13. 34 C.F.R. § 106.45(b).
14. *Id.*
15. 34 C.F.R. § 106.44(a).
16. *Id.*
17. *Id.*
18. 34 C.F.R. § 106.45.
19. 34 C.F.R. § 106.445(b)(7)(i).
20. Department of Education, Questions and Answers on the Title IX Regulations on Sexual Harassment, July 2021, <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>.
21. *Id.*
22. *Id.*
23. 34 C.F.R. § 106.45(b)(3)(i).
24. 34 C.F.R. § 106.45(b)(3)(ii).



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Sexual Misconduct on a College Campus: The Interplay of Title IX and New York State’s Enough Is Enough Law and Criminal Law

By Julie M. Mohl and Pamela D. Bass

Picture it: A stranger jumps out from behind a bush, attacks a woman walking alone on campus, and rapes her at knifepoint in the dark of night. That is what most people envision when they hear the term “rape.” However, the majority of rapes and sexual assaults are committed by acquaintances or former intimate partners of the victim.¹ There are important considerations in the investigation of both types of attacks. This article focuses on the latter and the different avenues available to victims of sexual assault on college campuses in New York.

Addressing Sexual Assault—A Brief Recent History

In 2014, then-Senator Claire McCaskill (D-MO) published a report of sexual assaults on United States college campuses revealing that insufficient protocols and procedures were in place to adequately address and deter such behavior.² In January that same year, President Barack Obama established the White House Task Force to Protect Students from Sexual Assault.³

The task force, in its first report, explained that many cases of sexual assault were not referred to local law enforcement as, for many survivors, “the criminal process simply does not provide the services and assistance they need to get on with their lives or to get their educations back on track.”⁴ In addition, the task force recognized that a criminal investigation did not “relieve a school of its independent obligation to conduct its own investigation—nor may a school wait for a criminal case to conclude” prior to proceeding with its investigation.⁵

Pursuant to Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, “schools that receive federal financial assistance” must “take necessary steps to prevent sexual assault on their campuses, and to respond promptly and effectively when an assault is reported.”⁶ The United States Department of Education, Office for Civil Rights (OCR), is responsible for the enforcement of Title IX.⁷ The White House Task Force recommended increasing communication between institutions of higher education and law enforcement to best address and support the victims of sexual assault.⁸ In addition, it emphasized information sharing, transparency, and clarification of the roles of government agencies in the enforcement of Title IX.⁹ Furthermore, it aimed to increase OCR’s enforcement of Title IX by clarifying the obligations of educational institutions.¹⁰

With this backdrop, in 2015 New York State added a new article, Education Law 129-B (the “Enough Is Enough Law”), to address sexual assault on campus.¹¹ The aim was to have a universal definition of consent and to require training for both students and employees of institutions of higher education. In addition, the Enough Is Enough law (EIE) aimed to establish a database for annual reporting of aggregate information regarding sexual assaults by each institution.¹²

In 2020 there were 229 colleges and universities in the State of New York obligated under EIE to report data.¹³ There were 2,480 incidents reported with 1,201 occurring on campus, 945 occurring off-campus, and 334 occurring in an unknown location.¹⁴ Of the 2,480 incidents 339 (or 14%) had law enforcement involvement.¹⁵ In 2019, there were 4,031 incidents and 750 (or 19%) had law enforcement involvement.¹⁶ In 2018, there were 3,869 incidents and 732 (or 19%) had law enforcement involvement.¹⁷

Avenues to Address Sexual Violence on Campus

1. The 2020 Title IX Regulations

On August 14, 2020, the Department of Education, after undergoing administrative law formal rule making, put into effect new regulations for Title IX sexual harassment.¹⁸ Three requirements of the regulations may significantly affect whether a student or employee who has been an alleged victim of sexual harassment as defined by Title IX may decide to file a formal Title IX complaint.

a. Definition of Sexual Harassment and the Filing of a Formal Complaint

The Regulations define sexual harassment to occur in one of three ways: quid pro quo, hostile environment, and crimes of sexual violence.¹⁹ The crimes of sexual violence include: sexual assault as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), and “stalking” as defined in 34 U.S.C. 12291 (a)(31).

In addition, the Regulations no longer require the institution to file a formal Title IX complaint. The educational institution, upon actual knowledge of a potential claim, must act promptly and without deliberate indifference.

b. Right to an Advisor

The Regulations provide that either party may have the advisor of their choice—who may be, but is not required to

be, an attorney—present at all phases of the grievance procedure.²⁰ The advisor may inspect and review all evidence obtained as part of the investigation.²¹

c. Cross-Examination

Probably the greatest role of the advisor is to perform cross-examination of witnesses and the other party to the grievance. Pursuant to the regulations, “[a]t the live hearing, the decision-maker(s) must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s advisor of choice and never by a party personally. . . .”²² Following a federal district court ruling in July 2021 to vacate the regulatory requirement of 34 C.F.R. § 106.45(b)(6) (i) prohibiting reliance on statements not subject to cross-examination, OCR has ceased enforcement of the specific regulatory requirement.²³

Only relevant questions may be asked.²⁴ Thus, the decision-maker, who may be a trained individual or panel of individuals, needs to make decisions regarding relevance in real time. This may be a challenge for trained administrators, professionals, contracted attorneys or hearing officers.

In addition, if a party does not have an advisor present at the hearing, the recipient (i.e., educational institution) must provide, without a fee or charge to that party, an advisor of the recipient’s choice, who may, but is not required to, be an attorney.²⁵ Accordingly, the complainant may not have the economic resources for an attorney, whereas the respondent (alleged perpetrator) may be represented by an attorney who will perform cross-examination of the alleged victim.

Lastly, if an alleged victim under Title IX chooses not to file a formal complaint, the institution of higher education may pursue the alleged sexual misconduct under the student code of conduct, including the institution’s obligations under New York State’s EIE.

2. Enough Is Enough Law (New York Education Law 129-B)

New York State Education Law 129-B establishes a universal definition of affirmative consent for all institutions of higher education in the state. Pursuant to Section 6441, affirmative consent is defined as:

a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions created clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does

not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.²⁶

The EIE law also relies on each institution to establish and utilize a set of procedures to adjudicate matters of sexual violence.²⁷ The EIE states:

Nothing in this article shall be construed to limit in any way the provisions of the penal law that apply to the criminal action analogous to the student conduct code violations referenced herein. Action pursued through the criminal justice process shall be governed by the penal law and the criminal procedure law.²⁸

3 Criminal Law

The filing of criminal charges is a third way to proceed after a sexual assault. This usually entails the victim reporting the incident to the local police department. The victim would give a statement containing the allegations and the assigned police officer, with the assistance of the district attorney’s office, would draft and file formal charges. Aside from the procedural differences, this avenue differs from Title IX and EIE proceedings in other important ways. Therefore, understanding the distinctions between this avenue and the others is beneficial prior to initiating a criminal proceeding.

The New York State Penal Law defines criminal offenses, as well as their elements, in very specific ways. These definitions are distinct and differ from those contained within Title IX and the EIE laws. First and foremost, “lack of consent” is defined under Penal Law § 130.05. Although the definition is more expansive for purposes of this article, what is important to convey is that “lack of consent” requires that “the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor’s situation would have understood such person’s words and acts as an expression of lack of consent to such act under all of the circumstances.”²⁹ Thus, in a criminal matter, it is not enough that a victim did not say “yes” to engage in the act. In fact, the criminal law requires the opposite; a victim must clearly express, through words or actions, he or she does not want to participate in the act. Evidence that a victim said “no” and that he or she engaged in some physical conduct that a reasonable person would understand as indicative of an unwillingness to participate in the act is crucial to a prosecution in criminal proceedings. Unfortunately, an absence of any words or actions are detrimental; a victim feeling uncomfortable or, in his or her own mind, not wanting to go through with the act, without clearly expressing those thoughts to the other party, is not sufficient.

In addition to the definition of consent under the Penal Law, criminal proceedings also differ from Title IX and EIE laws in that there are several designations provided for within the law depending on the specific act committed. Unlike Title IX and EIE, which provide general definitions for “sexual offenses,” the Penal Law breaks down not only the type of offense, but also the level of the crime associated with it. The three major distinctions are: rape, criminal sexual act, and sexual abuse. Rape requires proof of “sexual intercourse,” which has its ordinary meaning and occurs upon any penetration, however slight.³⁰ Criminal Sexual Act requires either oral or anal sexual conduct, as outlined in the Penal Law under Section 130.00(2). Lastly, sexual abuse requires “sexual contact.” This is defined under Penal Law Section 130.00(3) as any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. This includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed. Once the allegations are explored and a specific crime or crimes are identified, the level of the offense is determined. The most common sexual offenses, and those referred to herein, range from class B felonies to class B misdemeanors. The sentencing parameters associated with these crimes vary depending on the level of the offense.

Once charges are filed, the case will be assigned a prosecutor who will handle the case. It is important to understand the prosecutor does not represent the victim; the prosecutor cannot and will not be involved in either Title IX or EIE proceedings. In a criminal matter, the prosecutor represents the State of New York and the victim is a witness in the case, just as is a police officer or some other individual who is involved in the case. The prosecutor will meet with and discuss the facts and circumstances of the case with the victim as many times as necessary throughout the pendency of the criminal case.

Finally, the burden of proof in a criminal case is beyond a reasonable doubt. Beyond a reasonable doubt has an expansive definition and is an extremely high burden. This burden is much higher than those burdens defined under Title IX and Enough is Enough (described below). Essentially, it is not enough to prove that a defendant is “probably guilty.” Beyond a reasonable doubt requires that there be no honest, actual doubt of the defendant’s guilt. One must be firmly convinced by the evidence presented that each element of an offense has been proven. Additionally, if a jury trial, it must be a unanimous verdict of either twelve (12) or six (6) jurors, depending on the level of the offenses charged.

Comparison of the Three Avenues to Address Sexual Misconduct on Campus

The chart on the next page compares the primary differences between the three avenues to address sexual misconduct on campus.

Are the Three Avenues Mutually Exclusive?

The three avenues are not mutually exclusive, and therefore multiple actions could be evolving and/or proceeding at the same time, making it essential for all parties to fully understand each of the three available options.

Each college/university is required to have a sexual misconduct policy. Some institutions may combine Title IX and EIE into one sexual misconduct procedure, whereas others may have a Title IX policy and other procedures for sexual misconduct outside of Title IX. Accordingly, multiple actions/proceedings will most likely be EIE and criminal law or Title IX and criminal law. Title IX requires a grievance procedure with a reasonably prompt time frame for completion. However, it does permit temporary delay of the procedure or limited extension of time frames for good cause, as long as written notification is provided to the complainant and respondent of the delay or extension and the reasons for such action. Good cause may include concurrent law enforcement activity.³¹ In addition to time, three other aspects of the Title IX process may interfere with the efforts of law enforcement. First, the sharing of the complete investigation record may be problematic as law enforcement establishes its case. Second, the opportunity for live cross-examination by an attorney may cause a victim or witness to be inappropriately locked into a version of the incident that differs from how the district attorney may approach the matter in court. Third, a quasi-judicial decision-maker or panel would hold a hearing without the same rules of evidence as would a court of law. These factors may dissuade a victim of sexual misconduct from filing a formal Title IX complaint.

Conclusion

The Biden administration has indicated that it will be engaging in formal rule-making to modify and amend the 2020 Regulations.³² With institutions of higher education in New York juggling Title IX and the EIE law, it will be important to continue to educate and train students and employees on both, as well as on the New York Penal Code.

With the distinct differences between the three avenues, we recommend that all stakeholders review and understand the differences between the legal options and review the college’s/university’s code of conduct to assist themselves and others in making better educated decisions if they unfortunately find themselves in a circumstance covered by Title IX, EIE, or the penal code.

	Title IX	Enough is Enough Law	Criminal Law
Governing Law	Title IX Regulations 34 CFR 106, et seq. Campus Policy and Procedures based on minimum regulations in 34 CFR 106, et seq.	Education Law 129B Campus Policy and Procedures	Penal Code
Attorney, Lawyer, Advisor	Advisor of choice, who may be an attorney. If a complainant or respondent does not have one, then the educational institution will provide an advisor (who does not have to be an attorney). (Would not be the District Attorney if there is a criminal case.)	Advisor permitted and role may be limited by campus policy.	District Attorney
Definition of Consent	Not required under Title IX	Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity.	Active no
Activity Covered	Sexual Assault, domestic violence, dating violence, and stalking as defined by the Clery Act	Sexual Assault, domestic violence, dating violence, and stalking as defined by the Clery Act	NY Penal Code definitions.
Jurisdiction	Must occur: 1. in the United States 2. when trying to take advantage of the education program and activity of the institution, including locations, events, or circumstances over which the educational institution exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the institution.	Applies when violation occurs on campus, off campus, or while studying abroad.	Where NY Penal Code applies.
Burden of Proof	Preponderance of the evidence; or clear and convincing evidence. ¹	Student Code of Conduct, usually preponderance of the evidence.	Beyond a reasonable doubt
Cross Examination	Yes, by advisor of choice who may be an attorney.	Cross examination is not required. Method and format determined in institution's sexual misconduct policy and procedures.	Yes
Copy of investigation report	Preliminary and final report provided to both complainant and respondent.	Limited for allegations— may review (may not receive under individual policies).	Police investigation and discovery.

1. The burden of proof must be the same for students and employees.

Endnotes

1. Perpetrators of Sexual Violence Statistics, *available at* <https://www.rainn.org/statistics/perpetrators-sexual-violence>.
2. McCaskill Report, *Sexual Violence on Campus: How Too Many Institutions of Higher Education Are Failing To Protect Students*, July 9, 2014.
3. The White House Task Force, *Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault*, April 2014.
4. *Id.* at 15.
5. *Id.*
6. *Id.* at 16.
7. See United States Department of Education, Office for Civil Rights, Title IX and Sex Discrimination, Revised August 2021, *available at* https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html#:~:text=OCR's%20enforcement%20of%20Title%20IX, resolves%20complaints%20alleging%20sex%20discrimination.
8. *Not Alone, supra*, at 15.
9. *Id.* at 17-20. While OCR enforces Title IX, the Department of Education's Federal Student Aid (FSA) office is responsible for enforcing the Clery Act. Colleges and universities that participate in federal financial aid programs are required, under the Clery Act, to report annual statistics involving crimes, sexual assault and rape.
10. *Id.* at 17.
11. New York State Education Law 129-B.
12. 8 N.Y.C.R.R. § 48.2 Annual Aggregate Data Reporting by New York State Institutions of Higher Education Related to Reports of Domestic Violence, Dating Violence, Stalking and Sexual Assault. *Available at* <http://www.nysed.gov/information-reporting-services/chapter-76-laws-2015-enough-enough-annual-aggregate-data-report>.
13. *Id.* (2020 Full Year Report as of February 17, 2022).
14. *Id.*
15. *Id.*
16. *Id.* (2019 Full Year Report as of January 7, 2021)
17. *Id.* (2018 Full Year Report as of February 10, 2020).
18. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026 (May 19, 2020). The regulations begin on page 30,572.
19. 34 C.F.R. § 106.30 (a) Definitions. "Sexual harassment means conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the recipient conditioning the provision of an aid, benefit or service of the recipient on an individual's participation in unwelcome sexual conduct" (commonly referred to as "quid pro quo sexual harassment"); (2) "Unwelcome comment determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity" (commonly referred to as "hostile environment sexual harassment") and (3) "Sexual assault as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8) or "stalking" as defined in 34 U.S.C. 12291 (a)(31)."
20. 34 C.F.R. Part 106.45 (b)(2)(B) and (b)(5)(iv).
21. 34 C.F.R. Part 106.45(b)(5)(vi).
22. 34 C.F.R. Part 106.45(b)(6).
23. *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021), *appeals pending* (1st Cir.). See also United States Department of Education, Office for Civil Rights Letter to Students, Educators, and other Stakeholders re *Victim Rights Law Center et al. v. Cardona* (August 24, 2021), *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf>.
24. 34 C.F.R. Part 106.45(b)(6).
25. 34 C.F.R. Part 106.45(b)(6).
26. New York Education Law, Article 129-B, Chapter 76, § 6441.
27. New York Education Law, Article 129-B, Chapter 76, § 6440(4).
28. New York Education Law, Article 129-B § 6440(8). See also <http://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource> (produced in 2015 prior to the 2020 Title IX Regulations).
29. New York PL 130.05.
30. New York PL 130.00(1).
31. 34 C.F.R. Part 106.45(b)(1)(v).
32. Office for Civil Rights Blog (February 18, 2022), *available at* <https://www2.ed.gov/about/offices/list/ocr/blog/index.html>. OCR submitted its initial proposed rules for formal rule making on February 17, 2022. President Biden is quoted as saying, "all students should be guaranteed an educational environment free from discrimination on the basis of sex, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity."



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More Than Just a Game: An Appreciation of Title IX

By TaRonda Randall

As lawyers, we often celebrate the anniversaries of major changes in the law. June 23, 2022, marks the 50th anniversary of Title IX of the Education Amendments of 1972. Title IX 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.” Although Title IX provides additional protections, many immediately think of the federal law’s application to gender equality in athletics.

The proliferation of social media use has increased awareness and advocacy related to that gender equality. Just last year, a viral video from Sedona Prince, sparked outrage at disparities between the men’s and women’s NCAA basketball tournament. Professional athletes and the media chimed in and heightened awareness of the video.¹ Ultimately, the viral video and public response served as an impetus for the NCAA to retain a law firm to conduct an external gender equity review. Among the findings detailed in its report, the law firm concluded that the NCAA’s organizational structure and culture prioritized men’s basketball, contributing to gender inequity, and the disparity in participation opportunities in men’s and women’s basketball (e.g., bracket size) further impacted the student-athlete experience.² As a response to the information received, the NCAA began implementing many of the law firm’s recommendations in an effort to provide equitable experiences for student-athletes.³

When I was asked to write an article about Title IX, the theme became clear. As a former NCAA Division I student-athlete, a practicing higher education and collegiate sports attorney, and a woman, this anniversary is personal to me. This law has directly impacted the trajectory of my life and career. Title IX protected my opportunity to play the game of basketball while I pursued higher education. Thus, as clichéd as it may sound, basketball will forever be “more than just a game” to me. As a matter of fact, each time that phrase enters [and escapes?] my consciousness, I am reminded that basketball has served as a defining force within my life.

From a young age, I was afforded what many may deem a natural advantage for some sports—height. Although I typically towered over my peers, I was initially unaware of the untapped potential that my frame held. My parents encouraged academic achievement and involvement in related

extracurricular activities and did not actively encourage me to play basketball until our high school principal (and head boys’ basketball coach) suggested I attend a basketball summer camp prior to the start of my seventh-grade year.

Ironically, I cannot say that I felt an instantaneous and compelling love for the game as soon as I stepped onto a hardwood floor and felt the textured surface of a basketball. As someone who was used to grasping classroom concepts rather quickly, I initially struggled to grasp the technical skills associated with the game of basketball and can recall feeling dejected following basketball games when I did not perform as well as those who saw my height might have expected. However, as time progressed, my “skills” and love for the game also progressed; yet, I never imagined playing basketball beyond high school until much later in my high school career.

I was fortunate to receive an athletics scholarship to the University of Alabama at Birmingham (Go Blazers!) to compete as a member of their women’s basketball team.⁴ Although I earned playing time and served as team captain, my collegiate basketball career was not illustrious as far as statistics are concerned. My most noteworthy accomplishments were perhaps realized beyond the context of a basketball court through academic achievement and a commitment to community service.



TaRonda Randall serves as senior counsel at Husch Blackwell. She has served in the athletic departments of major public universities and as a postgraduate intern with the National Collegiate Athletic Association National Office. Her experience allows her to assist clients with NCAA enforcement, eligibility, and compliance matters, as well as issues related to diversity, equity and inclusion and Title IX equity in athletics. Randall’s

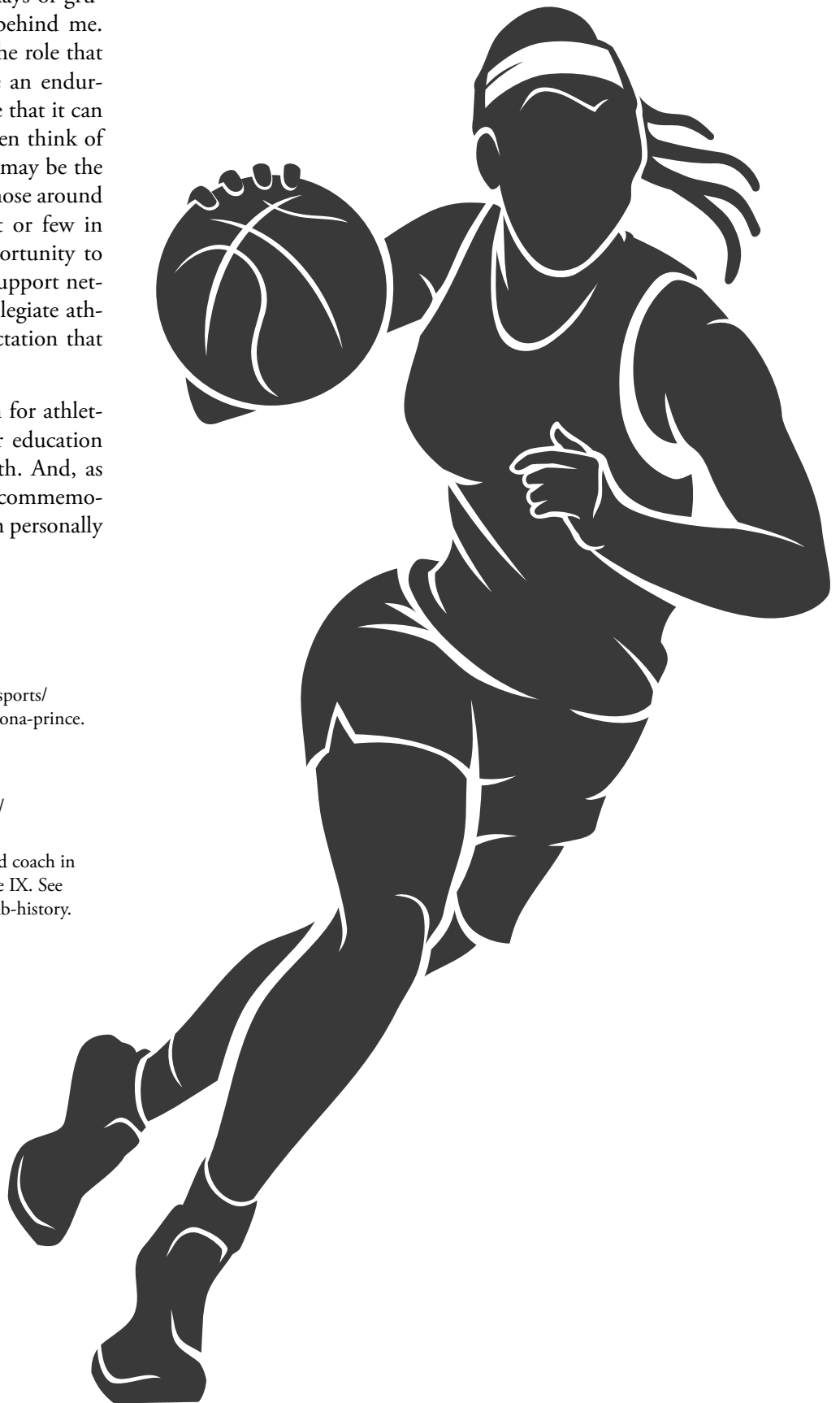
passion for the regulation and governance of collegiate athletics extends back to her undergraduate education and days as a Division I student-athlete.

My eligibility for competition as an NCAA student-athlete has long expired, and the days of grueling practices and workouts are now behind me. Nonetheless, there can be no denial of the role that basketball has played in my life. I have an enduring passion for sports and realize the role that it can play related to access to education. I often think of how some athletically gifted individuals may be the exception to what typically happens to those around them; perhaps they are among the first or few in their respective families to have an opportunity to attend college. However, when given a support network and resources throughout their collegiate athletics career, they may then set an expectation that others pursue higher education.

Undoubtedly, it has been my passion for athletics and the access it provided to higher education that have inspired my chosen career path. And, as the legal and athletics worlds prepare to commemorate the 50th anniversary of Title IX, I am personally grateful for the federal law.

Endnotes

1. See <https://www.nytimes.com/2022/03/15/sports/ncaabasketball/womens-march-madness-sedona-prince.html>.
2. See <https://ncaagenderequityreview.com/>.
3. See <https://www.ncaa.org/sports/2021/9/27/genderequityupdates.aspx>.
4. UAB named its first women's basketball head coach in 1977, just five years after the passage of Title IX. See <https://library.uab.edu/locations/archives/uab-history>.



Reflections on Title IX and Equity in the Jones Beach Lifeguard Profession

By Debra Vey Voda Hamilton



In 1977, I was finishing up my freshman year at American University (AU) and returning for my second year as a pool lifeguard at Jones Beach. At AU one of the classes I took focused on Title IX. Title IX 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.

Under Title IX, women should be afforded the same opportunities in education and sport programs that receive federal financial assistance as men.

I remember writing a great paper on how Title IX might be applied to my situation as a female lifeguard. Looking back now, I stretched the concept intended by Title IX, since Jones Beach was not an educational program or really an activity receiving federal financial assistance. Yet, the unfairness

and limitations to and on female lifeguards seemed parallel enough to me. I guess my professor did as well; I passed the class!

When I returned home to Flushing, New York, for the summer, I prepared to return to the best job on earth, being a Jones Beach lifeguard. As a member of the Jones Beach Lifeguard Corps (JBLC), you were one of an elite group of guards recognized around the world as the best. Women lifeguards were brought on in the early 1960s and assigned to lifeguard the pools. They were not permitted to take the ocean test, the gateway to lifeguarding on the beach.

Lifeguarding at the pools within Jones Beach was important work, too. Yet, it came with its own set of trials and tribulations. True, we didn't endure riptides or stormy weather. However, we did endure screaming kids inside a 25-foot high walled pool area along with the boredom that comes from watching hundreds of people bobbing up and down. Only the diving tank had action. If you were lucky, someone would

jump off the board and then suddenly realize the water was deep and they could not swim. On our hours off you would find the female pool lifeguards riding the waves, body surfing or grabbing a lifeboat or surfboard to enjoy the ocean and get away from the pool.

With the encouragement of my sister, Denise, and fellow women guards, and the information I had used in my paper on Title IX and Jones Beach, I mustered the courage to write a letter to the governor of the State of New York, Hugh Carey. I asked the governor to afford women the opportunity to take the ocean lifeguard test at Jones Beach. When women started working at Jones Beach in the 1960s, they were automatically assigned to the pools. This also meant they made less money. I sent the letter off to Governor Carey, signing only my name as I was sure I would be fired.

What happened next was scary yet amazing. The governor asked the Long Island State Parks Commission to allow women to take the ocean lifeguard test. The letter went on to state that the test should be given within a month, and if the women passed the ocean test, they would be allowed to lifeguard on the ocean.

I recall we had about three weeks to practice ocean rescues, which are very different from pool rescues. We were blessed to have several male lifeguards who worked tirelessly helping us adapt the rescue protocols in practice to be performed by a female. You see, we needed to complete rescue tasks differently. Women have lower body strength while men have upper body strength. The male lifeguards taught us how to use our lower body to pull ropes and drag dummies full of water across the pool. We put our hips into the effort and underneath the dummies, making sure they rode high in the water. This enabled us to pass the skills exam. The swimming part was easy; we all were competitive swimmers. Many of us were faster than the men.

On a cold and rainy day in June, all of the current women lifeguards at Jones Beach came out in intervals to take the test. We all passed.

One thing I have not yet mentioned is that the JBLC is a union. Several of the women taking the test were high-ranking union officers. When they passed the test, they went out on the ocean as lieutenants and boatswains. General lifeguards like me were assigned to an ocean field based on their years of seniority. My sister was senior to me and so went out on the ocean immediately on Field 2. I had only been a lifeguard for a year. I had to continue in the pool that summer before a slot came up for me on the ocean at Central Mall.

In the summer of 1978, I went out on the ocean at Central Mall (CM). CM is the main beach at Jones Beach. I learned so much that first year on the ocean from my fellow

lifeguards and from the people I guarded. Yes, there was hazing. However, in 1978, we didn't do much about it; we were too busy changing our status quo. (See video.¹)

The years I spent on the beach were my happiest. What isn't great about waking up early or late, driving to the beach, seeing the sunrise or sunset, working your hours, and getting a tan? It turned out the guys loved having women lifeguards on the beach. We were always there backing them up on our hours off. We pulled our own weight and helped when needed. We could run as many as 50 rescues a day, and then back up our relief guards as they made 50 saves. All we wanted in 1977 was a chance to take the test, pass the test and work on the ocean. We were given that chance. For the past 45 years, we have shown we are equal to the task and are equally compensated.

In the years that have passed since 1978, many women have become Jones Beach ocean lifeguards. We have reunions often and there is a Facebook page dedicated to the entire corps. We have fond memories of our time on the beach and share those memories with anyone in ear shot at reunion events. This is a bond that cannot be described or broken.

The comradery today is unisex. Everyone has each other's back. Members of the JBLC are loyal, courageous, and well trained.

When I walk by my female comrades on the Jones Beach lifeguard stand, I think, "That used to be me." Then I smile and think, "You know you're there because I wrote a letter to Governor Carey in 1978." Thank goodness for my Title IX argument and a lot of moxie; it shifted equity in the lifeguard profession.

Endnote

1. See <https://longisland.news12.com/female-lifeguards-at-jones-beach-proud-to-be-part-of-a-legacy-38899883>. See also <https://www.nytimes.com/1979/07/22/archives/long-island-weekly-on-the-beaches-theres-a-changing-of-the-guard-on.html>.



Debra Vey Voda Hamilton is the principal at Hamilton ADR-NC. HLM is a boutique firm whose focus is on helping people resolve conflict over animals or conflict due to a pet service matter using conscious communication, mediation, and collaborative practice to remain out of court and resolve the disagreements in the best interests of all. She is the chair of WILS Equity in the Profession Committee.

Ketanji Brown Jackson Confirmed as First Black Woman Supreme Court Justice

By Terri A. Mazur



In a historic vote on April 7, 2022, the U.S. Senate confirmed Judge Ketanji Brown Jackson as the 116th United States Supreme Court justice in a 53 to 42 vote. Judge Jackson will be the first Black woman to serve on the Supreme Court. Vice President Kamala Harris, the first Black woman to hold the vice president position, presided over the vote.

President Biden posted on Twitter, “We’ve taken another step toward making our highest court reflect the diversity of America.” Vice President Harris said that she was “overjoyed” and told reporters, “I am feeling a deep sense of pride in who we are as a nation, that we just did what we did as it relates to the highest court of our land.”

This will be the first time four women will serve on the high court at the same time, and the first time two Black justices sit on the court together. Jackson will be the second youngest justice at 51 years old. She served eight years as a federal district court judge in Washington, D.C. and in

June 2021 was confirmed for a seat on the U.S. Court of Appeals for the District of Columbia. She will be the first Supreme Court justice to have worked as a public defender. Jackson is the child of parents who experienced segregation firsthand—growing up, her mother and father attended segregated schools in Florida. Jackson graduated from Harvard and Harvard Law School. After graduating from Harvard Law in 1996, she clerked for Justice Stephen Breyer, whom she will now replace when he retires at the end of the Court’s term this summer.

Jackson will take her seat in October 2022 when the Court begins its next term with major cases on affirmative action, voting and gay rights on its docket.

Trailblazing Women Forging Their Own Paths in Private Practice

By Hayley Winograd

Justice Sandra Day O'Connor could not get a job at a law firm after graduating from Stanford Law School in 1952.¹ "When I was first looking for work, they just weren't hiring women, period," she said.² After declining an offer for a position as a legal secretary, O'Connor took a position as a deputy county attorney in San Mateo, California, offering to work for no salary.³ O'Connor went on to start her own law firm in Phoenix, Arizona on her way to becoming the first female associate justice of the Supreme Court of the United States.⁴

Justice Ruth Bader Ginsburg, one of 10 female law students in her Harvard Law School class in 1956 with more than 500 men, was once questioned by the dean, "Why are you here occupying a seat that could be held by a man?"⁵ Despite graduating first at Columbia Law School in 1959, Justice Ginsburg was not offered a job by any of the 12 firms at which she interviewed.⁶ "Probably motherhood was the major impediment," she said. "The fear was that I would not be able to devote my full mind and time to a law job."⁷

How far women have come in 70 years. But we are not quite there yet.

For over two decades, women have made up roughly one-half of all law school graduates, and since 2016 have made up the majority.⁸ Women currently represent roughly one-half of all law firm associates at the 200 largest law firms in the United States, often referred to as "big law."⁹ Yet, gender disparity is alive and well when it comes to women in leadership positions at such firms. Women currently represent less than one-third of all partners at firms, and less than a quarter of managing or equity partners.¹⁰ Women are likewise underrepresented in executive or management roles at these law firms, with women comprising less than a third of the members of those committees.¹¹ The gap in leadership positions is even wider for women of color. While women of color currently make up 20% of first year law students, they take up only about 3% of equity partners.¹²

Women are leaving law firms at disproportionate rates to men.¹³ In 2020, 42% of attorneys who departed their law firms for any reason were women, despite the fact that women make up only about 38% percent of all attorneys.¹⁴ Women have reported experiencing less job satisfaction than their male counterparts for a variety of reasons, including lack of mentorship, gender-biased work assignments, and being passed over for promotions.¹⁵ While 62% of men said

they were satisfied with advancement opportunities at their law firms, only 45% of women said the same.¹⁶ Only 2% of men said they felt they had been perceived as less committed to their career, while 63% of women reported feeling this way.¹⁷ Sixty-seven percent of women reported experiencing a lack of access to business development opportunities, but only 10% of men reported feeling that way.¹⁸ Eighty-two percent of women reported being mistaken for a lower-level employee, while no men experienced this issue.¹⁹

Despite these systemic gender barriers within law firms, there are women pioneers throughout the country who, while not having always crashed through the glass ceiling barriers in large law firms, have perhaps gone around them to create successful firms of their own. Among these trailblazers are Laura Davis Jones (Pachulski Stang Ziehl & Jones LLP), Jennifer Selendy (Selendy Gay Elsborg, PLLC), and Roberta Kaplan and Julie Fink (Kaplan Hecker & Fink LLP). These women's stories represent only a microcosm of similar stories of trailblazing women lawyers who have taken control of their destiny and courageously started their own firms. The profiles of these five women who have ventured into leadership positions in private law by starting their own firms will hopefully expand the vision of women lawyers who have previously never weighed the option of starting their own firms.

Laura Davis Jones, a distinguished star in bankruptcy law, founded the Delaware office of Pachulski Stang Ziehl & Jones LLP, a premier national bankruptcy and restructuring firm, in 2000. Jones is also a member of Pachulski's management committee. Prior to Jones founding the Delaware office, there were only two other Pachulski offices, both located in California. "My goal was to make us a national firm," she said. The New York office opened thereafter, and Pachulski became a "boutique national firm."

Jones rose to the very top of her specialty of bankruptcy law—a particularly male-dominated practice area—through her passion for the law and drive for excellence, noting that what helped her succeed was "develop[ing] a thicker skin," and "keeping [my] head down and driving forward. . . . The sooner you can develop that, the better." Jones also noted that she is "a very determined person" and said she "wanted to be a lawyer since I was nine years old. I love the law, and I think that's one reason I've done really well." Jones continued, "I think it's been very hard work and very good results that con-

tinue to get me the success that I have . . . I think at the end of the day, people like and pay for good work. Is it the only thing you can do? No. But, I think it's very helpful." When she founded the Delaware branch of Pachulski, Jones said she did not have a hard time generating business since she had already been in practice for 13 years and was well-known in her field. But her general approach to marketing herself, Jones said, has always been to "just do excellent work."

As a young lawyer in the 1980s and 1990s, Jones explained that it was unheard of for a woman to be a named partner of a national firm and "there were many times that, as a woman, you just weren't taken that seriously." At that time, "you [had] to give [a woman] five minutes to prove herself competent," while a man had "to prove incompetence." However, Jones said, as a named partner and founder of a firm, she has been "taken more seriously" than before. "You have much more control. . . . From a gender perspective, if you have someone who seems to have a discounted view of women, they're now in a position where they have to listen to you. You're a part of the infrastructure." As a leader of her firm, Jones also enjoys the autonomy to create diversity within her own teams, explaining, "I build my teams out with very different people, because I don't want group think." Jones also believes that having more gender equality in leadership positions in law firms is "like any other diversity. The more diversity you have, whether it's religious, cultural, whatever it may be, then the bigger [the] pool of ideas there are."

When Jones opened Pachulski's Delaware office in 2000, there were "only about 12 women practicing bankruptcy lawyers on a national basis," she said, and "not that many women in senior positions." Even now, "it's probably not more than 12, or maybe 20, and the names have changed." She added, "Putting me in that senior position, makes the institution more sensitive to broadening their horizons a little bit. Women are good at coming and shaking it up a little bit, and making people more sensitive at appreciating the input and thoughts of others." Young women lawyers can benefit from seeing other women lawyers in leadership positions, Jones explained, because "they see it can happen."

Jennifer Selendy, a renowned trial attorney and former partner at Kirkland & Ellis LLP, co-founded the law firm of Selendy Gay Elsberg PLLC, a litigation powerhouse based in New York City, in 2018. Selendy & Gay is one of the few women majority-owned law firms in the United States.

Selendy is a first-generation college graduate who knew she wanted to be a lawyer since the age of 10 after watching the movie *Paper Chase*. Her innate leadership abilities drove Selendy to re-shape private law practice for women and ultimately co-found Selendy & Gay with her two colleagues, Faith Gay and Philippe Selendy. "I am a do-er. I'm a problem solver. I can get things done," she said. "I'm not just an idea

person . . . there was a real opportunity for me to have a big say in molding what the firm would be and what it would look like." Selendy was frustrated by law firms' failure take steps to ensure greater equality for women and wanted to take action: "All the things that had frustrated me about the way other firms were led . . . I could change those things." Selendy discussed how her firm actively seeks to reduce the systemic roadblocks women face in private practice through bespoke mentoring, flexibility, and by instilling egalitarianism as a core value of the firm.

With respect to being a majority woman-owned firm, the firm did not decide it had to be "50-50," but just wanted to "grab the best lawyers . . . we can now write our own story, and be architects of our own destiny. Who do we want to practice with?" The firm's egalitarian model is also a result of its policies geared toward retaining and promoting women. While many firms are "very successful at the recruiting stage and building a good pipeline," Selendy noted that her firm is "focused more on bespoke mentoring, not only for women but for lawyers of color, so that we go beyond just bringing people into the firm, and we actually try to mentor them into leadership positions in the firm." The firm launched a diversity fellowship program in 2021 and uses a career coach who specifically focuses on helping the firm support their female associates.

Selendy also emphasized the firm's conscious efforts to provide women—and any other lawyers at the firm becoming parents for the first time—with flexibility. "What we try to do is make sure women know we are there to support them as they face challenges . . . even for our male associates, because we have a number of male associates becoming parents for the first time." To Selendy, this flexibility in the law firm setting means that "[women] need to not feel like they are asking for special treatment . . . the leadership must recognize and acknowledge overtly 'we recognize you have special challenges,' . . . instead of seeing it as 'she has one foot out the door.'"

Prior to co-founding her firm, Selendy experienced the same deep-seated biases facing other women in big law, including being viewed as less committed to the firm long-term, especially after having children. While she knew that she had established her ability to work hard and produce good work, she still felt that she had to make the firm "feel comfortable with me." Reflecting on her experience working with more women in leadership positions at Selendy & Gay, Selendy explained, "There is a huge difference. I have had the pleasure at [Selendy & Gay] of being on an all-female trial team. Openings and closings by a woman. Not a single woman speaking on the other side . . . and that was thrilling for me to be able to do that. We laughed because nobody could keep track of us. . . . [O]ur co-counsel, the judges, they were all mixing up our names every day of the week. It was hard for them . . .

we had an opposing counsel that referred to us as ‘those women.’”

Removing the systemic barriers seen in many law firms today takes a conscious effort and is a long-term investment. “I’m not here to tell you that we have solved this challenge . . . It is a reflection of the power dynamics in the society that we live in, it’s not a surprise that these law firms reflect these broader societal issues.” She noted, “We are a very white firm right now, but that’s not how we want to be. We’re investing in our diversity. . . . It takes planning, it takes work, it costs us money. But over time, it will really pay dividends.” Selendy’s advice to women beginning their legal career is to “go to a firm that you already know will help your career. How many women are trying cases? How many women are controlling client relationships? The numbers don’t lie. Have a say in the future of the law firm.” She added, “If the most talented women in our profession don’t vote with their feet, they aren’t going to be as successful as they want to be.”

Roberta Kaplan, a former partner at Paul, Weiss and renowned civil rights attorney, founded Kaplan Heckler & Fink LLP in July 2017. Kaplan Heckler is an elite, majority women- and LGBT-owned litigation boutique firm based in New York City, focuses on white collar investigations, commercial litigation, and public interest law. Kaplan, who also wanted to be a lawyer since she was 10 years old, is best known for arguing on behalf of her client Edith Windsor in the landmark Supreme Court case of *United States v. Windsor*. On breaking away from her decades-long career at Paul Weiss to found Kaplan Heckler, Kaplan stated, “since *Windsor* . . . I . . . wanted to have a really diverse litigation practice, being a general litigator” and “having a mix of big and small cases.” In July 2017, Kaplan decided to take what she called a “huge leap of faith” over a “very steep cliff,” and start what is now Kaplan Heckler & Fink. Kaplan noted that she had “anticipated” there would be a real demand in the market for a firm like Kaplan Heckler; that is, one with “top quality legal talent, real dedication, and real creativity in the way we approach cases . . . with the flexibility that a huge mega-firm doesn’t have.” Kaplan explained, “[T]hat premonition on my part . . . turned out to be true.” Kaplan’s visions for her firm were to “continue to practice law, but have this incredible amount of fun doing it, and do interesting and diverse cases. I’m proud to say we have accomplished all of that.” Describing how fortunate she was during the beginning stages of opening Kaplan Heckler, Kaplan observed, “Shockingly—and very fortunately—for us, marketing didn’t end up being that much of a problem. A lot of my clients who I worked for at Paul Weiss decided to come with me.” Kaplan’s recognition from successfully arguing the *Windsor* case also helped her firm attract clients.

As the founding partner of her firm, Kaplan described the autonomy she has in both making business decisions and molding the values of the firm. From a business perspective, she said, there is “a lot more flexibility” in “deciding whether to pursue things that come in the door. . . . It’s just not a big place, you don’t have to go through layers of bureaucracy to get things approved or get things done or get briefs out the door.” In this way, she said, “clients get that and appreciate that . . . we just have to work more efficiently because of our size.” Kaplan also has been able to inculcate certain values into her firm that are geared toward promoting gender equality and diversity. Kaplan emphasized the value the partnership places on diversity, especially from a gender, sexual orientation, and race perspective: “We have little interest in working with anyone who doesn’t share those values, and a deep-seated commitment to doing work in the public interest.”

Julie Fink, who started the firm with Kaplan in 2017 and who is one of the youngest managing named partners of a major law firm, explained that such values are perhaps a large part of what propelled the firm’s success. The firm has grown from just four attorneys in 2017 to over 50 in 2021. As a “small firm,” Fink said, “you can take a long-term view of success” and can “take risks” in terms of taking on smaller matters. In this way, she said, the firm could take “progressive public interest work and build the firm that we want.” As it turned out, Fink explained, “the mix of public interest work and commercial work . . . has allowed us to attract these brilliant lawyers. . . . and more and more clients come back to us.” Fink also described the firm as a “disrupter” of the traditional approach. She explained, “we have complete autonomy—because it’s ours—to think about the workplace . . . from a progressive standpoint. . . . You don’t have to follow the traditional models for anything.” Kaplan Heckler turned this vision into a reality by taking affirmative steps to mitigate systemic obstacles for women during the promotion process and through implementing groundbreaking policies. Nearly one year after its founding, Kaplan Heckler created a unique program which would allow a law clerk to take parental leave during her federal clerkship.²⁰ “Having this opportunity, and having it become a reality that you could do whatever you want within the bounds of responsibility, creates an excitement,” Fink said. “It pushes you to be a little bit entrepreneurial.”

Elizabeth Anna “Betiayn” Tursi, while not an attorney, is a leader in the private legal world. Tursi is the Global Chair and Co-Founder of the Women in Law Empowerment Forum (WILEF), a national platform launched in 2007 aimed at helping women working in the largest law firms and corporate law departments in the United States attain leadership positions. Having worked in the legal world for over four decades, Tursi said that while women founders of their own law

firm have more autonomy over their legal career, “it takes a unique individual” to take such a risk. It takes a “trailblazer,” to say “I know what I’m getting myself into” and “I can survive in this climate.” But, as Tursi recognized, starting a firm is certainly not for everyone. This is why WILEF is so critical in the world of big law.

WILEF’s mission is to help big law firms achieve greater representation of women in positions of leadership by setting the “Gold Standard,” the benchmark participating law firms must meet for the retention and promotion of women. Some of these criteria are that 25% of a firm’s equity partners are women, 10% of women equity partners are women of color, and 20% of the top half of the firm’s equity partners in terms of compensation are women. “It’s not easy to do,” she said. This seminal benchmark for law firms to use for achieving greater gender equality is critical to making sure “law firms [are] not just talking the talk, that they are also walking the walk,” said Tursi. She concluded that there is still such a disparity between men and women in positions of leadership positions at law firms because “Women got started later . . . women came into the profession 50 years ago. Men were [already] controlling the firms.”

Starting a law firm certainly is not for everyone. Yet women lawyers who never even dreamed of such an option should know that starting a firm is not only possible, but realistically attainable. It takes strength, confidence, drive, and a thick skin. Gone are the days where the only options for women in private practice were conscientiously working our way up the ladder looking into the glass conference room of mostly grey-haired male-dominated board rooms, but not being in those rooms. As these five women have shown, women can successfully found, manage, and control their own firms—and their own destiny—if that is the path they want.



Hayley Winograd earned her J.D. from the University of Pennsylvania Law School. After graduating law school, she began her career practicing complex commercial litigation in New York City and served as a judicial clerk in the Southern District of New York. Winograd is presently a litigator at the law firm of Pachulski Stang Ziehl & Jones.

Endnotes

1. Evan Thomas, *Behind the Scenes of Sandra Day O’Connor’s First Days on the Supreme Court*, Smithsonian Magazine (March 2019), <https://www.smithsonianmag.com/history/behind-scenes-sandra-day-oconnor-first-days-supreme-court-180971441/>; R. Jennie Gritz, *Sandra Day O’Connor: “I Couldn’t Get a Job in a Law Firm,”* The Atlantic (June 28, 2011), <https://www.theatlantic.com/national/archive/2011/06/sandra-day-oconnor-i-couldnt-get-a-job-in-a-law-firm/241166/>.
2. Allison Beard, *Life’s Work: An Interview with Sandra Day O’Connor*, Harvard Business Review (December 2013), available at <https://hbr.org/2013/12/sandra-day-oconnor>.
3. *A Conversation with Justice Sandra Day O’Connor*, Vanderbilt Lawyer (37:2), <https://law.vanderbilt.edu/alumni/lawyer-vol37num2/news-oconnor.html>.
4. *Id.*
5. Dahlia Lithwick, *It’s Amazing to Me How Distinctly I Remember Each of These Women*, Slate (July 21, 2020), <https://slate.com/news-and-politics/2020/07/ruth-bader-ginsburg-interview-transcript.html>.
6. *In Memoriam: Ruth Bader Ginsburg ’59*, News from Columbia Law School, Columbia Law School (Sept. 18, 2020), <https://www.law.columbia.edu/news/archive/memoriam-ruth-bader-ginsburg-59#:~:text=Despite%20graduating%20tied%20for%20first,is%20now%20the%20Morton%20L>.
7. *Id.*
8. American Bar Association, Profile of the Legal Profession, *Women in the Legal Profession*, [https://www.abalegalprofile.com/women/#:~:text=A%20majority%20of%20law%20school,male%20students%20was%20in%202014](https://www.abalegalprofile.com/women/#:~:text=A%20majority%20of%20law%20school,male%20students%20was%20in%202014;); C. Debra Weiss, *Female Lawyers Still Underrepresented, Especially in Partnership Ranks; Which Law Firms Do Best?*, ABA Journal (Sept. 16, 2021), <https://www.abajournal.com/news/article/female-lawyers-still-underrepresented-especially-in-partnership-ranks-which-law-firms-do-best#:~:text=About%2023%25%20of%20equity%20partners,Glass%20Ceiling%20Report%20by%20Law360>.
9. Jacqueline Bell, *Law360’s Glass Ceiling Report: What You Need To Know*, Law360 (Sept. 13, 2021), <https://www.law360.com/articles/1418221/law360-s-glass-ceiling-report-what-you-need-to-know>.
10. *Id.*; see also American Bar Association, Profile of the Legal Profession 2021 at 82, <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf>.
11. Jacqueline Bell, *Law360’s Glass Ceiling Report: What You Need To Know*, Law360 (Sept. 13, 2021), <https://www.law360.com/articles/1418221/law360-s-glass-ceiling-report-what-you-need-to-know>.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. American Bar Association, Profile of the Legal Profession 2021 at 86, <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf>.
17. *Id.*
18. *Id.*
19. *Id.*
20. See Staci Zaretsky, *Revolutionary Arrangement Will Allow Federal Law Clerk To Take Parental Leave During Clerkship*, Above the Law (July 2, 2018), <https://abovethelaw.com/2018/07/revolutionary-arrangement-will-allow-federal-law-clerk-to-take-parental-leave-during-clerkship/>.

NYSBA Enters Into Memorandum of Understanding With Ukrainian Bar Association

By Brandon Vogel, *NYSBA Staff*

ED NOTE: *This article originally appeared at NYSBA.ORG on Dec. 16, 2021.*

The New York State Bar Association has just entered into a cooperation agreement, called a memorandum of understanding, or MOU, with the Ukrainian Bar Association.

This collaboration is the latest in a series of such agreements NYSBA has reached with bar associations around the world, most recently the Osaka Bar Association, the Philippine Bar Association, the Milan Bar Association, the Georgia Bar Association, the Dai-Ichi Tokyo Bar Association, the Nigerian Bar Association, the Seoul Bar Association, and the Bucharest Bar Association.

“The signing of the document is but the beginning of a strong friendship that will benefit and grow both of our respective organizations,” said (then) NYSBA President T. Andrew Brown.

Anna Ogrenchuk, president of the Ukrainian Bar Association, Brown and Edward K. Lenci, chair of NYSBA’s International Section, signed the accord. According to Lenci, “a MOU is a bridge between the bar associations. It promotes understanding and cooperation between them and offers benefits and opportunities for each other’s members.”

As part of the agreement, NYSBA and the Ukrainian Bar Association also plan to exchange legal publications, materials and information, as well as lawyer visits at educational events and programs, especially those pertaining to international legal issues.

The International Section has over 70 chapters around the world.

NYSBA Strongly Condemns Violation of Rule of Law in Ukraine

By Susan DeSantis

ED NOTE: *This article first appeared at NYSBA.ORG on Feb. 24, 2022.*

T. Andrew Brown, president of the New York State Bar Association, issued the following statement on the invasion of Ukraine:

The New York State Bar Association strongly condemns the Russian Federation’s criminal invasion of Ukraine. This act of unwarranted and illegal military aggression against a sovereign state is a flagrant violation of the United Nations Charter, Helsinki Accords, and established norms and principles of international law.

NYSBA joins the international community in demanding that the Russian Federation immediately withdraw its armed forces from Ukraine and restore Ukraine’s territorial integrity and international borders.

The invasion has resulted in the murder, injury, and suffering of many in Ukraine, including innocent women and children. NYSBA calls upon the U.S. government and the international community to restore the rule of law and to prosecute if war crimes are found to have been committed.

In December 2021, NYSBA entered a memorandum of understanding with the Ukraine Bar Association and formed a chapter in Ukraine. NYSBA supports our new friends and colleagues in Ukraine and, in this dark hour, NYSBA stands with Ukraine.

Susan DeSantis is NYSBA’s chief communications strategist.

Hundreds of NYSBA Members Train To Help Ukrainian Refugees

By Jennifer Andrus, NYSBA Staff

ED NOTE: *This article originally appeared at NYSBA.ORG on March 25, 2022.*

Nearly 750 attorneys took part in specialized training on how to help Ukrainian refugees apply for Temporary Protected Status or TPS. The designation, announced by President Biden and the Department of Homeland Security, allows those fleeing wars and natural disasters to seek protection in the United States.

DHS Secretary Alejandro Mayorkas extended TPS designation to Ukrainian refugees on March 3. Any Ukrainian refugees here in the U.S. as of March 1 have the ability to apply. Earlier this week, Biden announced a commitment by the U.S. to accept 100,000 refugees from Ukraine.

NYSBA President T. Andrew Brown, who opened the event, reiterated the association's strong stand against the Russian invasion of Ukraine.

"More must be done. Vladimir Putin shows no sign of backing down and the humanitarian crisis he has caused is steadily worsening," he said. Brown encouraged the members taking the training to use their skills and knowledge to help those in need. "Every lawyer here has the opportunity to change someone's life."

Two members of the Ukrainian Bar Association and the NYSBA Ukraine Task Force also joined to thank members for their help and support. Inna Liniova, a member of the task force, reported that while 3 million people have left Ukraine for neighboring countries, thousands of Ukrainian men have returned from abroad to fight for their country. She asked that the U.S. remain open to Ukrainian nationals for work.

Ivan Horodyskyy, co-chair of the Ukraine Chapter, reminded the members that the refugees from Ukraine are not economic migrants

and will look to return to their lives and homes in Ukraine when it is safe. He ended with words of hope that the Ukrainian cause will prevail. "We can see, hear, feel the changes that is making Ukraine stronger."

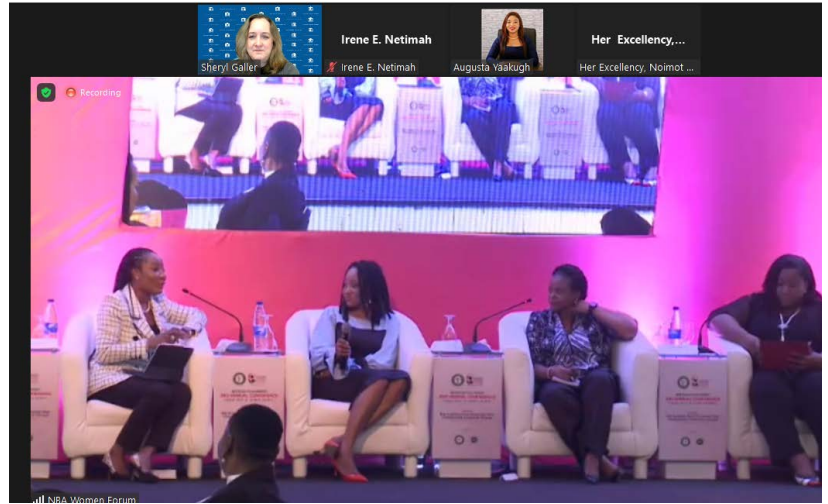
Michelle Lee of the Legal Project outlined the forms, identification documents and payments needed by refugees to apply for TPS. The status will last from March 2022 to September of 2023. In some cases, TPS can be extended past the first 18 months. If an extension is granted, applicants must reapply in order to stay in the U.S.

Daniel Alicea of the Center for Family Representation outlined important steps to avoid a TPS application rejection and how to navigate the next steps after approval. He also highlighted the red flags to watch out for in an application and when to seek the advice of an experienced immigration attorney. Alicea also outlined the backlog of cases at DHS in which thousands of refugees from Haiti and Venezuela are still waiting to hear if they are approved.

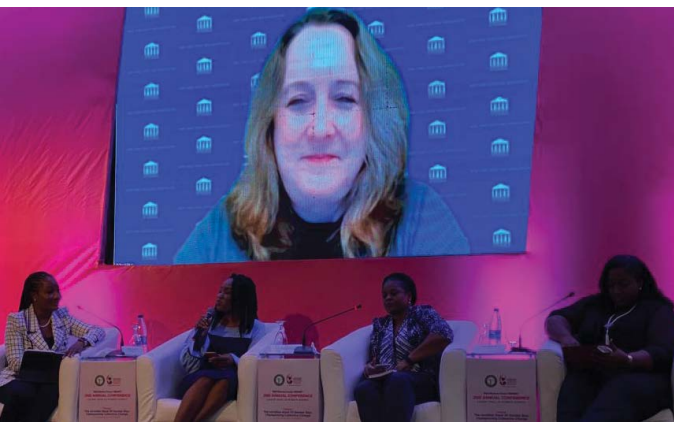


Nigerian Bar Association Women's Forum Second Annual Conference (NBAWF)

Below: The Nigerian Bar Association Women's Forum 2nd Annual Conference panelists. Top left: **Sheryl Galler**; below, left to right: **Wola Joseph** (Chief Legal Officer and Company Secretary, EKO Electricity Distribution PLC), **Nta Ekpiken** (Principal Partner, NECS), and **Chinwe Odigboegwu** (Legal Director, Guinness Nigeria PLC).



Below: The governor of Ogun State, Her Excellency **Noimot Salako-Oyedele**, spoke at the NBAWF.



Above: Panelists included Moderator **Sola Soleye**, along with **Wola Joseph**, **Sheryl Galler**, **Nta Ekpiken** and **Chinwe Odigboegwu**.

Below: The NBAWF presented this award to **Sheryl Galler** to thank her for her participation.

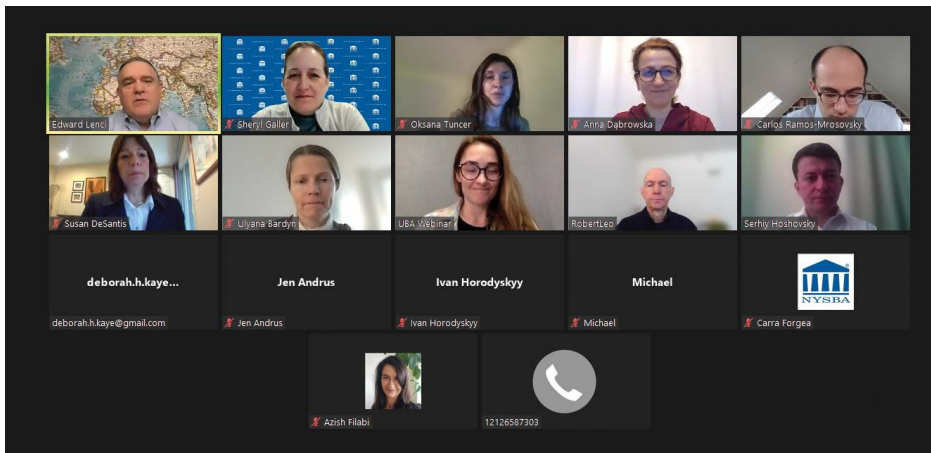


Right: NYSBA Past President **T. Andrew Brown** presented the inaugural Ruth Bader Ginsburg award to **Sierra Sanchez**, a second-year law student at Hofstra Law School.



Ukraine Task Force

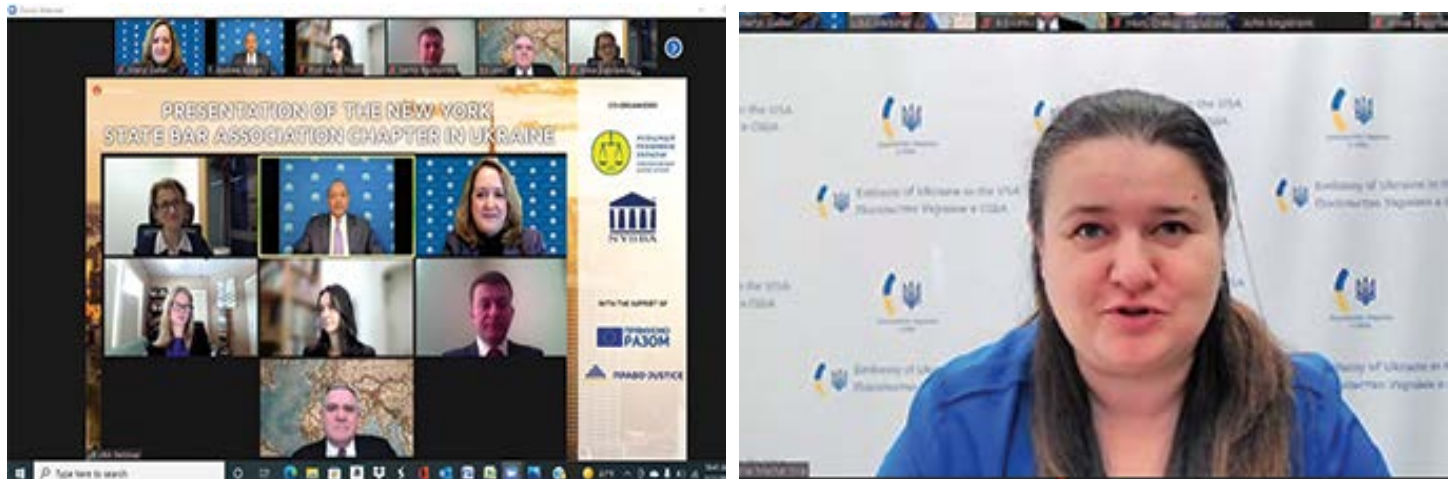
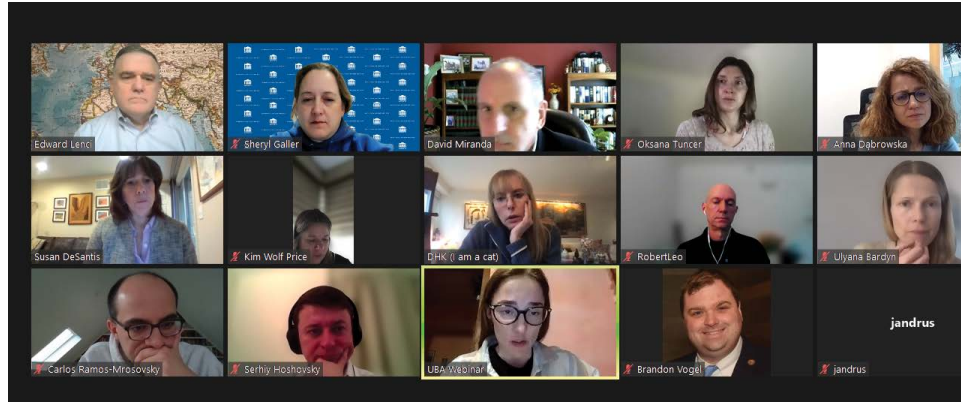
Below: Members of the NYSBA Ukraine Task Force. Top row, left to right: Ed Lenci, Sheryl Galler, Oksana Tuncer, Anna Dabrowska, Carlos Ramos-Mrosovsky; middle row: Susan DeSantis, Ulyana Bardyn, Robert Leo, Serhiy Hoshovsky; bottom row: Azish Filabi.



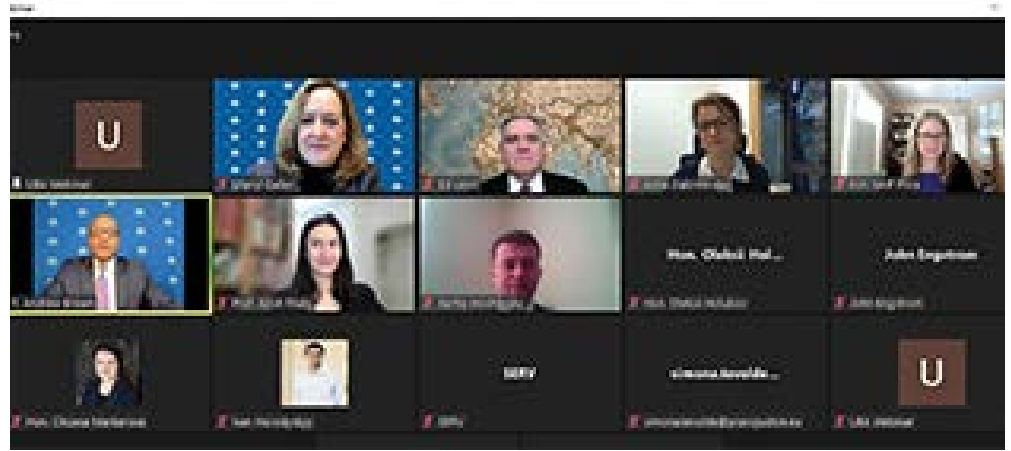
Below: NYSBA Ukraine Task Force members have met numerous time. Top row, left to right: Ed Lenci, Sheryl Galler, David Miranda, Oksana Tuncer, Anna Dabrowska; Middle row: Susan DeSantis, Kim Wolf Price, Deborah H. Kaye, Robert Leo, Ulyana Bardyn; Bottom row: Carlos Ramos-Mrosovsky, Serhiy Hoshovsky, Brandon Vogel.

Below, left: Panelists on NYSBA's Ukraine Chapter Presentation, Top row left to right: Anna Dabrowska, T. Andrew Brown, and Sheryl Galler. 2nd row left to right: Kim Wolf Price, Professor Filabi and Serhiy Hoshovsky. 3rd row: Ed Lenci.

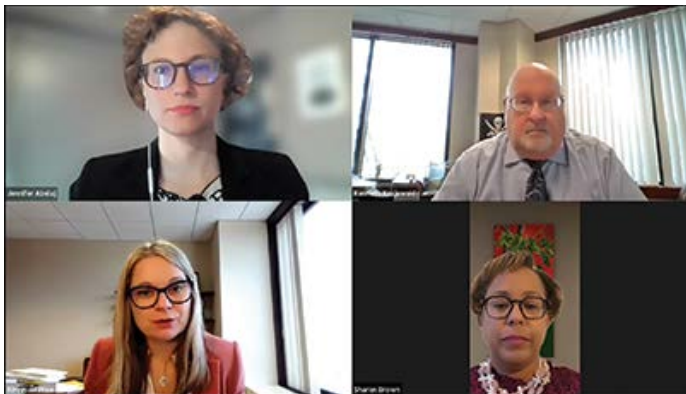
Below, right: Hon. Oksana Markarov.



Right: Panelists for the NYSBA presentation to the Ukraine Bar Association. Top row left to right: **Sheryl Galler, Ed Lenci, Anna Dabrowska, and Kim Wolf Price**; 2nd Row: **T. Andrew Brown, Professor Azish Filabi, Serhiy Hoshovsky and Hon. Okeksii Holubov**; 3rd Row: **Hon. Oksana Markarova and Ivan Horodyskyy**.



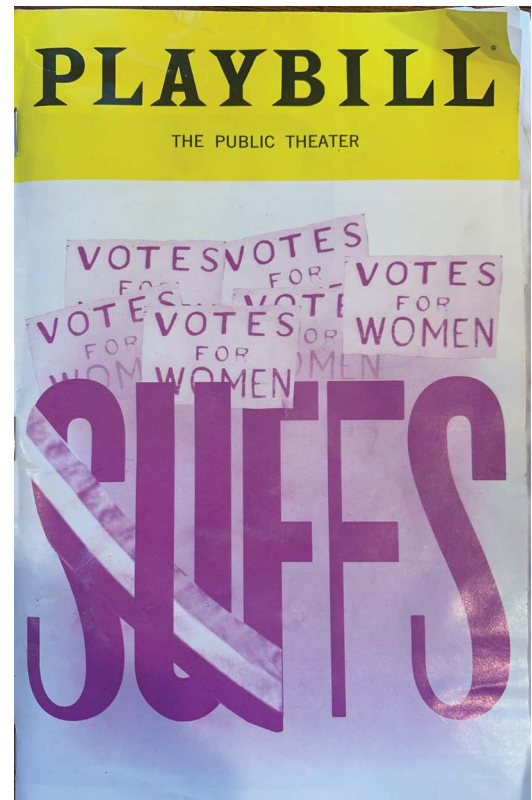
Below: NYSBA's Ukraine Chapter Presentation Panelists **Anna Ogrenchuk and Inna Liniova**.



Above: "Zoom Etiquette for Law Students." Top row, left to right: **Jennifer Abelaj, Kenneth Krajewski**; bottom, left to right: **Kim Wolf Price, Sharon Brown**.

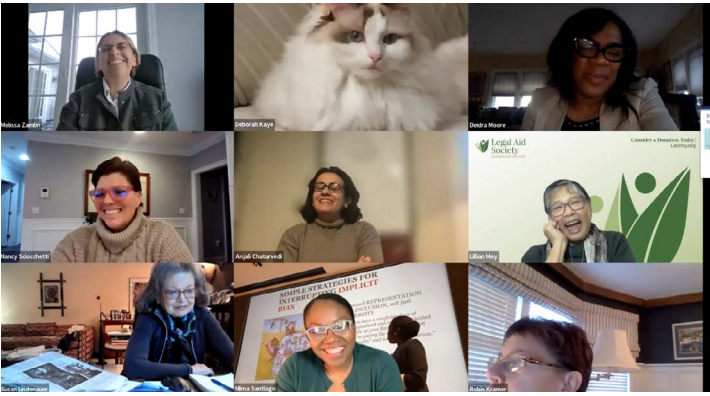


Left: "Virtual Interviewing." Top, left to right: **Christina Singh-Bedell, Kim Wolf Price**; bottom, left to right: **Vernadette Home, Ron Hedges**.



Above: WILS members enjoyed attending a performance of "Suffs" in May 2022.

ANNUAL MEETING & OTHER PROGRAMS 2022



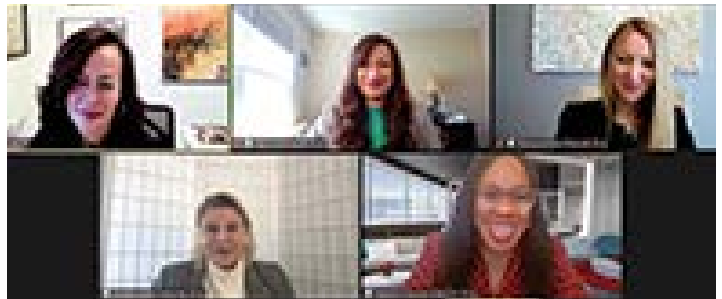
Above: The panelists for “Opening Doors: Leadership Challenges.” Top row, left: **Melissa Zambir**; middle row, Moderator **Nancy Sciocchetti**, **Anjali Chaturvedi** and **Lillian Moy**; bottom row, **Mirna Santiago**. Also shown: **Deidra Moore**, **Susan Lindenauer**, and **Robin Kramer**.



Above: Panelists for “Gender Identity and Expression.” Top row, left to right: **Theresa Rusnak**, **Pamela Bass**; bottom row, left to right: **Kim Wolf Price**, **Mia Perez**.



Above: “Changing Lanes: Ethical Blindspots” | Top row, left to right: **Kaylin Whittingham** (Moderator), **Robert Barrer**
Bottom, left to right: **Kim Ringer**, **Trisha Rich**.



Above: “How To Advocate for Yourself at Work” Top row, left to right: **Joi Bourgeois**, **Rippi K. Karda**, **Daisy LePoer**; bottom: **Sheila Marie Murphy**, **Natalya Leona Johnson**.

Below: NYSBA Celebrates Trailblazers on International Women’s Day

Top row left to right: **Mary Fernandez**, **Sheryl Galler**, **Helen Naves**; middle row: **Daniela Bertone**, **Michele Clarke-Ceres**, **Ruby Asturian**; bottom: **Marianna Eguiarte-Morett**.



Slowly but Surely: Working To Increase Opportunities for Women in ADR

By Shira Forman



As alternative dispute resolution (ADR)—the resolution of disputes through arbitration, mediation, and other non-litigation methods—continues to grow in popularity, many leaders of the ADR community are focused more than ever on diversity efforts, including efforts to increase the number of women serving as neutrals.

Although reliable statistics on women’s participation in ADR are hard to come by, recent reports indicate that women make up approximately 23% of the arbitrators at the nation’s top alternative dispute resolution firms.¹ This number is steadily increasing but, for many in the ADR world, not quickly enough. Using various approaches, ADR leaders are aiming to open doors for women neutrals—and, in so doing, enhance the ADR experience for all participants.

A Hub for Connecting

In 2021, the NYSBA Dispute Resolution Section partnered with the New York City Bar Association’s ADR Committee and other organizations to create the New York Diversity Equity and Inclusion (DEI) Neutral Directory.² The directory lists ADR professionals from historically underrepresented communities and allows users to search for professionals according to self-identifying characteristics, including gender, racial identity and ethnic heritage, disability status, and membership in the LGBTQ+ community, in addition to practice area, languages, and other criteria.

Robyn Weinstein serves as ADR administrator for the United States District Court for the Eastern District of New York (EDNY) and spearheaded the creation of the directory

as co-chair of the New York City Bar Association’s ADR Committee DEI Subcommittee, along with her co-chair, Rachel Gupta, and their counterparts Stephen Marshall and Iyana Titus of NYSBA’s Dispute Resolution Section Diversity and Inclusion Committee. According to Weinstein, although there were published lists of diverse neutrals in the past, none were local to New York State or searchable online. The new directory, she said, is “a hub for people to connect if they want a neutral from a certain background” and “a way for people who are underrepresented to be visible to clients.” The directory is only a few months old, but already ADR leaders in other states have expressed interest in recreating it for their localities, Weinstein added.

Leadership in Court Programs

In recent years, women have made up around 50% of the volunteer mediators in the United States District Court for the Southern District of New York’s ADR program. Rebecca Price, the program’s director, attributes this in part to the increased gender parity in law school classes and at law firms. In addition, the leaders of both the Southern District of New York (SDNY) and EDNY ADR programs are women under 50, which, Price suggests, “is a signal to women under 50 that they are welcome and valued and respected.”

One benefit of joining the S.D.N.Y.’s roster, according to Price, is that it is a volunteer experience that, unlike many forums for neutrals, guarantees opportunities for everyone on the roster to mediate. “It’s not a given that a woman in the room will connect to a woman but at the same time it mat-

ters that that opportunity is offered at least part of the time,” said Price.

By Diverse Neutrals for Diverse Neutrals

When Marcie Dickson noticed that none of the large ADR firms in the U.S. were led by a woman of color, she set out to change that. In August 2021, Dickson became the first Black woman to found and lead a national dispute resolution firm in the United States when she opened Alterity ADR, which is based in Atlanta.

“Our panel of neutrals reflects the clients and communities we serve, and our procedures and rules are designed to ensure greater flexibility, transparency, and accountability in the ADR process,” Dickson said. She hopes that building a diverse roster of neutrals will improve the ADR process for all involved. “An empathetic neutral who can build rapport and trust with clients has an increased chance of empowering them to take control of the dispute at hand and work together to find a resolution.”

Endnotes

1. *Where White Men Rule: How the Secretive System of Forced Arbitration Hurts Women and Minorities*, American Association for Justice, June 2021.
2. New York DEI Neutral Directory at <https://sites.google.com/view/ny-dei-neutral-directory/home>.



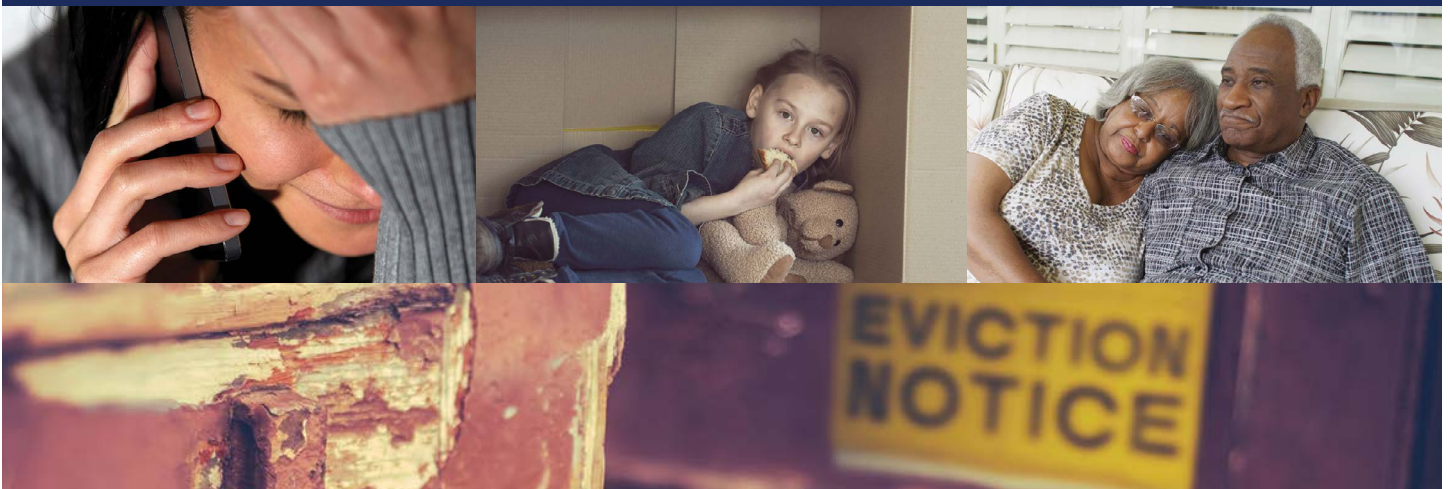
Shira Forman is an employment attorney at Sheppard Mullin Richter & Hampton and a mediator and arbitrator. She serves on the arbitration rosters of the American Arbitration Association’s Consumer Arbitration division and FINRA, and as a mediator for the SDNY and the New York State court system.

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Nigeria, Still Virtually!

By Linda A. Redlisky

The Second International Women's Day Conference of the Nigerian Bar Association's Women's Forum (NBAWF) was held on March 31, 2022. Entitled "The Invisible Hand of Gender Bias: Championing Collective Change," it was attended by approximately 250 people at the Civic Centre in Lagos and hundreds more attended virtually, including WILS Chair Sheryl Galler, who spoke at the conference.

Galler participated in a plenary session titled "Rising to the Occasion: Leadership from the Eyes of Contemporary Women." The panelists provided insights as to how women attorneys can make positive changes in their own careers and inspire others, and shared their experiences in overcoming barriers to achieve career advancement and success.

Galler described the benefits that companies and organizations derive from gender diversity in leadership, including financial stability, and the importance of women leaders as role models to girls and young women. She also shared personal stories from her own career path and the key roles played by the people in her life when she made the successful career transition from litigating cases to counseling clients on employment law matters.

Finally, the moderator asked how we can encourage women not to give up on their legal careers. Galler stressed the importance of bar association programs where we can talk about the challenges we face as women attorneys and assure anyone who is struggling that they are not alone. Together, we can share insights and ideas, connect as sponsors and mentors, advocate for changes in the law and our workplaces, and take inspiration from each other's success. She added that we also need to be available to each other on an individual level, to listen to the specific issues that may be causing someone to consider giving up on their legal career and help them consider whether changing their area of practice, changing employers or taking time to rest and recharge might be alternatives to leaving the legal profession.

The skilled moderator of the panel was Shola Soleye, Judiciary Correspondent, Channels TV. Galler's esteemed copanelists were: Nta Ekpiken, Principal Partner, NECS; Wola Joseph, Chief Legal Officer and Company Secretary, EKO Electricity Distribution PLC; and Chinwe Odigboegwu, Legal Director, Guinness Nigeria PLC. The session was coordinated by Rahila Dauda on behalf of the NBAWF.

The conference featured goodwill messages from Nigerian leaders including Her Excellency, Noimot Salako-Oyedele, Deputy Governor, Ogun State. Other informative and absorbing plenary sessions at the conference covered topics such as hidden biases in the courtroom, bullying and sexual harassment in the legal profession, and navigating the corporate ladder.

This is the second year that the NBAWF honored WILS with an invitation to participate in its International Women's Day Conference. WILS' Immediate Past Chair, Terri A. Mazur, joined the NBAWF's first conference in March 2021.

The NBAWF also invited us to speak at the Nigerian Bar Association's 2021 Annual General Conference, which was held in October. Galler spoke at a session coordinated by the NBAWF and titled, "Women in Practice: Coping With Modern Workplace Biases, Inequities & Challenges." For more information about that program, please see our previous issue of *WILS Connect* (2022; Vol. 3, No. 1).

These kind invitations result from a Memorandum of Understanding that NYSBA, WILS and the NBAWF signed in 2020. Since then, we have had the pleasure of coordinating speaking opportunities with the vice chairperson of the Women's Forum, Chinyere Okorocho, who is also a partner and head of sectors at a top tier law firm headquartered in Lagos, Nigeria. In June 2021, we were honored that Okorocho joined us to speak at a fascinating webinar presented by WILS and NYSBA's International Section, titled, "How Women From Five Countries View Post-Pandemic Office Returns."

We look forward to more opportunities to bring together the members of WILS and the NBAWF to discuss issues of interest to women attorneys worldwide.



Linda A. Redlisky is a partner at Rafferty & Redlisky in Pelham, N.Y., focusing on elder law and guardianship matters. She is an Executive Committee member of the Elder Law and Special Needs Section, co-chair of the newly formed Long Term Care Facility Reform Committee and co-chair of the Client and Consumer Issues Subcommittee.

An Ode to a Woman Who Helped Pave the Way

By Juliet Gobler

“While we are impressed with your credentials, we are looking to hire a man for this position.”

My grandmother Ada practiced law starting in the late 1940s in Brooklyn, New York. Grandma was born in Southern Italy and moved to the United States through Ellis Island when she was four years old. Her family settled in upstate New York, where she spent the rest of her childhood.

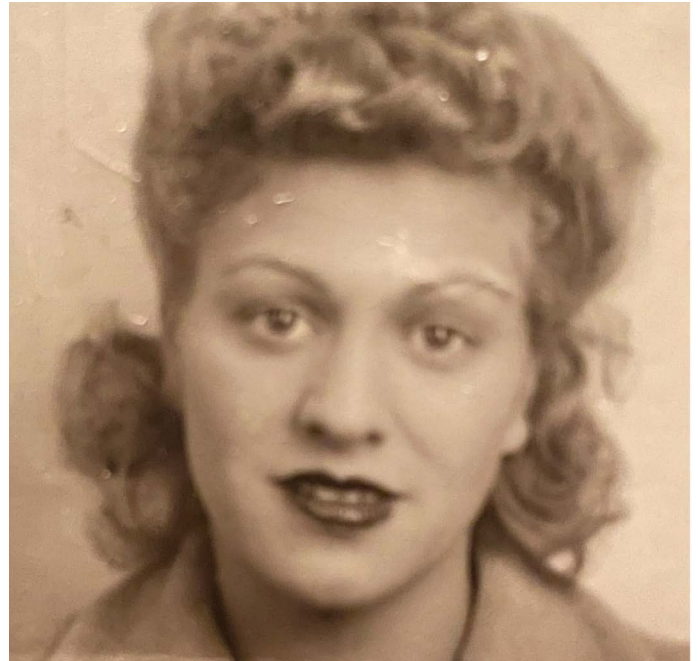
Grandma Ada was an exceptional student. She was featured in the local newspaper for attaining the highest average score for the New York State Regents exams. She was valedictorian of her high school class.

As one of five daughters, with no sons, Ada’s father took her under his wing as his apprentice. Grandma assisted her father with the Italian American newspaper he ran.

While she had an interest in journalism, she continued her education and earned her college degree. While attending college, in order to earn money, Ada worked in a military defense factory during World War II. When the war was over, despite having been trained and working in these factory positions, Ada and all her female coworkers were expected to immediately step away from their positions for men returning home. She felt this was an injustice. Growing up in a family with only daughters, she was raised by parents who did not subscribe to gender norms and limitations. Ada was taught and believed one should be judged based on their merit and ability. After college, she decided to pursue an education and career in law.

In the mid-1940s, Grandma moved to New York City to attend St. John’s University School of Law. She did not know of other women attorneys before attending law school and may have met one other female law student while attending St. John’s. In the 1940s, society did not view it as acceptable for women to attend graduate school. She was not well received by professors or her classmates. Ada would say she had to “work ten times harder” than her male counterparts to earn the same grades. She was not afforded the same respect as her male classmates by her professors.

Grandma was the only woman in her graduating class. Despite her stellar academic record, her first position out of law school was secretarial because no one would hire her as a lawyer. After a year or two at the secretarial job, Grandma had no choice but to open her own law firm in Brooklyn.



Ada as a young woman.

My grandfather, Ada’s husband, had a real estate firm in their close-knit Brooklyn neighborhood and he referred his clients who needed legal services to Ada, enabling her to go out on her own. She ran her law firm as a general solo practitioner for the next 40 years. Ada practiced criminal law, family law (divorces and adoptions), disability law, wills/trusts and estates, and handled real estate and corporate transactions. Having a general law practice was common in those days.

While she never revealed this during her lifetime, my grandmother faced blatant sex discrimination when she entered the legal field in the late 1940s. The attitude of Ada’s male counterparts in law school and when practicing law was that she did not belong in the field. Ada felt she was treated as a second-class citizen by judges and opposing counsel—all of whom were men. They could not believe she had the audacity to be in their field, in their space. They would go out of their way to give her a hard time. Fortunately, Ada was motivated by the naysayers and she worked even harder. After her death, rejection letters from a New York district attorney’s office and a Manhattan law firm were found among her possessions. Both letters stated that, while the employers were impressed with her credentials, they were looking to hire

only men for attorney positions. There can be no question that Grandma's only choice was to hang out her own shingle in order to practice law.

Clients approached Ada knowing that they were going to be retaining a female attorney because her name was on the door. She had to charge less than her male counterparts. However, her clients were very loyal—they used her over and over again for all of their legal service needs. She often took on women clients whom male attorneys refused to work with or disrespected. Ada did not personally know of any other women practicing law when she started her career, but she had the comradery of a dear female friend who was a doctor.

Grandma Ada had a brilliant legal mind and was fluent in five languages. As an attorney and a person, Grandma's generosity knew no bounds. She would answer calls in the middle of the night to defend clients in criminal court. She was known to barter with her clients in exchange for her legal services. Grandma even went so far as to house clients in need in her own home.

In the mid-1960s, while raising her three children and running her law practice, Grandma ran for a seat in the New York State Senate. She even received an endorsement from the then-mayor of New York City.

Grandma Ada defied the prescribed expectations of women in the mid-20th century, enduring blatant gender discrimination prior to the enactment of equal employment opportunity laws. Her story inspired me to become a social activist and community leader starting in college, advocating for gender equality and earning a degree in women's studies with a specialty in gender and social change. My grandma's courage and career path influenced my decision to attend law school in 2010. I am sure she would be astonished and



Left to right: Ada, **Juliet Gobler**, and Juliet's mother.

pleased to learn that today more than half of law students in the United States are women. I am also certain she would be disappointed, though not surprised, that gender and sex discrimination still persist in the legal field. Eight years into my own legal career, I followed in her footsteps and opened my own law practice. I aspire to live up to Grandma's legacy by using the law as a vehicle to help and empower others.

Let us celebrate the women who have paved the way for us in the legal profession. May we remember their history, appreciate the obstacles they overcame, and be grateful that their efforts positively impacted our careers. More importantly, may we recognize that there is much more work to be done to achieve equality for women in the legal profession. I ask that you join me in continuing to clear the path for women in the hope that it will be less treacherous for those who travel down it after us.

Below: Ada's New York State Senate campaign poster.



Juliet Gobler is the principal of The Law Office of Juliet Gobler in White Plains, New York. Her practice focuses on wills, trusts and estates, and she has extensive experience in commercial litigation and Art. 81 guardianships. Juliet has been a feminist social activist, community leader and public speaker since 2008 while attending Stony Brook University. Most notably, Juliet is the former president of the National Organization for Women's

Suffolk County chapter.

In Memoriam: Justice Eileen Bransten (1942-2022)

By Terri A. Mazur

Justice Eileen Bransten, a retired justice of the Manhattan Commercial Division Court of the New York County Supreme Court, First Judicial District, died on April 26, 2022. She was 79 years old. Justice Bransten was known “for her ability to ‘cut through complex issues,’”¹ and described as a “judicial titan[.]”² Justice Saliann Scarpulla (Appellate Division, First Department) said: “Lots of people enjoy aspects of being a lawyer, but [Justice Bransten] did so much more than that, for the practice of law.”³ Justice Scarpulla was so inspired by her clerkship for Justice Bransten that she decided to pursue a seat on the bench.⁴

Justice Bransten first worked as the director of research for political campaigns from 1965 to 1969. She also was a senior research analyst for the Style and Arrangement Committee of the New York State Constitutional Convention in 1967, a correspondent for the *New York Law Journal* from 1967 to 1968, director of research and public relations for the New York State Senate Minority from 1970 to 1973, and an executive assistant and director of research, writing and legislation for the Criminal Justice Coordinating Council of the New York City Mayor’s Office. Justice Bransten received her B.A. from Hunter College of the City University of New York in 1975.⁵

Justice Bransten started her legal career in 1978 as a student assistant for the U.S. Attorney’s Office in the Southern District of New York. After graduating from Fordham Law School in 1979 with a J.D., she became an assistant Queens County district attorney in 1980, where she worked for four years. She then worked as a sole practitioner until 1992. From 1992 to 1994, Justice Bransten was the principal court attorney to Supreme Court Justice Jacqueline Silberman. In 1994, Justice Bransten was elected judge of the New York City Civil Court, holding that position for two years. She then served as a justice of the New York County Supreme Court, First Judicial District, from 1996 to 2018. Justice Bransten was elected to this court in 2000, after serving as an acting justice from 1996-1998. She retired from the bench in 2018.⁶



Justice Bransten chaired the NYSBA Judicial Section in 2008.

Endnotes

1. <https://www.law.com/search/?q=judge+eileen+bransten&source=falcon&startDate=2022-04-22&endDate=&button-search=Search>.
2. Franklin C. McRoberts, *A Fond Adieu to Two Giants of the Manhattan Commercial Division*, (Dec. 24, 2018), <https://www.nybusinessdivorce.com/2018/12/articles/lcs/fond-adieu-two-giants-manhattan-commercial-division-bench/>.
3. <https://www.law.com/search/?q=judge+eileen+bransten&source=falcon&startDate=2022-04-22&endDate=&button-search=Search>.
4. *Id.*
5. See https://ballotpedia.org/Eileen_Bransten.
6. *Id.*

WILS Annual Meeting 2022

Jennifer Wu's Inspiring Keynote Speech, "Raising Our Voices for Equity," Opens WILS 2022 Annual Meeting

By Jennifer M. Boll



Above: **Jennifer Wu** (top left) gave an inspiring keynote address. Also shown (top middle) **Susan Lindenaure**; (middle row, left to right) **Rita Christopher** (daughter of Edith I. Spivack), **Deidra Moore** and **Gabriela Palmieri**; (bottom row, left to right) **Foluke Dada**, **Catherine Christian** (Co-Chair WILS Awards Committee), and **Kim Wolf Price** (WILS Chair Elect).

The 18th Annual Edith I. Spivack Symposium, WILS' 2022 Annual Meeting, was held virtually over two days on January 18 and 25, 2022. The symposium honors Edith I. Spivack, a trailblazing lawyer whose legal career, which began in 1932, was marked by tenacity and determination. Edith was a charter member of NYSBA's Committee on Women in the Law, the predecessor to the Women in Law Section. This year's symposium theme was "Women Leaders Driving Change by Opening Doors and Raising Our Voices."

The symposium opened with a motivating keynote address by Jennifer Wu, a partner at Paul, Weiss, Rifkind, Wharton & Garrison, LLP. Wu's address was entitled "Raising Our Voices for Equity: Good Leadership and Leading for Good."

Wu shared with our virtual attendees her experiences and insights in addressing such questions as: How do we lead in a way that is authentic to who we are? How do we empower others to become leaders? How do we bring fairness to our communities even as we navigate unprecedented challenges at home and work?

Wu inspired us to be leaders, to advocate for change in our laws for the benefit of women and families, to speak out for

diversity, equity and inclusion in our society and in the legal profession, and to help open doors and career paths for our colleagues and emerging leaders.

WILS featured three other CLE-qualified panels on leadership issues, including an ethics program, along with its business meeting, presentation of the Kay Crawford Murray Memorial Award and the Ruth B. Schapiro Memorial Award, and a networking reception. If you are interested in hearing more, the keynote and the other Annual Meeting panels and awards presentations are available on demand on the NYSBA website.



Jennifer M. Boll is a member of Bond, Schoeneck & King. Her practice focuses on corporate, tax and estate planning matters. Boll also serves on the WILS Executive Committee, is deputy co-chair of the WILS Annual Meeting, Programming and CLE Committee, and is WILS' Upstate Member at Large.

Fostering Women as Leaders

By Nancy L. Sciocchetti

The Annual Meeting for the Women in Law Section opened on January 18, 2022 with a compelling panel on “Fostering Women as Leaders.” The panel was targeted at both leaders and aspiring leaders. A panel of dynamic, accomplished women provided an opportunity to learn from their experiences on how to hone the skills necessary to rise to leadership. Exploring aspects of leadership style and the necessary skills to succeed, the panel proved to be of interest to a wide variety of participants, including women who are—or are working toward—leading teams big and small, in the traditional law firm setting, in corporate offices, in not-for-profit legal services organizations, and in government. The panelists addressed finance, hiring practices, and management styles that can help leaders and aspiring leaders rise to the next level.

The panelists included Mirna Santiago, founder of the not-for-profit organization Girls Rule the Law; Anjali Chaturvedi, former assistant general counsel for Northrop Grumman, now an assistant attorney general with the U.S. Justice Department; Lillian Moy, executive director of the Legal Aid Society of Northeastern New York; Melissa Zambri, partner and chair of the Health Law Department at Barclay Damon; and Nancy Sciocchetti, a health care attorney and consultant with Mercury Public Affairs.

If you are interested in hearing more about this outstanding panel, the WILS 2022 Annual Meeting program is available on demand on the NYSBA website.



Nancy L. Sciocchetti

is a health care attorney and managing director at Mercury Public Affairs. She concentrates in the area of health care enterprise development and transactions, licensure and operation of health care facilities, certificate of

need, sales, mergers and acquisitions, financing, and corporate and real estate issues. Sciocchetti serves on the WILS Executive Committee and is deputy co-chair of the Annual Meeting, Programming and CLE Committee.

Speaking Up and Speaking Out on Sexual Harassment

By Jennifer M. Boll

The second panel at the 2022 WILS Annual Meeting Program was a virtual panel discussion entitled “Speaking Up and Speaking Out: Using Our Voices To Combat Sexual Harassment.” The panelists began by reviewing current laws to combat sexual harassment in the workplace, including mandatory reporting and laws against retaliation. They discussed current issues involving remote work and digital environments. The conversation then shifted to the risks, requirements and rewards of speaking up against harassment, and how to help protect and support colleagues who may be experiencing sexual harassment or retaliation. Our panelists also addressed how to handle media interest and public relations. Finally, the panel concluded with examples and advice for leaders on how to foster a culture of respect within organizations and how to build support systems to promote safe and inclusive workplaces.

The panel was moderated by Jennifer M. Boll and included Anne L. Clark, a partner at Vladeck, Raskin & Clark, PC; Laura H. Harshbarger, a member at Bond Schoeneck & King, PLLC; Cora MacLean, senior counsel at Standard Chartered Bank; and Lucy Yang, a reporter at ABC7 Eyewitness News. A recording of this panel is available on demand on the NYSBA website.

Below, panelists for “Speaking Up and Speaking Out.” Top row left to right: Anne Clark, Jennifer Boll (Moderator); bottom row: Laura Harshbarger, Cora MacLean, and Lucy Yang.



Changing Lanes: Ethical Blind Spots

By Kaylin L. Whittingham

The 2022 Annual WILS Meeting ethics presentation was titled “Changing Lanes—Ethical Blind Spots” and designed to address the great resignation and the vast increase in the number of attorneys changing firms.

With so many professional conduct rules to consider when navigating the change from one firm to another, or to government, or in-house, or when going solo, it is no wonder there is a new proposed Rule 5.9 to be added to the New York Rules of Professional Conduct that would address some of these challenges. Since we did not have the benefit of Rule 5.9 at the time of WILS Annual Meeting, the panel did the best that they could to guide the attendees away from the possible ethical landmines that await the unwary when “switching lanes” from one place of employment to another.

The discussion focused on the duties of not only the attorneys making the change, but also on the old firm or organization and their responsibility to the clients to continue to put the clients’ interests first and protect their confidential information. Exactly what “onboarding” information can a lawyer share with the new firm? Who gives notice to the client of the lawyer’s departure and when should notice be given? Who keeps the client file? How does the old firm protect its work product and data? The presentation addressed these and many more of the attendees’ burning questions. The panel discussed the possible pitfalls for the new firm, in particular, as it relates to conflict of interest. Would screening be enough to avoid the conflict in circumstances involving non-government attorneys? The discussion covered the specific rules for mediators, third-party neutrals, judges and public sector employees, including the challenges of conflicts checks on government employees.

With so many attorneys opening their solo practice, no discussion would have been complete without paying attention to steps that lawyers should take to stay in compliance with the rules. For those solo practitioners adding “Of Counsel” to their law firms, often for marketing purposes to appear as a larger firm with more expertise, issues included what potential challenges may arise. Finally, the panel reminded the attendees of the importance of reading their partnership

agreements and not waiting until they are ready to change firms.

The panel was moderated by Kaylin L. Whittingham and included Robert Barrer, chief ethics and risk management partner at Barclay Damon; Trisha Rich, partner, co-chair of the legal profession team at Holland & Knight; and Kim Ringler, principal of the Ringler Law Firm. This presentation is available on demand on the NYSBA website.



Kaylin L. Whittingham is principal of Whittingham Law, where she focuses her practice on legal ethics and professional responsibility. She is the founder of the Legal Ethics Lab and host of the podcast “Legal Ethics in a New York Minute.” Whittingham is a member of the WILS Executive Committee and currently serves as WILS Secretary.

2022 Kay Crawford Murray Memorial Award Presented to Katherin M. Crossling

By Catherine Christian and Marilyn Flood



Women in Law Section Chair Sheryl B. Galler presented the 2022 Kay Crawford Murray Memorial Award to Katherin M. Crossling during the Section's 18th Annual Edith I. Spivack Symposium on January 18, 2022. Crossling was recognized for her commitment to diversity in the legal profession and dedication to advancing the professional development of women attorneys and women generally.

This award was created to honor Kay Crawford Murray, a Black lawyer who had a distinguished professional career in New York City government, served in leadership roles in many bar associations, including the New York State Bar Association, advocated for women's rights, and mentored women lawyers and law students, especially Black women.

Crossling exemplifies Kay Crawford Murray's dedication to public service and advocacy on issues of special concern to women, as well as her commitment to diversity in the profession. A partner at Heidell, Pittoni, Murphy & Bach focusing on medical malpractice and personal injury defense, Crossling began her career in the Rackets Bureau of the Bronx County District Attorney's Office, where she developed a novel approach for prosecuting those accused of sex trafficking of minors.

"Katherin Crossling is an outstanding role model in the legal profession for all working parents. She has been an active advocate on the importance and value of flexible work options and helped recruit more female lawyers to her firm," said Galler.

Crossling also volunteers in her community, where she organized a community action group of women to address

suburban sex and labor trafficking issues. She founded Ossining Destination Imagination, an educational nonprofit that has supported more than 300 students in after-school STEM project-based learning. Crossling provides pro bono legal advice to Rising Above Boundaries, a nonprofit dedicated to providing quality child care to mothers in need and mentoring to at-risk youth. She also helped found Harmed Suburban Five, a conglomerate of inadequately funded suburban New York school districts with high poverty that advocates for increased funding and enrichment opportunities.



Catherine Christian is currently chief of the New York County District Attorney's Office Elder Abuse Unit. Christian is a member of the WILS Executive Committee and co-chairs the WILS Awards Committee. She is a past president of the New York County Lawyers Association.



Marilyn Flood currently volunteers as a hearing officer for the September 11 Victim Compensation Fund. Previously she served as counsel to the New York County Lawyers Association, associate director of the YWCA of New York City and executive director of the Mayor's Commission on the Status of Women. Flood also serves on the WILS Executive Committee and co-chairs the WILS Awards Committee.

Judge Leslie E. Stein Receives Prestigious Ruth G. Schapiro Memorial Award

By Catherine Christian and Marilyn Flood



Former Court of Appeals Judge Leslie E. Stein was selected as the 2021 recipient of the Ruth G. Schapiro Memorial Award sponsored by the Women in Law Section, recognizing her great service to the public and the legal profession. NYSBA President T. Andrew Brown presented the award to Judge Stein on January 25, 2022 during NYSBA's Annual Meeting.

Judge Stein, now the director of the Albany Law School Government Law Center, began her judicial career on the Albany City Court in January 1997 and was elected to the New York State Supreme Court, Third District, in 2001. She was appointed to the Court of Appeals in 2014, where she remained until her retirement in June 2021. During her time on the bench, Judge Stein served as co-chair of the New York State Unified Court System's Family Violence Task Force, chair of the Third Judicial District Gender Fairness Committee, and was a founding member of the New York State Judicial Institute on Professionalism in the Law. She also served on the Executive Committee of the Association of Justices of the Supreme Court of the State of New York, as an officer of the New York State Association of City Court Judges, and as a member of the board of the New York Association of Women Judges. Her public service includes leadership positions in bar associations such as the Capital District Women's Bar Association and the Women's Bar Association of the State of New York. Judge Stein also served on NYSBA's Task Force on Increasing Diversity in the Judiciary, and was a member of the Committee on Women in the Law (now the Women in Law Section) and the Family Law Section.

This award is presented each year in honor of Ruth G. Schapiro, who was a trailblazing leader in the legal profession, the first woman partner at Proskauer Rose, LLP, the first woman chair of NYSBA's Tax Section and Finance Committee, and the first chair of the Association's Committee on Women in the Law (CWIL), the predecessor to the Women in Law Section. Under Schapiro's leadership, CWIL issued a groundbreaking report in 1987 on women in the courts and subsequent reports on education, legislation and gender-related issues.

WILS Business Meeting and Successful Networking Reception Held During 2022 Annual Meeting

By Jennifer M. Boll

WILS held a business meeting during its 2022 Annual Meeting, electing the following officers for 2022-2023:

- Secretary: Kaylin Whittingham
- Treasurer: Margaret Sowah
- Members at Large:

Jennifer Boll (Upstate Member at Large),
Justice Tanya R. Kennedy,
Lisa Schoenfeld and
Laura Sulem.

WILS' current Chair, Sheryl Galler, continues her two-year term, which ends on May 31, 2023, and Chair-Elect Kimberly Wolf Price will become Section Chair effective June 1, 2023.

The 2022 WILS Annual Meeting closed with a well-attended virtual networking reception at which our program attendees spent time talking in small groups with the panelists, speakers and each other. Attendees learned more about our panelists and discussed topics of interest in an informal setting. WILS' annual networking reception provided an opportunity for all WILS members and program attendees to participate in and continue the discussion focused on women leaders driving change by opening doors and raising our voices.



Thank You Sponsors!

NYSBA Opens a Chapter in Ukraine

By Sheryl B. Galler and Kim Wolf Price

In December 2021, NYSBA and the Ukrainian Bar Association (UBA) entered into a memorandum of understanding to promote mutual respect and cooperation between the two organizations.¹ Edward K. Lenci, Chair of NYSBA's International Section, and Anna Ogrenchuk, president of the UBA, signed the agreement.

NYSBA's International Section then opened a chapter in Ukraine. Anna Ogrenchuk, along with Ivan Horodysky, vice chair of the UBA, and Inna Liniova, CEO of the UBA, took on roles as leaders of the new chapter and liaisons between the organizations. The UBA and NYSBA planned a historic program to mark the official opening and promote the chapter to the legal community.

In preparing for the program, Ogrenchuk and Liniova learned about WILS. They asked for the opportunity to meet with us and learn about our activities, goals and how we can work together.

Our Section's Chair Sheryl Galler and Chair-Elect Kim Wolf Price were honored to be invited to speak at the virtual program, which was held on February 11, 2022. Galler and Wolf Price began their remarks by expressing WILS' support for Ukraine during that critical moment and concern for their new colleagues.

Galler then explained the mission of WILS and briefly described its many programs, active committees, prestigious awards and interesting publications. The UBA was particularly interested in WILS' legislative affairs committee and its

advocacy for laws that combat violence against women and promote gender equality. Wolf Price described her professional experience in promoting diversity, equity and inclusion, and organizing programs for law students and emerging lawyers. These areas are key goals of the UBA's cooperation with NYSBA, and Liniova noted that the UBA looked forward to working on such projects with Wolf Price and WILS.

The UBA hosted the program, which featured eminent dignitaries including: the Hon. Oksana Markarova, ambassador of Ukraine to the U.S.; the Hon. Oleksii Holubov, consul general of Ukraine in New York; John Engstrom, resident legal advisor, U.S. Embassy in Ukraine; and esteemed speakers including T. Andrew Brown, NYSBA's president; Edward Lenci; Professor Azish Filabi, Chair-Elect of NYSBA's International Section; and Anna Dąbrowska, partner at Wardynski & Partners, co-chair of NYSBA's chapter in Poland, and officer of the European Regional Forum of the International Bar Association.

We thank our hosts, as well as President Brown, Ed Lenci, and Azish Filabi for making these new connections for our members. Panelists for the new Ukraine Chapter Presentation were (top row L - R) Anna Dabrowska, T. Andrew Brown, Prof. Azish Filabi; (middle row) Ed Lenci, Sheryl Galler, Serhiy Hoshovsky; and (bottom row) Kim Wolf Price.

Endnote

1. <https://nysba.org/new-york-state-bar-association-enters-into-memorandum-of-understanding-with-ukrainian-bar-association/>. See also page 37 of this issue.



NYSBA's Ukraine Task Force: From the Rule of Law to Rules of War

By Deborah H. Kaye

In December 2021, the International Section of NYSBA and the Ukrainian Bar Association (UBA) entered into a memorandum of understanding to promote understanding and cooperation between NYSBA and the UBA, and to offer benefits and opportunities for their members. The International Section then formed a Ukraine chapter and met virtually with the leadership and members of the UBA to launch the new chapter. Shortly after that presentation, International Section Chair Edward K. Lenci formed the NYSBA Ukraine Task Force to effectuate the goals of the new chapter. WILS Chair Sheryl Galler and Chair-Elect Kim Wolf Price joined the task force, and WILS member Deborah Kaye volunteered to serve as its secretary.

The first meeting of the Ukraine Task Force was held virtually on February 17, 2022. Barely a week later, Russia invaded Ukraine. The Task Force continued to meet regularly to explore how to support Ukraine during the war and assist the advocacy of the UBA.

Our new connections made the war feel personal even for those of us without relatives there. UBA Executive Director Inna Liniova shared first-hand reports on the situation in Kyiv. We worried for her safety and the safety of her friends and family as she fled to western Ukraine and eventually to Bulgaria. Anna Dabrowska, a law firm partner in Warsaw and chair of NYSBA's Poland chapter, invited Ukrainian refugees, including a mother and baby, to stay in her home. Anna shared the tale of their harrowing journey and the dedication of colleagues who helped them along the way.

NYSBA President Andrew T. Brown joined the task force's meeting on February 24 to condemn Russia's criminal invasion and to affirm that NYSBA stands with Ukraine. NYSBA issued press releases stating its support of Ukraine and the rule of law, and inviting others to follow. At the UBA's request, task force members used their connections to encourage bar associations around the world to issue their own similar statements.

Over the next few weeks, the mission of the task force grew to include teams focusing on: (1) providing guidance on the sanctions imposed on Russia and its companies and citizens; (2) providing advocacy and immigration assistance for Ukrainian refugees, residents and immigrants in Europe, Canada, Poland, Moldova, Germany, Ireland, the United States, and elsewhere; (3) collecting information regarding charities and resources to assist Ukraine, including guides in multiple languages; (4) providing guidance on the collection of evidence of war crimes—an immensely complicated

subject—and other preparations for Ukraine to bring claims against Russia in international tribunals; and (5) helping Ukrainian attorneys find remote jobs in other jurisdictions, even as far away as Canada. The task force also grew from approximately 15 people to over 60, as it welcomed additional NYSBA members and staff, representatives of other bar associations here in the U.S. and abroad, and representatives of law firms and pro bono legal services organizations, all with the goal of coordinating efforts for Ukraine and its people.

NYSBA helped promote the task force's efforts through articles and press releases, and by creating a resource page with links to international statements against the invasion, international resources on sanctions, lists of charities collecting for Ukraine, plus news articles and updates. See <https://nysba.org/legal-resources-on-the-ukraine-conflict/>.

In March, NYSBA offered specialized training on how to help Ukrainian refugees apply for Temporary Protected Status (TPS). Nearly 750 attorneys took part in the TPS training. Many people volunteered after the training. It was reported to be the most watched webinar in NYSBA's history.

The *New York Law Journal* and other legal news outlets have written and reported about the task force, its mission and accomplishments, and the individuals who are making this happen.

We are honored to be part of this important project but hope that the task force can soon return to its original long-term goals: to provide advice and guidance to the legal profession and the judiciary in Ukraine concerning the protection of the rule of law, professional and judicial ethics, best practices in the legal profession and the judiciary, and the greater involvement of young lawyers and women lawyers in the legal profession. We hope that the war will end soon and that Ukraine can begin to heal and re-build. Meanwhile, we hope and pray for the safety of our friends and colleagues at the UBA and their families and fellow citizens.



Deborah H. Kaye, co-chair of WILS Champions Committee, is a former managing director and senior managing counsel at BNY Mellon, where she was the chief managing attorney for multiple companies in the international securities, futures, mutual funds, and collateral business lines. She also created their Global Pro Bono Committee.

Gender Identity and Expression: Creating Inclusive Spaces

By Pamela D. Bass

On March 22, 2022, the Women in Law Section (WILS) of the New York State Bar Association, with the support of the LGBTQ Law Section, the Young Lawyers Section, and the Committee on Continuing Legal Education, presented a CLE entitled “Gender Identity and Expression: Creating Inclusive Spaces.”

This program took a unique view of creating inclusive spaces by examining the impact of federal and state laws on the workplace and in public schools and institutions of higher education. A key reality is that today’s students are more informed of their rights than in the past. As these students mature and as their parents, relatives, and friends operate in the workforce, all are interested in creating respectful and inclusive spaces.

The presenters were Pamela D. Bass of Thomas, Drohan, Waxman, Petigrow and Mayle, LLP (who focused on the educational environment) and Theresa E. Rusnak of Bond, Schoeneck & King PLLC (who concentrated on the workplace). In addition, Tamia “Mia” Perez, a 2023 juris doctor candidate from the William S. Boyd School of Law at UNLV, shared her personal experiences in the workforce.

Federal Law—Title VII and Title IX

Title VII prohibits discrimination because of race, color, national origin, sex or religion in the workplace.¹ The United States Supreme Court in *Bostock v. Clayton County*, ___ U.S. ___, 140 S. Ct. 1731 (2020), held that Title VII’s prohibition of discrimination on the basis of sex, includes discrimination on the basis of gender identity and sexual orientation. The Court stated,

homosexuality and transgender status are inextricably bound up with sex. Not because homosexuality or transgender status are related to sex in some vague sense or because discrimination on these bases has some disparate impact on one sex or another, but because to discriminate on these grounds requires an employer to intentionally treat individual employees differently because of their sex.²

Like Title VII, Title IX prohibits discrimination on the basis of sex.³ Based upon the Court’s decision in *Bostock*, the United States Department of Justice and the United States Department of Education issued guidance that discrimination “on the basis of sex” under Title IX includes gender identity and sexual orientation.⁴

New York State Law

The State of New York has been a leader in the rights of transgender individuals. In 2019 the New York State Human Rights Law was amended to include gender identity and gender expression.⁵ In addition, students in New York are protected against discrimination, bullying, and harassment on the basis of their gender identity and under the Dignity for All Students Act (DASA) and Education Law, § 3201-a.⁶

Creating an Inclusive Environment

With the law clear that employers and schools are prohibited from discriminating against individuals based on their gender identity, the program focused on creating inclusive spaces at work and school. Both employers and schools are required to provide individuals with access to the restroom or locker room consistent with an individual’s gender identity.⁷ Similarly, both environments are expected to refer to individuals by the name and pronouns that are consistent with their gender identity.

In addition, the program covered best practices to help create an inclusive environment including:

- Create single use restrooms that are gender neutral;
- Train and educate managers/employees regarding transgender rights;
- Establish a system of checks and balances to confirm decisions and actions are taken properly for a legal purpose.

The program also examined ways to address situations that an individual who is cisgender may find uncomfortable, including:

- Asking an individual their preferred name and pronouns;
- Apologizing if you make a legitimate mistake with an individual’s name or pronouns;

- Being supportive when someone comes out as transgender.

Transgender Athletes

The program ended with a short discussion of the national debate over sports participation by individuals whose gender identity is different from the sex assigned at birth. The debate is mostly focused on the participation of transgender girls/women in girls/women's athletics.

The New York State Bar Association has created a task force to study youth sports. The New York State Public High School Athletic Association (NYSPHSAA) follows New York Education Law 3201-a. Its policy and procedures states:

The NYSPHSAA recognizes the value of participation in interscholastic sports for all student athletes. The NYSPHSAA is committed to providing all students with the opportunity to participate in NYSPHSAA activities in a manner consistent with their gender identity and the New York State Commissioner of Education's Regulations.

The Dignity for All Students Act (DASA) prohibits discrimination and/or harassment of students on school property or at school functions by students or employees. The prohibition against discrimination includes discrimination based on a student's actual or perceived sex and gender. Gender includes a person's actual or perceived sex as well as gender identity and expression.⁸

The policy provides for local decisions and is appealable directly to the Commissioner of Education.⁹

The CLE program is available on demand through the New York State Bar Association.

Endnotes

1. Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e et seq (1964); *id.* at § 2000e-2(a):

“It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex[] . . . ; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's . . . sex[] . . . ”.

See also United States Department of Justice discussion of Title VII, available at <https://www.justice.gov/crt/laws-enforced-employment-litigation-section>.

2. ____ U.S. at ___, 140 S. Ct. at 1742.
3. 20 U.S.C. 1681(a) (“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. . . .”).
4. *See* United States Department of Justice Civil Rights Division Memorandum from Principal Deputy Assistant Attorney General for Civil Rights Pamela S. Karlan to Federal Agency Civil Rights Directors and General Counsels regarding Application of Bostock v. Clayton County to Title IX of the Education Amendments of 1972 (Mar. 26, 2021), *available at* <https://www.justice.gov/crt/page/file/1383026/download>; United States Department of Education, Federal Register Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County (June 16, 2021), *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf>.
5. The Gender Expression Non-Discrimination Act (GENDA) added gender identity and gender expression to the list of protected classes in New York State's Human Rights and Hate Crimes laws. Exec. L. § 292(35). *See* <https://dhr.ny.gov/genda>.
6. Education Law, §10 – 18. A new Article 2 – Dignity for All Students was added to the New York State Education Law to prohibit bullying, harassment, and discrimination. The Dignity Act also amended Section 801-a of New York State Education Law regarding instruction in civility, citizenship, and character education by expanding the concepts of tolerance, respect for others and dignity to include: an awareness and sensitivity in the relations of people, including but not limited to, different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, gender identity, and sex, as well as Education Law § 3201-a.
7. *See Gloucester Cty. Sch. Bd. v. Gavin Grimm*, 2021 U.S. LEXIS 3441. On June 29, 2021 the Supreme Court announced that it would not hear the case, leaving in place the Fourth Circuit's decision that mandated that a student be allowed to use the restrooms that correspond with their gender identity. *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir, August 26, 2020).
8. New York State Public High School Athletic Association Handbook (February 15, 2022) at 49-50, *available at* https://nysphsaa.org/documents/2022/2/15//NYSPHSAA_Handbook_002.pdf.
9. *Id.* at 49-50.

The Legislative Process in New York State: Women’s Fight for Equal Rights

By Kaelyn Gustafson

New York has long shaped the contours of American jurisprudence and is repeatedly touted as a global leader in progressive policies and initiatives.¹ Seneca Falls, New York served as the birthplace of the women’s movement in 1848, where Elizabeth Cady Stanton proclaimed, “All men *and* woman are created equal.”² International Women’s Day traces its roots to a 15,000-woman march through New York City in 1908,³ seemingly solidifying New York’s reign as a champion of women’s rights. And, modern-day politicians gush that New York is the country’s “progressive beacon.”⁴ Yet, New York State has yet to pass and adopt an Equal Rights Amendment (ERA) that prohibits discrimination on the basis of sex, trailing woefully behind the majority of states that have already done so.⁵ In 2022, women are *still* unequal under New York’s Constitution. As Columbia Law Professor Katherine Franke said during a recent webinar on this issue hosted by the Legislative Affairs Committee of the Women in Law Section of the New York State Bar Association,⁶ “New York has basically a 19th century Constitution, particularly when it comes to equality.”⁷

New York’s failure has not been for lack of trying. In 1938, New York passed an equal rights amendment that prohibited discrimination on the basis of race, color, creed, or religion. While including women in equal rights amendments was a national discussion by this point, most states’ ERAs addressing women’s equal rights were not enacted until Congress passed the federal ERA in 1972.⁸ Unsurprisingly, New York sought to be chief among them. The New York Assembly and Senate passed an amendment closely tracking the federal Equal Rights Amendment: “Equality of rights under the law shall not be denied or abridged on account of sex.” As required by New York’s Constitution, the amendment was put to a popular vote in 1975 but was defeated by nearly 400,000 votes. Proponents and opponents of the amendment agreed it was largely rejected by women voters, who—based on opposition propaganda that warned the amendment would lead to unisex toilets, gay marriage, and women paying alimony—feared the amendment’s impact on their lives.⁹ The effects of the defeat reverberated far beyond New York State, striking a “psychological blow” to the women’s movement and severely stalling the momentum necessary to ratify the federal ERA.¹⁰ State activists at the time decided that there would be “little point” in trying to push the state Equal Rights Amendment through the Legislature again, choosing instead to focus their

efforts on getting the federal ERA ratified. This too, of course, proved futile.

After the 1975 amendment’s defeat, New York’s Legislature put any plans for a state ERA into hibernation while the fight for women’s equality persisted at the federal level. It was not until 2018, when Senator Liz Krueger and Assemblywoman Rebecca Seawright disrupted a four-decade slumber by sponsoring concurrent bills to amend New York’s Constitution, that New York re-entered the battle, this time not only to prohibit sex discrimination, but discrimination based on several additional identities and characteristics.¹¹ Subsequent iterative drafts have been presented to the Legislature each year since, fine-tuning specific language, but remaining ideologically committed to increasing inclusivity coverage, dragging New York’s Constitution into the 21st century. ERA advocates hope that 2022 is the year that the New York State Legislature begins to bring this vision to fruition. In fact, the timing is critical.

According to New York’s Constitution, the Legislature must pass a constitutional amendment in two consecutive sessions before the amendment can be put to a popular vote. This year is the second year of the current two-year legislative session. Passing an equality amendment this year would allow the amendment to receive second passage in the 2023-2024 legislative session, and then be put to a popular vote. Stated differently, if the New York Legislature does not pass an equality amendment this year—in 2022—then women will continue to be unprotected under New York State’s Constitution for *at least* another four years. This means that, rather than being able to point to an explicit statement in New York State’s governing document to demand equal protection under the law, women and other marginalized groups have to rely on a patchwork of statutes and local ordinances. Lourdes Rosado, president and general counsel of the Latino Justice PRLDEF, has described the limited protections these statutes offer as “a safety net that has some major holes in it—depending on where you land, you may or may not be protected from discrimination.”¹² Namely, these statutes remain subject to judicial interpretation, which, at least at the federal level, have been increasingly hostile to civil rights.

Two equality amendment proposals are currently pending before the New York State Legislature.¹³ Both propose prohibiting discrimination on the basis of race, color, ethnicity, national origin, disability, and sex, including pregnancy,

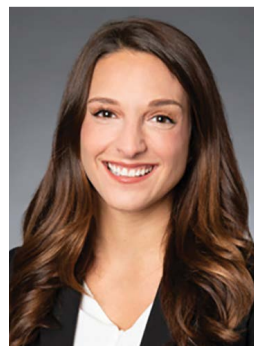


Above, “The Legislative Process in New York State” panel. Top row, left to right: **Kaelyn Gustafson**, (moderator), **Sen. Liz Krueger**, **Katherine Franke**; bottom row, left to right: **Hon. Elizabeth Holtzman**, **Lourdes M. Rosado**.

sexual orientation, gender identity, or gender expression. The Senate bill would also prohibit discrimination based up on pregnancy outcomes. Professor Franke notes, “Thinking sex equality independent of those other vectors of identity doesn’t make any sense and is absolutely unworkable. . . . We no longer live in a time when we can’t think and work intersectionally.” The current proposals offer an intrinsically New York approach by amending the Constitution to expand equal protections beyond sex and incorporate a progressively broad approach to equality.

NYSBA’s Women in Law Section, upon recommendation of the Legislative Affairs Committee, endorsed the Senate bill, which includes language that would not only prohibit intentional discrimination, but also discrimination that disparately impacts the amendment’s protected categories. This is important because, as a result of the U.S. Supreme Court’s 1976 holding in *Washington v. Davis*, even New York’s current Equal Rights Amendment that prohibits discrimination based on race, color, creed and religion is limited to intentional discrimination.¹⁴ Ms. Rosado notes, “We are perpetuating the discrimination by continuing to ignore the impact of what we see as race-neutral policies today, because those policies—even though they are race neutral—they do stem from past discrimination and they disproportionately impact people on the basis of color or race or gender.”

Thus, ideologically, New York politicians and advocates are committed to enshrining more expansive equality in the state’s Constitution. But, as Senator Liz Krueger recently noted,¹⁵ changing the New York Constitution is “damn hard.” She explained that “when trying to make sure that you are providing for the protections for everyone, you really have to think through who those ‘everyones’ are and what the impact can be because you’re not going to change [the Constitution] very often.” She noted that legal counsel for each chamber are weighing the specific location of the amendment’s language in the Constitution, explaining that the decision affects the amendment’s relationship to the existing protections for religious rights. Professor Franke noted that while the state Constitution already protects religious liberty robustly—in some



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ated “The Legislative Process in NYS: Women’s Fight for Equal Rights.”

cases privileging religious over secular values—some advocates feel it does not make sense to bundle religion with same kinds of protections of other groups because of the unique character of religious liberty. In addition, counsel for the two chambers continue to discuss whether the amendment needs to clearly state that it is self-executing. Overall, however, New York’s politicians agree that the state is overdue for a comprehensive, modern, and inclusive amendment to the Constitution’s equal rights provision. Senator Krueger said that other states are looking to New York as a leader in this regard, adding, “I would love us to be able to get this done the right way as soon as possible and be a model for the other states.”

While there is renewed vigor for passing a federal Equal Rights Amendment, the stamina necessary to sustain that momentum comes from action at the state level—particularly, New York. In 1975, New York ERA supporters said that approval would “spark efforts to complete ratification of the separate Federal ERA.”¹⁶ It stands to reason then that passing an inclusive equality amendment in New York in 2022 will not only foster a national and political environment receptive to the idea of federal equal rights legislation, but further embolden a generation to demand it.¹⁷

A similar article appears in The New York State Conference of Mayors. The author extends her gratitude to Legislative Affairs Committee Co-Chair Denise Bricker for her helpful edits and to Kevin Krotz, University of Virginia law student and Fried Frank 2021 Summer Associate, for his background research.

Endnotes

1. N.Y. Assembly, *Next Steps: Continuing an Agenda to Put New York Families First* (Nov. 7, 2018), available at <https://nyassembly.gov/Press/files/20181107a.php> (last accessed Mar. 17, 2022).
2. Leslie W. Gladstone, *Equal Rights Amendments: State Provisions*, CRS Report for Congress Order Code RS20217 at 2 (updated Aug. 23, 2004).
3. *International Woman’s Day 2021: History, Marches and Celebrations*, BBC (Mar. 2, 2021), available at <https://www.bbc.com/news/world-56169219> (last accessed on Mar. 17, 2022).
4. *Andrea Stewart-Cousins on Being First Black Woman to Lead NY Senate*, *Ebony* (Mar. 1, 2019), available at <https://www.ebony.com/news/politics/andrea-stewart-cousins-first-black-woman-ny-senate/> (last accessed Mar. 17, 2022).
5. States with some form of an equal rights amendment include Alaska, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Virginia, Washington, and Wyoming. See “State equal rights amendments,” Wikipedia, available at https://en.wikipedia.org/wiki/State_equal_rights_amendments (last accessed Mar. 23, 2022).
6. *The Legislative Process in NYS: Women’s Fight for Equal Rights*, NYSBA Leg. Affairs Comm. of the Women in Law Section (Feb. 28, 2022), available at <https://nysba.org/events/the-legislative-process-in-nys-womens-fight-for-equal-rights/>.
7. *Id.*
8. Judith Avner, *Some Observations on State Equal Rights Amendments*, 3 *Yale L. & Policy Rev.* 144, 146 (1984).
9. See Linda Greenhouse, *Defeat of Equal Rights Bills Traced to Woman Voter*, *N.Y. Times* (Nov. 6, 1975), available at https://timesmachine.nytimes.com/timesmachine/1975/11/06/107209292.pdf?pdf_redirect=true&ip=0 (last accessed Mar. 20, 2022).
10. *Id.*
11. See S7558 (2018), available at <https://www.nysenate.gov/legislation/bills/2017/S7558>; A9584 (2018), available at <https://www.nysenate.gov/legislation/bills/2017/s7558/amendment/original>.
12. *The Legislative Process in NYS: Women’s Fight for Equal Rights*, NYSBA, Feb. 28, 2022 (webinar), available at <https://nysba.org/products/the-legislative-process-in-nys-womens-fight-for-equal-rights/>.
13. See S1268 (2021), available at <https://www.nysenate.gov/legislation/bills/2021/S1268>; A760B (2021), available at <https://www.nysenate.gov/legislation/bills/2021/A760>.
14. 426 U.S. 229 (1976).
15. *The Legislative Process in NYS: Women’s Fight for Equal Rights*, NYSBA, Feb. 28, 2022 (webinar), available at <https://nysba.org/products/the-legislative-process-in-nys-womens-fight-for-equal-rights/>.
16. Mercedes A. Laing, *Voters in Jersey, New York, Defeat State-Wide ERA’s*, *The Crimson* (Nov. 5, 1975), available at <https://www.thecrimson.com/article/1975/11/5/voters-in-jersey-new-york-defeat/> (last accessed Mar. 17, 2022).
17. Judith Avner, *Some Observations on State Equal Rights Amendments*, 3 *Yale L. & Policy Rev.* 144, 146 (1984).

NYSBA Celebrates Trailblazers on International Women's Day

By Jennifer Andrus, NYSBA Staff

ED NOTE: This article appeared at NYSBA.ORG on March 8, 2022.

The New York State Bar Association hosted a morning program celebrating International Women's Day with a panel of legal trailblazers representing five different countries. The women shared the successes and challenges of being a woman in the profession and offered advice for other female attorneys. The event was co-sponsored by the Women In Law and the International sections of NYSBA and moderated by Michele Lee Clarke-Ceres.

Mentors and Inspiration

For many of the panelists, it was their mothers who inspired them to become professional women. Marina Eguiartre-Morett, a tax attorney from Mexico, reminded participants that there were many women who were not allowed to enter a professional career and told only to focus solely on their families. She broke that mold and pursued both a career and a family.

Mary Fernandez, an intellectual property attorney from the Dominican Republic, said she gains inspiration from pro bono and NGO work focusing on women's rights and equity issues. "It's important to assist and mentor women in leading roles in the profession and other areas," she said.

Helen Naves, who founded her own law firm in Brazil, said many of her mentors are men and some are not lawyers. She said her first boss has been a mentor for more than 20 years. "He was the one who was there to teach me things at work and taught me to look for solutions to a problem. He has given me help in being assertive," she said. Naves said her network of mentors also helped her navigate the pitfalls of opening her own law firm.

Daniela Bertone, a former criminal attorney from Argentina, encouraged women to trust themselves and be their own advocates. "If your goal is to climb the corporate ladder, you have to do the work. You have to be persistent because you are a woman." In her native country, Bertone said, girls are raised to put motherhood and family above all else. "I had to move out of my comfort zone and do things that were not expected of a woman. I was criticized a lot," she said. In the end, Bertone said paving the way for other women to follow is both a burden and a privilege.

The First but not the Last

Several panelists grappled with being the first woman to reach milestones in their career in their home countries. Maria Eguiartre-Morett was the first female associate professor to teach tax law at her alma mater in Mexico. "I don't like to be the first one and the only one. The fact that we are the first, the path can make it a little easier for those who come behind us. I may be the first but not the last," she said.

Ruby Asturias, an infrastructure attorney from Guatemala, encouraged others to develop their emotional intelligence and stay true to themselves as women. "We have to be women and stick to our nature," she said. "We need to understand that our strength comes from our nature. Dress as a woman, talk as a woman, that does not make us less!" She said the road was not easy, but a good attitude and positive thinking have led to positive outcomes.

Tips for Work-Life Balance

The panelists were all asked to share tips on creating a work-life balance and many of them pointed to having a partner or spouse who supported their career. "Be surrounded by people who can support you at home and at work," said Helen Naves. When balancing career and motherhood, several panelists said they strived to raise self-sufficient children. "Kids learn by example; they absorb what they see every day. They learn to be independent when they have professional mothers," said Ruby Asturias.

Others mentioned finding time for personal enrichment through exercise and hobbies. "Find happiness and contentment with small things," said Helen Naves. She also encouraged attorneys at any stage of their career to plan their days and plan their careers. Are you asking yourself, "Where do you see yourself in the next few years?" She said it's never too late to plan. Mariana Eguiartre-Morett added that improving focus and remaining calm and practicing meditation were keys to her success.

The forum wrapped up with an acknowledgement of the suffering of women and children in Ukraine on this International Women's Day and our shared commitment to peace, justice and freedom around the world.

Justice Tanya R. Kennedy Receives Champions for Justice Award

By Terri A. Mazur

Associate Justice Tanya R. Kennedy, Appellate Division, First Department—a member of the Women in Law Section (WILS) Executive Committee and WILS Member at Large—was honored as the 2022 Champion for Justice by the Harry and Jeannette Weinberg Center For Elder Justice on June 15, 2022. Justice Kennedy received this award during the Weinberg Center’s Tenth Annual Awards of Distinction Breakfast. The Weinberg Center each year “recognizes the contributions of two extraordinary individuals dedicated to change and justice.”¹ The Harry and Jeannette Weinberg Center “is the nation’s first comprehensive shelter for victims of elder abuse, providing legal, social and care management services in partnership with the Hebrew Home at Riverdale,” in Riverdale, New York.

In July 2020, Justice Kennedy was appointed as an associate justice of the Appellate Division, First Department by Governor Andrew M. Cuomo, after serving in the judiciary since 2005. She is also a former adjunct professor at Fordham University School of Law, where she taught a juvenile justice seminar for 10 years. Beyond her work on the bench, Justice Kennedy is tireless in her commitment to public service. She is a member of the board of directors of the New York City Bar Association and past chair of that organization’s Special Committee to Encourage Judicial Service; a member of the Committee on Pattern Jury Instructions of the Association of Supreme Court Justices of the State of New York; a member of the Board of Overseers of the Benjamin N. Cardozo School of Law, where she received her law degree; and an advisory board member of Penn State Law. Justice Kennedy is also a past president of the National Association of Women Judges (NAWJ). Justice Kennedy is a member of the Metropolitan Black Bar Association and a former board member.



Justice Tanya R. Kennedy was honored as the 2022 Champion for Justice by the Harry and Jeannette Weinberg Center for Elder Justice.

Endnote

1. <https://www.riverspringliving.org/elder-justice/>.

Knowledge Is Power: Financial Strategies for Women

By Laura Sulem



On Dec. 16, 2021, the Women in Law Section (WILS) hosted a financial planning presentation titled, “Knowledge Is Power: Financial Strategies For Women,” led by Niraj Chhabra, a business financial advisor at Ameriprise Financial Services. Chhabra’s presentation focused on how financial planning is different for men and women, as women often face the challenge of balancing career with family, historically have made less money and therefore earn less in social security, live longer, and are often the ones who care for aging parents. He also provided information and tips on education planning, life insurance and protection planning, retirement planning, and tax reduction strategies.

Nearly 100 people registered for this program. The attendees asked questions and were highly engaged, and many commented on how clearly Chhabra explained complex financial concepts. Our partnership with Chhabra continued in 2022, when on April 8 he and WILS Executive Committee member Morghan L. Richardson presented another well-attended program entitled “Divorce Changes Everything: How Women Can Find Their Independence.” (See page 62 of this issue.)

Niraj Chhabra focuses on clients in the legal profession and helps them navigate through their unique tax challenges and modify their financial plan as their careers evolve. His areas of expertise include family finances, tax and estate planning, retirement planning, and financial planning for small businesses.



Laura Sulem is the Senior Director of Litigation at Practical Law, a Thomson Reuters company, where she oversees content and business strategy for the litigation service. Sulem also sits on the Executive Committee of NYSBA’s Women in Law Section and chairs the Annual Meeting, Programming and CLE Committee.

New York Enacts Sexual Harassment Hotline Legislation Supported by WILS Legislative Affairs Committee

By Sarah E. Simpson and Denise Bricker

The Women in Law Section (WILS) is pleased to share that one of the bills it supported in 2021—Assembly Bill No. A2035-B/Senate Bill No. S.812-B—an act to establish a toll-free hotline for complaints of workplace sexual harassment—was signed into law by Governor Hochul on March 16, 2022. This legislation was initially identified by the Section’s Legislative Affairs Committee co-chairs, Denise Bricker and Sarah Simpson, as a bill of interest in 2021, and was approved for support by the Section’s Executive Committee under the leadership of then-Section Chair Terri Mazur. The law, which took effect July 14, 2022, requires the State Division of Human Rights to establish a toll-free confidential hotline in order for individuals experiencing sexual harassment in the workplace to obtain unbiased information about sexual harassment and basic legal advice on their options from volunteer pro bono attorneys experienced in the area of practice.

Each legislative season, the Legislative Affairs Committee meets to review pending state and federal legislation that has a direct impact on women, both in the legal profession as well as societally. Committee members research and discuss legislation of interest to determine which bills to support or oppose. Once an initial position is established by the committee, committee members draft memoranda on the bills members find to be the most compelling, advocating for improvements to legislation when necessary. Those memoranda are then submitted to the Section’s Executive Committee, which votes to determine the Section’s positions on the proposed legislation.

With this hotline legislation, the committee supported the initial draft in concept, but identified several areas that needed improvement prior to passage to protect both individuals seeking guidance from this hotline, as well as the attorneys providing volunteer services. In its memo on the legislation, the committee suggested changes to provide for confidentiality for the caller, to prohibit volunteer attorneys from forming an attorney-client relationship with any callers they interact with, and to ensure that the operation of the hotline comports with Rule 6.5 of the New York Rules of Professional Conduct, which governs attorney representation in limited scope pro bono legal services programs. These reforms were essential to garnering the full support of the committee. Then the committee, through the New York State Bar Association’s

Government Relations office, conducted outreach to the sponsors regarding these changes and concerns. The committee’s co-chairs and members met with representatives of Senator Alessandra Biaggi’s office to discuss the original draft and to express the need for certain amendments to the legislation. Both Senator Biaggi and Assemblymember Yuh-Line Niou incorporated the committee’s suggestions into their legislation, which was ultimately adopted and signed by the governor. Through the hard work of the Legislative Affairs Committee and WILS, this legislation was substantially improved and the hotline will be of great benefit to individuals experiencing sexual harassment in the workplace across New York State.



Sarah E. Simpson serves as principal law clerk to Judge Maureen T. Liccione for the New York State Court of Claims. Sarah is a member of the WILS Executive Committee and co-chair of the WILS Legislative Affairs Committee.



Denise Bricker is the deputy general counsel of the National Audubon Society, a 150+ year old conservation organization dedicated to the protection of birds and the places they need throughout the Americas. She is a member of the WILS Executive Committee and serves as the co-chair of the Legislative Affairs Committee of WILS.

Divorce Changes Everything: How Women Can Find Their Independence

By Morghan Leia Richardson

Exiting a marriage can be an overwhelming experience. On April 8, 2022, the Women in the Law Section (WILS) hosted a virtual program featuring divorce lawyer Morghan Richardson and financial planner Niraj Chhabra, who discussed the many challenges that women in particular may face while going through a divorce. The event was co-sponsored by the Family Law Section, and moderated for WILS by Laura Sulem.

Chhabra, a financial advisor with Ameriprise Financial, discussed his many years of working with clients who are unaware of the family finances and need to set new goals and budgets as they take control of their financial future. “For many married people, it could be said that marriage is their greatest financial resource,” he said.

In an age of extended lifespans, women live an average of 4.8 years longer than men, with many women outliving their spouses as long as 15 years, he said. This can translate into more living expenses and the possibility of more medical and long-term care expenses. A certified divorce financial analyst can help women evaluate their financial options and analyze potential settlement offers.

In certain cases, Chhabra pointed out that an ex-spouse, man or woman, may be entitled to 50% of a former spouse’s benefits. The caveats: the couple must have been married for at least 10 years; the spouse applying for the dependent benefits is unmarried and age 62 or older; and the spousal benefit is higher than the benefit the applicant would receive from his or her own earning history.



Morghan Leia Richardson is a partner at Tarter Krinsky & Drogin LLP, where she co-chairs the Matrimonial & Family Law Department. Richardson focuses her practice on divorce and family law, and regularly handles cases that involve complex divorce litigation, alimony, child support, prenuptials, parent coordination, separation agreements, visitation, property division, asset protection and LGBTQI family law issues.



Niraj Chhabra

Richardson, a partner and co-chair of the Matrimonial Department at Tarter Krinsky & Drogin, LLP, discussed some of the basic legal aspects of approaching a divorce, including a discussion of the many financial documents that every woman should have in preparing for her case.

“Often, decisions made during a marriage around child care have limited the financial power of one of the spouses,” she said. “That time spent taking care of kids may not have been measured financially, but has contributed to the well-being of the family.”

Today there are many women who earn significantly more than their husbands, and, according to the National At-Home Dad Network, the number of stay-at-home dads is on the rise, she said. The balance of financial power in any case is something that needs to be addressed throughout the discovery process. A good team of professionals can help in getting organized and addressing different aspects of a case. Consider hiring a forensic accountant, financial advisor, and divorce coach or therapist.

Richardson also explored the options for the divorce process, including mediation, negotiation, collaborative divorce and trial.

Audience members engaged with the speakers with questions about bankruptcy and divorce, social security benefits, and child support issues when a couple has shared custody.

The program is available on demand online at NYSBA’s website.

WILS Helps Bridge the Gap

By Sheryl B. Galler



We are proud to report that three members of our Executive Committee contributed to NYSBA’s “Bridging the Gap” continuing legal education programs in March and April 2022.

Sheryl Galler, Chair of the Section, presented “Client Counseling and the New Anti-Harassment Laws and Employment Law 101.”

Sarah Gold, NYSBA Executive Committee’s liaison to our Section, presented “Project Management for Lawyers: Identifying Workflows To Improve Systems Within a Firm.”

Leona Krasner, co-chair of our Section’s Communications Committee, presented “Litigation Best Practices: Key Skills for New Lawyers.”

We thank Sheryl, Sarah and Leona for sharing their advice and expertise with newly admitted attorneys!

Attorneys interested in presenting at future programs are invited to contact Katherine Suchocki, Senior Director, Continuing Legal Education & Law Practice Management at NYSBA, at ksuchocki@nysba.org.



Women in Law Section’s Holiday Virtual Get-Together

By Laura Sulem

The Women in Law Section hosted a virtual holiday get-together to celebrate National Brownie Day and the end of another busy and productive year on December 8, 2021. WILS members and potential new joiners enjoyed brownies and festive beverages, networked with colleagues, and celebrated the holiday season.



How To Advocate for Yourself at Work

By Jennifer Andrus, NYSBA Staff

ED NOTE: This article originally appeared at NYSBA.ORG on March 17, 2022.

Advocating for yourself in the workplace, especially for women, can be a touchy subject.

“Tooting your own horn” can come off like boasting, bragging or gloating about a success. The New York State Bar Association’s Women in Law Section and its General Counsel Committee, chaired by Frettra DeSilva, teamed up to tackle the thorny issue head-on. The NYSBA Business Law Section and Kirkland & Ellis joined in cosponsoring the event.

In a one-hour program moderated by Joi Yvonne Bourgeois, four panelists shared tips and tactics to navigate promoting yourself in an effort to accelerate your career success.

Sheila Murphy, the founder of Focus Forward Consulting, kicked off the panel by assuring those in attendance that self-promotion is a form of self-care.

“You are taking care to make sure that you get what you need both in your career and your life and on top of that you are taking care of yourself,” she said. “I am making sure people know my qualities and traits so they can make informed decisions as to whether they want to hire me or promote me. People can’t do those things if they don’t know who you are and what you do.”

Natalya Johnson, senior counsel at Johnson & Johnson, agreed, saying it’s time to reframe promotion as a positive term for women. “Self-promotion provides visibility for my experiences, for my expertise and amplifying the causes and organizations that have my energy” she added.

She offered three tips. First, bring other people into your promotion. If you have co-workers on a project, post on LinkedIn about the work and tag them. Second, focus on informal promotion by talking to your colleague or boss about the work you are doing. Third, use external resources or your organization’s marketing department to promote larger projects.

Daisy Darvall, a partner at Kirkland & Ellis, says we need to remove the feeling of shame from the conversation. “You can’t self-advocate unless you know your value and worth. No one will advocate for you like you will!”

Murphy echoed that sentiment by saying it’s important to own your narrative. “I know that it feels icky now and then, this idea of self-promotion and putting yourself out there, but let me tell you whether you put yourself out there or not, there is a story in people’s heads about who you are and what you do.” She said failing to be an advocate is a disservice to your firm, your clients and yourself.

Speaking Up and Taking on New Roles

Panelists were asked to share ideas on the disparity between women and men in the area of self-promotion. Rippi Karda, assistant general counsel at Verizon Communications, said that men are better at stating their goals and asking for opportunities to take on new roles and projects while women can be deferential and don’t jump at the chance. “You can take on additional responsibilities and learn as you go; you can find other resources. You don’t have to know it all; you just have to know that there is a plan you’ve got to concoct to figure it out.” She said this advice also helped in her work at the South Asian Bar Association of New Jersey, for which she is the 2022 president-elect.

Johnson said she saw a need to include women of color as presenters in programs about technology law, real estate and other areas of practice. So, in 2019 she started her own program to give attorneys of color a platform. Even in promoting her event she was reticent to take credit for the work. That work did get her noticed and led to further leadership positions. Johnson is the current president-elect of the Garden State Bar Association.

Karda shared how she got noticed while volunteering for projects that no one else wanted. She also sought out additional training. If you need training or learning opportunities, she encouraged attendees to attend events and trainings at the New York State Bar Association. Consider it an investment in yourself and your career. It will help you and it will make you a better lawyer for your clients. Johnson said sometimes success can be as simple as “just showing up. Show up and bring excellence to everything you do and others will take notice.”

NYSBA Honors WILS Members Kathleen Scott, Neva Strom and Mark Berman

By Terri A. Mazur



Kathleen Scott



Neva Strom



Mark Berman

NYSBA has honored several WILS members with prestigious awards this year.

Kathleen Scott: David S. Caplan Award for Meritorious Service, Business Law Section

Kathleen Scott, the deputy superintendent of banking at the New York State Department of Financial Services, received the David S. Caplan Award for Meritorious Service during the Business Law Section's Annual Meeting on Jan. 19, 2022. The Business Law Section established this award in order "to recognize the importance and value to the Business Law Section of the many hours of volunteer service provided to the Section and its Committees by its members."¹ Scott's involvement with NYSBA and the Business Law Section spans many years: she has been active as a Section member, chair of the Banking Law Committee, Chair of the Business Law Section, and currently serves as a member of the House of Delegates representing the Business Law Section, and as Chair of the HOD's Section Caucus. Scott also is an active member of the Women in Law Section and is a past co-chair of WILS' Reports, Surveys and Publications Committee.

Neva Dayton Strom: Pro Bono Service Award

WILS member Neva Dayton Strom was one of the 19 attorneys, law firms, students and law student groups honored at the 31st Annual President's Pro Bono Service Awards on Law Day, May 2, 2022, at a special ceremony in Albany. With these awards, NYSBA honors lawyers "who have made an exceptional commitment to serving the public good" and "volunteering their time and expertise for a wide range of causes includ[ing] environmental concerns, domestic violence, and refugee resettlement."² Strom, whose practice focuses on estates and trusts law and Surrogate's Court matters, has volunteered with NYSBA's Pro Bono Surrogate's Court volunteer group since May 2020. She also has mentored other volunteer attorneys and shared her expertise on Surrogate's Court issues and proceedings.

Mark Berman: Alcott-Leber-Younger Committee of the Year (for Commercial Division Committee), Commercial and Federal Litigation Section

On May 13, 2022, Mark A. Berman, along with his colleagues Charlie Moxley, Daniel K. Wiig and Ralph Carter, were awarded the inaugural 2022 Alcott-Leber-Younger Committee of the Year Award by the Commercial and Federal Litigation Section (ComFed) during the Section's spring meeting for their work on the Commercial Division Committee. This award recognizes a ComFed committee that has "developed programs or projects that have been innovative, of high quality, and have had or are likely to have an impact on the betterment of the profession, the judicial system or ComFed/NYSBA itself." The award is named for Mark Alcott, Bernice Leber and Stephen Younger, all of whom served as Chairs of the ComFed Section and as Presidents of NYSBA. Berman is a partner in the litigation group at Ganfer Shore Leeds & Zauderer and a former Chair of ComFed, and former member of the NYSBA Executive Committee. He is currently a member of the WILS Executive Committee and co-chair of the WILS Champions Committee, which engages men as partners to advance women in the profession, the association, and society-at-large. Berman also co-chairs the NYSBA Task Force on the Future of the Legal Profession.

Endnotes

1. <https://nysba.org/david-s-caplan-award-for-meritorious-service/>.
2. See <https://nysba.org/presidents-pro-bono-service-awards-to-honor-lawyers-across-ny-state/>.

WILS Celebrates Black History Month With Training on Fostering a Culture of Belonging

By Frettra DeSilva

As part of Black History Month, on Feb. 23, 2022, WILS' General Counsels Committee and the Committee on Diversity, Equity, and Inclusion sponsored an informative training session led by Lanre Sulola on the topic "Fostering a Culture of Belonging." Sulola is a senior development coach and facilitator at Inner Ambitions, a company focused on inspiring and creating strategies for individuals, teams and organizations to bring what's inside to life.

Studies have shown that inclusive teams increase employee innovation, exceed financial forecasts and increase job satisfaction. Using his years of coaching to build effective and inclusive teams, Sulola led participants through an interactive discussion on ways to leverage diversity to meet business objectives and build stronger teams.

With an understanding that "belonging allows our true self to thrive," Sulola led the group through reflections on how to:

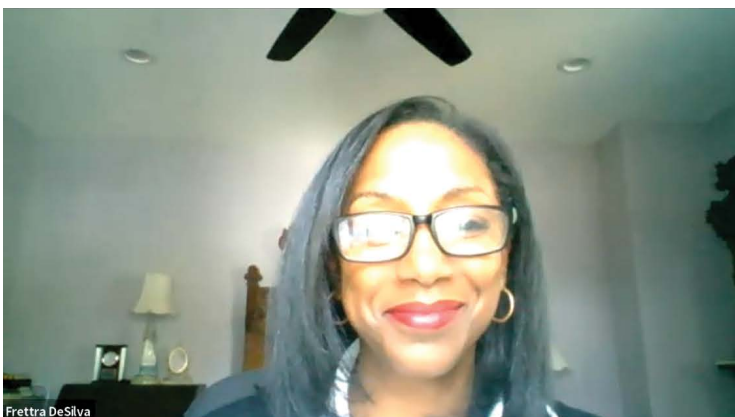
- Create psychological safety within their teams;
- Recognize diversity within their teams;
- Identify opportunities for building connection within their teams; and
- Create greater cultural awareness.

He cautioned participants to be conscious of the micro-messages that they may give in their interactions, and to be aware of how small gestures and expressions can either encourage or chip away at another's confidence and sense of belonging.

Finally, Sulola challenged participants to look outside of their homogenous circles to think what they could do differently to strive for "true inclusion." He explained that "there are infinite ways in which we build commonality" and it is up to us to think beyond just race and gender. Participants were encouraged to consider interest, values, humor and other personal elements to build commonality among their teams. We must think "what can we do differently" and "how can we do it better" in order to create real change.



Frettra DeSilva is the head of legal, transaction banking, Americas for Standard Chartered Bank. She has been practicing corporate, banking and securities law for more than 30 years. She was formerly at Citi and Debevoise & Plimpton. DeSilva is a member of the WILS Executive Committee and chairs the WILS General Counsels Committee.



Frettra DeSilva (Chair WILS General Counsels Committee) and **Lanre Sulola** discussed how to leverage diversity to meet business objectives and build stronger teams.

The Future of the Profession: WILS Co-Sponsors Four-Part Series for Law Students Focusing on Professionalism and Technology

By Christina Singh-Bedell

While today's law students may be a generation raised on smart phones and social media, understanding the best practices, uses and ethical implications of that technology in law practice is critical to their success.

With the goal of helping law students understand some of the issues and identify the pitfalls, the Women in Law Section (WILS) along with the Young Lawyers Section, the Committee on Technology and the Legal Profession and the Committee on Lawyers in Transition sponsored a four-part conversation on professionalism and technology. The four sessions, moderated by WILS Chair-Elect Kim Wolf Price, covered everything from virtual interviewing to social media. "Many of today's law students are fluent in a number of technology programs and social media platforms from a young age," Wolf Price said. "We understand that they are frequent tech users. We focused on ways technology impacts practice and ethics. Our aim was to help new lawyers become more informed so they can avoid pitfalls and think more clearly about how they use technology in practice and beyond." WILS Executive Committee members Christina Singh-Bedell and Mark Berman each participated in one of the programs.

A description of each program is below. All four programs are available on the law student page of the NYSBA website to provide a resource for law students and anyone interested in learning more about these issues.

Virtual Interviewing: Techniques To Help You Land the Job

The first program in the series, this conversation focused on how to prepare for and execute successful virtual interviews. Panelists, including WILS EC member Christina Bedell, gave advice on how to make the most of the experience, how to stand out and what technology issues interviewers should consider when preparing.

Zoom Etiquette: A Guide for Law Students Post-Grad

This panel tackled everything from how to appear in court virtually to best practices for getting assignments and connecting with clients. Panelists discussed the positives and the negatives of using virtual platforms and other technologies to connect with clients, courts and opposing counsel. The panel also discussed general issues of lawyer etiquette and professional behavior.

Communication in the Workplace: From Professionalism to Cybersecurity, What New Lawyers Need To Know

While using virtual platforms, apps, and technology devices are second nature to law students and new lawyers, this panel addressed issues beyond the everyday, including data privacy, professionalism, terms of service and the intersection of all of these and the Rules of Professional Conduct.

Social Media Between Generations: The Do's and Don'ts

Social media from traditional posting platforms to disappearing content platforms are part of everyday life for many law students and new lawyers. But how does the use of those platforms, even in your personal life, intersect with your professional duties and the Rules of Professional Conduct? Can current—and even past—use of social media impact your professional relationships or job prospects? This panel, including WILS EC member Mark Berman, discussed these issues as well as the ways social media can be used in legal practice, including investigations, child support matters, prosecutions and employment matters.



Christina Singh-Bedell is an assistant attorney general in the New York Office of the Attorney General, where she represents the State of New York in state and federal courts and handles affirmative justice cases involving civil rights, consumer fraud, charitable donations and workers' rights. She also conducts outreach in the local community, educating New Yorkers on a variety of issues. She is an adjunct professor of law at Hofstra University School of Law. Singh-Bedell sits on the Executive Committee of WILS and chairs the Emerging Lawyers Committee.

Why Are Women Leaving the Law and What Barriers Do They Face on Re-Entry? EITP's Survey on Women Leaving and Re-entering the Legal Profession

By Debra Vey Voda Hamilton

Studies indicate that women have been leaving the practice of law over the last several years at a much greater rate than men. This attrition appears to have been amplified during and after the COVID-19 lockdown. Initial research reveals that women were disproportionately impacted by COVID-19 as the shift in the work/family dynamics produced more obstacles for women continuing to practice law than their male counterparts.

The WILS Committee on Equity in the Profession (EITP) recently distributed a survey seeking input from women attorneys about what they experienced before, during, and post-COVID-19 that led them to leave the practice of law.



We asked female attorneys from the New York State Bar Association and beyond to assess factors impacting their leaving the law. What led them to leave the practice of law? Was it the COVID pandemic, their families, their professional happiness?

We also asked participants about their experience in re-entering law practice, what resources they used and found helpful, and what additional resources might be helpful in returning to work.

The goal of this survey is to provide valuable information to aid in implementing strategies and policies to keep women in the law, and to foster an easier path for women transitioning back into the practice of law and achieving equity in the profession.

Please stay tuned for the results: The EITP Committee is reviewing the survey responses and will be writing a report, currently scheduled for a fall release. WILS and the EITP Committee are also planning programs designed to assist women in their return to the practice of law. The committee is looking forward to hearing more from women about what happened as they navigated re-entering the workforce, COVID-19 and beyond. This survey and the stories women share will help WILS provide current input, information, and new opportunities to assist women in attaining equity in the profession.

WILS Co-Sponsors Third Annual International Law Conference on the Status of Women

By Marilyn Flood

On International Women's Day, celebrated every year on March 8, the United Nations Committee of the New York City Bar Association convened its third annual conference, virtual this year, focused on legal and policy issues confronting women around the world. The Women in Law Section (WILS) co-sponsored the conference and promoted the event to its members and their networks. The International Law Conference was a lead-up event for the 66th Session of the United Nations Commission on the Status of Women, a two-week series of programs sponsored by U.N. agencies and member states and non-governmental organizations that culminate in recommendations on actions to promote women's enjoyment of their rights in political, economic and social spheres.

The three panels focused on different topics: pursuing justice for women victims of grave atrocities in conflict zones and modern-day genocides; achieving gender equality and the empowerment of women and girls in the context of climate change and environmental policies and programs; and the plight of women judges, prosecutors and lawyers in Afghanistan, as well as those who have escaped.

Special remarks on U.N. women's initiatives were presented by Pramila Patten, undersecretary general and special representative of the secretary general on sexual violence and conflict. The panelists, representing educational institutions, legal organizations and survivors' groups, discussed their efforts to aid survivors and address the impunity of perpetrators of violence. Many speakers addressed the complications of the COVID pandemic on their work, including isolation of victims, reduced governmental funds and oversight, and increased opportunities for child marriage and sex and labor trafficking.

After the panels, the EPIQ Advocate Awards and Huntington Bank Hero Awards were presented to distinguished women from local and international organizations.



Marilyn Flood currently volunteers as a hearing officer for the September 11 Victim Compensation Fund. Previously she served as counsel to the New York County Lawyers Association, associate director of the YWCA of New York City and executive director of the Mayor's Commission on the Status of Women. Flood also serves on the WILS Executive Committee and co-chairs the WILS Awards Committee.

Debunking Diversity Myths in International Arbitration

By Sheryl B. Galler

Improving diversity in arbitration panels is a worthy goal, not only for its own sake but for the benefit of the parties and the legal community.

That was the important message relayed in a recent webinar by an esteemed panel of women trailblazers in international arbitration. NYSBA's International Section and WILS presented the webinar, "Debunking Diversity Myths in International Arbitration: Why More Needs To Be Done," on March 16, 2022.

The panelists engaged in a lively and thought-provoking discussion of ongoing efforts to improve diversity in international arbitration. They noted that, despite concerted efforts being made to narrow disparities in gender, culture, and age, diversity remains of ongoing concern in international arbitrations. The panelists charted paths to success and explained the importance to clients and the legal community of achieving this goal.

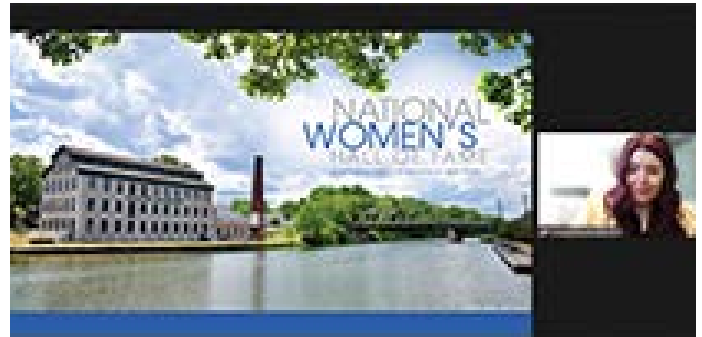
The panel was moderated by Marcie Dickson, founder and CEO, Alterity ADR. Dickson was joined by Dana MacGrath, MacGrath Arbitration; Maureen Ryan, general counsel, Atlas Renewable Energy; Patricia Shaughnessy, Stockholm University Law Department; and Jacomijn van Haersolte-van Hof, Director General, LCIA, London, UK.

We thank the program's sponsors: Alterity ADR, Arbitration Ireland, ArbitralWomen, CPR: International Institute for Conflict Prevention and Resolution, and London Court of International Arbitration (LCIA).

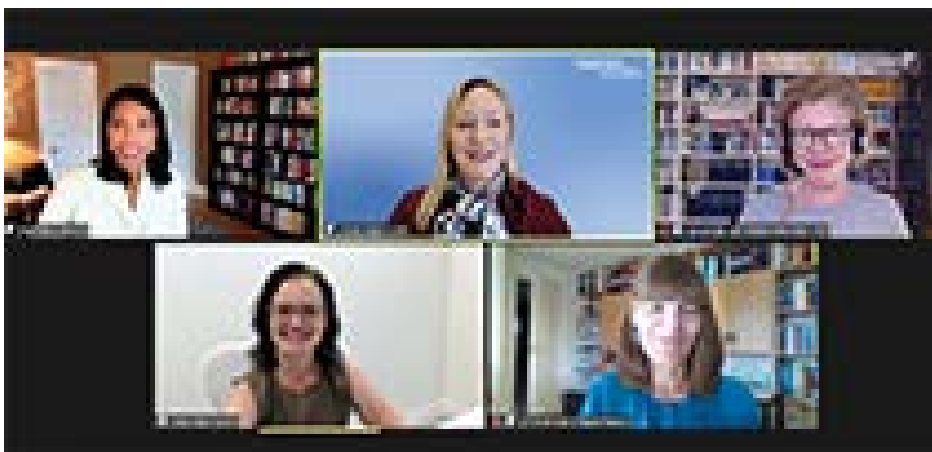
The webinar was one of the programs presented in March as part of NYSBA's celebration of Women's History Month.

National Women's Hall of Fame Virtual Visit

By Jennifer M. Boll



On April 28, 2022, WILS presented a virtual visit to the National Women's Hall of Fame, dedicated to "Showcasing great women. . . Inspiring all!" The visit was curated by Natalie Rudd, learning and engagement manager of the National Women's Hall of Fame, and arranged by Jennifer M. Boll of the WILS Executive Committee. The National Women's Hall of Fame, located in Seneca Falls, New York, is the nation's first and oldest nonprofit organization and museum dedicated to honoring and celebrating the achievements of distinguished American women. Two hundred ninety-three women have been inducted into the Hall of Fame—they have made invaluable contributions to American society in the areas of science, government, humanities, arts, athletics, law and education. In this virtual visit, Rudd welcomed us to learn more about the Hall of Fame and many of its inductees.



Left: Panelists for "Debunking Diversity Myths." Top left to right: Marcie Dickson, Dana McGrath, Joacomijn van Haersolte-van Hof; bottom, left to right: Maureen Ryan, Dr. Patricia Shaughnessy.

Deborah Kaye Receives FBI New York Citizens Alumni Academy Award for Volunteering

By Terri A. Mazur

In May 2022, the FBI New York Citizens Alumni Academy (FBINYCAAA) honored Deborah Kaye with its Citizens Alumni Academy Award for Volunteering. Kaye, co-chair of WILS Champions Committee and a member of WILS' Executive Committee, is a graduate of the FBI's Citizens Academy, which FBINYCAA offers once a year in the New York Field Office. It is approximately six weeks in length. She has been a longstanding active member of the FBICAAA and has invited FBI agents to speak on WILS programs, on topics such as how to avoid cyber fraud and other scams during the COVID-19 shutdown.

The FBICAAA is an all-volunteer organization that is a community-based and supported organization, "distinct and separate from the FBI."¹ Its goal is to "promote a more informed and safer community through diverse service projects and by educating business, labor, media, medical, minority, government, education, religious, senior citizen, and community leaders in the State of New York and the New York City Metro Area in particular, about law enforcement, with particular emphasis on the mission, resources, and limitations of the FBI."²

Endnotes

1. FBI New York Citizens Alumni Academy Association, Mission Statement, located at <https://fbinycaaa.org/>.
2. *Id.*

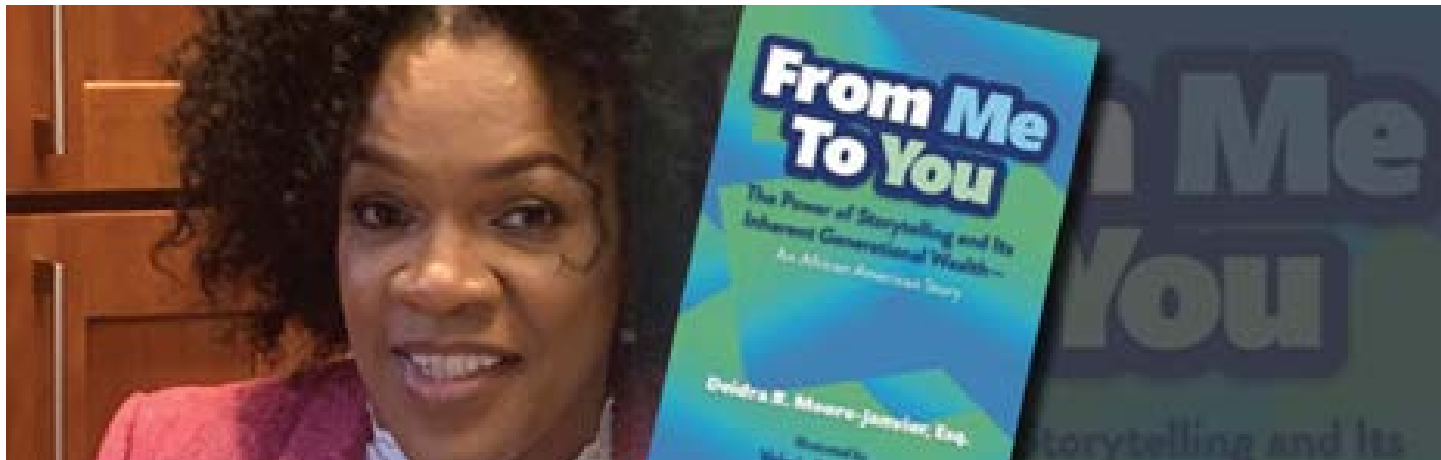


Deborah H. Kaye

WILS Virtual Book Club Series

Deidra R. Moore-Janvier's *From Me To You: The Power of Storytelling and Its Inherent Generational Wealth*

By Laura Sulem



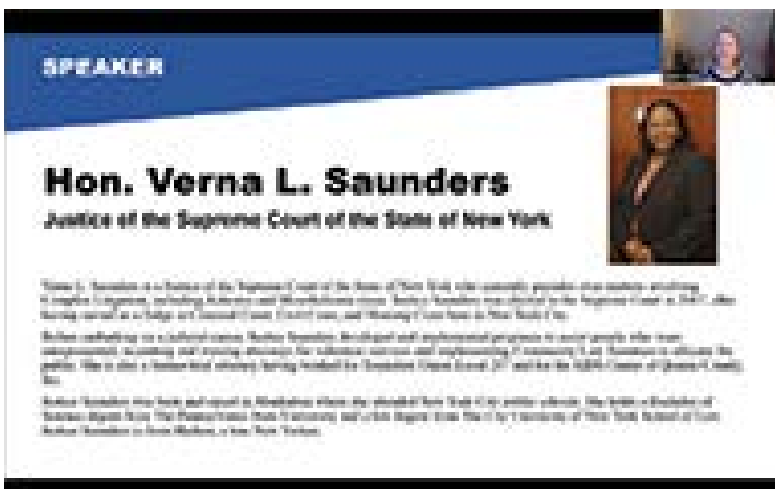
On Feb. 10, 2022, the Women in Law Section hosted a book club meeting entitled, “Finding Self-Worth and Empowerment in African-American History.” In celebration of Black History Month, we were delighted to welcome two extremely accomplished and successful women of color as presenters at the meeting. Author Deidra Moore-Janvier discussed her book, *From Me To You: The Power of Storytelling and Its Inherent Generational Wealth!* Moderating the discussion was New York State Supreme Court Justice Verna L. Saunders.

From Me To You is a multi-generational coffee table book focusing on multiple aspects of African American history, and by extension, American history. It explores the social

impact and economic legacy of the once central American institution of slavery from the lens of enslaved Africans and their descendants through accessible storytelling. We had an engaged audience of 45 attendees, many of whom asked questions following Moore-Janvier’s presentation of the book and the additional context she shared on the importance of writing it for herself and her family.

In 1996, as a single mother, and after nine years of employment with TIAA-CREF in Manhattan, Moore-Janvier quit her job as a commercial real estate paralegal to attend law school. After graduating CUNY School of Law at Queens College, Moore-Janvier worked as a public defender with the Legal Aid Society in Bronx County. Nearly five years later, she left the Legal Aid Society to establish her own firm, the Law Offices of Deidra R. Moore, P.C., where she advises and litigates on all aspects of matrimonial law, guardianship matters, trusts and estates law, elder law, and wrongful death cases.

Justice Verna L. Saunders is a justice of the Supreme Court of the State of New York who presides over complex litigation matters, including asbestos and mesothelioma cases. Justice Saunders has also served as a judge in New York City Criminal Court, Civil Court, and Housing Court. Before embarking on a judicial career, Justice Saunders developed and implemented programs to assist people who were unrepresented, recruiting and training attorneys for volunteer services and implementing community law seminars to educate the public. She is also a former trial attorney.



Justice Verna Saunders moderated the lively discussion with Deidra Moore-Janvier about her book, *From Me to You*.



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CLE

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Bringing you the best and most relevant continuing education to help you as a lawyer. For decades, volunteers have been developing and presenting some of the most rich collections of written materials and raising the bar for legal practice.

GET ACTIVE!

Join a Women in Law Section Committee

Get active and join a WILS committee to help address the many critical issues impacting women attorneys today. Committee membership is a great opportunity for you to shape and influence the laws and policies affecting women, develop research initiatives to spotlight issues important to women, and create innovative programs and events that raise your profile and enhance your professional development. We welcome your ideas and participation!

Please email our Section Liaison, Ernesto Guerrero (eguerrero@nysba.org), to indicate your preference for up to three committee(s) you wish to join.



WOMEN IN LAW SECTION COMMITTEES

Annual Meeting and Programming Committee

Organizes programs throughout the year for the Section, including WILS' Annual Meeting event, the Edith I. Spivack Symposium. Committee members develop and run programs and events, have extensive interaction with leaders in the legal profession, and may have an opportunity to participate as a speaker or moderator of a program.

Awards Committee

Chooses recipients for the Ruth G. Schapiro and Kay Crawford Murray Memorial Awards and participates in the awards ceremonies. This committee will also participate in selecting recipients for the newly created Ruth Bader Ginsburg Memorial Scholarship. Meets September through November and in January.

Champions: Men Advancing Women Committee

Engages men as partners to advance women in the profession, the Association, and society-at-large. Activities include planning Drinks & Dialogues events (small get-togethers to discuss gender issues in a "safe environment" for men and women), commenting on news and issues, and supporting policies that advance women.

Communications Committee

Promotes the work and activities of the Section, including on social media and the NYSBA Communities platform.

Development and Sponsorship Committee

Develops a financial sponsorship plan to support WILS programs, events, and activities. Committee members also foster relationships with companies, legal vendors, and law firms to provide financial support for the activities and mission of the Section and of NYSBA and works closely with senior leadership on developing and executing WILS' strategic operational strategy. If you have an interest in finance and developing relationships with companies, vendors, and law firms to support WILS, this is the committee for you.

Emerging Lawyers Committee

Promotes opportunities and relationship-building for women new to the legal profession and supports their professional development and success. Programming includes networking events for women lawyers at varying career stages, panels featuring women leaders in different practice specialties, and the opportunity to learn about the variety of career paths available for women with law degrees (including non-traditional careers for lawyers). For law students, recent graduates, and new attorneys.

Equity in the Legal Profession (EILP) Committee

Explores, understands, and advances the equity of women in the law. The committee examines issues that may be delaying or derailing the advancement of women in the legal profession due to gender, ethnicity, sexual orientation, age, or disability. Activities include programming, researching and drafting reports, and collaborating with our NYSBA colleagues, law firms, corporations, the public sector, and outside bar associations. We promote scholarship, recognition, networking, and engagement to advance equitable access to leadership positions for women in the legal profession.

Gender Issues Committee

Addresses specific issues and rights that may impact women, children, and families. Examples include domestic violence, human trafficking, and gender violence. The committee also helps women secure leadership positions and develop specific skills, such as negotiation skills.

General Counsel Committee

Develops strategies and tactics to help advance women lawyers within companies and as outside counsel. The committee supports women in-house counsel to help them advance their careers and find and exploit professional opportunities. For current and former in-house counsel in private, public, and not-for-profit practice.

Legislative Affairs Committee (LAC)

Identifies new or existing New York State legislation relating to issues of interest to women, drafts evaluations and memos in support of proposed legislation as it may affect women, and presents such reports to WILS' Executive Committee (EC) for adoption, and when requested by the WILS' Chair or EC, to the NYSBA Executive Committee or House of Delegates for their consideration. Members conduct research, make recommendations to WILS regarding the legislation, and prepare memos supporting or opposing legislation. Members may also participate in meetings with NYSBA's lobbyist, plan programs, and develop partnerships with other NYSBA sections. The time commitment is approximately 15-25 hours annually. The peak committee activities occur between January and June 30.

Membership and Engagement Committee

Recruits, retains, and engages members of the Section and seeks to advance and promote WILS' mission. Committee members are the membership ambassadors of WILS.

Partners Committee

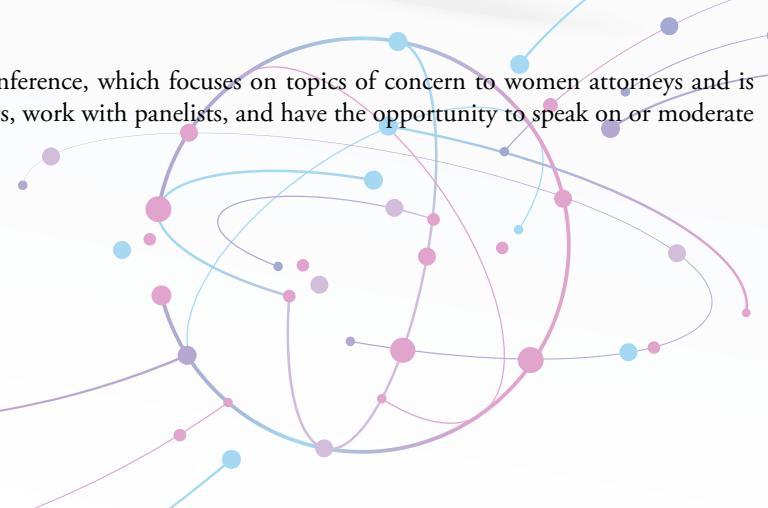
Explores the unique issues faced by women partners in law firms, including maximizing client development, securing firm leadership positions, and finding and acting as mentors and sponsors. Members network with other women partners and foster a strong and supportive community for women partners throughout New York State. For current and former partners or executive level counsel in private practice.

Reports, Surveys and Publications (RSP) Committee

Reviews reports submitted to the House of Delegates and drafts memos about such reports to the WILS Executive Committee for consideration. Committee members also conduct surveys on behalf of the Section, prepare WILS's publication, *WILS Connect*, and write articles, blogs, and other materials to promote the equality and fair treatment of women in the legal profession and all women under the law.

Women on the Move (WOM) Committee

Organizes and runs WILS' annual Women on the Move CLE conference, which focuses on topics of concern to women attorneys and is traditionally held in October. Members identify topics and speakers, work with panelists, and have the opportunity to speak on or moderate panels. This committee meets spring to late October.



Section Committees and Chairs

The Women in Law Section encourages members to participate in its programs and to volunteer to serve on the Committees listed below. Please contact Section Officers or Committee Chairs for further information.

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Additional Details & Agendas Coming Soon!