

PRESIDENT'S PERSPECTIVE

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Hear Us. Recognize Us. The Power of Women Speaking Up.



It was my pleasure just a few weeks ago to kick off the New Jersey State Bar Association Women's Leadership Conference program "I Dissent: Celebrating the Legacy of Justice Ruth Bader Ginsburg and the Power of Speaking Up," which was presented by the Association's Women in the Profession Section and the Diversity Committee.

As historian Jill Lepore wrote in the *New Yorker* after Ginsburg's death in September 2020 at age 87: "Ginsburg bore witness to, argued for, and helped to constitutionalize the most hard-fought and least-appreciated revolution in modern American history: the emancipation of women. Aside from Thurgood Marshall, no single American has so wholly advanced the cause of equality under the law."

Yet Ginsburg "faced discrimination on the basis of sex at every stage of her career," Lepore wrote.

Here are some figures to consider: For the last 20 years, about half of law school graduates in the U.S. have been women, yet only 36% of lawyers at law firms are women. And of those, only 22.7% are partners and 19% equity partners. Women are in the profession, but we still have a way to go.

As I read Justice Ginsburg's biography, *My Own Words*, from 2006, I have been heartened for the progress of women at the bar and on the bench in our state and across the country.

"Yet," Ginsburg wrote, "as the numbers reveal women in law, even today, are not entering a bias-free profession. Social science research can aid in why that is so and perhaps in solving persistent problems."

She offered the story of Arabella Mansfield who in 1869 became the country's first woman to be admitted to the practice of law. That year marked the first time women would be admitted into law school. But they were not always welcomed with open arms. "An example from the University of Pennsylvania Law School, in 1911 the student body held a vote on a widely supported resolution to compel members of the freshman class to grow mustaches. A 25-cent per week

penalty was to be imposed on each student who failed to show substantial progress in his growth. Thanks to the 11th hour plea of the student who remembered the lone woman in the class, the resolution was defeated, but only after a heated debate."

"The bar's reluctance to admit women into the club, played out in several inglorious cases.... The few women who braved law school in the 1950s and '60s, it was generally supposed, presented no real challenge to or competition for the men. One distinguished law professor commented at a 1971 Association of American Law Schools meeting, when colleagues expressed misgivings about the rising of enrollment of women that coincided with call up of men for Vietnam war service, 'Not to worry,' he said, 'What were women law students after all? Only soft men.'"

Ginsburg rhetorically asked: "Why did law schools wait so long before putting out a welcome mat for women? Arguments range from—anticipation that women would not put their law school degrees to the same full use as men—to the potty problem.... In the 1960s, women accounted for about 3% of the nation's lawyers.... In the law schools, women filled about 3 and 4.5% of the academic seats for each of the years between 1947 and 1957."

So, we have come a long way. Strides in law practice are similarly marked as I mentioned earlier. But note, that since Ginsburg's biography was published in 2006, Alabama has had three women bar association presidents up to today. At the time of her book, in 2006, more than 160 women had already served as state bar association presidents. And here in New Jersey, I am the ninth woman to serve as president in 122 years, with two more women following me in the next five years. As of this year, there have been 10 female American Bar Association presidents, including our own Paulette Brown, the first woman of color to lead the ABA.

So where do we go from here?

In quoting her friend and colleague, U.S. Supreme Court Justice Sandra Day O'Connor said, "For both men and women, the first step in getting power is to become visible to

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Andrew Bondarowicz provides a larger perspective on this topic with his article, *The NCAA's Historical Challenges With Antitrust Issues And Its Current Battle For Continued Relevance*. The bigger question is, who should benefit from the student's abilities, the student, their college or NCAA? Are the Big Brother tendencies of the NCAA soon to leave the students making their own destiny with the money they get from their skills? That answer depends on whether the NCAA backs down on its historical position since it does not appear that the athletes are backing down anytime soon.

Furthermore, Desha Jackson and Victoria Nguyen make it clear in their article, *It's All About the Benjamins: College Athletes Getting Paid for Their Name, Image and Likeness*, that NIL is a problem that is not going away, and the most welcome outcome is that the students are finally going to be able to cash in on their sweat equity. Their article presents and answers questions like how much money are student-athletes permitted to earn, should they hire an agent who is an attorney and will the student-athlete be required to hold their money in a trust account? All good questions with very common-sense answers.

Addressing the NIL issue with female

professional athletes is covered in the article by Mari Bryn Dowdy and Mailise Marks in *The Fight Off the Field: Legal Issues Surrounding Compensation of Female Professional Athletes*. This article addresses the ever-relevant issue of female professionals making less than their counterpart male professionals and the frustration faced by the players and their agents and lawyers. Gendered pay discrimination discussions are or should be happening every day. This refreshing article, starting with the U.S. Women's National soccer Team, presents hope that after the WNBA collective bargaining victory in 2020 (allowing athletes with children no longer lose pay when they have childcare issues), negotiations for the USWNT should follow suit.

An article addressing gender equity or inequity is written by one of our colleagues and Abby's former associate, Jan L. Bernstein and Gregory L. Grossman, *Title IX and the Continuing Fight for Gender Equity in Athletics*. This article goes to the core of sports participation and representation, i.e., women and men should have equal right and access to participate in sports, based on their ability, not their gender. We might add they should be paid equally as well.

William P. Deni provides a unique outlook on the New Jersey Fair Play Act

in his article, *New Jersey Fair Play Act Creates An Uneven Playing Field for Lawyers: Athlete Agents for College Students Held to Different Standard*, that echoes similar concerns as the other articles in this special edition. He highlights that while attorneys are supervised and subject to discipline by the Office of Attorney Ethics, there is no enforcement body that exists to oversee and discipline a sports agent doing business in the state. A problem that should be rectified.

Christopher C. Schwarz tackles the obvious question of, *Has the Supreme Court's Sports Gambling Decision Opened the Door for Corruption in ESports*, that many of us have likely pondered. Discussing the pivotal case of *Murphy v. National Collegiate Athletic Association*, may help you find the answer or at least be able to articulate your client's position in court and to your adversary.

And finally, but never last, is an expose by David P. Pepe peeking into MLB history in *The Catalyst for Change in Baseball Labor Agreements: A Legal Look at Curt Flood's Impact on Free Agency*. The first question that is answered, is who is Curt Flood? Arguably,

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others, and then to put on an impressive show. As women achieve power, the barriers will fall. As society sees what women can do, as women see what women can do, there will be more out there doing things and we'll all be better off for it."

Today, I celebrate the visibility of women with all of you. Whether you are a new associate in a law firm or a partner

in a large firm or own your own practice or you are a Supreme Court Justice, your visibility is important and your voice will help undoubtedly others.

Ginsburg is said to have spoken in a slow, measured and thoughtful manner. Her law clerks instituted what they called the "two-Mississippi rule," that is, to wait two beats after they asked her a question, her response would be forthcoming. Yet, as another *New Yorker* article said, "Her halting style in private never prevented her from vigorous advocacy before the bench."

Women speak in different voices; we just need to listen.

And finally, let me just say that speaking up is what I do. As president of the New Jersey State Bar Association, the state's 18,000-member strong organization for the legal profession, as a criminal defense attorney, as a wife and a mother. When I speak up, I want to be heard and recognized, just as all women do. I am not naïve to the fact that as women, we have faced and continue to face many societal barriers that have sought to squelch our voices. 🙏