

NYWBA

NEW YORK WOMEN'S BAR ASSOCIATION

May 14-17, 2015 WBASNY 2015 CONVENTION

The Sagamore Resort, Bolton Landing, New York

Join us as WBASNY inducts NYWBA member *Amy Saltzman* as a WBASNY Vice President and honors members *Patricia Ann Fersch* and *Judith E. White* with the *Hanna S. Cohn Pro Bono Award!*

For more info, go to www.wbasny.org
or email info@wbasny.org.

New York Women's Bar Association's 2015 Annual Awards and Installation Dinner and 80th Anniversary Party

Wednesday, June 10, 2015
Marriott Marquis, Times Square, NYC

The *President's Special Award* will be presented to the seven Matrimonial Justices sitting in New York County
Hon. Matthew F. Cooper *Hon. Douglas E. Hoffman*
Hon. Tandra L. Dawson *Hon. Deborah A. Kaplan*
Hon. Laura E. Drager *Hon. Lori S. Sattler*
Hon. Ellen F. Gesmer

The *Doris S. Hoffman Service Award* will be presented to
Hon. Sherry Klein Heitler
OCA's Chief of Policy and Planning

We will proudly congratulate
Hon. Peter H. Moulton
Administrative Judge of the
NY County Supreme Court, Civil Term

Jennifer P. Brown will be installed
as the 2015-2016 NYWBA President

Cocktails and Silent Auction to benefit the *NYWBA Foundation* and its *Hon. Betty Weinberg Ellerin Fellowship*
at 6:00 p.m. Dinner and Program at 7:15 p.m.

RSVP information will be available shortly.
Check www.nywba.org for updates.

PRESIDENT'S MESSAGE

Our Founding Members Would Be Proud

Last year at this time, we were honoring the *Hon. Sonia Sotomayor* at our Annual Awards Dinner. It was an exceptional evening with an extraordinary woman who shared her personal and professional journey, highlighting the key roles women have played in her life, and celebrating the bonds of sisterhood throughout. This celebration was followed in September by our Installation Dinner, at which we honored *Roberta A. Kaplan*, who similarly galvanized us with her account of her successful legal struggle in seeking marriage equality for same-sex couples before the U.S. Supreme Court.

I couldn't imagine a more inspiring introduction to the start of my tenure as President of our Association. I was honored by the confidence placed in me and humbled by the responsibility and the challenges ahead. And, this was to be a very special term - the Association's 80th anniversary year.

In order to commemorate this anniversary year, we are working on an oral history project to produce recorded interview vignettes from some of our distinguished members who entered the legal profession more than 50 years ago!

This year is also historic in that the four Chief Judges of the Federal Courts in the Southern and Eastern Districts are all women. One of my goals has been to seek the involvement of more federal practitioners at our events. In this spirit, we had the honor of having *Hon. Loretta A. Preska*, our 2011 President's Special Award recipient, as keynote speaker at our Mentoring Circles Reception. We have also revitalized our Federal Practice Committee, which has been organizing outstanding programs, including the upcoming "**An Evening with the Women Magistrate Judges of the Southern and Eastern Districts**" on May 11, 2015.

(Continued on Page 2)



Yacine Barry-Wun

Announcements & Calendar of Upcoming Events

- 5/5 – Repro. Rights Comm. Mtg. – p. 3
- 5/6 – M&F CLE – *Avoiding Malpractice* (sold out) – pp. 3, 4
- 5/11 – Federal Practice Comm. sponsors "*An Evening with the Women Magistrate Judges of the Southern & Eastern Districts of NY*" – p. 3
- 5/12 – International Human Rights Comm. Mtg. – p. 3
- 5/12 – Prof. Ethics & Discipline Comm. CLE on LinkedIn – p. 3
- 5/14-17 – *WBASNY Annual Convention* – p. 1
- 5/17 - *Annual AIDS Walk* (hosted by Repro. Rights Comm.) – p. 3
- 5/19 – Civil Courts Comm. Mtg. – p. 3
- 5/19 – Criminal Law Comm. Mtg. – p. 3
- 5/19 – Events Comm. Mtg. – p. 3
- 6/3 – M&F CLE – *Spousal Maintenance Legislation* – pp. 3, 10
- 6/10 – *NYWBA 80th Anniversary Dinner* – p. 1
- 6/11 – Prof. Ethics & Discipline Comm. CLE on Twitter – pp. 3, 7
- 6/17 – Civil Courts Comm. Mtg. – p. 3

Check www.nywba.org for more Meetings, Programs & Events.

President's Message (Continued from Page 1)

We continue to be actively involved with WBASNY, which is celebrating its 35th anniversary this year, and now has more than 4,100 members, firmly maintaining its position as the second largest bar association in New York State.

Expanding our Association's imprint, it is noteworthy that we have participated twice in the past year, through WBASNY, in the very important process of interviewing and rating the candidates under consideration to be nominated to fill the Associate Judge vacancies on the New York State Court of Appeals.

Another objective I set for my tenure was to raise our online profile and enhance members' knowledge and use of social media tools. We optimized communication of our programs and events through our LinkedIn, Facebook, and Twitter accounts, which promote quick exchange of information. Thanks to Technology and the Internet/Website Co-Chair **Elizabeth A. Bryson**, we have designed a new website, which will be unveiled over the summer. I thank Ms. Bryson's Co-Chair **Rebecca Iwerks**, and the Social Media Working Group for drafting a policy on social media use by the NYWBA. In addition, I am thrilled to announce that we are planning, in collaboration with the Professional Ethics and Discipline Committee, a hands-on social media and ethics CLE program series, focusing on "LinkedIn: Best Practices & Attorney Advertising Ethics" on May 12, and on "Twitter: Best Practices & Attorney Advertising Ethics" on June 11.

I can't wait to attend our **Annual Installation and Awards Dinner** on June 10, 2015 at which we are honoring so many accomplished jurists, including the seven Matrimonial Part Justices in New York County, our new Administrative Judge **Hon. Peter H. Moulton**, OCA's new Chief of Policy and Planning and Board member **Hon. Sherry Klein Heitler**, and our octogenarian members!

Don't forget to attend the **WBASNY Convention** May 14-17, 2015 at which we will congratulate President **Irene V. Villacci** on her outstanding tenure, and welcome incoming President **Andrea F. Composto**, and her fellow officers, including our very own **Amy Saltzman**, who will be installed as Vice President of WBASNY. We are thrilled that NYWBA members **Patricia A. Fersch** and **Judith E. White** will be receiving the Hannah S. Cohn Pro Bono Award for establishing and running the NYWBA Matrimonial Pro Bono Project.

Lastly, I would be remiss not to acknowledge the women whose work behind the scenes supports us every step of the way: **Karen Lu**, our Executive Director; **Annie Lee**, our website programmer; and, **Jessica Cygler** and **Alexandra Campbell**, our Newsletter Committee Co-Chairs, whose dedication and extraordinary diligence helped us edit and publish our Newsletter this year!

Reflecting on the year past, I am extremely proud to have had the privilege of leading this outstanding organization alongside such competent and hard-working Officers, **Jennifer P. Brown**, **Julie Hyman**, **Amy B. Goldsmith**, **Deborah G. Rosenthal**, **Myra L. Freed**, and **Virginia A. LoPreto**; our Directors, and Committee Chairs. Together, we have accomplished great things, and held excellent programs, including our premier annual events, such as our Membership Reception, our summer event on "What It's Really Like to Practice Law as a Woman," our Mentoring Circles Reception, and, our Judiciary Reception, which was attended by 127 people! In addition, our 30+ Committees have put on a steady stream of diverse programs and CLEs, offered free of charge to our members thanks to the generous grant of one of our founders, **Hon. Florence Perlow Shientag**.

As I turn over the leadership to our wonderful incoming President, **Jennifer P. Brown**, I am confident and happy that our Association is in good hands - well positioned and poised for yet another exciting year ahead! I look forward to seeing you at our June 10, 2015 Dinner, and continuing to work with you for the benefit of our great organization and mutual goals.

Yacine

**YES YOU CAN:
JOIN WBASNY + BE A MAN***

"It's all about gender equality. That's why I'm here."

– Michael W. Appelbaum, Esq.,
WBASNY Member, New York Chapter

Michael W. Appelbaum received his law degree from Columbia Law School in 1959. There were 225 students in his graduating class. Only 12 of them were women. Twenty years later, WBASNY was founded by a group of women lawyers from around New York State to address their professional concerns and to confront gender bias. Since its founding, WBASNY – now the second largest bar association in New York State with over 4,100 members – has strived to make life better for all women in the legal profession and in society as a whole.



WBASNY members are often asked whether men are allowed to join the organization. The answer is "YES!" Not only can men join WBASNY, but the organization encourages support and participation of male attorneys. But, why should men join?

Men should join WBASNY because it is hoped that all male attorneys value and support WBASNY's mission, which is to:

Promote the advancement of the status of women in society and of women in the legal profession; to promote the fair and equal administration of justice; and to act as a unified voice for its members with respect to issues of statewide, national and international significance to women generally and to women attorneys in particular.

Male attorneys may be unaware how much they already support WBASNY's mission. If you provide advice and encouragement to female attorneys entering or practicing in the profession, you support this mission. If you support equal pay for equal work, you support this mission. If you treat others with the same respect and professionalism regardless of gender, you support this mission. And, if you want to live in a society that values men and women equally, and affords them equal opportunities to succeed, you support this mission.

Unlike Michael Appelbaum's graduating class, law schools in New York State now graduate roughly equal numbers of men and women. However, while law school doors are now more equally open to both genders, once women enter the legal profession they find that gender bias and unequal opportunities still abound. The more voices that speak up to affirmatively support WBASNY's mission, the better. To take Michael Appelbaum's statement and pair it with his exemplary action of being the first man to serve on NYWBA's Board of Directors, this fight is not one for women to face alone. So, men: YES. You can, and we hope you will, join us!

** NYWBA is a founding Chapter of WBASNY and is proud to reprint this article about trailblazing NYWBA member Michael W. Appelbaum that appeared recently in WBASNY's Newsletter. This article shows male attorneys how important and fulfilling it is to join and support the 18 Women's Bar Chapters across the state. In addition to serving on NYWBA's Board, he is Co-Chair of NYWBA's Membership Committee.*

COMMITTEE NEWS

- The **Civil Courts Committee** will continue its **Lunchtime Series** on **May 19** to discuss **Article 81 Proceedings** and **June 17** to discuss **Ethical Obligations Regarding Escrow Funds**. Both meetings will be held from 1:00-2:00 p.m. at NYC Civil Courthouse, 111 Centre St., 12th Fl. Boardroom (Attendees must enter via White Street). Email CivilCourtChairs@nywba.org for more info and to RSVP.
- The **Criminal Law Committee** will meet on **May 19**, at 6:15 p.m. at The Hoffinger Firm, 150 East 58th St., 16th Fl., NYC. RSVP to CrimLawChairs@nywba.org.
- The **Events Committee** will meet on **May 19** at 6:00 p.m. Location: Law Offices of Jennifer P. Brown, 570 Lexington Ave., Suite 1600, NYC. For more info and to RSVP email events@nywba.org.
- The **Federal Practice Committee** will sponsor a program on **May 11** from 6:00 - 8:00 p.m., **"An Evening with the Women Magistrate Judges of the Southern and Eastern Districts of New York."** RSVP: www.nywba.org/FederalPracticeRSVP. For more info, email FederalPracticeRSVP@nywba.org. (See notice p. 3)
- The **International Human Rights Committee** will meet on **May 12** from 6:30-7:30 p.m. at Le Pain Quotidien at 81 West Broadway, NYC. RSVP to IntlChairs@nywba.org.
- The **Matrimonial & Family Law Committee** is meeting on **May 6** at 6:00 p.m. for a CLE entitled **"How to Avoid Malpractice Claims & Billing/Counsel Fees Disputes"** featuring Susan L. Bender and Aimee L. Richter (SOLD OUT). The Committee will also host a CLE **"Spousal Maintenance Legislation"** on **June 3** at 6:00 p.m. Both events will be held at the Law Offices of Virginia A. LoPreto, 565 Fifth Ave. (entrance on E. 46th St.), 7th Fl., NYC. 2.0 CLE Credits. For more info or to RSVP email MFrsvp@nywba.org. Space is limited so advance registration is required. (See notices pp. 4, 10)
- The **Professional Ethics & Discipline Committee** will present a CLE on **May 12** from 6:00-8:00 p.m. entitled **"LinkedIn: Best Practices & Attorney Advertising Ethics."** RSVP: www.nywba.org/SocialMediaMay. The Committee will also host a CLE program on **June 11** from 6:00-8:00 p.m. that addresses **"Twitter: Best Practices & Attorney Advertising Ethics."** To RSVP, go to: www.nywba.org/SocialMediaJune. Both programs will be held at the offices of Frankfurt Kurnit, 488 Madison Ave., (btwn. 51/52 Sts.), 10th Fl., NYC.
- The **Reproductive Rights Committee** will meet on **May 5**, at 6:30 p.m., location TBD, and will participate on **May 17** in the 30th Annual AIDS Walk New York. The walk begins in Central Park. Email ReproductiveRights@nywba.org for more info.

Please join the NYWBA Women's Health & Reproductive Rights Committee

as we participate in the

30th Annual AIDS Walk New York

NYWBA's Women's Health & Reproductive Rights Committee will be participating in the 30th Annual AIDS Walk New York as team **"State of the Uterus"**! AIDS Walk New York is the largest single-day AIDS fundraising event in the world, and has raised more than \$139 million to combat HIV and AIDS. Visit gmhc.org for more information on the services and programs benefited.

Date: Sunday, May 17, 2015

Place: Starting in Central Park

RSVP: Join our team and start fundraising:
<http://bit.ly/1ATqJ06> or email
ReproductiveRights@nywba.org.

Can't attend? You can also donate to our team and help us reach our goal at <http://bit.ly/1BtvP36>

NOTES ON MEMBERS

Congratulations to NYWBA Past President **Laurie Berke-Weiss** and husband Brian Berke on the upcoming wedding of their daughter, Alex, in May.

Our heartfelt condolences to NYWBA Director, **Dawn M. Cardi**, whose father-in-law, Meyer Kinzer, passed away in April. Condolences may be sent to Cardi & Edgar LLP, 2 Park Avenue, 19th Floor, New York, NY 10016-5675.

Has something noteworthy happened to you or another member? Send your news to Newsletter@nywba.org.

WELCOME NEW MEMBERS

Skylar Bader	Elizabeth A. Kowell	Emily S. Pollock
Shannon D. A. Clarke	Evelyn K. Lin	Oghenerukevwe Riesa
Ruchama L. Cohen	Christina Llewellyn	Zoe E. Sajor
Paula Collins	Linda A. Monica	Sarah Sulkowski
Melanie Debrosse	Julia Morpurgo	Laura M. Wilson-
Albina Gasanbekova	Jacqueline Perez	Youngblood
Aaron H. Hauptman	Alan J. Pierce	Maria W. Wong

as of 4/12/15

The United States District Court, SDNY, is seeking candidates for the Criminal Justice Act (CJA) Panel!

The CJA Panel is comprised of private attorneys who are authorized to serve as appointed defense counsel pursuant to 18 U.S.C. §3006A. To qualify for a position on the CJA Panel, attorneys must be members in good standing of the Southern District and have proven experience and competency in the field of criminal defense work.

Applications are available on the court's website at www.nysd.uscourts.gov/cja.php and must be submitted electronically by May 31, 2015.

Contact Karen Van Outryve at Karen_van_outryve@fd.org or 212-417-8741 for more information.

The NYWBA Federal Practice Committee

presents

"An Evening with the Women Magistrate Judges of the Southern and Eastern Districts of New York"

Join us for a moderated discussion of each participating Judge's path to the bench and the best practices for appearing in her courtroom.

Date: Monday, May 11, 2015, 6:00-8:00 p.m.

Place: Lowenstein Sandler LLP
1251 Avenue of the Americas, 17th Floor, NYC.

Cost: \$55 for NYWBA/WBASNY members
\$65 for non-members

RSVP: www.nywba.org/FederalPracticeRSVP before
May 1st. Light refreshments will be served.

Info: Email FederalPracticeRSVP@nywba.org.
Space is limited so advance registration is required.

**If you are not a current member, join or renew using our secure online membership form at www.nywba.org/Membership.*

Disparate Views of Women's Rights at Home and Abroad

By Farah Zaman

The **NYWBA International Women's Rights Committee** hosted a screening and panel discussion to commemorate the 59th Session of the United Nation's Commission on the Status of Women. The event featured the documentary, **Madame President, Why Not U.S.?**, which chronicles the journey of two women, one from the United States, and one from Rio de Janeiro, Brazil, as they explore the key question of why so many other countries have elected female presidents before the United States. The event was held at **New York University's Brickel & Brewer Latino Institute for Human Rights** on March 12. This event showed the Committee's ability to build relationships, which was evident through co-sponsorship with the **Brickel & Brewer Latino Institute for Human Rights**, and participation of the **Hispanic National Bar Association**, **Silva Thomas PC**, and the **New York Women's Bar Association Foundation**.

The panel was moderated by **Linda Wayner**, Executive Director of the Brickel & Brewer Latino Institute for Human Rights and former General Counsel of the New York City Mayor's Office for International Affairs. The Committee was honored to bring together distinguished panelists, including **Heather Arnet**, director of the documentary and Executive Director of the Women and Girls Foundation, and Board Chair for the Ms. Foundation; **Patricia Gatling**, Deputy Secretary for Civil Rights of the State of New York and former Commissioner of the New York City Commission on Human Rights; and **Beverly Neufeld** President of BCN Consulting Group, LLC and former Executive Director of the White House Project.

The event was a unique program that successfully brought together a diverse group, and a nearly equal number of male and female audience members, including legal practitioners, civil society members, international advocates, and other interested individuals. An initial discussion of barriers to leadership roles for women, including greater access to reproductive health, maternity leave, child care, quotas, and economic inequality (including specifically access to money for campaigning), evolved into a dialogue about the need to engage key stakeholders in making the business case for women's equality at large. Discussions highlighted studies that have shown that corporate boards with more women yield greater returns than those without; cultural norms outside the U.S. that value the role of women both at home and in the workplace; the engagement of men in "women's issues," and strategic terminology to engage disinterested or oppositional individuals, such as phrasing training as "legal compliance" instead of "sensitivity training." Audience members heard anecdotal reports of how multinational corporations adhere to both local laws and societal norms in the countries in which they operate, with disparate results. For example, one corporation that provides six months of maternity leave in Brazil for a particular position allows only six weeks in the U.S. for the exact same role.

The Committee intends to continue providing real and practical assessments of international women's rights, including contrasts of domestic and international policies, and it will be hosting a CLE on comparative maternity leave in September.

Farah Zaman works as a privacy attorney for the New York City Department of Social Services and is Chair of the NYWBA's International Women's Rights Committee. Ms. Zaman is passionate about international human rights, social entrepreneurship, and the intersection of technology and the law.



NYWBA Matrimonial & Family Law Committee presents a CLE Program

"How to Avoid Malpractice Claims and Billing/Counsel Fees Disputes"

featuring

Susan L. Bender, Esq.
Aimee L. Richter, Esq.

Please join us as we review the current state of the law regarding legal malpractice cases and billing and counsel fees disputes. Our speakers will also address effective strategies for avoiding malpractice claims and billing disputes.

Date: Wednesday, May 6, 2015, at 6:00 pm

Place: Virginia A. LoPreto, LLC
565 Fifth Avenue, 7th Floor, NYC
(Entrance is on East 46th Street)

CLE: 2.0 CLE Credits*

Cost: Free for Members**
\$50 for Non-Members if space is available.

RSVP: SOLD OUT. (Email MFrsvp@nywba.org for info.)

***CLE:** New York Women's Bar Association is a founding chapter of the Women's Bar Assn of the State of New York, an accredited CLE provider. Approval of CLE credit is pending in accordance with the requirements of the NYS CLE Board for the above-listed credit hours for established attorneys and as transitional credit hours for newly admitted attorneys.

****Membership:** Members attend CLE programs for free. If you are not a member, go to www.nywba.org/Membership to join or renew using our secure online membership form.

Courting Success with an Extraordinary Remedy: A View of Injunctions From Behind the Bench — NYWBA CLE

By Vivian Rivera Drohan & Terence Michael Schroeder

It's approaching 4:00 PM on a Friday afternoon, and an attorney rushes into 60 Centre Street to appear *ex parte*, desperately seeking a temporary restraining order. The result?

For **Hon. Jeffrey K. Oing** of the New York Supreme Court's Commercial Division, New York County, at best, about 48 hours of relief. "[I] invariably get them at 4 o'clock on a Friday afternoon," Justice Oing remarked, referring to last-minute TRO requests. He may grant it, but only on one condition—"come back Monday at 10 o'clock." Otherwise, the TRO expires. And if 10:00 a.m. is objectionable? "2:30 p.m. then."

Hon. Eileen Bransten, also of the Commercial Division, appeared less inclined to even consider such a request. She noted that she hardly ever "[gives] injunctive relief *ex parte*." That is, with one rather prominent exception, as she proceeded to describe a case combining elements of *The Thomas Crown Affair* with the touch of an international thriller: a rare, valuable painting, likely a Rembrandt, had been pledged as a security interest in favor of Morgan Stanley, which the owner kept on the wall of a luxury apartment in Trump Plaza. The TRO request came *ex parte*, just before the weekend, out of concern that the painting had been moved—to be transported abroad, perhaps to either Amsterdam or Copenhagen, for sale in violation of the security interest. With the TRO and attachment in place, Morgan Stanley employees apparently raided the apartment over the weekend to ascertain whether the painting was still there.

While distinctly aware of the differences in their approaches to injunctive relief, the two seasoned jurists shared a key message for the audience of practitioners at the **Federal Practice Committee's** CLE on injunctive relief - a TRO is truly is an "extraordinary" remedy, and judges will scrutinize each application accordingly. At the same time, as Justice Oing opined, it "makes the practice of law most interesting."

For many practitioners, the basic elements of the law are highly familiar. The CPLR incorporates three main provisions for attachments,¹ TROs and preliminary injunctions,² and the increasingly obscure receiverships.³ A TRO requires a showing by the plaintiff "that immediate and irreparable injury, loss or damages will result unless the defendant is restrained before a hearing can be had."⁴ A preliminary injunction, which generally follows a hearing with the opportunity for opposition, requires a showing of "(1) a likelihood of ultimate success on the merits, (2) the prospect of irreparable injury if the

provisional relief is withheld, and (3) a balancing of the equities in the movant's favor."⁵ The CLE provided a rare, distinct perspective one generally cannot find amidst statutory text and volumes of case law—a glimpse into the minds of the decision-makers themselves, to see what resonates most prominently in their eyes.

In his overview, Justice Oing reflected a deliberative approach in evaluating requests for injunctive relief, always mindful of broader practicalities. With respect to the latter, the "timing" of certain petitions is often key. He referred to the fact that waiting several months, all while having at least some awareness of a pending transaction, only to move for a TRO the day before the transaction is consummated weighs heavily against granting such relief. With respect to preliminary injunctions, Justice Oing tends to heavily scrutinize a party's ability to effectively demonstrate the required elements, particularly irreparable harm and the likelihood of success on the merits. A failure to meet any one element is generally fatal.

For example, in a case involving Fimat USA, Inc., a former employer sought to enforce a non-competition clause against a former employee, and as Justice Oing reviewed the text—he cautioned the audience that he does read everything—he discovered an express carve-out, that, had the employee met certain conditions in his resignation and subsequent employment, he would not be in violation of the clause. He then asked the employer's attorney, "where is the irreparable harm?" When the attorney replied with "standard stuff," he pressed him again, remarking that in effect, the company "gave its blessing" to the form of competitive employment in which the former employee was presently engaged. In another case, Justice Oing found the matter "teetering in favor of the plaintiff," the employer, until he uncovered what in effect operated as a liquidated damages provision. The parties had agreed that a violation would result in a payment of monetary damages. No irreparable harm. In both cases, injunctive relief was denied.

Justice Bransten emphasized more of a holistic approach, as embodied within the third element, the balance of the equities. You "always have to put the three prongs together," she said. She further observed that, with respect to the third element, "if [you] argue properly on that, it can be very persuasive."

Justice Bransten expressed a keen interest in a peculiar form of injunctive relief born not of statute, yet of the judge's pen: *Yellowstone* injunctions. This form of remedy has its basis in, and derives its

name from, *First National Stores, Inc. v. Yellowstone Shopping Center, Inc.*,⁶ a decision of the New York Court of Appeals. As Justice Bransten summarized, "the Court of Appeals basically said one of the most valuable things you can have is a commercial lease." In order for a court to grant a *Yellowstone* injunction, forestalling a threatened termination of a lease, a party must have a valid commercial lease—can't be one that "expired yesterday"—and the "ability to cure" or a "curable event" with respect to the default the landlord is claiming as a basis to terminate the lease. This does not mean rent. As Justice Bransten stated, it helps to be "current on rent." The *Yellowstone* injunction merely preserves the *status quo*, providing a tenant time to cure a default instead of facing immediate eviction. Yet judges will also be prudent with respect to *Yellowstone* injunctions being used improperly. In one case in which a landlord objected to a *Yellowstone* injunction, the landlord's attorney described to Justice Oing that the end to the tenant's lease was a few months away and the tenant was effectively seeking to benefit from the length of the injunction to avoid making the required repairs until the lease expired. Justice Oing provided for an injunction just short of the lease period's termination date. He later learned that the tenant vacated within a week.

With respect to restrictive covenants, Justice Bransten observed that "courts are particularly interested in getting a resolution to the problem before you." Her approach appeared fairly pragmatic. For example, she described a case where a (former) employer's request was for relief on the basis of a broad restrictive covenant—which courts may be loathe to enforce—yet the employer's attorney presented a more narrow field of concerns, what was really at issue for the client. If that is the case, the court "may fashion a remedy along those lines."

Justice Oing in part echoed this sentiment in advising the audience that generally speaking a restrictive covenant is "not overbroad until a judge tells you it is overbroad." And each side must be prepared for unexpected or adverse results. Justice Oing revealed a deep respect for attorneys that are well-versed in their cases and the relevant law, with the capacity to seamlessly present an alternative solution should the court reject their initial position. Attorneys are advocates for their clients, and generally should, at the outset, pursue the preferred outcome for their side. "But always have an escape card in your back pocket," he cautioned. Advocates are charged with "protect[ing] their client's interests" but must be mindful of ultimately achieving "something that is doable." (*Continued on Page 8*)

Women in Prison: Before, During and After By Fran Hoffinger and Judith Rifkin

On March 19, 2015 the **Criminal Law Committee** sponsored a CLE program entitled **Women in Prison: Before, During and After**. The program was co-sponsored by the Gender Fairness Committee of the New York County Criminal Court, the New York Criminal Bar Association and the Assigned Counsel Plan of the Appellate Division, First Department. Over 100 people attended the program, which took place at 111 Centre Street, including judges of the Criminal and Supreme Court, defense attorneys, and prosecutors.

The program was moderated by **Judge Rena Uviller**, retired Justice of the Supreme Court, New York County, Criminal Term. The panel was comprised of **Kerry Cooperman, Esq.**, an attorney at Stroock, Stroock & Lavan LLP and an affiliate of the Center for Research in Crime and Justice at NYU Law School; **Tamar Kraft-Stolar**, Director of the Women in Prison Project, Correctional Association of New York; **Nathan Z. Dershowitz, Esq.**, a partner at Dershowitz, Eiger & Adelson, P.C., who specializes in appellate and post-conviction work; **Donna Hylton**, Community Health Advocate at St. Luke's Hospital, who spent 27 years in state prison; and **Susan Gottesfeld**, Associate Director of The Osborne Association.

Kerry Cooperman, together with Professor James Jacobs of NYU Law School's Center for Research in Crime and Justice, is researching prison systems in the U.S., and in particular, issues concerning women's health in U.S. prisons and jails, with a particular focus on the resources devoted to management of women inmates' health needs and proposals for improving services available to women inmates. His research confirmed that women and men experience prison quite differently. Women tend to enter prison in fairly poor health and often exit in worse condition. For example, nearly 60% of women in prison have a serious or chronic medical condition, 12% are HIV positive, 17% have Hepatitis C, 70% suffer from mental illness, often made worse by incarceration, 80% have or have had substance abuse issues, 90% have been abused physically or mentally, 80% were abused physically or sexually as children, 75% were the victims of abuse by their partners, and almost 70% of them have minor children. The pathways for women into crime are overwhelmingly mental illness, substance abuse and a history of violence, usually as victims. All of these statistics are much higher for women inmates than for men. The rate of abuse by corrections staff is also much higher for women than for men, as it continues to be a nationwide problem.

Mr. Cooperman suggested areas for improvement. Women thrive in community-based alternatives to incarceration, and those alternatives should be expanded. Women inmates who are raising children can be closer to home. Correctional facilities' women-specific health programs and policies need improvement, including intake and pre-release health services tailored to women's issues, improved treatment programs, partnering with outside educational institutions and community-based organizations, and a physical infrastructure that is more communal. Gender-responsive training/education should be expanded. There is also additional need for advocacy groups working on legislation, litigation and public awareness.

Tamar Kraft-Stolar explained that the Correctional Association's Women in Prison Project (WIPP) has been focused on reducing incarceration for women, ensuring that prison conditions for women are as humane and just as possible, and creating a criminal justice system that treats women and all people with fairness, dignity and justice. Ms. Kraft-Stolar
(Continued on Page 9)

Diversity Committee Co-Hosts Mentorship Event with the NAWJ By Morgan F. Mouchette & Amrita Mahabaleswara

On March 9, 2015, the **Diversity Committee** and **District 2 of the National Association of Women Judges** co-sponsored an exciting networking program at New York University School of Law, "**MentorJet: Speed Mentoring & Networking Fun for Law Students, Judges, Lawyers, and Other Professionals.**" The "speed mentoring" networking event was co-hosted by **NYU Law Women** and was modeled on the "speed dating" format in order to provide law students and recent law school graduates with the opportunity to experience multiple one-on-one interactions with mentors.

The mentors included various distinguished members of the judiciary, including Housing Court, Civil Court, Criminal Court and Supreme Court judges, court attorney referees and court attorneys as well as private practitioners from diverse areas of the law.

The intimate and relaxing environment allowed for an easy flow of conversation between the mentors and mentees, who remarked that they greatly valued the information and insight received from the mentors. The NYWBA Diversity Committee enjoyed working with the NAWJ and looks forward to partnering on future events.

Morgan F. Mouchette and Amrita Mahabaleswara are co-chairs of the NYWBA Diversity Committee.



NAWJ members and NYWBA Diversity Committee Members



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Her financial bequest has helped to underwrite the cost of this Newsletter and many of our CLE programs.

LinkedIn: Best Practices & Attorney Advertising Ethics

featuring

Nicole Hyland, Partner at Frankfurt Kurnit Klein & Selz P.C.
Vikram Rajan, Founder of Practice Marketing, Inc. and phoneBlogger.net

Marketing your practice & developing your career through **LinkedIn** has become essential for lawyers. Learn how to do so, from Profiles to Pages, Discussion Groups & Advanced People Search. This program consists of a **45-minute workshop** followed by a **30-minute ethics CLE** discussing the ethics rules relevant to LinkedIn and other social media platforms. We recommend bringing a laptop or tablet so you can set up and access your LinkedIn profile during the program.

Date: Tuesday, May 12, 2015
Time: 6:00 – 8:00 p.m.
CLE: 0.5 CLE Ethics Credits*
Cost: Free for Members**, \$50 for Non-Members
Place: Frankfurt Kurnit Klein & Selz PC
488 Madison Ave. (51st St.), 10th Floor, NYC
RSVP: www.nywba.org/SocialMediaMay
Info: Email SocialMediaRSVP@nywba.org

*CLE Credit: The CLE portion of this program has been approved in accordance with the requirements of the New York State Continuing Legal Education Board for a maximum of 0.5 credit hours in Ethics & Professionalism. (Note: The content of this course is appropriate for both newly admitted and experienced attorneys (non-transitional and transitional)).

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Twitter: Best Practices & Attorney Advertising Ethics

featuring

Nicole Hyland, Partner at Frankfurt Kurnit Klein & Selz P.C.
Vikram Rajan, Founder of Practice Marketing, Inc. and phoneBlogger.net

Marketing your practice & connecting with influences through **Twitter** is now popular among lawyers. Learn how to gain followers & keep on the pulse, through #hashtags, @profiles, retweeting & other Twitter jargon. This program consists of a **45-minute workshop** followed by a **30-minute ethics CLE** discussing the ethics rules relevant to Twitter and other social media platforms. We recommend bringing a laptop or tablet so you can set up and access your Twitter profile during the program.

Date: Thursday, June 11, 2015
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Cost: Free for Members**, \$50 for Non-Members
Place: Frankfurt Kurnit Klein & Selz PC
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Relocation, Redaction & Record Making *By Cheryl Stein*

The March 2015 *Matrimonial & Family Law Committee* meeting focused on current trends and highlights in the above-titled 3 “R’s”. After the frigid winter, a string of R’s conjures thoughts of rest, relaxation, recuperation, and recreation. While our subject R’s were not quite that, **Hon. Lori S. Sattler** and **Virginia A. LoPreto** co-chaired an enjoyable and informal meeting that was highly interactive. Facts and case scenarios were presented to the audience, who were encouraged to jump in and ask questions in order to glean pertinent information to try to determine the outcomes.

The most appropriate synopsis of the relocation discussion would be, “Your guess is as good as mine!” Justice Sattler and Ms. LoPreto classified the recent trends and broke them down by the primary factors and the driving forces in the decisions rendered in the First and Second Departments.

Recent decisions from the First Department focus heavily on two dominant factors: i) the residential/custodial parent’s willingness to allow liberal visitation, access and foster a meaningful relationship between the children and the non-residential parent, and ii) the non-custodial parent’s delayed, erratic or delinquent child support payments.

While the Second Department does consider those factors, it appears to instead place more emphasis on the custodial parent’s ability to provide the children with better living accommodations, such as a house with more bedrooms and a backyard, as well as a close connection between the children and the custodial parent’s new spouse and/or stepchildren.

Justice Sattler and Ms. LoPreto also addressed new redaction rules pursuant to 22 NYCRR 202.5(e), which require that certain personal information, such as social security numbers, bank account numbers and children’s names (other than initials) not appear in documents via e-filing. Although the new redaction rules do not apply to matrimonial actions (because they are sealed), matrimonial practitioners must be cognizant of the new rules. For example, there are instances when a matrimonial action feeds into, is referenced, or where exhibits from the matrimonial proceeding are used in a non-matrimonial action. In such cases, the redaction rules will apply.

Ms. LoPreto also noted that despite the sealing of matrimonial documents, she does not include full social security numbers and account numbers in Statements of Net Worth, and advises that full social security numbers are not required for HIPAA forms. She further advised to err on the side of caution, treat the client’s personal identification numbers as you would want yours treated, and protectively supply only the last 4 digits.

Our final topic for the evening was preserving the record for appeal and being mindful that letters written to the court and memos of law do not become part of the record for appeal. These practices have become so reflexive for many, yet may be best to shed. Similarly, oral arguments that take place in the absence of a written motion do not become part of the record, which is most relevant in Family Court, where the practice of relying exclusively on oral arguments is the norm.

If necessary, a motion may be made to expand the record on appeal at a later time. However, the best practice is to modify habits along the way, as described above, in order to obviate the need for supplemental motion practice.

Cheryl Stein, Esq. is a matrimonial/family law attorney and mediator with offices in Manhattan, Brooklyn, and Long Island. She is a member of the NYWBA Matrimonial & Family Law Committee.

Injunctive Relief (Continued from Page 5)

In part, this means an advocate must always be intimately familiar with the relevant facts. Justice Oing recalled a hearing where an attorney had appeared on behalf of a corporation, and at one point during the argument Judge Oing asked, “who runs the company?” The attorney launched into a 5-minute evasive response. The judge pressed him again, who runs the company? Finally, the attorney conceded: “I don’t know.” At that moment, from the table behind the attorney, an arm rose up. “I run the company.” It was the attorney’s client. As Justice Oing concluded, judges are “looking to you, the attorneys, for responses,” and “you need to know your cases.”

Throughout the program, both Justice Oing and Justice Bransten were keenly sensitive to practical concerns surrounding requests for injunctive relief, beyond the relevant legal principles and procedural minutiae.

Justice Bransten emphasized that injunctive relief, especially prior to any consideration of the merits of a case, is an ingredient of judicial remedy to be used quite sparingly: “I don’t as freely give injunctive relief as it appears I would.” In part, this stems from the fact that “it is a huge amount of remedy at the time the case is starting.”

“Think about the repercussions that come with a TRO,” Justice Oing advised. For Justice Oing, a TRO can be quite “onerous,” souring the parties’ relations with an upfront, one-sided judicial restraint. As an alternative, a standstill agreement—worked out by the parties themselves—presents “less of a bite”—a more cooperative, amicable approach.

Justice Oing also observed, with respect to disputes over restrictive covenants, that we “can’t forget that we are dealing with real people.” Whether injunctive relief is granted or denied, and the extent to which relief is granted, is not merely a legal matter; it has a substantial and often deeply personal impact on individuals’ lives. As Justice Oing further remarked that “people have to eat, pay the bills.” As Justice Bransten had previously reminded the audience, “equity is a remedy not based in law.” Practical considerations are thus an integral part of the analysis, and the broader implications of a certain remedy will likely have a significant effect on a court’s response to any request sounding in equity.

Both judges noted that courts and practitioners have to be ready to face the next challenge. Justice Oing commented that, as it is the 21st century, new developments in technology continue to present new legal challenges. In his review of a recent law journal article, he discovered a rather unique question regarding the scope of certain restrictive covenants: would merely posting an update regarding a change in employment status to Facebook or LinkedIn—when these services automatically disseminate data and information broadly to other parties—constitute a violation of a non-solicitation clause? Justice Oing had one request if an audience member came seeking relief on that issue: “Go to [Justice] Bransten first.”

1. C.P.L.R. § 6201 *et seq.*
2. C.P.L.R. § 6301 *et seq.*
3. C.P.L.R. § 6401 *et seq.*
4. C.P.L.R. § 6313.
5. *Reichman v. Reichman*, 88 A.D.3d 680, 681, 930 N.Y.S.2d 262, 263 (2nd Dep’t 2011).
6. 21 N.Y.2d 630 (1968).

Vivian Rivera Drohan is a partner and head of the Litigation Practice at Drohan Lee LLP. Her practice includes federal and state trial and appellate litigation, as well as arbitration and mediation. **Terence Michael Schroeder** is a recent graduate of Washington and Lee University School of Law and an associate at Drohan Lee LLP.

Women in Prison (Continued from Page 6)

focused her presentation on the area of reproductive health and reproductive justice for incarcerated women, about which the WIPP has recently released a report of its findings, which include lack of oversight and serious problems with both access to and the quality of gynecological care. Providers were often dismissive of the inmate patients, and there were difficulties in scheduling women to see an obstetrician or gynecologist, even in instances when the patient was in labor. Sanitary napkin supplies were limited and contraceptives generally unobtainable, other than condoms, even if the female was visiting her family overnight, preparing for a transitional work-release program, preparing for release to the community, or required for reasons other than contraception. Perhaps the most disturbing finding was the shackling of pregnant women en route to obstetrician appointments and hospitals, and during childbirth and recovery. Despite a 2009 law banning the shackling of pregnant women during childbirth, the report found that 23 out of 27 pregnant women are still shackled. The WIPP is supporting proposed legislation that will strengthen enforcement of the law.

Nathan Dershowitz focused his presentation on what defense attorneys can and should do when representing a female client facing incarceration, and how to get the client into the best prison possible. In the State system, there are only two options for female prisoners: Albion, near Rochester, which has such poor conditions that it has been compared to Attica, and Bedford Hills, in Westchester. In the Federal system, 7.2% of the prison population is female (much lower than NY State's population) and there are very few secure facilities available for women in the Northeast. At present, the only options for women in the Northeast are the Metropolitan Correctional Center (MCC) in New York City and a facility in Philadelphia.

Therefore, it is critical to focus on the client's prison designation prior to sentencing, and to try to have bail pending appeal set, or a "self surrender" order in the federal system. Mr. Dershowitz spoke at length about the necessity for attorneys to be involved at every stage in the pre-sentence report, which determines a prisoner's placement using a variety of factors, including: the severity of the offense, length of confinement, criminal history, prior attempts to escape, and public safety factors. A prisoner's classification dictates the level of security, access to programs, and privileges during confinement. Attorneys must review the pre-sentence reports not only for errors and omissions that might adversely impact sentencing, but also for information, or the lack thereof, which might prejudice a client once she is incarcerated, and request the removal of objectionable references. It is vital for the pre-sentence report to contain accurate information, particularly with respect to health information. The pre-sentence report is "the Bible" for the prison officials, and therefore accurate and complete information must be included. In the federal system, a sentencing judge can give reasons for a particular designation, either on the record or in a letter to the Bureau of Prisons.

Mr. Dershowitz also emphasized the need to prepare clients psychologically for prison. He confirmed that women in prison generally do not fare well, and that preparing them and their families for isolation from each other is essential. He also discussed the necessity of explaining the rules to potential prisoners in advance, and how to handle the demeaning and dehumanizing elements of incarceration.

Donna Hylton also confirmed that most female prisoners have suffered physical or sexual abuse and/or other emotional trauma. She fits into that category: adopted at the age of eight and sexually abused by her adoptive father from the age of 9. When she revealed the abuse to a school counselor at age 12, she was accused of fabricating the story by her adoptive mother. At age 14, Ms. Hylton ran away with a 25 year old boyfriend who was also abusive toward her, and her life spiraled downward from there, resulting in a 25 year prison sentence.

While in prison, Ms. Hylton was a key member of the Violence Against Women Committee. She participated in the Family Violence Program and others designed to help women heal from abuse and on breaking the cycle to prevent children from falling into destructive patterns. Health-related programs were also critical. An AIDS program was particularly meaningful to Ms. Hylton, who entered prison at age 20 in 1985 in the middle of the AIDS epidemic. In addition, Ms. Hylton addressed the shortcomings of the parole review process, and explained how, despite a perfect institutional record, someone may repeatedly be denied parole because of a violent offense committed decades in the past. She suggested that regulation is needed to guide parole review and board decision-making.

The final panelist, Susan Gottesfeld of the Osborne Association, described Osborne's mission of serving people at every stage in the criminal justice process, from arrest through the court process, detention, incarceration, and reentry. Osborne provides support services to individuals and their families in five interrelated areas: achieving economic independence, maintaining healthy lifestyles, reconnecting families, reducing reliance on incarceration, and strengthening communities. Ms. Gottesfeld noted that 120,000 mothers are currently incarcerated. Most of the women at Albion are from New York City, a 10-hour drive from the city. Osborne flies children to Albion twice a year, after their parent completes a parenting course. Osborne also established the New York Initiative for Children of Incarcerated Parents to support policies and practices that meet the needs and respect the rights of children and youth whose parents are involved in the criminal justice system.

Ms. Gottesfeld also explained that Osborne is an advocate for child-sensitive arrests and is working on initiatives to train law enforcement to be sensitive to issues of children when making arrests (e.g. be aware if children are present, if there are children who live there who are not present and will need to be notified or picked up from school). Finally, Ms. Gottesfeld discussed the importance of a Family Impact Statement, which Osborne is promoting as part of a pre-sentence report to highlight a person's parental status, based on the theory that children should not be punished for the actions of the incarcerated parent, and she recommended that such statements should be included in any pre-sentence advocacy to the sentencing judge and prison officials.

The program ended with questions posed to the panelists from Judge Uviller and the audience. The panelists made it clear that there is a lot of work to be done, by promoting more alternatives to incarceration for women, by advocating for better conditions, for the enforcement of rules and laws already enacted and for additional legislation, such as the Domestic Violence Survivors Justice Act, which would create mitigating sentencing guidelines for domestic violence survivors in certain situations and by giving judges more discretion.

Fran Hoffinger is a partner in The Hoffinger Firm, LLP where she specializes in criminal and civil litigation and family law. Judith Rifkin is court attorney to the Honorable Lisa A. Sokoloff, Civil Court Judge currently sitting in Criminal Court, New York County. Ms. Hoffinger and Ms. Rifkin serve as co-chairs of the NYWBA Criminal Law Committee.



You and Your 50's

By Michael B. Salmon

While 50 may be the new 40 in terms of lifestyle, vitality and longevity, it's important to take a more earnest and pragmatic approach toward your long-term financial health than you may have in your 40s. Retirement may have felt far away a decade ago, but now it's approaching rapidly. Many people in their 50s also feel the financial pressure of being part of the "sandwich generation," a growing group of individuals who simultaneously support their adult children and aging parents, in addition to saving for their own financial goals. Here are a few financial tips for people who are in their 50s.

1. Organize your financial priorities. At this point, saving aggressively for retirement should be at the top of your list. You likely still have other financial obligations, but it is critical that you don't put retirement on the back burner. Try to find a balance between funding your family members' needs – like college or assisted living expenses – and your personal savings. These decisions are often difficult, and may seem overwhelming, but having a written financial plan with guidelines for you and your family can help make them easier.

2. Kick your savings into high gear. If you're already saving for retirement but have the ability to increase the amount you're contributing to your 401(k) or IRA – do it! Know the maximum contribution you're allowed to make each year, adjust what you're saving accordingly and ensure you're taking full advantage of your company's matching program. If your savings are lacking, don't panic, but recognize that you might have some catching up to do. The good news is, after age 50 you can make catch-up contributions to most retirement plans.

3. Calculate what you'll need for retirement. Set aside some time to determine the expenses you'll likely incur during retirement. Keep in mind that the financial impact of healthcare costs and long-term care can be sizable – and that with the average lifespan increasing, you may need to rely on your retirement savings for 30 year or longer. Though they shouldn't replace the advice of a professional advisor, online resources like a retirement savings calculator can provide a baseline to get you started.

4. Be realistic. Retirement may be a possibility for you within five or 10 years, or it could be more distant. Regardless, now is the time to evaluate what you will spend your money on once you've retired and to discuss your retirement plans with your family. If you have a spouse or significant other, set goals together, and make sure your plans are aligned. Consider where you might live, and whether you plan to travel or work part-time. If you find that your retirement expenses are largely out of reach, adjust your savings, or make some decisions about how you'll prioritize your goals.

5. Anticipate bumps in the road. Your role as a parent and a child is never ending, but as your family grows and changes, so should the level of financial support you provide. Have candid conversations with any family member you're supporting financially and set realistic expectations. If your adult children or aging parents need help making healthy money decisions, provide advice but try to resist opening your pocketbook if it will put your own financial security in jeopardy. Also, be prepared for changes that may impact your plans, such as an early retirement offer or unexpected illness. While these can be difficult to prepare for, thinking through a variety of scenarios and establishing contingency plans can help ensure you're financially secure in any situation.

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presents a CLE Program

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featuring

Lydia S. Antoncic, Esq.

Virginia A. LoPreto, Esq.

Please join us for this cutting edge program which will review the current state of the law regarding temporary and post-divorce maintenance laws and cases in the wake of proposed legislation that will revamp the determination of maintenance.

Date: Wednesday, June 3, 2015, at 6:00 p.m.

Place: Virginia A. LoPreto, LLC
565 Fifth Avenue, 7th Floor, NYC
(Entrance is on East 46th Street)

CLE: 2.0 CLE Credits* (pending approval)

Cost: Free for Members**
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RSVP: Email MFrsvp@nywba.org. Space is limited so advance registration is required.

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There are many milestones you might encounter during your 50s, like becoming an empty-nester, a grandparent or dealing with the death of a parent – and all these things may have an impact on your finances. If you haven't already started working with a financial advisor, consider doing so. A professional can help you navigate the complexities of estimating what you'll need in the years to come, and help you organize, plan and save – regardless of what might come your way.



Michael B. Salmon, is a Financial Advisor with Ameriprise Financial Services, Inc. in New York City, NY. He specializes in fee-based financial planning and asset management strategies. Contact him at michael.b.salmon@ampf.com or (646) 964-9470.

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