



***Appellate Practice:  
What NOT to do in the First Department***

Join

First Department Justices  
Richard T. Andrias, Helen E. Freedman,  
David Friedman and Dianne T. Renwick

and Moderator Myrna Felder

as they take you through the "don't's" of  
appellate work here in the First Department.

1.5 CLE credits

**April 27, 2009 at 6 PM  
at Proskauer Rose  
1585 Broadway, NYC**

***Save the Date!  
NYWBA Annual Award &  
Installation Dinner - June 9, 2009  
at Capitale, 130 Bowery, NYC***

Join us for the gala reception and sumptuous dinner, and participate in the silent auction supporting the New York Women's Bar Association Foundation's charitable projects, and more.

Our special guest will be the *State of New York's CHIEF JUDGE JONATHAN LIPPMAN*, who will be presented with the President's Special Award for his extraordinary service to the bench, bar and community.

The NYWBA Annual Dinner Journal is also the perfect place to congratulate our honorees and our new Officers and Directors and for members, firms, clients and providers to promote their services. To place an ad or tribute, or to obtain more information, just send an email to "Journal@nywba.org."

**For the latest news and information on programs and events, check NYWBA online at [www.nywba.org](http://www.nywba.org).**

**PRESIDENT'S MESSAGE**

MARCH 2009

The New York Women's Bar Association is proud to welcome all our new members, and of course welcome back the many who have renewed in our latest membership drive. Our ability to provide quality programs, including CLE, networking, leisure, community service, women's issue and quality-of-life focused presentations is based on our broad membership base. Running the gamut from law students right through retired judges, we take advantage of the attributes brought to our organization by each individual, and we all grow together as an organization because of our personal resources. This year, we have once again not only achieved our membership goal, but passed it by over 10%. This gives us a continued spot at the top of the voting hierarchy at our WBASNY meetings, where significant issues, including the organization's positions on legislative and policy matters, are discussed and approved. Every single member adds to our wealth of strength, and enhances our ability to bring about positive change.



Jo Ann Douglas

I want to thank every member who joined or renewed thus far this year, and encourage others to do the same. As we move toward our many Spring events, including our Annual Meeting on April 27 and our Annual Installation and Award Dinner on June 9, I look forward to welcoming even more people into our Association. It will be my pleasure to say goodbye to many more people than I said hello to in the beginning of my year as president.

We currently have over 550 members. My goal for membership in the third certification period, at the end of my term is 613 members, a special number on two counts. You get points for getting them both.....the number of "mitzvot" (good deeds) of significance to some, and the number of wins the Knicks had under the guidance of Red Holtzman, also of significance to some. The French say "jamais deux sans trois"- never two without three-so let's make our third membership certification a third instance of this charmed number, of significance to all of us.

# Letter to the Editor

Law Office of Martha E. Gifford

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93 Montague Street #220  
Brooklyn, NY 11201

January 6, 2009

To the Editor:

While the legal community throughout New York State celebrates the extraordinary tenure of Chief Judge Judith S. Kaye, who broke barriers and established fair treatment for women in both her judicial opinions and administrative policies, it is a terrible irony that the candidates to succeed Judge Kaye as Chief Judge, presented to the Governor by the Commission on Judicial Nomination, do not include any women. WBASNY has spoken out against this absurd omission in a letter to the Governor - who, to his credit, immediately castigated the Commission's failure.

It was equally distressing to read comments, some by lawyers who should know better, that proposing seven male candidates for the position of Chief Judge was not a serious issue because, to paraphrase, "there are still three women on the Court of Appeals." We are far past the day when women can reasonably be left off a list of candidates for this or any other judicial position in New York State. The pool of female talent both on the bench and off is large and impressive. Our position is clear and simple: the list for the appointment of a new Chief Judge should and could have included serious female candidates. The number of women currently on the Court has no bearing on this issue, just as our position is unrelated to the question of which individual should be appointed as Chief Judge. Can we imagine the response if the Women's Bar defended a list of all women by saying that there are already three male judges on the Court?

Sincerely,

Martha E. Gifford  
President, NYWBA, 1994-95

## REPORT OF THE NEW YORK WOMEN'S BAR ASSOCIATION COMMITTEE ON NOMINATIONS

At its January 11, 2009 meeting, the NYWBA Committee on Nominations nominated the following candidates to serve during 2009-2010 and for other terms as stated below. The elections will be held at the Association's Annual Membership Meeting: **April 27, 2009 at 5:15 PM.**

### OFFICERS (2009-2010)

President:	Lisa A. Bauer
Vice Presidents:	Gretchen Beall Schumann Donna M. Praiss Catherine M. Foti
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Recording Secretary:	Bonnie R. Cohen-Gallet
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Class of 2009-2012

Yacine Barry	Patricia Ann Grant
Leona Beane	Kay Marmorek
Jane Bevans	Hon. Jacqueline W. Silberman
Jo Ann Douglas	

### COMMITTEE ON NOMINATIONS

Class of 2009-2011

Elizabeth A. Bryson	Jo Ann Douglas
Janet I. Cord	Myra L. Freed

### NYWBA MEMBERS OF WBASNY BOARD (2009-10)

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Dawn M. Cardi	Jo Ann Douglas
Hon. Betty Weinberg Ellerin	Christina Kallas
Marjorie Martin	Amy Saltzman
Gretchen Beall Schumann	Lisa A. Sokoloff

## ANNUAL MEETING & ELECTION

Article XIV, Section 1 of the By-Laws provides that *only* members who are in good standing and whose 2008-2009 dues have been received by **January 31, 2009** may vote at the Annual Meeting.

Article XVII, Section 10 provides that any fifty members eligible to vote may, by a writing delivered to the Corresponding Secretary not less than forty days prior to the Annual Meeting, propose candidates for officer or director positions to be voted on at the Annual Meeting. Any such petition must be sent to Kelly O'Neill Levy, New York Women's Bar Association, 132 East 43rd Street, # 716, New York, New York 10017-4019 and must be *received* by no later than **March 17, 2009.**



*The Association proudly announces that it will hold its Annual Meeting and present an exciting CLE program on April 27, 2009 at the offices of Proskauer Rose LLP, 1585 Broadway, NYC. We also hope you will mark your calendars for our gala Annual Dinner, which will be held on June 9, 2009.*

*Jo Ann Douglas, President*

## NEW YORK WOMEN'S BAR ASSOCIATION'S ANNUAL JUDGES' RECEPTION

The reception began with an introduction by Sylvia Di Pietro, NYWBA Vice President, who spoke of the Association's commitment to mentoring and guiding young lawyers. Ms. Di Pietro was followed by Jo Ann Douglas, President, who thanked TD Bank and our Event committee, Sylvia Di Pietro, Jennifer Brown and Aija Tingling for planning a wonderful evening.

Jo Ann also spoke about our special honoree of the evening, newly retired Chief Judge Judith S. Kaye, and the NYWBA's tribute to Judge Kaye, recognizing her initiatives for children and families. We have created an ongoing book drive, on this event for the first recipient, the Harlem Children's Zone. Hundreds of books were collected for the HCZ and delivered to them with lovely bookplates stating they were from the NYWBA Judge Judith S. Kaye's Children's Book Club.

*Hon. Judith S. Kaye (retired), Hon. Jacqueline W. Silberman (retired) and President Jo Ann Douglas collecting books for the Judge Judith S. Kaye's Children's Book Club at the Harlem Children's Zone*



*Hons. Angela Mazarelli and Betty Weinberg Ellerin (retired)*



## Justice Rosalyn Richter Makes More History: 6th Woman Appointed to First Department

The New York Women's Bar Association is delighted to congratulate long-time member and supporter Justice Rosalyn H. Richter on her appointment to the Appellate Division, First Department.

Justice Richter brings to her new Court a wealth of experience, both judicial, community and administrative. Serving on the bench in the Criminal Court of the City of New York from 1990 to 1999, she was appointed as Acting Supreme Court Justice in 1997 by then-Chief Administrative Judge Jonathan Lippman, and elected to the Supreme Court in 2003. Justice Richter is a member of the City Bar's Council on Judicial Administration, and is Co-Chair of OCA's Committee on American Disabilities Act. Justice Richter has also served as a board member for the NYC Lesbian and Gay Community Center.

We know Justice Richter will bring her extraordinary judicial skills with her to her new position, where we will continue to enjoy her sound judgment and unimpeachable judicial temperament as well.



*Justice Rosalyn Richter and Justice Jacqueline Silberman at our Judges' Reception*

## NYWBA/WBASNY Members Volunteer On Martin Luther King, Jr. Day

Inspired by the call of President-Elect Barack Obama to serve in the community, supporters of the Women's Bar joined thousands of Americans on Martin Luther King, Jr. Day for a day of volunteerism. WBASNY Vice President and former NYWBA President Teresa Schiller led a group from Clifford Chance US LLP -- a strong supporter of the NYWBA -- in an effort to beautify a public high school in New York.

Sixteen members of the Clifford Chance community painted a daycare center and other interior areas at Thomas Jefferson High School in Brooklyn on January 19. The high school project, which accommodated hundreds of volunteers, was organized by City Year New York (CYN), an organization that unites diverse groups of 17 to 24-year-olds annually for community service and leadership development.

Clifford Chance has cultivated relationships with organizations like CYN and the Women's Bar in response to ideals of social equality like those espoused by Dr. King. For several years, the firm has shown support for its women attorneys by covering the membership of all their attorneys who wish to join the NYWBA. As a result, the 60 to 90 attorneys who join each year are able to further the goals of the Women's Bar while developing their professional skills and widening their network of support.

As the NYWBA enters its 74th year of advancing the status of women in our society, its members and supporters welcome the call of President Obama for a new "era of responsibility." May his words -- and the ideals of Dr. King -- continue to inspire us in the days ahead.

*Thanks to Teresa Schiller, Past President of NYWBA and current Vice President of WBASNY, for her article and her continued dedication to volunteer and pro bono efforts.*

## MEMBER NOTES

*Has something noteworthy happened to you or another member? Send us your news at [newsletter@nywba.org](mailto:newsletter@nywba.org).*

The NYWBA extends its congratulations to **Diana Browne** on her new position as Counsel with Sonnenschein Nath and Rosenthal LLP.



## The NYWBA ADR Committee Hosts A Program on Appreciative Inquiry

*by Annie M. Ugurlayan*

On November 5, 2008, the NYWBA ADR committee hosted a program entitled "Appreciative Inquiry - A Life-Serving Approach to ADR." The guest speaker was Denise Lalonde of Lalonde Consulting and Coaching. Ms. Lalonde is a consultant and facilitator specializing in improving individual and organizational performance. She has over twenty years of business experience and fifteen years consulting internationally to Fortune 500 companies in a variety of industries and organizations in the non-profit sector. As such, she has brought strong consulting, facilitation and project management skills to the design and management of planning, change, communication and development strategies.

In this interactive session, Ms. Lalonde explained that Appreciative Inquiry is an asset-based process and philosophy that searches for and examines what is working well, what we want more of and what is life-serving in any given situation or organization - in a business setting, it helps increase effectiveness and boost bottom line results. Ms. Lalonde took the principles of Appreciative Inquiry and showed how they can be useful in an ADR setting. Since ADR at its core tries to achieve agreement between opposing parties on a given issue, Appreciative Inquiry, when used as a facilitation approach, uses specially-worded questions to elicit high point stories and experiences that serve as the foundation for moving forward towards a common objective, an envisioned future, and goes beyond finding common ground to bringing people to higher ground. The attendees found Ms. Lalonde's unique perspective highly applicable to their practice, and the ADR committee greatly appreciates Ms. Lalonde's participation.

Ms. Lalonde can be reached at 212-974-1438 or [dlalonden@aol.com](mailto:dlalonden@aol.com).

### NYWBA Foundation Breakfast Series

Friday, May 8, 2009  
8:00 a.m. - 9:30 a.m.

Cornell Club, 6 E 44th St, New York, NY  
Cost: \$75

Guest Speaker: Carol Frohlinger, Esq.

Our guest is co-founder of Negotiating Women, Inc., which provides negotiation and leadership training, and co-author of [Her Place at the Table: A Woman's Guide to Negotiating Five Key Challenges to Leadership Success](#). Come to this great program and leave with skills and tips.

For information, please contact Katherine Posner at [kposner@condonlaw.com](mailto:kposner@condonlaw.com)



## ***A Report from Jessica Oliff, the New York Women's Bar Foundation's First Ellerin Fellow***

The Hon. Betty Weinberg Ellerin Fellowship was established in 2006 by the New York Women's Bar Association, through its Foundation, to honor Justice Betty Weinberg Ellerin, the first woman to serve as Presiding Justice of the Appellate Division, First Department, Past President of NYWBA and a mentor to women lawyers and judges. The purpose of the fellowship is to offer law students the opportunity to intern with a sitting judge. Jessica Oliff, a law student from New York University School of Law, is the first Ellerin Fellow and interned with Justice Alice Schlesinger. Below is a report of her experience.

When I learned that the New York Women's Bar Association Foundation had created a fellowship position with a New York State Supreme Court Justice, I jumped at the opportunity. I was particularly excited about the possibility of interning with a judge who had previously worked as a public interest attorney. My internship with Justice Alice Schlesinger last semester exceeded my expectations and turned out to be one of the best learning experiences of my law school career.

My internship with Justice Schlesinger had three components: I observed as the judge and her staff conferenced cases and heard motions; I watched many trials; and I helped prepare two written decisions, receiving invaluable guidance and feedback.

I learned how a case develops and what tasks attorneys must complete to move a case from its inception to settlement or trial, and gleaned much insight into what judges expect from the attorneys who appear before them. It quickly became clear that the most competent attorneys were well-versed on the details of their cases and arguments that favored their positions. I learned the importance of considering in advance an opposing attorney's likely arguments and having responses ready before appearing before a judge.

Attending several trials over the course of the semester gave me a chance to observe a number of different attorneys and to compare their techniques and styles. This opportunity was particularly useful for me this semester as it enhanced what I was learning in my trial practices seminar. Watching attorneys make and respond to objections helped me better understand what my course materials were trying to emphasize about this practice. Moreover, I had the unique opportunity to ask Justice Schlesinger questions about the attorneys' performances. Her explanations provided me with a better understanding of the trials I was observing and enabled me to get a sense of how I will try to approach witnesses, jurors and judges when I become a litigator.

My work helping to write decisions elucidated how different the process of writing a legal memorandum or brief is from crafting a judicial decision. Working with the Court Attorney, Rose Ann Magaldi, I began to see how judges identify the essential legal reasoning for a decision and how this information can be best explained in a written decision.

I also had a chance to watch how Justice Schlesinger was able to balance the litigants' pain and loss in the medical malpractice cases she handles with the law that must be applied. Her balance of compassion and legal acumen served the litigants well, both in litigating and in helping to settle many previously un-negotiable cases.

Despite observing the skill of Justice Schlesinger, her staff and many of the attorneys who appeared before her, my 16 weeks in the part also gave me a new appreciation for some of the weaknesses in our legal system. Several matters came before the judge more than once, enabling me to see the slow speed at which many cases develop. As someone who is still new to the legal profession, I was surprised to see how little seemed to be accomplished in the six or eight weeks between appearances before the judge. While there were always explanations for this slow pace, I can imagine the frustration that plaintiffs must feel during the course of litigation.

Given my experiences last semester, I would strongly recommend that my classmates seize the opportunity to see legal practice from "the other side of the bench." My internship greatly enhanced my coursework in my last year of law school. I will take the lessons I have learned into my practice. I am very grateful to both the New York Women's Bar Association Foundation and Justice Schlesinger for providing me with this unique and rewarding academic experience.

### ***SAVE THE DATE***

Ethics CLE—2 credits

#### **Learn to Love the New Rules**

*(And if not, just learn them!)*

Deborah Scalise  
and  
Sarah Josephine Hamilton

March 30, 2009, 6-8 PM

at: Fulbright & Jaworski  
666 Fifth Avenue  
New York, NY

EthicsCLE@nywba.org

## 2009 WBASNY ANNUAL CONVENTION AT NIAGARA ON THE LAKE

The 2009 Annual Convention is scheduled to take place in Niagara-on-the-Lake, Ontario Canada from June 4-7, 2009. The convention will take place at the exclusive Queens Landing, a renowned inn and conference center, [www.vintageinns.com](http://www.vintageinns.com). The 2009 Convention Committee is hard at work planning the schedule of events, including the Friday and Saturday night receptions, Continuing Legal Education classes, and a variety of events for all of those who attend. Anyone interested in joining the committee should contact Natalie Grigg at [nataliegrigg@gmail.com](mailto:nataliegrigg@gmail.com).

Niagara-on-the Lake is full of beauty and history. Its many attractions include parks, agricultural markets, the Shaw Festival, art galleries, antique shops, the marina, the shopping district, golf courses, and world famous Niagara wineries. Come enjoy a relaxing carriage ride through town, an exciting jet boat tour up the Niagara River, a decadent wine tour, or a relaxing massage at one of the Vintage Inn spas.

Niagara-on-the Lake has retained its 19th century charm and is a wonderful place to explore with family and friends. Enjoy a walking tour of Fort George, where you and your family watch the staff recreate the lifestyles and activities of the revolutionary period. For something a little different, take a guided tour of the Great Mountain Ginseng Farms and learn firsthand how the ginseng plant is grown, or walk among the butterflies as you make your way through a network of paths in the Butterfly Conservatory.

For those who seek the outdoors, Niagara-on-the-Lake is small enough to inspire walkers, hikers, and cyclists to explore the area at their leisure. The adventurers among us can take a self-guided walking tour of the area and experience the scenery as well as a variety of historical sites. The Niagara River Recreation Trail has its northernmost point at Fort George and is used as a walking, cycling, and rollerblade path. Pick up a lunch at one of the area country markets or gourmet marketplaces and enjoy a quiet picnic along the Niagara River.

In addition to the many activities offered within the town of Niagara-on-the-Lake, Niagara Falls, Canada is a mere 20 minutes away. Take a trip over to Niagara Falls where you and your family can walk along the Falls, the Queen Victoria Park, and The Great Canadian Midway. The surrounding area of Clifton Hill, also includes many fun-filled activities including shopping, miniature golf, and an assortment of dining venues. Take a tour of the Movieland Wax Museum of the Stars, Ripley's Believe it Or Not, or the Guinness World Records Museum. If a little adventure is what you seek, dare to attend the Imax Movie Theater, the Ghostbusters dark theater ride, the FX Ride Theater, or the Nightmares Fear Factory. Additional sites to visit include the Niagara Casino,

the Hard Rock Café, the Rainforest Café, and the Bird Kingdom, the World's largest, free-flying indoor aviary.

So come and enjoy all that our friendly neighbors to the north have to offer. Stay tuned for additional details regarding the schedule of events and pricing!

**\*\*REMINDER\*\***


Passports are required to cross the border into Canada. Information regarding obtaining/renewing your passport can be found at [travel.state.gov/passport](http://travel.state.gov/passport). You can apply for a passport at many post offices throughout the state. Information regard how to obtain a passport or passport card at the post office can be found at [www.usps.com/passport](http://www.usps.com/passport). Additionally, the NYS Enhanced Driver License is available and serves as proof of U.S. citizenship. This license can be used for land and sea board crossings only instead of a passport and is an accepted method of entry to and from the U.S. and Canada. More information regarding the Enhanced Driver License can be found at [nysdmv.com/edl-main.htm](http://nysdmv.com/edl-main.htm).

For those traveling from outside the Western NY region, the following travel links may be useful:

[www.jetblue.com](http://www.jetblue.com)

[www.amtrak.com](http://www.amtrak.com)





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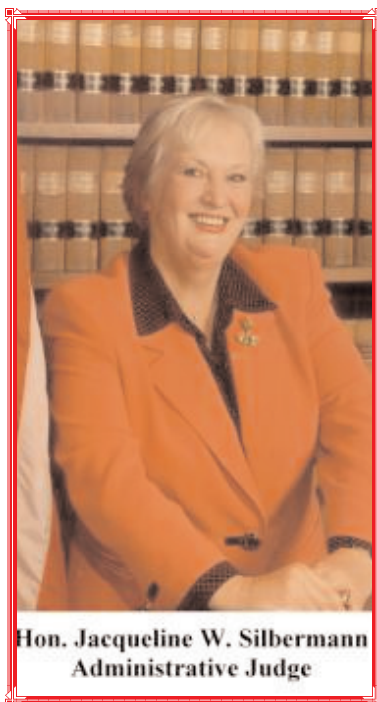
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# ***NYWBA's Women's History Month Tribute to Justice Jacqueline W. Silbermann***



**WHAT, NO PARTY?!**

We asked Judge Silbermann if we could make a party in her honor upon her retirement.

No thank you, said Judge Silbermann. No party.

What about a lunch?

No thank you, said Judge Silbermann. No lunch.

Perhaps an award?

No thank you, said Judge Silbermann. No Award.

We finally got smart. We didn't *ask* about a newsletter recognizing Justice Silbermann for her accomplishments and her leadership roles in so many arenas. We didn't *ask* if we could consult just a few of her friends for their views. We didn't *ask* if we could create a tribute to her years of public service by focusing on her in our Women's History Month Newsletter.

And she didn't say no.

So, for all that Judge Jacqueline W. Silbermann means to all of us, we dedicate this Women's History Month Newsletter to her.

Working for

***Judge Silbermann***

was not only a privilege and an honor, but also an entirely pleasant experience. I always looked forward to going to work because the Judge created an atmosphere of calm, reassurance and high standards that made it possible for all of us on her staff to do our best and enjoy it.

*Lindsay Feinberg,  
Principal Court  
Attorney to  
Hon. Laura E. Drager*

## **Silbermann Filled Two Top Jobs And Kept Busy in the Courtroom**

***by Vesselin Mitev***

As the state court system adjusts to the departure of Chief Judge Judith S. Kaye, it faces another imminent challenge: filling the vacancy left by recently retired Manhattan Supreme Court Justice Jacqueline W. Silbermann, who held two top administrative posts while continuing to hear cases.

Justice Silbermann, who stepped down last month after 25 years on the bench, served as both statewide administrative judge for matrimonial matters and as the administrative judge in charge of civil cases in Manhattan. Additionally, she remained an active judge who oversaw a trial calendar, placing her in the unique position of an administrator who also spent considerable time on the bench.

"I have been one of the few administrative judges who have stayed in the courtroom," she said in a recent telephone interview from her Florida vacation home. Justice Silbermann attributed her desire to stay involved with both administrative and trial work to a deep-seated love for the law and its daily operations.

"That's what I became a lawyer for," she said. "I liked to be involved in the court and the business of the courts."

She said that her 2001 appointment as administrator of civil cases at 60 Centre St. was something she did not seek but felt "privileged" to receive. She called the last eight years "the best" of her career. She also fondly recalled the matrimonial side of her job, where she exercised statewide oversight starting in 1997.

"I loved [matrimonials] because it is obviously a field that I have become an expert in and I was a generalist when I got on the court," she said. "The [experience] has served me well."

Justice Silbermann will carry that experience this month to her new role as of counsel in the New York office of Blank Rome (NYLJ, Oct. 15).

A 1972 graduate of Fordham University School of Law, she began her legal career as a commercial litigator at Skadden, Arps, Slate, Meagher & Flom. It was there, she said, that she accumulated the knowledge that would serve her well in overseeing the Commercial Division of Manhattan Supreme Court decades later.

"I know a lot of the commercial attorneys were a little concerned that I would not have the respect of the division," she said of the part, which was created on an experimental basis in 1993 to stem the flow of business cases to federal, rather than state courts. "I think I have maintained a healthy respect for the division."

She added that if she could do it all over again, she wished she "could have raised the level of respect" for matrimonial judges to the same level that their Commercial Division counterparts command from the bench and the bar. Matrimonial practice is still viewed as "women's work," she said, because "people tend to forget the commercial aspect of it."

*Continued on page 8*



## *Silbermann Filled Two Top Jobs Continued from Page 7*

Focusing on the overlap between commercial and matrimonial litigation has made her a better judge, she said. She said a straightforward business case is like a "commercial case-minus," meaning it lacks the valuations, custody or other issues that arise in a matrimonial dispute. A matrimonial matter is a "commercial case-plus" the additional legal issues, like maintenance or child support.

Justice Silbermann explained that she "always liked numbers but I love people."

She added, "If you can take a family in crisis and somehow put it together and talk to the people, I felt that I had a real feel for that," she said. "It gave me a certain kind of satisfaction that true commercial litigation would not."

### Fairness on the Bench

Practitioners praised Justice Silbermann's approach as a judge.

"Generally speaking the [matrimonial] practice has become more complex and the ability of the judiciary to deal with it has had to grow in terms of the business, financial and tax issues that arise," said Peter Bienstock, a partner in the Manhattan firm Cohen Hennessey Bienstock & Rabin.

In an interview, Mr. Bienstock said Justice Silbermann was "leading the way" by example.

"There is no matrimonial judge who is more conversant with the commercial issues than she," he said. "The fact that she had experience in the Commercial Division was invaluable to us."

Norman M. Sheresky, a Manhattan matrimonial attorney, recalled the numerous times he had appeared before Justice Silbermann. He said he knew that if she was trying the case, the outcome would be just.

"I knew her for years and years and I liked appearing before her but I knew I was not going to get any particular break," said Mr. Sheresky, of Sheresky, Aronson, Mayefsky & Sloan. "She may have given me an adjournment but when it was time to call it she called it fairly. The lawyers that won or lost in front of her, including me, will all tell you that they got a fair deal."

The even-handed judicial temperament stemmed from an encyclopedic knowledge of the statutory law, said Susan L. Bender, of Bender Burrows & Rosenthal.

"The devil is in the details and [Justice Silbermann] knows every aspect of the law," Ms. Bender said. "She can take a look at a CPLR provision on discovery and tell you exactly why or why not that section does not apply." Ms. Bender added that there "are no accolades high enough" for the departing judge.

### Politically Sensitive Cases

New York City Corporation Counsel Michael A. Cardozo called Justice Silbermann the ideal administrator, one who worked "tirelessly, frequently behind the scenes, to ensure that the court was functioning efficiently and that litigants were treated fairly." Mr. Cardozo pointed out that she personally handled politically sensitive, high-profile cases, like the litigation stemming from the

arrests during the 2004 Republican National Convention and the September settlement of a 25-year-old case involving the homeless' rights to shelter.

The cases Justice Silbermann calls "hot potatoes" include her 2005 ruling that the state was illegally holding a dozen convicted sex offenders who had served their prison terms in a mental hospital, and allowing Mayor Michael R. Bloomberg to seek a third term through a fast-tracked City Council vote in October (NYLJ, Oct 23, 2008).

She said the decision to preside over the more contentious matters that came through the court was simple: She was not looking to ascend to a higher court or seeking reelection.

Justice Helen E. Freedman, a Commercial Division judge prior to her July appointment to the Appellate Division, First Department, was one of several judges who petitioned departing Chief Judge Judith S. Kaye to let Justice Silbermann stay on as administrator past the mandatory retirement age of 70.

"[Justice Silbermann] had the confidence of the judges and that is important when you are an administrative judge," Justice Freedman said. "Each of us is an elected official, so being an administrator is difficult in that sense because you are not in an organization where people can just take orders." Justice Silbermann, she added, was able to "motivate people to work hard and fulfill their obligations."

First Department Presiding Justice Jonathan Lippman said that Justice Silbermann was the right person at the right time for the right job.

"It could not have been a better choice, she could not have run a better court and she could not have been more respected by the people [in] it," said Justice Lippman, a former chief administrative judge for the state.

Justice Lippman said it would be up to the new chief judge and chief administrator to decide how to fill Justice Silbermann's roles.

Acting Supreme Court Justice Saralee Evans of Manhattan, who sits in the matrimonial part, said she appreciated Justice Silbermann's way of supporting her judges.

"She has always supported us individually and collectively . . . she has in particular given me and other judges the chance to work in fields that they feel committed to," Justice Evans said. "Obviously, she gave great deference to the matrimonial and commercial fields. She was very committed and we are already feeling her absence."

Despite her love for the courts, leaving the bench was a relatively straightforward decision. Justice Silbermann said she had told Judge Kaye that "when she leaves, I would leave," to avoid any uncertainties or realignments under a new administration.

Money also was a factor in the decision. Justice Silbermann, who made \$144,000 a year as a judge, *Continued on page 10*



## *A Conversation with Justice Silberman* by Shelly-Ann Maye

### Justice Jacqueline W.

**Silberman** has had a remarkable career as a lawyer and jurist as discussed in the articles reprinted herein. Justice Silberman's contributions are exemplary and evidenced not only in her decisions, but also in her professionalism, her commitment to streamlining and improving the court's efficiency, and in her willingness to provide guidance and mentoring to new attorneys and jurists.



In 2005, in one of Justice Silberman's most notable decisions in her opinion, she opposed then-governor Pataki's executive order requiring that sex offenders be committed to a mental health institution on completing their prison terms. Justice Silberman essentially decided that this was an issue for the legislature. Her decision was challenged, but ultimately upheld by the New York State Court of Appeals. *State of N.Y. ex rel. Harkavy v Consilvio*, 7 NY3d 607 (2006).

But Justice Silberman's accomplishments are not only reflected in her court decisions. She has played a leading role in managing and improving the professionalism of the matrimonial bench and bar. Toward that end, she has been involved in developing and implementing training programs for judges in domestic violence and child custody cases. She is also a strong advocate of certifying and maintaining a list of certified forensic experts to be used in these cases. *See Hon. Jacqueline W. Silberman, An Advocate for Healthy Families*, NYSBA, Government, Law and Policy Journal, 27 (2008). She is known for her commitment to promoting efficiency and case resolution. Of utmost importance, aside from acknowledgement of her legal skills and cogent decisions, Justice Silberman has earned the respect of practitioners and litigants alike for her professionalism and courtesy in the courtroom.

In addition to her accomplishments, Justice Silberman's insights on the profession - its present and future challenges - are invaluable. One of the challenges she mentioned is the use of technology and the ethical implications associated with electronic discovery. Specifically, Justice Silberman stated that courts must be able to successfully grapple with technology and the associated ethical issues of protecting privacy and confidentiality. Another challenge is maintaining a cost-effective, stream-lined litigation system, while at the same time protecting clients' interests. Justice Silberman suggested that increased use of alternative dispute resolution, where feasible, is a cost-effective means of managing litigation. Finally, in the area of matrimonial law, Justice Silberman noted that the courts are currently wrestling with the issue of same sex marriage in New York State.

Justice Silberman has been at the forefront of significant reforms in matrimonial law. One major reform she pointed to is the principle of "gender neutrality" replacing principles of the "tender years doctrine" and "primary caretaker" in child custody cases. The latter principles or presumptions largely favor women. With the adoption of the "gender neutral" principle, judges are required to make their assessments based on the best interests of the child, rather than have the gender of the parent be dispositive.

Another significant reform is New York's adoption of the principle of equitable distribution in dividing and allocating marital property. This principle was codified in New York in 1980. According to Justice Silberman, under equitable distribution, matrimonial law has evolved to encompass aspects of both commercial and partnership law. This is so because the equitable distribution of property invariably involves appraisals and decisions on the percentage of property allocated to each party.

Justice Silberman's accomplishments are augmented by her humility and her respect for the profession. This is evidenced by her commitment to public service, her mentorship of new lawyers and jurists and her emphasis on the human aspects of the practice. She points out that in addition to the technical details of law, judges play an important role in restructuring people's lives, especially where children are involved. Justice Silberman has also mentored and coached lawyers being screened by judicial panels. She favors the creation of incentives to attract law school graduates and new attorneys to public service.

In many ways, Justice Silberman can be viewed as having come full circle in a distinguished career. She began her career in private practice, then became a highly respected jurist, and now has returned to private practice, where her depth of experience as a specialist in matrimonial law, as well as her background in commercial law will serve her well in her new role.

Justice Silberman is also a highly valued member of the New York Women's Bar Association's Board of Directors.

Judge Silberman recently swore me in as a Justice of the Supreme Court of the State of New York. For me this was fitting because she was responsible for my first Judicial appointment as a Housing Court Judge in 1990. As the then Administrative Judge of the Civil Court of the City of New York, Judge Silberman was one of the people responsible for the final choice of who would become a Housing Court Judge at the end of a long selection process. Although she had never known me before I put my application in for the position, she supported me. In the years that followed, and as her position within the court system rose, she gave me other opportunities for new and challenging assignments. Among them was the opportunity to preside over a dedicated matrimonial part. She had confidence that I could do the job, even though I was new to the substantive area of law. I am pleased to know Judge Silberman as a colleague and friend over the years.

---Justice Judith J. Gische



*I have endless words of praise for Judge Silberman starting with her phenomenal personal qualities, her excellent judicial qualities, and her incredibly great administrative qualities.*

*-- Judge Kaye --*

I write on behalf of the Board of Justices as well as myself to praise Justice Jacqueline W. Silberman. This is an easy subject for me and for the other members of the Board because all of us love her and were so happy to have her as our Administrative Judge. She wisely understood that the justices are professionals and treated them accordingly. On the one hand, she never sought to impose her view of how any application should be decided, and she always understood the complexities of the work handled at civil term in our County and the time that was required to handle our work. On the other hand, she had an open door policy and was always ready to listen, as one judge, to a colleague with a legal problem and try to think it through with the judge. She understood the frailties of humans, even judges, and she graciously helped judges with personal problems (which, sooner or later, I guess we all have, whether the problems are greater or smaller) without making the judge feel badly. I perhaps more than most worked with her in my capacity as President of the Board of Justices, and she was remarkably easy to work with. When I organized trips to Albany to beseech legislators to give the judges raises that are so badly overdue, she took time from her responsibilities at 60 Centre Street to join a trip to Albany (although her 60 Centre Street responsibilities traveled with us by means of her Blackberry). She was so esteemed by my colleagues that when a disagreement arose between two of my colleagues about a form that we wanted to issue, they agreed to submit it to Jackie for arbitration and the loser accepted her ruling without question. She came in before 8 AM most mornings, worked a full day on matrimonial matters (including trials) and administrative matters and would then go off in the evening for a bar function. So this workaholic worked very long days and parts of many weekends at conferences and bar functions. Despite this schedule, daunting to most normal people, Jackie remained ebullient and gave positive reinforcement to our judges. We already miss her because she is an unusually nice and intelligent person with great human understanding.

*Justice Stanley L. Sklar*

*Justice Silberman* hired me for my very first job as a court attorney in the Housing Court. Later, I remember being honored to be chosen to work for her as her law clerk in her matrimonial part, a position I filled for several years, and then I was again fortunate when she appointed me as her Executive Assistant during her tenure as Administrative Judge for Matrimonial Matters. I have thus had the unique opportunity to see Judge Silberman work on a day-to-day basis and witness first-hand her extraordinary ability to wear multiple hats, both as a matrimonial judge with a busy part, and as an administrator with all of the unique challenges that such a position presents.

If one were to ask an attorney, a litigant or a member of her staff to describe her, I suspect that the same words would be used - wise, thoughtful, even tempered, caring and committed. It is apparent to all that she cares about the families in the matters before her, in particular the plight of the children caught up in the strife of divorce matters. Justice Silberman's wisdom and caring also came through in her relationships with those of us fortunate enough to work with her during her long tenure in the courts. I think it is not an exaggeration to say that we all think of ourselves as her "court family," and we continue to thrive based on the nurturing and guidance she provided us early in our careers. On a personal level, Justice Silberman became and remains a treasured friend and mentor, whose continued support has meant so much to me in the past few years as I have embarked on my own judicial career. While we in her "court family" will miss her, we wish her the best in her new career as Counsel at Blank Rome LLP. They are indeed lucky to have her!!

*Judge Lori Sattler*

#### *Silberman Filled Two Top Jobs Continued from Page 8*

said that her finances had become tighter since the death nearly three years ago of her life partner, Judge George F. Roberts.

"We used to share expenses and paying rent and paying for everything just doesn't manage to go as far as it used to," she said.

Most important, however, the Blank Rome job was a chance to start something she needed, something new.

"When you have suffered losses in your life it's very good to do something that will reenergize you," she said.

Coming back to court without the black robe will be "strange but exciting at the same time," she said.

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*From December 2008:*

## TRIBUTE TO JUSTICE SILBERMANN

*by John F. Werner and Robert C. Meade Jr.*

At the end of December, Justice Jacqueline W. Silberman, administrative judge of the New York County Supreme Court, Civil Branch, and statewide deputy chief administrative judge for matrimonial matters, will retire from the bench. Justice Silberman spent a number of years in private practice and she will return to private practice in January. But the bulk of her career has been spent in public service. Since becoming a judge in 1984, she has sought to make a contribution to the public welfare because that is the kind of person she is--someone more interested in the well-being of others than in her own. She will leave behind a court system that is notably better for her having been here. Justice Silberman is proof that there should never be any doubt of the capacity of individuals to make a difference, even in an organization as large and far-flung as ours.

She has been an exemplary jurist, fiercely dedicated to the cause of justice, diligent in her handling of cases, efficient in the management of her inventory, thoughtful, scholarly and fair. She has created a body of important precedent in the matrimonial field, where she is renowned for her expertise. Whatever case she has handled, including bitterly-contested matrimonial matters, she has entertained the arguments of the parties with an open mind and without bias. The soundness of her judgment has been evident in many sensitive cases that have come before her, such as a challenge to Governor George Pataki's policy of incarcerating sex offenders after the conclusion of their sentences or, an application to bar the City Council from voting on a measure to extend term limits for city officials. Although she possesses the utmost respect for our appellate courts and is delighted when a colleague ascends to that high level, her 'true love' has always been our courts of original jurisdiction and all of the habits thereof: trial judges, trial attorneys, court clerks, court reporters, court officers, court attorneys, county clerk staff, and all parties in need of the court's attention.

Her executive talents were noticed early on by the court system's leadership. Judge Silberman served as the administrative judge of the New York City Civil Court from 1989 to 1996, where she worked tirelessly to make access to justice a reality for all litigants. Since January 1997, she has served as statewide administrative judge for matrimonial matters and later statewide deputy chief administrative judge for such matters. Since March 2001, she has served simultaneously as administrative judge of civil term of Manhattan Supreme Court. Throughout her tenure as administrative judge, she has maintained her own part with a substantial inventory and has presided each day over the court's referee assignment part; in other words, for almost eight years, she has been doing not one job, but three, in addition to her statewide responsibilities in matrimonial matters.

Justice Silberman has continually sought ways to improve the operations of the court. Even under the most daunting

circumstances, of which there have been many, she has never become discouraged or complacent. She has taken the lead in promoting electronic filing, believing that electronic filing and digital records should predominate throughout our court system. Approximately 128,000 cases have been e-filed to date, many of them in our court. She has written and spoken often in favor of e-filing. It was her leadership that led to our court's construction of our Web site, a repository of a vast array of information about the operations of the court, as well as a statewide Commercial Division Web site, and one for the litigation coordinating panel, the operations of which are housed in our court.

In collaboration with County Clerk Norman Goodman, Justice Silberman has led our court's public access project, one of two in the state that places online an unprecedented volume of case and county clerk information integrated with scanned images of key case documents, through our Supreme Court Records On-Line Library (SCROLL), developed at 60 Centre St. by her staff.

She has introduced improvements in our motion operations, including a system for adjournment of motions by e-mail. She experimented with a system of conferencing by telephone. She has led the way in reducing waiting time to trial, including in the difficult city case inventory. She has championed revamping and modernization of our guardianship and fiduciary support office. Standard guardianship forms have been developed and made available on our Web site and cases have been processed more quickly and efficiently. The court has collaborated with the New York County Lawyers' Association to provide assistance in Article 81 matters to lay guardians (family members, generally, of incapacitated persons), who are often bewildered and overwhelmed by their role and their duties, as well as the emotional impact of their situation.

She has continued our efforts to reach out to the general public, including through our matrimonial support office, which handles more uncontested matrimonial cases than any other court in the state, and our office for the self-represented, the first such office in a court of superior jurisdiction in the state. She established a center for complex litigation using, among other things, electronic filing and case management orders governing groups of related cases. She has expanded the orientation efforts of the court so that judges, attorneys and staff undergo a transition that is as easy as possible.

Justice Silberman has promoted dialogue between the court and the bar. She expanded the number of standing advisory committees to the administrative judge, which meet regularly and provide opportunities for candid discussion and ideas for improvements. There are now separate committees for tort, medical malpractice, guardianship, tax certiorari/condemnation, and Commercial Division practice and alternative dispute resolution initiatives. Their work has led to concrete advances in court operations. She has presided over a statewide

*Continued on page 15*



## NEW RIGHTS FOR NEW YORK NURSING MOTHERS AT WORK

by Laurie Berke-Weiss\*

In August 2007, New York State advanced the rights of nursing mothers in the workplace with passage of New York Labor Law § 206-c, the Right of Nursing Mothers to Express Breast Milk (the "Nursing Mothers' Law"). The statute states in its entirety:

An employer shall provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express breast milk for her nursing child for up to three years following child birth. The employer shall make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy. No employer shall discriminate in any way against an employee who chooses to express breast milk in the work place.

N.Y. Lab. Law § 206-c (2008).

The Nursing Mothers' Law filled in a gap left after women gained the right to breastfeed in public without being charged with indecent exposure. See N.Y. Civ. Rights Law § 79-e (2008); N.Y. Penal Law §§ 245.01, 245.02 (2008). Although these statutes granted women important rights, they did not address a nursing mothers' need to express milk during the day at convenient times and in comfortable surroundings. Notably, in 2003, the Appellate Division, Third Department, dismissed the claim of Kathleen Landor-St. Gelais who alleged she was discriminated against when her company implemented a lactation policy that forced her to express milk either during her regular break times, or by punching out for the time she needed and working a longer shift to make up the lost time. Landor-St. Gelais alleged that the restrictive policy made her uncomfortable and led to a decline in her milk production. In refusing to find employer liability, the court held that, "the language of the statute unambiguously refers only to breast-feeding, not to expressing milk." *Landor-St. Gelais v. Albany Int'l Corp.*, 763 N.Y.S.2d 369, 370, 307 A.D.2d 671, 673 (3d Dep't 2003). Under the Nursing Mothers' Law, however, nursing mothers cannot be discriminated against for expressing milk at work, and also have gained flexibility in determining when and where they will do so.

The impact of the Nursing Mothers' Law is demonstrated by guidelines recently issued by the New York State Department of Labor's Division of Labor Standards (the "Guidelines"). These are intended to encourage employer compliance with the statute and to set parameters for employers' policies on expressing milk at work. The Guidelines apply to all employers, regardless of the number of employees and nature of the business, but they are not mandatory. Still, the Guidelines provide a template to employers and suggest the potential impact of the law on the workplace.

As a starting point, the Guidelines require employers to notify nursing mothers of their rights. But, the Guidelines go further, providing detailed instructions for compliance with the statute, as follows:

- Reasonable unpaid break time should be made available at least once every three hours, if requested.
- Reasonable efforts for privacy must be made by the employer. Specifically, "Employers should make reasonable efforts to provide a private room or other location for the purpose of expression of breast milk." The Guidelines dictate that this room cannot be a restroom or toilet stall but, rather, a dedicated lactation room or vacant office that is well lit. Moreover, if the room has a window, the employer should provide curtains or blinds for privacy. The Guidelines further specify that the room should contain a chair and a flat surface, and, if possible, an outlet, clean water supply, and access to refrigeration.
- "Suggested employer activities" include allowing breastfeeding women to have flexible work hours and scheduling, providing educational information about breastfeeding, and including protection for pregnant and breastfeeding mothers in the company's sexual harassment policy.

N.Y.S. Dep't of Labor, Division of Labor Standards, LS-702, Guidelines Regarding the Rights of Nursing Mothers to Express Breast Milk in the Work Place (2008).

New York is ahead of the federal government in protecting nursing mothers at work. In 2007, Representative Carolyn B. Maloney of New York's 14th District, introduced the Breastfeeding Promotion Act of 2007, HR2236, in the United States House of Representatives, whose purpose was to, "clarify that breastfeeding and expressing breast milk in the workplace are protected conduct under the amendment made by the Pregnancy Discrimination Act of 1978 to title VII of the Civil Rights Act of 1964." Materials presented in support of the bill include a variety of research studies that have established the plethora of health related benefits of breastfeeding for mothers and their children. No vote was taken on Congresswoman Maloney's bill, however, and, to date, it has not been reintroduced to the House.

The legislative history of the Nursing Mothers' Law acknowledges both the benefits associated with breastfeeding, and the personal and public policy concern that a mother who does not breastfeed or express her milk for an extended period of time risks losing her ability to continue to do so. Mem. in Support of Legislation, 2007 Legis. Bill Hist. NY A.B. 1060 (2008). Because the law requires all New York employers to provide nursing mothers of children under 3 years with a comfortable, private location to express breast milk, and the freedom to take time during the work day to do so without fear of discrimination, the Nursing Mothers' Law allows women to return to the workplace after pregnancy without forcing them to sacrifice the choice to breastfeed their infants. As a result, employers need to be aware of this statute and the Guidelines to understand their obligation to accommodate nursing mothers in order to be in compliance with the law and avoid liability.

\* The assistance of Liana Passantino, a sophomore at Cornell University's School of Industrial and Labor Relations, in the preparation of this article is gratefully acknowledged.

## Post-Marital Income and Dividing Resources of Twenty-First Century Families

by Jill Laurie Goodman<sup>1</sup>

Flex-time. Part-time. Stepping off track. On ramping. The mommy penalty. The daddy bonus. These are the catch phrases used to capture the realities of families struggling to divide the work of earning paychecks, raising children, and administering households in the face of increasing work weeks and the demands of caring for a younger generation - and, often, an older one as well.

Maintenance. Equitable distribution. Child support. These are the names for remedies New York Domestic Relations Law provides when the negotiated solutions to doing all of the work of being a family end in divorce. Add to these post-marital income guidelines, a new kind of award, proposed to replace maintenance.

The use of post-marital income guidelines, sometimes called maintenance or spousal guidelines, is a fairly recent approach to the problem of allotting marital resources, although counties in California have used the concept since the 1970s. The guidelines approach relies on numbers produced by formulas as starting points (and only starting points) for discussing what in the distant past was called alimony. These initial numbers are functions of the amounts the parties earn and the length of time the parties were married. In form and structure, the scheme follows the Child Support Standards Act, after which it is patterned.<sup>2</sup>

Post-marital income has many advantages, among them administrative ones. It would provide greater predictability and consistency in awards as well as a mechanism by which middle and lower income women would gain access to a kind of remedy that now is outside the reach of those who cannot afford extensive litigation. Perhaps even more importantly, however, the concept of post-marital income speaks directly to the dilemmas of families functioning in an imperfect world, the world of stepping off track and mommy penalties.

The assumption underlying maintenance, often characterized as "rehabilitative," is that divorcing husbands and wives, for the most part, should make their peace with fallout of past decisions made about paid and unpaid labor in their marriages. A bit of dividing marital assets, if there happen to be any (and in most cases there are not), and maybe, a couple of years of maintenance and, the theory goes, people should go their separate ways.

This approach, however, presupposes families existing in a world in which decisions about divvying up the work of living together in marital partnerships are made unconstrained by the pull of traditional sex roles and lingering gender bias. Such is most emphatically not the case, as we all know just from looking around at friends and co-workers (and often our own families, in spite of our best intentions to do things differently). Women commonly, although not universally, still do the lion's share of the work within the home, whether or not they have paid jobs, and women continue to sacrifice

advancement in the workplace for flexibility to care for households, children, and the elderly. They, for the most part, are the ones who cut back on the hours they work, take jobs that allow leave (often unpaid) to care for sick children, turn down promotions to jobs that require business travel, and leave paid employment for a few years when children are young. Often, when they decide to return full throttle to the workplace, they find their paths blocked in ways they never expected. Even highly qualified women find "on ramping" surprisingly difficult.<sup>3</sup>

The cumulative effects of these decisions on women's economic status are devastating. Over their prime working years, women who are employed make only 38% of what men make.<sup>4</sup> They face retirement with fewer resources, less in the way of pensions, and far lower expectations from Social Security.<sup>5</sup>

The reasons families continue to configure themselves into old patterns are complex. The stay-at-home dad and the mom who works 60 hours a week still contradict societal norms. Eyebrows still are raised when a man asks for paternity leave, while a woman with an infant who works the bruising schedule of her male colleagues still risks censure. The realities of the mommy penalty and the daddy bonus play a role as well. Unlike men, women lose on average 5% of their earning capacity for each child they bear.<sup>6</sup> Laboratory experiments have demonstrated that these disparities in the values placed on mothers in the workplace, as compared to men and childless women, are functions of perceptions rather than subtle differences in work ethic or product.<sup>7</sup> Both the mommy penalty and the daddy bonus have been documented in the legal profession as well as elsewhere.<sup>8</sup>

The negotiated trade offs husbands and wives make in their lives often work magnificently for intact families, but, when marriages end, the results may be devastating for women's economic prospects and for the children who are usually in their mother's custody following a divorce.

Post-marital income awards would right some of the imbalance in the financial prospects of those who do more of marital partnerships' domestic work at the expense of paid employment. These awards, under the proposal put forth in recently New York State,<sup>9</sup> would not equalize incomes. At most the lower earning spouse post-divorce would have 40% of the combined income of the parties, leaving the higher earning spouse with 60%. Nor would the awards necessarily last forever. Awards made at the termination of short marriages would end soon, while awards made at the end of longer marriages, like the effects of diminished participation in the paid workforce, would last longer. These awards, however, would bring divorcing spouses' incomes closer, at least for some period of time in reasonable proportion to the length of the marriage.

Putting in place post-marital income guidelines would not solve all of the problems of splitting assets of

*Continued on page 15*

## The Importance of Women's History Month In The Eyes of the Hon. Judith S. Kaye, Chief Judge of the NYS Court of Appeals (retired) and the Hon. Carmen Beauchamp Ciparick, Associate Judge of the NYS Court of Appeals *by Annie M. Ugurlayan*

The achievements of women in all professions are too many to count, but Judge Kaye and Judge Ciparick are true trailblazers in the legal profession - indeed, they are shining lights, having achieved excellence in their professional and personal lives despite many obstacles. What better way to understand the importance of Women's History Month than from women who have shaped women's history.

Judge Kaye stressed the continued importance of Women's History Month and noted that while women have come far in the legal profession, with large numbers in law school, "the battle for equal opportunity is by no means won." This is best illustrated by "the persistence of gender stereotypes, the resistance to flexible work arrangements, and the use of the 'billable hours' economic model." However, Judge Kaye noted that "more women attribute their successes to personal accountability...engaging in strategic planning to chart a course for advancement, setting limits on their time that are respected by colleagues and firm management without sacrificing the needs of clients, developing external support systems..." and that, today, "work/life balance...is not seen purely as a women's issue" given the active role men play in their children's lives.

As for her own professional choices, Judge Kaye noted that she started out in journalism, but at the time she graduated from college in the late 1950s, it was very hard for women to get into news reporting. She decided to go to law school as a way to advance her journalism career, but ended up moving over into law. She noted that upon graduating law school, there was an "impossible mountain" ahead of her, but at that time it became desirable for a firm to hire its first female attorney and the firm she was hired at did so. Judge Kaye remarked that later in her career, Mario Cuomo, the former Governor of the State of New York, was also eager to appoint the first woman to the Court of Appeals, which became Judge Kaye. She then noted that with so many more women graduating from law school today, the concerted effort to appoint or hire women is regrettably not as prevalent today.

In terms of her advice for young women looking for a similar path to Judge Kaye's, Judge Kaye acknowledged that women face many societal pressures. Her advice to women lawyers, particularly those finishing law school, would be to "persevere," and that it is important to stay in the legal profession because there are many more opportunities than when she graduated law school. Judge Kaye also emphasized the importance of being helpful to other female attorneys and noted that she felt the importance, as a judge, "to stand for equal opportunity in a system that calls itself the 'justice system.'"

When asked what were the most difficult and most rewarding parts of her career, Judge Kaye said that the most rewarding part was being the Chief Judge of the Court of Appeals and being a

judge generally and noted that she has worked with "phenomenal women in the court system." As for the most difficult part of her career, she said that it was raising three children because there were times when she felt like giving up "the opportunity for an enormously satisfying professional life...advancing justice in our society" in favor of spending more time with her children. However, she feels fortunate to ultimately have achieved both goals. Judge Kaye noted that she sees "genuine avenues of opportunity in mentoring and support programs, in part-time, flextime and reentry programs, and in exploring alternatives to the billable hour." While she recognizes that "statistical parity remains elusive," the progress she envisions is reflected "in whether women perceive that they truly have a choice, and whether the role they play at their firms helps to influence choices available for the next generation."

Judge Ciparick echoed Judge Kaye's sentiments as she noted that it is important not to "become complacent and dwell on our past accomplishments" as there is "still a great deal of work to be done," because in both the private and public sector, leadership roles for women are "sparse." She reflected on her legal career, starting in Legal Aid in the late 1960s after graduating from St. John's University School of Law. She found practicing at 60 Centre Street "most intimidating, mainly because of [her] youth and gender." She became the Chief Law Assistant in Criminal Court, the first woman to hold this position, and then was appointed by former New York City Mayor Ed Koch to the Criminal Court, becoming "the first Hispanic woman in the State to ascend to the judiciary." Judge Ciparick noted that she came to New York County Supreme Court in 1983, the same year Judge Kaye was appointed the first woman on the Court of Appeals. Judge Ciparick joined Judge Kaye on the Court of Appeals ten years later.

Judge Ciparick praised Judge Kaye and highlighted her many accomplishments during her tenure as Chief Judge. "We have witnessed a revolution in the creation of specialized courts, from commercial courts to community courts, from domestic violence courts to drug courts" as well as "[i]nnovations in security, technology, education and training." Judge Kaye's latest challenge has been "advocating on behalf of her judges for much needed salary increases and salary reform in general." Judge Ciparick stressed that "[o]ur voices will be heard and our presence will be felt until we attain the equality we deserve," and that "[w]e will continue to build our legal and judicial communities and sustain and fulfill our dreams."

Many thanks to Judge Kaye and Judge Ciparick for sharing their thoughts on Women's History Month and for inspiring women lawyers, past, present and future.



*Tribute to Judge Silberman continued from page 11*

committee that has made significant improvements to matrimonial practice.

Justice Silberman promoted compliance with the then-new matrimonial rules set forth in Uniform Rule 202.16 and worked with administrative judges statewide to promote assignment of highly qualified justices to the matrimonial parts. She developed educational materials and operational initiatives to improve the handling of these cases and annually presents a three-day seminar for justices and court staff.

When she first became administrative judge at 60 Centre St. she indicated that she would have an open-door policy and that she has done ever since. Despite the whirlwind of activity in which she has been engaged for 20 years, she has always made time for judges, staff attorneys, clerks, court officers, county clerk staff and everyone else. She understands the pressures on judges and has sought to serve as a counselor, helper and friend, while also explaining their concerns and needs to the central administration.

She is renowned in the courthouse for the warmth, kindness, good humor and sincere interest with which she treats every person on staff. There has surely never been a more down-to-earth administrative judge. She has turned her belief that every person deserves to be treated fairly and with respect, listened to and encouraged, into a practice that has proven to be the most productive approach to the administration of a system whose critical mission is to advance justice, fairness and the rule of law. She has demonstrated beyond dispute that you can follow her way and at the same time achieve a vast amount of good for the public whom we serve.

We have had the privilege and pleasure of working with the judge every day for almost eight years. We have seen up close the skill with which she has handled challenges that have often been far more complex, sensitive and seemingly intractable than may be appreciated. Administration in a large and complicated organization like the Unified Court System can be a difficult, thankless and frustrating undertaking, but we have seen the equanimity and good humor with which she has approached difficulties and disappointments. Court administration is not a job for the faint of heart or the pessimistic and she is neither.

By all that she has done and the way she has done it, she is an outstanding exemplar of excellence on the bench and in judicial administration. The public is often skeptical and cynical about government, but it would be less so were it possible for the citizens of the county and state to know that there are public servants such as Judge Silberman quietly laboring in the public's interest on a daily basis for decades. Although we know that year's end will bring for her a change of scene and a different role, and that she will remain active in the profession she loves, the end of her judicial career is nevertheless a great loss for the people of New York, and on a personal level, an acute loss for all of us who have had the good fortune to work with her. She has earned a place in all of our hearts. She leaves with the gratitude, respect, and

*Post-Marital Income continued from page 13*

a marriage nor right all the inequities that follow from taking lower paying jobs in exchange for time with a family. It would, however, be a direct and nuanced response to the realities of modern men and women performing their daily balancing acts as they live their lives in twenty-first century families.

1. Jill Laurie Goodman is counsel to the New York State Judicial Committee on Women in the Courts and Co-Chair of the Lawyers Committee Against Domestic Violence. The views expressed in this article are her own rather than those of her institutional affiliations.

2. For a more detailed description of the proposal, see [www.DivorceReformNY.org](http://www.DivorceReformNY.org).

3. Sylvia Ann Hewlett and Carolyn Buck Luce, "Off Ramps and On Ramps: Keeping Talented Women on the Road to Success," *Harv. Business Rev.* (March 2005), at 3-4.

4. Stephen Rose and Heidi Hartmann, "Still a Man's Labor Market: The Long-Term Earnings Gap," Institute for Women's Policy Research (2004).

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The New York Women's Bar Association thanks the author for submitting the article, but takes no position at this time on this issue.



affection of everyone who works in New York County Supreme Court, in the matrimonial parts, and in our wider court system, who will always think of her as she has been every day during all of these years--a model of all that a judge should be.

JOHN F. WERNER is the chief clerk and executive officer of New York County's Supreme Court, Civil Branch, and ROBERT C. MEADE JR. is special counsel to the administrative judge.

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