

## PRO BONO

## Karen G. Silverman – Attorney of the Month

*Driven & Compassionate*

By Rhoda Selvin

When Karen G. Silverman spoke about her two most recent Pro Bono Project cases, she did more than clearly present the facts. Her description also quietly revealed her deep empathy for her clients. Ms. Silverman, whose private practice is devoted exclusively to Family Court and matrimonial matters, spent more than 140 hours over five-and-a-half years representing one woman, first in a case concerning a *pendente lite* matter and later, a divorce action.

In the other case, her client was a high school senior (when it began), whose mother locked her out of the house and would not support her after her father's suicide although the mother had received nearly \$1,000,000 in pension and life insurance proceeds. For her 239 volunteer hours devoted to the Pro Bono Project, and especially for these two cases, Ms. Silverman is the Pro Bono Attorney of the Month for September 2008.

Ms. Silverman describes the first of these clients, who has received disability benefits for her mental condition for many years, as “a brilliant woman, but with ups and downs.” Although she sometimes cancelled appointments, Ms. Silverman added without the slightest rancor, “When she's on her medications, she can participate meaningfully.”

Suffering from her husband's abuse, the

wife had moved out of the marital home with her four sons about 10 years before becoming Ms. Silverman's client. Living in a homeless shelter and unable to care for the children properly, she soon sent them back to their father. (Perhaps this desperate escape was the basis for her husband's accusing her of abandonment, when he filed for divorce two years after Ms. Silverman began representing his wife.) Before that, the Family Court case that initiated Ms. Silverman's involvement had brought relief to her client in the form of maintenance, health and life insurance, car and unreimbursed medical expenses, and a contribution to her legal expenses. Her husband appealed this decision and, though unsuccessful, refused to comply.

It took three years for the divorce action to come to trial, only to be dismissed on procedural grounds. The husband filed an appeal, so Ms. Silverman continued working with her client. “I won't abandon you,” she told her.

Ms. Silverman had known the second client, a friend of one of her daughter's and an outstanding citizen at her school for years. She willingly took her on as a pro bono client. Indeed, when her mother locked the girl out of the house and refused to let her collect her clothes, textbooks, sports equipment, and notes she needed to prepare for spring final exams (including four AP exams), friends took her in. Later,



Karen G. Silverman

her mother stuffed all her daughter's belongings into 10 garbage bags (clothes, trophies, pictures of herself with her recently deceased father and other cherished items) and set them out on the curb. The garbage collectors took them away.

After that, the community (teachers, school personnel, friends, and parents) rallied around the girl, providing the financial and emotional support she needed as well as shelter, clothes, food, transportation, and school supplies so that she could finish high school and live in her community until she left for college. Ms. Silverman's contribution evolved to over 78 hours of pro bono representation.

For about three months, until the daughter filed a support petition, her mother refused to provide any meaningful support. Although the woman could well afford it, she also refused to pay for her daughter to go to the private college that had the professional program she wanted and to which she had been admitted. She insisted that instead the girl go to a SUNY arts and sciences college because it cost far less.

In August before her daughter left for college, at the first conference about the support petition and in open court, the mother agreed to pay her \$300 a month. Within two months, however, represented by a new lawyer, she successfully petitioned the Support Magistrate to reduce her payments to slightly more than one-third

the amount. Then she moved out of state. When the trial began a month later, Ms. Silverman proved that the mother had made many false allegations in asking for the support payments to be reduced. The judge decided in the daughter's favor, ordering the mother to pay college expenses up to the SUNY rate, health insurance, all uncovered health care expenses, and a weekly allowance of \$100.

Ms. Silverman received her J.D. from the Faculty of Law and Jurisprudence, State University of New York at Buffalo in 1987. She had graduated magna cum laude from SUNY at Albany in 1984 with a major in political science. Her original idea had been to go into politics, but when her work as a legislative intern during her senior year at Albany taught her what *really* goes on, she changed direction.

Her first job as a lawyer was with a large commercial law firm in New York City. She then worked for five years as an associate in a Hauppauge firm primarily engaged in Family Court and matrimonial matters, an area of law that has been her specialty ever since. After a four-year partnership in Nesconset, she opened her present office in Huntington in 1998.

Ms. Silverman is a member of the Suffolk County Bar Association and its Matrimonial and Family Law, Alternate Dispute Resolution, and Women and the Law Committees; the Suffolk County Women's Bar Association and its Matrimonial and Family Law Committee;

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## APPELLATE LITIGATION

## Attention Discount Shoppers...

By Steven A. Feldman

It used to be that price-fixing was illegal. Now, manufacturers are seeking shelter under a new legal ruling, from the Supreme Court, which may alter the landscape of discount retailing in the United States. Indeed, manufacturers may now set minimum prices on their products and prevent retailers from discounting.

Since the early 1900's, it has been conventional wisdom that a manufacturer, which punished a retailer for selling merchandise at a discount, was an automatic violation of antitrust law. Last year, however, the Supreme Court held, in *Leegin Creative Leather Prods. v. PSKS, Inc.*, 127 S. Ct. 2705, 168 L. Ed. 2d 623 (2007), that a manufacturer could dictate minimum retail prices, or even cut off shipments.

The Supreme Court's 5-4 decision in the case reversed a precedent-setting 1911 ruling in *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373, 31 S. Ct. 376, 55 L. Ed. 502 (1911). In that case, the High Court found against Dr. Miles



Steven A. Feldman

Medical Co., a maker of relaxants and sleep aids that had cut off shipments to discounters.

The reversal in the Supreme Court has roiled retailers. They argue that minimum prices, which undermine the very purpose of a discount store, are the functional equivalent of price-fixing, and make them miss substantial profits. They say

they are being punished for being more efficient than their competitors. This, in turn, fuels inflation, by creating conditions in which prices are determined not by market conditions but by price-collusion.

Manufacturers counter that the discounters tarnish a brand's image. They fear that low-ball pricing creates a discount stigma. They advocate minimum-pricing strategies, in part to prevent no-frills discounters from getting a "free ride" from the marketing efforts of rival retailers who charge higher prices to spend more money on promotion. They also don't want customers of high-end products who feel "cheated," and thus "stupid," because they paid more.

The manufacturers point out that it is still illegal for two or more manufacturers or

retailers, or both, to conspire to fix prices. That, they say, would be a violation of the Sherman Antitrust Act, which prohibits this type of anti-competitive behavior. But *Leegin*, they noted, focused solely on whether a manufacturer had the right to enforce minimum prices on its own products.

Critics, meanwhile, simply claim that the policy undermines the free market. Some manufacturers agree, noting that price discounting actually increases sales, and market share. This of course, often increases profits in the long run. Other manufacturers agree, but on different grounds. They fret that minimum prices, which are artificially high, may give cheaper rival products an edge. Worse, they worry they may face a backlash against their products by both retailers and consumers. Some powerful retailers, for example, can either refuse to sell the product, or

play hardball, and steer customers to competing products. But it's not only retailers who are affected. If Hertz has fixed prices, and Avis doesn't, how can a Hertz franchisee compete in the marketplace?

Still, the Supreme Court said that minimum pricing pacts between manufacturers and retailers could actually benefit customers. How? By providing retailers enough profit to either promote a brand or offer better service.

Regardless of its reasoning, one thing is sure: *Leegin* reassures us that most prices always seem to go up, not down.

*Note: The author handles state, federal, civil and criminal appeals in New York and throughout the United States. Inquiries from the bar on this, or any other appellate matter, are welcome at (516) 522-2828.*

## LETTERS

## Comment Meant To Hurt, Helps

Dear Editor:

Someone once wrote, "Autism is like this: someone breaks into your house late at night and steals your precious child's mind and personality and leave the bewildered body behind."

My son suffers from autism. Autism is a severe developmental disorder of neurobiological origin that begins in early childhood and results in seriously impaired social interaction, communication and behavioral functioning. In recent years, there has been an alarming increase in the number of children diagnosed with autism.

Whether children with symptoms of autism are being improperly diagnosed as "autistic," is an appropriate issue for debate. Whether children, like my son, who are severely impaired by the debilitating disease, are "morons," "idiots," or "brats" is simple ignorance.

Michael Savage, in a July 16 broadcast of his nationally syndicated talk show, proclaimed that autism is "[a] fraud, a racket." Mr. Savage went on to say, "I'll tell you what autism is. In 99 percent of the cases, it's a brat who hasn't been told to cut the

act out. That's what autism is. What do you mean they scream and they're silent? They don't have a father around to tell them, 'Don't act like a moron.'"

He delivered these ludicrous comments to a broadcast audience of millions. Mr. Savage must be terribly proud of the additional pain his words caused millions of families like mine who mourn their children's disabilities every day.

On behalf of my family, I thank Mr. Savage for his insensitive comments. On one hand, he brought further attention to the plight of children impaired by autism. On the other, he revealed himself little more than yet another purveyor of hate, anger and pain.

Edward J. Nitkewicz  
Nitekewicz & McMahon, LLP

## Letters policy

*The Suffolk Lawyer welcomes letters, which should be no longer than 300 words and must contain the name of the writer and phone number for verification. Anonymous letters will not be published, but names may be withheld upon request if the editor deems it appropriate. Letters should be sent to scbanews@optonline.net.*

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It is my hope, that our members, who are not a part of our Foundation, will understand the importance of our work and will help us with a contribution, no matter how large or small.

Our goal is to put out our hand to help our fellow lawyers.

Donna England  
Managing Director

Karen G. Silverman  
Attorney of the Month *(Continued from page 9)*

and is a facilitator/presenter for the Parent's Education and Custody Effectiveness Program (PEACE). She is especially active in the Matrimonial Bar Association of Suffolk County, having been on its Board of Directors since 1996 and worked her way up the ranks of offices. She has been vice president since 2006 and is due to become president in 2009. The New York State and Suffolk County Women's Bar Associations have published her articles on No-Fault Divorce, Valuation of a Law Practice and Egregious Fault.

In a family of athletes, Ms. Silverman is the figure skater and the chauffeur. Her daughters, Rachel, 13, Alison, 16, and Samantha, 18, are all involved in sports and (except for Samantha, who is a student at the State University College at Oswego)

need Mom to get them to practices and games. Her husband David, a computer programmer, plays baseball. Ms. Silverman's other hobbies are quieter: gardening, baking, and playing the guitar. The whole family chips in, though, when it's time for her Christmas baking marathon and wrapping the 4,000 or so cookies they give as gifts.

Karen G. Silverman had been practicing law in Suffolk County for 14 years before she discovered the Pro Bono Project. Having her on board has been a boon to the Project and to the indigent citizens of the county and is a fulfilling addition to her law work. For her compassionate concern for her clients and scrupulous representation, she well deserves to be Pro Bono Attorney of the Month.