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Former Manhattan Commercial Division Justice Eileen Bransten, Known for Cutting Through Complex Issues, Dies at 79

"Lots of people enjoy aspects of being a lawyer, but she did so much more than that, for the practice of law, for so many [legal] organizations," and for her law clerks, "she championed us in a way that many people never do," said Appellate Division, First Department Justice Saliann Scarpulla, who clerked for Bransten at age 39 and then decided to aspire to the bench herself.

By Jason Grant | April 28, 2022



Eileen Bransten, a former Supreme Court Commercial Division justice in Manhattan. Courtesy photo

Eileen Bransten, a former Supreme Court Commercial Division justice in Manhattan, known for her ability to cut through the most complex issues facing New York's business and finance sectors and for breaking ground as one of the first female jurists to sit on one of the nation's most vital business courts, has died.

Bransten, 79, died earlier this week from natural causes while sleeping, according to her former law clerk, Saliann Scarpulla, who followed in her mentor's footsteps, eventually also serving as a justice in Manhattan's Commercial Division before later joining the Appellate Division, First Department court bench.

Bransten, the daughter of two writers, including her mother, the bestselling author of the 1938 book "My Sister Eileen," forged her own path to become the first lawyer, and then the first judge, in her family circle. And she forged that path despite her mother being "outraged" when Bransten eventually insisted at age 28 that she go to college and lead a more conventional life, according to a New York Times profile (<https://www.nytimes.com/2003/12/21/realestate/sister-eileen-to-daughter-eileen-a-state-judge.html?referringSource=articleShare>) of Bransten from 2003.

To her mother, Ruth McKenney, "I didn't need to go to college," Bransten said in the article, adding that McKenney believed "that all I needed was to read books and I would be totally educated."

But Bransten went regardless, graduating with a bachelor's degree from Hunter College of the City University of New York in 1975, and then earning a law degree from Fordham Law School in 1979. And then, according to Scarpulla, who clerked for Bransten from 1999 to 2001, the daughter of two unconventional, creative writers became a "lover of the law" who stayed immersed in the legal profession until the very last days of her life.

"Eileen was a law lover," said Scarpulla in a phone interview with The New York Law Journal on Wednesday evening. "She loved the law. And so she was not afraid to dig deep into an issue as a judge—to read 100 cases, to talk to three or four other judges about it.

"She really cared about the law, and where it was going, and did it make sense that it was going in this direction," Scarpulla said.

"And that is what people want," she continued. "They want someone who cares about not only their own case, but also in the broader sense, who cares about: Does this statement in the law that I'm going to put out in this decision, does it make sense for the businesses in the state of New York."

Scarpulla then also said, "She was [nearly] one of the founding members" of the state Supreme Court system's Manhattan Commercial Division, which today is considered one of the world's central business litigation forums, known for handling highly complex, high-value-only cases from Wall Street and New York's robust banking and business sectors. "She was there near the beginning, when the Commercial Division starting taking off." Today the division spans 10 different state jurisdictions, after beginning only in Manhattan and Monroe County. And "she's one of the titans of the bench, a judge emeritus of the commercial bar," said Scarpulla.

Moreover, she "was a woman judge in a field," New York business and commercial litigation, "that was traditionally dominated by male lawyers, and she held her own," Scarpulla later also pointed out.

"She was firm, she was not easily intimidated, and that served her well," she said.

Mark Zauderer, a named partner at Ganfer, Shore, Leeds & Zauderer in Manhattan and a commercial litigator who's been practicing in New York for 50 years, said in a phone interview on Wednesday evening, "Justice Bransten was highly respected and extremely skilled at handling the most complex issues in major commercial cases in New York.

"She was able to easily sort through a myriad of factual and legal issues in complicated cases and get to the heart of the matter, and render well-reasoned opinions," he then added.

Asked for an example of one of his own past cases before Bransten, the veteran lawyer later said via a text message, "I recall appearing before her in a major case on a temporary restraining order application when papers were flying back and forth until late Sunday evening over a weekend. By the time of the hearing on Monday morning, it was clear that she had mastered the arguments better than many of the lawyers involved."

Zauderer also noted by phone that during Bransten's years on the Manhattan Commercial Division bench, where she sat from 2009 until her 2018 retirement, she spent "a good deal of time" presiding over residential mortgage-backed securities, or RMBS, cases that sprang from the 2008 financial crisis. Many RMBS cases, in general, have focused on a complex RMBS securitization process and allegations that banks omitted information or made misleading statements about the underlying collateral for the securities.

Bransten, said Zauderer, "wrote many important opinions in that [RMBS] area."

At the same time, while touting Bransten's legal acumen and intelligence, both Scarpulla and Zauderer said that the former longtime judge, who first stepped onto the bench in 1994 when she was elected to the New York City Civil Court, could be both firm and fair with lawyers appearing before her.

"She loved talking to the lawyers," said Scarpulla. And she also "felt a deep responsibility to the litigants, that they had her day in court."

"She was direct, and exuberant also," Scarpulla said. "When it was a matter of trial, she was very much in the camp that the lawyers should be able to try their case. She was not overly controlling. [But] she wasn't going to let anybody go off the deep end."

Zauderer had great respect for her as a judge, he said, and then one day in 2015 when he was vacationing, she called and asked him to mediate a tense and issue-laden case involving the breakup of the major New York personal injury firm of Napoli Bern. The veteran litigator was interested. And then as he entered the fray, the parties in the emotional case proposed that he take it over, in a sense, presiding over its issues as a decision-making referee.

Bransten decided to allow it, using an unusual provision in the state law to empower Zauderer as a referee to hear and determine. He was flattered, he said, and now seven years later he continues to handle the messy firm litigation and wind-down.

In court, he recalled, Bransten generally "would be very direct with lawyers," but then when he socialized with her at bar association retreats, he said, she was "very good company" who fit in well with everyone there and who "never hesitated to express her opinions."

"A real New Yorker," he said.

For Scarpulla, Bransten was a role model, and she made clear on Wednesday that the 24-year judge, who served as a general Supreme Court justice from 1996 to 2009 (acting, and then elected), was responsible for changing her life by convincing her she should be a judge herself.

Scarpulla had been a Big Law attorney at Proskauer Rose for years, and had been at the Federal Deposit Insurance Corp. and in other positions, when at age 39 she decided to clerk for Bransten as she searched for a shift in her career, she said.

Bransten saw the abilities of a strong judge in Scarpulla, and "she just kind of decided I was going to follow in her footsteps," Scarpulla said with a chuckle.

"She was absolutely confident that this was the right thing for me to do," being a judge in New York, "and that I would be successful at it, and she was right," she said.

And then Scarpulla pointed out that Bransten also mentored and directed current Commercial Division Justice Jennifer Schechter to the bench, after Schechter clerked for Bransten for several years.

And they were not alone, as Bransten caringly guided rafts of her other clerks in their careers over the years.

"Lots of people enjoy aspects of being a lawyer," said Scarpulla, "but she did so much more than that, for the practice of law, for so many [legal] organizations" she participated with, and for her law clerks, "she championed us in a way that many people never do."

"She was my champion," said Scarpulla, her voice rising in pitch, "and I am so grateful and lucky to have had that."

