

SOUTHERN JEWISH HISTORY

Journal of the Southern Jewish Historical Society

Mark K. Bauman, *Editor*

MarkKBauman@aol.com

Bryan Edward Stone, *Managing Editor*

bstone@delmar.edu

Scott M. Langston, *Primary Sources Section Editor*

sclangston@charter.net

Stephen J. Whitfield, *Book Review Editor*

swhitfie@brandeis.edu

Jeremy Katz, *Exhibit and Film Review Editor*

jrkatz@thebreman.org

Adam Mendelsohn, *Website Review Editor*

adam.mendelsohn@uct.ac.za

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rheimovics@cfl.rr.com

2016
Volume 19



Southern Jewish History

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Articles appearing in *Southern Jewish History* are abstracted and/or indexed in Historical Abstracts, America: History and Life, Index to Jewish Periodicals, *Journal of American History*, *Journal of Southern History*, RAMBI–National Library of Israel, Immigration and Ethnic History Society *Newsletter*, and the Berman Jewish Policy Archive.

Southern Jewish History acknowledges with deep appreciation grants from the
Lucius N. Littauer Foundation, New York, and
the Gale Foundation, Beaumont, Texas.

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ISSN 1521-4206

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Fair Labor Lawyer: The Remarkable Life of New Deal Attorney and Supreme Court Advocate Bessie Margolin. By Marlene Trestman. Baton Rouge: Louisiana State University Press, 2016. 242 pages.

This intriguing book is primarily a “thank you, and I love you” note from the author to Bessie Margolin. Both women came out of difficult family situations, resided at the New Orleans Jewish Orphans Home, and attended the Isidore Newman School. Margolin never forgot where she came from, and, whenever possible, helped young women like herself, encouraging them to aim high, and, in Trestman’s case, to become a lawyer. Trestman never forgot the kindness or the encouragement, and this book is in many ways a repayment of that kindness.

Bessie Margolin had an amazingly interesting life. She entered the law profession at a time when few women dared to follow that path, but it also proved a time when the New Deal needed as many lawyers as it could get, and she was fortunate to have bosses who recognized that a supersmart legal mind lay behind her pretty face. She successfully defended the Tennessee Valley Authority (TVA) in the courts, and after the passage of the Fair Labor Standards Act in 1938, she became the chief lawyer at the Labor Department defending its provisions.

She met and knew just about everybody worth knowing in Washington, D.C., from 1933 until her retirement in 1972. (Trestman includes a partial guest list of those who attended Margolin’s retirement dinner in 1972, and it is literally a Who’s Who of Washington.) When Robert H. Jackson went to Germany to lead the American team at the Nazi war crimes trial in Nuremberg, Margolin wangled a position on the American staff. She described the eight months she spent there, and in touring around Europe, as an “interesting adventure.”

Margolin understood that being pretty by itself would get her nowhere, but, at the same time, she took great care in her hair, makeup, and clothes to be attractive. As Trestman notes, Margolin early on decided not to marry and that her vocation would be her lifelong love. This made a great deal of sense, for in middle-class America at the time, married women did not work. They stayed home, had babies, and cooked dinner for their husbands.

But Margolin always had enjoyed the opposite sex, and over her life had several intense and semisecret affairs. In 1981 Margolin and Robert Ginnane, the general counsel of the Interstate Commerce Commission from 1955 to 1970, surprised their friends by announcing they would wed. The two had been having a clandestine romance for more than two decades and now felt free to go out in public as a couple. Unfortunately, Ginnane died before the two could marry.

Margolin argued twenty-four cases before the U.S. Supreme Court, winning twenty-one of them, making her one of the most successful practitioners before that tribunal, male or female. She also argued and won dozens of cases in lower courts, first representing the TVA and later the Labor Department. Her record should have entitled her not only to a supervisory position but to be head of the Labor Department's solicitor's office, and the fact that she did not get the job convinced her that she would have to fight sexism. She presented evidence to Secretary of Labor Frances Perkins of what Margolin called "unconscious discrimination" against her as a woman that prevented her promotion. Perkins agreed, and in 1942 she named Margolin Assistant Solicitor of Labor. Margolin later received the Department's Distinguished Service Award, and Chief Justice Earl Warren praised her for developing "the flesh and sinews" around the "bare bones" of the Fair Labor Standards Act.

As one might have expected, in the postwar Red Scare someone as obviously prolabor as Margolin would be investigated by the FBI, and although the Bureau found no traces of communism, it did uncover her romantic involvements. She would be investigated and her loyalty questioned again later in the 1950s.

It is very probable that the FBI reports kept Margolin from achieving the one goal that eluded her—an appointment as a federal judge. She apparently was considered for the position several times during the Kennedy and Johnson years, but although as well qualified—better qualified, in fact—than some of the men chosen, the presidents decided not to name her and never really explained why. In 1966, during the Johnson years, Margolin, who described herself as a "reluctant feminist," joined the National Organization for Women as a founding member.

In her last years in the Labor Department, Margolin did not slow down, and in 1969 she argued the first Equal Pay Act appeal, *Shultz v. Wheaton Glass Co.* The law required that men and women be paid the

same for “substantially equal” work, which the employer argued meant identical work. If not identical, the company claimed, it did not have to pay women as much. Margolin convinced the Court of Appeals for the Third Circuit that the phrase “substantially equal” meant just that, and not “identical,” a decision the Supreme Court declined to review.

Although Margolin came from a Jewish family, and certainly benefited from the care she received at the Jewish Orphans Home and her education at the Isidore Newman School, Judaism apparently played a very minor role in her life. A nonobservant Jew as an adult, she always considered herself Jewish, and as Trestman points out “she was identified as a Jew by others, and not always to her advantage” (9). She certainly opposed antisemitism, which led her to want to take part in the Nuremberg trials and to travel to Israel in 1962. Trestman believes that Reform Judaism’s emphasis on social justice, regularly invoked at the Jewish Orphans Home in speech and practice, played an important role in shaping her professional life.

Bessie Margolin certainly deserves a biography, and Marlene Trestman has covered her career quite well. She skirts around some of



the private relations she had, and there is little that one might call “critical” here. Margolin had an amazing life, especially for a woman of her era, and perhaps there was little to be critical of. Margolin did not preserve all of her papers with the sort of care that would help a biographer, and much of what Trestman found related to her professional life. She left practically nothing about her private life except a few bundles of photographs and some private letters, for most of which the recipient could not be identified. Margolin’s remaining family

members helped out with reminiscences, pictures, and stories, and, given the paucity of information, Trestman did yeoman work filling in the gaps of her professional life, and even a good part of her private one as well. It is doubtful anyone else will tackle Margolin as a subject, and we should be grateful for what Trestman has achieved. It is an absorbing story told well.

Melvin I. Urofsky, Virginia Commonwealth University