

Interview with Peggy Cooper Davis by John Caher and Linda Dunlap-Miller, May 10, 2016

John Caher: Welcome to the latest episode of a brief series of oral history interviews with the trailblazers and pioneers who were so instrumental in establishing the Franklin H. Williams Judicial Commission. Each of the recordings is an excerpt of a longer interview conducted in preparation for a documentary on Franklin Williams. That documentary has been airing on PBS.

In recognition of a 30th anniversary of the Commission, the co-chairs, Justices Shirley Troutman and Troy Webber, and Executive Director Mary Lynn Nicolas-Brewster, decided to post excerpts that describe the early days and the early challenges of this commission. Today, Peggy Cooper Davis, a renowned legal scholar, former judge, and original member of the Commission shares her thoughtful insights on the Commission, why it was needed, and why it remains critical to the court's mission. I'm John Caher, Senior Advisor for Strategic and Technical Communications.

Judge Cooper Davis: It's hard to say how it was that the court system came to recognize that need, but certainly, my own experience, both in practice and my experience as a judge in New York State made very clear to me the differences in treatment among people of different races and classes, and the disaffection and resentment that many people felt. So the need was clear to me. How it came to the attention of court administrators, I can't say

John Caher: So, the Commission began its work, I think, with a series of hearings and meetings, I think more than 60 of them. Was the idea to have public hearings, was that Franklin Williams' idea, do you remember?

Judge Cooper Davis: I believe so, yes.

John Caher: Do you remember him talking about it or saying why it was necessary?

Judge Cooper Davis: Well, I remember that he was insistent that we not kind of sit clustered in a room and speculate about the problem, but rather that we get close to the problem and actually hear from people who had felt it.

John Caher: And I suspect you got an earful.

Judge Cooper Davis: Yes, absolutely.

John Caher: What sort of things were you hearing at these meetings?

Judge Cooper Davis: Well, actually, the judicial commission hearings had a very powerful effect on me in the sense that they documented things that I had been seeing throughout my practice and throughout my time on the bench, but documented them in a striking way. And I began to realize that the very fact of that documentation, hopefully, would have an impact.

Actually, after I left the Commission, several years after, I wrote about some of the testimony in those hearings. And I guess my starkest memory is the memory of a gentleman who had sat on a jury, an African American gentleman. And he was involved sitting on the jury in the trial of a young, very affluent white man who had murdered, I think, his wife. And there were two African Americans on the jury and both of them were persuaded that the man had in fact killed his wife. And they were equally persuaded as a result of the deliberations which can become, of course, very personal and intense, that their word was not credited in part because the word of a Black man was not to be credited from the perspective of the other jurors. So, they felt this simultaneous sense that, instinctively, this defendant was not the sort of person that the white jurors imagined as a murderer. And then on top of that, that they were not the sort of people that the white jurors were accustomed to crediting.

So they felt this double barrier and it obviously had a profound effect on them. And it's a sort of testimony, I think, that repeated over and over again, makes some impact. I hope it has. And it was also important to see the problem from multiple perspectives, not just from the perspectives of those who were within the system and understood that something was wrong, but also from the perspective of people who were experiencing the prejudice and seeing it more clearly than anyone on the other side.. You can call in lots of experts to tell you how bias *works*, but we were able to hear how it *feels* and how it alienates people.

And that was a very important. It's hard to get people to own up to the painful results. So I'm always skeptical that, that will happen. And of course, it's probably because of Franklin's persistence and because of his insistence that the commission members listen to hours upon hours of-

John Caher: What were the initial goals, other than, I guess, fact-finding?

Judge Cooper Davis: I think for different members of the Commission the goals initially might have been different. For some of us, certainly for me, a goal was to document the kind of inequity and the kind of perception of injustice that

I knew was in the court system. I think for other members of the Commission—it was a very balanced commission—it was to find out whether those things were present. But if you're going to have those mechanisms in place, you also need, periodically, to take the measure of the community and to have the kind of in-depth inquiry and the in-depth hearings that the Commission had. But I think the more important thing is that public institutions in general, and certainly the justice system, be always mindful of the possibilities of inequity that exist.

John Caher: I think Judge Wachtler had told us that when he started, he knew things were not good, but he didn't know how bad they were.

Judge Cooper Davis: Yes. I think many people had that reaction.

John Caher: Do you think Franklin Williams did? Do you think he was surprised by what you were hearing?

Judge Cooper Da...: No, I don't.