

Hon. Betty Weinberg Ellerin

John Caher: Welcome to Amici, news and insights from New York courts. I'm John Caher.

At the 2021 Judicial Summer Seminar, retired Judge Betty Weinberg Ellerin spoke to the judicial response to gender bias in the courtroom. Judge Ellerin, a historic figure in her own right, began with a brief but enlightening history of the Committee on Women in the Courts, a history Judge Ellerin is very much a part of. In this episode of Amici, we are very pleased and proud to present to you Judge Ellerin's opening remarks.

Judge Ellerin: As you know, I am the chair of the New York State Judicial Committee on Women in the Courts. I'd like to give you a little history as to how we came into existence.

In the mid-1980s, academic studies indicated that women were not being treated fairly in our court systems, in our system of justice. Those studies were propagated or were publicized by the National Association of Women Judges, and they made their way to New York where our then Chief Judge, a gentleman named Lawrence Cooke, who came from Monticello, a person who was truly committed to justice, heard about them and was quite concerned. And he thought that it was important to get some information as to whether that was true about the New York State Court System.

So he established a task force on gender bias in the courts. And the purpose of that task force, as he indicated, was to investigate all the aspects of the court system, both substance and procedural, and to ascertain whether there are statutes, rules, practices or conduct that work unfairness or undue hardship on women in the courts.

That task force consisted of an extraordinary group. It had state legislators; it had academics. It had representatives from large law firms, from small law firms, from all aspects of our life. I believe it was 22 in number. It then undertook a very intensive investigation. They had hearings, they had meetings with bar associations, large and small, upstate and downstate. They had listening sessions and they also sent out a questionnaire through the graciousness of our state bars and some of the local bars. And after two years, they came up with a report that was really quite remarkable. And this was what that report concluded: gender bias in our court system was pervasive, with grave consequences that denied women equal justice, equal treatment and equal opportunity.

That report was over 300 pages, although there was an executive summary that made it a lot easier to peruse, and came up with over a hundred recommendations, addressing two aspects of our court system: One of those recommendations was the establishment of a permanent committee to oversee the implementation of those recommendations.

Now, by the time the report came down, we have a new Chief Judge, Judge Sol Wachtler, and he took it very seriously. He said that was going to be a primary concern of his administration and he was very true to his words. He set up a committee to implement the recommendations of the Task Force on Gender Bias in the Courts. That was changed to the New York State Judicial Committee on Women in the Courts, a lot easier to remember and to pronounced.

Now, he appointed as chair of that first committee, the Honorable Kathryn McDonald, who was then the Administrative Judge of the Family Courts. It was an inspired choice. She, truly, not only took the messages of the reports seriously, but she had a manner that just encouraged people to come to the fore and to do what they were supposed to do.

She recognized that just having a committee of 15 people from statewide areas was not really enough. She felt you had to know what was going on in each section of the state. So she not only suggested, but she organized, through that committee, local gender fairness committees run in each section of the state that was composed of various constituencies depending on the particular district. And that meant that we had, at that time, 12 local committees, each of them having a chair and each of them, in a sense, seeing what the lay of the land was within their particular localities.

Now, one of the things instituted under her aegis was having an annual meeting, in person, without masks!, when all of those chairpersons of the local committees met with the members of our statewide committee. And those were very helpful because those kept the statewide committee informed about where we were, what was doing in the various areas, how we were doing on the recommendations.

And by the way, the recommendations were very specific. Many of them addressed the big issues that the report identified as violence against women, both domestic violence and in terms of rape, and also, with regard to how women were treated upon the termination of marriage, the unfairness of the distribution of assets, the inadequacy of the support provisions or the maintenance provisions that were made for women and also how women were treated in the courtroom, what credibility was

accorded to women, as lawyers, as litigants and as witnesses, particularly expert witnesses. As time went on, that committee kept abreast of emerging issues. One of those issues was sexual harassment, and that was really not touched upon in any great measure in the original report.

About three to four years ago, we had an annual meeting at which all of our local committees reported. And what came out of that meeting was, well, we've made a lot of progress, but, you know, there were still a lot of problems that exist. And how were we going to determine that? Well, we decided we needed a survey.

We came out with the report in November of 2020, an unfortunate time because, as you know, we were still masked; we were still in the pandemic era. But that report was an eye opener to many of us because it showed that while we had made great progress in certain areas, for example, the fact that there were many more women judges now statewide, although some of the upstate areas were not keeping pace to the same extent as our downstate areas, we had women on the Court of Appeals, we had a second Chief Judge who was a woman on the Court of Appeals. We had Administrative Judges throughout who were women, and that was all very positive. But the second report— we got over 5,000 responses—did show that we still had some serious problems.

The report is available to all of you to read and I urge you to do so. It showed—and this was most distressing, frankly, to me—that the credibility of women, in so far as the court system was concerned, was still far behind the credibility accorded to men. And that was true, whether the judges were male or female, although the latter to a lesser degree.

We have a very interesting program for you, so I don't want to go further into the report, other than to urge you to read it; we do have an executive summary and that makes it easier. Now, you know, they say a picture speaks louder than a thousand words so today that's what we're going to do. We're going to give you some pictures and we have a star-studded cast.