

## Promoting Diversity in the Court System: Hon. Edwina G. Mendelson, 9/17/21

John Caher: Welcome to Amici, news and insight from the New York Courts. I'm John Caher.

Over the past few years, the Office of Diversity and Inclusion has sponsored a series of Diversity Dialogue interviews with individuals of different backgrounds who work in various capacities in the court system. We've learned about different cultures, different viewpoints, and different perspectives.

We've seen that those differences don't Balkanize us or separate us. Rather, they bring us together in a beautiful mosaic or tapestry that, together, is the *Unified* Court System. It should come as no surprise that the name of a newsletter from the court system's Office of Diversity and Inclusion is "*Mosaic*."

Today's program is a special edition, and we are deeply honored and pleased to have as our guest the Hon. Edwina G. Mendelson, Deputy Chief Administrative Judge for Justice Initiatives. Judge Mendelson's job, in a nutshell, is to ensure meaningful access to justice for all New Yorkers. She also oversees the Division of Policy and Planning, and in that capacity, is in charge of over 300 problem-solving courts.

And if she didn't already have a full plate, Judge Mendelson has been tasked with implementing the recommendations of the Special Adviser on Equal Justice, Jeh Johnson, in his October 2020 report examining racial bias in the court system. As we mark the one-year anniversary of that groundbreaking report, we thought this would a good time to check in with Judge Mendelson for both a retroactive and prospective look at where we were, where we are and where we're going.

Judge Mendelson, thank you so much for coming on the program. Before we dive in, I'd like to ask you something I've been meaning to ask you for quite a while, actually. You are a graduate of CUNY Law School, one of the many places you have a degree from. And it seems to me that every time you mention CUNY Law School, I hear the CUNY Law School motto, which is "Law in the service of human needs." *Law in the service of human needs*. Why does that resonate so strongly with you?

Judge Mendelson: Thank you, John. I love that question. It gives me an opportunity to tell you that I was fortunate, so fortunate, to attend the CUNY School of Law

soon after it launched, soon after it was created as the nation's premier public interest law school. So, 36 years ago, 1985, I entered as a proud member of the school's third class and its motto from the inception was "Law in the service of human needs."

It was expressed to us often. It was ingrained in all of our studies and it's guided me in all my years in the law. Just the calling — "law as being of service to others" — just seems fitting. But, guess what? I have adopted a brand new motto just this week to serve as a complement to that one, a supplement perhaps.

John Caher: Does CUNY happen to know that you modified their motto?

Judge Mendelson: Well, we won't tell them. They get to keep their motto and I get to use it and then add another sentence to it.

John Caher: Sounds fair.

Judge Mendelson: I heard it on a podcast this week and all it says, and I think it does fit nicely with law in the service of human needs: "We should give more to this world than we take." Doesn't that fit?

John Caher: It absolutely does. It absolutely does. And it fits with you. Let's back up a little. Tell me about your background. I don't know much about that— where you grew up, how you grew up, what inspired your interest in public service law. So, what's the story?

Judge Mendelson: So, here's the story. I am a proud daughter of the Bronx. I grew up in Edenwald Houses, which is located in what is now called the Wakefield Section of the Bronx. My 90-year-old mom still lives in that neighborhood, the neighborhood of my childhood. My daughters live nearby and I am a proud public school educated person from elementary school all the way through my undergraduate and other degrees that you've mentioned. And if you really want to make my day during this interview, don't call me judge anymore. Call me doctor, because nobody does that. I don't get that honorific mentioned to me, and I attained that degree from a public institution, the wonderful City University of New York.

John Caher: So, Dr. Mendelson, are there things you experienced or saw that fostered what I think anyone who knows you would see as a genuine passion for equal justice? This is not just a job for you, and that's obvious. Where does that come from?

Judge Mendelson: So I'm unapologetic about my feelings that my most recent assignment from Chief Judge Janet DiFiore to lead our court system's Equal Justice in Courts Initiative is what I consider to be the assignment of a lifetime. And I don't hide my passion for equal justice. In terms of life experiences, I have been Black and female my entire life. You and I don't have time sufficient to fully discuss the very many things that I've witnessed and experienced that contribute to my care for this work. But in thinking about this question, it causes me to reflect on my educational path.

And I can just give you one example that I think will be helpful in answering this question. I'm taking you back to high school. I was a senior in Music and Art High School, also known as the "Fame" school, where I played cello. And I was given the opportunity along with my classmates to take two courses at a college while completing my high school senior year.

I really don't recall how I was provided with this opportunity, but I remember the registration process clearly. And what stands out for me, and what I can remember as if it were yesterday, was that when the group of us went to sign up for our classes, the professor who was in charge of the program looked at me and suggested to me in front of everyone else that I not take the two classes per semester that was being offered. He indicated that my chances of actually passing the college level course would be increased if I only took one class.

This person didn't know me. He didn't know what I was capable of. He saw me, or thought he saw me, and he made assumptions about my abilities and made the mistake of underestimating my abilities. He did not make that suggestion to my classmates, who were white, and they were present. So, what he was communicating to us all about my worth was powerful and impactful. And I'll tell you, over the years, helpful. I did well in the two courses I took each semester—note, *two* courses each semester. I did not take his kindly advice and I've been doing pretty well since, but I use that as an example of the context for my passion for equal justice.

I have spent many years exceeding people's narrow expectations of me. That experience with the professor wasn't the first, and it won't be the last, and I'll tell you how it applies in real life, and in real time. I had the opportunity to go back, of course, and teach at that very same college for 10 years while I was getting these degrees that you're aware of, that I took along the way after receiving my law degree.

And I became the professor who took great pride in *not* underestimating my students based solely upon their appearance or where they came from. And even as a judge, I really try hard to do my best to not make assumptions about people based on identifying features. And that was the lesson for me.

But one last thing, and I think this is important. I like to remind people that being a Black woman who grew up in this society, that I am not immune from the very same messages that I've been receiving from the womb, those messages that tell us that in our society certain people are "less than..." just because of who they are, where they've come from or what they may look like.

And that ties into what we're trying to do with the Equal Justice in Courts Initiative. The implicit bias science tells us that we're susceptible to these quick assumptions and shortcuts that may serve us in many ways, but also lead to disservice. And so, even as a lawyer and a judge, I've had the familiar and disturbing experiences of being mistaken for my Family Court clients. Sometimes, I'd say on a good day, I was mistaken for the social worker or the interpreter. And as a judge, *as a judge*, most recently being told that I "don't look like a judge."

John Caher: Recently?

Judge Mendelson: Recently.

John Caher: Thirty years ago, Ambassador Franklin Williams undertook the first comprehensive look at the court system vis-a-vis racial and ethnic bias and found that the courts were falling quite a bit short of their obligations to ensure equal justice. Last year, Secretary Jeh Johnson took another look and found much the same thing. So, let's start with the good news. How is the court system better than it was 30 years ago?

Judge Mendelson: The opening paragraphs of the Equal Justice Report note that many within our court system are working hard to "get it right and make it better." That's a quote from the report, and it begins with what Secretary Johnson, who drafted the report, calls the good news.

In my opinion, the very act of commissioning this Equal Justice Report is noteworthy and good news. Chief Judge DiFiore made a swift and impactful decision in this season of racial reckoning in our country and our world, and her decision was to engage a highly respected former Presidential cabinet member, Secretary Jeh Johnson, to be our special advisor on equal justice, an act she performed on the very day of George

Floyd's funeral. An act that was quite different from other chief judges' responses, to have an outsider review our court systems' practices and policies as they relate to issues of racial bias and fairness.

Well, I'll say what Secretary Johnson has said. I've had the privilege of presenting with him a few times since he issued his report. Secretary Johnson says he would never have invited an outsider to review any agency he has led. So, there is good news.

Today, there are more judges of color in the state than we had 30 years ago. And I'm a living example of that, as a high-ranking statewide court leader, serving as Deputy Chief Administrative Judge for Justice Initiatives. Before me, there were two other Black women who held the same post. I also served as Administrative Judge of the New York City Family Court, which is another high-ranking and impactful judicial leadership position. And others have followed me in that role, such as Judge Jeanette Ruiz, our current Administrative Judge, a Latina, and Judge Anne-Marie Jolly, her Deputy Administrative Judge, a Black woman, an African American.

And there are many other examples of diversity increasing in our judicial or administrative judge ranks or court management. But in discussing equal justice, I want to just put a pause in here to mention women. The Women in the Court's 2020 survey, issued more than 30 years after an initial survey created in 1986, indicated that we're seeing more women in positions that were in previously occupied predominantly by men, especially in administrative judge and appellate court roles. So, that's the good news.

John Caher: Then, where are we falling short? What do we have to do next?

Judge Mendelson: Oh, make no mistake! We've got a great deal of work to do if we are serious about promoting full and meaningful diversity on the bench in New York State, and in all positions of our professional staff and our court managers, despite the progress that I've described.

Secretary Johnson—more bad news—talked about a problem that the courts can't solve on our own, that our court system presents a dehumanizing experience in overburdened, high volume courts that create a demeaning “cattle-call culture.” Again, a quote. Our busy, high volume courts are frequently and disproportionately filled with people of color and those who are experiencing poverty. He used the term “second class system of justice for people of color” in New York State. Very painful to read in 2020, when that report came out. He reported that racial

intolerance and inherent biases are still very much a real presence within the court system.

Judge Mendelson: And he described experiences from many similar to what I just described about not looking like a judge or a lawyer to the public. And the personal experiences of many of the people who talk to him. Even with the increased diversity that I reported on the bench, it is clear. There is under-representation of judges of color and that persists.

Judge Mendelson: In 1991, Secretary Johnson indicated, there was 20.5 point gap between non-white population and non-white judges. Fast forward to 2020. That gap is 20.9. That hasn't moved. So we have more judges of color, but it's still disproportionate. And it's not like Black judges haven't made great progress, particularly in New York City, to be closer to a representation as compared to the public and the public we serve. But that's not the same for the Latinx judges, and it's definitely not the same for Asian and Pacific Islander judges. Outside of New York City, the under-representation is even more stark.

John Caher: Certainly. In the Third Judicial Department, where I live, a 28-county region, there's been a grand total of one Supreme Court judge of color elected to any of those 28 counties, *ever*. There is a grand total of one judge of color, *ever*, on our Appellate Division, and she was brought up from the Bronx. So in this area, we have a particularly terrible track record.

As Secretary Johnson noted, some of this is within our power to change, some of it is not. So, in the role that you've been given by the Chief Judge, what can you do, what is within our power?

Judge Mendelson: I have to say changing attitudes, eradicating biases, that's not something where we can just wave the magic wand. If I had a magic wand, I'd wave it and handle it. But we can't policy away these thorny and difficult and long-standing issues. If we want to move the needle and move it in the right direction, it requires a strong commitment, and it requires a lasting commitment. This can't be "one and done" work to tackle the thorny issues that face our society and face our courts today.

I'm thinking back to the college courses where I first learned and was told that race is a social construct that has no biological meaning, and it's just not real, right? But we know it has such an out-sized impact on real lives, despite that.

So our goal, our job, our *mandate* is to eradicate racial intolerance at all levels of the court system. We have an obligation to educate our judges, educate our court personnel, to recognize instances of bias, whether it's conscious, explicit, express or implicit and unconscious.

So, what can we do? First of all, the Special Adviser, in addition to detailing their findings, did give us a toolbox of 13 practical recommendations, not easy, but doable recommendations, that are within our power to address. And Chief Judge DiFiore and Chief Administrative Judge Marks have fully embraced this report and the recommendations and have committed on behalf of us all to full implementation. And I get to have the job of a lifetime by leading the day-to-day implementation of these recommendations.

John Caher: That seems key, for the message to come from the top. I mean, the Chief Judge could've said to Secretary Johnson, "Thank you for this nice report and what a pretty cover it has," and tossed it on a shelf. But she seems to have taken the recommendations to heart, and she has appointed you to implement them. So it sounds like you have the support from the highest levels of the court system as you go forward.

Judge Mendelson: That's very, very true. The Chief Judge commissioned that report. She was decisive and it's definitely a priority for her and her team. And the first recommendation, Chief Judge DiFiore has said a number of times, is the most important to her, and that is expressing a commitment from the top. She's holding our executive and judicial leaders responsible for embracing a zero-tolerance policy for racial discrimination and bias in our courts.

I have had, as I mentioned, the privilege of presenting a few times with Secretary Johnson, and I have assured him, not that he needs my reassurance, but I've mentioned that his report is not going to be something that's going to be gathering dust on anybody's shelf. His efforts and the efforts of his team in producing that 100-page painful-to-read report, needs to not just be read once. I've read it a few times and keep seeing new things. It's a call to action for us, and we've got a lot of work to do.

John Caher: That's great. Now we have a number of entities within the courts, and I wonder how they will be involved in this: the Office of Diversity and Inclusion, the Franklin H. Williams Judicial Commission, the Richard C. Failla LGBTQ Commission. Do all of those play a role in your effort?

Judge Mendelson: I'm glad you mentioned these long standing and really critically important entities. They were created and they exist to promote justice equity and meaningful inclusivity, and they'd existed for years before there was a Special Advisor Report on Equal Justice. So, their expertise and their experience will provide invaluable insight to us, and they are guiding our efforts as we move forward. So, while I'm leading the day-to-day implementation—and I want to mention right now that the project leaders for this within my office are Michelle Smith and Rosemary Martinez and some others. Michelle and Rosemary have been working morning, noon, night and sometimes, I'm ashamed to say, through the nights on this project. But our job is not to be front and center. Our job is to provide backbone support to the others who are on the front lines doing this work, like those existing institutions you mentioned.

And that's the second recommendation in Secretary Johnson's report. He asked us to promote existing institutions, which means giving these institutions a strong platform, giving them resources and supporting them in their fight, *our* fight, against racial injustice and other forms of bias. You mentioned the Williams Commission, the Office of Diversity and Inclusion and the Failla Commission, and they've all been working very, very hard independently and together to promote justice in our courts.

But there are others, such as the Judicial Committee on Women in the Courts and the Inspector General's Office, and I want to mention them because they've been on fire, working to promote a bias-free workplace for our courts. Our Human Resources Division has an action plan. All of the OCA entities, any one of them that you can think of — Language access. Human resources, our data people, our Division of Technology and Court Research. So many of our court leaders, counsel's office, have been working really, really hard to promote justice with this equal justice in courts endeavor.

John Caher: So, this is really a unified effort from the entire from entire court system, it sounds like.

Judge Mendelson: Oh, it is. Absolutely. All hands on deck! We've been meeting regularly with the leaders of all of those entities I've mentioned, with our experts from the Perception Institute, and other experts we're engaging. It is all hands on deck. It's at the highest level. We have our committees established in each of the judicial districts outside of New York City, as well as within New York City. They're equal justice champions and equal justice committees that are doing local equal justice work.



John Caher: Now, I know the court system is making a very concerted effort to reach out to all communities and to encourage people to apply to the court system. And we have a very, very wide range of titles and opportunities from clerical to IT, to law enforcement and everything in between. Is that key, bringing people in to address the perceptual issue that Secretary Johnson notes so strongly?

Judge Mendelson: Well, the perception is, of course, a reality for people who perceive. There is a concerted effort to reach out to the community. We failed to mention the court officer leadership, who have been at the table for every meeting and are doing remarkable work, particularly since there was some negative information in this report regarding our law court officers. Our court officers are rolling out a really comprehensive anti-bias training program.

They have created community outreach officers. They are in development with members of the rank and file of our court officer community to do this really important outreach. And together, the plan is to reach out to the communities.

We can't do this work by ourselves and say, "Okay, we're the courts. We're going to fix the courts all by ourselves. We are the courts." We won't succeed if we do it that way. So our engagement with community court stakeholders, like our legal justice partners, as well as the members of the community impacted by and served by the court is critically important.

The Third J.D. has a really nice program where they're going out into the schools to educate school children. Civics education is an important piece of our work as the courts, about the opportunities, job opportunities, within the courts. And other jurisdictions are doing different and similar things.

John Caher: This is really an exciting time, I think, in the courts. You know, there's a path forward. It seems like a great potential for success, or at least making a very significant difference here.

Judge Mendelson: Agreed.

John Caher: Judge Mendelson—*Dr. Mendelson*—thank you for your time and for all that you do for the court system and the people of our community.

Judge Mendelson: It's been a true pleasure and privilege. Thank you.