

John Caher

Welcome to Amici, News and Insight from the New York Judiciary and Unified Court System. I am John Caher.

Today we are fortunate to have as our guest, the Honorable Betty Weinberg Ellerin, the retired presiding justice of the Appellate Division, First Department. Justice Ellerin was the first woman deputy chief administrative judge for the New York City courts and the first woman appointed to the Appellate Division, First Department. She is now Senior Counsel to the Manhattan law firm of Alston and Bird. Justice Ellerin also chairs the New York State Judicial Committee on Women in the Courts, and that is the focus of our chat today. Judge Ellerin, first, what is the Judicial Committee on Women in the courts? When and why was it formed? How was it comprised?

Judge Ellerin:

Okay, to give you the answer to that we have to go back a little to the early 1980s so you get the historical perspective of how we came about.

At that time, there were some academic studies done at the University of California, Santa Cruz by a sociology professor named Norma Wikler, who is no longer with us and in those studies she raised questions about whether women were being treated fairly in the court system in California and, of course, her observations were based on anecdotal information. She herself was not a lawyer. In any event, at that time, the National Association of Women Judges was a newly formed organization, also with its roots in California, and they had a conference out there and she partnered with that group to put on a program raising these issues.

At that conference ... consisting of about a hundred people, I think, I was not involved at that time, was a judge from New Jersey named Marilyn Loftis. She was very impressed with the program, came back to New Jersey, spoke to her chief Judge, Robert Wilentz, a very progressive man. He took it to heart and said you know what we're going to do? We're going to form a task force to look into that to see whether the data supports those kinds of conclusions. Of course, all he had to do was speak to some of the women who had been around awhile. Believe me, we could have told him, yes those conclusions were very real.

In any event, the New Jersey task force reported in 1984 and it evoked a front page New York Times article which not only I saw, but several others. At that time, I was the Administrative Judge for the Courts in the City of New York and I started to get phone calls, one from the late Honorable Sybil Hart Kooper, who was President of the New York Women Judges and she said, "Betty, we must have a task force too." So I said, "I

agree with you." And Lynn Shafran who's a leader in the movement, and a couple of others looked to me to set up an appointment with the Chief Judge at that time, Lawrence Cooke, a remarkable man. He came from Monticello, a small town and was one of the most enlightened, fair people you could ever want to meet and that was his touchstone, fairness in the legal system.

When I called to set up a meeting, he gave us an appointment and we told him that we thought New York should have such a task force as well. Well, he was a little chagrined at that because he, himself, was so fair, had appointed women to committees, had appointed me, etc. He thought maybe that was sort of a criticism of him, but I took him aside privately, as I could because of our relationship, and indicated that was not the case at all and that the women really felt they needed it here in New York for others not as enlightened as he.

I got a call the next morning. "Judge" — he always called me Judge — "I listened to what you said and I am going to set up such a task force."

Well, I'm ecstatic. I have a whole list of people I know are going to be great on this task force. However, he didn't ask me. He put together a task force that was ... when I looked at it, I was sort of taken aback. He had leaders of white shoe firms, you know the Brahmins of the bar. He had legislators. He had presidents of Bar Associations. He did have a couple of leaders of the women's movement, like Fern Schair and Marge Karowe. When we indicated we were sort of upset about the look of the committee, he agreed to have advisors, and that included Lynn Schaffran, Marjorie Fields and Norma Wikler, people who were very well known in the field.

John Caher:

Let me interrupt you a second. Why do you think he comprised the task force in that way?

Judge Ellerin:

I'm getting to that.

John Caher:

Okay.

Judge Ellerin:

I'm getting to that. And they started their work and lo and behold, he gave all the resources necessary for that to committee to function. Men like Oscar Ruebhausen and Hal Fales, who had these large firms, they became not only converts, they were crusaders because they had had hearings, listening sessions, they sent out questionnaires and you know there's nobody who's a stronger advocate than, in a sense, a convert.

They realized they had never thought about this. But when they heard all of these stories about the bias against women at so many levels, they really were committed to try to root it out. So, I always say, he was right and I was wrong. He knew what he was doing putting those people at the head of a committee or on the committee. They really gave it a certain credibility that was immeasurable. It really did.

Aside from using their firms to expand the resources available to do the work of the committee, they personally went upstate, downstate ... I think they sent out 10,000 questionnaires. They had public hearings. Whatever you want, they had it. It took two years for them to come up with the report. It was over 300 pages long, documenting in exquisite detail the elements of bias against women within our court system and also touching upon the other participants in the justice system. For example, on the criminal side, the police, the DA's, etc. and the need for various resources and what have you. And they made detailed recommendations for the court system to address very specific issues.

You want me to tell you in sort of a general way, what the task force report said?

John Caher

Well, as I remember, one of the Task Force's first acts was a release in April of '86 and the opening sentence is often quoted to this day and I will quote that: "Gender bias against woman litigants, attorneys and court employees is a pervasive problem with grave consequences. Women are often denied equal justice, equal treatment and equal opportunity." It challenged the bench and the bar and the public to engage in intense self-examination and "demand the justice system more fully committed to fairness and equality." I know you've described the day that was released as a milestone in your life. Can you tell me why?

Judge Ellerin:

Absolutely. Listen, I grew up as a woman lawyer a longtime ago. I was there when I would go into court as a young lawyer and the judge would say, "You know we don't have secretaries answer the calendar." The nicer ones would ask, "Are you a lawyer?" That could be a little daunting and I saw all sorts of bias when I went out to get a job: "Oh, we can't hire you. You'll get married and get pregnant." I always used to say, "I wish you'd tell my mother that," because my mother was sure once I became a lawyer, that would be it.

In any event, I had felt that kind of prejudice at that time so, to me, it was like I was vindicated. The things that I knew were going on were now a matter of public record and once they became a matter of public record,

they could be addressed and it was the brilliance of the Task Force report that they made very specific recommendations on very specific issues.

They really came out with four major areas because while there was bias at innumerable levels, there's only so much you can do in one report. What they focused on were: one, the status of woman litigants, primarily in situations involving domestic violence and rape and also women's economic rights—how women fared after divorce and what other obstacles they faced in the economic area. You've heard of the feminization of poverty?

John Caher: Sure.

Judge Ellerin: That's very real and the fact that women, even today, don't get equal pay for equal work.

John Caher: Just to put it in perspective, but the time this report comes out, Judge Cooke I believe is retired and Judge Sol Wachtler is Chief Judge.

Judge Ellerin: Correct.

John Caher: So did Judge Wachtler... apparently he picked up that baton and kept that going.

Judge Ellerin:

I've got to tell you, we have been so fortunate in New York with our Chief Judges, Wachtler was terrific. He took the report and ran with it. I'll get to the others in a minute, but one of the strongest recommendations was to establish a subsequent committee that would be charged with implementing those recommendations, and the name of the committee was the "New York Committee to Implement the Recommendations of the New York Task Force on Women in the Courts" — that was quite a mouthful, but the idea was a perfect one.

He appointed Judge Katherine McDonald as the Chair and that was an inspired choice. She was fabulous. She was maybe 4'11" in height, but let me tell you, she was a giant in all of the ways that counted and she was a force unto herself and she was committed to making this work. The name of the committee changed with Judge Kaye. She came up with the "New York State Committee on Women in the Courts," which is a much more manageable one and of course she was wonderful in terms of supporting us, as was her successor, Judge Lippman, as is the current Chief Judge., Judge DiFiore.

They all have been absolutely committed to the work of the committee and to making sure that we succeed and that bias within our system, in so far as against women, actually bias against any group, is rooted out. So that goes to the support we got from the various Chief Judges and that tells you how our name changed to what it is now, the New York State Judicial Committee on Women in the Courts.

John Caher: There's a lot of momentum here. It starts with Judge Cooke, continues with Judge Wachtler, gets promoted again by Judge Kaye and Judge Lippman and now Judge DiFiore.

Judge Ellerin: Exactly.

John Caher: So where are we now? Is it still a problem or have we moved beyond it? Is gender bias still a pervasive problem? Are women denied equal justice, equal treatment, equal opportunity?

Judge Ellerin: We have made some progress, actually a lot of good progress. However, we also have a long way to go.

I want to read you a statement that Judge DiFiore made recently because she summed it up very well in a short paragraph: "We must continue to advocate without hesitation on behalf of women on critical issues like domestic violence, sexual harassment, fair treatment of women litigants, pay equity, family leave and on and on. There is no shortage of challenges for us to address." She's absolutely right. For example, we take a step ahead and then because of budgetary constraints, we lose that step ahead.

We had children's waiting rooms throughout the state because we recognized that poor women couldn't afford childcare if they had to go to court, whether it was on a domestic violence case, a family matter, or housing court. They had to have a place to leave their children so we were able to get the court system to spearhead having these children's waiting rooms. Then the budget crisis came about eight, nine years ago and, bingo!, most of those waiting rooms were either shut down or the hours were curtailed sharply.

For example, one of the problems that a working mother has — and today, unfortunately all mothers have to work whether they have custody of children or not — it's that they would have to take a day off from work to come in to ensure that the orders that they were granted were enforced. Delay was truly lethal to these women. It would be

wonderful to have evening hours in court. Well, the budget precludes that, unfortunately.

Now we're working toward trying to reopen many of these waiting rooms. Listen, I got District Attorney Cy Vance to agree to open one in Manhattan. The Family Courts all have them pretty much, but we don't have one in Manhattan for the housing court attendees, or for those who need to be in criminal court or in matrimonial parts. Cy Vance has agreed that his office will pay for the renovation of some space in the courthouse so that there can be a children's waiting room, for which we are very grateful, and he agreed to sponsor it for at least five years.

John Caher: That's great. Let's take a step back. I'd like to talk about your history. When did you first think of becoming a lawyer?

Judge Ellerin: I've got more I want to say about the committee!

John Caher: Okay, go ahead.

That's fine.

Judge Ellerin: Okay. One of the things that we recognized at the outset was that many judges, particularly those sitting in matrimonial parts, one, were insensitive to the concerns of women. Women's "credibility," that was always found to be a serious problem, whether it was in a matrimonial case, whether it was in a rape case. That's one area, by the way, where we've made tremendous progress, at least within the court system.

When I was a young law clerk, rape cases were treated sneeringly, laughingly even by the DAs and some judges. That's no longer the case. The DAs' offices take those cases very seriously, for which they deserve great credit, and the police as well. I attribute some of that to our work where we have held conferences. We have a lot of educational programs, but I think also many of these TV programs, that put a different spin on those kinds of cases, have been very helpful in educating the public as well as judges.

So education has always been one of our biggest functions and we do that. We're also a catalyst in many areas. For example, we recognized that there were — and this was some years ago — a lot of foreign women litigants who use our courts so they're at a terrible disadvantage, not just as women but because of language difficulties, and cultural differences.

John Caher: Sure.

Judge Ellerin:

We were very concerned about what was going on vis-a-vis the interpreters, and I have to give Fern Schair credit for this. She picked up on that and I designated her to push it with court administration. They set up a special committee for that, and they now take that very seriously.

I'm not sure we've completely won the battle but at least it's on the radar screen. They know that you have to get interpreters, one, who are not interpreting things that are not being said or are trying to, in a sense, trying to scare the woman, and to make sure that when people take the oath as interpreters they really fulfill it. There are also really problems about getting enough of the various languages, I think 169 or something. I mean this is really a monumental problem but at least it's something the courts take very seriously and lawyers know that. Do you want me to go on?

John Caher: Please.

Judge Ellerin:

We have put out various publications. The one that really is sought throughout the country is something called "Fair Speech." You know it was always a fireman, a mailman, whatever... well, the world has changed so it is a mail *carrier*, a police *officer*. Do you know what I mean?

John Caher: Of course

Judge Ellerin:

Gender neutral language. Years ago when the women's movement or the feminist movement would get very upset if you called them girls, I used to say, "Listen, I don't care what you call me, just pay me the same." But I realized they're right. What you call someone is a very significant factor. That sets the tone of how you think about the person and how you treat the person. Judge McDonald was the chair when that booklet came out and we had a wonderful counsel at that time, who retired about a year and a half ago, Jill Goodman. She's a wonderful writer and she took care of that.

We then had a booklet on potential scenarios of bias in the courtroom and how a judge could address them. We didn't give them an answer, what we did was we had various judges give proposed answers and we would distribute the book to give judges an idea about some of the ways they could address bias, and that has been very helpful. We've worked also with various bar associations and other community organizations,

like Sanctuary for Families, Safe Horizons, etc. I was a member of the implementation committee from the beginning. Judge Wachtler appointed me. I was not on the Task Force itself but I was on the implementation committee from the beginning. And I also was appointed as chair of the City Bar's Women in the Courts Committee. That also was established right after the Task Force report. So I was very into all of the elements that were stated and one of the biggest things was the delay in getting motions for interim support decided.

Judges would sit on them for months and months and here's a woman who has no other means of income, who basically is starving so she was starved into submission. Well, I got my bar association committee to recommend a court rule that those motions be decided within 30 days of submission. I want you to know Judge Wachtler had that enacted as a court rule and that's on the books.

John Caher: Wow!

Judge Ellerin Yes. Then the issue of child support guidelines was hot because there was a national law and the question was should the state pass such a law — in my view, absolutely, because that would give some predictability and some assurance that child support awards would be made. The City Bar's Matrimonial Committee was dead set against it. The Children in the Law Committee were very for it. Well, I'm Chair of the Women in the Courts Committee at the Association at that time and I must say my committee was great. They were very responsive to issues that I would put forth and when I said I think we should take a position, they agreed with me and we took a position.

The President at the time was a lawyer from a large firm who had no knowledge of this area when we met, but he was great. Whatever I said went, and he recommended it to the executive committee and after a pretty big fight, I understand— because I was not on the executive committee at that time — they passed it and that was one of the criteria that the then governor pointed to as the basis for signing that legislation. You have to come at it from multiple ways. You can't do anything in isolation because these are broadly rooted problems, societal problems. But the one thing we can do is make sure that the courts do their part to try to resolve these issues.

John Caher: it sounds like that is starting to happen, but now let's take a step back. I want to know about you. When did you first think of becoming a lawyer?

Judge Ellerin:

Well, I was lucky that I had a father who came from Europe — had he been born in America, he would have been a college professor. He had that kind of a mind. He used to talk to me about politics when I was a kid, seven, eight years old, like I was an adult. Remember, we were on the edge of World War II. He also was a union man, a very liberal guy and he talked about what it was like on the picket lines, etc.

So when I was about 12, I said I'm going to become a labor lawyer and I'm also going to become a United States senator because that's where big decisions are made. Well, neither of those came true, and I went in another direction. But from the time I was 12, I was going to become a lawyer. My mother was not happy. My father was not either because he was Depression-scarred and he said, "A secretary or a teacher always makes a living. Lawyers starve to death." Well, children don't listen and I worked my way through school and I went to law school.

John Caher:

In Law School did you experience any gender discrimination? There couldn't have been a whole lot of women in your law school class.

Judge Ellerin:

Well, I went to NYU and I must say we were ahead of the curve. Yes, we were a comparatively small group, I would say in the day session, we must have had 12 to 15 women.

I knew certain things were going to be said or I was going to be confronted, so I was prepared. The first week, some guy comes over to me and he says, "What are you here for, to get a husband?" So I said, "Well, yes, actually that's why I came, but when I saw what was available, I thought I'd get the degree instead." No one ever bothered me again. So you have to be realistic—think ahead and be prepared.

I was in a study group, mostly male, I never allowed being a woman to scare me. I always had a certain amount of self-confidence, and I went forward.

John Caher:

So you're admitted and you're still certainly a very small minority in the Bar, did you experience gender discrimination in the workforce?

Judge Ellerin:

Yes, very much so in getting a job. That was the toughest because when you went to see an employer, they were very reluctant to hire women. Ultimately, I got a job *because* I was a woman. I went to a maritime firm — a small, maritime firm— and the person who interviewed me was a young associate. I heard him going to the partner and say, "Listen, this bright, young woman here. I think we should hire her because she'll be

able to do things some of the guys can't do." And the partner is screaming, "A woman?!" In any event, they hired me as a law clerk and when I left two years later, he's yelling — the same partner — "You can't go! I'm building a department around you." But that was because I was able to do things that some of the men in the office couldn't.

I had to deal with seamen clients and when they would see me, I was a "lady." Let me tell you, they would be like scared to death, they would be like little angels so I could talk to them in a way that the partners couldn't. So I did very well there, but I knew it wasn't for me. I knew I did want to get married, that I wanted to have children and that this was not the place where I was going to be able to do it.

Fortunately, the opportunity presented itself for me to get a job as a law clerk to a judge in a court that no longer exists, the City Court. It's now part of what we call the Civil Court. It had maritime jurisdiction, so when I went to see the judge who was looking for a law clerk and he looked at my resume, he was thrilled. He said to me, "Listen, I'll swear you in now or do you want your parents to come this afternoon." I said, "Oh, no, no, I've got to give my office a couple of weeks' notice." Well, he said, "I'll swear you in and then you can give them notice."

Anyhow, he hired me and I was for some time the only woman law clerk in that court. You have a question about why I said I didn't suffer by being a woman?

John Caher:

Yes.

Judge

And that's the truth and I'll tell you why, for a funny reason, in a way: I'm a good lawyer. I'll be immodest and say that. Immediately, a seaman's case came in and I wrote a decision and it was really a very good one and they weren't used to that but I had a federal practice background and all of that. "Who helped you with this?" They'd ask me. "I wrote it all by myself" I would answer.

Ellerin:

A woman wasn't supposed to be smart. They expected so little of you that if you were good, you became brilliant, you were exceptional, and so that stood me in pretty good stead, both in the Civil Court or City Court and then when I went to the Supreme Court. Actually, I was the first woman ever appointed as the law clerk to a regularly elected Supreme Court judge in the State of New York in 1965. Would you believe that?

John Caher: 1 know it to be true, so 1 do believe it. But how did you position yourself politically to be in the position to get that?

Judge Ellerin: 1 did belong to a local political club. In those days, you had to stand in line. There were people way ahead of me, but they apparently sent this judge several people that he found completely unqualified. So in desperation so that they wouldn't lose the job, they sent me, even though 1 was not, from their perspective, in any way supposed to be getting any kind of entree to a job. And that's how 1 got it—a judge insisted on getting somebody who was qualified.

John Caher: And once you got there, you seemed to progress awfully quickly. After only three years in the Civil Court, you're elected to the Supreme Court. Within months of that Chief Judge Cooke makes you the administrative judge.

Judge Ellerin: Right.

John Caher: 1 know you're the first woman in that position and I'm sure the vast majority of the 425 judges you were in charge of were male. Were there any gender issues, or any pushback from the male judges who weren't used to having a woman boss, a woman administrator?

Judge Ellerin: If there was, 1 didn't see it or know about it. Let me put it to you this way, 1 got along very well with my law clerk colleagues. They elected me President of their association. They respected me. 1 respected them. When 1 became a judge, 1 took the same attitude. 1 never had a chip on my shoulder. 1 never was thinking, "Oh, he may have looked cross-eyed at me because 1 was a woman." That was just not my way. I'm a Jewish mother at heart and so let's say I'm the city administrator and, of course, every judge has a complaint. They would call me, "1 gotta come see you about something." I'd say sure, come in the morning and I'd have coffee and some sort of little Danish and 1 had been in the system so long that 1 knew many of them. How's your wife? How are the kids? Etcetera. By the time we got to what his problem was, all the air had been deflated.

1 have — I'll be immodest — pretty good people skills and 1 did very well with them. Beyond that, Ed Koch was the Mayor and Ed Koch wanted to use judges as his whipping people. That was a time of jail overcrowding, when Morris Lasker, may he rest in peace, a wonderful man, a federal judge, was releasing prisoners because the City had not built the detention facilities that it was supposed to. So, of course Koch needed

somebody to blame. Whose fault was it? It was the judges fault, the state judges. They weren't sentencing fast enough, they weren't doing this, etc. Well, 1 was not going to lie down and play dead and let him beat up on my judges. So 1 responded in kind, and they knew that 1 was standing up for them and for what they were doing so that gave them, 1 would say, a lot of respect for me and I'd say affection as well.

John Caher:

Now you were a founding member of the Woman's Bar of the state of New York-

Judge Ellerin:

Yes but 1 was never the president of the State Women's Bar. 1 was earlier on president of the New York Woman's Bar Association but once 1 was a judge, 1 could not be the president of the statewide Bar Association because they take political stands. A judge can't do that. However, notwithstanding that 1 never was the president, when they have their annual dinner of past presidents, and all the past presidents meet, I'm always included. I'm the one non-president that is invited and they frequently come to me for advice and what have you.

John Caher:

Now, how did the woman's bar come to be? 1 think it happened in the late '60s. Why was it formed, do you recall?

Judge Ellerin:

Yes, very well. There was a young woman president named Joan Ellenbogen, who's gone now. There was a fight within the New York Woman's Bar between those who wanted to keep it as it had been, which was just a parallel bar association where they had tea parties, or those who felt that a women's bar should have some meaning in terms of fighting for the issues that affect women as lawyers and as citizens generally.

And, of course, 1 was in the latter group. They had a contested election and a group induced me to run. 1 was not too happy about that because by then 1 had three children and was carrying a full time job. However, 1 said to myself, "You've been talking about this, so you've got to do it." So 1 did and 1 won. 1 became very close with many of the others on the other side, some of whom were younger, and we all finally agreed that we would focus on women's issues.

Well, Joan Ellenbogen went beyond that. She read the bylaws very carefully and said, "You know something? We can form a State Women's Bar based on these bylaws." 1 said, "Joan, I'm not for that." 1 said, "We're going to let some of these upstate people wag the dog? Their attitudes are so

different."

But she was committed to that. She was right and I was wrong and that's what we did. It was almost like a constitutional convention the way we met, who was going to have how many votes, what issues the state would take, what issues the local would handle. Her attitude was — and she was absolutely right on this — we could only be a strong and meaningful voice if we were united statewide. That was true.

At that time, I was the City Administrator so I had the Chief Judges' ear, that was Judge Cooke. He used to meet quarterly with statewide bar associations, the New York State Trial Lawyers and the New York State Bar Association, so I said, "Judge, you know there's another statewide group too that you have to include: The Women's Bar of the State of New York." And so they were one of the statewide bar associations that were included. That was terrific because they were able to present their agenda along with the other bar associations. As I said, he was wonderful on these issues.

John Caher: So the organization made itself very relevant, a player?

Judge Ellerin: Absolutely.

John Caher: Okay. In the little bit of time we have left, just some parting words of advice to women law students and new admittees, what should they know about the pioneers like you who paved their way?

Judge Ellerin: That it wasn't always easy, that they are inheriting a different profession than when we were there, that we fought to make certain things better and right for them, but that they also are going to confront some obstacles because they are women. The pay disparity is still very much there. But never use the fact that you're a woman ... never allow that to stand in your way of doing your best as a lawyer and having confidence in yourself as a lawyer. Find your own style and perfect it and be prepared to speak up. Never allow a slight, a serious slight, to go unanswered, because as long as you do that, the fight is never won, so to speak.

And I am happy to say, I have seen so many wonderfully bright, young women lawyers right here in the firm where I am now. I mean, I really am thrilled to see them and what they produce and how much confidence they have in themselves. But I also say, don't forget your poorer sisters, the ones who can't speak for themselves, because as long as any women are an underclass, all of us are in danger. I really feel strongly about that.

John Caher:

That's a great way to end up and I really appreciate you taking the time to talk to me, Judge Ellerin. Thanks for listening to Amici. If you have a suggestion for a topic on Amici, please contact me, John Caher, at 518453-8669 or send me a note at JCAHER@NYCOURTS.GOV. In the meantime, stay tuned.