

**Women in the Courts**  
***An Historic Perspective by an Historic Judge: The Hon. Betty Weinberg Ellerin***

John Caher: Welcome to Amici, News and Insight from the New York courts. I'm John Caher.

Today we have a very special and unusual program in two ways. One, we have both audio and video for this podcast. And two, we have a very special guest, a returning guest and a very historic guest. And that is the Honorable Betty Weinberg Ellerin, the retired Presiding Justice of the Appellate Division, First Department.

Judge Ellerin is back with us to discuss a fascinating new report on gender fairness in the courts, a topic that she knows a little bit about. 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 & Bird.

Judge Ellerin also chairs the New York State Judicial Committee on Women in the Courts, and that is the focus of our discussion today. But before we do that, if I may, I'd like to bring some context to this discussion. Judge Ellerin, all of us in the courts are pretty familiar with who you are and your career and your accomplishments and your contributions, but I'd like to peek behind the curtain a little bit if we could and ask you: Where are you from? What's your story? Tell me about your childhood and how all that relates to where you are today?

Judge Ellerin: I was born in the Bronx of immigrant parents, both of whom came from different parts of Europe. We moved to Connecticut. It was the middle of the Depression and my father got a job in Connecticut, at a place called Derby. That's the Naugatuck Valley about 10, 12 miles from New Haven. And that was where I grew up until my first year of high school. I went to grammar school there, my first year of high school. And that was a very nice place to grow up in – except that I'm Jewish and it's a very anti-Semitic area.

And that had a great impact upon me. It colored my attitude about how I felt about other minorities because I was, in that context, a minority and I felt the prejudice of the nasty comments, what have you. But in any event, we moved to New York when I was going into my second year of

high school, which was the right time, because all the other kids were going into high school from junior high. And I went to a school called James Monroe in the Bronx, a school of well over 600 students.

I graduated as valedictorian, which was very nice, and should have really given me an open ticket to many schools. My family didn't have much money, unfortunately, but also, I graduated in 1946. That was the year that World War II ended. And so, all the veterans were returning, but I wanted to go out of town to school, that was a dream of mine. And when we were in Connecticut, my parents had friends who had children who went to schools like Ohio, Indiana, etc. I had no guidance, but I sent letters to those schools, and I got a scholarship to Indiana University.

So, I went out there, gorgeous, gorgeous campus. That was the first week. I loved it. Second week, I found out it was Klan territory. Well, that didn't sit too well with me, and I was constantly marching. After a year I got out of town, came back to New York, got a partial scholarship at NYU, which was a school I was happy to attend for a couple of reasons. One, I was delighted to be in the city atmosphere with the excitement, the political dynamism and what have you. And it was a place where I could get two degrees in six years, the first year at Indiana, and I took extra courses and I did, I got a BA and an LLB.

And for me, the extra year's tuition was important because I had worked my way through school, working in the summers, working at various jobs during the year. Then I graduated from law school and NYU did not have a particularly great placement service. I must say this about NYU: For the most part, it was a friendlier atmosphere for women students than many of the other law schools. NYU was ahead of the curve in that regard, and I never felt out of place there.

I had a couple of incidents with some of the young men, but I had a lot of moxie. I remember early on one of the guys came over and said, "What are you here for? To get a husband?" Now I expected that question, so I said, "Well, to tell you the truth, yeah that was why I came. But you know, when I saw what was available, I thought I'd get the degree instead." Well, I'll tell you, nobody ever bothered me again!

I had a study group, young men, we've remained friends for many, many years. So law school I viewed as something I had to do in order to become a lawyer, something I had wanted from the time I was about 12 years old, because I wanted to be a labor lawyer, I was going to help people. In any event, when I got out of law school and went looking for a job, the fact that I was a woman suddenly became very evident. I went on

a lot of job interviews, and I heard things that I know wouldn't happen today. "Well, we can't hire you, the clients wouldn't like it," or those who didn't use that line, "You know, you'll get married and have children." And I used to say to myself, "I wish you'd tell that to my mother," who was very concerned when I went to school, that that might not happen, although I had three wonderful children.

In any event, I ultimately got a job *because I was a woman* with a maritime firm. The person who interviewed me was a pretty young guy, and he thought it would be very helpful to have a woman in the firm. When he went in to tell the senior partner that there was somebody he wanted him to interview, I heard the scream, "A woman? Are you crazy?"

In any event, two years thereafter, when I told that partner I was leaving, he said, "No, you can't leave, I'm building a department around you!" And I was helpful, I was able to do things in the firm, or in terms of investigating things, in terms of dealing with the seamen that were very helpful. The seamen treated me like a lady and so I could tell them, when we'd get a settlement, "This is your share. This is the firm's share." They were like lambs. When one of the partners or one of the other men would do it, you'd hear screams.

So, I was helpful. And it was a wonderful body of law, because I was in the federal courts a lot. Now in the federal courts I would... And this was true in most courts, when you'd come in as a young woman in those days, and I don't think it's any secret about how old I am. I'm 91. So you can imagine how many years ago that was. The first question the nice judges would ask was, "Are you a lawyer?" And I'd say, "Yes, Your Honor, I am." And that would be it. The not so nice ones would start out with, "You know we don't allow secretaries to answer the calendar." And then I'd have to explain that I was a lawyer.

Now, that really was not very nice, but it was something that we accepted, the few of us who were in the profession at that time. As time went on, I had the opportunity to become a law clerk to a judge in a court that no longer exists. It was called the City Court of the City of New York. Now this judge, his name was Harry Frank, was a sort of avant-garde guy. He liked the idea of being different, and the fact that I was a woman was something that he liked, because most of the other judges, actually all of them, had men law clerks.

So, when he interviewed me, he looked at my resume, "Oh, do you want me to swear you in now or you want to wait for your parents and husband?" I said, "No, no, I have to give my firm notice." So, he said, "Tell

you what..." because there were some political overtones to it... "I'll swear you in now and I'll give you two weeks to clear it up with the office." And that began my career in the court system.

That was a court that had jurisdiction up to \$6,000 in civil cases, but it also had unlimited jurisdiction in maritime cases. So that was a natural fit. And I remember the very first case that I had in that court. He was hearing a maritime case and he said to me, "Come upstairs, and I want you to sit in the courtroom." And I'm upstairs and a witness is on the stand, a first mate. And he's talking about the rope and he's making these motions, and nobody can get the word out of him. So, I raised my hand, I said, "Judge, I think he's talking about kinks in the rope."

Well the place broke up, because of all of these guys who were maritime lawyers didn't know what the guy was talking about. And I wrote under his name, some very interesting decisions, some in the maritime field and some in other areas. And I'm going to be very honest, being a woman was helpful. They expected so little from a woman lawyer, that if a woman was competent, if a woman was good, she was brilliant, she was exceptional. And that used to be the word, "Harry Frank's got this exceptional law clerk."

And, by the way, we were called law secretaries in those days, notwithstanding that I was the only woman, but law secretaries. And as years went by, and we were in the Supreme Court, I remember I would get calls from lawyers, "I would like to speak to the judge's law secretary." And I'd say, "This is the judge's law secretary." "No, no the law secretary," I'd said, "No, counsel, this is judge..." "No I mean the man." I say, "Counsel, women have been admitted to the bar of the state of New York since 1869. This is the judge's law secretary. Can I help you?"

But that was the kind of thing... I didn't have much problem with the lawyers though, they were smart enough to know that the judge's law secretary or law clerk, if you wish, was a pretty important person in chambers, and they all acted for the most part with great respect.

John Caher:

That's good to hear. Now, let me take a step back for a moment. I'd like to go back kind of a long way. You were a young woman, may have even been an attorney by that point, when *Brown v. Board of Education* was decided. But your activism, your interest in these sorts of issues, your experiences as a child experiencing anti-Semitism. I'd like to explore that. What were your thoughts at the time? What was going through your head? Were you aware of all this?

Judge Ellerin: Let me put it to you this way. I started marching when I was 16 years old. I was very active in high school clubs. When I got to college, I became president of the NYU Democratic Club. I was always marching against injustice, including racial injustice. At Indiana, that was what soured me on Indiana. There was a conference on racial equality. And every restaurant in town put up a sign: "We cater to the white trade."

While it was good for my diet, but I never stepped in another restaurant in that town. No way am I staying here. They can keep the rolling, beautiful hills and beautiful buildings. This is not for me. And I was marching there as well, for the African American, although they were called at that time the Black fraternities and sororities. And I was not a sorority person, but they were not eligible to be part of the group and I marched against that.

Whenever there was an issue like that, I was marching. Actually, once at NYU I was marching and I'm handing out a leaflet and my professor passes by and I hand out the leaflet and she looks at me and said, "Miss Weinberg, good to know where you are, because I missed you in class today." But I was an activist even then.

John Caher: Did that come back to bite you in any way? Did that-

Judge Ellerin: No. I have always been very outspoken about those kinds of issues.

John Caher: And that outspokenness really comes from your own experiences, right?

Judge Ellerin: Yes, and because I think it's the right thing to do. I wanted to be a labor lawyer because my father had been a union person when he was younger, and I wanted to help working people achieve proper status. Trouble is, the lawyers who represent the unions were not waiting with open arms for me. It was a different sort of atmosphere by the time I graduated from law school; I had an idealized version of what union work would be like.

John Caher: Now in 1986, the New York Task Force on Women in the Courts issued a report concluding the gender bias was pervasive, a pervasive problem in the courts, and that women were frequently denied equal justice, equal treatment and equal opportunity. Now, your committee revisited that issue, I don't know 30, 40 years later, and issued a report in late November, showing that there has been progress, but we have not yet reached the promised land of equality. Is that accurate?

Judge Ellerin: First, let me tell you how the first report came into being.

At that time, I was a City Administrative Judge and had great rapport with then Chief Judge Lawrence Cooke from Monticello. He was truly a man committed to justice.

And there were writings at that time about the fact that women were not being treated properly within our court system. New Jersey had done a report, and a group of activist women contacted me, and I said, "Yeah, we're going to go and talk to the Chief Judge." And we did and we spoke to him and told him, "We need that kind of a taskforce too, to explore whether there is bias," notwithstanding that we knew there was but we needed to support that with data.

And so, he's a little taken aback, because he was such a fair person himself. He thought that was sort of a criticism of him. But after I spoke to him, I got a call the next day: "Judge, I listened to what you said, and we're going to have that taskforce." And he was wonderful. He appointed a taskforce that included people from big firms, legislators, educators, what have you, but actually very few of what you would call people committed to gender equality. I was a little disappointed, but he was much smarter than I, because those people, when they are converts, believe me, they go all the way and may have an impact far beyond what those who are known to be sort of prejudiced in an area can have. And they came out after hearings, after meetings, with the report that, as you say, said that gender bias infected all areas of our court system.

And one of the recommendations was the appointment of a permanent committee to follow the progress... That report had a lot of recommendations as to how to address the incidence of bias that pervaded the court system. And it said there should be a committee to oversee the implementation of those recommendations.

Now the Chief Judge to whom the report was given because Cooke had to retire, was Sol Wachtler. And he took it very seriously. His Law Day program right after the report was presented to him was on that issue, that he was committed to seeing that those recommendations were fulfilled, and he did establish the committee. I think it was called the Committee to Implement the Recommendations of the Taskforce on Women in the Courts. That was quite a mouthful.

Ultimately, I think it was Judge Kaye who changed it to the New York State [Judicial] Committee on Women in the Courts. And the first chair of that committee was the Honorable Kathryn McDonald, the Administrative Judge of the Family Court. As I said in the report, in the current report, that was an inspired choice. She was fabulous. And she

came up with the idea that no one statewide committee can really have eyes and ears everywhere, and that you really need input from the localities. What's going on in the various districts?

And so, she was the one who initiated the local committees. We have a local gender fairness committee in every one of the judicial districts within the state. And in a sense, they are the eyes and ears, and we have an annual conference, that in a sense compiles all of what we hear from around the state, and we try to incorporate it in what our focus is for the following years.

Now, at one of those annual meetings about three years ago we had a big discussion at the annual meeting. So, we decided it's time maybe for another taskforce or for another report. And, as usual, in the court system, money was very scarce. But this is one time, I'm not a big technology lover, as everybody who knows me knows, but I appreciate that in this instance technology was very helpful. While we couldn't have the meetings and the impressive investigatory efforts that the original taskforce engaged in, we could send out a questionnaire to every lawyer in the state of New York.

And so, what we did is we prepared the questionnaire that in many ways was similar to the original one. We sent out the questionnaire to every lawyer in the state of New York, who gave an email address. And we got back, well over 5,000, close to 6,000, responses, which is a pretty terrific number. And that gives you a really pretty accurate assessment of what the problems are.

John Caher: What were the major findings? What did you learn?

Judge Ellerin: Okay, let me start with the good news. I like to do that. When the original taskforce report was issued, women judges throughout the state were few and far between, which was very unfortunate. The fact is that when I was appointed to the Appellate Division in 1985, in the First Department, which covers Manhattan and the Bronx, probably more women lawyers in that area than anywhere in the country, I was the first and only one in that court for 11 years. That's pretty sad.

At the time of the first report, in 1986, you had Judge Kaye on the court of appeals. But other appellate courts were pretty barren in terms of any women members. And women judges throughout the state, particularly outside of the City were few and far between. In the City, the Family Court had quite a few... Well, fast forward to the second report, 30 years later, the number of women judges is astounding. We have had periods

where the Court of Appeals, our highest court, has had a majority of women. The court where I was alone for 11 years, today has a strong majority of women. The Second Department has women, and even the Third and Fourth, which are outside of the city, have multiple women. Thirty years ago, I would not have believed it were possible. And to me even more important at the local levels, you have women Administrative Judges, and in the non-judicial sector, we have court officers, court clerks. Listen, when I came into the system, they were pretty uniformly men.

Once in a while there'd be a woman, but today many, many of them are in leadership positions. And I think that has been terrific. And that was reflected in many of the answers that we got. All the data indicates, as far as judges are concerned, judges do not demonstrate bias against women lawyers. And court personnel have improved in that regard remarkably.

Unfortunately, other lawyers, and I guess that's for the most part men lawyers, do show bias towards women lawyers and to women witnesses and litigants, almost to the same extent that they did 30 years ago. And that's very distressing to us, I must say that. Also, credibility. When you go to court for a case, credibility is critical. Now, the report indicated that women lawyers and litigants and witnesses are given less credibility. Lawyers really take advantage in that area and that's terrible. That's something that interferes with a just result—that you take two witnesses, one is a man, expert witness, the other's a woman, and you automatically give her less. Now, I'm not saying that it is a majority, an overwhelming majority, but it is sufficiently concerning that we have to be aware of it and seek to eliminate it. As I said to you, judges were not, I hate to use the word “guilty,” but judges didn't engage in untoward conduct toward women lawyers, litigants, etc.

But the one area that we fault judges on is that if they see it happening by lawyers or by others, they don't necessarily intercede, and they control the courtroom. They have an obligation to intercede, both in the courtroom and, frankly, within the profession itself. After all, judges are the leaders of our system of justice, and they have to set the pattern.

There are also other areas where there have been improvements. For example, in terms of the issuance of orders of protection, where a woman, and in most cases it is women who are the victims of domestic violence, there has been a big improvement on that in terms of how the police address it, and how it's addressed generally.



One of the things that is a great concern is that the courthouse does not have safe spaces for those victims. When a woman comes back on the initial order of protection day, there are not safe spaces, and that can be very dangerous.

We make a lot of recommendations about posting information in courthouses—where to report incidents of discrimination or of abuse or maltreatment, and that's important. The public has to be aware if something is wrong, there's got to be a way to report it and report it easily. And we've made very specific recommendations and we're now in the process, under the aegis of Judge [Edwina] Richardson-Mendelson of trying to implement many of those recommendations.

An area to me of particular concern is the support provisions upon termination of marriage. Some legislation has been passed over the course of the years that in my view, and the view of several judges and others, does not properly take into account the length of a marriage and the realities of the ability of a woman who's been out of the workforce for many years to in fact be able to obtain appropriate employment.

And the statute is not very sensitive to that nor does the statute, as to equitable full distribution or support, give appropriate emphasis to the value of work that has been traditionally considered women's work. The tort lawyers in New York City, pretty smart guys and women, they know how to lay out what it costs to do all of the tasks that an ordinary homemaker does, or a caretaker does. They can assess an economic value to it.

But that's in their tort cases, a limited number of cases, and that has not been accepted system wide. And it's not reflected in support awards or in equitable distribution, or when a woman is injured. If she doesn't get the right lawyer, juries don't look upon that kind of work in terms of its economic value. These are just a few of the issues.

We've come quite a way, not far enough. We still have a way to go. And we are not giving up. We believe in a truly fair and equitable system of justice at every level. And that means women are entitled to that same standard as are their counterparts.

John Caher:

One of the parts of the report that intrigued me is you're calling for more human trafficking courts. A dozen years ago or so New York enacted what is supposed to be maybe the strongest anti-trafficking law in the nation, and it seems looking at the numbers from the Division of Criminal Justice Services that, that may have fired blanks. I mean, in 13 years, we've had a

grand total statewide of 127 convictions for sex trafficking, 103 of them in New York City. So roughly 10 a year. So, either we don't have a problem, or we're not really addressing it.

Judge Ellerin:

Believe me, you have the problem. Listen, I have always said, every pimp is a trafficker. Let's be honest, that's what we're talking about. And that's obviously a very complicated area, I sat in criminal court and I'm going to tell a tale out of school. I was considered a pretty liberal judge. I didn't throw people in jail unnecessarily. Legal Aid liked to appear before me, let's put it that way.

However, when I would get a pimp in front of me, listen, I would put those guys in. The problem was they have such control over the poor women that they traffic. But I used to say, let those, pardon me, let those terrible people know what it's like to be back there, because the prostitutes were incarcerated. And I was always big on having services for prostitutes, to try to get them out of that life wherever possible. It's a terrible problem, and part of the problem is DAs are confronted with the difficulty of getting witnesses. And listen, we have a due process system. You do have to have evidence. We don't have the trafficking courts throughout the state. I was a big proponent of that under our last Chief Judge, and he started a couple of them. But again, economics interferes.

Many years ago, there was a committee started, I think, by Judge Kaye, on women and children. Ellen Schall was one of the co-chairs. So, she calls me up. "Do you have any ideas?" And I suggested, "What's terrible is, many of the low-income people have children. Listen, a woman can't afford to hire a babysitter, so she can lose her apartment because she can't answer a call-in housing court. We've got to have waiting rooms or nurseries."

She says that's a great idea and they were started in many areas. For example, Suffolk County, had one of the best. We had one in New York County at 111 Center Street. That's the civil court building. And we were doing pretty good. They were expanding hours, and they served a wonderful purpose. The Family Courts still have them. And they're obviously very critical. The litigants could leave the children at these nurseries, waiting rooms as you will, and they could go off to the various parts. Then came 2007, with the recession, and of course the hours were reduced.

I remember the then-Chief Administrator was Judge Pfau. I remember meeting with her and with the president of the State Women's Bar, and she made a commitment when the budget allows, that will be one of the

first things we'll do. Unfortunately, that has not come to pass because of the budgetary restraints, but that's an important issue. And we're trying to find creative ways to perhaps incorporate community involvement.

Another thing, the fact that you would want a lactation room for a new mother. I didn't even think about that and I had three kids during the time I was a law clerk. Today, a lot of women lawyers and women judges and women court personnel are new mothers. They want to continue with their careers to work. All they need is a lactation space, because more and more there's natural breastfeeding. This is something a little money could provide. Pods would be okay for this where space is limited.

And another thing that may sound amusing, baby changing tables. Listen, you go into some of these courts, and you see a baby being changed on the bench outside of the courtroom. Now, that's not really good for the baby, for the parent, etc. Every bathroom, male and female, should have a baby changing table. The court system doesn't own the buildings in which we operate. We are subject to the whims of those who do. Money becomes a predominant factor. But that, to me, seems pretty easy, and certainly in new buildings, there's no excuse. Put a baby changing table in the bathroom. I think that's manageable.

John Caher: It sounds like you have a mix of recommendations, some of which I would say are quite easy to achieve. Some which require legislative changes, which are a lot harder to achieve. And some that require some financial commitment, which in the middle of a pandemic may be difficult to achieve. But otherwise, I don't think we're talking a whole lot of money. Is that correct?

Judge Ellerin: Well, it depends on who you talk to. Talk to me, and I'll say it's not too much, because what you're seeking to correct is so egregious, that whatever that amount is, it's critical. One of my concerns is supervised visitation. A few years ago, an upstate DA said to me, "the court provides that, don't they?" I said, "unfortunately, they don't." He looked shocked, like this is something the court should provide. It should. This becomes a big thing. There are supervised visitation entities where you have to pay if there's no appropriate family member available. It's a very complicated thing which again is about money. When you put together all of the various needs for money, especially in today's climate, we're going to have to come up with some creative ways. We may have to have cake sales.

John Caher: That's a great way to put it. Judge Ellerin, you've been promoting equal rights for 75 years, and I don't get any indication you intend to slow down.

Judge Ellerin: I hope not. I'll keep trying.

John Caher: Thank you for your time, and thank you for your service.