

Promoting Diversity in the Courts: Marilyn Marcus

John Caher:

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

Thirty years ago today, the Hon. Judith S. Kaye became the first female Chief Judge in New York State history and went on to lead the Court of Appeals and the state judicial system for a record 15 years. Judge Kaye was also the first woman to serve in the state's highest court when then Governor Mario Cuomo defied conventional wisdom, as well as the Woman's Bar Association, and plucked from obscurity a 44-year-old commercial litigator with no judicial experience, no political experience, and no experience in the public sector.

Even Governor Cuomo knew very little about her, but after interviewing her twice, the governor was impressed. "I thought she had the capacity to not only be a good judge, but a great judge," Cuomo told the *New York Law Journal* in 2000, adding, "It very soon became apparent to me that I was right."

Judge Kaye died in 2016, but for this special Women's History Month edition of Diversity Dialogues, we are pleased to welcome back to the program Marilyn Marcus, Executive Director of the Historical Society of the New York Courts. Marilyn contributed to a biography of Chief Judge Kaye and was the fly on the wall when the Historical Society conducted a series of oral history interviews with Judith S. Kaye.

Marilyn, thank you for coming on the program. Let's dive right in. Twenty years ago, Chief Judge Kaye and Judge Albert Rosenblatt founded the Historical Society of the Courts. And I know over the years you had many, many interactions with Judge Kaye. What did she mean to you personally? What did she mean to the Historical Society?

Marilyn Marcus:

Well, thank you John for inviting me back. Nothing could have enticed me more than your telling me that we might focus on former Chief Judge Judith Kaye for Women's History Month. What did she mean to the Historical Society? What did she mean to me? She meant everything to the Historical Society. She engineered our founding, she modeled us as a membership organization similar to the Supreme Court Historical Society so that we could have autonomy through our own financing. But unlike the Supreme Court Historical Society, she envisioned that the Historical Society would represent all the courts in the state. And that's really been our founding principle.

For me personally, she was such a role model. And I'll tell you a little story. It started back in 2005 when I was hired for this position. I was a practicing lawyer but didn't have very much to do with the courts. And the idea of meeting her, the Chief Judge of the state one-to-one, was very intimidating. However, I walked into her chambers in the MetLife building and was immediately embraced. She took away those fears. She was open. She was approachable, and we began a relationship that lasted until her death. In fact, she and I had dinner about a week or two before she passed away. And through that I learned so much.

You told me, John, your own personal story with her, and I think that everybody within her court family, everybody she touched had a personal story to tell. She was a consummate judge, and lawyer, and journalist, and that journalism background was always present. But she also was able to feel comfortable to just be a woman and to go by her female instincts to be nurturing, to be caring. What she taught me was to just try as I entered this new job, new phase of my own life, to trust your instincts, to be the person you are, to be feminine if that's who you are, and to be excellent at what you do.

John Caher: Well, she obviously meant a lot to you as she did to me. And one of the things that jumps out at me in the oral history is it captures her — and this goes back to your first meeting with her as well — was her capacity to be elegant and even regal but at the same time imminently approachable, and down-to-earth, and easy to talk to.

Marilyn Marcus: Yes, she was. And you had asked me when we first talked to focus a little on her oral history, which you've gone through, and which is available on our website both in transcript form and in video. Just to give you a sense of the magnitude of it, it was done in four sessions at her office, which at that time was at Skadden, Arps. And it covered her early life, her move to the bench, and then her court years on the Court of Appeals.

Of course, she stands alone as the first woman on the Court of Appeals, the first female Chief Judge, and the longest serving Chief Judge. So it's an amazing history. And to give you a sense, she chose two of her former clerks to do the interviews, Anne Reddy who did the early years and her personal life, and Robert Mandelbaum, now a judge, to talk about her Court of Appeals years. I did have the privilege to sit in for all of that.

Just on a personal note, one of the things that struck me as I sat there and listened was what her office was like. Her office had all of her photos and mementos of past years. And what you're focused on was a full wall that had hundreds of photos of people in her life, her court people, her

family people. This was the woman who kind of viewed herself as the matriarch of this very large organization and that everybody in it was part of her family.

And the other thing that was so remarkable about her goes back to her journalism background. She spoke not in words, she spoke in paragraphs. Everything came out clear, defined, elegant, as you said John, and perfectly thought through. And that was an amazing message to take away from that.

John Caher: The oral history is a true treasure and I will include a link to it at the bottom of the transcript. But let's take a look at the big picture taken as a whole. The oral history amount to a 277-page transcript, which is fascinating reading in itself. But taking it as a whole, what emerges about the woman, the wife, the mother, the person, the lawyer, the judge who was a truly historic figure?

Marilyn Marcus: Well, I think I've talked about her as the human, the person, the personality. As a judge, listening to how she built her record I came away with such a feeling of the forward-thinking of this judge, of the visionary approach of this judge. It wasn't only about deciding cases and administering, it was about the big picture for her, too. During her tenure, she formed new courts. Again, taking that very humane approach of saying, "Well, the court's system of punishment and justice may not work in all situations. So let me start a court for young people. Let me start a court for others. Let me start a court in neighborhoods that can think of other alternatives through the judicial system."

That was one thing that emerged loud and clear. And also her love of history, of legal history, and of her desire to bring it to the public so that the public can learn from it. We did that in so many ways together.

I would say one other thing that emerged from the oral history for me was the fact that she was a consensus builder always, and on the bench a consensus builder. She really tried to get her decisions to be built on consensus as much as possible, to get as many as she could to find that middle of the road, to find that respect on both sides, and she did it time after time. I think she represents a kinder, more inclusive time. And with all that is happening in courts across this country at this time, we can look back and not only remember it fondly, but hopefully learn from the way she adjudicated from the bench.

John Caher: What an excellent way to put it. And you mentioned the educational benefit of the oral history with Judge Kaye, but hers is one of only many,

many, many oral histories that the Historical Society has compiled. I believe you've got biographies of all current and former judges of the Court of Appeals, including the 10 women who've served on the court since Judge Kaye became the first.

What sort of things can a researcher, a student, just someone who's interested, glean from reading these biographies that you've compiled?

Marilyn Marcus: Well, there are certainly the biographies. We certainly have that, but we have lots of other things. Let me if I could just take a minute to tell you all the ways I think we present the legal history and then maybe talk a little about how the resources are used. So we did take oral histories of really only three women so far and certainly intend to expand on that, but the bios exist and as more women come on the bench, that list of female bios will grow.

In addition to that, we've taken lots of videos, and I want to point out one special one for me. And that was one where I conducted interviews with all of the women sitting on the bench or formally sitting on the bench at a court moment in time, which was 2013. Judge Kaye, who was sort of hosting it, moderating it. And it was Carmen Ciparick, it was Vicky Graffeo, it was Susan Read and Jenny Rivera. And to see how these women bonded and became role models for each other through these oral histories that they told was I think very, very powerful.

We also have two series going that really brought some very amazing women to our organization. After Judge Kaye passed away, we started a series called Women in the Law that has brought women talking about their issues, talking about their successes, talking about their paths to law to the public. We've done some great programs there and I love seeing in the audience lots of young women who come to sit at the feet of these women who've made it through to a certain point.

And the other was a series that I'm very proud of where we partnered with the Supreme Court Historical Society and brought justices to our organization in public programs. So we had Ruth Bader Ginsburg twice, we had Sonia Sotomayor, and we had Elena Kagan. And these programs are memorialized in our videos on YouTube and our website. These women stand as role models, women who talked about their challenges, who talked about their road to the court, and who stand I think for young people and the younger generations as figures that they can look up to.

As far as scholarship, I would say that the website has grown with all of these resources, both our journal, *Judicial Notice*, which has done many

stories on women in the law, and through our videos, our podcasts, the oral histories. It stands sort of like a virtual library, so it's a resource for scholars. They can come find what they want about women of the past and other events, cases, other legal history. It's our particular lens. We do often have scholars come to participate in our programs, and also to ask questions, and to find out about our resources.

John Caher: Now, most of the people you mentioned, maybe all of them, are famous judges, but your Woman in the Law project I think encompasses much more than judges. I know you've done oral histories or biographies with other legal luminaries, people like Maryann Saccomando Freedman, the first woman to have the New York State Bar Association, Helaine Barnett who's devoted her career to equal access to justice and legal aid, and I believe was a classmate of Judge Kaye's, and Charlotte Smallwood-Cook, New York's first woman district attorney. So these are people who are not household names, I guess. What do they tell us? What can we learn from their stories?

Marilyn Marcus: Right, right. I have to say Charlotte Smallwood-Cook was such an interesting oral history that we did. I got to know her a little bit in preparing for this and listened in to the history, which was done up in Upstate New York where she comes from, really far up in the Buffalo area. Here was a woman, a lawyer, a young woman, who was in her early 20s and she was tapped to run for DA in a very conservative area up there. And she was basically laughed at, but she persevered, and she became the first elected female DA in the state. What a role model she is, and just a regular woman, as you say.

Another interesting figure that we've been working on recently with John Werner, the former clerk at 60 Centre Street, was a woman known as the "Tombs Angel," Rebecca Salome Foster who went into the prisons and ministered to the prisoners, trying to help them through their crises, trying to get them out of jail where she could into better conditions.

And then of course, in present day, people like Helaine Barnett, who sat on our board for so many years. Here's a lawyer who devoted her career to access to justice. And Maryann Saccomando, who became the first female president of the New York State Bar Association. So yes, the average woman can move forward, and I think it's a very positive story, I think it's a story of progress.

John Caher: I agree with that. I'm going to turn to a subject that I know will make you a little bit uncomfortable and that is you. Now, I've known you for many years, and yet I know very little about you. I've tried to dig out details on

the internet and social media, and I've found very little. I'm beginning to wonder if you're in the witness protection program!

But I know you've been executive director since I think 2004. I know you're a lawyer, but I don't know anything else about you. So give us a peek behind the curtain? Who is Marilyn Marcus? Where do you come from? What did your parents do?

Marilyn Marcus: So John, you're right, I do prefer to work from behind the curtain. Recluse, no, I would say not a recluse, but yes, from behind the curtain. So, I grew up in Mount Vernon, New York where I went to elementary school and high school. I spent summers as a kid in the Catskills. And when I got to know Judge Kaye and I realized that she grew up in Monticello, New York, which was a place as a kid where I went often, and even probably went into her parents' store. So that was something we share, a lovely memory about Monticello, New York.

Also, another thing about Judge Kaye, here she came from this sort of rural area and made it to Barnard and on from there, so another story in that. Then I went to NYU. I graduated with a major in history, and a minor in education because my mother always told me you needed something in your back pocket. After that, I went to SUNY Albany for a master's. I loved history, I always loved history, it was my major and I was encouraged by my professors at NYU to pursue it.

And so I went to Albany, I had a little teaching fellowship that helped with covering the costs, and that trusty teaching license came in handy then. I was the first college grad in my family. My dad owned some shoe stores, small business, and my mom was a homemaker. Then I guess I was at a crossroads. I had to decide whether to go on for a PhD in history or law school. Those sort of were the choices that I thought I should pursue and I really was torn.

And I think one of the things I love about my job now is that, yeah, I'm a lawyer, but I'm also working with and sort of a historian of the unprofessional kind, and it's a real love. I had a professor in my master's program who said to me, "Look, you love history, you're good at it, but you have to understand that you'll need to go anywhere a job comes up." It was already becoming difficult for grads to find positions and so I decided to go to law school. I went to Brooklyn Law School and that's the background a little bit.

John Caher: So it sounds like in this position, you were able to find the job that combined your interest in history, your interest in education, and your interest in the law, all in one neat package.

Marilyn Marcus: Yes, it took a while certainly. When I graduated from law school, I was lucky enough to get a clerkship with a federal Bankruptcy Judge, Roy Babbitt, who I loved. I loved that opportunity. That was one of my favorite things being a lawyer, just kind of sitting in chambers with the judge after having sat in the courtroom with him to hear a matter, and hearing how the wheels of his head worked, and then getting an opportunity to write something up for him as a draft opinion, and then sitting there while he just took it and spouted the opinion orally to his secretary who took down the notes.

And I learned so much from my own mistakes, my own maybe intellectual thought that might have gone in the wrong direction, and he corrected it. So that was a wonderful experience. And then I worked at law firms for a number of years starting out with some of the bigger white-shoe firms and moving to smaller firms. And then as I raised my family, I realized that I just wasn't working. And I started practicing from home doing real estate, and small business matters, and small bankruptcies, things like that.

Then there came a time the kids got a little older and I got interested in nonprofits through sitting on a board. It was the Jewish Family Services, which helped me find a spot for my mom, who needed some adult center to go to. And so through my own family needs, I got involved. I found I love nonprofit work and I found an ad for this job. And when I saw the ad, I said, "Wow!", this is just as you say, bringing back together my love of history and law. And so you're right, it was a really good fit.

John Caher: So you just applied for this job from an ad? You didn't know Judge Kaye? You didn't know Judge Rosenblatt?

Marilyn Marcus: I knew nobody. I knew nobody. So the first thing I needed to do was to meet with Sue Nadel, who at that time was a court staffer at the Judicial Institute, and had been asked to take on some of the responsibilities of doing the startup work of the Historical Society that Judges Rosenblatt and Kaye had initiated. She was arranging some of the programs, she was doing some of the publications, and it couldn't work, she couldn't have two jobs. So that was when they decided that it was time to bring in an outside executive director.

Then I met with Judge Rosenblatt and found him to be the most charming, open, easy person to be with. How lucky I am that I got to work and continue to work with Judge Rosenblatt, who continues to be the essential force in the Historical Society. How lucky I am, John, that I've spent my years with people like Judge Kaye and Judge Rosenblatt. It's been a real privilege.

John Caher: It would be an intellectual treat just to sit in a room with Judges Rosenblatt and Kaye, and not say a word, and just watch and listen, and I bet you've had that opportunity.

Marilyn Marcus: Many times, many times.

John Caher: Well, thank you, Marilyn.

I'd like to end this Women's History Month podcast by giving Judge Kaye the last word, which is usually how it ended up. At one point in the oral history, Judge Kaye said she'd always been reluctant to provide advice, especially unsolicited advice.

But as she says and I quote, "As I've grown older in this profession, I'm bold enough now to give some advice, especially to women, and that is to never give up, to persevere, to keep coming back. If you close yourself out, then everybody else will too."

With those parting words from the great Judith S. Kaye, my friend and yours, happy Women's History Month!

Marilyn Marcus: Oh, thank you, John. This was such a pleasure.

LINK TO ORAL HISTORY INTERVIEWS WITH CHIEF JUDGE KAYE:

<https://history.nycourts.gov/the-significance-of-judge-judith-kayes-red-shoes/>