

CELEBRATING THE SILVER ANNIVERSARY OF THE NEW YORK STATE JUDICIAL COMMITTEE ON WOMEN IN THE COURTS

HON. BETTY WEINBERG ELLERIN*

When the New York State Judicial Committee on Women in the Courts celebrated its silver anniversary on April 5, 2011, I had the great honor and privilege of having been the Committee's chair for fifteen years. My active involvement in seeking to end gender bias in our court system, however, reaches back at least another fifteen years to the early 1980s. Those were the days when the first woman, Justice Sandra Day O'Connor, had just been appointed to the United States Supreme Court,¹ less than 10% of New York's judiciary was female,² and I was the only woman to hold a statewide Administrative Judge position in New York State.³ It was still a time when marital rape was not a crime in most states, including New York,⁴ and New York was just getting around to abolishing the requirement of "earnest resistance" in rape cases.⁵ And it was an era in which a trial guide written by a well-regarded member of the bar advised practicing attorneys that "Women, like children, are prone to exaggeration; they generally have poor memories as to previous fabrications and exaggerations."⁶

The movement to examine gender bias in court systems began at meetings of the National Association of Women judges, of which I was later fortunate to

* Hon. Betty Weinberg Ellerin is currently Senior Counsel to Alston & Bird and Chair of the New York State Judicial Committee on Women in the Courts. A judge for thirty years, she was the first woman Deputy Chief Administrative Judge for New York City Courts, the first woman Associate Justice of the New York State Supreme Court, Appellate Division, First Department, and to date the first and only woman Presiding Justice of the Appellate Division, First Department.

1. Justice Sandra Day O'Connor was appointed to the U.S. Supreme Court in 1981. Timeline of the Justices, History of the Court, THE SUP. CT. HIST. SOC'Y, <http://www.supremecourthistory.org/history-of-the-court/> (last visited Oct. 20, 2012).

2. UNIFIED CT. SYS. OF THE ST. OF N.Y., REPORT OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURTS (1986), reprinted in 15 FORDHAM URB. L.J. 11, 151 (1986-87) [hereinafter TASK FORCE REPORT].

3. Figures compiled by the N.Y.S. Office for Court Administration.

4. Not until 1984 did the New York Court of Appeals find that the marital exemption to New York's rape law was unconstitutional. See *People v. Liberta*, 64 N.Y.2d 152, 163-64 (1984) ("We therefore declare the marital exemption for rape in the New York statute to be unconstitutional."); TASK FORCE REPORT, *supra* note 2, at 51 n.115 (describing efforts to repeal the marital rape exemption).

5. The "earnest resistance" requirement was repealed in 1982. TASK FORCE REPORT, *supra* note 2, at 51 n.113.

6. F.L. BAILEY & H.B. ROTHBLATT, SUCCESSFUL TECHNIQUES FOR CRIMINAL TRIALS § 205, 190-91 (1st ed. 1971).

serve as President. I watched the idea of court self-examination catch fire in New Jersey, and I lobbied New York's then Chief Judge Lawrence H. Cooke for a Task Force of our own in New York. I followed with great interest the deliberations of New York's Task Force, and, I joined what became the New York State Judicial Committee on Women in the Courts in its first year.⁷

Participating as a leader in the vibrant movement to identify and eradicate gender bias in the courts has been one of the great joys of my professional life. Above all, it has been a true pleasure to work with superb, dedicated members of the bar and bench in this long and continuing journey. We have been blessed with four immensely supportive Chief Judges of New York. The first was Hon. Lawrence H. Cooke, who wisely saw the need for court self-examination and appointed the Task Force in 1984. He was followed by Hon. Sol Watchler, who embraced the Task Force's findings without hesitation and immediately appointed an implementation committee. Hon. Judith S. Kaye succeeded Chief Judge Watchler, and for fifteen years brought her own unique sensibilities to the New York Court of Appeals and to her responsibilities for administering New York's court system as New York's first woman Chief Judge. Currently, Hon. Jonathan Lippman, a man with true feminist instincts, presides over the New York courts. Like the other Chief Judges before him, he has been an unstinting friend of the Committee throughout his tenure and, indeed, throughout his career in the Court system.

During the Task Force's period of gestation, intellectual vision was provided by two pioneering women: Lynn Schafran, a fine lawyer, skilled scholar, and a fighting spirit, and the late Professor Norma Wickler, a sociologist who brought brilliant insights from the academic world to the movement. Following the issuance of the Task Force Report, my friend and colleague, Hon. Kathryn McDonald, took the helm of the implementation committee. A wise judge with an elegant style, a keen intellect, and a magnificent understanding of human nature, she chaired the Committee through its first ten years and ensured that it would have the ability to continue its mission as long as needed.

The successes of the Committee for the past 20 years, and particularly the remarkable 25th Anniversary Program, are largely due to the extraordinary talents and efforts of the Committee's counsel, Jill Laurie Goodman. Her intimate knowledge of this area, and all its nuances, coupled with her superb writing skills and relationships with leading figures in this field have made her invaluable to the Committee's effectiveness. The Committee and I, both as its Chair and personally, are grateful to her beyond measure.

The Committee has also been blessed with the unswerving support and encouragement of the state's Chief Administrative Judges—specifically, for example, Judge Jonathan Lippman during his tenure in that position, and, in the

7. For a full description of my participation in the movement to examine gender bias in the courts, see generally Betty Weinberg Ellerin, *Building a Justice System Committee to Fairness and Equality for Women: A Personal Account of New York's Progress*, 36 TOL. L. REV. 899 (2005).

critical recent years, Judge Ann Pfau, who has been a stalwart proponent of our work and activities and has insured that the needs of the Committee were met even in the face of recurrent budgetary crises. Judge Pfau has our heartfelt thanks for her invaluable contributions in enabling the work of the Committee to prosper.

In many ways the theme of the 25th year's Symposium can be found in the words of the Committee's tenth year report that spoke of "impressive progress alongside persistent problems."⁸ Since that report, progress has continued; nonetheless, complicated problems persist. Another twenty-five years (and, perhaps, longer) may be necessary to overcome the problems and biases that were the *raison d'être* for the Committee's creation.

It was particularly fitting that this Twenty-Fifth Anniversary celebration be held at a law school (and I am delighted that it was NYU from which I earned both my B.A. and my J.D.). Special thanks are due to NYU Law School's Vice Dean Jeannie Forrest for making the event possible.

In the final analysis, it is students, such as the NYU students who helped organize this Anniversary Symposium, who will have to take up the work, if it is to continue. I am delighted that we have another generation in the wings, students like Genevieve Lakier, Amalea Smirniotopoulos, Ben Cady, and Rachel T. Goldberg, the 2011–12 Editors-in-Chief of the *N.Y.U. Review of Law and Social Change*, who brought this Symposium volume to light. It is to them and others like them that we will pass the torch, confident that they will bring to fruition the goals that we have worked toward for the last quarter of a century.

8. N.Y. JUD. COMM. ON WOMEN IN THE CTS, EQUAL JUSTICE, EQUAL TREATMENT, EQUAL OPPORTUNITY: APPRAISING CHANGE AND PROGRESS A DECADE AFTER THE REPORT OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURTS, 45 (May 1996).

