

WORKING FOR EQUITABLE WORKPLACES: AN INTERVIEW WITH ALLEGRA FISHEL

Kathryn Evans[∞]

Allegra Fishel is the Founder and Executive Director of the Gender Equality Law Center, or GELC. Located in Brooklyn, this small, not-for-profit law and advocacy organization packs a large punch, working to stamp out discrimination based on sex, gender identity, sexual orientation, and caregiver status in New York schools and workplaces through a combination of litigation, policy advocacy, workplace trainings, and more. Even before founding GELC, Allegra put her J.D. to use serving the community, first representing tenants in housing court through Rhode Island Legal Services, and then working at plaintiff-side employment firms.

I sat down with Allegra to discuss what it is like running a legal not-for-profit organization, the changes she has seen in the legal field throughout her career, advice for law students, and more.

This interview has been edited for clarity.

Kathryn Evans: What got you interested in employment law and gender discrimination in the first place?

Allegra Fishel: I guess being a woman always helps—you have your own experiences. But to tell you the truth, looking back, I never felt there were any barriers to being a woman. What's really quite remarkable about that is that one generation earlier, so many doors were closed to women. For instance, my aunt went to N.Y.U. Law School in 1953. She was one of three women, and she felt very ostracized and isolated. I guess they tolerated her being there but they certainly didn't welcome her. I went to law school thirty years later and half of my class was women. That's a remarkable change in one generation.

I think social interactions were governed by outdated stereotypes, but not achievement in the workplace. So I really went to law school to be a civil rights lawyer and was motivated by issues of race, which were infused in our society and still are, in a different way. My first job was in housing, at Rhode Island Legal Services. After a few years, I moved back to New York City, where I am from, and

[∞] J.D. Candidate, N.Y.U. School of Law, 2020; B.A., Union College, 2017. As an aspiring employment discrimination lawyer, I had the pleasure of interning at the Gender Equality Law Center this past summer, and thank Allegra for sharing her experiences with me in this interview.

took a job at a plaintiff-side employment law firm. I still think that housing, employment, healthcare, education—those are all areas in which individuals need to achieve equality; they are all about fighting systemic oppression. So it wasn't all that deliberate, but then I became impassioned about it.

KE: Have you ever experienced gender discrimination?

AF: I think I first started to experience it when I became a lawyer. When I graduated from law school, my opponents were all men, all significantly older than me, and many of them very patronizing. Most of the infrastructure was male-dominated. There were some women who were judges but most of the judges were white men. It was very clear when I got out of law school that the whole power structure was run by men. I began to see that there were a lot of limitations in the way that judges and other lawyers would treat you. Sexual comments and off-color jokes were often tossed around in these primarily all-male environments—for example, while waiting for a court conference or outside a deposition room. But I have to say in my early career, professional women felt far less empowered to push back against that type of treatment. It was a different environment. As a female lawyer, it would have been extremely uncomfortable to object or push back against off-color jokes or sexualized comments by male lawyers while you were standing alone in another corner. There was just no culture to do that.

KE: I'm hesitant to ask since it's a question so frequently posed only to women, but I'd love to know how you've balanced work and family throughout your career. And how we can make family responsibilities more gender-neutral.

AF: Absolutely. When I say that throughout high school, college, even law school, that I never felt discriminated against for being a woman, I mean that. But when it comes to family issues, I did. When I first got out of law school, the concept that one could have a family and be a lawyer was not something I could really understand. I have one child, who I had in my forties, so I waited a long time. I am not saying that it was one hundred percent because of my career, but really at the time if you had a child, the expectation was that you would take a very short leave from work. There was no paid family leave. The FMLA only applied to certain employers. There was a stigma in having a child. From the moment you were pregnant you were going to be viewed differently even in the best of organizations because you were going to be taking time off and you were assumed to be less devoted to your job after becoming a mother. And I do think that factored into my decision not to get pregnant until I was forty, which is not the ideal time to get pregnant.

Paid family leave in New York has made a huge difference. In 2021, it will provide twelve weeks of partially paid and protected family leave for every New Yorker who works for the private sector. I think the workplace now actually expects that women, and hopefully men, will take time off to welcome a new child.

I honestly don't know how best to balance one's family and career. When I worked at the law firm Outten & Golden, a preeminent plaintiff's employment law firm, I technically worked three-fifths time, which meant sometimes forty hours per week instead of sixty. But if I had a trial I could not say, "Sorry, I can't do the trial, I have a child." It is really difficult, and I only have one child. I think if you have more, it is even harder. The key is that until society creates a space for men to step up and take time off, so that there is no stigma related to parental leave and men *want* to take time off, I think women's ability to remain competitive in the workplace will remain limited. Which is why I am passionate about bringing cases on behalf of men who seek to take family leave. We have a case now where a large company wouldn't even give our male client the paperwork to take the parental leave.

But I think the culture has shifted hugely in the last twenty years. I can't say how people balance it. Probably part-time work, but is that fair? You pay a price in any institution working part time for a decade. I was okay with that trade-off.

KE: In lower pay and benefits?

AF: Yes, and advancement. Because you are not at work and you cannot do as much for the organization. Not everyone decides to work three-fifths time for a decade, but I had one child late in life and I was going to be there for her. I think ultimately what is key for women is flexibility. At GELC, I have always believed that parents should be able to take time off and have flexible schedules. It is tricky to pull off in a small organization. When you have to be somewhere, there is no one to cover you. But we can work from home and be flexible.

KE: How have you seen the legal field change related to diversity and inclusion throughout your career, and how can we keep improving?

AF: I still think there are very, very few lawyers of color compared to white lawyers. You see diversity in legal services and the government, and some firms like Outten & Golden have done a great job creating diversity. But I think they are pretty unique in that. I think in most law firms you don't see very many lawyers of color, and at the partner or senior counsel level, there is even less representation.

Women are well represented in the sense that incoming associate classes are fifty percent women. But then why is it that as you filter up to the partnership level women only represent, at best, twenty-five percent? Women are more recently

represented—for instance, there was a big influx of women in the U.S. House of Representatives. I think women have a lot more power than they did, but it is a slow cultural shift. When I was growing up, pretty much every figure of authority was a man. When I started practicing law thirty years ago, there was always a male adversary, always a male arbitrator. Nine out of ten times the judge was a man. Now, frequently there are many women in the room, sometimes *only* women. That creates a very different dynamic.

I think our society is a little less hierarchical. Lawyers are a little less patronizing. But I think age also gives you a little leg up.

KE: What made you decide to go out on your own and create your own organization, and how did you know you were ready to do so?

AF: I don't know that anyone ever knows they are ready, but they feel very compelled by forces to make a change. Really the history for me is that I was a private practice civil rights lawyer for about twenty years. At my last private employment job, I was of counsel for Outten & Golden, and while I was there, I felt more and more as time went on the pressures about making money rather than changing policy and creating law. That's why I went to law school, to change law and policy. Whether you are litigating a case and you get a great decision, whether you are helping low-income people access legal representation, working in partnerships to legislate for statutory changes, doing trainings, that was always much more important to me than charging clients money. Even though Outten and Golden is probably the preeminent plaintiffs' employment law firm, I felt frustrated that I didn't get to do more advocacy because a lot of what we did depended on how much we could make or how much the client could pay.

KE: What has been the greatest challenge of running your own legal services organization?

AF: Fundraising is a big challenge. One of the ways GELC survives is through attorneys' fees, so we are not solely reliant on government or private grants. But it is hugely challenging. Also, as a not-for-profit you have a board of directors who you are ultimately responsible to, so you are not really running your own show.

KE: What sets GELC apart from other legal services and impact litigation organizations?

AF: GELC utilizes a very unique blend of litigation and non-litigation work. I'm not saying there is no other organization that does that, but a lot of legal organizations

will only take class cases. We have only had one class case to date. We take cases where we use one or a group of individuals to create change. That could be legal change, such as a case we are working on where we want to push back on the Catholic church's encroachment on areas of employment antidiscrimination law, where I think their outdated views impact the ability of someone to be employed because of who they love. Or whether it is requesting in every settlement discussion policy changes, trainings, and other forms of injunctive relief, in addition to obtaining monetary compensation for our clients. We don't bring any cases where the client is not fully on board with working toward changing employment policies and practices as a major thrust in the case. For instance, we are now representing a man who was given a hard time and, we believe, ultimately retaliated against because he tried to take family leave. There were a lot of comments about "Men don't stay home with the kids." This man works for a very large, 800-employee company, so it is important to the client and to us that we really push back in terms of their training, their policy. I think we are also atypical in that not only do we litigate legal claims and push for changes to the law, but we also try to provide legal counseling, support, and a variety of referral sources to everyone who calls our hotline, even if we can't represent them or they don't have a legal claim.

KE: Can you talk about some of the non-legal strategies you use to support your litigation and policy work?

AF: That is one of the exciting things about being a not-for-profit. In the private sector, going to the media is a threat you never follow through on, because in a settlement, most employers want confidentiality. We have a case now against a New York City government agency where if we cannot settle it, we will go to the press because we believe the pressure using the press puts on employers or other institutions is faster, more efficient, and more effective in creating change than a lawsuit in which we have to wrangle over legal theories—and it can take a very long time, even years.

We also do a lot of organizing with our partner organizations. That could be going to a march, demonstrating outside of the city council offices, packing a city council hearing. We don't do that alone. We work with a lot of organizations where organizing is their main focus, so they help us create events and propel much of the momentum.

The law is very exciting and getting a great legal decision is very exciting. That is why I went to law school. But it is also very risky and very cumbersome, and it often takes years of litigation, which is not always an effective strategy. That's why we don't want to use that strategy alone. Moreover, organizing efforts in

combination with legal challenges are more likely than not to produce sustained institutional change.

KE: You have mentioned that GELC is pretty small, but there is a large demand for your services. Can you talk about how you decide which cases to take on?

AF: We spend a lot of time deciding which cases to take for representation, because our intake has grown considerably. I would say ninety to ninety-nine percent of the time it is important to us to serve someone who would not be able to access legal services otherwise. I don't want to say we exclusively serve low-income people because the other thing we look for is can we change the law, or can we change the institution using the law? Sometimes, if that is very powerful, we may take someone who technically could afford a private lawyer, but probably would not get one. Most private lawyers don't want to litigate over training or changing the systems within institutions, because you don't get a contingency fee on non-monetary relief. You have to litigate all the way to the end and then get attorney's fees to have a pot of money to take from. We like to take cases where we think we can demand institutional changes. We have a case now against a government agency that really just has to do with adjusting the language access on their website. Most private lawyers won't do that.

So we look at three things: One, is this a case that a private lawyer would take? If it is, and we have too many cases, we will refer it to a private lawyer. Two, is this someone who has a barrier in access to justice? And three, can we use these claims to create systemic change?

KE: Can you tell me about a case or project that you are working on that you are most excited about right now?

AF: I have several.

KE: Is this like choosing a favorite child, you can't pick one?

AF: When you only have one you never have that problem!

I am very excited about a case where we are challenging a very large trucking supply company's stereotyping of a male worker who wanted to take family leave pursuant to the FMLA and New York State's Paid Family Leave law. Not only did the company try to prevent him from taking the time off, but they treated him differently when he returned to work. They made many statements outright saying

that his wife should have remained at home bonding with the new baby, in other words that it was “women’s work.”

I am also very excited about a case we are bringing against a large construction company for sexual harassment of a female construction worker. I think that is very important case because women are not historically or statistically represented in these fields, and there is a lot of sexual harassment that occurs in predominately-male workforces.

There is also a case that we are bringing against a Catholic school for sexual orientation discrimination, and I am excited because I think there is a possibility that the Supreme Court will find that there are employment protections against discrimination on the basis of sexual orientation and I would really like to litigate the case in federal court. I feel very strongly that LGBTQ folks should be able to work without being harassed or pushed out of the workplace. So those are my three most exciting cases. But we have such a small resource pool that we don’t bring any case unless we are passionate about it.

KE: My next question was actually whether there are any Supreme Court cases you are watching this term and whether you feel optimistic about them.

AF: Yes indeed. In *Bostock v. Clayton County*, *Altitude Express, Inc. v. Zarda*, and *R.G. & G.R. Harris Funeral Homes v. EEOC*, I am very excited to watch the Supreme Court. I read the transcripts, and one can never say, but I would certainly say that four of the justices are squarely there on the side of the employees, because they always are. I think there are two other justices that might join them, and I think that shows an incredible social shift. There was acknowledgement as to who was even in the room listening, [i.e. transgender individuals], a real sense that the world has changed. I thought the arguments that counsel for the employees chose to make were really strong, and really homed in on the issue that sexual orientation discrimination and bias on the basis of a person’s transgender status is always discrimination on the basis of sex; sex being the term used under Title VII of the 1964 Civil Rights Act. . I think they did a great job getting around the issue that Congress has repeatedly refused to amend the statute. I wasn’t optimistic before, but now I think it is more likely than not that they will find in the employees’ favor. And if they don’t, hopefully we will have another president who will push for new legislation. Or a lot more Democrats in the Senate.

KE: And that may be the answer to my next question—if you could pass any law, what would it be?

AF: Where can I start? Since we are talking about it, I certainly would like to pass the Equality Act. I think it is completely absurd for anyone not to be able to work because of their sexual orientation or their gender identity or gender expression. A lot of people don't realize, when you come from a progressive state like New York with layers of protection at the state and city level, that something like half of the states in this country have no protection against discrimination for LGBTQ employees, so someone can be openly discriminated against. So that would be my first choice of a law to pass. I'm sure I could think of some other laws given more time.

KE: You work on some emotionally tough issues, like sexual assault. What do you do for your mental health?

AF: I have a lot of resilience when listening to other people's stories. I don't really get freaked out. I think I am used to absorbing it and being able to counsel people. I do yoga, but that is for my general mental health as opposed to dealing with client stories.

KE: Since you started GELC, what is the longest period of time you have gone without checking your email?

AF: An hour or two? I don't check email in the middle of a client interview or a mediation. So maybe half a day, but that is pretty unusual.

KE: Do you wish we could go back to a time when we were less accessible, or do you think it is good that we all have email on our phones now?

AF: I really think it is very good to have e-mail access. You have to manage it. If you spend all of your time answering your email, you don't do any work. But it allows you to create a record of everyone who is trying to contact you. Then you can set aside a certain time of day to respond to them.

When I started my career, there was no email. You had to pick up the phone and call people. I think email does not substitute for picking up the phone and calling your adversary, but it is very efficient when used to schedule times or reiterate things without writing a formal letter. It is great for managing client expectations because instead of them calling and calling, you can send them an email that you are out and will call them back tomorrow. So I can't imagine not having it.

KE: Can you tell me about your proudest moment in life?

AF: Can I have two?

KE: Sure.

AF: I would say my proudest moments are creating GELC, from literally an idea of “I don’t really want to be in private practice anymore.” Really a flicker of an idea to becoming something real. Having my daughter is the other. I am not trying to be a feminist, but I could not trade them off. My most emotional moment was the birth of my child, but my proudest professional accomplishment is that GELC is surviving.

KE: Has anyone been particularly influential on your life or career?

AF: I was very lucky when I came to New York and started working in employment law that I had the National Employment Lawyers’ Association. I think having mentors was huge. Having people you can confide in that you have no idea what you are doing, and they can help you is really important. Being part of a bar association that was not competitive was hugely helpful.

KE: You have worked in a lot of different types of legal jobs. Do you have any advice for public-interest-minded students who are trying to decide whether they want to go to a law firm and do a lot of pro bono, join a plaintiff-side firm, or work for a legal services non-profit?

AF: Try to find something you really like and really want to do. Don’t feel pressured by your law school or the people around you—other students, professors, your career placement office—who try to tell you what the best or most prestigious job is. Now, people coming out of law school today have much bigger issues with student loans. I took out a loan but paid it off pretty quickly. But I felt a lot of pressure coming out of Boston University School of Law to work in a corporate setting. That is what the school really held out as the benchmark of success: going to a firm, making a lot of money. I had to push back because I knew that was not for me. I don’t know if people feel that pressure now, thirty years later. But I think it is important to work where you feel productive and happy, and where you have good relationships with people, and you feel like you are doing something meaningful with your life.

Notwithstanding that, you may need to work at a private law firm to pay back loans. It is also really important to remember that law school perpetuates elitism. Even outside of law firms, there are “prestigious jobs” and “not prestigious jobs.” That is all going to be wiped out a couple of years after you graduate. Do something that you love, and remember that you have a long career ahead of you. You can change what you are doing.

KE: Do you have any advice for students or young attorneys who are trying to build networks?

AF: I would go to events if they are affordable and open to students. Networking is huge at any stage in your career. For me, I am not looking for a job, but I might be looking for someone who can serve as co-counsel, or be the next partnership that we establish, or who might make a donation. It is always exciting to meet with like-minded people, even if you are a little shy. And it is always good to meet people. Even if they won't be your first employer, maybe they will be your second, and they will say, “Oh I know her.” It is good to be part of the wider legal field. Bar associations are usually free or very affordable the first few years out of law school. Which is good because you are not always in a workplace with people who are completely-like minded, or in a large workplace. For me, being part of a legal community at all times was really important to my career. It made me feel excited and supported.