

Women Leaders in the Courts: Chief Judge Janet DiFiore

John Caher: Welcome to Women Leaders in the Courts, a new program created and produced by the New York State Judicial Institute. I'm John Caher, Senior Advisor for Strategic and Technical Communications.

Over the next several weeks, we'll introduce you to some of the remarkable woman who sustained one of the largest and most complex court systems in the nation, if not the world. We'll chat with pioneers and trailblazers, people with firsthand knowledge of just how far women have come in the New York courts in both judicial and administrative capacities. And who better to start with than our Chief Judge, the Honorable Janet DiFiore, whose role is both judicial and administrative.

Judge DiFiore was appointed to the dual position as Chief Judge of the Court of Appeals, the state's highest court, and Chief Judge of the state in 2016. The only child of Italian immigrants, Judge DiFiore is a graduate of St. John's University School of Law. Much of her early career was spent as a prosecutor in Westchester County. She was a trial judge from 1999 to 2005, serving in Westchester County Court, and then State Supreme Court, when she was elected district attorney. She was re-elected twice and then was among more than 30 attorneys and judges who applied to succeed the Honorable Jonathan Lippman as Chief Judge. She was nominated by Governor Andrew Cuomo and unanimously confirmed by the state Senate.

Judge, most of your 25 predecessors as Chief Judge were promoted from within the court. You came from the outside. What special challenges did that present in the judicial aspect of your position? Did you need to prove yourself? Did you need to overcome a "who the heck is she" sentiment?

Chief Judge DiFiore: Certainly I needed to prove myself. I was the new Chief Judge. But I never got the sense of "who the heck is she coming in here." First of all, I remind everyone that ours is a collegial court, so by its very nature, there is a lot of motivation to formulate good relations. We are seven judges who sit on every case together and we have to reach at least four, hopefully seven, on most occasions, in order to fashion a rule in every individual appeal. So there's great incentive to develop an immediate rapport. It wasn't new that a Chief Judge would come from the outside. After all, my predecessor, Jonathan Lippman, came from the outside, and I think by every measure people have judged his tenure as Chief Judge as one of stellar achievement and innovation. He was just a fantastic Chief Judge.

Chief Judge DiFiore: I will also say this. I had an advantage when I came in. At the time, there was a marvelous, marvelous Senior Associate Judge, Eugene Pigott, who had served as the Acting Chief until I was confirmed. Judge Pigott welcomed me with open arms, and he was extremely generous with his time and his devotion to my transition. That wasn't because he liked me or I was a friend of his. We really didn't know each other before that. It was because Eugene Pigott was devoted to the institution, and he wanted to make certain that I had all the benefit of the knowledge that he had accumulated over his decade of service on that court and his tenure as the Senior Associate Judge and his brief but very fine tenure as Acting Chief Judge.

In addition, at the Court of Appeals there is a very strong foundation in the professional staff there. The staff is led by the Clerk of Court, who is John Asiello, and the Consultation Clerk, Hope Engel, two extremely critical positions. These are individuals who have worked at the court for literally decades. I always said to Judge Kaye, who as you know I've known for many, many years, that when you walk through the doors of the Court of Appeals and into that beautiful building, it's not only the physical beauty of the building that takes your breath away, there's a very special feeling when you walk through that door. You know that something special is going on there, and it is because it is a revered institution and the people who move that institution forward on a daily basis are so extraordinarily dedicated to the health and well-being and beauty of the institution, and that's across the board, whether it's the Judges, the Clerk of Court, the Consultation Clerk, all across the board to the building attendants who work there.

So I came into this with a very strong foundation and people who were very motivated to ensure that the new Chief Judge, whoever that was, had a seamless transition and the best opportunity to excel in the position. So it's been an extraordinary experience, and I never felt a hint of pushback. Instead, it was completely the opposite. Everyone is very motivated to have the new Chief succeed in that institutional position.

When you joined the court, women went from a 4-3 minority in the court to a 4-3 majority. It's not the first time women held a majority in the court, but I'm wondering if at that time, with you coming in and being a woman, that was particularly significant.

Chief Judge DiFiore: Well, being a woman and only the second woman chosen to serve as Chief Judge, of course, that had some personal significance to me and I hope significance to the community at large. The fact was, when I arrived at that court there were very strong women already serving on the court.

Judge Rivera, Judge Abdus-Salaam and Judge Stein were on the court. And so while a women majority on a state's high court may have been something fairly unique nationally, it really hadn't been unique here in New York State. We have a long history of strong women serving on that court, starting with Chief Judge Kaye, who served for many years as an Associate Judge and, of course, was elevated to the position of Chief Judge.

And of course, she served with Carmen Ciparick, who was on that court for 19 years and performed beautifully as the Senior Associate Judge on the court, and Judges Susan Reed and Victoria Graffeo had long histories on the court and in the legal community as trial judges, as lawyers, as terrific public citizens. And so I think that there was ... Well, it's special to be a woman serving as chief judge. It wasn't unusual given the history of our Court and given the history of many strong women in the court system. And personally for me, I've had many strong female mentors within the court system. Betty Ellerin, a legend in the court system, still going at age 90 after literally decades of service to the courts. Joan Cooney was another legend up in the Ninth Judicial District. In fact, she was the first female judge who served as a mentor to me. She was the supervising judge of the Family Courts in the Ninth Judicial District. Brilliant lawyer, just a heart of gold and totally focused on improving the lives of women and children and strengthening families. Her work was really renowned and she taught me a lot. Carmen Ciparick has served. I mentioned Carmen earlier as a wonderful mentor, very generous with her time given to me to help me improve my skills as a judge and as the Chief Judge, and others like Angela Mazzarelli, a wonderful trial judge, a fabulous, fabulous appellate judge and a person who has demonstrated by her actions what it really means to be a judge in the overall sense, not only doing the adjudicative work assigned to her, but stepping out and volunteering for additional assignments.

Judge Mazzarelli sits on the Commission on Judicial Conduct, and she also serves as a member of the important Commission on Forensic Science. There are many, many strong women mentors, and I'm doubling back to where you started with the question. Again, well, of course I am enormously privileged to serve in this position. I'm thrilled to be the second woman appointed to the job. The truth is that we have a history of many strong women in the court system, and it's something we're all very accustomed to.

John Caher:

Some say there is a such thing as a “woman's way of thinking.” Frankly, I can't recall very many cases over the decades where the women on the court were all on one side and the men were on another. But I wonder if

there have been times when the men and the women came to the same place, the same result, but maybe through a different thought process.

Chief Judge DiFiore: A woman's way of thinking. I don't know about that. I will leave that to others to study and make some conclusions about that.

As for myself, I will tell you I'm a very linear thinker. I am always prepared and always, I hope people think, thoughtful about my approach to cases. I study the law and the precedent, and I think that has been the experience on the court. We have myself, Judge Rivera and Judge Stein who serve on the court now, and Judges Rivera and Stein are very strong women. They are very bold and thorough thinkers. And I don't find that their style is particularly different in any very prominent ways from Judges Fahey, Garcia, Wilson or Feinman. I think that we all collectively come to the cases in the same way — honest, prepared, studying the law and applying the law to the facts.

John Caher: Now, at your confirmation hearing you were asked a question of who was your favorite judge of all time, your favorite Court of Appeals judge. And I think many people were expecting Benjamin Cardozo, Judith Kaye. You said Stanley Fuld. Why?

Chief Judge DiFiore: Well, first of all, Judge Fuld was an extremely accomplished lawyer, judge and public servant, magnificent public servant. He was a very highly regarded prosecutor under Thomas Dewey. And when he was a prosecutor not only did he prosecutes some very important cases on behalf of the district attorney's office, but he brought to that institution many practices that remain institutionalized today. So I had an affinity for his work as a prosecutor, and then he went to the Court of Appeals and he emerged there and developed into a brilliant jurist, a wonderful writer. But what I think I was drawn most to about Judge Fuld was that here he was, and I said this in my confirmation hearing, this very muscular prosecutor, at least that was people's impression of him, and he emerged into a staunch champion of individual rights.

And while I think that surprised some, when I think about his career and the way in which he demonstrated his affinity and devotion to strong individual rights, it doesn't surprise me, having served as a prosecutor. When you serve in that position and you feel the very real sense of the power and the authority of that position and the impact of moving the power of the government, I'm not at all surprised that he emerged as a strong supporter of individual rights. And so for all of those reasons, Judge Fuld was my favorite judge. Well, let me correct that. Not my

favorite. He was one of the most impressive chief judges. I don't have any favorites. It's like your children.

John Caher: Now, turning to the administrative side. In the DA's office you had a staff, I believe, of about 200. When you became chief judge, you inherited a staff of, what, 16,000, many of them represented by any one of maybe a dozen labor unions. What were your first observations taking on this enormous administrative task?

Chief Judge DiFiore: Well, in the opening I heard you describe the court system, John, in a way it's been described many times as the largest, the busiest and the most complex court system in the world. And I came to the system knowing that, but I also came to the system with a familiarity of the system having been a trial judge, having served as a prosecutor and the elected district attorney of my county for a decade and being the number one litigant in the criminal courts. So I had an intimate familiarity with the system. On the run up to preparing to apply for and then assume that position of chief judge, I spoke to a lot of people in that process.

And over the course of that process, two recurring themes kept emerging. One was the important responsibility that I had to continue what my predecessor, Jonathan Lippman, had started, and that was expanding access to justice and the fact that the Legislature and the Governor had entrusted to the judicial branch of government through the budgeting process, \$100 million in taxpayer dollars to support access to justice initiatives. So that was one piece of one theme that kept recurring, the importance of that responsibility to expand and continue the model of increasing access to justice and the careful expenditure of this \$100 million in taxpayer dollars. And that was all a very good thing.

But the other theme that kept emerging, and lawyers and litigants kept doubling back to, is the challenges that the court was facing and the space we were in, which was backlog and delay in the courts. And that was a product of many, many different reasons. So in my mind, I had to find a way to square those two things because, after all, what good was increasing access to justice and the responsibility of granting \$100 million in taxpayer funds, and what good was that to the people who needed those services when we couldn't get the cases through the court system? So how is that promoting access to justice for individuals who needed their cases to be resolved?

So I decided to implement, and announced on the day of my investiture, which I know surprised some people, the Excellence Initiative. And for those who may not be familiar, almost five years in, as to what the

Excellence Initiative is, the Excellence Initiative is our way of promoting and supporting both operational and judicial decision-making excellence for the people of the State of New York, and we launched our Excellence Initiative.

John Caher: Now, how has the Excellence Initiative manifested itself with regard to the COVID-19 pandemic and the way in which the court system responded? Remarkably, frankly, in my opinion.

Chief Judge DiFiore: Well, thank you. And I do think our judges and our professional staff have responded magnificently to the tragedy really that has unfolded in the shadow of this awful, awful pandemic. That said, we were at a place before the pandemic hit where we were really hitting our stride. I think that, by every measure, people have reported that the Excellence Initiative has been a success. We started out by making certain that everyone understood that it was a good and healthy thing to look inward and examine what we were doing and where we were at. So we built a strong administrative team. We educated the team about the purpose of the Excellence Initiative, which is to support our judges and professional staff in doing their job and giving them the tools and the education and the training that they need to do their job and perform their responsibilities with excellence.

Four and a half years in, when the pandemic hit, backlog in delay had been basically eliminated outside of the City, and inside the City, where the volume of cases is just crushing, we were well on our way to performing with excellence. Everyone was getting excellent marks for participation and for the work that they were doing. We were really moving the numbers in the City as well. And so I think that when the pandemic hit, we were already a very cohesive group in terms of mission. We were a cohesive administrative and management team because we had been together for a while, notwithstanding the fact that we were a young management team, but we all had built deep relationships, and we were very aware of each other's strengths and weaknesses, and coming together in the stress and the urgency of the pandemic, I think really brought everything into even sharper focus.

And I will tell you, this team headed by Larry Marks, who is an absolutely extraordinary talent as our Chief Administrative Judge, has really performed magnificently. I'm ready to say people need a day off. Well, not quite. Almost ready to say that.

John Caher: As the response to the pandemic shows, and as the Excellence Initiative shows, there's an awful lot you can do on your own, but there's also an

awful lot you can't do without the cooperation of the other branches of government. So how much of the job is, "small P" political so to speak, dealing with the other branches?

Chief Judge DiFiore: We are the one branch of government, obviously, that doesn't do politics, so the way in which we interact with the Executive and the Legislative branch of government is very different. We are in constant communication with those two branches of government. We seek their support and their approval of our work because we are supported by them in terms of our budgeting process, and we always present a legislative agenda to the Legislature by building strong relationships and demonstrating to those two branches of government our competence, our commitment to access to justice, our commitment to being fiscally responsible and our ability to get the job done. We raise their confidence level that their support of our work and our goals and our mission is well-earned, and we have excellent relations with both of those branches of the government, I'm very happy to say.

John Caher: Now, before the pandemic threw everything into disarray, it was pretty clear that your major legislative prerogative for the year was passage of a constitutional amendment to modernize the courts, the elusive goal of all of your predecessors for the last 50 years. How does the pandemic change the equation, and is that still the goal for this year?

Chief Judge DiFiore: Court simplification will always be the goal for whatever year we're in until it's done, and like everything else since the pandemic has struck, we've been on pause with that. But I think the importance of the goal to simplify the court system has been underscored in very real ways by the pandemic and the way in which the court system has had to pivot and adjust. In the very beginning stages when the numbers were rising and we were all so nervous and concerned about whether or not we'd be able to meet our responsibility to keep the courts open in some capacity, we were nervous and afraid for our judicial colleagues, our professional colleagues, we didn't know if we'd have enough judges to staff our additional parts, we scrambled to reassign judges. In fact, I insisted on being designated as an Acting Supreme Court Justice myself in case, God forbid, we were struck with a lack of judges to staff the parts so that I could be one of the judges.

When we have artificial barriers in the system that prevent us from seamlessly assigning our resources when the need arises, that's not good or healthy for any organization. And so that is my commitment and the commitment of many, many people before me for decades to move this

issue on simplifying the court system, and that will be my commitment and my goal and my effort until we get that done.

John Caher: I'd like to wrap up circling back to where we started and ask you if, in the course of your career, you think you have been treated differently because of your gender than others?

Chief Judge DiFiore: Well, I will say this. I have never felt that I achieved the position because I was a woman. I've never felt that I was denied a position because I was a woman. That said, I've been around a very long time. It's almost 40 years that I've been in this business. And there's a lot that I have seen, and there is a lot that I have been called upon to remedy in my capacity as a bureau chief in the prosecutor's office when I was supervising other prosecutors, in my capacity as the elected district attorney [where] I'm responsible for making certain that our office was representative across every level of the office and here now as Chief Judge of the Court of Appeals in the State of New York.

I've been blessed in life. I've had a lot of important role models and people who have shown me how to be a good individual and a good lawyer and professional, starting in my own family, my dad, who was not an educated man, he didn't pass the eighth grade. I am, as John, you pointed out, an only child. My father intuitively taught me that there were no limits to what you could do. He wasn't really a man who was not very expressive with his words, but his actions really were very telling. I was 12-years-old and I was with my father on a Saturday. And I was in the yard that he worked. He was a sheet metal worker, and there was a dump truck that needed to be moved. I was 12-years-old. My father threw the keys at me and said, "Go move the dump truck over there." I said, "Okay, I guess I could move the dump truck."

It's one of the things about my dad that's always stood out in my mind, just communicating to me through his actions. You can do anything you want to do. Remember, that was 55 years ago when there were no women in the yard, right? Also, in my professional life, I've had a lot of role models, men and women. I spoke about the female role models, Judith Kaye, a magnificent role model, people like Carmen Ciparick, Betty Ellerin. We spoke about those role models. I also had some very important male role models. My first professional experience was in the prosecutor's office in Westchester County under the legendary District Attorney Carl Vergari. No regard to whether I was a male, a female. I got put right in the Rackets Bureau, right in the middle of all the scrum. I was the only woman for many years in my division in the office, and I never once felt from District Attorney Vergari that I had any limitations on me.

And then when I was elected to the bench, I had the very good fortune of having an Administrative Judge who acted similarly. His name is Frank Nicolai. He remains my mentor and one of my closest and dearest friends until this very day. He, too, never once indicated any hint that my gender had anything to do with anything. In fact, he was such a great Administrative Judge and a good leader. He was very instructive on leadership as well. And when I became the supervising judge of the criminal courts for the Ninth District under him, he taught me something. He taught me a good lesson. I came in, he told me that I had the job, and he looked me square in the eye and he said to me, "Okay, here's the deal. It's your shop. You run it. No surprises." Again, communicating to me no limits to what you're going to do. Be responsible. Be careful. Just like my dad, no limits to what you're going to do. Be responsible. Be careful. You could do anything you need to do. And I hope that not only my words but my actions communicate the same things to people who may look up to me as a model for their own careers and for their own advancement in both the law and the legal profession and the judiciary.

John Caher:

I think that's exactly what your words and actions convey. Judge, thank you so much for taking the time with us, and I hope you and your family remain safe and healthy.

Chief Judge DiFiore:

Thank you. Same to you, John. Thank you.