

THIRD JD GENDER FAIRNESS COMMITTEE

PIONEERING WOMEN IN THE LAW

ORAL HISTORY PROJECT

John Caher: Okay, is it August 6, 2018 and the Gender Fairness Committee is about to conduct an interview with three pioneering women litigators in the Capital Region: Hon. Mae D'Agostino, Maureen Bonanni and Susanna Martin. We are at the home of Judge Rachel Kretser, chair of the Third Judicial District Gender Fairness Committee, and we are also joined by Michelle Browne, now of The Legal Aid Society. Michelle is assisting the committee on this project.

Maybe we could start with each of you briefly introducing yourself.

Susanna Martin: Okay. I am Susanna Martin. I graduated from law school in 1981, went right to work for Carter Conboy, a litigation firm. Worked as a litigator, became an equity partner, and the last 10 years I was the managing partner at that firm. I retired in 2009.

Mae D'Agostino: I'm Mae D'Agostino. I went to Syracuse University College of Law. I graduated in 1980 and then I joined the law firm of Maynard, O'Connor, and Smith here in Albany. I was there from 1981 to 1997. I became a partner at that law firm in 1985, and then in 1997, I started my own law firm, which was called D'Agostino, Krackeler, McGuire and Cardona. I remained at that firm until 2011, when I went on the federal bench.

Maureen Bonanni: My name is Maureen Bonanni. I graduated from Albany Law in 1980. I went immediately to Carter Conboy, Bardwell, Case and Blackmore in Albany. I stayed with them until 1988. I was a partner. In 1985, I tried my first malpractice cases under the tutelage of Jim Carter, Jim Conboy, Forest Case. In 1988, Art Thorn, myself, Jeff Tyman and Richard Gershon from Maynard, O'Connor and Smith established our own firm: Thorn, Gershon, Tyman and Bonanni. From 1988 to the present, for 30 years, that's where I've been practicing. Primarily, right now, we do mostly medical malpractice cases, but I have done product liability cases and many other kinds of civil litigation.

John Caher: I think you are all the first partners in your firm. I think Judge D'Agostino and Maureen were two of the first name partners in a firm that had more than two people.

Mae D'Agostino: Yes. You're absolutely correct. I became a partner in 1985. At the time, I was, for a period of time, the only woman at the firm. Then for quite some time, I became the only woman partner at the firm, so it wasn't easy. I wouldn't want anybody to get the idea that what we accomplished in the early '80s or late '70s was very easy.

When I first joined Maynard, O'Connor and Smith, I think that people looked at me with many, many questions. They really wondered if I would be able to do the work. It was really quite difficult because there were no other women at my firm to look up to. There was no one woman to mentor me. As I've often said, I was excluded from many activities at the firm where clients were being entertained because many of the events were all-male events, so I would have to stay back while the young male associates would go to an all men's golf club or an all men's golf outing. I think the partners wanted me to succeed, but they really didn't know quite what to make of me when I started at the firm.

Susanna Martin: I had a different experience. I was not the first woman at Carter Conboy. Maureen was there the year before me.

Maureen Bonanni: And Dianne Bresee was there the year before me.

Susanna Martin: As a matter of fact, I went to Carter Conboy because I was told by another classmate that Carter Conboy was looking to hire women. Now, that's not exactly true. The truth was that they were open to hiring women, whereas other firms weren't. When I got there, Maureen and Dianne were there and another woman came with me. She was from Western New England. She was from another law school, but she started with me.

I think the example of Jim Carter, who Maureen mentioned ... Jim Carter was very open to working with women. Like Maureen said, she worked with him. My first cases that I had were with him. We used to say Maureen was the son he never had. I think because he had four daughters and he was used to and he appreciated women, but that was it. I never felt in my office, in the office, that anybody discriminated against me so far as work was concerned, but what I experienced outside the office was a completely different thing.

John Caher: Tell us.

Susanna Martin: For one thing ... Well, I should say, and I think Mae and Maureen would say this too, the problem came more with office staff and the people who just didn't know what to do with you. When I would show up for a

deposition it would be inevitable the receptionist would tell me, "Oh, you can go right in and set up," because she thought I was the court stenographer.

Maureen Bonanni: Yeah.

Susanna Martin: A couple times I fell for that, and I'd go in and the attorney would be in there with his client, and he would say, "The stenographer's already here," or something like that. I think there was an assumption that because you were a woman that you weren't going to be tough. You could just be kind of pushed aside, so it was really hard to stand your ground and be firm.

In our own office, my work got done after all the male lawyers. The secretaries were much more receptive to doing work for the men than the women, except for Maureen because I'll tell you, everybody in the office was afraid of her.

Maureen Bonanni: Yeah, and then they put me in charge of personnel so there was a reason for that! No, I agree with you. The firm that we went to, Carter, Conboy, Bardwell, Case and Blackmore is what it was at that time. All of them, I guess, now dead except for Conboy. They were wonderful. It was primarily Jim Carter with his four daughters who wanted us to succeed. Now, Dianne Bresee was there before us and she was so happy to have somebody come.

Maureen Bonanni: Dianne was there and she didn't want to do the trial work. She wanted to do appellate work and motion work so that when I came in it was the perfect opportunity. I had to ask, "Can I?" They said, "Why not?" That was the perfect opportunity for somebody like me to learn, and then took me with them, not every place, but took me to trials, took me to depositions. It was primarily Jim Carter that did that, but the other ones too.

I was hired by Randy Ezick. My first malpractice trial was given to me by Jim Conboy. My second one, Gene Napierski, so they gave me the chance to get out there and see what I could do. Warning me, because they knew, that this was a club of men and that everybody wouldn't be receptive to having me there, and they weren't. That's true of certain judges that are all dead, but ...

Susanna Martin: Well, yeah, that's true. Except for Judge [Edward] Conway.

Maureen Bonanni: Judge Conway was wonderful.

Mae D'Agostino: Judge Conway, yes he was.

Maureen Bonanni: He was absolutely wonderful.

Mae D'Agostino: Genuinely supported women in the profession.

Susanna Martin: The first time I tried a case in front of Judge Conway, Maureen, you had just tried that-

Maureen Bonanni: I had tried my first malpractice case in front of him.

Susanna Martin: Yeah, and he told me that I was going to win. He said, "Because women always win in my courtroom."

Maureen Bonanni: He told me I was going to lose!

Rachel Kretser: He started the Gender Fairness Committee.

Maureen Bonanni: He was wonderful. There were some wonderful people, wonderful men, and then there were others that were not so wonderful.

Mae D'Agostino: I remember at my firm Earl Jones Jr. clearly wanted me to succeed, but it was a time when there wasn't ... Today, associates are given a lot of teaching. People sit down with them and tell them how to do things. In my firm, anyway, the only way that you really learned was by doing. Mr. Jones would eventually take me over to watch some of his trials and take me to some depositions, and that's the way we learn, but there was no question that most of the men at my firm really wanted me to succeed.

There were some who didn't seem very thrilled that I was there and I'm quite sure did not want me to succeed, but if you ... I don't know about the two of you, but I felt that I had to work harder than the men. I felt such pressure because I was the only woman.

Susanna Martin: Yes. Absolutely.

Maureen Bonanni: We always work harder than the men. That doesn't change even today.

Susanna Martin: If you want the work of five lawyers, hire one woman. That's what we used to say.

Mae D'Agostino: I just felt tremendous pressure because I did not want to muck it up so that the firm would say in essence, "Well, we're never hiring another woman. This woman didn't know her elbow from her fingers, so we're just not hiring another woman."

Maureen Bonanni: They also wanted to make sure that we fit in. How do you treat us? Do we fit in in the community? Do we fit in with them? Can they be themselves? Can they not worry about somebody running off and saying, "You did this to me"? We just sat there silently through a lot of things. We never said a word. I mean a judge said to me once, "That's enough out of you, little lady." In front of the jury.

Susanna Martin: And do you remember how we used to dress? We used to dress like men.

Mae D'Agostino: With ties and a pinstriped suit.

Susanna Martin: With the Oxford cloth skirts?

Maureen Bonanni: We had to wear skirts.

Susanna Martin: We never could never wear slacks.

Mae D'Agostino: We were told if we wore pants ... I was told I would be physically removed from the courthouse by a judge up in the Northern Tier. Also, I was called "an ignorant girl" by a judge. I went back and told my senior partner that because I didn't feel that anyone, any human being, should be treated that way. I agree with what everybody is saying that, I think most of the men in my firm really wanted me to succeed. Several judges were very, very interested in seeing us perform, and I think a lot of judges wanted us to succeed, but there were also some judges who felt that we didn't belong and no matter what we did nothing was going to be right. All you could do with those judges was to continue to make a record of some of the boneheaded things that they said to you. You couldn't show any fear. I mean, I had judges say absolutely preposterous things to me and I would not back down. The more a judge said preposterous things to me, the more I would just keep my cool and say things like, "Respectfully, Your Honor, I disagree with your position," and I would request an opportunity to make a record.

I will never forget this. One of my first depositions was around the time that a corrections officer by the name of Donna Payant was murdered in a prison. I walk into the deposition and the first thing that happens is that one of the men says, "Oh, good. The court reporter is here," as you experienced. I said to him, "I'm not the court reporter. Are you?" Then

for some reason, they were talking about issues of the day. Before the deposition started he said in words or substance that, "What the hell was a woman doing in a correctional facility?", and, "She pretty much got what you might expect she would get."

I was new to the community because I didn't go to law school here and I was just frozen. How and why would you say that in front of the only woman in the room? What are the implications for that? I felt such hostility at one of those earlier depositions that I went to. It was absolutely unbearable.

Susanna Martin: I was born in 1948. I was raised in the '50s. For me to think that I could go to law school and even apply, that took a lot. That took a lot of thinking about myself and re-educating myself. When I see what Mae just talked about with people reacting that way to women in certain situations, I understand where it comes from because it took me a long time to not think like that. That, "Oh, I would never have thought of being a lawyer when I was in my teens. I mean that's a male job."

Maureen Bonanni: That's a good point. I started out after I went to ... I got a master's degree and I started out in government and that is probably what turned me to law school. I worked in the state legislature. At that time, it was called the Central Staff, and the idea was good government Republicans or Democrats could come to a central staff for research. I worked there and I also worked for a while on the legislature in Pennsylvania. Watching those people, mostly all men pretty much, and all pretty much lawyers, I was not impressed with working in the government and in particular with the legislature.

I was there when a couple speakers were indicted. I said to myself, "This can't be hard. It can't be that hard to be a lawyer. Look at these guys." That's when I said, "I'm going to take the LSATS," and I did. That's when I went to law school. I thought I wanted to be in government. The experience with the state legislature, two of them, and what I encountered there, which hardened me to the point where there wasn't too much a judge could do that I hadn't already seen or experienced, and that's when I went to law school.

Mae D'Agostino: I was an intern with a senator when I was in a college, Senator Joe Galiber. I always knew I wanted to be a lawyer and people have trouble believing that, but at a very young age I realized that I enjoyed public speaking. I thought that most likely I would go to law school and become a politician. I had a cousin who was the first in our family to go to college and he went to Georgetown Law, and he lived with us when he was

studying for the Bar. His name is Ted Occhialino. He's a career law professor and he had a huge impact on me wanting to go to law school because he clearly loved law school, and I loved him, and I really had a lot of respect for him.

I just always felt that I wanted to be a lawyer. I thought I would probably use whatever oral skills I had to go into politics, but after interning for Assemblyman Tom Brown, who I have a lot of respect for, and Senator Joe Galiber from the Bronx, who was a very, very interesting man, and I did learn a lot from him, I realized that politics was not going to be my path. When I went to law school I got as much litigation practice as I could, got on every trial team that I could get on, and had two amazing mentors in law school, Professor Emil Rossi and Professor Travis Lewin, who had me leave law school with, I think, trial skills that many people don't have until they're out two or three years.

I owe it all to them. It's not what I did. It's what they did for me. I always wanted to be a lawyer, but I did think I would go down the political route. I thought the legislature was a little bit dysfunctional even back then.

John Caher: One of the things that strikes me is not only that you went into law at a time that was kind of unusual for women, but you went into an unusual specialty in litigation. Furthermore, med mal defense. How did that all happen?

Susanna Martin: Well, initially when I decided to go to law school I never thought I would have to practice law. I just went as an academic. I was married. My husband was a doctor and he was from a wealthy family so money wasn't an issue, but when we got divorced I suddenly realized that, "Gee, I'm going to have to make money." I thought that I wanted to work in a DA's office because that's what lawyers on TV did, I guess.

At Carter Conboy, med mal was the top of litigation. The med mal and the product liability work was the best to do and it was fun. Really, I love litigation. If I could just work in a courtroom and not have to do all that preparation work I would still be doing it. Maureen will know this. If you stayed close to one of the senior partners, they would get cases that they just didn't feel like handling and they would pass them off to you. I wound up in the North Country. I had just about an exclusive, me and one other partner, would be up in the North Country in Plattsburgh, and Canton, and Saint Lawrence because nobody else in the firm wanted to go there, to deal with the same lawyers over and over. It's the same plaintiff's attorneys, the same defense attorneys.

Luckily, the juries up there were very receptive to doctors, so I did very well. So, a lot of my caseload was just hand-me-downs from people who didn't want to go up there and then I established myself. Then it got to the point where up in Malone and Canton I was like a hometown lawyer up there. I tried a case against Dan Santola once and the judge treated me like I was local and Dan was the outsider. There were a few women in litigation, but specifically in med mal defense.

Mae D'Agostino:

I met Maureen at a deposition where the mother had to be deposed. It was a case involving a baby who was born severely damaged, and my law firm sent me to the deposition and I hadn't done very many depositions. I was representing the doctor and Maureen had the hospital. Now, I had heard of her. In fact, I was afraid of her. There were just a handful of women practicing in this area. I knew Susanna was practicing litigation. I knew that Diane Bresee was doing a lot of the motions and appeals, and I knew Maureen was a litigator, so when I got to this deposition ... Ordinarily, if you represent the doctor you take the lead. You are the one who questions the mother, and I wasn't quite sure what I was going to do because I didn't receive a whole lot of training.

I looked at her, introduced myself. It was the first time I ever met her and I said, "Maureen, I'm Mae D'Agostino. I know that I should take the lead, but I've never done a deposition of a plaintiff in a brain-damaged infant case." These are the most serious cases that you can get, as you know, and I said, "Could you possibly take the lead?" I got the roll of the eyes because, technically, I shouldn't have to do it, but she was very kindly. Even though she was scary, she was a kindly person, and she went, "I'll do it."

Well, everything I ever needed to know about deposing a plaintiff in a medical malpractice case, a birth mom, I learned from her. I bought that transcript with my own money. I bought a copy for myself and I used it for a long, long time. She really taught me a lot, and I think that, I don't know, I've always tried to pay it forward my whole career. I know these two have as well, but we were a small band of comrades. There were just not that many women who were doing litigation.

For me, when I joined Maynard, O'Connor and Smith, they had such a big book of business that it was only normal if they had a lot of medical malpractice you would do medical malpractice, but I also tried automobile negligence cases, products liability. Sometimes I was hired, I would say, because I had fallopian tubes and ovaries. I was often hired in civil rape cases where companies were being sued for a lack of security. I distinctly remember a company calling me in a case and saying, "Oh, we

need you to represent us. A woman was raped and ..." I said, "Well, I find that a little bit offensive, quite honestly. Are you looking for a good lawyer or what's the story?" But I knew what they were saying because somebody was going to have to cross-examine that rape victim. When we joined our firms, we took on their book of business until we started getting our own cases, and I think that's true for all of us.

Susanna Martin: When I started at Carter Conboy, if you were admitted and you had a driver's license you were sent out, and the work was assigned the night before, so you never knew what you were going to be doing the next day. Conboy did most of the assigning at like 4:00 the day before, and I don't know what went through his head, if he thought, "Oh, this is a good case for Susanna because she's a woman," or "This is a more complex case. Let's give it to a senior associate or a senior lawyer."

Maureen Bonanni: It's a miracle they were so successful since they handed us stuff we never saw.

Susanna Martin: I know, the night before we got it.

Maureen Bonanni: Absolutely. I remember Jim Conboy coming to my office and saying, "Here. Go pick a jury. It's an intersection accident."

Susanna Martin: And we used to be confused for each other. I can't tell you the number of times that I was called Mae, or ... And this would get me, if someone would call me Maureen. I'd just stand up. "Do I look like Maureen?"

Mae D'Agostino: Same with me. They would say, "Ms. Bonanni is here," I would always say, "Your Honor, Ms. Bonanni is about 5'1" tall and weighs 80 pounds. Clearly, you can see the difference." They confused the three of us, the three women.

Rachel Kretser: Well, you weren't the only three women. You weren't the only women around then, but most of us were in government. You were out there. You were the trial attorneys. My question to you, one of them, I have another question, is we were told ... When I was active in a leadership position in the women's Bar, and, of course, promoting women wherever I could for the bench, we were always told by the party leaders that we didn't have enough trial experience. We were also told that we hadn't paid our dues to the party and that sort of thing. But you had that trial experience in spades, and I know Mae was offered ... She's the only woman for decades actually who was offered a judgeship by the party. What about both of you? Maureen? Susanna?

Susanna Martin: As far as a judgeship is concerned?

Rachel Kretser: Yeah, had you considered it?

John Caher: Did you ever seek it? Did you ever ask?

Susanna Martin: I couldn't have taken the cut in pay.

Rachel Kretser: I figured.

Susanna Martin: Seriously. Also, I don't think I'm judicial. I have a lot of respect for judges, most judges, and-

Maureen Bonanni: Yeah. Well, after the legislature, I decided I wasn't going to be in politics, so I didn't play the political game. I didn't enroll in parties. I didn't play any of that. There was a fine judge named Bob Doran, who encouraged me many years ago to, "Please become a Republican," or something because he wanted to push me for a Saratoga judgeship or that kind of thing. I really, like Susanna, didn't want to do that.

Mae D'Agostino: Younger lawyers, like myself, called Maureen and Susanna for advice. Diane Bresee, I remember calling her and asking her, "What do I wear to the Court of Appeals dinner?" That was the issue of the day. My law firm said, "You have to go to the Court of Appeals dinner. This is a long tradition. This is formal dinner." Of course, they're all getting their tuxedos and I had no clue what to wear. Stuff like that, I just remember calling Diane and-

Susanna Martin: I basically lived in Diane's office because I'm the kind of person that learns by asking questions. Well, we were lucky. We had Randy and Dianne was my ... I would be rushing in there every-

Maureen Bonanni: If we ever had a legal question, wherever we were, you would call from the pay phone because we didn't have cell phones. Diane Bresee or Randy Ezick for an answer on the law. For example, Mae said make your record. Well, we did make those records whenever judges were pushing us or whatever. But the way some judges tried to hurt us was with jury instructions. You can tailor a jury instruction just so with a word here or there. If a juror is truly paying attention, you can be hurt. Your client can be hurt. When they started ad-libbing off the PJI we were always on the phone because we knew something bad was about to happen to our client. They would be the people to call. Diane, Randy.

Susanna Martin: At Carter Conboy, which was a litigation firm when I was there, the most important person in the firm was the person who was on trial. If you called in from court, no matter who you were calling, they dropped everything to handle your call. That was nice and there was no distinction made over who was calling. Although once Maloney told me, "If you lose to him don't come back here."

Maureen Bonanni: Yeah. Well, they also used to tell us, "It's a need to know basis. We'll let you know when you need to know." You learned by doing, as we said.

John Caher: Wait. I want to go back over that, what you said about the jury instruction. How can a judge undermine you and why, and what can you do about it, other than make a record.

Mae D'Agostino: John, I had one of the most difficult cases of my life was a case where a mom fell asleep on Christmas morning. She was driving from Vermont to, I want to say someplace in the southern United States, and she fell asleep. She went down an embankment and her eight-year-old son was rendered a ventilator-dependent quadriplegic. There were several co-defendants in this case, but everybody settled out the Friday before, leaving me. I had been hoping to tag along with the expert testimony of the other co-defendants. All of that was gone. I asked the judge for an adjournment, he said no. I said, "Your Honor, but things have changed substantially." "No. No adjournment."

During the trial, I was the only defendant. I represented the contractor who was supposed to have guide rail where the car went off, and inadvertently we did not put the guide rail there. I spent most of the trial blaming the project engineer and said, "Well, why the heck did the project engineer sign off on this job if we did not lay sufficient guide rail?"

Well, the trial judge knew exactly what I was doing and exactly where my defense was going, and a few minutes before the charge, and in the hallway, he said in words or substance, "Mae, I have added a couple sentences to the charge." I said, "Well, Your Honor, what have you added?" He added the sentence, "It is of no moment that the project engineer approved the job." I said, "Your Honor, I object to that statement." You see, that was tailored to make sure that I did not prevail on that case.

John Caher: And it was done in the hallway?

Mae D'Agostino: It was done in the hallway.

John Caher: So, there was no record of it.

Mae D'Agostino: I said, "Well, Your Honor, I need a court reporter." I said, "Your Honor, how can you add that when my contractor thought they had done a job well done? They thought that they had laid all of the guide rail that was necessary because the project engineer signed off on it." He basically said, "I can charge whatever I want." Things like that.

It's a really bad feeling when something like that happens, and all you can do is try to protect the record. Now, I may be wrong, but I think that when the oral charge was given I think the judge capitulated and did not give that charge, but that's the kind of thing that we're talking about, where a judge is a judge.

Susanna Martin: Well, it still happens today.

Rachel Kretser: It still happens?

Susanna Martin: Oh, absolutely.

Rachel Kretser: Wow.

Susanna Martin: This is what you teach the young lawyer.

Rachel Kretser: I never did charge conferences off the record.

John Caher: But is that a gender thing or do we just have a uniformly bad judge?

Mae D'Agostino: I do think gender sometimes played a role in the way we had to interact with male judges because I think that sometimes some male judges tried to pound us down to see if we would capitulate. I think that we learned at a young age that if we showed fear, if we showed indecisiveness ... I mean there were a few times in my career that I kind of wanted to cry about what a judge was doing because I couldn't ... I was like, "Nobody ever told me this could happen in law school," and my legs got a little weak, but I tried to never ever show it because I felt as a woman that would be particularly damaging to my client. That I absolutely had to be as strong as any man to my right or my left.

Maureen Bonanni: Well, that's true. If you can't do that, then we shouldn't have embarked on this particular career and we shouldn't have tried cases.

Mae D'Agostino: Yeah, I remember telling one young woman who was crying one day out in the hallway, "Buck up. You are a litigator."

Maureen Bonanni: But there were some judges who would berate particularly new, young female attorneys until they did cry. We had to explain to them, "This is the way he likes it. I mean, for god's sake, he wants you to cry."

Susanna Martin: I'll tell you, we don't just have to deal with the judge and the other lawyers. We have a jury sitting there, and a woman in the courtroom is marked.

Jurors watch everything you do. They watch everything you wear. I can't tell you how many critiques I've got on the different suits and clothes I wear, and how I act. If I have a run in my stocking, that is the worst thing that can happen because I know they're all going to notice it and judge me on the basis of it. But once you get some confidence and you know what you're doing then you can go in there and be yourself.

I had a bad verdict once that I wasn't expecting, and after that, for the next six trials that I went to verdict and one that I didn't even go, I hired an investigator to question the jurors after the trial. I had a list of questions, and we would come up with it together, and in there would be the relevant questions like, "What did you think of plaintiff's counsel? What did you think of defense counsel? Did you feel that fibromyalgia was a real disease?" Something like that, and by and large, the response that I got back was that jurors liked me best when they felt I was honest and least when I'd treat them like they were idiots. Believe me, the way I was being trained back at the office by the men is you've got to treat everybody like they're idiots.

Mae D'Agostino: On the other hand, I do think women and men on the jury were tough on us as women litigators. Back in the '80s, we had to use the same bathrooms as the jurors did, the women. We went into the same restroom. I remember coming out of a stall once and hearing a juror say, "That lady lawyer's got an ugly suit on today."

Susanna is right. I think that jurors demanded more of us than they demanded of the men. I mean the men could show up every day in a blue or a gray suit day after day after day with a different color tie, but those jurors were looking for ... After I was divorced, I continued to wear my diamond for a while because I didn't want to have to explain to jurors what was going on in my personal life, and I could see them looking at my finger. I became very conscious of what I wore every day. After one trial, the jurors said that they had a betting pool going on what color suit I would wear the next day. I mean, that's ridiculous stuff and they would never do it with men.

I think we all dressed down our jewelry when we had a trial. I would never wear a pin. I would never wear showy jewelry.

Susanna Martin: I did. I wore my Rolex.

Mae D'Agostino: Oh, well, you were brazen, but I mean we did have concerns in front of the jury that men did not have. I felt sometimes that some women looked at me early on with an attitude of, "Who do you think you are being a trial lawyer?"

Maureen Bonanni: Yes.

Susanna Martin: It wasn't just early on, Mae. It still happens.

Maureen Bonanni: It's still today.

Susanna Martin: I told every jury I had that I had no children because I didn't want them to think I had children at home that weren't being taken care of. I mean there's so many things that you had to be conscious of.

Maureen Bonanni: Even on jury selection now. I mean, the last jury I picked was in January, but this woman, just when I was picking the jury, she didn't like something about me and you know it right away. Basically, she was very honest. She said to me, "I hear what you're saying and I know you have a job to do, but I don't think I like that you're so tough," basically. That I was going to be out there saying, "Everything he says is not true. Everything you hear, you've got something else coming." She did not like me at all, but she told me. I mean, that's all I need to know.

Mae D'Agostino: Have you ever heard the saying that women are tougher on women? I don't know if this is true. Women are tougher on women. Sometimes I would be more uncomfortable with women jurors than I was with men.

Maureen Bonanni: I had a judge tell me once that I only won a case because juror number something fell in love with me.

Susanna Martin: I know what that was. That was the mailman. I know that case, and he was in love with her.

Maureen Bonanni: I don't care if that's how I won.

Mae D'Agostino: You know what's interesting, if we did a wicked cross of someone, like these two women can do and like I used to do, just demonstrating in a wickedly sharp fashion that someone is lying, we become shrill, and I'll say the word, bitches, in the eyes of a lot of people in that courtroom, but a man can do it and be applauded for it.

Whenever I was picking a jury I would say, "Folks, I'm going to tell you something right now. In a few days, I'm going to be cross-examining that plaintiff over there and I'm going to be tough on that plaintiff. I'm going to put that plaintiff on a treadmill of truth and see if she falls off the treadmill. Are you going to hold that against me?" Of course, they all say no, but honestly, a man can do that with ease, but when a woman becomes tough, "Isn't it true?", and, "Isn't it a fact?" Well, we have to worry about being called all kinds of names for doing that, and that's absolutely true.

Maureen Bonanni: This last case, that you know just because I told you, I had to show that the parents were liars and not very good parents, so that's kind of walking a very fine line. I was the only woman attorney, but interestingly, it was two female doctors. I didn't have both of them. It was me, two female doctors, and then the other ones, but to say the parents didn't treat their own child right and to prove that. That's why the woman didn't like me.

John Caher: How were you treated by your adversaries? I suspect you've all spent a whole lot of time with Stu Jones.

Maureen Bonanni: Oh, I love Stu Jones.

Mae D'Agostino: Stu has always treated us with nothing but respect.

Maureen Bonanni: And his father before him.

Mae D'Agostino: And his father too.

Susanna Martin: I tried a case with Stu Jones and we had a hung jury, and I consider that a victory. He sucks all the air out of a courtroom. He doesn't personally demean you or anything, but he's ... I just had to moderate how I was because he was so dramatic and so emotional about his client that I just kind of had to change my whole style and just try to be the reasonable person.

Maureen Bonanni: I don't think any, even early on, any of the attorneys personally tried to demean us. They wanted to beat us to show that we were some sort of a

flake, shall you say. They wanted to be the first ones to beat us. You know what I'm saying?

Mae D'Agostino: Yeah.

Maureen Bonanni: Because we had a series of successes, and you have a series of successes and, "Who's going to bring her down?" That was the kind of thing you experienced, but that, as soon as they knew that we were here and we were staying, and continuing, and we were prepared, and we knew what we were doing, and our clients were well-prepared, it stopped.

Mae D'Agostino: Well, some men gave us the silent treatment. If we were at a pretrial conference or getting ready for trial they would be all fun and jovial with everybody else and just totally ignore me, which made me feel pretty badly.

I remember I tried a case, I think we were co-defendants. There was a lawyer in Delmar named Karl Schrade and he was a lot older than I was, and he looked pretty scary, but we got through the case, we tried it. It was a period of time where I kept getting stopped at the metal detector. You know, "You can't come in because you're not a lawyer." I remember, I think it was that day, the person at the metal detector had prevented me from coming in numerous times without a long explanation, and that day he looked at me and he said, "Where are you going?" I said, "I'm on trial." He said, "Well, what are you on trial for?"

Yeah. I didn't even understand the question and I went, "What?" He goes, "Murder? Assault?" I just gave it to him. I had enough and I said, "You know what? I've been coming to this courtroom now for two years and you keep giving me this crap and I'm tired of it. I don't have to explain. You know I'm a trial lawyer. You know I'm on trial."

Anyway, at the end of that case at that courthouse this Karl Schrade came up to me and he extended his hand. He said, "I just want to tell you that it was an honor to try this case with you, Ms. D'Agostino. It was an absolute honor, and you are going to have a great future." I drove back to my office just crying tears of joy. Just that singular act of kindness, it meant everything to me and it kept me going for another full year. But not everybody was always nice to us, especially at depositions when there was no judge present and they could say stuff under their breath about us.

Maureen Bonanni: But you do know who was generally nice to us in the courtroom was the court reporters.

Susanna Martin: They would get used to working with you, but, now, see, my response to what Mae's situation was is that if I would win a case and the plaintiff's attorney acted like that, I would say, "Oh, he's just upset because he got beat by a girl." It probably was true.

I tried a case once with a plaintiff's attorney who was very tall, 6'8". He had been a professional baseball player. This was out in Cooperstown. He used his size to dominate the courtroom. This was one of my first cases, and he was dominating because of his size. He went to take something, an exhibit, from my hand, and I pulled back on him like that. Out of the corner of my eye, I saw a woman juror in the front go, "Yeah! Yeah!" You know? You can use this thing two ways. You use the female thing ... You can use it to your advantage, too.

John Caher: For a long time, it seems like you three were it in med mal defense in this area.

Maureen Bonanni: We were it.

Mae D'Agostino: We were it.

Susanna Martin: Yup.

Mae D'Agostino: I think that there's a bond between the three of us that we can kind of finish each other's sentences and we know what the other is going to say before they say it. People sometimes ask me how could I be friends with Maureen because she was at a competing law firm. "How could you be friends with somebody at a competing law firm?" I have to say that early on in my career we were at three law firms all doing the same thing and all probably competing for the same pool of clients, but I felt nothing but respect for the two of them. That has continued. Even though I don't practice anymore, there's just, I think, a bond because the three of us were thrown into the fire.

Maureen Bonanni: Yeah.

John Caher: It's interesting to me how you all ended up in this field and none of you really intended to end up there. None of you, as far as I know, has a science background, right?

Maureen Bonanni: I mean it was up and coming at that point in time. Believe it or not, in the early '80s, late '70s medical malpractice cases were being filed in numbers that we have not seen since that time. The volume was incredible and how those cases were handled was evolving. This was all

evolving, how to even try these cases, so we were at very good firms with very good people. Also, though it was just the brink of how these cases were going to be handled, so we were lucky.

John Caher: When and how did things begin to change, and when did you start to gain acceptance? As the number grew or as time went on, or didn't you?

Susanna Martin: Well, as Judge Conway said, "Old buildings and judges get distinguished the longer they're around." I think it just came from being around for so long.

John Caher: Being accepted?

Susanna Martin: Yeah.

John Caher: It's interesting what you've all said about Judge Conway though because he was maybe the oldest judge in the building?

Maureen Bonanni: He was wonderful.

Mae D'Agostino: He was. Judge Hughes was demanding on everyone, but I felt that Judge Hughes embraced women, too.

Susanna Martin: He just wanted you to be good.

Mae D'Agostino: He just wanted you to do a good job. He was frightful equally to both men and women if you weren't doing a good job, but I certainly couldn't say a bad thing about Judge Hughes, who was there when I broke in.

Susanna Martin: Some of the older judges like [state Supreme and later U.S. District Court Judge Con. G.] Cholakis ... I love Cholakis, but Cholakis could say the wrong things to you.

Maureen Bonanni: They treated you like your father, for god's sake.

Susanna Martin: When I had younger judges who were pulling this nonsense then I wouldn't stand for it. I mean, Conway and Cholakis could get away with a lot that somebody new coming on the bench couldn't.

Maureen Bonanni: It was just their way-

John Caher: Let's define that a little better. Let's make that a little clearer about what they're "getting away with."

Susanna Martin: Oh, by calling you dear or something like that.

Mae D'Agostino: There was political incorrectness is what there was.

Maureen Bonanni: It was a generational thing and you had to be smart enough—you were and so was I—to accept the fact that they did not mean this to be demeaning in any way. This is the way they would talk to their own daughter, okay? They were giving you a fair shot in the courtroom, and I think that women who took offense of anything like that did it to their own detriment. You can't be rigid. You've got to know when somebody says to you, "Shut up and sit down, little lady," in front of jury, that's different than just calling me a "lady."

Susanna Martin: But if a younger judge started with this nonsense then I would speak to them and say ...

Maureen Bonanni: I think my point was, I saw other women come behind me, and even those today, younger women, who react inappropriately, in my judgment, to things that are said that are not meant to be malicious or demeaning. They've got to grow a hide. If they don't have one maybe they shouldn't be doing this because it's not necessarily a sexist thing, or a woman thing, or anything is intended like that, but things are going to be said. Things are going to be said to you in a deposition, in a hallway, behind your back, whispered in your ear, and if you can't deal with it then you don't belong here.

Mae D'Agostino: Litigation is a tough world.

Susanna Martin: It is. It is.

Mae D'Agostino: It's not for the faint of heart.

Maureen Bonanni: No.

Mae D'Agostino: When an injustice was done back then like, "Shut up, little woman," or for me, "Shut up, ignorant girl" ...

Susanna Martin: Or, "Sit down, dolly."

Mae D'Agostino: Totally unacceptable. Unacceptable then, unacceptable now. You know what? If you did have a problem with a judge in terms of how they were

addressing you, Ms., Mrs., Miss, you could ... There isn't any reason why you should not say to the judge, "Your Honor, I would ask you to refer to me as Ms. D'Agostino," but a lot of them didn't even know what Ms. stood for in that period of time. -

Susanna Martin: Weren't you the one who told a judge that you would leave your son on the corner or something because he wanted ...

Mae D'Agostino: Yeah, that was me. I had a judge who got angry at an attorney during a trial and didn't seem to be able to necessarily control his anger, so he told us to report to the courthouse at 7:45 the next morning. Well, this particular courthouse, they don't open the doors until 9:00 AM, and he got so angry he's like, "The two of you, be at this courthouse at 7:45!" I hadn't done anything wrong. It was like we're both being punished, so he said to the plaintiff's lawyer, "You have any problem with that?" It was the plaintiff's lawyer who had brought this on and the plaintiff's lawyers says, "No, Your Honor."

He turns to me and he says, "You have any problem with that Ms. D'Agostino?" I'm lucky I didn't go to jail, in retrospect, because I said as follows, "No, Your Honor. I'll just leave my five-year-old in the house alone and have him walk to the bus stop by himself."

After I said it was like, "I'm going to jail."

He stared me down and he went, "8:30." And I go, "Yes, Your Honor. I'll be here at 8:30." It was funny.

Susanna Martin: When you mentioned clothes, pants, wearing pants in the courtroom, I know trial lawyers right now to this day who will not. They wear skirts in the courtroom, but the first time I ever had somebody wear pants in the courtroom was an associate I brought to a trial. She came in a pantsuit, and it wasn't that long ago. Well, that was not long before I retired, and I looked at her like ... I was going to send her home, and I thought, "Well, why not?" She was fine. The judge had no problem and she was fine.

Rachel Kretser: Well, the irony is, we talked about our Court of Appeals suits and things like that. They always had to be skirts. Always.

Susanna Martin: Yeah.

Maureen Bonanni: Yes.

Rachel Kretser: Now the women on the Court of Appeals wear pants. All of them.

Mae D'Agostino: Yeah.

Rachel Kretser: Pantsuits.

Mae D'Agostino: But we were told by several ... I was told by several judges in the early '80s that if I ever showed up in pants that I would be bodily removed from the courthouse, so that was a little bit of an issue.

Maureen Bonanni: I mean, I think back now though it was an issue for men, too. At Carter Conboy back then, the men had to wear white shirts with long sleeves and a certain color suit. I mean there was a dress code, which is very lax today, shall I say, in many firms. There was something about that that made you feel like you were a lawyer. Being dressed up and stuff like, so yeah, they did that, but it applied to men, too.

John Caher: Was there a difference in the way the judges treated you on the State bench than on the Federal bench or was it the same sort of thing?

Maureen Bonanni: Well, I think the Federal court was always a little more sophisticated, shall we say. I don't know why, but I can remember Judge Miner, Roger Miner, and trying cases in front of him. He would not tolerate any bit of nonsense from anybody. I can remember I was in the courtroom and the lawyer said, "I object to what she just did." And he looked at the lawyer and said, "She has a name." That was, whoa!

John Caher: How long was it in your careers before you tried a case before a woman and who was it? Do you remember?

Maureen Bonanni: A woman?

Mae D'Agostino: A woman?

Susanna Martin: One woman. One. Judge Graffeo. That was the only time. She was just on the bench.

Mae D'Agostino: This is really sad to say but I don't think I ever tried a case in front of a woman in my entire career.

Maureen Bonanni: My god. I guess my first one was just this year. The judge down in Albany, Judge Ryba. I appeared before Judge Stein but I don't think I ever tried anything in front of her.

Mae D'Agostino: It goes back to one of the things that Rachel said, why weren't more women seeking judgeships? It was the furthest thing from my mind. Part

of that, I think, is because I never saw a woman for a long, long time on the bench. I tried cases for 31 years and I had to think about that. I never even tried a case in front of a woman, so I think that maybe one of the reasons that women were not ... many women may not have been pushing, pushing, pushing to be judges is that it wasn't part of what they were seeing. Maybe they almost thought it was too difficult to aspire to.

I never thought of it. It was the furthest thing from my mind. The judges were older men, and that's who I spent my days, and my weeks, and my months, and my years with. I never even imagined being a judge. It just wasn't a part even of my vocabulary. The other interesting thing about women in the profession is that I think people like Judge Conway did a lot to foster more women in the profession because young lawyers would come up to me when I was a lawyer and say, "Oh, Judge Conway came to talk to us at Albany Law School and he said that we need to watch you in a trial."

I think that Judge Conway was a one-person cheerleader for women in the profession. Wherever he went, he often did say that he found the women in the profession smarter than the men, better than the men.

Susanna Martin: Better prepared.

Mae D'Agostino: More than 20 or 30 people over the years came up to me and said, "Well, we just heard Judge Conway talk at Albany Law. Can we come and watch your next trial?" He was a huge fan of us. I remember that when I was offered the opportunity to be the Democratic candidate for a Supreme Court judge, I did go to see Judge Conway. I took counsel with him. I had probably been practicing six or seven years, and I went and I asked him his advice as to whether he thought I would be a good Supreme Court judge and I got nothing but positive support from him. But many women may not have. We saw so few women judges, it may not have become a part of what we were thinking. Did you?

Maureen Bonanni: I never really thought about it.

Rachel Kretser: But it was only this part of the state, ironically. I don't know why. The capital of the state, and we were so backward when it came to both women and minorities. You don't see it, so you don't think it. If you don't think it the party leaders surely didn't think it.

Susanna Martin: But doesn't it seem the party leaders still don't get the message?

- Rachel Kretser: In fact, the poles say that women do six points to eight points better overall than the men. The party leaders wanted to reward the people who paid their dues. They also felt more comfortable, I think, with the "guys," their CBA buddies and so forth.
- Susanna Martin: Yeah, they still don't get it. I think that any place where you have a political party that dominates you get bad government.
- Maureen Bonanni: That's what we've had in Albany County forever.
- Susanna Martin: You have to have a mix you know.
- John Caher: Michelle, as someone from another generation, what do you want to know?
- Michelle Browne: What suggestions do you have for newer female attorneys who are looking to kind of carry the torch in what you started?
- Mae D'Agostino: I think they have to get themselves well-prepared in law school. For example, although you may not want to specialize in law school if you have an idea as to what you want to do, whether it be commercial litigation, transactional work ... I'm a big fan of being a litigator to the point where I often will say to an audience, "Please excuse me because there are many other things that you can do with a law degree other than be a litigator and they're important."
- I think that for young women today, when they're in law school, the sooner they can get an idea as to what they want the more they can move in that direction in law school. Because law school education is so different today than it was when we went. They have all of the internships and clerkship and those things. So I would say for the young women to try to figure out where you want to go and try to take as many of those courses as you can.
- Try to latch on to a mentor in law school, or a mentor in a Bar Association, or just have a mentor because my two mentors in law school, they were men. They were my trial practice teachers. They meant everything to me, and I wouldn't be where I am today without them, so-
- Join the local Bar association so you can do mentoring even before you get out of law school.
- I think that you should try to set goals in law school, try to get a mentor, and not be too impatient with your life. The three of us paid our dues big

time. A lot of young women will come up to me and say in words or substance, "I want to be a judge." I always smile and I say, "When?" It's sooner rather than later, and I say, "That's a great career goal, but let's talk about some of the steps."

The other thing I think women can do is just try to set themselves apart at whatever they're doing, whether it be government or a private law firm, to put in those hours and to put in all of the stuff that you have to do to set yourself apart. As I say, we all worked harder than the men because we felt that we had to, but it does get noticed. That's another thing I tell young women, at your first post, at your first job, what can you do to stand out at that job? Whatever it is, you should do it. That's the advice that I generally give.

Susanna Martin: In a way, if you're looking to litigation, we were lucky because there were a lot more cases litigated when we started. Litigation is a very hard career to have if you have a family life. Maureen and I don't have children and Mae had a very supportive family behind her, but the women at Carter Conboy, they would inevitably have a hard time managing being on trial unless they had a supportive spouse with their families. What I would say to both those points is because there's a lack of trials now get on assigned counsel lists and things like that. Get as much courtroom practice as you can. Motions, and Federal court has assigned counsel cases, and most State courts do too. As far as family is concerned, make sure that you have a supportive network. Judge Ginsburg managed to have a baby while she was in law school.

Rachel Kretser: I would add one thing even though I'm not one of you. I would just say what Judge Conway said is still true. Watch Mae. Tell the young women, "Go to Mae's court and watch her." Watch all of you, in fact. I think that's a great way to learn.

John Caher: You've discussed how you were treated by some trial judges, but what about the appellate courts?

Mae D'Agostino: I think that we were a real novelty in their eyes though. I remember the first time I argued at the Appellate Division. I was very young. I said, "May it please the Court, my name is Mae D'Agostino. I'm an attorney with Maynard, O'Connor and Smith in Albany," and I see all these heads go up. I felt like they were not seeing many women in Albany at the Appellate Division or at the Court of Appeals. I argued many times at the Court of Appeals when I was young and they just seemed surprised when they

saw a woman there, so I don't think too many women were doing appellate arguing at the time either. I argued at the Appellate Division too many times to count and at the Court of Appeals. I just felt that they weren't ... They didn't do anything bad or anything untoward. I just felt that they were a little bit surprised to see a woman doing those arguments, but I never had a bad experience there.

But one of our champions was Leonard Weiss [justice and presiding justice, Appellate Division, Third Department]. He wanted us to succeed. Very much so. That was without reference to politics or anything else. Leonard Weiss just was wonderful, I believe, to all of us. And of course, Judith Kaye [first woman on the Court of Appeals, first female chief judge in state history] was a mentor and hero to all of us.