

## Diversity Dialogues: Sherrill Spatz and Kan-Ann Porter Campbell

John Caher: Welcome to Amici, News and Insight from the New York courts. I'm John Caher.

Today we have a special Diversity Dialogue program featuring two guests and a particularly timely topic. We're joined by Inspector General Sherrill Spatz and Kay-Ann Porter Campbell, Managing Inspector General for bias matters.

On the very day that George Floyd, an African American man killed by a police officer in Minneapolis, was buried Chief Judge Janet DiFiore ordered an independent review of the court system's response to issues of institutional racism.

She appointed distinguished attorney Jeh Johnson to lead that review and directed the panel to conduct a no stone left unturned analysis. After an in-depth inquiry, the Johnson panel issued a wide range of recommendations to ensure equal justice. One of the recommendations, which was immediately embraced by the Chief Judge, calls for a zero tolerance policy with regard to discrimination. That potentially involves the Office of Inspector General.

So Sherrill and Kay-Ann have kindly agreed to chat with us today about the office, its broad role and its role in implementing the recommendations of the Johnson panel.

Sherrill, Kay-Ann, welcome to the program. Sherrill, if you could, would you start off just by telling me what exactly the IG's office is and maybe something about your background and how you ended up in this position?

Sherrill Spatz: Yes, sure. And John, thank you so much for arranging this podcast for Kay-Ann and I.

John Caher: My pleasure.

Sherrill Spatz: The Office of the inspector General is an office that has statewide jurisdiction to investigate allegations of misconduct and fraud, criminal activity, conflicts of interest by court employees and persons or corporations doing business in the courts.

The way we look at it is it's our house and we need to make sure that everything is operating smoothly. So, for example, Kay-Ann once did an

investigation involving two attorneys in private practice who were having a conference in judge's chambers and one made an allegation against the other.

So even though those people were not court employees, we still had jurisdiction to investigate. The Office of the Inspector General has three parts. One of them is the general investigatory part. The other is Kay-Ann's part, which is the bias matters part. And we also investigate allegations of misconduct by court appointees who handle fiduciary matters.

John Caher: How large is your staff?

Sherrill Spatz: Much smaller than all of our chores would result in! We have four attorneys and we have five investigators now and two support people.

John Caher: And what is your background?

Sherrill Spatz: I've been with the courts since Valentine's Day 2000. And I came in originally to be the Special Inspector General for Fiduciary Appointments. So the first couple of years, we did a large investigation into fiduciary appointments and thereafter I became the inspector general.

Before that, after law school, I was in private practice for a couple of years. And then I spent about a decade at the Manhattan DA's office in the appeals bureau and I did sex crimes, and I also did white collar crime investigations. From there I went to the New York Stock Exchange enforcement division and spent about five years investigating securities fraud.

John Caher: Oh wow. Now Kay-Ann I believe you also have a public service background. What's your story? And what's the story of the office that you run?

Kay-Ann Porter Campbell:

So thanks again, John, for inviting us to expand our presence and make sure everyone knows about the IG's office and the bias unit.

Prior to joining the IG's office, I was an attorney with New York City Transit Authority where I litigated Title VII and New York State Executive Law cases in both state and federal courts. And then prior to New York City transit, I was an Assistant Attorney General for New York State in the Litigation Bureau. And I defended the State of New York, its officers and

agencies in state and federal court in matters involving Title VII, as well as Section 1983 actions.

John Caher: Let's back up. For people who are unfamiliar with "Section VII" and "1983" could you explain them please?

Kay-Ann Porter Campbell:

Well, Title VII is the federal statute that basically says you cannot discriminate against people based on race, gender, sex. And most recently, this past summer the Supreme Court has ruled that that has been extended to include sexual orientation. The Executive Law is the state counterpart to that.

I've been doing this kind of work since basically law school. So, it was a natural progression for me to continue with this work in the IG's office, coming over from New York City Transit. When I came — and I came to the court system in 1999, just a few months before Sherrill—it was the Office of the Special Inspector General for Bias Matters.

That office was created in 1998. Over time, obviously the name has changed. I'll just tell you a little bit more about the kinds of cases that we see and the jurisdiction of the office. So, the allegations that we would investigate include sexual harassment and discrimination based on race, color, gender, disability, religion, creed, national origin, sexual orientation, gender identity, or gender expression, marital status, and domestic violence status.

And the office would also investigate any types of complaints of retaliation for engaging in any protected activity. In addition, just to point out, the office does have jurisdiction to investigate judges. As Sherrill mentioned, we have statewide jurisdiction. So we cover courts from Buffalo to Montauk, all 62 counties in New York State.

John Caher: I'd like to follow up on something you said about investigating judges. Where does your jurisdiction end and the Commission on Judicial Conduct's begin, or vice versa?

Sherrill Spatz: We work in conjunction with the Commission on Judicial Conduct and there is a free flow of information as far as case referrals go. They ultimately will make a decision concerning a judge. So they have the jurisdiction. However, their process is different than ours, and it is the responsibility of the court system to ensure that our employees are safe and are able to do their work without fear of harassment or retaliation.

So if an allegation is made, for example, that a judge has sexually harassed a member of his or her staff, Kay-Ann would investigate that to determine whether the complaint has been substantiated. Decisions could be made for the safety of our staff and to do the appropriate thing *prior* to the Commission on Judicial Conduct beginning their investigation, and then acting thereafter. So in that situation, Kay-Ann would do her investigation first.

John Caher: I see.

Sherrill Spatz: And then the case would be referred to the Commission for them to take whatever action they deemed was appropriate.

John Caher: I see. The Commission of course can admonish, censure or remove a judge. My guess is you don't have that jurisdiction, that authority, correct?

Sherrill Spatz: That is correct. But we would have, after we did the investigation and Kay-Ann wrote a confidential report, we would have contact with Chief Administrative Judge Marks concerning what our findings were, so he could make whatever appropriate decision he determined.

John Caher: Now, where do you get cases from? Do you need a complaint or a referral, or can you institute an investigation on your own?

Sherrill Spatz: We get our complaints from a wide variety of places. We might get a complaint from someone who wrote to the Chief Judge. We would get a complaint from the Deputy Chief Administrative Judge's office, outside of New York City. In New York City, we get our complaints from the District Executives, from Chief Clerks, from the Appellate Division. We also get them from litigants who might write to us or call us or find us online. And from court employees who would make a complaint directly to us.

We also get referrals from outside agencies. For example, the Civilian Complaint Board might have a complaint against someone who thought the person was a police officer, but in fact, they were a court officer. So they might refer the case to us. Someone might have written to the State Inspector General, but it's about a court employee. So they might refer a case to us.

We work closely with District Attorneys or the Attorney General's office, where appropriate. And every once in a while we might find the case in an article that we read in the newspaper.

John Caher: I see.

Kay-Ann Porter Campbell:

I would add to that state law enforcement, whether it's NYPD or any local law enforcement could contact the IG's office to refer it over to us if it involves our employees.

John Caher: Now, Kay-Ann, Sherrill let's say your office investigates a judge for some sort of bias and finds something, and then you can refer to the Commission on Judicial Conduct. Does it work the other way as well where you might see a determination by the Commission on Judicial Conduct and say, "Hmm, that's something for us."

Kay-Ann Porter Campbell:

Sometimes that has happened. A lot of times our employees know that they can come to us and it's important because we have a duty to take any ameliorative action to make sure that an employee's not further harmed. We cannot leave that employee in a situation if they've complained to us that they're being sexually harassed or there's any sort of discrimination. And that's what the Commission cannot do because they're employees, they're court employees.

So in that situation, whether it's a secretary or a court attorney who the complaint to us, we would immediately take action to remove that employee from that environment during the pendency of the investigation. And at that point, after the investigation has been completed, we would make a determination. But in no instance would we leave that employee to continue working in that hostile work environment.

John Caher: I understand. Now some of the things you investigate, I would imagine, are not only inappropriate, but potentially criminal. Have there been times when you've referred a case to the District Attorney, the US attorney, whoever the appropriate agency would be?

Sherrill Spatz: Yes, we do. We have referred a case at the conclusion of our investigation and depending on what occurs there, we might, for example, need to testify in the grand jury concerning our investigation. If we're talking about criminal cases, our employees must cooperate with the IG's office, which means that they need to come in and provide information and be interviewed by us.

What they say to us is protected because they would potentially lose their job if they didn't cooperate with us. So we would not send the information that we garnered from an interview to a prosecutor's office.

John Caher: I see. But let's back up a step. What is the process? A complaint comes in or you see something, then what?

Sherrill Spatz: So why don't I start, Kay-Ann, and you jump in.

The first thing generally that we would do is interview the person who made the complaint. In any other time, we would do that in-person, have them come to our office, or if that was not possible, meet them at a district office, or someplace else that they felt comfortable and safe. So that would be our initial interview. Thereafter, we would conduct a series of interviews with other people who might have witnessed the incident or been told about the incident or had other information that would be relevant to the investigation.

At the same time, we would review all relevant evidence. That could be a court file. It could be computer records. It could be someone's personnel file, letters that were sent, social media, Kronos records, E-Z Pass, a whole range of relevant documentation. Video, if it exists in the courthouses, we would review that also. That can be relevant in a case. Generally, the last person that we would interview would be the subject of the investigation. They would be informed that they were the subject. They are entitled to representation. Most of them come in with their unions since most of our employees are members of unions. Some employees might come in with a private attorney.

At the conclusion of our investigation, we write a confidential report in which we analyze all of the information and all of the testimony, discuss the credibility of the witnesses, any documents that we've reviewed. And we would make a determination if the complaint was substantiated. And that confidential report would be sent either to one of the two Deputy Chief Administrative Judges, either at this point Judge Silver or Judge Caruso or the OCA director, if it involved an OCA employee.

If in fact it did not involve one of our employees as the subject, then an appropriate referral would be made, possibly to the Commission on Judicial Conduct or one of the disciplinary or grievance committees or the appropriate prosecutor's office. And the other referral could possibly be to another city agency. If something happened in our courthouse and either a city or state agency employee was the subject, we would refer the case to them.

And that is pretty much when it leaves our hands. The DCAJ or the OCA director would ultimately make the determination as to any potential discipline. If discipline was appropriate, then charges would be prepared by counsel's office. Ultimately, a case might be settled or it might go to hearing.

If a hearing is held, then a judicial hearing officer would hear the evidence and make a determination as to whether the matter was substantiated, make a recommendation as to potential discipline. And then the discipline itself going all the way back to the beginning, resting in the hands of the DCAJ or the OCA director.

John Caher: I see. So you investigate and make a recommendation, but you can't fire an employee or remove a judge.

Sherrill Spatz: That is correct.

Kay-Ann Porter Campbell:

And just to add, John, the process is confidential. When we interview our witnesses, we tell them it's confidential. They should not discuss it. They should not disclose the fact that they were interviewed or that there is an investigation. And that is to make sure that we can complete the process. And a lot of times when we start an investigation and once other employees know about it, there could be some division in the office.

So, we tell people they should really not discuss it and whatever they tell us is confidential. The only person who will see their statements would be the Administrative Judge in the case of the bias unit. My reports first go to the Administrative Judge and then to the DCAJ. So those are the only persons who would see their statements. So, they should feel comfortable knowing that the complainant nor the subject will ever see what they tell us. So they should feel free to speak to us.

John Caher: Say the complainant is not a court employee. It's a member of the public who had a negative experience with a court employee or a judge or whomever. What steps do they follow? How do they initiate a complaint?

Sherrill Spatz: They can send us a letter or fill out the complaint form that is available online. They could call our office. We are currently creating a position of ombudsperson, as had been recommended by Mr. Johnson in his report. It will be a senior administrative person in Kay's group who will be further trained, although she has been doing this very thing for years to provide intake for complaints.

John Caher: I see. You mentioned the Johnson report referring of course to Jeh Johnson's examination, which was commissioned by the Chief Judge. Kay-Ann with all that you see, in all these years did anything in the Jeh Johnson report surprise or shock you?

Kay-Ann Porter Campbell:

I've been doing this since 1999, so I've seen a lot over the years, things that have surprised me. I was not surprised by the fact that there is racial discrimination. I think it's something that we have worked on and we will continue to work on. What was surprising was that many of the employees indicated they were not aware of our office. The bias unit itself has been in existence since 1998. I have done many programs. I used to do the sexual harassment training and as part of that training, and I would tell people, even though we're discussing sex harassment, Title VII also includes protections based on race. And I've also done training for the new court officer recruits, where we discuss sexual harassment as well as racial discrimination.

So I was very surprised by that finding. But we are rectifying that, we are making sure that we're going to have more presence by doing this podcast, and by making sure our posters are displayed all over the courthouses and doing lunch and learns. I'm available to speak with any group, any offices, to make sure that employees understand there is a place to go to address these types of issues. They should not feel that they have to suffer.

John Caher: Now, as I said at the outset, the Johnson commission recommended a zero-tolerance policy, which Chief Judge DiFiore and Chief Administrative Judge Marks immediately embraced. Does that affect your office in any way?

Kay-Ann Porter Campbell:

Since 1998, we've been in existence. And I think that the reason the office was created was because there was a need, obviously, and they wanted to make sure that there was a zero tolerance policy. I think we just have to continue to make sure our employees are properly trained. They know that this is not going to be tolerated and complainants know that there is an avenue to go and address this.

So I think that the office's profile has increased since the recent events this summer, but we're going to continue doing what we've always done, which is to investigate any allegations of bias and all complaints will be

treated seriously. And to make sure that employees know that there's an avenue to address these types of complaints.

John Caher: So I think what you're saying is that there already was a zero tolerance policy. What's happening now is the Chief Judge and Judge Marks are saying, "Come on in! We're here we want to hear it."

Kay-Ann Porter Campbell:

Right. We've been at the forefront of this for over 20 years since the office was created. And I think many other States probably don't have this type of office specifically to address employee complaints, discrimination-type complaints. But we have been here for a while. We've been in business and we will continue to do what we've always done. I think that people just need to make sure that they know they can always come and file a complaint and know that it's going to be treated seriously and will be investigated thoroughly.

John Caher: All right, great. Now the Chief Judge often says that trust and confidence is the currency of the court system. How do your offices promote trust and confidence? Sherrill maybe you could start to address the question generally and Kay-Ann maybe you could approach it more specifically to your unit if you will.

Sherrill Spatz: Yes, of course. As we always say, when you do things for the right reason, it makes it easier to explain it afterwards. And all of the investigations that we conduct, we approach them with not the consideration of who has more power or who has the higher title, or who has the bigger salary, but trying to assess the credibility of all of the witnesses and the subject that come before us.

So people should all feel confident that we would consider allegations against a judge in the same way that we would consider an allegation against a court assistant or a clerk or a court officer. And that's always the way that we've conducted our business, which is that we don't know the parties. We don't have a preconceived notion of who these people are.

We don't think that any one group or one title has any more value than anyone else. So, we're here to make an assessment about the facts of the particular case, which is what we say when we encourage the District Executives, for example, to refer the cases to us and not do their own investigation. Because we don't have a sense of who these people are. And we are open and interested in hearing what information people provide to us.

And then to talk a little bit more about what Kay-Ann was talking about with confidentiality, we try to keep every case as confidential as we can. And while we counsel everyone who comes in that they should not talk about it, that we don't really have any control over. But we're not releasing the information to co-workers or to the press or to anyone else. We're keeping the information confidential.

John Caher: I understand. Now Kay-Ann, for historic reasons, the minority community did not have great trust and confidence in the court system. How does the work that you're doing help restore that trust, to create that trust or build that relationship?

Kay-Ann Porter Campbell:

Well, as an African-American woman myself, I take these complaints seriously and I'm proud of the work that the office has done over the years to ensure that we are addressing these types of issues. We promote the office a lot and I want to make sure that everyone understands that all the complaints that come in are investigated thoroughly and extensively.

We make sure that we review any documentation that will help us to investigate the complaint. Witnesses or complainants can forward to us any documentation that will help us to resolve these complaints. Everyone should make sure that they understand this office exists to ensure that employees will work in a bias free environment. That's our goal, to make sure everyone understands that.

And in doing so, complainants and witnesses should feel comfortable knowing that there is a no-retaliation policy. If you speak with us, feel free knowing that you will not be retaliated against; that will not happen. So, we encourage everyone to come forward. If you see something that's inappropriate or offensive, you can report to us, even though you may not be the person who that the comment was directed at. If you do overhear a comment, please report it to us. Or if you see something happening to someone else, report it to us as well.

John Caher: Kay-Ann, thank you and thank you, Sherrill. Thank you both for the really important work you're doing on behalf of the court system.