

# Hon. Rachel L. Kretser

## Former Albany City Judge

### 10-21-16

John Caher: For the record, it's October 21st, 2016. We're interviewing Judge Rachel Kretser of the Albany City Court. Thank you, Judge. First, when did you first consider becoming a lawyer, and why?

Rachel Kretser: I was a child of the 60s and we were very idealistic. We wanted to change the world. Then, I had the opportunity to work for the state legislature while I was going to college and then in graduate school. I saw that the law could be a vehicle for social change.

John Caher: Including social change in gender issues?

Rachel Kretser: Yes, the law was a vehicle for social change in gender issues, as well as environmental issues and other issues that were very important to us at that time.

John Caher: When did you start law school?

Rachel Kretser: I started law school in 1974, after going to graduate school.

John Caher: How many women were in your class, do you recall?

Rachel Kretser: Yes, I do. I followed that closely--18% in my freshman class and, by the time I finished, there were almost 1/3 women. The percentage was increasing very rapidly at that time.

John Caher: Did you face any gender-type issues in law school?

Rachel Kretser: When I was in law school, I had some excellent professors and have fond memories of several of them, but unfortunately, I didn't have women professors in the mid-70s, none. Women were just entering law school in numbers and there were very few female professors in those days. Young women, in those days, had very few role models in the legal profession.

John Caher: Were you anticipating encountering that when you got out?

Rachel Kretser: I don't know if I anticipated that. There were questions that we were accustomed to getting at that time. Honestly, we didn't even think about it. We were asked whether we had any intention of having a family. That was a standard interview question asked of women in the early, mid-70s. I would respond that I had no immediate plans to have any children.

I do remember one interview that stood out in my mind, because it was a little bit unusual. I was interviewing with a high-level assembly member for a job as his counsel. He looked at my resume, and he said, "You have all the credentials, but I have to tell you that I meet with my counsels after hours after legislative session in the evening. I honestly don't think I could concentrate with a woman as my counsel."

Now, that was, of course, sexist. But I have to give him a few points for candor. Now, people may still think those things, but they certainly don't say them.

John Caher: Early on, did you need to balance family life and professional life?

Rachel Kretser:

I had my son when I was a bureau head at the attorney general's office. As bureau heads, we could only take two months' maternity leave. If I had not been a bureau head, if I were a rank and file attorney, I would've been given 6 months. So, I took my two months.

Then, after that, I remember I wanted to continue breastfeeding, so I would travel home every day at lunch to breastfeed my son until I could get him into a daycare center right near our offices, pretty much right down the hall, which was wonderful, and then I could see him every day at lunch and read to him and put him down for a nap and then go back to work. That was nice.

John Caher: Early on professional role models?

Rachel Kretser: I was lucky enough to have many women role models, not too many women judges because, frankly, there were none in those days. When Judge Kaye came along, she became my number one role model, without question, professionally. I did, however, have personal role models who inspired me greatly and those were my parents.

My dad grew up very poor, had immigrated to this country from eastern Europe at the age of four, not speaking the language, and growing up in a Jewish ghetto in Brooklyn, the youngest of six children. He went on to get a degree in architecture from Harvard.

If he was bright, my mother was brilliant, because she was the type of woman who answered all those "Jeopardy!" questions without hesitation. She was a

Barnard graduate, a high school English teacher who, while raising three children, managed to earn all the credits for a doctorate in library science. They instilled in me the feeling that I could, if I worked hard enough, be anything I wanted to be, regardless of my gender.

I began my career at Weil, Gotshal & Manges, a large Manhattan firm. I was very fortunate when I graduated that there were opportunities for women. I was in the top of my class, which helped. The Wall Street firms, the big Manhattan firms, had just begun to really open their doors to women. Except for the stodgy, white-shoe firms, they were accepting women the same way they accepted men from law schools. Although, the freshman class of associates in Weil, Gotshal was primarily men, they welcomed me into the firm and gave me all the same opportunities as the male associates.

John Caher: Were you expected to dress in any way other than men or behave in a different way other than men?

Rachel Kretser: Women in those days did have to prove themselves. People were looking at us. We were a little bit different, so the eyes were on us. We felt that we had to prove ourselves. In terms of dress, there was definitely a code of dress for women attorneys. We had to wear skirts to court, without question, which is a little ironic when you think that, now, the majority of the judges of the Court of Appeals wear pantsuits every day to court. In those days, it was a pretty strict code of dress for women.

John Caher: Whose rule was that? Was that just the culture of the firm, the judiciary? Who imposed that?

Rachel Kretser: It was more or less understood that women had to wear skirts.

John Caher: That was the culture?

Rachel Kretser: Yes.

John Caher: Then, after Weil, Gotshal, where did you go next?

Rachel Kretser: I actually took a half-salary cut to go to the attorney general's office, to go into public service. I was lucky enough to get a very good job at the attorney general's office. Attorney General Abrams hired me and he was very open to hiring women and, I would say, hired almost as many women as men.

I practiced in state Supreme Court and federal court in the attorney general's office. We did a lot of Article 78 work, Title VII, Title IX, in Federal Court. I was

very fortunate to have a wide variety of cases assigned to me. My memory of my days in the attorney general's office is almost entirely positive.

John Caher: How has the increased presence of women impacted the legal profession and judiciary?

Rachel Kretser: Women have made great strides in the profession since I entered the profession in the mid-70s, but we are still only about 20% of the Judiciary, I believe, in the Third Department. When you consider the fact that we're 51 or 52% of the population and well over one-third of the bar now, we still have a long way to go in achieving equality on the bench.

Women always were, when I entered the practice, steered to the family court. I, of course, resisted that, but there were very few women practicing in the criminal courts, in the county courts, local criminal courts—very few women. Now, both my public defender and my ADA are women of color, so things have definitely changed.

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However, on the bench in criminal courts, we still have a long way to go. I was the first woman ever to serve on a criminal court bench in the entire Third Judicial District and that was only 11 years ago. Since then, we now have one other woman on the criminal bench in the Third Judicial District—Rensselaer County Judge Deborah Young. In all those years, it's amazing to me that we only have two women sitting on criminal court benches, to my knowledge, in the entire Third Judicial District, even to this day.

John Caher: Why do you think that is?

Rachel Kretser: The rough and tumble world of the criminal courts, I think, was thought to be unsuited to women. I remember when I began in my court as the first woman walking through the door and encountering, at the desk, an officer cleaning his high-powered automatic gun. Then, I walked past him, I heard the clanking of the doors to the cells below, the holding cells. I heard the defendants cursing. I walked past my colleague's chambers and saw the samurai sword that he keeps displayed right next to his desk.

Everyone there was male—the officers guarding us, the judges. Everyone, except the administrative staff, was male. It almost seemed like there was testosterone dripping from the walls in that courthouse. Then, I walked into my own chambers. In my chambers, there were flowers all over the place from people who were kind enough to send me good wishes on my election to the bench. It just seemed like an oasis, those flowers contrasted with the rest of the courthouse. It seemed like an oasis from that macho environment.

John Caher: Let's talk about the election. How did you position yourself to be able to get a nomination?

Rachel Kretser: I had worked for many years for other female candidates. That is something that I recommend to women, if they want to learn how to get elected, it's good to work for somebody you believe in and help them get elected. I did that, but I couldn't actively work in the Democratic Party because, as an assistant attorney general, we had certain ethical guidelines that prohibited us from doing that. Also, I would've had to take a leave of absence to run.

Fortunately, Mayor Jennings appointed me based on merit, because I hadn't been able to do much for the party. After my appointment, of course, I had to run for office. I had friends in the reform camp and the regular camp. Because I had worked with all of the factions of the Democratic Party over the years and was known to all of the factions of the Democratic Party, I was well-positioned to avoid a primary.

John Caher: Did gender play a role—positively or negatively—at that time? Was the mayor looking to appoint a female? Was it an issue in any way at all?

Rachel Kretser: At that time, I don't know whether the mayor was looking for a woman. I do know that my gender had hurt me in the past. There were no women on the bench in the late-70s, when I entered the field of law, in the early to mid-80s—no women.

Finally, the Women's Bar, and I am a past president, met with the party leaders and tried to make them aware that there were qualified women out there who wanted to be judges. At that time, I was not advocating for myself. I was advocating for other women.

I remember the party leader, who was very powerful and a long time party leader at the time, saying, "We offered it to Mae D'Agostino and she said no." I said, "That's wonderful, she's a remarkably talented woman. That's wonderful that you offered it to her, but there are other women also qualified for the bench." The fact that she wasn't willing to take a pay cut in order to go into public service is unfortunate, but we were flabbergasted. We were flabbergasted that the party actually believed that Mae D'Agostino was the only woman in the entire Capital District qualified for the bench, but that's what they thought.

John Caher: Why?

Rachel Kretser: They were very old-fashioned traditionalists in those days. There was a network. Most judges of the day went to the Christian Brothers Academy and they all knew each other. In fact, there were families with many judges. It was a fairly closed network and especially closed to women. Now, to complicate matters, I was a known "women's advocate," so if they were uneasy with women, they were certainly uneasy with women's advocates.

John Caher: Now, why do you think they were willing to consider Mae? Do you think it was because she was in the courtroom so much they were aware of her?

Rachel Kretser: Mae is outstanding, even they had to recognize that. She was such a well-known trial attorney and so successful. I don't know how anyone could have said that she was unqualified for the bench. Also, I think, honestly, they believed that, because they had offered it to a woman, they had done their part. They were off the hook. They could wait another 10 years. That was the way they thought.

John Caher: Pretty early in your career, the Court of Appeals, in its, oh, 130-year history or something by that point, had never had a woman sitting at the bench. Then, 1983 comes along and Mario Cuomo puts Judith Kaye on the bench. What did that mean to you and other women lawyers?

Rachel Kretser: Oh, it meant the world. We were thrilled. We were ever so proud. It gave us all hope. When I think back about Judge Kaye, she was an icon. I was fortunate to have her, not just as a role model, but actually as a mentor. She took time out of her busy schedule to advise and encourage me. I treasure the handwritten notes that she sent me over the years.

One of my fondest memories is of the day her portrait was unveiled, maybe 5 years ago. The joy of that moment was captured by a New York Law Journal cameraman. There is a photo of Judge Kaye, Pat Bucklin and myself gazing up at her portrait, and I was beaming. There was such a look of joy on my face and it did capture my feelings at the time. I was joyous that we now had a woman's portrait hanging on the wall with all those men displayed in the courthouse.

I remember the feeling of joy at seeing a woman's portrait hanging in that sea of male faces that adorned the courtroom, but also the fact that it was that particular woman, who I so admired and adored, and that she would be forever gazing down on the court and presiding over the court that she loved.

John Caher: Now, what did Judith Kaye's appointment mean to the Court of Appeals, other than symbolically? Did she bring anything to the court that had not been there before, other than the symbolic presence of a woman?

Rachel Kretser: Judge Kaye brought much more to the Court of Appeals than just her symbolic presence as a woman. In fact, there are studies that have shown that the

presence of a diverse judge, a woman, a person of color on the bench actually affects the collective decision-making process.

I think it was the Yale Law Journal had a study entitled "Female Judges Matter: Gender and Collegial Decision-Making in the Appellate Courts." It cited specific examples, especially Title VII, Title IX, the sex discrimination, the equal rights cases. To have a woman on an appellate bench not just gave that perspective, one of them, but she was actually often able to persuade her colleagues.

Women on the bench provide not just a perception of equality, it provides equal opportunity for women, role models for our youth. It inspires confidence in the justice system and, most of all, it promotes justice, because women bring their different life experiences to the bench.

Judging is not just applying the law to the facts, although that's, of course, what we try to do. We don't want to make law, we want to apply the law to the facts, but it isn't a robotic process. It's not a mathematical formula. If it were, a computer could be a judge. It is the process of being a human being, analyzing the facts and interpreting the law based upon all of our experiences and everything that goes into being a human being.

The reason diversity on the bench is so important is that more cases are decided by judges than by juries. We have become accustomed to discrimination issues when it comes to juries. *Batson* and all of the cases that followed talk about how important it is to have a jury of your peers and to avoid any type of discrimination based on race, sex, any type of discrimination in the selection of jurors, but isn't it equally, if not even more important, to have judges who represent the population that we serve? As I say, judges make most of the decisions, not juries.

John Caher:

What would you like to say to the people that preceded you, not so many recently, but long back, the people who blazed the trail that you were able to pick up on?

Rachel Kretser:

I am so very grateful to the women who preceded me. Whatever difficulties I encountered in the 70s paled by comparison to those experienced by Judge Kaye, by Justice Ginsburg, by so many of the women who paved the way for the rest of us. It's really on their shoulders that we stand.

John Caher: We talked about what you would say to those who preceded you. Let's now have a discussion and a message for those who succeed you, not only in the next few years, but in the future. People, hopefully, won't be able to imagine the world you have described for us in the 1970s.

Rachel Kretser: What I would say to the future generation is, Don't let others define you. Follow your heart. Listen to your heart. In my case, it was that I was led in certain gender stereotype directions, like family law and so forth, and I resisted that because that's not where my heart lay.

Even in becoming a pilot, I resisted it. I was told that I couldn't be a pilot. Women weren't pilots in the '70s, when I took flying lessons, but I pursued that. Don't let others define you. Do what your heart tells you to do. Work hard. There's no substitute for hard work. Every step of that ladder, look behind you and see if you can help somebody come up with you.

John Caher: What were the trials and tribulations of being a mother and being a practicing attorney in, we're talking '80s, '70s?

Rachel Kretser: It definitely was difficult to be a mother and a lawyer, especially when I practiced in the '80s, when my son was born. I had to put my career on hold. I kept the job I had, but any hopes of advancement were put on hold. Any thought of becoming a judge at that time was put on hold, because it does take a lot of time to raise a child. That responsibility, especially in those days, was placed primarily on women.

I've served on a number of panels geared to women talking about how to become a judge or about the role gender plays in being a judge, and often, the question is asked of me, "Can a woman have it all? Can she have children and a successful career?" Then, I look down the row of panelists and I see all these friends and women I admire on the bench who've been such a credit to the bench, such wonderful judges, but at what sacrifice?

The majority of women on the bench in this area are either never married or divorced. The majority of the women on the bench have no children of their own or, if they do, they're adopted. Those of us who do have children have one, generally, it's only one. There's no question that the women who have achieved success in this profession, in my generation, have done so at some sacrifice in terms of their family life.

John Caher: Do you see that changing?

Rachel Kretser: I do see it changing. I can now think of women on the bench who are happily married and have two, maybe even three children. They're still rare, but the

young women, I'm starting to see that. I'm hopeful that that will change in the future as young men, as their spouses assume a greater role in child-rearing.

John Caher: Unfortunately, I'm not so sure things have improved much over there in the last 150 years. What was it like working in the legislature as a young woman in the '70s?

Rachel Kretser: The positives were that it gave me a love of the law, but there were no women or virtually no women, legislators in the mid-70s when I was working there and no women counsels, none whatsoever. All women, myself included, were deemed to be secretaries. It was assumed, even though I was drafting the bills and it was my role to draft and pass bills for my boss, Senator Donald Halperin, everybody just thought I was his secretary. Secretaries are wonderful, I have great respect for secretaries, but that was it for women. They were all secretaries. There were no other roles in the legislature for women.

I did encounter some sexual harassment in those days in the legislature. I wasn't groped. Everybody talks about groping in this current climate because of the comments of a certain presidential candidate, but I do remember incidents where I was trying to achieve passage of a piece of legislation that I had drafted and, for example, I went into the office of the chairman of the Judiciary Committee in those days and was trying to talk to him about the merits of the bill. He said, "Can't we talk about this over lunch?" I said okay.

We went out to lunch and I was talking to him about the merits of the bill and he asked me out to dinner. I said, as I always did when asked that question, "You're very charming and attractive, but you're married and I'm in a relationship. So, no thank you." He said, and I quote, "You can kiss that bill goodbye." That was the kind of thing that we encountered. It made the job a little more difficult for women.

Sad to say, he went on to become a judge.