

John Caher: Welcome to “Amici,” news and insight in the New York Judiciary and the Unified Court system.

Today we are talking with the Honorable Richard B. Lowe III, presiding justice of the Appellate Term, First Department, and the newly installed chairman of the Franklin H. Williams Judicial Commission.

Justice Lowe, a 1967 graduate of St. John's University Law School, has served as presiding justice on the Appellate Term since he was appointed to that position in 2011 by then Chief Administrative Judge Ann Pfau. He began his career as an assistant district attorney in Manhattan and also served as Inspector General in the U.S. Department of Health and Human Services, chief counsel to the House Ways and Means Subcommittee on Oversight, and chief counsel to the House Select Committee on Narcotics Abuse and Control.

Judge Lowe was appointed to a New York City Criminal Court judgeship in 1985 by then Mayor Edward Koch. He was elected to Supreme Court in 2003. On December 1st, 2015, Judge Lowe was designated chairman of the Franklin H. Williams Judicial Commission by then Chief Judge Jonathon Lippman, succeeding Justice Rose H. Sconiers of Buffalo.

First of all, what is the Franklin H. Williams Commission?

Judge Lowe: The Franklin H. Williams Judicial Commission is a part of the New York State Unified Court System. The Commission is composed of judges, attorneys and court administrators and also outside personnel, all whom are appointed by the Chief Judge of the State of New York to develop strategies to make the court system more responsive to the concerns of people of color. The Commission is charged with monitoring the perception of how people of color are treated in the courts, reviewing the representation of people of color in judicial and non-judicial positions and recommending ways to increase diversity.

John Caher: That's very interesting. When and how did the Commission come into existence?

Judge Lowe: In 1988, then Chief Judge Sol Wachtler formed what was called the New York State Judicial Commission on Minorities in the Courts and this was done to conduct an in-depth study of the treatment and representation of people of color in the courts. The study resulted in a scathing three volume report which revealed the severe lack of diversity on the bench, in management positions and a widespread perception of racial bias in the courts. The study was conducted by Franklin H. Williams.

John Caher: I see. Who is Franklin H. Williams and what were his requirements before agreeing to accept this assignment from Judge Wachtler?

Judge Lowe: Franklin H. Williams was an associate of Thurgood Marshall. He was an attorney with Thurgood Marshall at the NAACP. He also was a statesman, the first ambassador to Ghana. Sol Wachtler commissioned him to conduct this study. He agreed to do it subject

to three conditions: One was that he had to have unfettered access to the entire court system; two, he would hire his own staff to conduct this study; three, he would finance this study himself so that there could be no question as to its independence and impartiality.

John Caher: Judge Wachtler has told me that the Commission is one of the things he's most proud of in his tenure as Chief Judge.

Judge Lowe: Yes, and I believe he has the right to feel that way. Judge Wachtler really put this thing on the map and opened up the review of this court system, which was just woefully inadequate with regard to minority and female representation.

John Caher: I think he was interested in this before it became fashionable, so to speak.

Judge Lowe: Yes. This is back in 1988.

John Caher: How long has the Commission in its present configuration been in existence?

Judge Lowe: Well, first of all, you need to know that as a result of this study, Judge Wachtler changed the name of the commission from the Statewide Judicial Commission on Minorities to the Franklin H. Williams Commission on Minorities to honor him. Judge Wachtler and Franklin Williams met in Reno, Nevada and addressed the Conference of Chief Justices, all the chief justices from around the country, about the necessity of other states replicating our New York initiative. Afterward, the president of the United States and the American Bar Association began initiatives toward furthering minority concerns in our state courts. New York, the first in the nation to establish such a Commission, was always cited as a model. That meeting gave birth to the National Consortium on Racial Fairness. Unfortunately, Franklin Williams did not live to see the enormous impact of his incredible effort.

The commission has been a permanent entity within the courts for the last 25 years.

John Caher: Wow.

Judge Lowe: Yes.

John Caher: What type of projects has it undertaken during the more recent times, the most recent decade?

Judge Lowe: Over the last ten years, the Commission has provided conferences, seminars and workshops on issues of race, ethnic fairness and diversity within the courts and the legal community around the State of New York.

Some of our more prominent and timely conferences within the last five or six years included: "Race, Law and the Courts," which was hosted by Donna Brazile as the keynote speaker; "Innovative Strategies to Nullify Gang Violence in the Community," which featured a panel of district attorneys from around New York City; "The

Disproportionate Representation of Children of Color in the Courts,” which was hosted by our keynote speaker Marion Wright-Edelman.

In the seminar series, we have co-hosted a seminar which is entitled “Everything You Ever Wanted to Know About Becoming a Judge.” We do this around the state because we hope to bring diversity to districts where there is a lack of diversity on the bench, and mainly upstate New York. As a result, we've conducted this seminar in Rochester, Buffalo, Albany and Syracuse, and this spring and fall we will be going to Suffolk and Nassau Counties in downstate New York.

We have featured a seminar on “Implicit Bias for Court Employees and the Public.” This is particularly important to us. People are not aware of the concept of implicit bias. Many people believed they are totally lacking of prejudice and discriminatory feelings, but we have recognized that all of us, black, white, indifferent, possess implicit bias which we don't know about. We conduct seminars on implicit bias for court personnel, court employees and particularly training for administrative and supervisory judges. It's particularly important for people higher up to recognize this concept and we also present this class for new judges at the New York State Judicial Training Institute with a course on implicit bias.

John Caher: It is a fascinating topic and, in fact, we made a podcast out of Rachel Godsil's presentation on implicit bias and it is part of our “Amici” podcast library.

Judge Lowe: Oh yes, and she is unbelievable. I have attended seminars with her presentation and I'm sitting there and I'm recognizing my faults. I don't know even know if you can describe it as a fault, as much as it is a condition which all of us are subjected to.

John Caher: And not necessarily aware of.

Judge Lowe: Exactly, that's the whole point of implicit bias. We're not aware of it.

John Caher: Now, as the chairman of the Commission, how would you describe your vision for the Commission?

Judge Lowe: Well, as chair, I see the Commission as a leader in the court working to ensure that people of color are represented within the court system and meeting with decision makers to educate and seek ways to improve culture and racial sensitivity and diversity. I would like to see the commission take the lead and be at the forefront of topical issues such as implicit bias, and the school to prison pipeline, which is very important.

This is an example of something that was initially started as a positive — to rid the schools of unruly students so that other students could learn without the difficulties that arise, but what has resulted is ... Things that I did as a kid in school or perhaps even you—I probably have you by many years—you were taken to the principal's office and perhaps your parents were called. Well, the concept of a zero tolerance results in a kid who commits an infraction in the school, a police officer is called and that student is taken to the precinct. We want to peel back the cover of this because we've also learned

that the students who are taken to the principal's office are generally white and those taken to the precinct are generally students of color.

We'd really like to focus on that. In addition, we'd like to focus on mass incarceration and also we want to review a bail system that keeps people, particularly in minor crimes, misdemeanors and low level criminal acts, in jail simply because they can't afford to post bail. The purpose of bail is to ensure the return to court, not punishment. Punishment comes after the fact. Punishment comes when there's been an adjudication. Too often, many of these people are held in jail simply because they cannot afford the bail that is set.

John Caher: Of course, Judge Lippman made important strides on that and I believe Chief Judge DiFiore is equally committed to it.

Judge Lowe: That's correct and we hope to work former Chief Judge Lippman on this issue to see how we can assist him in his efforts to come up with a proposal that can uniformly be applied, particularly in the City, but throughout the state as well.

John Caher: Now, I know you're planning a diversity awards program sometime this year. Can you tell us a little bit about that?

Judge Lowe: Yes. It's important to have a program that recognizes people who have been long standing in promoting racial and ethnic fairness in the courts and the legal community. Again, I think it's important to recognize those who take time to serve others and to increase opportunities for all. We hope that by doing so, we encourage others to be vigilant and mindful of diversity and inclusion.

John Caher: Sounds like a great idea. Just to back up again, who are the members of the present Commission and where do they come from?

Judge Lowe: Currently there are 23 members and they represent members of the Judiciary, including judges from the Appellate Division, the Appellate Term, from Family Court, Criminal court. We have an Administrative Judge and a judge from the United States District Court, a federal judge. We also have attorney members who work for the Office of Court Administration within the courts, and we have attorneys who have volunteered to be members of this Commission who are in private practice. In addition, we have a member of the Court Officers Association. He is a court lieutenant. The Commission members hail from around the state, including New York City, Albany, Buffalo, Rochester and Syracuse.

John Caher: What a wonderful organization. Thank you for your work in keeping it going.

Judge Lowe: I have to tell you, I've been a member for quite a while and I'm humbled that the Chief Judge nominated me to chair this Commission. The irony is that I knew Franklin Williams. It's an irony that I, 20-some odd years later, get to chair the Commission that he started. It is, quite frankly, humbling.

John Caher: There's a nice symmetry to that. Can you tell us a little bit about Mr. Williams? What was he like? How did he impress you back then?

Judge Lowe: Well, it's an interesting thing. He was no nonsense and the irony is that he and Thurgood Marshall, they rubbed heads together, quite frankly. Thurgood had the approach, and you can agree or disagree, but his approach was to only bring cases to the Supreme Court that he thought we could win, we the black community. Franklin Williams was much more aggressive. If he saw an injustice, he took that, ran with it and wanted to take it wherever it could go.

There's an interesting book called "Devil in the Grove" and it basically is a book about three black boys in the south who were arrested and charged with raping a white girl. Thurgood Marshall and Franklin Williams went, it was in Florida, and Franklin Williams was the more aggressive and the authorities in Florida actually sent people out to assassinate him.

John Caher: My goodness.

Judge Lowe: Yes, really. It's a fascinating book, but this man, he was a giant. I know that's said about a lot of people. But this man really was a giant.

John Caher: That's a wonderful note to end on. Judge, thanks so much for talking to me this morning.

Judge Lowe: Listen, I appreciate you calling and I appreciate our efforts to let other people know.

John Caher: Thank you, Judge.

John Caher: Thank you for listening to this addition of "Amici." If you have a suggestion for a topic on "Amici," call John Caher at 518-453-8669 or send him a note at jcaher@nycourts.gov. In the meantime, stay tuned.