

TF 30: La Cosa SDNY: An Insider's Guide to the Most Renowned U.S. Attorney's Office

Harry Litman [00:00:07] Welcome back to Talking Feds, a prosecutors roundtable that brings together prominent former federal officials for a dynamic discussion of the most important legal topics of the day. I'm Harry Litman. I'm a former United States Attorney and Deputy Assistant Attorney General and a current Washington Post columnist. Today I'm in New York City with three colleagues and former officials. And you can cut the mystique with a knife.

Harry Litman [00:00:36] Here we have three hot shots from the Southern District of New York and we are going to be talking about the Southern District of New York. The vaunted office we've heard so much about over the last couple years, so you know many of them. But first Mimi Rocah returns to talking Feds. Mimi is Pace Law's Distinguished Fellow in Criminal Justice and a legal analyst for MSNBC and NBC News. She was for many years an AUSA and then a supervisor in many leadership positions in the office of the U.S. attorney for the Southern District. Mimi, welcome back.

Mimi Rocah [00:01:17] Thanks Harry. Great to be here in person with you.

Harry Litman [00:01:19] We are also joined again by Jennifer Rodgers, a lecturer at Columbia Law School and a longtime member of the SDNY. Who had more who logged more time between the two of you?

Jennifer Rodgers [00:01:32] Mimi logged more by about three years maybe two years.

Mimi Rocah [00:01:35] But Jen was there [CROSSTALK]

Harry Litman [00:01:40] OK. And finally Elie Honig returns to Talking Feds. He's an analyst for CNN as well and a special counsel at a Lowenstein Sadler also for many years a supervisor in the SDNY specializing in organized crime prosecutions.

Elie Honig [00:01:57] Thanks for having me. I'm definitely the junior member here.

Harry Litman [00:01:58] Although am I right that some of you had the same actual supervisory positions as others, you inherited one from the other?

Elie Honig [00:02:07] We kind of all there was. It was you guys rotated being out on maternity leave and I filled in for one and then the other.

Jennifer Rodgers [00:02:14] Well Mimi was the Chief when I was the deputy chief and then you were the deputy chief while I was the chief and then we were co chiefs.

Harry Litman [00:02:21] So anyway organized crime and it's all a blur and you're all good friends. All right.

Harry Litman [00:02:26] Well look I was a justice for many years and hearing about SDNY, SDNY, the Sovereign District of New York as it's sometimes known and we've been hearing about it for two years both in its institutional role and also for the specific investigations that may remain even in the wake of the Mueller probe. So I'd like to talk

about actually both in turn. I think there's a lot of things that people are curious about with such an institution as SDNY. So let me ask you guys and briefly if one of you says the same thing as the other and you don't have to add fine but if you have something different to say. So just quickly what about getting the job, did it take a long time were you trying--was that the thing you really wanted? Did you pass up other things? Mimi, what was your introduction to the big the big leagues of SDNY?

Mimi Rocah [00:03:25] Well I definitely wanted to be a federal prosecutor in New York and I applied to the southern and eastern districts which I think, you know, most people do. I had actually clerked in the Eastern District of New York. So I had to sort of it was hard for me to tell my judge in the eastern district that I was going to the Southern District of New York.

Harry Litman [00:03:45] I don't understand why's that?

Mimi Rocah [00:03:48] Because he had been a prosecutor in the Eastern District. I clerked for him in the Eastern District and you know there's a rivalry between the eastern districts in the Southern District of New York--.

Harry Litman [00:03:56] That severe? So you had to steel yourself to let him know. Crips and Bloods?.

Mimi Rocah [00:03:59] Yes. I mean, my entire time in the southern district I'm not sure he ever quite foregoes the Southern. But we're still very friendly, he married me in fact. So, you know, he presided over my wedding, so I guess he got over it. But like many people I mean I had, you know, who wanted to be federal prosecutors I just I'd heard about this, you know, mystical place the Southern District of New York. And so it was impossible to turn down an offer from the Southern District of New York. I felt very privileged to have gotten it. I was hired by Mary Jo White at the end of her tenure. You know, when you get that call from Mary Jo White you just say, 'yes" immediately. I think most people say "yes" no matter who they get the offer from.

Harry Litman [00:04:42] Well what if you got the offer from EDNY first? You say "yes" immediately you hold out for the big--

Mimi Rocah [00:04:47] You know, I've heard people have that have that debate. I didn't have that problem. So I was able to withdraw my application from Eastern before, you know. I heard. It definitely is--I think most people, you know, I've heard maybe one story and it's pretty legendary about someone not accepting an offer on the spot from the Southern District of New York.

Harry Litman [00:05:08] Speaking of getting off to a great start you guys, you know, dress up nice and pack your lunch and go for the first day. You've heard yourself about the culture, you know, as Mimi mentioned, but you don't know exactly what to expect. I assume you're a little bit intimidated but I want to hear a little bit about the first three, four months when you encounter it is your basic impression., "Whoa this is just like what they said. this is pretty intense. Or is it, like, "What was the big deal? Why is everyone so you know intimidated by this? Just a kind of regular job." What was the the feeling? Jan you want to give a sort of--

Jennifer Rodgers [00:05:47] Yeah, I was super intimidated. I mean, I had worked at a firm that didn't do any criminal work, so I really had no idea what the difference between an arraignment and an indictment and a presentment. I knew nothing. And it's really overwhelming when you kind of feel like you're jumping into the deep end without knowing how to swim. And what's amazing about it is you feel so overwhelmed the first few weeks and then by a month in, six weeks in, eight weeks, you obviously still know far from everything but those little basics like at least you're getting your arms around it so that as the new people behind you start, all of a sudden you're the senior person accompanying them to court which is ridiculous. But that's how it works. But I found the learning curve incredibly steep. I was really intimidated by it all. And it was just, you know, walking down the office or next door to my slightly more senior colleagues for help on basically everything and then you return the favor as people come in behind you. But it is a scary time for sure.

Harry Litman [00:06:44] Everyone agree ? Both a steep learning curve and an intimidating one?

Mimi Rocah [00:06:47] Yeah. But the great thing about it and I'm sure this is true at other offices too, you feel like you're not doing it alone. You have this great camaraderie with the other people who are going through at the same time. It's almost like, um, slightly you know, we're in this battle together helping each other get through it.

Harry Litman [00:07:06] And both in terms of that camaraderie, that feeling but also in terms of the intimidation, did you feel it was more keen for you as a woman? I know there were a lot of women there by then but did you know it was sort of tougher to be the new kid?

Jennifer Rodgers [00:07:21] I didn't think so.

Mimi Rocah [00:07:22] So I guess this is good. Jen and I actually have a different view on something. I did in the sense that I thought, and I learned this early on, and later when I became a supervisor I told this to a lot of women, I thought men were--it came more easily to them to say, "You know, I can do this. I've got this. I know the answer." Whereas I was constantly questioning myself and I and I saw that in some other women not all so some of it is just personality. But what I later told women I supervised was nobody knows what they're doing in her beginning. It's just men are less self-conscious about it. So just act like you know what you're doing and you will eventually, but that's kind of what you need to do. So you know I don't think that's just a gender thing but I think over my life I've seen that it gets harder for women to sort of decide that, you know, I can do this even if I don't know what I'm doing. I'm ok doing it.

Harry Litman [00:08:20] I mean I can tell you as a quick note of comparison with other offices. I was a newbie in two different offices and I had the same feeling you did but with even less support. It was like, "OK, here's a file go off to the judge and--" What? "Harry Litman for the United States and we're asking for...bail..I think."

Elie Honig [00:08:39] No, the other one.

Harry Litman [00:08:45] Exactly. All right. So you're there. It sounds like you're getting your sea legs after a few months, ecetera and now your you're one of the gang. So let's talk about the gang. First, you mention this competition with E.D. N.Y., which everybody

knows, just to tell people, is the Eastern District of New York. So it's the neighboring office. How does that play out? Is it more them than anyone else? Would you also be competitive with the Northern District of Illinois? Another prestigious place. Or it's just because they're neighbors. And is it is it, like, a friendly competition or is a little bit...

Elie Honig [00:09:27] Someone said earlier Bloods versus Crips. I wouldn't go--I think the better analogy is Yankees Mets.

Harry Litman [00:09:31] OK.

Elie Honig [00:09:32] Right? We're sort of playing the same game and we sort of--.

Harry Litman [00:09:34] By the way, you guys are the Yankees--.

Elie Honig [00:09:36] Well it's also geographically correct. Yankees play in the Bronx which the Southern District, Mets play in Queens which is Eastern District right? And the Yankees have this illustrious history, World Championships--gosh, any Eastern District person is going to be--The Mets won once! But you're in the same game and you're you're all trying to do the same thing and there's a certain amount of respect. But Southern District we think we're better, just when it comes down to it-

Harry Litman [00:10:02] And why do you think by the way? You think you're better because you were better when you were hired. So overall you were better?

Elie Honig [00:10:06] No, no--

Harry Litman [00:10:11] Or you actually think you were formed in six months into the better prosecutorial machines.

Elie Honig [00:10:17] Part of it I think is is neither of those, it's just by being in the southern district. You have certain cases and certain traditions--.

Harry Litman [00:10:24] That make you better?

Elie Honig [00:10:26] Yeah. Tha no one--

Harry Litman [00:10:26] Just walking in the door. Because because of these traditions you're--

Elie Honig [00:10:31] No, but it's the same thing as getting drafted by the Yankees versus getting drafted by my favorite team the Phillies. Like, there's more of a history and a tradition and an ethic there.

Harry Litman [00:10:39] Yeah, but that doesn't make the rookie better--

Elie Honig [00:10:43] But it's what we think. (LAUGHTER).

Harry Litman [00:10:46] (LAUGHTER) OK. All right. Well we'll cut to the chase at the very end. But do you think this now that you're out?

Elie Honig [00:10:53] Yes. Of course. I t was fully indoctrinated.

Harry Litman [00:10:56] All right, so explain it then. There must be a reason that's--.

Elie Honig [00:10:59] Well, we get the biggest and best cases.

Harry Litman [00:11:01] Okay, that's a reason.

Elie Honig [00:11:02] Yeah, we've made them over the course of our history. Part of that is an accident of geography. Right? We're a quarter mile away from Wall Street. Many of the worst, of course 9/11, but many other horrible terrorist attacks have happened in Manhattan. We have Mafia in our district. I mean, it's sort of every kind of crime you can think of happens in Manhattan. Manhattan's the center of the world and we're in Manhattan. So there is an inherent built in advantage in terms of getting the highest impact cases. So I think that goes a long way and a lot of it's just an ethic and attitude and people talk about this Southern District swagger and, "You guys are like a mafia." To which I say "yes and yes" and we're kind of proud of it.

Harry Litman [00:11:40] So you think you have a little bit more of a swagger than the Eastern District of New York..

Elie Honig [00:11:48] Or you can name Northern District of Illinois or whatever.
(CROSSTALK)

Harry Litman [00:11:54] I was in the Western District of Pennsylvania. I tangled with Mary Jo White once on a case and I somehow wrested about half of it from-- but it was pretty clear, you know, even though we're both U.S. attorneys, who was, sort of, the boss. Well anything to add to this? You guys are fill in the blank. "You're the best because..." Here, we'll make it a multiple choice: Because the best cases and so that makes you the the best. The best people from the start and that that makes you the best. The best culture, so you're not the best until you're there for a while and then you're the best...

Mimi Rocah [00:12:31] I think it comes down to a little bit of all that. Certainly everything Elie said. But from the first day you get to any U.S. attorney's office you're taught by the people who precede you. And the southern district has had some incredible prosecutors. I think the unit chiefs who you know for the most part are are people who you know have just incredible experience and it's set of principles about what it means to be a good prosecutor but also be an aggressive but fair prosecutor.

Harry Litman [00:13:06] I want to say to get back to that.

Mimi Rocah [00:13:07] Right. I mean, I think the Southern District teaches you to take chances. It prides itself on doing that. So you charge cases that other districts would run away from maybe, you know, because you're no--you're taught to not be afraid to lose a trial. You know it's OK. And so you know you take a risk in charging a case if it's the right thing to do because we know this person is guilty of the crime.

Elie Honig [00:13:33] There is an aggressiveness and this is what I was talking about with the ethic and I think if you ask federal agents in the tri state and beyond area, "Where would you most like your case to land?" They will tell you in candor Southern District. And I have examples of that. One of the best mafia cases I did under Jen and Mimi came to us because a New Jersey based FBI agent was dissatisfied with the way New Jersey handled

and charged his case. And he cold called me and I went over and met with him one day and I called probably one of you two and said OK. This is a nine count racketeering case including a murder, we charge it. It became a huge case. We convicted a captain of murder and he kept bringing us cases afterwards because there is this aggressiveness and sort of fearlessness. We're not cowboys. We can talk about this later. We don't overcharge we. We are very careful about what we do. But there's also this sense of if it's the right thing I'm going to do it even if it's a tough case.

Harry Litman [00:14:25] Yeah. All right so, very briefly, we've got in the corner there a phantom figure who's the Eastern District of New York representative here just for the next forty five seconds and he says wha?t Does you say you're completely full of it. You're not better. Or does he say, "Yeah you're better and here's the reason."

Jennifer Rodgers [00:14:43] Well I don't know what he would say. I mean, I think he'd have to concede, as maybe I know since we both did hiring for a lot of years, that they--ypically when people go to Eastern it's because they didn't get in at Southern.

Harry Litman [00:14:55] Except Ellie--.

Elie Honig [00:14:55] Eastern said no to me.

Jennifer Rodgers [00:14:59] Ellie's the reverse. But usually that's true. And, in fact, to the point where I heard at one point that they were making on the spo offers. The US Attorney and Eastern was saying to people, "I'm giving you this offer and you have to tell me right now," because they didn't want them to say, "Oh let me go make a quick phone call and see where I am at Southern." But look, I mean they're an amazing office too. They have a lot of the same characteristics that we do and it's the only place in the country where there's one FBI office covering the territory that two U.S. attorney's office cover which means we're kind of no matter what you want to think about who's better and who's stealing whose prospects, we're fighting with them for the same cases at the same FBI office at the same agent. So that kind of creates a competition that you know would be there regardless of whether there was kind of any other sort of inherent competition there.

Harry Litman [00:15:49] All right, so let's talk about this notion of aggressiveness and SDNY being like a little bit more, even more than a little--although I heard you know emphasize both both Ellie and Jen emphasize prudent and don't overcharge etc., meaning you walk that perfect line in the SDNY. So it sounds like you think that's true. That's the reputation. What's the impact of that reputation. Do you find in the world when you go in front of judges, when you have defense attorneys. Are people, you know, a little cowed by you? "It's a southern district coming." Or do they want to take you down especially? Do you come at them with a reputation for arrogance deserved or not. You know, what downside or what's the general consequence of wearing the big, you know, "FDNY We're Aggressive" t shirt emblazoned on your. --when you come into court.

Elie Honig [00:16:54] It's interesting. I think if you asked defense lawyers, "Where do you want your client to be charged?" I think, you never want to be charged federally as opposed to state. Because Federal penalties are generally higher than the state. But I also think defense lawyers that I dealt with understand that we can be reasonable that we don't take sort of angry vindictive measures that we don't pile on. We didn't do these 88 count indictments, right? We would try to get our indictment sort of as narrow and tight and well-formed as possible. And I think there's a good amount of reason. And I'm sure we all

have stories like this but I have many stories where you had a narcotics defendant who we easily could have if we insisted on the mandatory minimums do 40 years or 20 years. But you look at all the circumstances and try to do the right thing. I mean I have very specific examples of that. I was mid-trial once on a case where the guys were gonna go down for 25 20 and 20 years. My chief at the time, now a judge, Ray Lohier, looked at the whole case and said, "Look you're going to win this trial I get it but the right thing to do here is to give him a little less time." And that's what we did.

Harry Litman [00:17:56] Oh, you temporized your aggression in that one?

Elie Honig [00:17:57] Yeah...what does temporized mean? (LAUGHTER) Moderated it?

Harry Litman [00:17:59] They know that in the Eastern District of New York.

Elie Honig [00:17:59] That's a confusing word for the jury, I'd lose 'em.

Harry Litman [00:17:59] Right, you'd need it for the Court of Appeals then. You know, you weren't as aggressive as you could--you're boasting now or whatever that you guys are aggressive. That's part of your rep, etc. You've just given me example where you weren't.

Elie Honig [00:18:21] Aggressive when appropriate.

Harry Litman [00:18:25] OK well we'll change the, you know, the T-shirt motto. But you're certainly considered aggressive you agree with that?

Jennifer Rodgers [00:18:32] Yeah.

Harry Litman [00:18:32] And so what are the consequence of that in front of-- are judges tougher on you? Do they give you--stay with baseball--you know, if you're throwing them all good you'll get a slightly bigger strike zone, the umpire I'll give it to you. Or it might be you know that you've got a bigger cross to bear being from the Southern District. What's it feel like?

Mimi Rocah [00:18:52] I think it's really important to emphasize that--I think all three of us have said this in different ways. From day one, it is ingrained in you to be aggressive meaning take chances on what you will charge take chances with arguments you'll make. If it's the right thing to do. Don't just be aggressive to be aggressive. That is actually I think completely counter to the culture there and--.

Harry Litman [00:19:16] Give me the short definition of what it means to do the right thing?

Mimi Rocah [00:19:21] It means to not be aggressive where there are there is good reason to not be. To back off a charge. To not send someone to jail for the absolute longest time that you possibly could or try to because you do not seek the highest sentence because there are mitigating factors that you see and you take into account. Sometimes that's up to the judge to make that decision. But we all know you know learn early on that in charging decisions and what sentence we seek we as the prosecutors and is this true of any prosecutor have this immense power and you have to use it responsibly--.

Jennifer Rodgers [00:20:00] And that's by the way I think, I think you want to get into this later. That's where we most often butted heads with main Justice and DOJ. Because there's guidance coming out of DOJ as we all know about how you have to charge things and there was a memo that came out. I can't remember which DAG it was under. You know what I'm talking about?

Mimi Rocah [00:20:17] The Ashcroft Memo?

Jennifer Rodgers [00:20:18] The memo that said you basically, you have to charge the highest -.

Mimi Rocah [00:20:22] The Ashcroft Memo.

Jennifer Rodgers [00:20:23] --the highest possible charge you you can. Yeah. And so that's an instance where we in the office might say we don't think we should have to do that and there's a reason for that. And so you know you start fighting with justice and that's why Justice looks at us and says like, "Come on, people. Get in line you know what's wrong with you that you're trying to use your prosecutorial discretion in charging?" Which of course you should be able to. But Main Justice is main justice after all. But that's I think one of the tension points that we always had with Washington that you know would sometimes cause them to look at us. with--

Harry Litman [00:20:54] Well while you say "main Justice's main justice after all" but really a big part of your reputation. The origin of the so-called Sovereign District of New York is that you know another attitude toward what you said Jen "main justice is main justice." That means you salute and have to do what they say. And how would . you ever think about violating any-- it's a real thought that like you know an edict from main justice will be a "recommendation" to the Southern District. They maybe will, maybe won't. There's gonna be a real tussle on your hands. Is that a fair reputation and how is it justified within the office that you're you know actually not following sometimes or going your own way on DOJ policy?

Elie Honig [00:21:45] It is it is a fair I think overall characterization and again some of it's just cultural. I was sort of taught from very early on they are not our bosses. In fact, the only the only time Preet Bharara--.

Harry Litman [00:21:55] --and they are yet--.

Elie Honig [00:21:56] Well they are, technically, but we don't recognize it. I mean, the only time Preet Bharara got actually angry at me was, we had a visit from Lanny Breuer who was I think Chief of the Criminal Division at main justice in D.C. at the time and I said something like referring to Lanny as "our boss". I think I said, "Well our boss is coming up." Preet just said, "Lanny Breuer is not your boss. Lanny Breuer is not my boss." So that's just a sense of sort of the culture. But there are specific examples I think Jen gave the best one. This memo comes down right from DOJ saying thou shalt charge everything to the max. And I don't remember ever giving that any more than just passing notice and nor did any of my chiefs at the time. I think I was in narcotics at the time say "OK we're all doing this." I mean it would lead to absurd results.

Harry Litman [00:22:38] I can tell you, bud, we had those absurd results when I was--.

Elie Honig [00:22:41] I mean, I don't think I ever charged everyone to the maximum of everything. That would be insane.

Mimi Rocah [00:22:48] You know, at the end of the day though, you're still a government attorney you're still a government employee you do have to follow, for example the DOJ rule that a president would, you know, should not be charged.

Harry Litman [00:22:58] There's mavericks and then there's, like--

Mimi Rocah [00:23:00] No one in the Southern District is going to go around that. Under any U.S. Attorney I think that's my personal belief.

Harry Litman [00:23:06] And that's because, unlike other edicts, it's a...super serious one?

Mimi Rocah [00:23:11] Well I think it's hard. I mean like I said it's not that you just ignore the other rules or the other guidance or the other policies is that there are there is so much discretion that comes in the job that I think you can find ways to justify your way around them. This kind of a rule about indicting a sitting president how can you find your way around? I mean, there just isn't really--

Harry Litman [00:23:36] Yeah, I can report by the way having been at Main Justice as well as as a U.S. Attorney's office there's a concomitant kind of...fear of you--You know if sometimes the Deputy Attorney General whoever it may be is going to have to you know really get an argument going and go call Mary Jo White. And with anyone else it's a straightforward thing. But like Mary Jo might really you know give it to him with two barrels. Okay, so you know you've now been out for a few years, you've given the whole sense of the culture there. I want to know if it feels about the same. In retrospect do you think the SDNY you know called it true and right? Do you see as you sit here and you don't have to document exactly. Did you ever make because you were the SDNY either out of confidence or this aggressiveness. You know, a real mistake that you now regret?

Mimi Rocah [00:24:32] Of course. I mean I don't think anyone from the Southern District of New York would say that even given all these things that we're saying that we were perfect. This is about what you strive for. You know I think I as a prosecutor, I as a supervisor made probably wrong judgments. I mean it's all about judgment. I saw other people make wrong judgments. People are human you know. So it's not about being perfect. We're talking about what we were taught to aim for and try for and strive for and what I think the office as a whole at least under the U.S. Attorneys I served under did strive for.

Harry Litman [00:25:12] Well and others, you know you don't have to tell us what they are but feel like, "I kind of wish on that one I kind of wish I'd been more by the book. E.D.N.Y., instead my SDNY handbook made me really go too far not far enough etc.? I think like Mimi said we've all made mistakes and things we wish we would have done differently. But I don't think that's ever because we were Southern District to the contrary. I think sometimes being Southern District saved me from making a mistake. I remember very early on I had I just tried my first case and early on there's this sort of anxiety about am I getting enough trials right?

Harry Litman [00:25:50] Well no right. That's a big thing. That's right. You can go a few years and not get a trial because they're so big.

Elie Honig [00:25:56] Yeah. But even early on: "The people up and down the hall from me have three and four trials but I only have one." And you want it, right? Everyone knows their stats. So I just finished my first one and I was getting ready to try what I thought was going to be my second one and I can say that the person who supervised my first was Rich Sullivan who's now a judge on the southern district and he was great supervisor and I was getting ready to try my second one and I just stopped by his office and said, "Hey I'm getting ready to do my second case." And he said "Tell me about it." And I'll just, long story short it was a very shaky case that probably there was a much lesser disposition that was the right thing. And I told him that I said: "But I really want to kind of get my second trial running." And he said: Whoa. We don't do things that you run up your stats and your record." And it was the right thing to give this guy a much much lower. I think it was a non-custodial plea a probationary play. It was in retrospect now that I'm a little older and a lot older and a little wiser. It was absolutely the right thing to do. So I think having that Southern District influence prevented me from making a mistake.

Harry Litman [00:26:55] Okay, and you know right now as you sit here the converse kind of example doesn't come to you.

Elie Honig [00:27:00] I can't think of a time when we ever when I was ever involved in anything where we overextended because we had to be the big tough Southern District and got burned.

Harry Litman [00:27:07] Yeah that's exactly what I'm talking about.

Jennifer Rodgers [00:27:09] Yeah I agree. I mean yes some regrets. I'm sure plenty of mistakes. But you know never felt like I did anything unethical. Never you know aired on the side of against a defendant's rights you know nothing like that. So I can sleep well for that stuff.

Harry Litman [00:27:25] By the way so quick side point I want to go back. You just mentioned Ellie, everyone's aware of his or her stat.

Harry Litman [00:27:31] So in the same way, now you're in there you're in this vaunted institution. Some people some vaunted institutions. Everyone's you know happy they're in it together. Some there's a real strong competition that remains. What what was what did the attitude tend to be toward your colleague? You know about who's getting ahead of whom or what. Once you were in the you know paradise was it all kind of fine?

Jennifer Rodgers [00:27:58] That's a good question and it's so funny because you know you would think it would be very competitive. And I really found that it was not. And part of that is because except for very very early on where sometimes I'll try a case by yourself you're always on a team. Investigations, trials when you're in a senior unit you're always on a team and it's not like you're with the same person. So you're kind of you know you and your colleagues in your unit are switching around working together on different cases all the time. So there's just this collegiality that I think extends far beyond any competition that there would be. And you know no one's on partner track. No one's making partner here. Yes there are supervisors who are made--

Harry Litman [00:28:38] Made? Like a Made Guy? (LAUGHTER)

Jennifer Rodgers [00:28:38] That's right. With a very comprehensive ritual (LAUGHTER)

Jennifer Rodgers [00:28:43] But you know. So yes there is some sort of elevation that happens to people if they stick around long enough. Which many people don't. But it's not like you're at a law firm. I mean Mimi and I were at the same law firm before the office and you know if you sent around an office wide request for like a sample or something people would ridicule you. It's like: Why are you sending around a request for this kind of motion? Are you lazy? Aren't you going to do all the hours yourself to come up with this? Whereas at the U.S. Attorney's office constantly every day is like does anyone have a you know motion to dismiss response on this particular issue because we're all sharing and helping each other. No one has the time to reinvent the wheel and so that's just kind of how it was.

Elie Honig [00:29:22] And it's so true. There's such a team atmosphere there. I mean yes there's friendly rivalry and "Oh I've done double the trials of you." But it's I mean one of the traditions that Southern District is when somebody is giving an opening address to a jury closing address or getting a verdict an e-mail goes around and our offices steps away from the courthouse and people would file into that room. And I'll tell you like waiting for my friends juries to come back and especially people I supervised juries to come back. I was just as nervous as my own chair is like watching your kids play sports right. I mean you are pulling for each other and helping each other and when you're on trial there is this understanding that if you need anything anyone will help you out. You can call a unit. Well I'll give one story. So I was getting ready to try a five defendant human trafficking case and my my partner who I was getting ready to try this with his wife was pregnant with twins and us being guys we didn't really understand timelines we kind of roughed it out in our heads and we're like, "Well, maybe she'll give birth towards the end of the trial so we front loaded it for him and backloaded it for me. Well guess what his wife gave birth weight eight days before the trial on a Sunday and the trial started the following Monday. And so I sent around an office wide e-mail.

Harry Litman [00:30:29] Was this their first child

Elie Honig [00:30:31] Uh, no. They had one but this was the two girls. So I sent around an office wide e-mail saying I'm really thrilled to announce so and so's had twin healthy baby girls beautiful everything's good. In a related note does anyone want to hop on a trial with me. I'm defending a trial that starts in eight days and Mimi was a chief at the time I was not. And she was like I'll do it. I mean I got 30, 40 responses from people at the highest levels the office to people who were brand new and in no position to do this saying if you're serious I'll do it. And the person who ended up doing it with me Lisa Zornberg became sort of my.--but she didn't know a thing about the case. And in eight days she was up. I mean, I opened--.

Harry Litman [00:31:06] You gave the opening argument.

Elie Honig [00:31:07] But she was ready to go eight days later and that's sort of the ethic of the office. People were willing to drop everything they were doing and jump into this emergency situation.

Harry Litman [00:31:20] So this is a little bit off topic and then I want to return to maybe you know current day but this is not SDNY specific but another retrospective question.

Now you guys have been out for you know at least a couple of years. Anything about the whole system you know SDNY included but you know looking at DOJ the federal criminal justice system that at the time you didn't give any second thought to you thought was fine but you now think in fact if you were the god of the criminal justice system you would change and you see now in retrospect was a little unjust? Does anything like that occur to you?

Elie Honig [00:32:02] I had a different experience than I think almost everybody who leaves the Southern District that I went to work for a state prosecutor right.

Harry Litman [00:32:09] From there?

Elie Honig [00:32:09] Yeah, I left the Southern District in 2012 and I spent the next five and a half years running the criminal division of the New Jersey Attorney General. So I went from federal to state. And boy what a reality hit that was right?

Harry Litman [00:32:24] Why?

Elie Honig [00:32:24] So I'll tell you a couple reasons. We used to bellyache about our judges like anyone would. I'm sure you did too Harry. But man, what I wouldn't give to have one of them back-- (LAUGHTER).

Elie Honig [00:32:34] The federal rules, the rules of procedure, so much better. The cases move so much more quickly and orderly than in state courts.

Elie Honig [00:32:42] But the one thing that really I think is my answer to your question is the sentences, right? Boy oh boy, the sentences that you would routinely hand out in federal narcotics cases in particular are through the roof. And when you get into the state system and you see the sentences, some of them are still outrageously high but you realize like a case that would be a routine case federally a routine drug case--eighty seven a hundred eight months. Right. Remember these are like guideline numbers. I mean that's an outrageously high sentence for state systems. And so I think I look back and I think boy some of these federal sentences and you don't realize it when you're in this--.

Harry Litman [00:33:18] So you feel this now where you didn't at the time you just sort of went through it.

Elie Honig [00:33:22] I do. I think particularly in drug cases narcotics cases the federal sentences are outrageous and hard to justify.

Harry Litman [00:33:30] Yeah. Others?

Mimi Rocah [00:33:30] Yeah, I mean I think there's a lot of things that you know part of this is looking back but it's also partly I mean I think we as a society are changing our views on you know mandatory minimums particularly in drug cases. I think are too harsh. Interestingly the other place where there was very high mandatory minimums that I did more work on at the end of my time there is in like child exploitation crimes very high minimum minimums. And I can't--.

Harry Litman [00:34:00] And this is just Congress's judgment right? Congress just lays them on--.

Mimi Rocah [00:34:05] Right and whereas for example gun crimes in general very low sentences right. So I mean a lot of this is politics and sort of you know people Congress wants to look tough on you know who doesn't want to look tough on child exploitation crimes? But whether that 15 year sentence is actually justified under the facts of each child. And I mean I cannot think of a more horrible crime in many ways than child sexual exploitation and I feel very strongly about those cases but I don't think 15 year mandatory minimum is justified in every one of the cases that meets the statute.

Jennifer Rodgers [00:34:44] Yeah I agree. I agree. Like Mimi, I supervised the General Crimes Unit where the child pornography cases come in and you know some of those cases they're horrible cases. But for someone who has just found something on his computer getting 17 is really harsh.

Harry Litman [00:34:59] Again this is a little bit different and since you left but we now have I mean Mimi averted to it a pretty strong attorney general a different kind of U.S. Attorney in place in the Southern District. So if you have current thoughts knowing both about the sort of irresistible force of Main Justice and the immovable object or vice versa. You have this very strong Attorney General who's you know hard to say no to and you know maybe have a more onboard or less sort of independent--that's the wrong way to put it--but more onboard U.S. Attorney. How do you see that playing out now? Obviously if Southern District wants to indict a president that's going to be in trouble but are there is the overall dynamic likely to be different? Or will maybe the you know from the supervisory level and the agents on down that people will find ways to do what the Southern District always has done and find creative solutions. Any any thoughts?

Jennifer Rodgers [00:36:09] Well I'm very worried about this actually. And I'm interested to hear what Mimi thinks having been there during sessions. But you know when Trump came in and started his almost immediate attacks on DOJ and on the FBI it was really troubling. And you know it's only gotten worse. And Sessions at least to his credit did seem to try to push back on those. And so I thought for you know most of the time of this administration until very recently that at least DOJ was trying to stay the course and it would be a relatively similar relationship between Southern District and DOJ as it had always been. Now with Bill Barr I'm not so sure because for the first time you know I'm looking at my old shop DOJ and I'm concerned that that it's not being led by someone who has the best interests of the agency at heart.

Harry Litman [00:37:00] Your shop or the or the whole DOJ?

Jennifer Rodgers [00:37:02] DOJ. I'm talking about DOJ. So you know I just worry that you know in the past maybe you have the U.S. Attorney arguing with Bill Barr about you know whatever it is kind of your typical stuff and we push back and they push on you. But now you know you have an attorney general who I think is not trying to keep DOJ where it should be is not trying to push back against the president's attacks on DOJ. Is willing to let the institution be attacked and have power taken away from it. And so that is really concerning. I mean I think it's kind of heartbreaking for those of us who spent so much time in the Department of Justice to see that happening at least for me.

Harry Litman [00:37:39] I'm seeing nods to either side of me.

Mimi Rocah [00:37:39] To me it's not about that Bill Barr is such a strong you know forceful hands on Attorney General. It's that he seems well more than seems I think has shown himself to be much more willing to carry out the political agenda of the president. Right And so before this wall that we that we all just took for granted frankly.

Harry Litman [00:38:10] Wall between whom and whom?

Mimi Rocah [00:38:10] Between politics and the attorney general. Right? I mean there's so many examples in the past of public outrage where that wall seemed to be breached and I'm not saying it never ever was but Barr with his rhetoric with his seemingly opening investigations that Trump purely it seems because Trump wants them you know into the origins of the Mueller Russia investigation things like that that he seems so consistently not just willing to let the wall down but almost.

Harry Litman [00:38:44] What wall?

Mimi Rocah [00:38:44] He totally obliterated it and it seems like DOJ has become more and more a tool of the political rather than separate from it and pursuing things because of you know where the case is taken. So that's the part about Bar that I--

Harry Litman [00:39:04] All right and maybe I'll frame this to Ellie for last words: last words: Why don't we then have the you know Southern District of New York marinated in the strong culture pushing back all the more. You must be afraid that in fact in your old office there will be some kind of increased capitulation. Is that true?

Elie Honig [00:39:24] IYeah I think there's there's two pieces of this equation. One of them is DOJ and I agree with what Mimi said and Jen said I think Bill Barr is different in kind from his successors or predecessors as Attorney General. We served under AG's as varied as John Ashcroft Alberto Gonzalez Eric Holder Loretta Lynch and sure, does everyone love and I mean everyone in DOJ and in the public love all of the policy initiatives they were forwarding? No there's healthy normal disagreement. While the Republican administration wants to focus on this kind of crime Democratic administrations want to focus on this kind of crime. That's how it should be. That's that's normal. But to see Bill Barr using the rhetoric of spying and no collusion and that there's a red line that's been crossed and investigating the investigators, I think puts him in a completely different category. I also do not think it helps that really the top three people at Main Justice right now Barr, Angle, Berman, and Rosen have combined tried a grand total of zero cases from a prosecutor's perspective. From a criminal perspective and so they lack that--

Harry Litman [00:40:32] It really does matter. From many offices as you come you work your way up you have someone who knows what's going on in a trial.

Elie Honig [00:40:39] 100 percent. And on the other side if you look at the Southern District all of the U.S. attorneys that I served under were again very different but giants I think and seen as giants or became giants from Mary Jo White to Jim Comey to Preet Bharara, Mike Garcia. People who are seen as very formidable and who had recently been in the office within the past certainly the past decade often the past five years and had made major sort of groundbreaking cases in their time there. Jeffrey Berman I don't know personally but he has not been a prosecutor for 25 years I think he was last there in the early 90s. He spent three years.

Harry Litman [00:41:16] He's the current person.

Elie Honig [00:41:17] Yes the current U.S. attorney so I think he's different again in kind from the past six or seven U.S. attorneys and also he has this sort of strange status where he was never nominated by the president. He was never Senate confirmed. I don't know whether he's good or bad. I don't really know much about him directly but he is in a different standing and status than his predecessors.

Mimi Rocah [00:41:38] OK. So Harry one thing I think it's important for people to know is what the Southern District in Manhattan the Southern District office looks like, feels like, is like: it's a dump. There is just no nice way to put it. It is a very old building I think built in the 60s has some really unusually artwork in the lobby. It's this massive government looking I mean from the outside it looks like it could be a jail except as big windows I guess. It is filthy dirty. You can't drink the water at least while we were there. Maybe this is has changed. You couldn't drink the water from the water fountains. They were all closed off because of the lead levels. There were bugs routinely kind of walking around your office. Bedbug infestations regularly. You know there's the maintenance staff does as good a job as it can. But there's like a year's worth of dust and dirt just sort of ingrained in the furniture. It's just a really miserable looking place except for the windows and the views and some of the offices. Air conditioners that are so loud you have to turn them off because you just you can't you can't hear the person on the phone that you're talking to. You can't think. And I say this because I actually think it's sort of part of the culture there. It's almost a badge of honor. It's a point of pride.

Harry Litman [00:43:06] SNNY Pride, like: Bedbugs Don't Deter Us.

Mimi Rocah [00:43:11] You know what. I don't care what this place looks like. I don't care. I am thrilled to get up and go to this dump of an office every day notwithstanding what it looks like because that's how important the job feels. That's how good the work is and how great the people are. And so you just become numb and immune and blind to it and you think it's the greatest place you know no matter what.

Elie Honig [00:43:37] It was always fun when you would have big firm lawyers who made many many multiples of our salary. Beautiful suits come into meet and you go into a proffer room with actual mismatching furniture.

Mimi Rocah [00:43:47] No wiidnows.

Harry Litman [00:43:47] You guys must be really good to have an office like this.

Elie Honig [00:43:52] Right. One side of the office actually faces the MCC. The Metropolitan Correctional Center. There are some offices where inmates can see in and if you had one of those offices you would know and you would sort of be a little bit wary of that fact. And there was one story speaking of the windows you guys may remember this but they decided that they were going to put in brand new windows and they were these super high tech windows that would--.

Mimi Rocah [00:44:11] Bomb proof. After 9/11.

Elie Honig [00:44:12] Right if there was an explosion they would blow up out so they didn't impale the people inside and they also kept heat and air conditioning in and so it was this

huge disruption they would have to clear out our offices it was really disruptive. They finally put in it took months and months all the windows. Then someone realized they put them all in backwards (LAUGHTER).

Mimi Rocah [00:44:29] That's the government for you.

Elie Honig [00:44:29] And they had to redo it! For you. So for a couple months the explosions would have come in and they were doing a good job of keeping all the heat and air on the outside.

Harry Litman [00:44:39] And this was because of 9/11 these special windows? This I forgot to ask you about was there anything special about 9/11? I mean here's SDNY. The center of the universe and it really is.

Mimi Rocah [00:44:53] I think Jen and I could talk about this part for a long time.

Jennifer Rodgers [00:45:01] Yeah it was crazy I actually was in Greece on vacation so I was not there but the office is very close to Ground Zero and so everything else under 14th Street were closed for I think about a week and a half. And you know, so when it happened there were kind of these phone trees that started you know supervisors started calling people to say you know don't come in. Go home we'll get word to you about what's happening next. So people who were at Mimi and my level didn't do much other than report when we were told to report. People who were senior you know there's a whole command center set up to deal with those emergency subpoenas and other things that started happening right away as part of the investigation of what happened on 9/11. So the terrorism folks had a command center and you know they obviously had certain judges who they were in touch with when they needed things from judges and they were working around the clock. I heard even like Martha Stewart like came and brought a cake or something to them (LAUGHTER). In the days before Martha Stewart was actually one of our defendents (CROSSTALK).

Jennifer Rodgers [00:46:05] But people kind of knew that this was happening and were very supportive of those senior folks in the office who were doing this literally around the clock command center kind of emergency work in connection with that investigation.

Mimi Rocah [00:46:20] So I actually was there I was there on 9/11 and headed to the office. Came up the subway right after the second plane hit. And my instinct though was to still go towards the office. I did everyone who was there including my now husband who was a prosecutor there who were coming out of the office and we just were told to just go North ,go North. Just walk. And so the entire office you know hundreds of people were just walking North. I walked to a colleague's house with a bunch of other colleagues who lived above 14th Street and we we watched on TV as the towers fell. I then walked home to the Upper West Side where I lived at the time and and was trying to get a hold of FBI agents that I knew because we had heard that so many of them had gone down. You know we didn't know what had happened. There were these just frantic efforts and were people from the Southern District of New York. Mary Jo White was trying to find certain people who worked in the office who had gone down and they they were safe but there were some really tense moments. I actually did go back to the office before it was officially opened with about five other people. They wanted to have a skeleton crew of people in the office. It was-- 9/11 happened on a Tuesday I think I was back there by Thursday and we had to go below the barricades below 14th Street. We walked around--\.

[00:47:48] As I recall New York at the time downtown was closed down. Couldn't go near the tunnel and--

Mimi Rocah [00:47:53] We had credentials and got in and we walked around the office with masks on because I mean it was still like there was--I mean it's smoky I mean you could smell the chemicals. It was probably looking back not the smartest thing to be in that air but you know nobody thought about that at the time. And I remember walking into the office and it was like seeing this moment that clearly was just frozen in time because it had happened in the morning where people were at their desks eating their breakfast drinking their coffee checking their emails and so everywhere you look there was this half eaten breakfast. And it had this just very surreal feel plus you looking through this like smokyness. And I'm not even sure what we were doing there. We were there to sort of help support the command center if it needed it although they didn't really need us. It was truly this eerie just--you know and for months after that my walk from the subway to the U.S. Attorney's office, I'm sure this is true for you too Jen because of where you live, you would pass, I mean you could look down Church Street and see the pile. You know that Ground Zero. I mean you could see just as you're walking from the subway every single day you could smell it. You could see it. So it was very much a part of the Southern District. You know like I said I started in February of 2001. This obviously happened in September. A lot of things changed logistically. We got new IDs because all of a sudden they realized, "Wow. You know we need to-" There were barriers set up around the office but it really also just heightened this feeling of what we're doing here is so important because this is one of the offices that's going to work on these kinds of investigations. Not that there was anyone to prosecute out of 9/11 but we didn't know that at the time and we didn't know if there would be more.

Jennifer Rodgers [00:49:50] Yeah and everyone wanted in on that. I mean I went up to organized crime and terrorism which was one unit at the time, I think in February of 01. And you know Mimi you came up there when it was your turn too. I mean so many people just wanted to help by being a part of prosecuting those kinds of cases after that.

Harry Litman [00:50:08] Guys this has been a phenomenal discussion. I think I personally but everyone who is listening will know so much more about SDNY and how they play in historically and going forward. Thank you very much.

Harry Litman [00:50:26] Thank you very much listeners for tuning in to Talking Feds. If you'd like what you've heard, please tell a friend to subscribe to us on Apple podcast or wherever they get their podcasts and please take a moment to rate and review this podcast.

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Harry Litman [00:51:23] Talking Feds is produced by Jennie Josephson, Dave Moldovan, Anthony Lemos and Rebecca Lopatin. David Lieberman is our contributing writer, production assistance by Sara Philipoom and Matthew Flanagan. Thanks to The Radio

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