

# Embracing Change

## A Pioneer Reflects on Her Varied Career

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I was often the first and often the only. Throughout my life, I found that circumstance to be both a challenge and a lonely place. Now, having reached the age of 75, I have a long perspective on the choices we all make and how those choices shape our lives. To look back and reconstruct the decision points in a long and rich life is very special. While each person's path is unique, everyone faces similar challenges as we confront the choices we must make in our life and our career.

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### My Background

I grew up in Detroit, Michigan, the daughter of a teacher and a quasi-public figure. My father, who died when I was 13, was the executive director of the Jewish Community Council of Metropolitan Detroit. In that position, he represented the Jewish community on many public bodies. He worked with the governor of Michigan, the mayor of Detroit, the United Auto Workers leadership, the National Council of Churches, the chief of police, and many political leaders. This gave me an early and close-up view of the benefits and burdens of holding a public position.

My sister and I attended public school and were the only Jews in our school. We both recalled being the only kids staying home for the Jewish holidays and refraining from singing all the words in the Christmas carols sung in the school. We learned early what it feels like to be different and how important it is to stand up

for yourself and be proud of being different. It is easy to be like everyone else; it is not so easy to be different.

After my father died, I went to work in the summers and after school to earn a bit of money to help my mom and my two siblings. Most kids don't work at 13. But I learned typing and shorthand and worked throughout high school and college as a secretary. None of my high school or college friends worked. Once again, I felt different.

In college, I majored in Asian studies—including many years of struggling to learn Chinese. I loved history but languages did not come easily. I went on to earn a master's degree in Chinese history and eventually was ABD—a then well-known acronym for All But Dissertation—which means I did not earn a PhD. I taught Chinese and Japanese history for three years at a university in Montreal, Canada, but realized that without a doctorate I would never succeed in academia. This was the first time I really made a life-changing decision to embrace change.

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### Going into Law

While living in Canada, I had two children. When I decided to leave academia, I chose to attend law school. There were no lawyers in my family, and I didn't know any lawyers growing up. All I knew about lawyers was gleaned from watching TV or movies. I thought of law as a broad field where one could select from a variety of options. I began my legal education at Cornell Law School. There were very few women in my class when I

started in 1972—perhaps 5 percent of the class. I was the only mother in the class and one of the only parents. I was also five years post-college, which was unusual at that time. Most of the students lived in a law school dorm, but I lived with my family in our own home, with my faculty husband.

Because I had so many responsibilities (housekeeping and child care as well as legal studies), I was very efficient with time management. I envisioned practicing law in a small town like Ithaca doing wills, house closings, family law, and an occasional misdemeanor defense. But that never happened. To my surprise, I did very well in law school, joined the law review, and was near the top of the class. This changed my sense of what I could do as a lawyer.

After a summer job in a large law firm, I transferred to Columbia Law School as my husband moved from Cornell to New York City. At Columbia, I took a course with Professor Ruth Bader Ginsburg, and that changed my thinking as to what work I would do as a lawyer. She helped me secure an internship with a small civil rights firm that partnered with the American Civil Liberties Union in a large case about gender bias in academia. She also encouraged me to seek a federal court clerkship, which I was lucky enough to obtain.

Spending a year clerking in the Southern District of New York convinced me that a public-sector career was the right place for me. Following the clerkship, I became an assistant U.S. attorney (AUSA) in the Eastern District of New York. I still have a picture of the group of the new AUSAs who began when I did. I was the only woman and mother—again. The work was exciting but demanding. It wasn't easy to be a mom and a federal prosecutor, but the work got done. My kids grew up to be well-adjusted, high-achieving, happy, and successful adults. I was lucky.

After trying cases for four years, an AUSA who had left the office to become the deputy commissioner at the Department of Investigations of the City of New York asked me to join him as the agency's general counsel. Like most people, I found it scary to make the move off the traditional career path of clerkship, AUSA, big firm. But the work was fascinating and benefited the public, and I liked and trusted the friend and colleague who asked me to make the move. Not surprisingly, I was once again the only woman on the executive staff. Initially, the agency's investigators, attorneys, and staff seemed less than thrilled to be reporting to a woman and were perhaps more critical and less deferential than they were to my male peers. Nonetheless, in a now-famous phrase, I persisted! In the end, I look back at that year as a great experience of working in the state public sector after completing four years in the federal public sector.

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## Becoming a Federal Judge

An opportunity to join the federal judiciary came from my former boss, the U.S. attorney under whom I had served. He was now

the head of a court-appointed committee to select a magistrate judge for the Eastern District. He suggested that I apply, pointing out that there had never yet been a woman on the district court bench, and he thought it was long overdue and the right time. I applied and got the job. Again, the first and the only.

The next five years were great! There were four magistrate judges in the district. We worked well together and learned from one another. As the most junior of the four, I learned so much from my new colleagues. They were supportive and encouraging. The criminal work was familiar from my years as an AUSA, but the civil docket was new. It was a challenge to master the intricacies of discovery, motion practice, evidence, and settlement. Some of the lawyers who appeared before me were openly hostile—if not downright rude—because they were appearing before a young female judge. It was obvious that I made them uncomfortable. I learned that I had no choice but to firmly exercise my authority and to refuse to be intimidated. When the lawyers saw that decisions were being made and enforced, and that their cases were moving along and often settling, they accepted me. Their resistance diminished and eventually disappeared.

I pause here to discuss mentors. I mentioned (then) Professor Ginsburg and touched on the civil rights firm at which I interned, which was headed by one of the early woman lawyer giants of the New York bar—Judith Vladeck. All my other mentors were male, and I have always been grateful to them for supporting me as I advanced in my legal career. I clerked for Judge Charles Brieant, who later became chief judge of the Southern District of New York. He was the father of four daughters (and one son) and couldn't have been prouder that one of his female clerks became a judge. The U.S. attorney under whom I served, and who headed the magistrate judge search committee, was David G. Trager. After his tenure as U.S. attorney, he became the dean of Brooklyn Law School and later a U.S. district judge in the Eastern District. He promoted, encouraged, and supported many women and people of color, many of whom became judges or held high public office. My last mentor was Judge Jack B. Weinstein of the Eastern District, who recently died at the age of 99. He was a titan of the federal judiciary—the most progressive and innovative judge to grace the federal bench. He was chief judge when I was a magistrate judge and remained a friend and mentor for 40 years until his death.

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## Returning to the Private Sector

So why did I leave my job as a magistrate judge? It was a very difficult decision, but I did so for several reasons. The pay was low and my kids were then ready for college. Admittedly, I wanted to earn more money than the very poor pay then accorded to federal judges. But I also did not want to spend my life as a magistrate judge. I suppose I was too young at that time (early 30s) to see

that as my final job. I hoped that by returning to the private sector, I would be able to establish a larger footprint that might someday provide a path to a higher office. I joined my friend and colleague from our Department of Investigations days in opening the New York branch of a New Jersey firm. Of course, I was the only female partner at the firm. It was quite a challenge to locate space, furnish our offices, and hire a staff. It was exciting to find clients. I loved the idea of a totally new and different experience. Also, I was able to become active in bar associations—joining committees and eventually serving in leadership positions. I couldn't do this as an AUSA or a magistrate judge. This, too, was new and I enjoyed it. I became the first woman chair of the Commercial and Federal Litigation Section of the New York State Bar Association, an achievement of which I am still proud today. Notably, there have now been many other woman chairs of this large section.

Eventually, I moved from that branch office to a large New York City law firm and continued to practice as a civil-side litigator. To my surprise, I developed a client base, which I brought to my new firm. The new firm already had a few women partners, so I was not the first. I was treated respectfully, although, like many women, I do not think I earned on a par with similarly situated male partners.

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## Becoming a U.S. District Judge

The senior partner of this firm was a member of the search committee for New York Senator Daniel Patrick Moynihan that interviewed and recommended candidates for district court judgeships. I expressed my interest in applying, and this partner encouraged and supported me. I was interviewed by the committee and recommended, then interviewed by the senator, and then got the job. It was a no-brainer to leave the firm (and the salary) to become a district judge, the dream job for any litigator.

The next 22 years as a U.S. district judge in the Southern District of New York flew by and were the best years of my life. The caseload, both criminal and civil, was full of variety. Some cases were high profile, some presented issues of first impression, some allowed me to affect the lives of thousands if not millions of people, and all were important to the parties in each case. The daily intellectual challenge was extraordinary. The emotional toll was demanding and unexpected. Many judges have said—and I found it to be true—that sentencing was the hardest part of the job. I sentenced approximately 1,000 people over those years, and each sentence required an enormous amount of thought and attention. People's lives were at stake, not their money.

I was not the first and only when I joined the court in 1994. The incomparable Constance Baker Motley had been chief judge—the first African American and woman chief judge of the Southern District. I had several female colleagues. But we remained a distinct minority. I was often the only woman in the

courtroom as I looked out at the lawyers appearing before me. This did not improve over the next 22 years. The higher the stakes, the fewer the women who appeared as counsel. That troubled me greatly and continues to trouble me to this day.

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## Each change caused stress, a steep learning curve, and a good deal of second-guessing about whether I had made the right decision.

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As a result of this disappointing observation, I spearheaded two studies for the New York State Bar Association reporting on the presence of women appearing as counsel in New York courtrooms, state and federal. The studies were published in 2017 and 2020. They were based on questionnaires completed by judges throughout the state who recorded whether the attorneys with a speaking role in cases before them were male or female. The results were disappointing. When a case involved a public-sector entity represented by the U.S. Attorney's Office, the state attorney general, or the corporation counsel, women spoke in court in roughly 30 percent of appearances. When private parties are represented in civil litigation, that percentage shrank to 20 percent or less. I often wonder how long will it take for real change to occur, given that women have made up half of the graduating classes at law schools for at least three decades. Nonetheless, we persist—to quote a famous public-sector woman lawyer.

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## High-Profile Cases

Certain cases stand out from my years on the bench. One of my earliest criminal cases involved a young leader of a drug-dealing gang. He was “elected” to be the leader at the age of 18 because of his unusual leadership qualities. If he had been born to a different family in a different environment, I have no doubt he would have become a CEO. Instead, he led a gang of violent drug dealers who murdered several rival gang members and sold huge quantities of drugs. During a shootout with a rival gang, he was shot in the back and became a paraplegic. By the time of his trial, he was confined to a wheelchair. He was convicted at trial, and I

sentenced him to life in prison. It was a heartbreaking case. We corresponded for many years. He is still in jail.

I presided over three trials against John Gotti Jr., the son of the far more famous and violent John Gotti, Junior, as he was known, had already served a prison term for his mob activity. Three times, the jury was hung. He was never convicted. To this day, I believe the jury was convinced that the government was overreaching in trying him again for crimes for which he already served time. He was never acquitted, but he left the court a free man. I have never read anything about him in the decade since his trials. Maybe he went straight!

A third criminal trial sticks in my mind. An international arms dealer, who appeared to have “retired,” was lured back into the business by a sting operation in which government agents posed as terrorists seeking to buy arms to be used by terrorists in Colombia. The arms dealer agreed to sell the arms, including hand-held missiles, making statements that indicated he knew these arms would be used against the U.S. military. He was convicted and sentenced to a mandatory minimum term of 25 years in prison. He is still here in the United States while his family in Russia continues to fight for his release. I always thought that sentence was too long, given that this was a sting operation, but it was required by statute. Sentencing is not easy.

I presided over trials involving a young Palestinian Arab accused of being a material witness in the September 11 attacks. He was tried twice for perjury based on grand jury testimony he gave during investigations of those attacks. Although he was friends with some of the hijackers, and even roommates with one or two, he denied knowledge of their full names or activities. The first jury voted 11-1 for conviction, which means the jury was hung and a mistrial was declared. A year or so later, the second jury voted unanimously to acquit. It was fascinating to see how the passage of time affected the jury pool and their emotional reaction to anyone who even knew or was associated with the hijackers.

On the civil side, the series of *Zubulake* decisions laid the groundwork for the now-ubiquitous and lucrative field of e-discovery. Those decisions are still widely cited today, almost 20 years later.

My most famous case is the one that ended New York’s infamous stop-and-frisk police tactic that caused millions of young Black and Hispanic New Yorkers to be stopped and frisked without any basis for many of those stops other than their age and skin color. Due to my decisions, the number of stops decreased from a high of 600,000 per year to fewer than 25,000 per year *without any increase in crime*. That was a very satisfying result.

Two other civil cases stand out. In one, I issued a decision and order that changed the conditions of solitary confinement in New York prisons. This meant that hundreds, if not thousands, of inmates have been treated far more decently than in the years prior to the decision. In the other case, involving the apartheid

system in South Africa, I ruled that U.S. companies that assisted the government to impose discriminatory practices could be liable to its victims. That decision was eventually overturned, but it nonetheless was widely studied in the human rights community.

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## Leaving the Bench

Why did I leave the bench? At the age of 70, I found myself wanting one more challenge. I had served on the federal bench for a total of 27 years and felt it was time to leave. I saw some judges becoming unfit for the pressures and burdens of the difficult dockets they managed, and I heard the discontent of the lawyers when those judges were assigned to their case. I heard lawyers say, “He was once so great . . . but no longer” or “She was so smart . . . but is starting to lose it.” I did not want to stay past my prime or preside over cases when I could no longer do my very best. I also wanted to speak and write, without the constraints imposed by my judicial position. I wanted to become involved in “good works” by either direct advocacy or leadership in nonprofits addressing the issues about which I deeply cared. Finally, I hoped for a “second act” as a mediator, arbitrator, and special master.

Five years in, most of those goals have been realized. I have published at least a dozen op-eds in various newspapers and given countless speeches on race and policing. I have spoken at many bar association events about judicial independence and the importance of an independent judiciary. I serve on the boards of three nonprofits that espouse causes from voting rights, to police reform, to immigrant rights, and equal rights for all. I am especially proud of being the cochair of the board of the Lawyers’ Committee for Civil Rights Under Law. I also chaired the Federal Courts Subcommittee of the ABA’s Standing Committee on the American Judicial System. The hardest part has been building a neutral practice. It has not come as easily as I had hoped. Statistics show that women and people of color are not as successful in this field as their male colleagues. Many of us are working to change that. One of these days, I hope and believe, that will change.

I have been the beneficiary of strong mentors, lucky breaks, and my own commitment to hard work on good causes. It has not always been easy. Change was not easy for me, and I suspect it is not easy for others. Each change caused stress, a steep learning curve, and a good deal of second-guessing about whether I had made the right decision. The uncertainty can be nerve-wracking. But, on balance, I have few regrets. My advice to all is to keep on fighting—for yourself, your people, and others who have not enjoyed all the privileges you enjoy. If we all stay committed to these goals, the legal profession will lead the way to a better society and a better world. ■