



## An Unrepentant Advocate

The career path that led Nancy Gertner to a seat on the U.S. District Court of Massachusetts is unusual, to say the least. An unabashed liberal, she first attracted national attention when, as a young lawyer, she defended a radical feminist lesbian who stood accused of killing a police officer. She then became known for her work on abortion rights and sex discrimination cases. (She also married the legal director of the ACLU of Massachusetts.) Appointed to the federal bench by President Clinton in 1994, she retired in 2011 and is now a professor at Harvard Law School. In October, Gertner spoke with UC Hastings law professor Lisa Faigman about her career and her recently published book, *In Defense of Women: Memoirs of an Unrepentant Advocate* (Beacon Press).



Nancy Gertner

For the full interview video, go to [callawyer.com](http://callawyer.com).

Legally Speaking is a series of in-depth interviews with prominent lawyers, judges, and academics, coproduced by *California Lawyer* and UC Hastings College of the Law.

**Q. You went to Yale Law School in the late 1960s. Tell us a little bit about what that was like.**

I was supposed to be in the class of '67 when there were only 8 women in the law school out of 160, but instead I ended up going the next year when it was up to a whopping 20 women, and the reason it had gone up to 20 was because of the Vietnam War, which made it harder for them to fill the class. And you know when people talk about numbers—numbers really matter. Going from 8 to 20 mattered. We were complete pains in the butt. We organized about everything. It was very exciting. And when I graduated I fully intended to go back and be a law professor. But I also wanted a taste of practice before I went back into the academy.

**But first you went and clerked for a year.**

I clerked for Judge Luther Swygert of the Seventh Circuit, and he was really terrific. But when I sat down to interview with him he said to me: "I don't want to waste a clerkship on someone

who's just going to marry and have children." I didn't know what to do with this comment. So I said, "Well, Judge Swygert, of course I will never marry and have children." And it was sort of true, because at that moment I actually could not envision a relationship with a man who would support the kind of career that I wanted. Many years later, though, when Judge Swygert was celebrating his 80th birthday, he asked me to speak on behalf of all the clerks. So when I got up I told that story about how I promised I would never marry and have children. And then I turned to him, got on my knees, and said: "Judge Swygert, I'm 39, barren, release me from my pledge!" And he did.

**Sometimes I think law students today don't realize just how short a time ago there was a lot of overt sexism. You made some choices about how you were going to respond to that sexism.**

I was a radical at Yale, right? A lapsed radical to be sure, but I had a lot of crazy ideas. I didn't believe in briefcases. A briefcase was a badge of

professionalism that separated you from your client, so I would go into court with a shopping bag. I wore miniskirts. I was going to be me, no matter what.

**You made a name for yourself representing women in sexual harassment cases, while at the same time you became more and more aware of the difficulties of making sex discrimination claims. Yet in your book you talk a lot about how it's all a continuum and how they end up being very intertwined.**

The sex discrimination case I write about involved a wonderful woman who worked at Merrill Lynch. She was the first woman there, and the only woman. And there would be parties where there would be strippers or a cake in the shape of a penis. And she would say: "I don't care about that. I can take it as long as the money is equal." But as time went on she began to learn about what the men were making. ... So she sued. And the judge gave her very limited damages for the

Continued on page 50

Continued from page 28

discrimination, but a quarter of a million in punitive damages, which was then a very big verdict, for the sexual harassment. And, as I try to explain in the book, what was happening was that while discrimination law was stalling, sex harassment cases were winning. And in a sense that was because sex harassment was drawing together the right and the left. For the conservative judges who may not have been very thrilled about sex discrimination, it was all about chivalry; it was nasty to have women go through that, and of course for other judges who saw this as part and parcel of a discrimination paradigm, it was sex discrimination.

**I was going to ask you what would happen today if you were nominated to the federal bench in this political environment, but my guess is that there's a very quick answer to that.**

No, I would not be nominated today. And the story behind my nomination is Ted Kennedy. I went to [law] school with Bill and Hillary [Clinton], but Senator Kennedy was the one who was determined to see it through.

**At your swearing-in, you told a wonderful story about your mother, who had passed away by then.**

My mother passed away when I was 30. And the story goes back to when I graduated from Yale Law School in 1971. There I was, about to start a clerkship for a federal judge. The future seemed secure, and my mother and I were having a fight; the kind of fight that mothers and daughters have where you say things to one another you'd never say to anyone in the world—a really gigantic fight. And what were we fighting about? My mother wanted me to take the Triborough Bridge toll takers test—just in case. So I tell this story, and the audience breaks up. And then I look up at the ceiling, and I say, “Ma, at last, a government job.”

Watch the full interview at [www.callawyer.com](http://www.callawyer.com).