

Judicial Profile

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Hon. Nancy Gertner U.S. District Judge, District of Massachusetts

FOR MOST OF the early part of the 20th century, the Lower East Side of Manhattan, located in the southeastern part of New York City, was a major immigrant hub where waves of hardworking people from all over the world came to begin their own versions of the American dream. Among the most notable of the immigrant groups to settle in this community were Eastern Europeans of the Jewish faith, who made the four miles of small,

crammed buildings their first homes in the United States. When they arrived at Ellis Island, they had no money and no family roots, and they spoke little to no English. As the new generation of Jewish Americans started businesses and became more and more successful, the neighborhood flourished, creating the most recognized and vibrant Jewish neighborhood in the United States. In a small part of this tightly knit, mostly low- to middle-class neighborhood, Judge Nancy Gertner of the U.S. District Court for the District of Massachusetts was born on May 22, 1946.

Judge Gertner lived in a tenement apartment building along with her mother, an Austrian-American, her father, a Polish-American, and an older sister. Her father owned a small linoleum store and catered to people who lived in the nearby public housing buildings. The family was not wealthy. In fact, Judge Gertner remembers her parents describing how she had to sleep in her baby crib until the age of seven. Summer vacations were spent in a modest bungalow colony in the Catskill Mountains in rural New York state. In 1953, the Gertners left Manhattan for Queens, another New York City borough, located just across the East River. The move to the Flushing neighborhood brought about an improvement in the family's social status; an opportunity for Judge Gertner to attend better schools; and, eventually, a chance for the two young Gertner women to attend college, an achievement that neither of Judge Gertner's parents had attained.

Judge Gertner's upbringing reflects an immigrant Jewish heritage, in which her parents' attitudes toward women were extremely traditional. She recalls that, although she was very close to her parents,



she always had to struggle to overcome what she perceived as antiquated gender roles. Nevertheless, she was heavily involved in various activities in high school, such as the yearbook, literary magazine, cheerleading, and the theater. In 1963, she graduated from Flushing High School as the class valedictorian.

After graduating high school, it was obvious to Judge Gertner and her family that a college education was the next logical step for such an accomplished and talented student. When the time came to choose a college, her father insisted that she could not attend college outside of New York, because, he said, "A woman should live with her parents or her husband." Judge Gertner finally chose Barnard College, Columbia University's small women's liberal arts college, which was the same school her older sister had attended.

At Barnard, Judge Gertner was a stellar student and became president of the Undergraduate Association. She graduated cum laude in 1967. During college and high school, Judge Gertner's career goal was to become President of the United States; therefore, she studied the life of Abraham Lincoln and, wanting to

follow his career path, resolved to become a lawyer first, then a U.S. senator, and finally President. Her love of debate and her desire to grapple with issues of principle made the law an obvious career choice.

Desiring to become a legal academic, Judge Gertner decided to attend Yale Law School, which afforded her the opportunity to continue her studies in political science and at the same time pursue her Juris Doctor degree. She graduated from Yale with an M.A. degree in 1968 and a J.D. in 1971. At Yale, she worked on the *Yale Law Journal* and wrote a note on the Fourth Amendment and welfare home visits, "Rehabilitation, Investigation and the Welfare Home Visit," which appeared in the *Yale Law Journal*, vol. 79 (1969–1970). The note was based on her experience working for Mobilization for Youth, a legal and social services organization in Manhattan.

Even though Judge Gertner met many interesting people at Yale, she quickly made friends with Hillary Rodham Clinton—a friendship that continues to this day. In addition, Judge Gertner volunteered for and worked with a local attorney named Catherine G. "Katie" Roraback, a fellow Yale Law School graduate and prominent civil rights attorney. Roraback, who passed away in October 2007, was an important figure who was instrumental in shaping the future judge's lifelong support of civil rights for minorities, women, and the poor. Roraback litigated the landmark case of *Griswold v. Connecticut*, in which the Supreme Court first proclaimed a constitutional right to privacy; this case would eventually pave the way for the Court's 1973 *Roe v. Wade* decision.

Like so many of the so-called baby boomers, as a young adult, Judge Gertner was heavily influenced by the Vietnam War. When asked to describe the kind of effect the war had on her, Judge Gertner notes that it had a strong, dramatic impact, leading her to question conventional wisdom in many areas. This questioning encouraged her to examine all the accepted premises in her life—including the role of women, the organization of society, and the troubling racial divisions—and to evaluate their legitimacy. This critical approach to life, she adds, has been a part of her professional life.

After graduating from Yale Law School, Judge Gertner was a clerk for Judge Luther M. Swygert, who was chief judge of the Seventh Circuit Court of Appeals. Shortly after her clerkship, Judge Gertner began to look for job opportunities in the Boston area, hoping to join a small but prominent law firm where she could control the kinds of cases she litigated. In 1973, she finally decided to take a job practicing law with Harvey Silverglate, a Massachusetts attorney known for his zealous advocacy in the field of civil liberties. The original firm, Flym, Zalkind and Silverglate, eventually became Silverglate, Shapiro and Gertner, and from the first day on the job, Judge Gertner began handling some of the most controversial and prominent cases of the decade. One of her

first clients was Susan Saxe, a young anti-Vietnam War activist who was charged with robbing a bank to obtain money for the antiwar effort; a police officer was killed during the robbery. Along with other high-profile cases, Judge Gertner defended Ted Anzalone, then the deputy to Boston's Mayor Kevin White; Anzalone was charged with money laundering and extortion. She also represented Lisa Grimshaw, who was charged with murdering her husband; in this case, Judge Gertner successfully argued the battered women's defense.

Choosing to take on such difficult and demanding cases is a decision an attorney does not take lightly. With these cases Judge Gertner put her reputation, along with that of her law firm, on the line. The judge recalls a time when she was sitting by a lake with Katie Roraback at Roraback's summer home in New Canaan, Conn., hoping to seek some guidance from her mentor and longtime friend about representing Susan Saxe, an obviously controversial defendant given the context of her crimes. The judge was wondering whether she should represent Susan Saxe or play it safe and decline taking the case? Gertner fondly remembers Roraback's words to her that day, "Do what you love, Nancy. Do what you believe in, what you are passionate about. Everything else will fall into place." As difficult as criminal defense work was, however, Judge Gertner recalls that it was enormously satisfying because it involved "putting one's considerable skills at the service of protecting someone's liberty and, sometimes, their lives."

The year 1990 brought Judge Gertner to the firm of Dwyer and Collora, where she continued her Boston-based criminal law practice and expanded it to include many civil cases involving discrimination, malpractice, and stockholders' derivative suits. Then, in 1994, President Bill Clinton nominated her for the U.S. District Court for the District of Massachusetts. Asked about her reasons for wanting to become a judge, she states that she felt the need to commit to public service after a lifetime in private practice.

Judge Gertner's commitment to justice has been indefatigable. She analogizes her commitment to the folk tale "The Princess and the Pea," the story about the princess who is able to feel a pea through 20 mattresses and bedspreads. "The just result may be at the bottom of layers and layers of legal rhetoric and it may or may not be consistent with formal rules, provisions, and standards." She sees her job as finding out what justice is, even if it is unattainable because of the manner in which the decisional law has evolved or the restrictions under the express terms of a statute. In addition to a substantial commitment to doing justice, Judge Gertner believes that any good judge must possess a deep understanding of the context in which real people live. "Justice is not an abstraction," she maintains.

In 1985, Judge Gertner married John Reinstein, an attorney and currently the legal director for the

Massachusetts branch of the American Civil Liberties Union. She has two sons and a stepdaughter. Her oldest son is a senior at Bennington College, her youngest son is a sophomore at New York University, and her stepdaughter has an M.B.A. from Duke University. Off the bench, Judge Gertner likes to hike, play tennis, cook, read, travel, travel, and, yes, travel. She is also fluent in French and is an amateur astronomer.

In her current role, Judge Gertner has supervised and mentored many law clerks and has followed their careers and personal lives with as much enthusiasm as she has for her own children's dreams and ambitions. Her former law clerk Jan Hasselman states that Judge Gertner mentors her clerks to help them find their passion and develop their careers. "Ten years later, she still cares about the cases I'm working on." Says Hasselman, "If I'm quoted in the newspaper, I usually send the link to only three people: my mom, my dad, and the judge."

Throughout a career spanning almost four decades, Judge Gertner has always found time to share her extensive knowledge and experience with new generations of future attorneys, especially those of her alma mater. For the past six years, she has taught a year-long course on sentencing at Yale Law School and has also continued to lecture at many other law schools in the United States and internationally.

Recently, the FBA's Massachusetts Chapter honored Judge Gertner for her service to the judiciary and the bar. In addition to this recognition, in October 2007, Suffolk University Law School awarded the judge its Charles P. Kindregan Award for her significant legal public outreach endeavors as a teacher, speaker, and writer. On Aug. 9, Judge Gertner is scheduled to receive the 2008 Thurgood Marshall Award from the American Bar Association and the ABA's Section of Individual Rights and Responsibilities for her career commitment to justice and civil rights.

A computer-savvy jurist, Judge Gertner has even contributed to the legal blogosphere by writing entries dealing with the progress—or lack thereof—of women in the legal profession on her personal blog on the Ms. JD Web site, an online community that provides a forum for networking and dialogue for women law students and lawyers.

According to Judge Gertner, the greatest challenge facing federal judges is the ability to maintain independence and integrity in the face of constant news coverage, which can sometimes be less than accurate. This pressure—coupled with sometimes hostile executive and legislative branches of government—can take its toll on a judge. It is difficult to stay focused, Judge Gertner explains, while all the other branches are able to speak out and the judiciary cannot, except through their decisions.

In July 2007, Judge Gertner demonstrated just how seriously she takes her role as a judge when she or-



Judge Gertner shares a laugh with her court clerk, Maryellen Molloy, and her judicial secretary, Gail MacDonald.

dered the FBI to pay an unprecedented \$102 million to the families of Joseph Salvati, Peter Limone, and the estates of Henry Tameleo and Louis Greco. The four men were wrongly convicted and framed for a murder they did not commit, with Salvati and Limone each spending almost 30 years in prison and Tameleo and Greco dying while serving their sentences. In an opinion that was longer than 200 pages, Judge Gertner condemned the misconduct that led to the wrongful convictions, writing that "now is the time to say and say without equivocation: this 'cost'—to the liberty of four men, to our system of justice—is not remotely acceptable."

Judge Gertner is identified fondly in the Boston Federal Courthouse as the judge who regularly wears red clothing under her black robe. Asked why she chooses to wear attire of this color, Judge Gertner reveals that red has always been her favorite color and that she wore a red suit during Susan Saxe's trial. When the results of the trial were favorable to her client, she decided to keep wearing it. The color red, which evokes energy, passion, and courage, is fitting for someone whose remarkable legal career has been dedicated to the preservation of equal rights. **TFL**

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