

**Hon. Mae A. D'Agostino**  
**U.S. District Judge (Northern District NY)**  
**10-21-16**

John Caher:

It is October 21, 2016 and we're interviewing the Honorable Mae D'Agostino, United States Northern District Judge. What inspired you to begin a legal career in the first place?

Mae D'Agostino:

I think what inspired me to begin a legal career is that all my childhood and into elementary school and high school, I loved public speaking. I can remember back to second grade asking teachers if I could have narrator parts in school plays, even when there was no narrator, and when I got to high school, I thoroughly enjoyed debating and extemporaneous speaking. I continued that in college with National Model United Nations. I loved persuasive speaking and I loved doing it in front of a group, so I thought that the natural thing for me would be to become a trial lawyer and I really never wavered from that. I began thinking about that at a very young age.

John Caher:

Was there ever a time when you thought maybe that was not open to you because of your gender or that it was limited in any way?

Mae D'Agostino:

It's interesting. I didn't think it wasn't open to me because many women, I think, will tell you that in an academic setting, we were as good as any boy or any man as long as we were doing our work. I always found that in academic settings I was accepted for who I was, so going through college and law school and having met with some degree of academic success and some degree of success in the debating world, I never thought about not being accepted into the profession. I never thought that I would face any difficulties in law school, for example, and I didn't.

John Caher:

Any idea what percentage your class in law school was female?

Mae D'Agostino: I think that the percentage of my class, the breakdown, would probably be about 40 percent women, 60 percent male at the time.

John Caher: That's a pretty high percentage.

Mae D'Agostino: Yes. Well, I went to law school between 1977 in 1980 and women had already made significant inroads in the profession and in law school at that time.

John Caher: Your first job after law school, I don't remember what that was.

Mae D'Agostino: My first job after law school was with a firm here in Albany called Maynard, O'Connor and Smith. At the time, I was the only woman at the firm. It was a litigation firm so I felt as though it was the best possible fit for me.

John Caher: Was there any lack of acceptance there?

Mae D'Agostino: I wouldn't call my situation at Maynard, O'Connor and Smith a lack of acceptance. I think that I was accepted, but like most women at that time there were struggles, and what I mean by that is, it was brand-new for all of the men at the firm to have a young woman and that just created some uncertainty in terms of how to deal with me. We had events for many of our clients that were at places where women could not attend. We had events at country clubs that were not yet allowing women to be members.

I can remember going to the senior partner at the firm, and he was a big supporter of mine, Earl Jones Jr., "Mr. Jones, it is unfair that all the young male associates are able to go to these events for our clients and I'm not able to go," and his advice to me essentially was, "Well, you can entertain clients as well." I would say, "But Mr. Jones, I'm 25-years-old. Do you expect me to call a 60-year-old man and ask him to go out to dinner with me? It's not going to work."

It took a long time, but eventually we stopped doing the type of entertainment that excluded me and other women who came after me at the firm, but it was all new territory. I think that they supported me, but they were a little bit unsure about where this relationship was going to go at first.

John Caher: It sounds like what you're saying is there wasn't abject discrimination but a curiosity and a period of them getting used to something unusual for them.

Mae D'Agostino: Definitely. At the first firm, I was a bit of a curiosity and I also think that there were certain expectations in terms of whether I would be able to handle myself in this rough-and-tumble litigation world.

John Caher: Well, you did that very quickly and very, very skillfully. Even going back to when I first met you, you were clearly a star in the field and so you certainly earned your stripes that way. That must've had an effect on the firm and the partners, knowing that they had maybe done something they hadn't done or had rarely done and then it was working out well.

Mae D'Agostino: Well, it did quickly work out well thanks to a lot of support in the community. Many, many judges supported me when I first met them, and it was a different time then than it is now. It was a time when young lawyers actually tried cases. In my particular case, I probably tried 20 or 25 no-fault threshold cases in my first two years at the firm and with some degree of success. I found that a lot of the judges would call my law firm because it was new to them, too. They had not seen a woman litigator and they would call the senior partner in a non-official capacity and just say, "That young associate that you have is doing quite a good job," and that went a long way with the partners at the firm in terms of accepting me as a litigator.

John Caher: I suppose if it had gone the other way, it would've been a real setback.

Mae D'Agostino: It certainly would've been a setback, but I don't mean to imply that there were no setbacks. One thing I think I should point out is that often times when I and a few of the other women litigators in town would show up at a deposition or a trial, it was often presumed that we were the court reporter. I love court reporters, so I mean no disrespect to them. I could've never survived in this profession without court reporters, but the fact that it would just be assumed that a woman was a court reporter I think was really incredible.

The other thing that stands out is that I was told often by judges how to dress. What I mean by that is several Supreme Court justices advised me on the first day of trial that I was never to appear in their courtroom with pants on. Now in the early 80s, women generally were wearing skirts and

jackets to court but I don't think too many men were told how to dress. I had one judge tell me that if I ever showed up in his courtroom with a pair of pants on, I would essentially be sent home.

Also, because it was a bit of a novelty at that time to have women in the profession, we had significant trouble getting into the courthouse. Even if I came to the courthouse with three briefcases and a blue pinstriped suit on and kind of looked the part, I would often be told at the door to wait there until my attorney arrived. I found that a little disconcerting so I would have to say to the person at the courthouse, "Well, actually I am the attorney," and then I would usually be asked for some type of identification. I don't think people were deliberately being mean-spirited, but we did have our obstacles when we began.

John Caher: Did you adhere to the dress code at first?

Mae D'Agostino:

I did and I can remember the first day that I failed to adhere to the dress code probably wasn't until the late 80s or early 90s when I was actually trying a case with a woman who was my adversary. I have to give the other lawyer credit. She came up to me, Betsy Dumas, and said, "I will wear a pant suit tomorrow if you will," and we were on trial in Troy. It was a medical malpractice case. For the life of me, I cannot remember who the judge was but I looked at her with great trepidation and I said, "I hope we don't get in trouble." She said, "Well, there's strength in numbers," so we both wore pantsuits and we survived. After that, it became routine dress because it's just so easier, so much more easy for a trial lawyer to move about in a courtroom with a nice pantsuit on.

John Caher:

You mentioned earlier that you felt a need when you went to MOS to prove yourself. Did you feel a need to prove yourself because you were a very young, new attorney, or a woman, or both?

Mae D'Agostino:

Both. The first doctor that I represented found two problems with me, I think. One was youth, and I can fully understand, that but I think the second was that I was a woman. Albany is a very small community and I remember hearing that the doctor was really worried about being represented by "a young woman" and I did what I've done my entire career. What I did was I approached him personally and said, "Doctor, your observation that I'm young is correct, your observation that I'm a woman is correct, but I'm going to give you 110 percent of myself during this litigation, and I think you're going to be happy."

We got off on a footing that was not so great but by the time I spent a week with him, we really became lifelong friends. Whenever I faced concerns about the fact that I was a woman or that I was young, I would just deal with it head-on and not try to hide the issue or put the issue under the carpet.

John Caher:

You must've been working a ton of hours. Were there work life balance issues, family issues to balance?

Mae D'Agostino: There are immense work life balancing issues for anyone who is a trial lawyer, but I believe that they are very much heightened when you are a wife and a mother. I will say very frankly that I think that one of the reasons my marriage did not last was because of all the hours that I worked. That wasn't the only reason, but I think it contributed to it.

In 1993, the best thing in the world happened to me. I adopted a little boy and while that was, and is, the best thing I've ever done in my life, it presented all new challenges for me because being a trial lawyer is 24/7, particularly in my field, medical malpractice. But I didn't adopt a child just to not be with him so I had to make big changes in my life.

First of all, I had to depend on a lot of people to help me with my son. My mother, my sister, my cousin, I had a network of people who would take care of him during the day, but then there were times when judges in this very courthouse where we are taping this would say to me, "We're working until 8 or 9 o'clock at night." I can remember vividly, it was on the third floor of this courthouse, when Judge Joseph Harris said to me, "We're going to work until 9 PM today."

My mother had had my child since 7:30 in the morning. It was a turning point in my life because I didn't like to ask for help with the judiciary, but I asked, "May I approach the bench?" I went up, and those of us who know Judge Harris or knew him knew that he could be a little bit intimidating, and I said, "Your Honor, it's very difficult for me to work until 9 PM because I have a six-month-old baby home and I haven't been with him since 7:30 this morning."

My first reaction was, "I'm going to jail. I cannot believe I just said that."

Judge Harris leaned forward and said, "You have a six-month-old baby?" I said, "Yes, I do Your Honor." "Take your seat." I didn't know what he was going to do.

He turned to the jury and he said, "Members of the jury, we are adjourning for the evening. We will return tomorrow morning at 9:30." That was a lesson for me because previously I would've been afraid to ask. This judge who I thought was pretty gruff and intimidating valued family as much as I did.

John Caher: That's great. That's great. Any particular role models prior to your career and early in your career?

Mae D'Agostino:

My main role model was a cousin of mine by the name of Mario Occhialino, who is a law professor at the University of New Mexico in Albuquerque. He was someone that really got me interested in a big way in reading, and reading more and more difficult material when I was a child because before he went to Georgetown, he went to Siena College and he spent a lot of time with my family so I really credit him with broadening my horizons as a young child.

Once I got into law school, I got very heavily involved in mock trial, and that allowed me to meet Stewart Jones Jr. As a student, I actually tried a mock trial against him, and I was absolutely in awe when I met him. I felt like I was walking on air because I knew of his reputation in the Albany area. As I began practicing, I started to realize that there were very few women practicing in the Albany area. I met Marge Karowe, and in many ways, she became a great role model for me.

I met Athena Kouray in Schenectady, a fabulous lawyer like Marge. There were no women judges for many, many years when I started practicing so when I learned that Judge Kaye had gone to the Court of Appeals, Judge Graffeo had become a Supreme Court judge, Judge Karen Peters ascended to the bench, local and town justices, Judge Kretser, people who were a few years older than I was, Judge Stahl, it was amazing to me that I was seeing women getting on the bench because the first several years I practiced, there wasn't a woman to be seen on any of the courts where I practiced.

John Caher: You were admitted in what year?

Mae D'Agostino: I was admitted in '81.

John Caher: So it was two more years before Judge Kaye built a gender barrier for Court of Appeals?

Mae D'Agostino: Yes.

John Caher: Did you recognize at the time how significant of an event that was?

Mae D'Agostino: Oh, in my heart I did. I was just so joyful. It was almost unbelievable to me that a woman could get that position and I set out in my entire career to learn more about Judge Kaye, to go to everything that she was at that I could possibly go to. She is just somebody that I greatly admired and the admiration grew over time.

John Caher: We talked about the early days. How have things changed and before you went to the bench? How had things progressed by the time you went to the bench?

Mae D'Agostino: I went on the bench about 5 ½ years ago and I think the main change in terms of litigation and women in the profession is just that we have many, many more women. In the Albany area, we now have some really excellent young litigators and it's wonderful to see them both in the prosecution phase, as public defenders, as people involved in civil litigation. I don't quite know if those young women fully understand the type of sacrifices that the older and more experienced women made along the way in order for them really, in some instances, to be seamlessly accepted in their field.

I certainly think back to Judge Kaye and some of those women who were litigators when I first got out of law school, all of the questions that I had, all of the uncertainty as to whether I could do the balancing. I think young women today can easily pick up the phone and talk to another woman at any number of firms in the state of New York and ask pertinent questions, get those questions answered about what it's like to be a litigator. I think it is very much improved, but it's still far from perfect.

John Caher: Aside from perceptually, what difference does it make, what does it matter that there's a woman on the bench, other than perceptually and as a matter of pride?

Mae D'Agostino: Well, I think having women on the bench and a diversified bench in general is critical to the institution of the courts. I say that knowing full well that judges, my view of judging anyway, is to follow the law. I did not become a federal judge to create law. I have a duty to follow the law. However, every human being of diverse background brings a different set of tools and a different sense of lifetime perceptions to the individual facts of a case and to the law that's going to be applied to the case.

One of the examples I do use is that Judge Randolph Treece, who was a magistrate judge with me, is African-American. Sometimes we would be discussing, in the past, certain cases and I realized that I was missing some components of the analysis that he had from his experiences growing up in Lansingburgh and the way things were for African-Americans then and now, so that was an example to me that life perceptions do have an impact about how you evaluate facts and law.

The more diversity, the better. The bench should reflect the society that it is serving. I believe that women, people of color, people from diverse ethnic backgrounds do have an awful lot to add to this tapestry of justice.

John Caher: How did you become a federal judge? Was gender an issue, pro or con?

Mae D'Agostino: It's hard for me to say. I know that Senator Schumer and President Obama appear to be very, very committed to diversity on the bench and so I have to think the fact that I was a woman and that I was a litigator helped me get considered for the position for sure.

John Caher: You would be the first Northern District female judge in Albany. I think Judge Rosemary Pooler was the first in the district-

Mae D'Agostino: In Albany, yes. But we can't forget that judge Pooler was the first women judge of the Northern District of New York. Judge Pooler now sits on the Second Circuit—another hero to me. I never had the privilege of appearing in front of Judge Pooler when I was a trial lawyer, but I've had many conversations with her since I got on the bench. She is totally supportive and very, very helpful and she's been very active in the women's bar for years and years.



John Caher Speaking to the young women who are in law school now, or just out of law school, what is the main thing you want them to know and remember about how things were when you started around 1980?

Mae D'Agostino: I'd like them to know that things were not easy when I broke into the litigation business as a woman and I would like them to know that while they've improved, they are responsible as they move through this profession and get older, they are the key to future success. What I mean by that is, when law partners sit around a table and don't say things like they're concerned about whether or not a woman might have a pregnancy or whether a woman might need some type of leave, they may be thinking it and that women have to support other women both in law firms and in the judiciary setting and women have to have a work ethic that demonstrates that they can do the job.

In other words, women older than me, those women who went to law school in the 20s and the 30s and the 40s and the 50s, I don't even know how they did it. I can't imagine what it would've been like to go to law school then and what it would've been like to practice then. The women who came in in the 60s, 70s and 80s, we made it better for the younger generation, but they have to keep working. The struggle is not over, because I honestly believe that sometimes, while men and women at a law firm who are considering partners, of course they won't openly say, "Well, we're worried. We're wondering if this person's going to have a family. We're wondering if they're going to take leave." That still kind of permeates the thought process.

Men and women have families, so my message is, "Don't accept any of that nonsense. Do your work. Expect to be rewarded for your work, but also expect that in this society of ours, yes, men and women are entitled to maternity and paternity leave. That doesn't make you a lawyer who's not doing a good job, but just carry on, don't be complacent. Don't think that everything has been achieved because there still is a lot of subtle discrimination going on, and both in the state and federal bench we're still very, very much women underrepresented."

John Caher: Even though the New York Court of Appeals has a female majority?

Mae D'Agostino: Well, that's one court but if you look nationally at statistics, women still are underrepresented in the judiciary. It's getting better, there's no doubt about it but still much more has to be done. I think women have to be trained in terms of the political route to a state court judgeship. Obviously, in federal court we're not elected. It's very different but it's

very important for young women to get the message that when they get their first legal job, they have to work very hard at it. I don't care if their first legal job is doing real estate closings. Your reputation is everything. You be the best real estate closer that ever lived because your name is going to get out there.

If you're at a litigation firm, you've got to juggle. You just, you do have to juggle especially if you have a family, but juggling can be done and if you feel as though you want a career as a trial judge, I think that you have to do everything in your power to try to get some trial experience. That's for men and women. That's just not exclusive for women. It's hard to be a trial level judge if you've had zero experience in litigation.

John Caher           What did I forget? Anything else? Anything you want to add that I didn't think to ask you?

Mae D'Agostino:    I guess my final observation would be that I love seeing young women with tremendous success under their belt. More and more Assistant United States attorneys are prosecuting cases, and high-level cases. More and more women are becoming senior partners at law firms, something that I wasn't sure I would ever see because so many women drop out of law firms when they're young because they find the juggling and the balancing to be too much. So I just hope that the younger generation, those women graduating from law school now, the recent grads, keep up their end of the bargain and keep women moving forward and not be afraid to make some sacrifices along the way. You never sacrifice your family, but you try to fit in as much as you possibly can in order to achieve your goals. If people become complacent now, all of the gains that women have made in the past will really be for nothing.