The Honorable Constance Baker Motley is an extraordinary person, and one of the noteworthy and surprising facts about her is how little has been written about her life and work. If, after this presentation, you are interested in learning more about her, you might read her autobiography, Equal Justice Under Law, and you might watch a videotape of a 1988 interview of her conducted by Alfred Aman, Professor and former dean at the Indiana University School of Law at Bloomington. Our library can secure the videotape for you through interlibrary loan. The bibliography lists other materials relevant to her life and work.

Here are several striking facts about Constance Baker Motley, any one of which would make her worthy of serious study. She was the fifth woman, and the first Black woman, appointed to the federal bench. She served for almost twenty years, from 1946 to 1964, as staff attorney with the NAACP Legal Defense and Educational Fund, Inc., and was part of the "inner circle" responsible for Brown v. Board of Education, a case that many consider to be the most important of the twentieth century. She represented James Meredith in his successful attempt to integrate the University of Mississippi, integration that was accomplished only with the

\[2\] An interview with Judge Constance Baker Motley conducted by Alfred C. Aman (1988).

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intervention of federal troops but then ‘‘put an end to massive resistance’ . . . [;] [a]fter that, . . .
there was no further need for federal troops in the struggle.’’ She argued ten cases before the
United States Supreme Court, and she won nine of them. She may have been the first Black
woman in modern times to argue before the Supreme Court; she certainly was one of the few
women to make such arguments in those decades. Justice William O. Douglas wrote in his
autobiography that Charles Hamilton Houston's mind “had as sharp a cutting edge as any I have
known” and that Constance Baker Motley "was equal to Houston in advocacy of cases. . . [T]he
quality of [her] . . . arguments would place her in the top ten of any group of advocates at the
appellate level in this country.” (If you don’t know who Charles Hamilton Houston was -- or you
want to know more about him -- you might read the talk I gave about him. Its’ on my webpage at

She was the first black woman and only the second woman elected to the New York State
Senate and the first woman to serve as a New York City Borough President, in her case, of
Manhattan, and therefore on the New York City Board of Estimate.

Here is a bit more detail about her life and her work.

Constance Baker Motley's parents emigrated to the United States from Nevis, a tiny


6Washington, supra note 3, at 128

7Motley, supra note 3, at 201

8Id. at 195 (quoting The Court Years).

island in the Eastern Caribbean, where their forebears had been slaves. They settled in New Haven, where Constance Baker was born and attended public schools. Her father was a cook; her mother, a housewife; she was the ninth of twelve children. Her comments about her mother are particularly appropriate for consideration of women's history, for they leave the reader wondering what her mother might have achieved had she lived at a time when women were less restricted:

Everybody loved my mother. Even people who were not her relatives would come to her with their problems. When she died in 1973, hers was the second-biggest funeral the church ever had. I did not realize how many friends she had accumulated over the years after I left home. I think if my mother had had the opportunity she would have pursued her education and gone to college. She had that much intelligence and was that interested in government, community affairs, and people's lives.

She also tells about her mother a story that I found particularly moving:

When I was in the fifth grade, we moved to a house on Garden Street that had a nice big back yard. I remember one day playing in front of the house with my sisters Eunice and Marion when a white man approached and asked to speak to our mother. We called for her, and when she came out, the white man asked if she could spare any food since he had not eaten for a while and was in search of work. This was about 1931. The man said he was trying to make it to Boston. I thought my mother would simply shoo him away with words like "I have too many children to feed." Instead, much to my surprise, she invited him to the back yard, where she directed him to sit on the porch. I realize now it was my mother's way of sheltering the man from the embarrassment of begging and eating in public. My mother went into the house and, as usual, found something in the icebox. We children watched the man gobble down whatever it was and then ask for a glass of water. We had learned in school about hobos and vagabonds who roamed the country, but that was the first time I actually saw one. When the man left, I asked my mother why she had given him food, since he was white. She replied,

Invisible Bar 157.

"Because he was hungry."\textsuperscript{12}

From a young age, Constance Baker wanted to become a lawyer, but her family's financial situation made it impossible even for her to attend college. Her outspokenness and courage served her well, however, and provided the opportunity for her to do both. Late in 1940, after Constance Baker had graduated from high school, she took a job "varnishing chairs for a building reconstruction project."\textsuperscript{13} She also was a community activist and served as president of the New Haven Negro Youth Council. At a meeting called to discuss the apparent lack of interest shown by the Black community in opportunities provided by the Dixwell Community House, Constance Baker, as she recalled, "said that all the people on the board [of the House] were from Yale, and, therefore, the black community had no real input into what was going on; they did not consider it their place, and so we did not have a mass response to the center."\textsuperscript{14} Constance Baker wrote later: "I was the only speaker who caused a stir."\textsuperscript{15}

As it happened, one person who attended the meeting was a white multimillionaire, Clarence W. Blakeslee, president of the New Haven Gas Company, the Water Company, and C.W. Blakeslee & Sons, a founder of Union Trust Company, and a philanthropist who had given a good deal of money to, among other things, Dixwell Community House. A day after the meeting at which CB "caused a stir," she was told that Mr. Blakeslee wished to see her. This is


\textsuperscript{13}Invisible bar 157.

\textsuperscript{14}CB 45

\textsuperscript{15}CB 45
her account of what happened when she went to his office a few days later:

The day after the meeting, I had a telephone call from the newly appointed director of the community center. He said Mr. Blakeslee wanted to see me. I went a day or so later. He and I talked alone in his unpretentious office. He said, as best I can recall, "I was very impressed with what you had to say the other night. I looked up your high school record, and I see you graduated with honors. I want to know why you are not in college." Startled, I said, "I don't have the money to go to college. My parents do not have the money to send me to college." He asked, "What would you like to do?" I said, "I'd like to be a lawyer." With raised, truly bushy eyebrows, he said, "Well, I don't know much about women in the law, but if that's what you want to do, I'll be happy to pay your way for as long as you want to go. I am sending my grandson to Harvard Law School. I guess if I can send him to Harvard, I can send you to Columbia." Then he said, "Never be afraid to speak up; as Abraham Lincoln said, an independent voice is God's gift to the nation." 16

Judge Motley has written that when she went home and told this story to her parents,

They didn't much believe it. But they didn't oppose it. They had never encouraged me to become a lawyer. That was not in their dreams for me. They thought I should be a hairdresser. I even thought I should be an interior decorator when I was in the eighth grade. 17

Thanks to Mr. Blakeslee, she did attend college -- first at Fisk, then at New York University. She tells of her trip to Fisk:

When the train got to Cincinnati, Ohio, which is on the border with Kentucky, an Old South state, I had to disembark while the train employees put another passenger car behind the engine. It was older and rustier than the other cars on the train. When I went to get back on, a black porter said to me: "You have to go in this car," pointing to the one that had just been added. It had a sign reading COLORED on the coach door inside. Although I had known this would happen, I

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was both frightened and humiliated.\textsuperscript{18}

While at Fisk, she learned

Once in Nashville, Motley learned that being black prevented her from attending the theater, eating in restaurants, and trying on clothing and shoes in department stores. "Colored women were expected to give their size and buy without trying on, so the clothing never touched you. After a couple of times I decided if I needed clothes, I would wait until I was back in New Haven; I wasn't going shopping in Nashville anymore." Restricting herself almost exclusively to the Fisk campus and resenting it, Motley decided to transfer to a northern school. She signed up for courses at New York University and within two and a half years earned an honors degree in economics.\textsuperscript{19}

After college, she was accepted at Columbia Law School. Mr. Blakeslee helped her purchase appropriate clothing and take public-speaking courses in the Summer. While at Columbia, in 1945, she began to work for the NAACP LDEF, and she continued to work there, as a staff attorney, after her graduation from Columbia in 1946. At least in the 3d year of law school, she found it "an unmitigated bore, wholly theoretical, esoteric, and without practical application."\textsuperscript{20}

There were no civil rights courses.\textsuperscript{21} As she says:

Clinical legal education had not yet been born, and civil rights litigation was virtually unknown. The few civil rights cases I heard about when growing up had been the catalyst for my interest in law in the first place. The LDF job was just what I needed and wanted. It was my first inkling that I was going to do


\textsuperscript{20}CBM 59

\textsuperscript{21}CBM 58

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something I wanted to with my legal education and my life.\textsuperscript{22}

She continued there until ---, when she was appointed \textsuperscript{In1966,} President Johnson named her the first Black woman to sit on a federal court.

Judge Motley had an extraordinary docket at LDF. She worked on \textit{Sweatt v. Painter}, the first case in which the Supreme Court ordered a Black person admitted to a previously all-white educational institution -- in this case, the University of Texas School of Law. She represented Ada Sipuel in her successful attempt to attend Oklahoma's law school and Professor G.W. McLaren in his successful attempt to escape the internal segregation at the Graduate School of Education of the University of Oklahoma. She worked on the suit to integrate Georgia State College of Business Administration in Atlanta -- the first civil rights case LDF won in Georgia.\textsuperscript{24} She worked on the public school desegregation cases in Atlanta,\textsuperscript{25} Savannah, Brunswick, and Albany, GA\textsuperscript{26} and in Mobile, AL ("where," she writes, "everyone was ready for desegregation except the federal district judge, Daniel H. Thomas . . . .\textsuperscript{n} She worked also on \textit{Rice v. Elmore}, a 1947 case successfully challenging the white primary in South Carolina.\textsuperscript{28}\textsuperscript{28}}

She represented Martin Luther King, Jr., in Albany Georgia. She represented not only James


\textsuperscript{23}CBM 63-65.

\textsuperscript{24}CBM 141

\textsuperscript{25}CBM 142

\textsuperscript{26}CBM 146

\textsuperscript{27}CBM 147

\textsuperscript{28}CBM 66
Meredit at Ole Miss but also Atherine Lucy [and later Vivan Malone and James Hood\textsuperscript{29}] at the University of Alabama\textsuperscript{30} and Charlayne Hunter (now Charlayne Hunter Gault) and Hamilton Holmes in their successful effort to integrate the University of Georgia.\textsuperscript{31} She later represented Harold Franklin in his attempt to desegregate Alabama's other flagship institution, Auburn Polytechnic Institute, now Auburn University\textsuperscript{32} and Harvey Gantt when he sought admission to Clemson College in 1962.\textsuperscript{33} (Some of you may recall that Harvey Gantt later became mayor of Charlotte, NC, and ran against Jesse Helms -- and almost succeeded in replacing him in the US Senate.\textsuperscript{34} ) She was the lawyer for 1081 Birmingham students suspended from school for having been arrested for participating in demonstrations.\textsuperscript{35} She represented the students who sat-in in Maryland restaurants and took their case to the Supreme Court in Bell v. Maryland.\textsuperscript{36} She represented freedom riders.\textsuperscript{37} She worked on the case that desegregated "recreational facilities in the parks in Memphis," Tennessee.\textsuperscript{38}

\begin{thebibliography}{99}
\item CBM 187
\item 110
\item Rebels 43
\item 52 ala. 1143 (101)
\item Linn Washington 139; CBM 187-8
\item Linn Washington 139
\item 108
\item 109
\item CBM 167
\item Linn Washington 140
\end{thebibliography}
In my L&SC course, we consider the relative contributions to permanent change made by direct action -- like the MBB and the demonstrations in Birmingham -- and legal action -- like the lawsuit that ended the MBB by holding that segregation on local buses was unconstitutional. In this connection, it is worth noting Judge Motley's view that the lawsuit over the student suspensions "was the most critical point in what we now call the Birmingham campaign. If," she writes, "Judge Tuttle had not held this extraordinary court session, Martin Luther King might have gone down in Birmingham. Instead, Tuttle's injunction revitalized King's efforts. Yet there was not a single line the next day in the Birmingham papers or on the local radio station about the injunction."\(^{39}\)

She appeared before the Fifth Circuit so often that Chief Judge Tuttle said once that "Mrs. Motley has been here so often I sometimes think she is a member of this court."\(^{40}\)

In 1962, she argued four appeals in the Fifth Circuit. in one day.\(^{41}\)

In her years on the bench, she has decided more than 2500 cases\(^{42}\) and has rendered a number of important decisions. She has attacked the use of peremptory challenges.\(^{43}\) She's proposed that the right to adjudicate Title VII claims in a judicial forum may be not only fundamental, but inalienable.\(^{44}\) In 2000, she "ordered the City [of New York] to submit a plan to

\(^{39}\)CBM 137  
\(^{40}\)CBM 140.  
\(^{41}\)Linn Washington 139  
\(^{42}\)Linn Washington 143  
provide 'full and complete educational facilities and services to all eligible Rikers Island inmates." 45

One thing to which I really want to invite your attention is the amazing courage that she displayed as a woman -- before we even get to the fact of her being a Black woman. She was a woman at Columbia Law School in 1943-1946. She was one of the first women ever to argue before the United States Supreme Court. In 1964, she was elected to the New York State Senate -- and was the first black woman to sit in the New York State Senate. (There had been only one woman who preceded her -- a white woman who sat for a brief period of time.) 46 And there were only two black men in the NY State Senate then.) 47 In 1965, she was elected president of the Borough of Manhattan. 48 By virtue of that office, she was the only woman to sit on the NYC Board of Estimate. 49 She then became the first woman and the first black to sit on the federal bench in the Southern District of New York -- in Manhattan. She continued to be the only woman on that court until 1978, when President Carter appointed Mary Johnson Lowe to the SDNY. 50 She was chief judge of that court from June 1982 until October 1986 -- when she took senior status (which she still holds). She was only the second woman to serve as chief judge of a

45 City Law 112. (103)
46 Rebels 43
47 Rebels 44
48 Rebels 43-44. She had initially been appointed. 111.
49 Rebels 44
50 Linn Washington 144
federal district court -- and the SDNY is the largest federal trial court in the United States.\textsuperscript{51}

Imagine what it was like for her -- as a woman. At Columbia Law School, she found -- as she says, "much to her surprise --

When I finally got to Columbia Law School the next February, I found -- much to my surprise -- that the student body included several other women like myself who were determined to become lawyers, notwithstanding the hard-nosed, antiwomen bias prevalent in the profession. There were about fifteen women there when I arrived, and the law school took in at least eight more in the middle of the year. Columbia Law School men were being drafted, and suddenly women who had done well in college were considered acceptable candidates for the vacant seats.\textsuperscript{52}

The dean of the law school had earlier voted against the admission of women to the law school.\textsuperscript{53}

And in that atmosphere, she writes -

In that atmosphere the few women that were there nevertheless survived and graduated. When I graduated in 1946, you would not have been able to find a single person ready to bet twenty-five cents that I would be successful in the legal profession. I didn't believe it either. But the problem with us was that we could not foresee then, as we cannot foresee now, that post-war America would be dramatically changed by two revolutions which would carry blacks and women into the mainstream of American life.\textsuperscript{54}

The Dean of CUNY Law School, who graduated from Columbia in 1966, complains about what

\textsuperscript{51}Linn Washington 144.

\textsuperscript{52}Constance Baker Motley, Equal Justice Under Law (Farrar, Straus & Giroux 1998), p. 56.

\textsuperscript{53}Rebels 42


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it was like there --

"When I entered Columbia in 1963, . . . women made up less than seven percent of my class, and constituted only three percent of the profession. There were no women professors or senior administrators at the Law School, as was generally true at law schools throughout the country." 55

And then, for her to have a job! She writes -

Just before I graduated from Columbia Law School, I was fortunate enough to get a job as a law clerk on the staff of the NAACP Legal Defense and Education Fund. The chief counsel was Thurgood Marshall. And there was another one of the good guys, because if it had not been for Thurgood Marshall's liberal view of how women probably ought to have the same chance as men to become lawyers, I probably would not be standing here today telling you about my career. Having joined that staff in 1945, I was on the ground floor of the civil rights revolution as it has come to be known. Because we were a small staff and it was not very fashionable in those days to be working on civil rights, I got an opportunity that few lawyers graduating from Columbia Law School with me have had an opportunity to do and that is actually to try major cases, take appeals to courts of appeals, and to argue in the United States Supreme Court. 56

And what was her job? Arguing cases in the federal courts. Very few women did that.

As she writes,

One of the things I remember about my career in the 1950s and early 1960s is being the only woman in the courtroom. I think on one occasion in the Fifth Circuit there was a woman, a patent lawyer, an elderly woman who argued a case. In the period 1949 to 1964, I tried school desegregation and other cases in eleven southern states and the District of Columbia and in that

55Kristin Booth Glen, 102 Colum L Rev 1696 (104)

time I saw only one woman argue a case in the Fifth Circuit.\textsuperscript{57}

I want to offer personal testimony to the drama of her achievements. I graduated from law school in 1963, almost twenty years after CB -- and it was considered weird for women to be in law school even then! (Harvard didn't admit women until 1950.) And women had terrible times getting jobs after they graduated. I suppose everyone's heard the story about women law school graduates being asked how many words-per-hour they could type! When Judge Motley went on the bench -- in 1966 -- "women were not hired in the U.S. Attorney's Office on the criminal side."\textsuperscript{58} There were many other jobs that were not open to women in 1966.

We have to give TM credit for hiring a woman, and Judge Motley does so, reporting that "Marshall had a liberal view that women ought to have the same chances to become lawyers as men."\textsuperscript{59}

For Constance Baker Motley, of course, the discrimination was at least doubled, because she was both a woman and a Black. As Jack Greenberg writes, in the 1940's and 1950's, "the social, economic, and political status of blacks was appalling. Everyday life was a constant affront."\textsuperscript{60} think of her as a Black woman!

This was the experience when she and TM went to hear TM and Charles Hamilton Houston argue the restrictive covenant cases:

\begin{flushright}
\textsuperscript{58}Rebels 45
\textsuperscript{59}Linn Washington 134.
\textsuperscript{60}Crusaders in the Courts at 36.
\end{flushright}
I accompanied Thurgood to Washington to hear the arguments with the other staff members: Robert Carter, Franklin H. Williams, Marian Wynn Perry, and Edward R. Dudley. Since Washington was a racially segregated town, we stayed in a so-called Negro hotel, which was no more than a rooming house in a residential area of brownstones. We had to have our meals at the rooming house as well because white restaurants did not serve blacks. The woman who owned the place gracefully tolerated Thurgood, Bob Ming, and Ed Dudley, who romped around and partied all night like college fraternity brothers. A moot court, or dry run, was held at Howard Law School the night before the Supreme Court arguments. We rode to the Supreme Court in cabs driven by black cabdrivers; white cabdrivers did not pick up blacks in 1947.  

She and Robert Carter went to Mississippi in 1949 to try a teachers' salary case. She tells these stories about those 10 days in Mississippi -

We could not stay at the white hotel in Jackson or eat in any white restaurant. We stayed in a rooming house operated by blacks, a large, white two-story framed building called a hotel, though it was in a residential area. These were typical accommodations for traveling black salesmen. Black visitors to Jackson and other places in the South usually stayed with relatives or friends, as we often did in our travels.

Before the trial began, we met with Judge Sidney Mize. Bob convinced him that counsel for the school board should address Gladys Bates as Mrs. Bates on the witness stand and refer to me as Attorney Motley. In 1949, there were few women lawyers in the United States and apparently none in Mississippi. My presence in Jackson thus added a quixotic dimension to the unusual challenge we were making. Judge Mize seemed incapable of says "Mrs. Motley." He was the first person I ever heard say "Ms." During the trial, rather than refer to me as "Mrs. Motley, a visiting lawyer from New York," the local newspapers always called me "the Motley woman." There could have been no clearer statement of Mississippi's white-supremacist policy and practice.

The imitator had been enthralled by the fact that, at Bob's request, Judge Sidney Mize had directed the white superintendent of schools, who was then on the witness stand, to speak up so that Bob and the other lawyers could hear him. The barbershop crowd thought this was the greatest thing that had happened in Mississippi since the Emancipation Proclamation -- that is, a white man being sharply questioned by a black man and then being made to speak up by another

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white man so that a black man could hear his answers. They never seen anything like that before, nor had they seen any judge in Mississippi in this century consistently rule in favor of the black plaintiffs on motions and objections. Bob Carter introduced himself and explained to the group that there was no segregation in the federal courthouse, that blacks were free to sit anywhere they wished.

It is a scenario right out of Hollywood's antebellum South. On the other side of the mural, black men in farmwork clothes and women with Aunt Jemima appearances, wearing aprons and bandannas, stand by stacks of baled cotton.

This mural was not only emotionally agonizing but disconcerting in that it was contrary to Mississippi reality. During Reconstruction, Mississippi was run by blacks, and blacks were part of the state's middle class. When I was in Jackson later, in the early 1960s, I discovered that Mississippi's official records for the Reconstruction period were under lock and key in the state capitol building.⁶²

Judge Motley reports that such problems with accommodations continued until Congress enacted the CRA of 1964, "making it possible for us to stay in white hotels and eat in white restaurants."⁶³

With respect to traveling out of DC, she remembers

I remember being infuriated from the top of my head to the tip of my toes the first time a screen was put around Bob Carter and me on a train leaving Washington in the 1940s.

Early in this century, lynchings of blacks were common in the South, and race riots occurred regularly in parts of the country. One riot was in the Land of Lincoln, Springfield, Illinois in 1907. Thereafter a small group of white and black liberal New Yorkers met in the home of a young white social worker, Mary White Ovington. As a result, the National Association for the Advancement of Colored People (NAACP) was formed.

⁶²Constance Baker Motley, Equal Justice Under Law (Farrar, Straus & Giroux 1998), pp. 73-76.

⁶³Linn Washington, 131.
People was born.\textsuperscript{64}

Constance Baker Motley joined the bar association in New York City. When she went to use its library, she was stopped at the entrance by a white "gatekeeper" who first ignored her while he conversed with another person and then refused her entry to the library because entrance was limited to members. She reports:

When I told him I \textit{was} a member, it was as if he had seen a ghost. He shouted in disbelief. "You are a member of this association?" He couldn't believe I was a member. There were only one or two other female members. Female members were so recent, there weren't even restrooms for us. The gatekeeper asked for my name and searched the membership list. When he found my name on the list, he said, "Oh, right this way, Constance."\textsuperscript{65}

Judge Motley attributes this to gender discrimination -- which I find highly plausible, as I had a similar experience on my first use of the Supreme Court library and my first entrance into the section of the Supreme Court reserved for members of the Supreme Court Bar. Jack Greenberg tells the same story about Constance Baker Motley and the bar association, but cites it as an instance of racial discrimination. He adds -- as Judge Motley does not -- that she rebuked the doorkeeper for using her first name, asserting that her name was Mrs. Motley.\textsuperscript{66} She had to correct people about this on many occasions.\textsuperscript{67}


\textsuperscript{66}Greenberg, Crusaders

\textsuperscript{67}See, e.g., CBM 167 & story on video.
Of course, she encountered discrimination "on the job," from other counsel and from judges. When she first argued the Autherine Lucy case in the Fifth Circuit, one member of the panel, Louis W. Strum of Jacksonville, Fla., "swung his chair around and sat with his back to" her.68 Federal District Judge Marion Speed Boyd, in Memphis, always set Blacks' cases last on his calendar and usually closed his eyes when Black lawyers spoke.69

In her work for LDF, Constance Baker Motley encountered not only discrimination but considerable danger. When she and TM went to Birmingham to argue a contempt hearing against the board of trustees of the University of Alabama, since they could not stay in a hotel or motel in Birmingham,70 they stayed in the home of Black attorney Arthur Shores, whose "home had been bombed over a dozen times. At night," she reports, they "were guarded by Black men with [shotguns and] machine guns, and during the day we were escorted to and from court by men who carried handguns."71 Constance Baker Motley writes that the guns "sent shivers up my spine," and she could not sleep.72 "Fortunately," she writes coolly, "when one is young, missing a night's sleep is easy."73 When Medgar Evers -- who later was assassinated -- drove her and her secretary from Jackson, MI to Meridian, MI for a hearing in the Meredith case, they were

68CBM 121.
69CBM 144
70CBM 123
71CBM 123
72Linn Washington 137.
73CBM 123
74CBM 123.
followed by state troopers -- a terrifying ride followed by a night during which they expected to be attacked in the home of a courageous Black family that had agreed to shelter them for the night.\textsuperscript{75}

Judge Motley's customary avoidance of complaints against co-workers is breached only slightly even with respect to what I suspect was perhaps the major disappointment in her career -- the fact that when TM was appointed to the Second Circuit, she was not his successor. As she put it, she "had been passed over for the top spot at LDF."\textsuperscript{76} Robert Carter, who had been TM's first assistant, had become General Counsel to the NAACP when the NAACP and LEFT separated in 1956.\textsuperscript{77} Marshall selected Greenburg, apparently in part because TM believed that Constance Baker Motley had supported Robert Carter in the Carter-Marshall rift (which she says was not the case) and because, Constance Baker Motley says, "Thurgood also had difficulty with the idea of a woman in a leadership role in a male world."\textsuperscript{78} The women's rights movement of the 1970s had not yet emerged," she writes. "Except for Bella Abzug, I had no women supporters."\textsuperscript{79}

When she became the first woman (and the first Black) appointed to the SDNY, there were only four other women on the federal bench -- Florence Allen on the 6\textsuperscript{th} Circuit, burner Shelton Matthews in the District of Columbia, Sarah Hughes in Texas, and Mary Donlon on the Customs

\textsuperscript{75}CBM 180.
\textsuperscript{76}CBM 205
\textsuperscript{77}CBM 150
\textsuperscript{78}CBM 151
\textsuperscript{79}CBM 151.
Court. She was the first Black woman appointed to the federal trial bench anywhere. And she was the first woman appointed to the district court in the SDNY. Look at this photograph of the SDNY judges in 1966 (Constance Baker Motley before 123). Can you imagine what it was like for her to be the only woman -- and Black woman! -- in that group? And she was not only the only woman and the only Black who was a judge, but also one of the very few women who held any professional job at the courthouse and one of the very few Blacks who held ANY job at the courthouse. The Dean of CUNY Law School recalls that when she won a federal clerkship in the SDNY in 1966, "there were few women clerks, no women judges on the Second Circuit, and only one, Constance Baker Motley . . ." on the district court. And Judge Motley recalls that when she became a judge there was only one Black employees at the federal courthouse and that it was several years before a second was hired. "In fact," she said in an interview published ten years ago, in 1994, "today, you can still count the Black employees on one hand," and "there are very few Black lawyers who have ever even appeared in this court."

While her appointment to the district court can be told as a tale of triumph, it also is a tale of gender discrimination. She has told us that President Johnson initially planned to submit her name for a seat on the Court of Appeals for the Second Circuit, to replace TM, who had been


81Speaking truth to powe, 40 how. L. J. 291 (106)

82102 Colum 1697

83Linn Washington, 130. Judge Motley is quoted as saying both that there were no Black employees at the courthouse when she became a judge and that when TM became a circuit judge in 1962, there wqas one Black employee. Since these statements seem inconsistent, I have taken the more conservative view, that there was one Black employee in 1966.
appointed Solicitor General -- but the opposition . . . was so great that Johnson nominated her for the district court instead.\textsuperscript{84} She says that the opposition was based largely on her being a woman, and that the opposition was led by the chief judge of the Second Circuit, J. Edward Lombard.\textsuperscript{85} Since Thurgood Marshall already was sitting on the Second Circuit, it does seem more likely that opposition was based on gender than on race. She wrote

\begin{quote}
But Lombard and others on the Second Circuit didn't want any women in this milieu. New York was the real power center of the whole circuit, which also includes Connecticut and Vermont, because there you had all the great commercial cases and so forth. Their attitude, pure and simple, was that a woman had no business being there.\textsuperscript{86}
\end{quote}

She's not been immune from insult while on the federal bench. She tells the story of her introduction at a school for new federal judges

\begin{quote}
I remember after being appointed going out to Berkeley, California to attend a school for new federal judges. At that meeting the chairman of the group, who was a federal judge, whose name I have forgotten -- it's just as well -- he introduced each new judge at the meeting. In doing so, he told those assembled about how great each new judge was, how each had distinguished himself in the law. When it came to introducing me, he said simply that I had been on the Board of the United Church Women, and I had been on the Board of the YWCA, and that was it. Former Supreme Court Justice Tom Clark, who was co-chairman of the meeting, grabbed the microphone and said, "Just a minute Mr. Chairman, I would like to say something about Mrs. Motley. She has appeared in our court and argued, I don't know, twenty cases." I said, "No, it's only ten." But anyway after that little session
\end{quote}

\begin{quote}
\textsuperscript{84}Linn Washington at 128; CBM 212. In the LW interview, CBM says that LBJ actually submitted such a nomination and then "had to withdraw" it, but her autobiography says that LBJ contemplated the nomination to the Second Circuit but did not make it.
\end{quote}

\begin{quote}
\textsuperscript{85}Linn Washington at 129.
\end{quote}

\begin{quote}
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we were having lunch together and he said to me that he had been earlier that day in the locker room after he had a game of golf with some of the other men and he overheard the conversation in the locker room and this had to do with the appointment of Shirley Hufstedler to the Ninth Circuit. And he said to me these men were just running this poor woman down. He said "You know what I said to them, I said do any of you know this woman" And he said, "Of course none of them did."  

She experienced a similar insult at her first Circuit conference and reports a similar insult to Robert Carter, who joined the SDNY in 1972. She tells other stories -- of being greeted as "Mrs. Hastie" at a Patent Lawyers Association dinner at which the only Blacks were herself and the guest speaker, Judge William H. Hastie of the Third Circuit. At a meeting of the Lawyers Club, she took the elevator to the assigned floor, 20, but was told by the young white male operator: "No women on twenty." and taken to a dark and empty 21st floor, from which a member of the club rescued. Recalling these events, she says: "There are people who long for the good old days. I do not."  

She never was appointed to any committee by the chief judge of the court of appeals. Men with less seniority were appointed, but she was not -- although TM pushed for her appointment. She had what she called "an amusing experience" when she first joined the SDNY bench:

We used to have the judges' dinners for our district at the Century Club in Manhattan, two or three times a year. These were collegial affairs where we could get together and talk. In the courthouse you don't often see your fellow judges. Well, the Century Club didn't allow women to go up to the second floor. In fact, the club didn't have any women members until a few years ago. When I came on the bench my fellow judges wondered how in the world they were going to get me

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88CBM 224 (& prior pp).

89Linn Washington at 130
upstairs. So, they got up this ruse: They told the club people I was a secretary and that I had to take the minutes of the meeting. I guess the club people didn't want any trouble, didn't want to buck the judges, so they didn't say anything. I'm sure the maître d' who waited on us and made the arrangements for the dinner knew I wasn't a secretary. And the Black guys who worked in the coat room and opened the door, they are amused. They knew I wasn't supposed to be up there, so they would just laugh and smile every time they saw me.  

And she was the subject of a recusal motion "filed by a defendant law firm in a case in which a female lawyer was suing for gender discrimination under Title VII."  

**Conclusion**

Constance Baker Motley has led an amazing courageous, trailblazing, justice-making life. She is far less well-known than she should be. But as she wrote in her autobiography: "Becoming a part of history is a special experience . . . [N]obody can take it away from you. You may be forgotten, but it's like immortality: You will always be there." She is right. Constance Baker Motley has earned her immortality. She -- and the great good work she has done -- "will always be there."

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91 See *Judging the Judges*, 19 BC L. Rev 95 (102). She also was asked -- and refused -- to recuse herself.

92 CMB 106.