

Women Justices Speak Out: On Mentoring, Leadership, and Effective Advocacy

By M.C. Sungaila – March 26, 2014

Judges give their insights into effective briefing and oral argument and talk about the mentors who made a difference in their careers.

Tani Cantil-Sakauye, Chief Justice, California Supreme Court (2011–present)

Q: What is the one thing you wish lawyers appearing before you would do that would help you and your colleagues decide cases?

Be prepared. We absolutely rely on cogent, well-written briefs and well-articulated oral arguments to help guide our decision making.

Q: Would you say you ever had a mentor or sponsor who made a genuine difference in how your career turned out? If so, please tell us a little bit about that.

Being a Filipina, I grew up in a very matriarchal society—the “aunties” set the rules and enforced the law. Embarking on a career in the justice system meant entering a (at that time) very patriarchal society—women, and particularly ethnic women, were very much in the minority and the exception to the rule. But rules and social norms can change and evolve with a little bit of push and pull.

My family background taught me that hard work will be rewarded, and I received nothing but encouragement from my parents and extended family as I worked through public school, community college, and the UC system. I often tell the story of listening to a speech by attorney Gloria Megino Ochoa and having my mother elbow me and say, “You could do that!”

As my career was launched, I met lawyers and judges who saw the future of the bench and bar as something other than patrilineal institutions. They have worked consistently to make access, fairness, and diversity our judicial branch goals. It is these men and women, too countless to name, who in the last 25 years dramatically changed the administration of justice. I am a mere benefactress of time and circumstance—and of male and female lawyers and judges who saw the future and me in it.

Q: How do mentors or sponsors continue to play a role in advancing your judicial career and contributing to your growth as a judge? How have you mentored and sponsored others?

The question reminds me of Blanche Dubois's famous line in *A Streetcar Named Desire*: "I have always depended on the kindness of strangers." In fact, all of us depend not only on the kindness of strangers, but of friends, colleagues, coworkers, and family members. At this stage of my life, the mentors—like the issues—multiply: They become everyone around me, raising my awareness and teaching me by their very presence and the generosity of their intentions. I hope and trust that those around me feel the same way about what I like to call "mutual mentoring."

On a lighter note, I've said to others that I've acquired many new jobs since I became the 28th Chief Justice of the State of California; the only one I didn't expect but now enjoy was being a career counselor to young lawyers. I enjoy engaging the young lawyers—they are so impressive in their dedication.

That said, I embrace whatever role I have acquired or will be thrust upon me and I have absolutely relied on others to help me fulfill those roles.

Q: What is the best lesson in leadership you have learned, and how has being a judge (as compared to a practicing lawyer) opened up new avenues of leadership for you, both on the bench and in the community?

Good judges and good leaders have something in common: They are both deliberative and decisive. Deliberation requires an open mind, critical thinking, and impartiality. My years on the bench listening to great attorneys and reading well-written and insightful opinions prepared me well to assume the role of Chief Justice of California—where I head up the state supreme court and the state's judicial branch. One of my roles is chief advocate for the state's judicial branch.

Being the branch's chief advocate has been challenging, to say the least. When I began my tenure in January 2011, our state was in its third year of a financial free fall. In the last six years, the California judicial branch has been cut about \$1 billion. This past year, the state began to climb out of the recession, and the judicial branch began to crawl out of the hole we found ourselves in.

But the cliché about challenges being opportunities is entirely accurate. And the opportunity here was one of self-assessment, which I consider an important duty for public servants. Soon after I began my tenure, I appointed a committee of judges to reexamine the Administrative Office of the Courts, which is the agency serving the Judicial Council, which I chair. The committee returned with 151 recommendations that the Judicial Council accepted. I then appointed the committee's chair, vice-chair, and a committee member to the Judicial Council to make sure the recommendations were followed through. Completing the recommendations has not been a simple process, as the agency has been downsized by about 30 percent. Meanwhile, the Judicial Council, in the same spirit of self-assessment, has changed its governance practices—making meetings more transparent and open.

Other opportunities arrived with the bully pulpit that accompanies the role of chief justice. I believe we, as stewards of the public trust, owe something to the next generation—something all of us here learned from the generations before us: Our sense of fairness and justice comes from the power of our Constitution and the strength of our democracy. As government leaders, I believe it is our responsibility to engage the next generation of leaders—those sitting in our classrooms today.

This engagement takes a two-pronged approach. First, let's make sure we keep kids in school and out of court. To that end, I have used my role as chief justice to convene educators, jurists, attorneys, and social workers to share ideas about how we can keep our kids in school. Second, let's make sure we inspire those in school to understand the world around them through civic engagement and learning. I have teamed up with former U.S. Supreme Court Justice Sandra Day O'Connor—a fierce and tireless advocate of civic learning—to convene a statewide civic learning summit and to speak with her at different forums about the importance of civic learning. I have appointed a committee of educators, community leaders, and jurists to advocate for changes to school curriculum; I have made many appearances at school sites through our court's public outreach sessions; and I helped launch a nonprofit—the Foundation for Democracy and Justice, of which I'm an honorary member. The foundation brings together leaders and professionals to promote the principles of democracy and to increase the public's awareness and knowledge of the roles, functions, and interrelationships between the three branches of state government.

Jenny Rivera, Associate Judge of the New York Court of Appeals (2013–present)

Q: What is the one thing you wish lawyers appearing before you would do that would help you and your colleagues decide cases?

In brief writing, brevity is still important. It is important to get to the point. At oral argument, advocates must answer the questions posed by members of the bench. So many lawyers avoid directly answering a question. Answer yes or no, and then explain. It is important to listen carefully to the judge, and not interrupt. In posing a question, the judge may not be talking to you, but to a colleague on the bench, and you need to let the judge get the message across. It is also important to remember that this is an appellate court, not a trial court; be careful not to take a trial lawyer approach at the appellate level.

Q: Would you say you ever had a mentor or sponsor who made a genuine difference in how your career turned out? If so, please tell us a little bit about that.

I learned a great deal from Justice Sotomayor. I observed her and learned from her during the clerkship, and after the clerkship I watched with admiration the way she approached a very difficult appointment process. She has been very generous and a great support in my career.

A former law school dean of mine, Kristin Booth Glen, who rejoined the bench, also encouraged me to become a judge. People who were pioneers when they joined the bench—either because they had a public interest background, were women or ethnically diverse—were also helpful

because they were savvy about the judicial appointment process and willing to share that knowledge.

My life partner has always been very supportive as well. He is someone who is always honest with me and can give the best critique about what may be holding me back from achieving a goal.

What I have found most beautiful about sponsorship and mentorship is that those relationships need not be lifelong. They can be just for a short period of time. Mentors do not need to look like you, either. They do not have to be lawyers, and they need not be the same race or gender as you, or have the same life experience. It is important to be open to many different kinds of mentors.

Q: How do mentors or sponsors continue to play a role in advancing your judicial career and contributing to your growth as a judge? How have you mentored and sponsored others?

I continue to be deeply committed to students, whether they be in law school or high school. I am committed to reaching further down the pipeline to diverse students and changing their perspective on what is possible in their own lives.

Q: What is the best lesson in leadership you have learned, and how has being a judge (as compared to a practicing lawyer) opened up new avenues of leadership for you, both on the bench and in the community?

I understand my importance as a role model for women of color and other diverse members of society. It still matters that we are here, on the bench, in positions of significant authority and responsibility.

Fernande R.V. Duffly, Associate Justice, Massachusetts Supreme Judicial Court (2011–present)

Q: What is the one thing you wish lawyers appearing before you would do that would help you and your colleagues decide cases?

A very good appellate lawyer not only has a complete understanding of her case, but also appreciates her role as an educator of the court: We look to appellate lawyers to explain in a clear way the strengths of their cases, as well as why any potential downsides do not preclude their clients from prevailing. I lose some confidence if an argument or brief overstates, or misstates, a fact or the law. Most importantly, when we ask a question, we expect the lawyer to address the question posed, rather than make some other point; we really are looking for guidance and clarity, and our questions should be viewed as an opportunity to teach the court.

Q: How do mentors or sponsors continue to play a role in advancing your judicial career and contributing to your growth as a judge? How have you mentored and sponsored others?

I have always had a lot of support from other judges when applying to different positions in the court system, even if my judicial colleagues also were applying for the same position, and my former colleagues and law partners have remained a source of support. Affinity groups and other organizations in which I am involved have also been very supportive of me and, in turn, they have given me opportunities to provide mentoring to others through programs that encourage diverse candidates to apply in the first place, and then provide guidance about the process. Another of the many things I really love about my job is the opportunity to mentor law clerks, law students, and young lawyers.

Q: What is the best lesson in leadership you have learned, and how has being a judge (as compared to a practicing lawyer) opened up new avenues of leadership for you, both on the bench and in the community?

While becoming a judge forecloses political activity and imposes other limitations, it also opens up other opportunities to make a difference in your community. As a judge, I have convening power: I can bring groups of people together, and I have many opportunities to speak publicly. I have focused—as president of the National Association of Women Judges and by participating on various committees in local bar associations as well as the American Bar Association—on the promotion of broad diversity across all levels of the profession, and on access to justice, which covers a lot of areas.

As a justice on my state’s highest court, I have an additional avenue for impact: In addition to deciding issues of first impression, we oversee the running of the state court system. We have the opportunity to work on various committees whose work can influence policy, or the rules that govern court proceedings or the conduct of lawyers and judges. For example, one committee that I am currently involved with is reviewing our entire judicial code of conduct to consider whether there are ways in which judges ethically can be more involved in their communities.

Kathleen O’Leary, Presiding Justice, California Court of Appeal, Fourth Appellate District, Division Three (2012–present, Presiding Justice; 2000–2012, Associate Justice)

Q: What is the one thing you wish lawyers appearing before you would do that would help you and your colleagues decide cases?

In some cases that are very procedurally complex, it would be helpful if lawyers would tell us exactly what they want us to direct the trial court to do on remand. Describe the exact disposition you want: Do you want a complete retrial or a new evidentiary hearing, for example? If we reverse, what do you want redone in the trial court and what would the scope of the “do over” in the trial court be?

Q: Would you say you ever had a mentor or sponsor who made a genuine difference in how your career turned out? If so, please tell us a little bit about that.

My mentors were my teachers at a Catholic girl’s high school, who taught me I could do anything. It never occurred to me I could not be a lawyer or a judge. I was taught that women have the same talents and abilities as men; it’s our choice to do whatever we want with the

talents and abilities we have been given. It is very affirming, as we do now, to have young people see women in judicial positions, for example. Years ago, one of my friend's sons observed, for example, that men could only be lawyers and women were judges—because that is whom he had seen in those roles. Role models can be powerful.

Q: What is the best lesson in leadership you have learned, and how has being a judge (as compared to a practicing lawyer) opened up new avenues of leadership for you, both on the bench and in the community?

A lot of my activities are legal related. I have served on the statewide Judicial Council and the ABTL board, as well as my former high school's board of trustees and my church. Being a judge is a good platform for speaking about and explaining the justice system. Being a judge gives you instant credibility, and the community at large provides you a certain amount of deference. The only community service door that closes for you when you become a judge is participation in partisan politics.

Judith McConnell, Administrative Presiding Justice, California Court of Appeal, Fourth Appellate District (2003–present)

Q: What is the one thing you wish lawyers appearing in front of you would do that would help you and your colleagues decide cases?

Write briefs that are concise and to the point. Correctly cite the record and the applicable law. Do not try to mislead us. During oral argument, answer the questions asked and if you don't know the answer, say so.

Q: Would you say you ever had a mentor or sponsor who made a genuine difference in how your career turned out?

Absolutely yes! When I worked for the state as a trial lawyer, I had a wonderful boss who made sure I had excellent training in how to prepare for trial and how to conduct trial. But there were occasions between trials when I felt bored and didn't have enough to do. When I mentioned this to the head of the office, he slammed his hand down on my desk and said, "There is no excuse for being bored when there is so much in the world that needs improvement! Look around and find what interests you and get to work on it." Because I had suffered considerable discrimination as a woman, I became active in the National Organization for Women and found myself speaking on many occasions before groups that were interested in changing the way women were treated. One thing led to another and a group of us founded Lawyers Club of San Diego.

Q: How do mentors or sponsors continue to play a role in advancing your judicial career and contributing to your growth as a judge? How have you mentored and sponsored others?

My mentors today are actually my peers to whom I constantly turn for their sage advice on tough issues I deal with. Other judges are always a huge help to each other. I try to return the favor by being available to them, but I also try to meet the new judges and give them advice and try to help them with the process of transition to the bench. I also like to deal with newly admitted lawyers and try to help them establish a solid foundation for their future success.

Q: What is the best lesson in leadership you have learned, and how has being a judge opened up new avenues of leadership for you, both on the bench and in the community?

I think the best lesson I ever learned was to make sure you let all the voices of key stakeholders in any issue be heard. Consultation and collaboration are important and then the buck stops with you, the leader, to make the decision.

Being a judge, as I have been since 1977, has opened up amazing opportunities for me on the bench and in the community. Working within the judicial branch to make our courts better, more accessible, and free from discrimination has been a top priority for me; and I have had many opportunities to serve, both as a leader on the court and in judicial activities. I have also enjoyed my work with the National Association of Women Judges, where I was a founder and ultimately a president, and the Commission on Judicial Performance, which I chaired for three years and which serves the public by providing oversight of the judiciary to eliminate ethical violations.

Jacqueline Nguyen, Judge, U.S. Ninth Circuit Court of Appeals (2012–present)

Q: What is the one thing you wish lawyers appearing before you would do that would help you and your colleagues decide cases?

Effective representation starts with the briefs. Clearly identify the issues, the portions of the record below, and explain in plain language why the lower court decision should be reversed. Present your arguments through the appropriate standard of review. At oral argument, the best thing to do is to listen carefully to the questions and be responsive. It's surprising, at least to me, how often lawyers fail to answer directly the questions posed by the court.

Q: Would you say you ever had a mentor or sponsor who made a genuine difference in how your career turned out? If so, please tell us a little bit about that.

Absolutely. Throughout my career, I've been blessed with wonderful mentors, including judges before whom I've appeared and women I've known for years through various bar association activities. When I was a young lawyer, I never dreamed of being a judge. It was my mentors who encouraged me to apply and mapped out the judicial appointment process for me. If I didn't have the encouragement, I doubt that I would be a judge today.

Q: How do mentors or sponsors continue to play a role in advancing your judicial career and contributing to your growth as a judge? How have you mentored and sponsored others?

My colleagues have been wonderfully welcoming and I feel comfortable reaching out to a number of them if I ever need a sounding board. I also have many long-time friends who are now judges and, certainly, sharing our experiences improves my own growth as a judge. But at this point in my career, I definitely play the role of mentor much more so than mentee. I benefitted so much from mentoring that it's important for me to give back, so I definitely try to be available to young lawyers as much as I can. I do a lot of one-on-one meetings and lunches as well as meet in small groups with my mentees.

Q: What is the best lesson in leadership you have learned, and how has being a judge (as compared to a practicing lawyer) opened up new avenues of leadership for you, both on the bench and in the community?

For me, leading effectively requires commitment, whether it's to a particular cause or to a bar or community organization. Between demanding careers and personal responsibilities, so many of us are running on steam that it's hard to take a leadership role in anything without the right level of commitment. Having said that, however, I don't think that a title or an official position in an organization is necessary. You can make a commitment to mentor just one person and be able to make a huge difference.

Because my appointments have been historic to the Asian-American community, and to the Vietnamese-American community, I think that comes with certain responsibilities. I know that I serve as a role model for many young lawyers, especially minority lawyers, who aspire to be on the bench. I try to be accessible to them, to stay engaged in the legal community, and to mentor as many law clerks and young lawyers as I can.

Margaret McKeown, Judge, U.S. Ninth Circuit Court of Appeals (1998–present)

Q: What is the one thing you wish lawyers appearing before you would do that would help you and your colleagues decide cases?

I would ask lawyers to put themselves in the shoes of the judges. How would you write the decision in a way that would decide the case in your client's favor? What rule or principle will be extracted from the case? Do not think only about your case but look at the broader palette of the law. The judges are often writing an opinion that will impact many other litigants and, of course, it will become the law of the circuit.

Q: Would you say you ever had a mentor or sponsor who made a genuine difference in how your career turned out? If so, please tell us a little bit about that.

I was fortunate to have some early mentors. United States Senator Cliff Hansen from Wyoming where I grew up, and Frances Hesselbein, the former CEO of the Girl Scouts of America and now President and CEO of the Frances Hesselbein Leadership Institute (formerly, the Peter Drucker Foundation for Nonprofit Management). Judge Betty Fletcher (who sadly died last year) was my "buddy judge" on the court and before that was a mentor and sounding board when I was still a practicing lawyer. My mother, too, mentored me: She always told me I could be whatever I wanted to be, but like any kid, I didn't always believe her. I try to pay back that legacy through

my internship program with high school students and mentoring young lawyers and my big family of law clerks.

Q: What is the best lesson in leadership you have learned, and how has being a judge (as compared to a practicing lawyer) opened up new avenues of leadership for you, both on the bench and in the community?

There are leadership opportunities specific to the judicial community. For example, I was appointed by Chief Justice Roberts to chair the Judicial Conference of the United States Code of Conduct Committee, the ethics committee for the federal judiciary. I now chair the Federal Judges Association (FJA), whose activities focus on obtaining adequate funding for the federal courts; advocating for judicial vacancies to be filled in a timely fashion by highly qualified nominees; educating the public about the importance of an independent judiciary; and preventing diminution of judicial pay as provided for in the Constitution.

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