

# LITIGATION



*presents*

## **2024 Litigation and Appellate Summit**

The Portia Project

Thursday, April 25, 2024  
3:30pm - 5:00pm

Speakers: M.C. Sungaila

### **Conference Reference Materials**

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ORANGE COUNTY

# LAZY



# WHO'S WHO IN THE OCBA THE AFFILIATE BARS

**PLUS:**

Meet Judge Larry Yellin | Business Immigration During COVID-19 | Duties of Representing Clients Who Speak a Different Language

# MAY IT PLEASE THE COURT: PODCASTING, LEGAL STORYTELLING, AND DIVERSITY ON THE BENCH

by MARY-CHRISTINE (M.C.) SUNGAILA

Podcasts are exploding in popularity. But legal podcasts hosted by lawyer podcasters (rather than journalists) are still relatively rare on Apple or Spotify playlists.

A few of us are changing that. We are using legal storytelling in the podcast format to educate the public about the law, and to encourage more diversity across the profession, including on the bench.

*Lady Justice: Women of the Court* is the first podcast hosted by sitting judges. The podcast features three women state supreme court justices (Arkansas Justice Rhonda Wood, Michigan Chief Justice Bridget McCormack, and West Virginia Justice Beth Walker) discussing what it's like to sit on their state's highest courts. Podcast topics include state constitutions and how state courts work, women trailblazers, well-being in law, writing opinions, appellate advocacy, and many more. The monthly podcast, now in its second season, was inspired by an educational project led by Arkansas Justice Rhonda Wood.

The podcast got its start in the summer of 2020, when Justice Wood invited her friends—Chief Justice McCormack, Justice Walker, and Texas Justice Eva Guzman—to join her in recording answers to questions about the judicial branch of government posed by Justice Wood's granddaughter, Blakeley. The Lady Justices quickly realized that a podcast discussing state courts would be a powerful and accessible way to advance their shared enthusiasm for civics education. After Justice Guzman stepped down from the Texas Supreme Court in 2021, the



other three Lady Justices carried on with the podcast, which is produced by the Arkansas Supreme Court's Public Education Program.

The Lady Justices frequently discuss their paths to their current roles and hope to inspire other women. "All three of us are first-generation lawyers who did not have a family member to show us the way at the beginning of our legal careers. We are thrilled that our little podcast might shine a light on career possibilities," says Justice Walker. Justice Wood adds: "Our paths were different. But they share a similar thread: we didn't start our legal careers with the judiciary in mind, yet when the opportunity arose, we all took it."

The podcast is designed to appeal to listeners inside and outside the legal community. The Lady Justices hope to educate the public about the important—but not often discussed—work of state courts, where the vast majority of cases in this country are handled. As Chief

Justice McCormack observes: "Even though we have the same job, our courts do things differently, constitutions are structured differently, norms are different, and then we have lots of things that are quite similar. We've talked about all of those topics and then some, and we look forward to continuing the discussion."

Another podcast that aims to reach listeners inside and outside the legal community is the *Portia Project™ Podcast*. The *Portia*

*Project™ Podcast* was born out of twin desires to highlight women on the appellate bench, and to encourage more women to apply to positions on appellate courts by sharing the many varied paths women have taken to get there. The podcast guests include current and former state and federal appellate and trial judges, general counsel, firm managing partners, entrepreneurs, and nonprofit lawyers and leaders.

Launched in February 2022, nearly twenty episodes of this weekly podcast have aired and fifty more have been recorded. In collaboration with Girls Inc. Orange County, the podcast will conduct outreach to high school girls this summer through a live, in-person panel of prior podcast guests.

The podcast is named after Portia, a character in Shakespeare's *Merchant of Venice* who disguised herself as a man to assume the role of a lawyer's apprentice; her name became synonymous with women lawyers and women's entry into and early progress in the legal profession. The podcast

celebrates individual women's progress in the profession—from the 1970s to today—and seeks to inspire the next generation of women lawyers and judges. Collectively, their stories demonstrate women's overall progress in the profession, and the number of doors that have opened and opportunities that have expanded for women in the law over the last fifty years.

The podcast is a powerful adjunct to mentoring and diversity initiatives adopted by the courts themselves. On July 10, 2021, Governor Newsom announced the formation of the California Judicial Mentorship Program, a statewide undertaking between the executive and judicial branches to advance the shared goal of an inclusive judiciary that reflects California's diversity.

The California Judicial Mentor Program (Appellate) seeks to assist in developing and recruiting a qualified and diverse applicant

not yet submitted an application. For those uncertain about whether to apply, a judicial mentor can help the individual consider how best to prepare for a future application.

The Los Angeles Superior Court has also implemented a Judicial Mentor Program. The purpose of this program, too, is to assist in the recruitment and development of a qualified, inclusive, and diverse judicial applicant pool. This program was designed by Los Angeles Superior Court judges in collaboration with the Office of Governor Gavin Newsom. The program is designed to identify, encourage, and provide mentors for all individuals considering a judicial career. One of the chief goals is to communicate to all sectors of the legal community the uniform message of Governor Newsom's judicial criteria and commitment to appointing a capable bench reflective of California's rich diversity.

The *Portia Project™ Podcast* complements these efforts by

providing insights on the path to the bench to a wider audience, including those who have not yet entered law school. The potential through the podcast format to reach those already in law school or law practice, as well as those in high school or college, is exciting.

As Judge Michelle Williams Court of the Los Angeles Superior Court, one of the first guests on the podcast, has observed: "I decided to participate in the *Portia Project™ Podcast* because

I wanted to add my voice to the chorus of diverse women encouraging and advising others through telling our own unique stories," which, in Court's case, included a "rather unconventional path to the bench."

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The *Portia Project™ Podcast* . . .  
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pool for service on the state's courts of appeal. The program seeks to demystify the application process and improve transparency and accessibility for all members of the legal community who are interested in serving on the appellate court.

Outreach efforts are directed at all superior court judges and attorneys eligible for judicial office within the area served by the First District Court of Appeal.

Mentoring is available to individuals interested in learning more about the appellate court and the process for applying for an appointment. Mentors are active and retired appellate justices, usually chosen from outside the First District Court of Appeal in order to minimize the need for judicial recusals. Mentors do not promote or recommend candidates to the governor, but do discuss with the candidate and demystify the work of the court and the process for applying to join it. Mentors are available for those who meet the formal requirements of appointment and have

# 10 LEGAL SECTOR LESSONS

## Learned from The Portia Project Podcast

*Inspiring the next generation of women seeking a legal career path.*

BY M.C. SUNGAILA

**C**hristine Durham, the first woman justice and chief justice of the Utah Supreme Court, encountered job nolk:es stating: **Only men on law review, lead apply.**

Los Angeles Superior Court Judge Christine Byrd, who graduated law school in the 1970s, recounted that very few judges would hire female law clerks and, in fact, a few major law firms would hire women for short-term positions, but not for partnership positions.

Despite challenging beginnings, these and other women have attained great heights in their careers. Their stories, in fact, were a lot of progress over the last 50 years.

As an appellate lawyer who has argued before the highest courts and led appellate departments at some of the country's largest law firms, and the creator of a podcast, of the

award-winning Portia Project podcast I have interviewed nearly 200 women about their careers: federal judges, state judges, county and appellate judges, trial judges, general counsel, civil litigator, U.S. law firm partner, and entrepreneurs. The podcast chronicles the storied careers of women judges, lawyers, and leaders in the United States—women who rise in their experience and roles, each of whom entered the legal profession or business world at various points over the last half century. Their stories provide guidance for women looking to change and careers today.

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Ann Kappler, General Counsel of Prudential Financial, chose one position because she wanted to gain new skills from a leader at Citigroup's legal department.

Christine Byrd moved to the U.S. attorney's office to get trial experience. These Utah skills would also pull her into a position to obtain a law firm partnership afterwards. Her experience in the U.S. attorney's office also prepared her for the trial bench.

Arkansas Supreme Court Justice Rhonda Wood, as a practicing attorney, became an expert on the new HIPAA (Health Insurance Portability and Accountability Act) medical privacy law since the J.M.s. were new. She did not have to compete with judges practicing longer than she had, and quickly became the go-to lawyer in the area.

**&t o 'tu**

With all her goals and plans, *But* don't miss out on new opportunities. The "WY Even if those opportunities look a lot like hard work.

Alaska Supreme Court Justice Susan Casey had served her entire career as a public defender. Then one of the justices for the court on which she clerked suggested she apply for a position on the court and so did many others who had seen her legal career. She had considered serving on the bench before, but she applied, and she is here now.



# Appellate Practice

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March 14, 2023

## Tips for Video Appellate Argument (and How It's Different)

This article covers the main criteria to consider in setting up your video and putting together your presentation.

By M.C. Sungjilla and Rachel Cossar

Appellate argument by video became the norm during COVID-19. And even as courts have begun to permit in-person appellate argument, it has remained a popular method of presenting oral argument. As the American Academy of Appellate Lawyers (AAAL) observes in its guide, *Remote Video Argument: Suggestions for Arguing Counsel*, "appellate lawyers should treat video argument as a long-term and evolving condition" and "devote both time and resources to present video argument effectively."

Argument by video poses new considerations and challenges and is essentially an entirely new skill and art form. As the AAAL puts it, "[t]reating remote video argument as an in-person argument with a camera risks ineffectiveness and embarrassment. Video argument interposes both a camera and an app between advocate and the court, creating a new medium." *Id.*

Many of those challenges involve the video medium itself: How do you look and present over video? What kind of impression are you making? Are there things you should do on video that you would not do when presenting in person?

### First Impressions

First impressions happen within milliseconds, and most judgments are made based on visual cues, not spoken words. In the virtual world, the audience's impression of you as a speaker depends on the following:

- Framing: Are you ideally framed on the screen, centered, with the lens at eye height and appropriately distanced? Or are you off-center, with the lens looking down on you and uncomfortably close?

# Appellate Practice

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October 21, 2021

## Views from the Bench: Interviews with Leading Women Appellate Jurists

Insights into effective briefing and oral argument as well as advice for those considering a path to the bench.

By M.C. Sungjilla

Previously, for the [Woman Advocate newsletter](#), we interviewed women appellate judges about their paths to the bench. Now, for the *Appellate Practice* newsletter, we once again reached out to state and federal appellate judges across the country to get their insights into effective briefing and oral argument as well as advice for those considering a path to the bench. Here are their answers.

### Frank Hull, Senior Judge, U.S. Court of Appeals for the Eleventh Circuit

#### What was your path to the bench?

There is no one way, or even primary path, to the appellate bench. The journey is short for some, long for others; simple for some, complex for others. While some early on in their career have a purposeful goal to be an appellate judge, for me it was being in the right place at the right time with the right professional experience. While the process always varies, there were some key ingredients for me.

For starters, in 1973-1974, I was among the first few women to clerk on the U.S. Court of Appeals for the Fifth Circuit. I was privileged to serve as a law clerk to the Honorable Elbert P. Tuttle on the Fifth Circuit. My first job clerking for a federal appellate judge gave me keen insight into the diverse legal work of an appellate judge. My law professors at Emory Law School instilled in me a passion for the law—not just one subject, but everything from criminal law to civil procedure, to torts and property, and even tax and domestic relations. If you like only a narrow area of the law, appellate judging may not be for you.

# Amicus Briefs

## How to Write Them, When to Ask for Them

**F** By Mary-Christine (M.C.) Sungaita

Friend of the court, or amicus curiae, briefs are often filed in appellate cases heard by the U.S. Supreme Court and state supreme courts, as well as intermediate courts of appeal. And there is considerable evidence that amicus briefs have influence: Appellate courts often cite to them in issuing their decisions. One study showed that between 1986 and 1995 the U.S. Supreme Court referred to at least one amicus brief in 37 percent of its opinions; another study revealed that state supreme courts acknowledged or cited amicus briefs in 31 percent of cases and discussed arguments made in amicus briefs in 82 percent of the cases sampled.

The California Supreme Court, for example, has recognized the valuable role amici play "precisely because they are nonparties who often have a different perspective from the principal litigants," and acknowledged that their different perspectives "enrich the judicial decisionmaking process." *Connerly v. State Personnel Bd.*, 37 Cal. 4th 1169, 1177 (2006). The California

Supreme Court and courts of appeal have also invited amicus participation in some cases. In *Toyota Motor Corp. v. Shilper: Ct.*, 197 Cal. App. 4th 1107, 1130 (2011), the Second Appellate District was asked to determine whether California courts have the authority to require a corporate defendant's foreign officers, directors, managing agents, or employees to appear for deposition in California. Recognizing that the case presented "important and novel questions," the appellate court extended direct invitations to amicus organizations identified by the parties as being potentially interested in the outcome of the case and set up a post-argument amicus briefing schedule. (See January 21, 2011, docket entry, B225393; appellate cases.courtinfo.ca.gov.) The same division of the court of appeal invited "a number of governmental and private parties to submit amicus curiae briefs" in connection with another proceeding in 2008 involving "the legality of, and restrictions upon, homeschooling in California." *Jonathan L. v. Shilper: Ct.*, 165 Cal. App. 4th 1074, 1083 (2008).



ARTICLES

## The Path to the Bench: Interviews with Women Appellate Judges

By M.C. Sungaila

State and federal appellate judges offer their advice for women considering a career on the bench.

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

Q: What was your path to the bench? And what was the most unexpected aspect of being a judge, once you were appointed?

There has to be this confluence of serendipity and professional excellence and timing for an appointment to happen. Lucky is the best way to describe it. I was the first woman partner, first woman on the executive committee, and first woman managing director at Perkins Coie in Seattle and Washington, D.C. where I specialized in high technology and antitrust work. I had an international and national practice that I loved. I served the community in diverse ways, through national board service on the Girl Scouts of the USA, the White House Fellows Foundation, and work with national and local bar associations. I was the first co-president of the statewide Washington Women Lawyers and one of the founders. I was not contemplating the bench. But then a judge in Washington asked whether I might consider applying for an opening on the Ninth Circuit, which made me consider whether I would enjoy serving as a judge. I threw my hat in the ring for what turned out to be a long and arduous process. It took three and a half years to go through the appointment process, which was a politically tumultuous time. While some would say that there is a script for a professional life leading to the federal bench, I did not follow any script and did what I felt passionate about; had I followed a script, I might never have done the pro bono women's rights and civil rights cases I did in my career and that I was grilled about during the confirmation process.

I learned a few things during the confirmation process. First, the appointment process is a political one, and therefore more organic than the legal process we engage in as lawyers in court. Second, it gave me the opportunity to put into practice a saying that I kept on my desk: "When you are out on a limb, the world is at your feet." There is some reluctance to reach for the stars when you might find yourself out on a limb like I was during the appointment process, but I took the risks needed to move forward. Trust, relationships and reputation are critical. I so appreciated the bar, women's groups, clients, opposing counsel, and those I had served over the years rallying behind me in support of my nomination.

One of the exciting things about being a judge is that I no longer have to do timesheets. I can spend as much time as is necessary on a case; the time spent on a case is not related to the dollar

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

By M.C. Sungaila

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

*Tani Callitil-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

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