

Hon. Dorothy W. Nelson

By
Theodore D. Chuang

From her earliest days in the legal profession and through almost 20 years as a federal judge, Senior Judge Dorothy W. Nelson of the U.S. Court of Appeals for the Ninth Circuit has worked tirelessly — not just to achieve justice in individual cases, but to improve the overall system of justice so that it will resolve disputes in ways that are fair, efficient, and worthy of our nation's highest ideals.

A native of southern California, Judge Nelson came to the bench in 1979, following 26 years as a researcher, professor, and dean at the University of Southern California (USC) Law School. Her first judicial experience actually came during her senior year in high school, when she sat on the bench alongside a juvenile court judge to hear a day's worth of cases as part of annual Law Day activities. That experience of seeing the crucial role played by the law in addressing social problems sparked an interest in the legal profession. After attending college at the University of California at Los Angeles (UCLA), Judge Nelson went on to UCLA Law School and became one of only two women in the 1953 graduating class.

Despite the dearth of women in the legal profession, Judge Nelson received offers from several major Los Angeles law firms upon graduation. Seeking a broader experience, she instead signed on to work on a USC Law School project researching the state of the courts in Los Angeles County. Through this study, during which she interviewed every judge in the county, she learned of the inadequacies and imperfections in the way the system dispenses justice. One of the flaws that she uncovered was that jurors were not necessarily selected from a representative cross-section of the community. "In some courts, jurors were chosen from the telephone book, at a time when many did not have telephones. In other instances, churches were asked to recommend potential jurors to the courts," she recalls. "And some court officials would go through lists and exclude jurors with surnames they did not like."

Judge Nelson proposed a uniform jury selection system that required random selection of jurors drawn from a representative sample. That reform proposal was adopted by the California state legislature, along with 27 other proposals arising from her study.

Judge Nelson's work on this endeavor led to an appointment at USC Law School as the school's first woman faculty member, specializing in judicial administration. In

1967, she was named Dean of USC Law School, the first woman dean of any major law school nationwide. In her 13 years as dean, she worked not just to expand the size of USC, but also to expand its mission beyond traditional academic legal education to the improvement of all aspects of the legal and judicial system. Under Judge Nelson's leadership, USC helped to establish the Western Center on Law and Poverty, California Rural Legal Services, and other clinical programs through which USC law students learned by representing disadvantaged clients, at the same time that USC demonstrated a commitment to assisting those parts of the community that had previously lacked a voice. Such clinical programs were at the cutting edge of legal education in the early 1970s. Judge Nelson also helped to establish the then-novel concept of joint degree programs with other USC graduate schools, as well as certificate programs for practicing attorneys.

As dean, Judge Nelson helped USC weather the storms that affected all university campuses in the 1970s, including protests relating to the Kent State shootings and the bombing of Cambodia. She recalls that in the face of one particularly angry protest, her solution was to issue a call to the cafeteria to "send over donuts, sodas, anything you have. We'll find a way to pay for it later." The peace offerings quelled the protesters' hunger and anger all at once.

Among the many causes championed by Judge Nelson was the improvement of the quality of the judiciary. As chair of the board of directors of the American Judicature Society, she worked with President Carter's attorney general, Griffin Bell, to establish a nationwide system of merit selection of federal judges to replace the traditional system of senatorial patronage. It was fitting that once such a system was in place, Judge Nelson became one of President Carter's nominees to the expanded Ninth Circuit. At first, Judge Nelson was uncertain whether to accept the nomination; she had never contemplated a career on the bench. "But when I spoke to my husband, he said, 'Dorothy, you've been studying and criticizing the judiciary all these years, why don't you see what it's really like?'" she recalls. Her husband is James F. Nelson, a Los Angeles County Municipal Judge, who knew what being a judge is like. And so she accepted the appointment.

During her tenure on the bench, Judge Nelson has come across many of the issues she confronted during her years of studying the judicial system. She has seen the court struggle with almost uncontrolled growth in the federal appellate caseload without a proportionate increase in judicial resources. Under present circumstances, she believes that today's attorneys have an even greater responsibility to present cases in ways that assist the court in understanding the issues and achieving justice. "It makes such a difference if you have great briefs and great lawyers," she notes.

However, another of the lessons Judge Nelson has learned over the years is the unfortunate truth that the adversarial system typically favors the party with the greatest resources. Not surprisingly, some of Judge Nelson's most noteworthy opinions embody the principle that the courts must be vigilant in protecting the rights of weaker minority interests when they have been unjustifiably violated by more powerful, majority interests. In *Gomez v. City of Watsonville*, 863 F.2d 1407 (9th Cir. 1988), Judge Nelson ruled that a California city's at-large system of electing city council members violated the Voting Rights Act because it was "an impermissible obstacle to the ability of Hispanics to participate effectively in the political process." *Id.* at 1419. In *Cammack v. Waihee*, 932 F.2d 765 (9th Cir. 1991), in which the Ninth Circuit upheld Hawaii's designation of Good Friday as a state holiday, Judge Nelson authored a passionate dissent in which she argued that such designation violated the Establishment Clause of the First Amendment. "In this case, the legislature sends the message to non-Christians that it finds Good Friday, and thus Christianity, to be a religion worth honoring, while their religion or nonreligion is not of equal importance." *Id.* at 788 (Nelson, J., dissenting).

As much as Judge Nelson's opinions reveal some of the best in the administration of justice, Judge Nelson has continued to devote herself to finding new ways to improve upon the traditional system of justice in America. Judge Nelson has championed the view that justice would be better served by the implementation and expansion of systems of alternative dispute resolution (ADR). In her view, "The adversarial system is too costly and too inefficient for many types of disputes. We need a less painful way to resolve disputes."

Judge Nelson's philosophy stems in large part from her Baha'i faith, which teaches that conciliation and consultation are the path to conflict resolution. A longtime leader in the National Spiritual Assembly of the Baha'is of the United States, Judge Nelson has participated in mediation among Baha'is that has helped to resolve criminal, business, family and other disputes. She has written extensively on ADR, conducted seminars and participated in conferences relating to ADR not just in the United States, but also in Australia, New Zealand, India, Pakistan, China, and Israel.



Judge Nelson's commitment to advancing ADR and improving the justice system is embodied in the Western Justice Center, a non-profit institution she helped to found in 1987, that is dedicated to inventing, evaluating, and replicating new ways to resolve conflicts and improve the quality of justice. Located next door to the Ninth Circuit courthouse in Pasadena, Calif., the Western Justice Center, through consortia with national, state, and local organizations, has supported programs to promote the use of mediation in disputes among governmental entities, to increase and improve the use of mediation in environmental disputes, and to establish peaceful means of resolving conflicts among students in the Los Angeles Unified School District. With Judge Nelson as chair of its board of directors, it continues to support and encourage new initiatives to resolve the

varying forms of conflict in society.

Judge Nelson has not confined her efforts to improve the administration of justice to the United States. She has crisscrossed the globe to teach government officials, judges, lawyers, and students in other countries about the workings of the American legal system and to exchange ideas on ways to improve the administration of justice. Over five visits since 1989 to the People's Republic of China, Judge Nelson has met with the Minister of Justice and members of the People's Supreme Court, visited courts and correctional institutions, and taught a seminar on American Constitutional Law at the Chinese University of Political Science and Law, in order to learn about and advise on efforts to transform China into a country governed by the rule of law with an independent judiciary. She has participated in dialogues with judges and other leaders in Israel and India and has sat with the Israeli Supreme Court and the High Courts of Bombay and Calcutta, India. This year, she traveled to Turkmenistan to exchange ideas with judges on human rights, the independence of the judiciary, and ways to improve justice in that nation.

In her travels, Judge Nelson often discusses with foreign judges and lawyers some of the principles underlying the American system of justice. "A number of countries need to learn the importance of the rule of law, of enforce-

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ing laws fairly and impartially," she says. But Judge Nelson does not believe that fledgling democracies should adopt wholesale the American justice system. "Many developing countries have some informal systems of dispute resolution that are fair and just, that we can learn from." For example, she believes that neighborhood committees in rural China, which help community members find solutions to the underlying problems which cause disputes, could be a useful model for the implementation of similar, community-based dispute resolution centers in the United States. She believes, therefore, that more judges should engage in dialogues with judges and attorneys in other countries to "exchange ideas, not impose ideas."

Through all of her professional

endeavors, Judge Nelson has maintained a strong commitment to her family life. She credits the support she received from her husband, former Judge James F. Nelson of the Los Angeles Municipal Court, as instrumental in her ability to succeed in her career while raising a family at a time when few women were able to do both. The two judges met as camp counselors while in high school, took the LSAT together, became a rare two-attorney family in the 1950s, and then an even rarer two-judge family. Together, they have raised two children, with their son now an attorney, and have a grandchild to dote upon. They regularly travel together to international conferences and engagements, to national Baha'i activities, and to enjoy the great outdoors.

Judge Nelson's work over her ca-

reer demonstrates that a judge's commitment to improving justice need not be limited to the fair adjudication of individual cases. Recognizing that the system will always have imperfections, she has dedicated her career to the improvement of the quality of justice in her native California, across the nation, and around the world. ■

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