

What I Wish I Knew Then: An Interview With SDNY Judge Loretta A. Preska

By Steve Cohen

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Loretta Preska is a U.S. District judge for the Southern District of New York. She was nominated to the bench in 1992 by President George H.W. Bush, was Chief Judge from 2009 to 2016, and took senior status in 2017. President George W. Bush nominated her to the Second Circuit Court of Appeals, but the Senate took no action.

Preska has an undergraduate degree in chemistry from the College of St. Rose, a JD from Fordham Law School, and an LLM from New York University School of Law. She was interviewed by Steve Cohen, a name partner at Pollock Cohen LLP.

One of the things that I wish I had done was be a little more thoughtful and intentional in my career and in my life. You know, have a plan. But don't ever close your eyes to unexpected opportunities. I know so many people who begin working on something and make it their life's work.

The Road Not Taken: Chemistry

I went to college as a chemistry major. And unlike many of my peers, I was absolutely certain what I wanted to do; I was going to be an organic chemistry researcher. The luckiest thing that ever happened to me was that I got a National Science Foundation grant to do organic chemistry research the summer after my junior year in college. So, I went up to Union College in Schenectady, did it for the summer, and had a blast. But decided I couldn't get out of bed and do chemistry for the rest of my life.



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Well, my mother had always told me, you have to work. So, the question then was, what are you going to do now? I had a lot of speaking gigs: I was a high school debater and a college debater. I received a community grant to go abroad for the summer and then come back and speak to any community group that wanted to hear me. I had a big Girl Scout trip to Hawaii that required me to speak. And I had heard that lawyers can make a living by speaking.

No one in my family was a lawyer. My father was an engineer; my mother was a nurse. I had no idea what lawyers do for a living. Obviously, I had watched "Perry Mason," but that was it. I remember distinctly reading the hard-copy Fordham Law School catalog and seeing: "First Year Torts—a Civil Wrong". I did not know what one word in that

sentence meant. And that was terrifying, because all my debate pals had walked around with the LSAT books under their arms for years. The amount I didn't know was devastatingly huge.

Early Career

When I went to law school I was terrified. I studied very hard and I did okay first year. The second summer, I had an offer from IBM and an offer from Cahill Gordon. There were, I think, 15 of us in the summer class at Cahill, and I was the only woman. And thank God I went to Cahill Gordon, because I got the training there to be a lawyer. What I say to young people today is go somewhere for your first couple of years where you're going to get the right training, because you can't go back and do it over.

I was very fortunate at Cahill. I got to work for Floyd Abrams doing First Amendment work, and he is my friend to this day. Then after being there for a while, I went to a smaller firm—Hertzog, Calamari & Gleason—doing commercial litigation. One night, after being at a Fordham event, we were at a bar, of course, and we were doing what litigators all do: gossip about judges. And someone said, "You'd be a good judge."

I thought about that for a while. And I was lucky: back when I had been a summer associate at Cahill, the partner assigned to me was Michael Armstrong. Mike had been the Chief Counsel of the Knapp Commission investigating police corruption in New York City, and then the interim District Attorney of Queens. He also became the "chief judge picker" for U.S. Sen. Al D'Amato. I talked with Mike and told him I was interested in becoming a judge, and his advice was, "You need to get a little older."

On Becoming a Judge

I went back to the firm and really worked at becoming a good litigator. But the idea of becoming a judge was still there, and several years later, I submitted Sen. D'Amato's questionnaire. I went before his selection committee, was ultimately recommended, and met D'Amato. This was in 1992, and there was a selection process that had been in place for many years. New York had one Democrat



SDNY Chief Judge Loretta Preska, left, and U.S. Supreme Court Justice Sonia Sotomayor.

and one Republican in the U.S. Senate. It was an era with a very different sense of bipartisan cooperation. There was an informal agreement that the party that held the White House would get three out of four district court judgeships in New York. So, I was nominated as part of a two-person package. The other person nominated to become a district judge was Sonia Sotomayor.

Because we were a package with support from both our home state senators, Sonia and I moved ahead of others nominated earlier. 1992 was a presidential election year, and it was a tight race—George H.W. Bush was running against Bill Clinton. Eventually, our nominations were held up, but the night before the Senate left for its Labor Day recess, the nominations went through, and we were confirmed.

I joined the Court soon after, and so far, so good. But I wish I had been more intentional about it.

Advice to Young Lawyers: Be a Grown-up

I tell young lawyers: don't dismiss anything, be open to all opportunities, but get the best training you can get. Put yourself in the shoes of your senior. Litigation is not a science. It is so totally art, and every case is different. Try to figure out why your senior is making certain decisions, why he or she is making certain arguments and not making others, why he or she is taking certain depositions,

and not taking others. Figure out why your senior is taking certain actions. Once in a while, ask. First of all, you're going to learn something. Second, you're going to look like you're interested and like a grown-up. My advice to young lawyers is: be a grown-up and make it easy for the judge.

What do I mean make it easy for the judge? As a litigator, your attitude and demeanor should be: "Judge I'm here to help you through this difficult case."

So, state your facts: concisely, accurately, and without adjectives and adverbs. Think about what you want as a litigator: you want the judge to pick up your brief and start marking it up for the outline of the opinion.

If you're inaccurate, if you have adjectives and adverbs or conclusions, it's not going to work. Put your best facts forward. Do not string cite. Make it easy by providing pinpoint cites and putting the holding in parentheses.

One thing I say to the "kids"—pardon the expression—is that every brief has to be perfect. It has to have perfect grammar, perfect punctuation, and perfect Bluebook style. Why is that? Well, we read zillions of briefs a week that *are* perfect. And if there is a mistake in yours, it hurts our eyes, and it stands out. It labels you as a sloppy lawyer. You don't want that. And it makes both the judge and your senior at the firm think: if this guy can't get the little stuff right, how can I have any confidence that the big stuff is right? So, you need to be seen as a grown up, as a serious lawyer with a serious case. Make it easy for the judge. Help the judge be able to rule your way.

In oral argument, it is essential to lose the word "like." Too often I hear lawyers use phrases like, "Well, like, you know, Judge, like, the thing we thought judge..." Speak to the judge in grown-up language.

On Being Respectful

There are plenty of smart people applying for clerkships here. But particularly on the district court, we look for grown-ups. Clerks are on the phone all day long, often with counsel calling with questions. And many of those questions are easily



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answered simply by reading the judge's rules—not a good look for the questioner.

But every question needs to be answered respectfully; the clerks are representing the court. An example: years ago, as a first-year, I was sitting in Floyd Abrams' office, and one of my former classmates was clerking in the district court. He called Floyd and instead of saying, "The judge would like your views on XYZ subject, hopefully by 3 o'clock," he said, "Have papers on *my* desk by 3 o'clock." Fast forward six months, and the classmate is finishing his clerkship and looking to join Cahill. He comes in for an interview, but his high and mighty attitude was still fresh in people's minds, and he didn't get an offer.

Another story if I may—and I don't know if it is apocryphal or not, but it is too good not to tell.

Jamie Dimon, the CEO of JP Morgan Chase, wanted to hire a very high-level executive. The guy was exceedingly qualified, had passed all the other vetting, and was going to meet Jamie. The guy arrived downstairs at JPM's headquarters, and security didn't have his name on the list. Instead of having a hissy fit, he was exceedingly nice to the security guard. Eventually, the guard called upstairs, found it was fine. The guy got up there, met Jamie, and Jamie said, "You're hired. That was your test." How you treat people is what's important.

When I write letters of recommendation—and if it's true—I say the law clerk is kind to everyone

around: kind to the secretary, the deputy, a visiting Court of Appeals judge, and the guy who cleans our bathroom. Be nice. Not only do you never know, but it is good to be a mensch. And in chambers, we're on top of each other all day long. Life is way too short to work with a jerk.

On Understanding Psychology and Leadership

I really feel I was so lucky in my life, but that I just bumbled along. I would like to have taken a psychology course. Not just for dealing with lawyers, but much more so for settlement. I love to settle cases, and it's the hardest work we do because now I'm the guy trying to be persuasive, the one who is always on, the one who doesn't get a break. So, I wish I had taken a psychology course.

I wish I had focused more on leadership. Perhaps the best leadership experiences I had early on were in Girl Scouts, which I participated in through high school. But that was the end of any real leadership training until I woke up one day in 2009 and I'm Chief Judge. And as you may know, the chief judge in this court—and in most federal courts—has no power. Really, the only power the chief judge has is to assign people to committees. It is very different from the state courts, where the chief administrative judge has far more power.

Here, it is all soft power. It is persuasion. It's doing your homework. And I'll give you an example that I think I learned from. When U.S. District Judge Kimba Wood was chief, there was a judge who just was not doing his or her work. Motions piling up, and it was horrifying. The appropriate committee of the court made all sorts of recommendations. The judge was given an additional deputy. The judge was given two more law clerks. The committee tried everything. Nothing worked. Eventually, the committee said, "Alright, we're just going to have to redistribute the motions."

Well, you can imagine the outrage. "Why should I help the lazy judge? No, I'm not doing this," they said. Judge Wood went around and visited with the loudest objectors, and she allowed herself to be yelled at. Eventually, every judge voted for redistribution of the motions. Why? Because she

said to them, this is not about you, it's for the good of the court.

The term of chief judge is set: seven years. You put yourself out there every day to try to persuade your colleagues: could you do this, take on that? And the happiest thing in my seven years was that no judge ever said no. My colleagues were all so nice to me, so helpful. I will be eternally grateful.

On Work-Life Balance

I read an earlier column where Chip [Loewenson] recommended getting the best childcare you can afford. That is fabulous advice, and I'd add: fill in around the edges with family, maybe high school students, college students. Just fill in so that you can do the things you enjoy. So if you enjoy cooking, cook with your kids. Our son, now 37, could tie a veal when he was six because that's what we did on the weekends: we cooked. And then, if you can, outsource the stuff you don't want to do.

On Finding a Mentor

People talk about being intentional about finding a mentor. In my day, there were no women to act as mentors. So being mentored, for me, really just developed organically. There is a parallel today: do a good job—a really good job—for the partner you're working for. And then, ask for feedback. But importantly, give the partner some notice that you want feedback, so that he or she can think about it. Don't surprise the partner. Then, prepare yourself actually to hear it, both the positive stuff and the negative stuff, and to act on it. Be prepared to accept the advice. Too often—and I'm sorry to have to say this—kids have just been patted on the backs their entire lives. Well, I'm sorry, that's over. In the real world, merit is what matters.

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