



# Super Lawyers<sup>®</sup>

KATHLEEN SULLIVAN AND THE APPEAL OF APPELLATE LAW

# Appealing Appellate

## How Kathleen M. Sullivan went from academia to the only female name partner among the 100 largest firms in the country

BY TIMOTHY HARPER PHOTOGRAPHY BY MICHAEL PARAS

WHEN KATHLEEN M. SULLIVAN makes an argument before the U.S. Supreme Court—and she’s argued before it nine times—this is her routine.

A few days in advance, she and several colleagues from her firm, Quinn Emanuel Urquhart & Sullivan, take the Acela or a shuttle flight from New York to D.C. They check in at the Hotel Sofitel, near the White House, which she calls “our lucky charm.” Then they spend nearly every waking moment talking about the case. They eat together, anticipating questions. They take long walks on the National Mall, practicing answers. “We keep refining what we think the hard questions are, and how we think we should answer them,” Sullivan says. “That process, I have to tell you, is about as good as it gets—the process of being steeped in a case.”

That single-minded concentration has helped Sullivan win scores of cases in federal and state appeals courts, and prompted speculation that she could become the first openly gay justice on the U.S. Supreme Court. It’s also helped her become the only female name partner among the largest 100 firms in the nation.

On the day of the argument, Sullivan rises early and goes to the gym for the stationary bike and weights. She has the same breakfast: two bananas and coffee.

Lots of coffee. At the courthouse, she and her colleagues are ushered into the lawyers lounge. Each attorney who appears—whether making an argument or sitting in silent support as second chair—is given a quill pen as a souvenir of the occasion. Sullivan is so focused she sometimes has to be reminded to take her pen, but so far she has collected approximately 30 of them: nine from cases she argued personally and the rest from sitting second chair.

At this point, Sullivan, 59, is like a well-conditioned boxer before a match, and her colleagues are like trainers hovering in her corner. When Chief Justice John Roberts recognizes her from the bench, and Sullivan stands up, takes a deep breath and begins, “Mr. Chief Justice, and may it please the Court ... ” she is all alone in the ring. But she doesn’t feel alone. She is standing on the shoulders of all of those who have supported her over the years.

### **SHE WAS NAMED KATHLEEN**

Marie after both grandmothers, and grew up in the 1950s and ‘60s on Long Island in an “incredibly happy” extended Irish family that followed the news of the day and expected girls to speak their minds. Her father, Robert, was a business executive and her mother, Joan, a schoolteacher and

homemaker, to whom Sullivan was extremely close. They were the first in their families to go to college, and passed along a love of education and a strong work ethic to their children. Sullivan and her two younger brothers were jocks, playing whatever sport was in season; she credits her competitiveness to playing field hockey at Cold Spring Harbor High School.

For a while when she was young, she thought she might become a nurse. She considered scientist, then astronaut. Ruth Epstein, a partner at Stradley Ronon Stevens & Young in D.C., recalls meeting Sullivan at a summer program for gifted high school students where the 19-year-old Epstein worked. “At the age of 15, she had star quality already—charisma of a kind I have not seen before or since,” Epstein says. “I believe she was the desert-island person for almost everyone in that program.”

She graduated from high school in 1972, the summer of the Watergate break-in, and over the next two years at Cornell closely followed the unfolding scandal. “I realized then that everything was being done by lawyers. Lawyers had been the special prosecutors. Lawyers were running the committee hearings for the impeachment. Lawyers were representing various parties before those hearings. It was

noble. Lawyers were ushering in a peaceful transition of power after a national crisis.”

That’s when she began thinking seriously about becoming a lawyer. After Cornell, she spent two years studying politics, philosophy and economics as a Marshall scholar at Oxford. At Harvard Law School, even before getting a rare A+ in constitutional law from professor Laurence Tribe, Sullivan was working on Supreme Court appeals with him as a research assistant. “Kathleen became the most impressive appellate advocate I’d ever worked with—and she remains the best I’ve ever seen,” Tribe says. “Her talent for turning a phrase to capture the essence of a complex idea and to make it easily accessible—without oversimplification or condescension—is absolutely unique.”

Instead of joining a big firm as a litigator after graduation, she clerked for a year for Judge James L. Oakes of the 2nd U.S. Circuit Court of Appeals and then opted for a low-paying job as a litigation associate for Tribe—helping prepare his U.S. Court of Appeals and Supreme Court briefs, including some early gay-rights cases. That’s where she got her Supreme Court walking ritual. Tribe often took her on long strolls along the Charles River to talk about cases. They had a couple of cases together in Hawaii and Puerto Rico,



**KATHLEEN M. SULLIVAN**

- PARTNER, QUINN EMANUEL URQUHART & SULLIVAN
- APPELLATE
- NORTHERN CALIFORNIA SUPER LAWYERS: 2007; TOP 50 WOMEN: 2007
- NEW YORK METRO SUPER LAWYERS: 2009–2014; TOP 50 WOMEN: 2010–2014

and when they arrived they would change into their swimsuits and spend hours floating and paddling as they discussed their cases. “It was: ‘Glug, glug—I think we should cite *Plessy v. Ferguson*—glug, glug, glug,’” she remembers.

Still anticipating going to a big firm, she suddenly got an offer to join the faculty at the University of Virginia School of Law. Other offers rolled in: Penn, Columbia, Yale and Harvard. She went with Harvard.

Teaching was new to her. “Kathleen asked me for pointers,” remembers her friend and colleague Margaret Jane Radin, now a law professor at the University of Michigan. “It turned out she didn’t need any. She won the award for best teacher. She was an amazing teacher. She drew in every student, in classes of 100 or more, even in the back row.”

In 1993 Sullivan switched to Stanford Law, where she teamed up with Gerald Gunther to help write new editions of his *Constitutional*

*Law* textbook. A few years later, she got top billing; after his death in 2002, she continued to publish new editions. By this point she was dean at Stanford, the first female dean of any school at Stanford. During her stint, 1999 to 2004, she helped raise \$106 million in donations and saw women make up more than half the graduating class.

She was still teaching full time and devoting one day a week to her mostly pro bono constitutional law practice—as she’d done throughout her career—when, in late 2004, she was approached by an old friend and colleague, William Urquhart, who had gone on to co-found the litigation-only law firm Quinn Emanuel Urquhart Oliver & Hedges. “You have climbed to the top of the mountain in academia,” he told her. “You need a new mountain to climb. Why don’t you come start an appellate practice at our firm?”

Initially, as of counsel, working parttime and handling the firm’s

internal appeals, she held onto her Stanford professorship and kept teaching. “We did a lot of business and amicus briefs,” she says. “I was hustling for appeals from outside the firm, hustling for Supreme Court work.” The rise was quick. In 2007, she became a partner; in 2010, she was made name partner; in 2012, she finally resigned from the Stanford faculty. She moved back to New York City in 2007, though her work often allows her to spend up to two weeks a month back on the West Coast with her longtime partner, Helen Stacy, an international law scholar at Stanford. Sullivan says her sexual orientation doesn’t matter to clients any more than the fact that she’s a woman, Irish or a redhead.

As an academic, Sullivan typically analyzed cases long after all the critical decisions had been made; at Quinn Emanuel, she could watch those decisions being made. “I realized that legal issues that become your appeal

often start by the way you frame your complaint,” she says, “or by the way you write your motion to dismiss, or by the way you argue your summary judgment motion.” She often helps write motions for the firm’s trial lawyers, but makes it clear that she is not a trial lawyer herself. “I wouldn’t ever purport to step into their shoes to do a cross-examination or a killer deposition,” she says. “But I do try to help my trial partners on dispositive legal motions earlier on in the cases. Also, post-trial motions. Post-trials are incredibly important because that is where you set up your appeal.” She likes to think her appellate practice reassures clients that they won’t have to start over with a new firm if and when their case moves up to the next level.

Under Sullivan, Quinn Emanuel’s appellate practice has grown to 40 lawyers, including seven other partners. Mary Kay Vyskocil, a senior litigation partner at the New



Attorney Kathleen Sullivan (R) speaks to the media after representing Royal Dutch Shell Petroleum at the U.S. Supreme Court in Washington, October 1, 2012. She has a specific routine every time she argues before the court. REUTERS/Gary Cameron

York office of Simpson Thacher & Bartlett, recalls a case, “very big, hotly contested and often times contentious,” for which Sullivan was brought in on appeal. “She is a brilliant advocate, one of the more professional and delightful adversaries I have ever encountered,” Vyskocil says. “She was always the voice of reason, the voice of civility.”

“Whoever she is talking to, that person feels like the most important person in the room,” says Quinn Emanuel’s managing partner, Peter E. Calamari.

Michael Carlinsky, head of the firm’s complex litigation department, remembers that he once persuaded her to lead the arguments in front of a court where she didn’t have much experience. “We go in the courtroom, the panel comes out on the bench, and the first thing the presiding judge says is, ‘Oh my gosh, Dean Sullivan! It’s so good to see you!’ They exchange 30 to 40 seconds of pleasantries. Then he turns to Kathleen’s adversary and says, ‘Counsel, please introduce yourself.’”

**IN ONE OF HER FIRST BIG APPEALS** for Quinn Emanuel, she represented Mattel in a copyright case. A rival had sued the toy company for supposedly stealing its “sculpt”—the design for their doll’s head—and using it on Barbie. At first she thought to herself, “What am I doing? I am a serious constitutional lawyer, and here I am working on a copyright case involving Barbie’s head.” But she was soon captivated by the intricacies of the case: the 2nd Circuit has a line of cases on copyrights for dolls’ heads going back to Learned Hand. In the end, the case settled favorably for Mattel.

She’s made new law and headlines for clients such as Motorola, Samsung, the University of Southern California, and the Federal Housing Finance Agency, which oversees Freddie Mac and Fannie Mae. The reversal she won for FHFA in the 2nd Circuit last year allowed the government to recover \$20 billion from banks involved in the global financial meltdown. That same year she won a unanimous U.S. Supreme Court ruling for Royal

Dutch Petroleum Co. that reduced the scope of the Alien Tort Statute. Sullivan went into the case an underdog. “We won 9-0,” she says. “It was a thrill of a lifetime.”

Sullivan relishes the way appellate work lets her dissect a case. “A lot of times appellate law means finding the thread, even an arcane procedural thread, that can unravel all that went wrong at trial,” she says. “That’s a beautiful art form. That’s why appellate lawyers bring a very different set of eyes than trial lawyers do. I think we see the cases more in terms of the long-term and institutional precedents they set, which is how the court will think about them.”

“From the client’s perspective, Kathleen is everything you could want not only as an advocate, but also as a counselor,” says Russell Bonds, associate general counsel and head of litigation at The Coca-Cola Co. “Sitting in courtrooms and conference rooms with Kathleen, I’ve felt at times the way you feel when you watch a virtuoso musician or an elite athlete at the top of her game

and think to yourself, ‘I wish I could play like that.’”

Ever competitive, Sullivan can recite her win-loss record in appeals—a tough game in which any lawyer with a better than .500 record can be a star. 9th Circuit? 16-6. U.S. Supreme Court? 5-3.

In 2009, Sullivan’s name was prominently mentioned as a possible replacement for retiring Supreme Court Justice David Souter, but Sonia Sotomayor was nominated instead. Sullivan says, “It was a great honor to be on the short list, I can’t deny that,” but makes it clear she doesn’t expect to be considered again. She was not part of the discussion in 2010 when Elena Kagan was nominated to replace John Paul Stevens, for example, and insists she has “no great desire” to move to the bench at any level.

For the foreseeable future, Sullivan’s life will remain appealing, in every sense of the word. She sees no point in retiring.

“If I was on a beach,” she says, “I’d still be thinking about law.” 