

Striking a Perfect Balance

- **Chief Justice Charles W. Daniels believes you can be a lawyer and have a life, too.**

By Tiffany Sanchez

Chief Justice Daniels sat for an interview on a Friday morning between his appearances at the UNM School of Law and the State Bar, in the middle of the legislative session. It is clear why he is such a sought-after speaker.

Describe your professional and personal path which set the stage for your current position as the Chief Justice of the New Mexico Supreme Court.

This is an awfully complex answer to an awfully complex question: I never dreamed of being a judge as part of any game plan. In fact, it was after I became an adult that I even thought of being involved in the law at all, or at least thought seriously of it. No one from my family had ever gone to high school, and we didn't know any lawyers, didn't know any judges; and so I had no role models and no expectations of ever being involved with anything like that. What led me to law school was, when I was trying to figure out what I wanted to do in life when I was about twenty or twenty-one and knowing that I wanted to do something and be educated, I read a book about Clarence Darrow, the great trial lawyer from a century ago. I can still remember having a breath-taking experience after about a few chapters, realizing I wanted to do that and realizing I could do that somehow. It made me decide to go back to college with a vengeance. I had gone a semester and was directionless and unmotivated and dropped out and joined the military. I wanted to be a trial lawyer as a result of that beginning, reading that book and then studying more and more of the justice system. I wanted to argue for people in court, and that was my goal when I went to law school. That's what I did for 30 years, basically, even in the years when I was teaching, and I taught in several different stints, in the 70's primarily and then again a few years ago. I always was in the courtroom, too. My career was full-time lawyering, courtroom lawyering, and frankly, if that's all I had ever done and all I'd ever do, I'd be perfectly happy. It's a great career, and I never had any goal to go beyond it. The decision to go on the Court was really reached pretty late in life-I'm 68 now-and over three years ago when the vacancy occurred on the state Supreme Court as a result of the death of a great friend of mine, Justice Pamela Minzner, some people started encouraging me to throw my hat in the ring for it. At first I said no, because I've always wanted to be a player instead of a referee. The more I thought about it, the more I began to realize that it might be something that I'd like to do and that I thought was important to do, and so I did it. As with a lot of other things in my life, I was lucky that I got the appointment. I ended up going through the election process, which is probably too complex to discuss here, and I have just been retained for an eight-year term. Given the mortality tables and the lifespan of a human brain, I might not be running after eight years from now. That's how I ended up on the Court. That's the short story!

Would you ever want to go back to being a litigator?

I've thought about that for a couple of reasons. First, people often ask me that, so it's made me think about it. I wouldn't voluntarily resign from the Court, but I thought about it in both the

political election that I had to go through after I was appointed and because of New Mexico's strange system of election and retention of Justices, when I was wondering if I was going to have opposition and what would be the outcome, and I thought about it again in the retention election last year, wondering if there was going to be a campaign like there was in Colorado to throw all of the judges off during the retention election, or in Iowa to throw them all off because of their gay marriage case. I don't know what decisions of ours people might get upset about, but all of our cases involve conflict and controversy and make some people unhappy. I thought about what would happen if I left the Court as a result of the election, and I realized that I would be perfectly happy if I went back to being a trial lawyer. I'd love it if I went back being a trial lawyer. I'm glad that I'm not going to leave the Court, because I'm loving that too. It's a new adventure. New adventures are always good at this stage in life, and I don't think you are ever too old to have a new adventure.

You mentioned Clarence Darrow. Do you consider him an inspiration, or do you have anyone that has inspired your path in your legal career?

There have been so many people. Clarence Darrow was one. I read everything that I could by him, from him, of him. He believed in justice, he believed in fighting for people's rights, he believed particularly in giving voice to the voiceless, and that was a big inspiration. I didn't go into law to make money. I never had an ambition to be rich. I never thought money was more important than enjoying your life. I went into law because it would be a life that I would enjoy, and that has proven to be true. The money was never important, although I have never minded having someone pay me for any job that I've had, and I've always found ways to spend it. But it has never been a goal in and of itself to me. So Clarence Darrow and the kind of work he did was an inspiration. But there are so many role models in the legal profession. I have had role models among my teachers, among my law professors. I can name a lot of them, Fred Hart, Jerry Walden, and so many others. I have a couple of paintings behind my desk at the Supreme Court. One of them is a painting of Clarence Darrow, and one of them is a painting of a non-lawyer, Martin Luther King, Jr. Both of them had in common a commitment to finding justice for people who needed help.

You've had such a long career as a litigator and educator. In what way has this experience helped to inform your decisions on the Supreme Court?

Justice Daniels: I've used all of that. You don't come onto the Court as a blank slate. We have five Justices on the Court who come from different kinds of backgrounds, all of them committed to doing a good job and all of them committed to working together. They have had different life experiences, different professional backgrounds, and it all adds into the mix. I think we bring all of that. You also have to go beyond anything you have ever done. Being a lawyer in private practice, a trial lawyer, has helped me understand the realities of the cases that come before me. These aren't abstract cases. I know how the discovery process goes, I know how it works talking to witnesses and selecting juries and all those kinds of things we have to review in a cold transcript. As a law professor, I had to take myself out of the role of being an advocate to take an overview of the law, look at both sides and understand how it all fits together, and how sometimes it doesn't all fit together, and how it could be improved. You have to do that kind of

analysis to be a law professor, and that's helpful in being a judge. Because the role I have now is different from any role I've ever had; I'm not an advocate anymore for one side or the other in a case. In fact, my job now is not just deciding how I would like to see this particular case turn out; it's bigger than that. If I were King Solomon and told just do justice between these two human beings and don't worry about the impact on any other case or the fabric of the law, some of my decisions might come out differently, because in a particular case you might have sympathy for a side or one human being in a case. But we have to apply principles of law according to the rule of law that achieve some greater goal than just how they might affect the particular human beings in this particular case, because these people may be an exception to the situation that the rule was intended to deal with. And if there is a way you can articulate an exception in a principled way to help these people get justice, you should do it. If you have to bend the law in order to achieve a result, you shouldn't do that. If you have to create a rule of law that is going to be unfair to the whole society in the long run, then you can't do that. And we have to think about those things when we decide cases, which makes it an interesting job and is why I said this is a great new adventure.

Has your time on the Court changed the way you view the law?

I just think it has given me more of an overview, a big picture. It has been a growing experience.

What have you learned during your three years on the Court that you would have liked to have known while you were litigating?

It reaffirmed some things that I had thought. I'd always thought judges didn't particularly like lawyers being involved in whining and snipping at each other, and I can tell you on the judges' side of the bench it is really a distraction and annoyance, and it doesn't help anybody to do that. We're not up there to settle the spats between lawyers. We are up there to get to the underlying principles of the case. I think I've learned that judges don't like to resolve cases on legal technicalities instead of on substance and merits. Sometimes those legal technicalities serve a higher goal, and we shouldn't treat constitutional requirements as mere technicalities. Sometimes even non-constitutional technical requirements have a worthy goal to serve that requires them to be honored in particular cases. You really want to get to the merits of the case if you can and decide it on its merits. Sometimes the technicalities, like late filing of a lawsuit past the statute of limitations, can cause it not to be decided on its merits, because of the higher goals of timely resolution of cases and so on. But you don't quite walk away from that with the same feeling of satisfaction you do when you think, "we really did justice in that case." I'll give you an example of a rule we recently changed. We had a case that came to us a year or so ago where a lawyer mailed a notice of appeal from a decision in a lower tribunal. It was due on a Monday in the Court of Appeals, and he mailed it on Thursday from Albuquerque to the clerk's office in Santa Fe, sixty miles away. It didn't get there by Monday. The post office received it on Tuesday, and the Court of Appeals picked it up from their box on Wednesday. They said, "we have no jurisdiction; under the rules we can't hear an untimely appeal." It came up before our Court, and the lawyer basically said "help--this isn't fair." He was right; it wasn't fair. Our Court ended up denying him relief because the rule was real clear that if it weren't filed by then, he was out of

court. But the discussions that generated amongst ourselves about the injustice of that kind of result has caused us to make a rule change, where if you file a pleading to the appellate court and mail it with a postmark at least a day before the due date, we'll consider it as timely; and if the government doesn't get it to us for two or three extra days, we can live with that. The walls of justice won't topple if the post office gets it to us a few days late. We think you ought to be able to trust your government to do its part of the job if you file it in advance of the due date. So we have changed that rule now, and that kind of unfair result will not happen again.

Have the hard economic times affected the judiciary in this state?

I have seen a change in how efficient our courts have been and a change in the access to justice that our citizens have. It's not so much that the substantive rules have changed but, particularly in the last three years, the fiscal meltdown has impacted all parts of our society, our government, state and federal, and it's had a particularly harmful effect on the courts. In the last couple of years, our caseloads in our courts have gone up, partly because of the fiscal crisis, a lot more foreclosures cases, a lot more suits on bad debts, domestic violence, various kinds of criminal cases. In hard times, our society gets involved in more conflict and our courts are crucibles for conflict. They are the places where we hope conflicts are resolved, instead of having those conflicts resolved in the streets or the jungle. Yet at the same time, because of the fiscal impact on state budgets and court budgets, our resources are diminished. We don't have any control over how many cases we get. We are not like a business that can decide to cut out a particular line of products. If somebody has a domestic violence case, we have to be open for them. If they have a child custody case, we have to be open for them. If there is that criminal prosecution where the District Attorney wants to enforce the rape laws and the murder laws and other things, we have to be open for them. We can't say, "sorry, we don't have enough money, so we're not going to apply those laws." We have to be there. It has been a perfect storm of the resources diminishing at the same time our demand and workload goes up. Both are beyond our control. We can't hold bake sales to get money, and we can't tell people, "sorry we're not going to enforce those kinds of laws, because we just can't afford to enforce the rule of law in the particular area where you are seeking our help." We've had to do a lot of cuts of services, and we've had to cut back some of our most important specialty courts, like DWI and drug courts, mental health courts, behavioral modification courts that actually benefit society in so many great ways, although they are not required by the constitution. We have had to cut back on those. We have had to fire people. Nobody's gotten a raise in years, since before I came to the Court. I'm not complaining about that; I didn't get into this for the money. That is the smallest part of it all. The big impact has been on the people who need access to the courts, because we get back-logged. The lawyers and litigants can't get hearings in a timely fashion. In some parts of the state, it has reached a critical problem where the justice system is failing. I can give you all kinds of anecdotes, because I get them all the time. The phone that rang as we started the interview was a lawyer from Santa Fe who called to tell me about not being able to get a hearing up in Santa Fe. I get calls like that all the time, because the buck stops at my desk as Chief Justice. Some of these will just eat your heart out. It's had a huge impact. It's Friday, and I've been at the Legislature all the other four days of this week, talking to legislators, testifying before committees trying to find a way to get enough funding to keep our doors open and not have to do some court closures. As I said in the State of the Judiciary address, furloughs inevitability result

in court closures, since virtually all of our budget goes to personnel. We don't have cases being decided by computers; they are decided by people. Furlough closures don't help. They don't help with the work load. It's not like a park or a museum closing or a tourist train not operating on a certain day. Our work backs up and it is not work we can turn away. It just means we still have to spend the money to process those cases one at a time and we have to spend taxpayer dollars processing those cases anyway, and in the meantime, people are being denied justice. And I'm trying to tell everyone I can that there are some functions of government that are important. Most are important, as there are a lot of functions that are vitally needed by people, but there are some of them that are an essential part of democratic self-government. I have to think that a justice system is an inherent part of government, because without a justice system you don't have self-government. You don't have a rule of law if people's choices of law can't be applied. If you don't have courts to enforce them, it is back to the rule of the streets and the law of the jungle. We're one of three co-equal branches of government, but we only get appropriated 2% of the state's budget, so even though we provide a vital function the difference between success and failure is such an infinitesimally small part of the entire state budget that adjusting it enough to keep our doors open will have no impact on the budget deficits overall. I am trying to get the message across to everybody who is in a position to make sure we're supplied with enough money to keep our doors open that it will not affect the fiscal crisis of the state one way or the other if they make sure the doors of the courts are open, but it will preserve our democracy.

You sound incredibly busy handling your own case load and dealing with all of the administrative aspects of your position. In the spare time that you may have, do you have any interests or hobbies?

I guess my primary interest is my family. In terms of hobbies, I never took up golf. There is nothing immoral about golf; I think it is great for people to get pleasure out of it. I think it is good to have things besides just the law that you enjoy about your life. But for a long time now, I've had a couple of hobbies that I spend a little bit of time with. It's a good thing I don't need to spend a lot of time, because I don't have much spare time these days. Once or twice a month, I pick up a guitar and play with a band, and once or twice a month I strap into a 600-horsepower race car and do wheel-to-wheel racing. These days I do it only in the state, here at Sandia Motor Speedway in Albuquerque. Before I went on the Court, I used to travel around the country doing it as a hobby. I had an active practice as a trial lawyer; I would be doing it while other people were out on the golf course.

What is the name of your band?

I have two bands, actually. One of them is mostly in hibernation and is called "Lawyers, Guns & Money." We created that band in the late 70's, back in the days of the roadhouses, a scene that no longer exists. And we played for about 15-20 years pretty regularly, had some great adventures, and primarily did country-rock music. Now we get together once or twice a year. We're all still friends, and we just booked a fundraiser for the S.A.F.E. House here in Albuquerque for this fall. But the band I play with most often these days, with another group of friends, is "The Incredible Woodpeckers." We play about once a month on Friday evenings--early. We play mostly rock-n-roll, blues, reggae, basically anything we feel like.

We've had great adventures. One week before Christmas we played with Bobby Keys, the Rolling Stones saxophone player. He joined us as part of our band; he flew in from Nashville to do that. He's done it about a half- dozen times. We have a great time with or without a guest player.

What is your favorite type of music?

A wide range of it; I just like all kinds of music. I'd have to say the kinds of music we play in those two bands-blues, rock, country, reggae-are certainly of interest to me, but I like folk music and lots of other stuff. I like organic music, with people playing musical instruments, more than I like computer music.

Do you play any other instrument besides the guitar?

The bass guitar is my primary instrument. It's an easy guitar to play; it only has four strings. I play a little bit of guitar, not much, enough to satisfy myself. I play around a little bit on keyboard.

How did you get interested in music?

I started when I was a kid. I was in the high school band. My mother made me take two years of piano lessons which, like most boys, I resisted, but looking back on it, it gave me the foundation for all of the music in my life. It was a good thing to do. I quit making music from when I graduated from high school until I had been through college and law school. A friend of mine got a job with a law firm in Guam and was lightening his load of possessions. He had this old acoustic guitar, and he sold it to me for \$15. One of the students in the American Indian pre-law program was a guitar player and singer. I was tutoring him, and he taught me some basic things on the guitar. I just started playing around with it and had no plan in mind but eventually ended up playing with other people. It got to the point where people could finally stand being around it. Then they started to hire us. Next thing I knew, I was in a band and thought it was fun. I realized that I didn't have to give it up, because I didn't have to pretend to be in a courtroom 24 hours a day of every day of my life. You can be a lawyer and have a life, too. I found this also to be a reality about being a judge. You don't have to give up who you are just to be a judge, so long as you remember judicial ethics and that sort of thing. You know, I wouldn't wear the clothing I wear on a bandstand into a courtroom to preside over an oral argument, but I don't wear my robes onto the bandstand either!

It sounds like you strike a perfect balance.

It works for me.

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