

TENDER JUSTICE: JUDGE NORMA LEVY SHAPIRO'S HARD-HEADED HUMANITY

ELLEN P. GOODMAN¹

One hot August morning, fifteen minutes into my clerkship for Judge Shapiro, I saw the whole woman and her integrated approach to humanism, law, womanhood, community, and professional excellence.

In those first breathless minutes, the Judge, a gracious hostess and domestic doyenne, asked for my opinion about the new furniture she had selected for the clerks' office, and whether I thought it met her precisely articulated aesthetic and functional goals. She then led me with obvious pride through the chambers' small library. I was instructed to consult a treatise first when confronted with unfamiliar areas of the law, despite what the law school writing instructors might have told me. Digests and computer databases were all very useful, but not until the mind had grasped the whole. That instruction evinced the Judge's belief that unschooled electronic searches too often lead to haphazard legal research, but, more profoundly, it revealed her deep respect for the authority of learning.

Next on the agenda that morning was a short visit in the Judge's office, where splashes of color and comfort bespoke a woman at home with her work. The shelves and sills were crowded with awards for community service and legal achievement, with pictures of children and grandchildren, and emblems of a lifelong commitment to Jewish causes, the advancement of women, and social justice. I could not have been in there for more than twelve minutes. But by the time I left, the Judge knew the statistics that were vital to her: my romantic status and hopes, my birthday, and what I like to eat. And in those seven minutes, I absorbed lessons, both philological and psychological, I would never forget. I learned that the word "indicate" should be used with data (always plural) and not with people and that "that" is almost always better than "which," but it is better still to reconstruct the sentence to avoid the that/which grammatical quandary

¹ Associate Professor of Law, Rutgers University School of Law—Camden. Former Partner, Covington & Burling, Washington D.C. and law clerk to Judge Norma Shapiro, 1992–1993.

altogether. It wasn't just that the Judge valued good writing. She felt that good and accurate writing was a sign of good and accurate thinking. Just as importantly, the Judge told me that a woman need not abandon either tenderness or common sense in the pursuit of rigorous analysis. Beauty was truth, and truth need not wear boxers.

The next year provided—as has each of the subsequent years—a chance to practice and build upon Judge Shapiro's lessons.

I. HUMANITY

Federal criminal trials and sentencing are heartbreaking experiences. At least they were for me. The power of the state, with its polished wood and muscular federal marshals, is arrayed against the defendant who, now in the dock, is divested of all authority and menace. He seems small next to his lawyer, in whose direction the young children in the courtroom's back rows, kicking absently at the floor, look to save their helpless parent.

In the respite from a barrage of drug cases, the Judge presided over the trial of a man in his seventies who was convicted of a criminal Clean Water Act violation. Before his retirement, he had run a generic drug manufacturing company and had ordered an employee to pour toxic substances down a storm drain. Judge Shapiro is pretty tough on crime. Just as she would not hear from drug defendants that they thought their crimes were victimless, she was not going to be moved by the claims of this septuagenarian that he did not realize midnight dumping was so bad. The law was what it was and it reigns in the Judge's courtroom.

What I saw over and over in Judge Shapiro, however, is that judgment and empathy need not keep their distance. The Judge was clearly moved by this defendant who was facing the last years of his life in prison. When he was asked to read a document on the stand, it became clear that he could hardly see. While justice might be blind, the Judge did not think this defendant should be. She offered to get him a magnifying glass. During a break, she engaged him about the care he was getting for his eyes and made some suggestions about practitioners and possible treatments. I am not quite sure why this image of the Judge counseling this elderly defendant was so enduring for me. I think it has something to do with the mixture of mercy and fairness in this tough, loving woman. Her justice and her mercy come from the same place. The hard justice and the tender mercy are both, in a way, demonstrations of compassion. Women lawyers in particular, I believe, are tempted to hide or even eliminate their

softness. Judge Shapiro taught me that you did not need to. Softness was not weakness. Softness was as much a discipline to be practiced as strength.

II. THE LAW

Judge Shapiro taught me about the limits and possibilities of the law without ever declaring her views on the subject. She did it through her questions. They were questions to the state government, which was defending a civil rights claim for taking a girl from her grandmother's custody. How could it justify moving this girl through so many foster homes when her grandmother desperately wanted her? They were questions for representatives of the city government concerning the conditions of prisoners in its custody. How was it that they had no idea how many prisoners they were housing? How could this happen, particularly to juveniles? Often they were questions to private litigants in settlement conferences designed to pierce the puffery of lawyers who, by inaccurately assessing the merits of their claims, had failed to put their clients first.

One particular line of inquiry stands out. The Judge, her clerks, and a parade of lawyers and principals from the Department of Housing and Urban Development and a local housing rights group were on a tour of the dilapidated housing projects of Chester, Pennsylvania. The case had involved a claim of constructive demolition against HUD and the Judge, as she so often did, wanted to get her hands dirty—really dirty—with the facts. I think Judge Shapiro's view is that justice cannot roll like a mighty river unless decisionmakers are drenched in the mundane and the technical, where the truth hides.

We picked our way through broken glass, crumbling concrete, and doors half off their hinges. To the HUD principals in the group, the Judge turned and asked, in so many words, "Why can't you fix that wall so that it's not falling down? That's inexcusable." And to one of the resident association representatives, the Judge asked, again in so many words, "Why can't you pick up the needles and condoms in the playground? Are you going to just wait for HUD to do it?" I don't remember exactly how that case turned out a year or two after my clerkship. But I know what those questions meant. They meant that, notwithstanding the law's great power to right wrongs and create incentives for higher levels of performance, the law is limited in its ability to further our aspirations. Personal responsibility and honorable conduct on the part of the powerless and powerful alike

are necessary. Certainly many of us believe that. Judge Shapiro has the courage to say so and to say it to your face.

III. WOMANHOOD

One source of authority the Judge could call upon in asking a woman why she hadn't cleaned up is that the Judge had. She had cleaned up playgrounds and poop, coffee grinds and broken hearts. She never made much of the fact that she was her court's first female judge (and the first female in the 3rd Circuit) or that she was the first female partner at Dechert Price & Rhodes (now Dechert LLP), but we women knew it. We also knew that she had been a school board president, that she doted on her three sons and what are now her six grandchildren, and that she made sure the birthdays of all her fellow judges were celebrated with cake and songs at lunchtime. We knew she cared about her clothes and her hair, and she cared about our clothes and our hair. We knew that she believed, and she taught us to understand, that presentation of all kinds has meaning.

So far as I know, Judge Shapiro does not agonize over the work-family balance either for herself or for us, her clerks. She seems to be grateful for and content with the choices she has made and the varying emphasis she has given to child-rearing, community service, and the law at different times of her life. I left my clerkship with confidence and, frankly, probably even a sense of entitlement. I did not know what the future held for me in terms of children or career, but I certainly did not believe them to be incompatible or even in significant tension. They are, of course, in tension. I suspect other clerks learned the same thing. Values in tension, however, are not the same thing as values at war. Tension is difficult. Judge Shapiro thrives on difficulty and so, I think, have many of her female clerks who are law firm partners, general counsel, and senior lawyers in government and non-profits, as well as law professors.

IV. COMMUNITY

If the Judge has preferences for her clerks in their choice of career, there is only one that I could discern. It was to stay in Philadelphia if we could. The Judge is fiercely loyal to the city and to its institutions, especially to her alma mater, the University of Pennsylvania. Although Philadelphia, with its unfulfilled potential and big dreams, is a city that inspires loyalty in many, I think the Judge would have loved and served any community to which she was

connected. And she probably would have stayed connected to any community she was born into. For her, as a Philadelphian and a Jew, the city and the Jews command a dedication that is unshakable. It's a dedication of time and effort, not just affinity. So the Judge makes the trek to the synagogue of her youth because it is a place her family has long supported. She gives time she does not have to serve on committees and boards of various Jewish organizations. From what I have heard and what I have seen, these organizations are forever changed by her demands for integrity in financial management and pursuit of mission.

I made my way back to Philadelphia, my hometown, from Washington a decade after clerking for the Judge. For the Judge, the merits of the move were obvious. Whatever excitement and opportunities a place like Washington has to offer cannot compare to the value of contributing to the place that has contributed to you. Loyalty to family, community, and place are, for the Judge, more important than most considerations and as important as any.

V. PROFESSIONAL EXCELLENCE

Up there with loyalty is the execution of high standards.

A substantive federal trial court order is one of the most beautiful legal documents I know. The logic has to be simple and flawless. Whereas, a, b, c, and d are the factual predicates; and whereas, m, n, o, and p is the law; therefore, w, x, y, and z is the result. The language has to be simple. And the Therefore clause has to be right. Judge Shapiro writes orders of particular grace and she demands that her clerks give her good drafts.

First, the analysis has to be impeccable. Judge Shapiro can look at a document, apparently only skimming it, and then raise her head and say "You have left out a step in the analysis here on page 13." Sure enough, that part of the memo that never came together quite right had an analytical flaw in it. You had thought it was a writing problem, but it was the analysis. It was almost always the analysis. If the analysis is rock solid, the paper writes itself.

Requirement number two: no legal gobbledegook. I never wrote or edited a legal brief, memo, or letter without this admonition in mind. Although most of the civil litigants in federal court were well-represented, the Judge wanted the orders to be understandable to the principals and, really, to the public. Law should not be esoteric. The written products of the federal government should not be obscure. Judge Shapiro can be impatient and irritable, and it is usually when

she is confronted with obscurity and obfuscation. "I don't know what you're saying," she might bark at a lawyer or at a clerk. It is a call to courage. Come out from behind the veil of misleading or meaningless locutions and say it. Think it, then say it.

Finally, be correct. Some lower court judges wear reversals as a badge of honor. Not so, Judge Shapiro. She is very rarely reversed and she does not like it when she is. I daresay the Judge would rather be reversed than be wrong, but I think she believes there is a high correlation between being right and being upheld. Like all clerks, I didn't want to write the draft that became the opinion that was tossed back on appeal. The Judge's nose for analytical error gave me comfort that it would be hard to convince her of erroneous reasoning. But she wanted more from her clerks. She wanted common sense. So, when the books were closed, the numbers had been run, the computer turned off, and the last period marked, she would ask: "Do you think this result makes sense?" There it was . . . the bottom line. It is a question so often overlooked in advocacy; one I was to find in practice. The adversarial posture of conversations in the law encourages lawyers to advance their positions in negotiations and in arguments with force and confidence. Law clerks, having convinced themselves, can do the same thing. With Judge Shapiro's query resonating in my mind, I was to learn that good lawyers step away from the force of their own logic to check it against common sense. And the best lawyers can convince their clients, or judges, to change their positions in deference to the sensible.

VI. THE WHOLE PERSON

In my years since clerking for Judge Shapiro, I have turned to her often for advice about where and what to practice, about being a female partner in a big firm, and about motherhood and seasons in the law. I am always mindful that I am asking advice from someone who has done it all: family, friendship, several careers, community service, and leadership in the profession. She will advise me, I fear, to take on more than I can. Yet she never has. For someone who is so successful, Judge Shapiro has a nuanced and even spiritual view of achievement. I think she believes that achievement is the realization of potential. At its best, it is the unified expression of the whole person.

That is certainly the kind of achievement she has modeled for her clerks, particularly, I think, for the women. Sometimes at the end of the day, one of us would help bring her many bags down in the

elevator to her car. The bags themselves, so dense and heavy, reflected the elements of Judge Shapiro's life all looped together. There were the feminine quilted bags stuffed with briefs and schedules and monographs. There were the canvas bags given to the Judge from this bar association or that conference—she is active in so many. These too had papers or maybe a present she was going to drop off and a newspaper article she had cut out for her husband. Often, the Judge would not be going straight home, but to a Jewish Publication Society Board meeting or to a synagogue function, to see one of her sons, or to visit a childhood friend who was home ill in the old neighborhood. Wherever she was going, she would invariably be carrying a gift with a personalized inscription to recognize the milestones or alleviate the pains of another.

We clerks could see that the Judge's days were full with all the aspects of her personality and that she drew on them throughout the day. She did not cordon off the nurturer from the hard-headed lawyer, shaking out her domestic self when she arrived home in the evening. The intellectual jurist, the warm-hearted grandma, and the demanding perfectionist were all there in the belly laugh, in the sharp question, and in the bear hug.

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