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Diane P. Wood

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THE QUALITIES OF A JUSTICE: HARRY A. BLACKMUN

*Diane P. Wood**

At first, it was easy to miss the twinkle. Or at least, if one were a nervous young lawyer beginning the most important interview of her life, there was some excuse for missing it. On the other hand, on the occasion of my first meeting with Justice Harry A. Blackmun, in early September 1975, many of his qualities came through immediately: earnestness, seriousness of purpose, kindness, intelligence, and breadth of vision. As we spoke, I found myself tempted to look around his chambers, filled as they were with historical artifacts, personal memorabilia both profound and whimsical, and the trappings of an active Justice on the highest court in the land. Yet, to give in to that impulse would have meant allowing my attention to waver from the Justice himself, which would have been not only foolish in the context of an interview, but also impoverishing in light of what the Justice was offering: a chance to get to know him, even a little. By the time the hour was up, the twinkle was very much in evidence, tempered as always by the serious business at hand. Just before I left the chambers, the Justice said to me with an absolutely straight face, "You know, I can't guarantee that I'll still be here by the time October Term 1976 begins." "Neither can I," I replied. A week or so later, the Justice called me, asked (to my astonishment) if I was still interested in working for him, and offered me the job. Like those who preceded and followed me, I accepted in less time than it took to formulate the thought.

That interview—both its prospect and its aftermath—naturally invited reflection on what we expect in a Justice of the Supreme Court of the United States. Who are these people who bear the awesome responsibility of faithfully interpreting the Constitution and laws? What skills, ideally, should they bring to the job? How much should we value independence in decision-making and opinion-writing, and how much the ability to compromise and to forge a consensus? But even assuming that it is possible to answer those questions in the abstract—to construct a hypothetical "ideal" Justice—the question remains whether that exercise is worth anything. In my opinion, it is not. I learned far more from watching one individual demonstrate a Justice's qualities by dealing with his task (which he frequently dubbed "the ton of bricks" that fell on him the day he was confirmed). Over the years Justice Blackmun served on the Court, the outside world moved from its initial superficial impression of the "Minnesota Twin" or one of the Nixon Four to a nuanced understanding of his view of the Court and his unique contributions to its work.

* Circuit Judge, United States Court of Appeals for the Seventh Circuit; Senior Lecturer in Law, University of Chicago School of Law; Law Clerk to Justice Blackmun, 1976–1977.

One reason this process took time is a direct result of one of the Justice's finest qualities: his modesty. The unassuming man in the cardigan sweater, who drove an old Volkswagen Bug to One First Street, Northeast, every day and took noontime strolls around the building, vastly preferred that anonymity to the more visible persona he was forced to assume after unending threats to his safety necessitated the close presence of federal marshals at all times. Justice Blackmun lived modestly and conducted himself in exactly the same way he would have if he had remained a lawyer at his beloved Mayo Clinic or the Dorsey firm in Minneapolis. He knew from the core of his being that fancy titles did not make for a better human being. That fundamental insight permeates his jurisprudence, just as it permeated everything else he did in life. My father still remembers, with wonder and affection, the greeting the Justice gave him when my parents visited Washington at one point during my clerkship. I had arranged for them to join us at breakfast. When they came up to our table, before I had a chance to say a word, the Justice popped out of his chair, extended his hand, and said "Hello, I'm Harry Blackmun." Immediately at ease, my parents sat down, reminisced about old-time baseball players, chatted about family matters, and answered the Justice's careful questions about their own lives and background. This scene repeated itself literally every time a new guest joined us at breakfast.

Justice Blackmun may not have been Everyman, but he thought of himself as Everyman, and he therefore wore his status gracefully and modestly. But behind that modesty was an exceptionally intelligent and observant person—the kind of person who would graduate from Harvard College summa cum laude in mathematics, and the kind of person who would spot even the tiniest grammatical gaffe in a memorandum and draw a careful circle around it in pencil, so that the author would not make the same mistake again. Perhaps because the sciences interested him so much, the Justice's opinions typically paid meticulous attention to the facts of each case and rarely strayed off into more philosophical speculation about legal theory. Some criticized him for this, and saw in his style the mark of a second-rate jurist who was unable to see the broader implications of the cases before him.

My own experience working for him, however, suggests that nothing could be further from the truth. I remember talking to him just after the trio of abortion cases from October Term 1976 were argued: *Beal v. Doe*,¹ *Maher v. Roe*,² and *Poelker v. Doe*.³ In one way or the other, each of those cases involved the effect of the unavailability of public funds or public facilities on the choice of indigent women whether or not to have an abortion. The majority of the Court decided that the state was entitled to influence the indigent woman's decision by funding pregnancy services and public assistance programs for children and refusing to fund abor-

1. 432 U.S. 438 (1977).

2. 432 U.S. 464 (1977).

3. 432 U.S. 519 (1977).

tion services. Justice Blackmun readily understood that these decisions fundamentally redefined the right to choice recognized in *Roe v. Wade*.⁴ But more than that, I was impressed in our conversation by his deep concern for the possible theoretical basis for a conclusion striking down funding limitations. Indigence, it was established by then, is not a suspect characteristic for purposes of the Equal Protection Clause.⁵ If not indigence, then, the Justice asked repeatedly, what is the forbidden classification? Women versus men? Something else? (*Maher*, everyone will recall, rejected an Equal Protection challenge to the funding limitations in the statutes for precisely this reason, finding that there was a rational basis for the state to distinguish between birth and abortion.⁶) He underscored to me the fact that the constitutional basis for *Roe*, in his view, lay in the concept of liberty found in the Fifth and Fourteenth Amendment Due Process Clauses, rather than in the Equal Protection Clause. Overall, he demonstrated clearly not only his deep concern with the plight of indigent women, but also his full appreciation of the theoretical complexity of *Roe* and the line of cases about personal privacy.

Justice Blackmun, in this area as in many others, set a high standard for a member of the Supreme Court, no matter what one may think of his specific position on the issue of abortion. Nothing less would do than mastery of the law, coupled with a perfect command of the facts and the record. Given the number of cases that came before the Supreme Court during the years he served there, this was a standard that only a tireless worker could meet—at least for someone like the Justice who was prepared to take personal responsibility for every decision, on matters ranging from applications to petitions for writs of certiorari to full-blown opinions. Justice Blackmun put to shame those of us who were his juniors by some forty years. He was almost always the first person in chambers to arrive at the Court, around 7:30 in the morning. I usually staggered in at 7:59 A.M., hair still wet from the shower, almost awake enough for our regular 8:00 A.M. breakfast. Even though the Justice was not the last one in chambers to leave the building, he never departed without an enormous briefcase full of work to do in the evening. The next morning, the crowded desks of his two secretaries were testimony to the fact that he had indeed gone through all of it. He repeated this seven days a week, 365 days a year. During the summers, when he and his family would “recharge the batteries” at Spider Lake, Wisconsin, we would send huge packages of work to him there, all of which he managed to wade through without complaint.

Justice Blackmun had so many other qualities that helped to make him a fine member of the Court that it would be hard to list them all.

4. 410 U.S. 113 (1973); see *Beal*, 432 U.S. at 462–63 (Blackmun, J., dissenting) (“The Court today . . . allows the States . . . to accomplish indirectly what the Court in *Roe v. Wade* . . . said they could not do directly.”).

5. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 19–25 (1973).

6. See 432 U.S. at 473–75.

They include absolute integrity; a steely independence of thought (bred, surely, in his beloved Midwest); constant awareness that the handful of cases the Supreme Court decides each year concern real people with real problems, even if they also happen to present important legal issues; and a resistance to being pushed into an ideological pigeonhole. On a personal level, the Justice and Mrs. Blackmun showed unfailing kindness to the extended family of law clerks: I remember invitations to hear the Marine Band perform, invitations to their home in Rosslyn, generous offers of tickets to see performances at the Folger Shakespeare library, and countless other thoughtful gestures.

Last, of course (as the Justice would have written), was his sense of humor. Anyone who is a fan of Garrison Keillor's "A Prairie Home Companion" knows what the dry, understated Minnesota wit can be like. Indeed, the Justice enjoyed "A Prairie Home Companion" immensely, and Garrison Keillor was one of the featured speakers at the memorial service held for him in March 1999. Particularly because the Justice could be so serious so much of the time, he often managed to catch someone off guard with a tease or a joke. Only when you did a double-take and saw the twinkle in his eye and the slow smile starting to spread across his face did you realize that he had scored another hit. Even through his humor, the Justice taught those around him to stay on their toes and not to miss even the subtlest signals.

A little more than four years ago, I was fortunate enough to follow in Justice Blackmun's footsteps part of the way, when I was appointed to the Court of Appeals for the Seventh Circuit; the Justice himself swore me in. Serving as a judge on an appellate court has, if possible, deepened my respect and appreciation for the qualities Justice Blackmun brought to his own judicial positions. His example stands as a daily inspiration to me: the dedication, the hard work, the refusal to settle for an easy answer, the courage, the humanism, and the humor. Law is not science, and no one knew that better than a man who could have been a first-rate scientist if he had chosen that path. Instead, it is the aggregate of the best human actors can do with a myriad of rules that must function in unceasingly changing environments and serve for an unimaginably diverse population. Justice Blackmun found a way to make order out of that chaos, and for that, we should all be grateful.