1998

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Sense and Sensibility: Justice Ruth Bader Ginsburg’s Mentoring Style As a Blend of Rigor and Compassion

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David C. Williams**

From the summer of 1985 to the summer of 1986, we clerked for Ruth Bader Ginsburg, then a judge on the United States Court of Appeals for the District of Columbia. Since that time, we’ve been lucky to have contact with her in a variety of settings, both social and professional: we have gone to clerks’ reunion parties; we’ve had dinner with her and Marty in Washington; and we helped her prepare for her confirmation hearings—although she needed no help. We have seen her, then, in a number of roles, but her first role in our lives remains the most fundamental and enduring: she has been an active and caring mentor, an almost old-fashioned idea these days.

As a mentor, she has exhibited two quite distinct qualities in great degree. First, she demands of herself and those around her adherence to a most exacting standard of analytical rigor. Second, she offers a depth of warmth and kindness grounded in a sensitive emotional awareness. It is her combination of these qualities that, to us, is the most striking aspect of her mentoring. Many consider these qualities to be in some tension, and in many people they are in tension. Some judges, notoriously, seem so enamored of hard-hearted analysis that they become emotionally blind in their work and perhaps in their private lives as well. Others are so sympathetic that they seem unable to subject their emotional lives to analytical inspection. If Justice Ginsburg feels any tension between these two qualities, however, we have never noticed it. She has apparently never felt it necessary to compromise warmth and sensitivity for analytical rigor, or vice-versa, because in her they are not contradictory. Instead, she moves easily and naturally back and forth between them as occasion warrants. Nor has she felt it necessary to compartmentalize these qualities, reserving her emotional life for home and her analytical mind for work. Rather, we have seen her, in her professional role as mentor, deploy them both at the same time. Nor, finally, has she felt it necessary to allocate these qualities according to some closed set of rules or principles—analysis under certain conditions, emotion under others. Instead, she deploys either or both as the particular context demands. In that sense, her mentoring style

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corresponds to her judging style—closely tied to context, focused on particulars, taking each case and each person as they come.

Justice Ginsburg’s analytical rigor is by now the subject of legend and needs little emphasis. Among our law school classmates, she was famous as the architect of the legal campaign to get the Supreme Court to give heightened scrutiny to gender classifications. Yet among the clerks on the D.C. Circuit, that part of her history garnered barely a ripple of awareness. Instead, she was widely regarded not as a “women’s” judge, much less a “political” judge, but as a judge’s judge. That image of her rested on several perceptions. First, she has a comprehensive memory for cases, and she unfailingly ties her analysis of legal rules to the facts of the cases from which they emerge. Second, she approaches each case on its own merits, without prejudgement, not as an opportunity to advance some larger and hidden agenda. Third, despite her generally quiet demeanor in personal communications, she can be a tiger from the bench, because she will not tolerate obfuscation or sloppy thinking from lawyers. Fourth, she is deliberate and careful in all things. Indeed, the degree of her deliberation is so unusual that it can take some getting used to: unlike most people, she carefully ponders each sentence, and so she often pauses at length before responding to a question or comment. For trepidatious new clerks, this conversational style can be initially unsettling, as they might read disapproval into her silence and wonder whether they have said the wrong thing. In reality, her pausing is a sign not of disapproval but of respect, as she carefully considers the words of clerks, just as she carefully considers everything in life.

In law school, students and professors talk endlessly about styles of judging—what it is possible, desirable, or conceivable for a judge to do. It is one thing to talk about such matters, however, and another to see them in practice. One way that Justice Ginsburg mentored was to offer her own rigorously analytical style of judging as one possible way of living in the law. In 1985, faculty at the Harvard Law School were profoundly divided on whether legal language could ever be sufficiently determinate to generate one right outcome or even a range of right outcomes. Among the student body, this division generally took a highly simplified form. Those on the political right took the view that legal language was always and completely determinate, so that judges should be utterly passive. Those on the left took the view that legal language was always and completely indeterminate, so that law was nothing more than politics. It was thus a revelation, as recent graduates, to discover a prominent jurist who managed in practice to reject the polar terms in which this debate was phrased. Justice Ginsburg did believe that judges should pay close heed to legal language, and she was aware that such language could also have multiple meanings. Neither fact, however, seemed utterly central to her style of judging. Instead, we saw in her a judge who felt herself
to be constrained principally by the forms, practices, and culture of the law. In other words, her practice of analytical rigor—her attention to cases and context, her refusal to prejudge, her intolerance for sloppy thinking, her deliberation and care—provided her internal job description, making her neither an automaton nor a loose cannon.

Her analytical rigor also explains the very high regard in which she was held by her fellow judges on the D.C. Circuit, including those with substantially different substantive views and personal styles, such as then-Judges Antonin Scalia and Robert Bork. She, in turn, reciprocated that regard. In her new position, she enjoys the same relationship with the Chief Justice. To some, these relationships seem incomprehensible: after all, these very judges resisted or would have resisted her efforts as an advocate to secure heightened scrutiny for gender classifications. Yet Ginsburg exemplifies analytical rigor so powerfully that she compels respect for her judging abilities, even from those who hold deeply divergent substantive views.

Analytical rigor, however, only partially explains these close relationships in the face of sharp disagreement. Justice Ginsburg’s well-known commitment to collegiality also crucially contributes to their possibility, and this commitment to collegiality is only one instance of her broader commitment to sensitive emotional awareness and nurturance of human relationships. This quality of Justice Ginsburg’s character, we believe, is much less well known because of her sometimes shy and reserved demeanor. Indeed, we did not see it in its fullness until some time into our clerkship. Because Justice Ginsburg is a private person, she does not wear her warmth on her sleeve, and yet the warmth is there, with a depth that is sometimes startling.

That warmth can be illustrated only through random anecdotes, but of course the telling of anecdotes cannot adequately capture the experience. We were already married when we started our clerkships, and so the chambers became our second home. We were not married, however, when we accepted the job, eighteen months before. Some employers might have been discomfitted by this sudden change, this intrusion of a close personal relationship into a workplace setting. By contrast, Justice Ginsburg was so delighted by this answer to the work/home conflict that she did some research to discover that we were, in her words, “a Federal first”—the first co-clerks married before their employment began. Early in our clerkship, we began to interview for teaching jobs, and Justice Ginsburg willingly and happily allowed us to leave the chambers for several one-week trips. During that year, she often traveled herself, and she commonly brought us back small gifts, in the way that a parent would do; indeed, we have more presents from her travels than our own parents’ travels. As is well known, she and Marty often invite her clerks to their house for dinner; what is less well known is that the clerks generally feel feted at these dinners in the way that a visiting dignitary
would. Since our departure from her chambers, she has followed our careers with a close and caring eye. To this day, she routinely sends our children gifts and cards.

One incident, told in more detail, may help to explain this powerful mix of qualities. Because this incident happened to one of us (David), we shift briefly to the first person singular. During the preparation for Justice Ginsburg’s confirmation hearings, I arrived early and waited in the hall outside the conference room. Shortly, the other participants—Important People from the executive department and the academy—also arrived. And then Justice Ginsburg arrived, and we waited her pleasure. Ignoring for the moment the others in the hallway, Justice Ginsburg came straight over to me, stood on tiptoe to reach me and kissed my cheek. That moment is frozen in tableau in my mind: this tiny woman, radiating simultaneously enormous warmth and power, filling the hallway with her presence, briefly ignoring Important People so as to make contact with a distinctly unimportant ex-clerk, so justly confident in her judicial stature that she could publicly display the human tenderness that deeply grounds her.

Even more broadly, these two mentoring qualities resonate throughout Justice Ginsburg’s life. Her early career as an advocate for women sought to break down barriers, to open opportunities to all those of talent, regardless of gender. In a recent tribute to Justice Harry A. Blackmun, she recalls his words in *Stanton v. Stanton*, a case argued by Justice Ginsburg herself: “No longer is the female destined solely for the home and the caring of the family, and only the male for the marketplace and the world of ideas.”

In this phase of her work, then, Justice Ginsburg sought to allow women to exercise analytical rigor, to achieve excellence and prominence in “the marketplace and the world of ideas.”

More recently, however, Justice Ginsburg has turned her attention to the damage that can be wrought by an exclusive commitment to a life of analytical rigor and competition in the workplace: “An American Bar Association report in the early 1990’s expressed concern that lawyers in commercial practice may be losing their sense of perspective and ethics, under pressure from law firms to produce business and billable hours. Substantial numbers of the young lawyers surveyed complain about the attendant pressure to cut back on family involvement.”

But Justice Ginsburg offers hope and proposals for reform: “There is reason to hope that the increasing participation of women in the profession will have an ameliorating effect. By persistently raising the crucial

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issues of family and work place, of leave time for parents and work place affiliated facilities, women lawyers can take the lead in bringing sanity and balance to the profession. In this regard, sisters need the aid of brothers in law. These issues must become human issues, not just ‘women’s issues.'”

Read too simply, these passages could suggest that Ginsburg somehow compartmentalizes analytical rigor and emotional awareness: early in her life, she fought for the former in the work place, and later in her life, she fought to make the latter possible at home. In fact, however, we think that Justice Ginsburg is seeking to promote both qualities in both places. *Stanton* did make it more possible for women to succeed in the workplace. The reason, however, that the Justice believes equal opportunity is so important is not just an abstract commitment to equality as a principle; rather, it is because she, like Justice Blackmun, “cherishes daughters fully as much as sons.”

Correlatively, in calling for “sanity and balance” in the profession, Justice Ginsburg is not seeking to make space for a rigidly compartmentalized emotional life at home. Rather, she is seeking to blur the line between home and work, by insisting the we are human beings with a full emotional pallette even in the workplace, and we are thinking, analyzing people, even at home. She plainly hopes to make it possible for all lawyers to achieve the complex balance that she has achieved—always and everywhere committed simultaneously to analytical excellence and emotional depth—in all the aspects of her life, most evident to us in her mentoring style.

It is sometimes said that youth is wasted on the young; it might equally be said that truly wonderful clerkships are wasted on the young. At the time, we did not really know what we were seeing in then-Judge Ginsburg, because we had no standard of comparison. We did not understand how extraordinarily she combined these two faculties. And we did not understand what an utterly remarkable workplace she created for us—a place where we could bring both our emotional and analytical lives in fullness, a place where our mentor rejoiced in our being a “Federal first,” a married couple working together in a chambers where the line between work and home was transparent. It was an introduction to the law that we will never outgrow.

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3 *Id.*

4 Ginsburg, *supra* note 1, at 5.