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JUDGE BAREFOOT SANDERS

Janet Sanders

IN 1995, then Governor William Weld appointed me to be a state district court judge in Massachusetts. My father, U.S. District Judge Barefoot Sanders, was there at my swearing in. He was there again in 2001 when I took the oath of office as a judge of the Superior Court (the equivalent of state district court in Texas).

Like a federal judge, I was not elected to these positions. And my appointment was for “life”—which meant, in Massachusetts, until the mandatory retirement age of seventy. Like my father, I was a trial judge: I liked dealing with people more than paper. There were significant differences in what I do and what my father did, however.

The principle difference is in the kinds of cases that I handle. My criminal docket consists of street crimes ranging from larceny to murder. I have never seen a tax evasion case, and white collar criminals seem to break more federal laws than state ones. Cases on my civil docket are much more straightforward than those that a federal judge has to decide: they stem from motor vehicle accidents, claims of medical malpractice, and simple breaches of contract. I would not know the first thing about a complex antitrust claim, and those issues raising the big constitutional questions or which place the different branches of government at loggerheads (like school desegregation, for example, or voting rights) go to federal court.

Still, the qualities of a good trial judge are the same, whether or not she sits in federal or state court. Some of those qualities are obvious: one needs to have a firm understanding of the substantive law and the intellectual ability to grasp new concepts quickly. The good judge has to have experience—both in the courtroom and in life. And he or she must be a good communicator, able to write simply and speak clearly. Above all, a judge must be of impeccable integrity. My father, of course, had all of these qualities.

There are many more qualities, however, which are less obvious and which make a judge not just qualified but truly great. Many more eloquent and scholarly than I am have attempted to identify those characteristics, and I would commend the reader to those writings.¹ This Essay is written from a more personal point of view. What did I learn from my father that helped me to be a better judge?

1. A particularly good essay on the subject is *The Trial Judge*, by Henry T. Lummus, a former member of the Massachusetts Supreme Judicial Court.

I gleaned the following list not from watching my father in court: those lessons are best reflected in the reminiscences of his clerks contained in this law review edition. Rather, these bits of wisdom were conveyed over a period of many years. Sometimes, they would come in the form of advice, given in the context of my talking to my father about a particular problem I was facing. More often, I just absorbed these lessons. Here are a few of things I learned:

- *Be humble:* An odd thing happens to some people after they become judges. The power of the job can breed arrogance. Maybe it is the constant show of respect that does it. The judge starts believing that he is in fact smarter, wittier, and more insightful than everyone else because that is how he is treated. On the bench for thirty years, my father never let the job get to him in this way. Maybe that was because he had been in positions of power before he became a judge, and he knew that power was fleeting. One day you're in the White House advising the President (as he did for Lyndon Johnson); the next day you are a private citizen whose opinions are of no consequence to anyone. Therefore, consider yourself lucky to occupy the position and exercise the power of your office with humility. Remember that without your robe on, you are no different than anyone else.

- *Have courage:* One of the cornerstones of a democracy is an independent judiciary. That in turn requires a judge who is courageous enough to make the unpopular decision where that is the just result. From all outward appearances, this seemed to come easy for my father: charged with desegregating the Dallas public schools, he became accustomed to controversy. If he was hurt by a negative news account, he never showed it. That is not because he was insensitive: far from it. Rather, he recognized that a judge who simply gives expression to the popular will without regard for individual rights is not a judge at all. I did not appreciate how hard it was to be the subject of public criticism until I ended up in the newspaper for one of my sentencing decisions, targeted by a fairly nasty columnist for the Boston Herald. I sent a copy of the article to my father, not sure how he would react. He just laughed and made copies of the article to send to the rest of the family. (I am not sure if that was because he was proud of me or because he was happy to show everyone that he was not alone in being the target of an angry editorial.)

- *Welcome public scrutiny:* If the public is to have confidence in the judicial system, then the courts need to be open and the legal process understandable. Because the public is informed about what happens in court by the media, that means welcoming the press into the courtroom. Perhaps because my father had, for so many years before he was a judge, dealt with the press and came to know many of them personally, he did not harbor the distrust that many of his (and my) colleagues do. He also understood that, while the public does not have to agree with the judge's decision, people should at least be able to understand how he reached it. That means explaining oneself in terms that a nonlawyer would compre-

hend. Finally, my father was always open to constructive criticism, and so he was a firm proponent of the system of judicial evaluations put together by the Dallas Bar Association. I took these views with me back to Massachusetts, where I helped develop a program of judicial evaluations for state court judges and sat on judicial committees designed to improve communications with the media.

- *Learn how to listen:* My father was the world's expert at this, both in and out of court. He once told me that the key to being a good listener was remembering that a person's favorite topic of conversation is himself. Inquire about the other person and he will always be happy to tell you. More important, if you listen to what he says, you will learn a lot more than if you had spoken first. You will also know how to respond (if in fact your response is sought). Always an arguer, I learned the hard way that people are rarely persuaded to change their minds as a result of my talking at them. In court, of course, the dynamics are different than a dinner conversation, but the advice my father gave me is still good. A judge should always listen first, and ask questions later. Think before you say anything. It is usually wiser to keep one's own counsel.

- *Be sensitive to the shades of gray:* A teenager in the 1960s, I had particularly strong views on just about everything. My father would often play the devil's advocate, arguing the contrary position if only to show that things were not quite as simple as I had made them out to be. A good judge also understands the complexity of a problem: in our adversarial system of justice, the lawyers advocate their respective positions, but a good judge knows that the truth lies somewhere in between. More often than not, the moderate position is the correct one.

- *Maintain a strong work ethic:* Work in the public sector was never a five day a week job for my father. Even before he became a judge, he would "check in at the office" at least once a weekend. A regular work day began early (7:00 a.m.) and ended late (after 6:00 p.m.). Although one need not put in quite such long hours, a good judge does not assume that lifetime tenure entitles her to slack off. In fact, quite the contrary is true: the privilege of the position requires that you commit yourself fully, and that means that you put in a full day.

- *Manage your docket:* Because they have many cases to juggle, lawyers are almost always happy to put off a case if there is nothing requiring their immediate attention. Therefore, if a judge wants to move a case forward, then she has to do a little pushing. That means calling the lawyers in for a conference if a case seems to be languishing. It also means being reasonably tough with requests for continuances. Lawyers may be happy to put a case off, but their clients deserve to have their day in court without unnecessary delay.

- *Never keep a case under advisement too long:* The former Chief Justice of the Massachusetts Supreme Judicial Court, Joseph Tauro, once said that "no judge has the privilege of painting a Mona Lisa in his chambers while a thousand litigants wait in the corridors." My father would

agree with that. Certainly, you want to get it right, and saying it with eloquence is a goal worth striving for. But the parties are more concerned with what you say than how you say it. And they would like to hear from you before next year. My father always tried to produce a decision on a case within thirty days of argument. I have tried to follow his example.

- *Remember your role as a mentor.* When I graduated from law school, I worked for a federal judge in Boston. This judge (Rya Zobel) not only taught me by her example but also continues to guide me in later years with her advice and her wisdom. My father did the same for his “family” of clerks. And he extended himself beyond that to attend local and regional bar events, participate in teaching panels, and to swear in every year the new crop of lawyers who had passed the bar. Precisely because a judge holds such a revered place in the community, she has an obligation to step outside the cocoon of the job and make herself available to the younger generation of lawyers. Moreover, their fresh perspective and their energy is something that the judge can benefit from, too.