



THE HONORABLE SIDNEY M. SCHREIBER

A TRIBUTE TO JUSTICE SIDNEY M. SCHREIBER

*Hon. Robert N. Wilentz**

State supreme courts have a considerable scope of power. Common-law rules are legitimately subject to growth and change; statutes leave many questions unanswered; there may be no authoritative definition of societal goals. The interplay of these factors often affords a judge a range of alternative decisions in a particular case, each of which seems legitimately supportable. The result can be a decision that reflects the judge's values more than a consistent application of legal principles. It is important for a court to be aware of that danger. It is important to have judges who will guard against it.

Justice Schreiber was such a judge. He was concerned above all with the legitimacy of our decisions. His approach to every case was to determine the applicability of precedent and statutory command as well as the effect of state policy as determined by others. Every judge *considers* these matters, but sometimes only to see whether a previously determined result can be conventionally rationalized. With Justice Schreiber that approach came first, invariably. He deemed it his judicial duty.

Sometimes when the court would be considering a case at a decision conference, one of us might present a point-of-view with great force and logic, but without significant reference to underlying cases or statutes. If that remained the tenor of the discussion when it became Justice Schreiber's turn to speak, his previous poker face would quickly change. There would be an appearance of slight disbelief, a grim determination, and then he would speak, with just a little tone of the teacher, disappointed but still hopeful, lecturing an errant student. It was a pleasure to behold, although that was not the effect he sought. Even if you were the offender, you could not be offended, for it was impossible for Sidney to conceal the kindness that permeated everything he did, and impossible to conceal the satisfaction he derived from correcting some perceived lack of professional discipline. He might start, "I don't know what *you people* are reading, but I suggest you start with *Jones v. Smith*, which very simply governs this entire case. You know, you have to look at the record,

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too, I mean I am sure you have, but you must have missed the part . . .” and what would follow would be a detailed, meticulous recitation of facts with some help from a much thumbed-over transcript full of his notes. “You know, there’s a statute involved here too, which wasn’t really stressed nearly enough in the briefs or at oral argument, or by you, incidentally”

To the great benefit of the court there was no escaping Justice Schreiber’s insistence on legitimacy. Not that he was unwilling to mold and change the common law; indeed, no one was more determined to fashion a body of law appropriate to modern circumstances or more bold and persistent when he had concluded that the time for change had arrived. But the method—both in fact and in appearance—was as important to him as the result. Essential was a common-law analysis leading to the appropriate rule, followed by a careful consideration of any assertion that changing circumstances had rendered the rule inappropriate, an examination of the reasons for and against the rule, an assessment of alternatives, followed ultimately by a reasoned choice.

This professional discipline affected all of his judicial actions. The common-law method of deciding a case solely on the facts before the court and limiting the scope of the decision to those facts was not simply a “doctrine” with Justice Schreiber. Experience had long ago convinced him it was wise. He shared the wisdom of judges of the most recent and most distant past who felt secure with an intellectual humility that refused to peer too far ahead. He found it more sensible to deal with the arguments and the actual facts of the case at hand. Development of the law was too important to be shaped by blurred visions of an uncertain future. He was uncomfortable in the presence of spiraling propositions, overstated fundamental principles, affirmations of never-changing rules, and those who declared such were uncomfortable in his presence. If someone said that there was some need to paint even more of the landscape than was presently before the court, he suggested that there was a Legislature in the state better suited for that purpose. Passionate references to public policy, eloquent indictments of social ills, poetic flights of fancy, all were met with a frown. That was no way for a judge to express himself.

Justice Schreiber worked extremely hard. He was driven by his love of the court, of the institution, and his sense of duty to it. He shared the determination of the court’s founders to make it as

good as human effort would allow. He contributed more than his share toward that goal.

While his judicial work was what he enjoyed most, and what he felt he did best, he never declined when I asked him to undertake other matters for the court, and carried them to completion with the same dedication he gave his judicial work. Under his leadership, a procedure was devised to resolve disputes between the judiciary and the counties concerning the level of financial support needed by the courts and affordable by the counties, a practical and fairer procedure than had existed before. His last year on the court was one of especially great administrative accomplishment on his part. He chaired a committee that has proposed the most significant changes in civil practice since 1948. That committee, the Civil Case Management Committee, has almost completed its work, often a controversial work. Justice Schreiber guided it, its regional committees, its workshops, through a thorough examination of present civil practice and the proposals to improve it. Its product is promising. He is entitled to great credit for the Committee's work and for the improvements we all hope will result.

At oral argument Justice Schreiber was a persistent and aggressive interrogator. He enjoyed the give-and-take of these bouts with counsel—and sometimes with a colleague. But under it all, and not really very far under, was a most gentle and a most kind man. The members of the court, past and present, are fortunate to have served with him and fortunate to have had the fun and pleasure of the company of Justice and Mrs. Schreiber on those occasions when we all were together. We wish them both the happiness of a productive retirement, including many years of continued involvement (work) with the court.