

## ON BEING A *MENSCH*

One evening my first year of law school, as I was in the library Shepardizing cases for a legal writing assignment, I asked my research partner what he wanted to be after law school. A litigator? A transactional attorney? Maybe someday a judge? He was an exceedingly bright Yale grad from the Northeast whom I had liked immediately and admired for his warm manner and serious study habits. I knew he must have high aspirations, and I was curious what his answer would be. He paused very briefly and then answered, “A *mensch*.”

My Oklahoma upbringing and education had not exposed me to Yiddish, or even much German for that matter, so if I had ever heard the word, I didn’t recall it or have any idea what it meant. “What’s that?” I asked.

“A really good person,” he said. “A person with true integrity.” I must have looked puzzled. I was. Of course everyone wanted to be good and all that. That was obvious, but beside the point. He continued his explanation. “A *mensch* is a guy who always does the right thing. He helps people. He’s genuinely nice. And he does everything for the right reasons.” He looked at me very directly and concluded, “That’s what I want to be.”

So, now I knew what a *mensch* was, or thought I did, but I didn’t think that answered my question. “That’s nice,” I said, and gave him a vague smile. Then we turned back to our books.

I wanted to be a litigator. A good one. I knew what that meant and what it required. Good grades, success in moot court, impressive extracurricular activities, selective summer positions, and, perhaps most importantly, a prestigious judicial clerkship, preferably appellate, although certain high-profile district court clerkships might be worthwhile, too—all federal, of course.

Fortunately for me, the Honorable William J. Holloway, Jr., was kind enough to extend me an offer. Not only did this satisfy my prestige requirement, but it solved a geographical problem for me as well, by placing me in my own hometown (for only a brief stint, I was sure)

which was appealing while my husband's post-graduate geography sorted itself out.

As a Holloway clerk, I learned the key things one inevitably learned about Judge. The first and most evident was how nice he always was. Like everyone who knew him, I was struck by how incredibly nice he was to every person he encountered, whether judge or janitor, senator or secretary, corporate executive or cafeteria worker. It's what everyone always said about him. "*He is so nice.*" As one said or heard this, especially we young lawyers, so full of ambition and certitude, did we sometimes feel a bit uncomfortable? Like it was damning with faint praise? "*Nice.*" We would quickly add something about how smart he was, how hard he worked, how he remembered cases and holdings with uncanny clarity. But it wasn't his intellect that we cited first, and I think we may have felt that it should have been. Maybe we felt there was something almost unseemly about being so nice. It seemed so . . . humble. Not at all sophisticated. Was it sufficiently dignified for a man in his position? As we clerks grew into our new professional selves, I think some of us wrestled a bit with the question of whether we could emulate Judge in this respect and still advance our careers as we envisioned. Of course someone with life tenure could be nice, but what about those of us who were still trying to pull ourselves up in the world? Still, niceness prevailed in the Holloway chambers, even if it didn't run as deep in some of us yet as it should have.

Second, one learned quickly as a clerk that Judge Holloway absolutely disapproved of labeling a case "frivolous." "It's not frivolous to the litigant," Judge would always say. "It's very serious to the person involved. The outcome could affect his whole life." So we learned to avoid the word "frivolous," but I'm not sure that made us much less scornful of cases and appeals we felt shouldn't have been brought. We were eager to help judge the cases that came before the court, and our judgment was often harsh. Like his niceness, Judge's reluctance to call a case frivolous seemed notable but not necessarily an accomplishment we wished to imitate.

Third, one learned that Judge valued work. His work habits were famous. His hard work spilled over from the weekdays and extended into Saturday, when we would continue our work in the quiet courthouse and enjoy a lunch in chambers prepared by Judge himself—usually cold cuts or pimento cheese sandwiches, but occasionally hot dogs or another treat that Judge would select at the grocery on his way. Not only did he work

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hard himself, but he appreciated those who worked hard for a living. The most candid political discussion I ever had with him involved Oklahoma City's proposed one-cent sales tax increase for the first Metropolitan Area Projects (MAPS). I was excited about the proposal. He acknowledged the appeal of the civic projects but expressed concern. "One more tax on the working man," he said. Although he never stated specifically how he intended to vote, I suspect we canceled each other's votes on that ballot.

Fourth, over time, one learned just how much Judge agonized over his opinions. He was deeply committed to getting them right—both the reasoning and the result, which were inseparable to him. He saw both sides of an argument, and he recognized his own fallibility. Occasionally, there would be a draft opinion that he would chip away at for days and days, drafting and redrafting by marking up with his No. 2 pencil; then he might set the draft aside for weeks on his side table, inserted in the middle of a volume of the Federal Reporter containing a key case or perhaps a troubling one. He didn't want to send it out to his colleagues until he felt he had gotten it right—or until some internal deadline that he had given himself was upon him.

Judge was fatherly by nature and demeanor, and it was easy for me to think of him as a father, in part because his two children were friends of mine from high school—both as bright and nice as their father. He adored and was devoted to his wife and children and grandchildren, and he never failed to ask others how their children, spouse, or parents were doing, almost always asking by name. Family, friends, colleagues, and acquaintances all formed the community he cared about so deeply, and he worried when any of them were ill or facing some sort of difficulty.

I felt—and still feel—as if we clerks are a sort of progeny of Judge Holloway. By training and pedigree, we ought to carry on the Holloway tradition, and I hope we do—some by following Judge Holloway's judicial path, and all of us by trying to uphold his characteristic ideals. Those whom I have been fortunate enough to know are a credit to Judge Holloway.

Judge spoke proudly and warmly of all his former clerks, but there was one class of clerks that seemed to have a special place in Judge's heart. I remember him speaking several times about the clerks he had had one year in the early Eighties when he was Chief Judge. There was a sort of mischievous twinkle in his eye when he talked about that group. I wish I could remember his precise description—something about

“rascals” or “shenanigans” or maybe “high jinx.” That had been about ten years before my time, and only one of the names was familiar to me, not because I knew the former clerk but because he was the grandson and namesake of Supreme Court Justice Tom C. Clark.

A few years later, I met that clerk, Tom C. Clark II, in Washington, D.C., when we were both working at the Justice Department and Tom was the lead attorney in the *Cobell* litigation, one of the largest and most difficult cases in history. I was assigned to monitor the case for the Attorney General after the Secretary of the Interior and the Secretary of the Treasury were held in contempt of court for failure to fix the irreparably broken Indian trust fund management system. The last thing the lead attorney needed was a less-experienced “politico” second-guessing his handling of the case, but Tom’s impeccable manners and our shared Holloway connection provided the foundation for a solid working relationship. The case presented an impossible situation: an undeniable historical injustice combined with inadequate legislation, intractable limitations of federal and tribal bureaucracies, and a trial court judge who was later removed from the case for bias. This was not a case to “win.” The very idea was nonsensical. In that impossible situation, Tom delivered the greatest courtroom performance I’ve ever witnessed. More importantly, he represented the United States and led the large trial team with the kind of loyalty, integrity, and grace that one dreams of having in a leader or a friend. Tom was both. Tom passed away November 23, 2013.

Tom remained lifelong friends with two of his co-clerks, the Honorable John Dowdell, U.S. District Judge for the Northern District of Oklahoma, and Douglas C. McBee, both of whom carry on Judge Holloway’s legacy. A particular word of appreciation is due and owing to Doug, whose own fierce loyalty, integrity, and grace were demonstrated by his years of serving as Judge Holloway’s career clerk, attending to Judge until the very end. I know that all my fellow clerks share my gratitude to Doug for that service.

In the twenty years since my clerkship with Judge Holloway, I’ve come to appreciate his fine qualities so much more deeply than I did then. At the time, it seemed that being an appellate judge was hard and that being nice was easy. Now, it seems undeniable that the greatest and most difficult thing one can aspire to be in life is a *mensch*. And if we are fortunate, we will have a chance to work in common cause with those who share Judge Holloway’s signal characteristics: kindness, concern for

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others, a recognition of one's own fallibility, and a willingness to work hard to make the world better and more just.

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