



by Cory Brader and Andrey Spektor

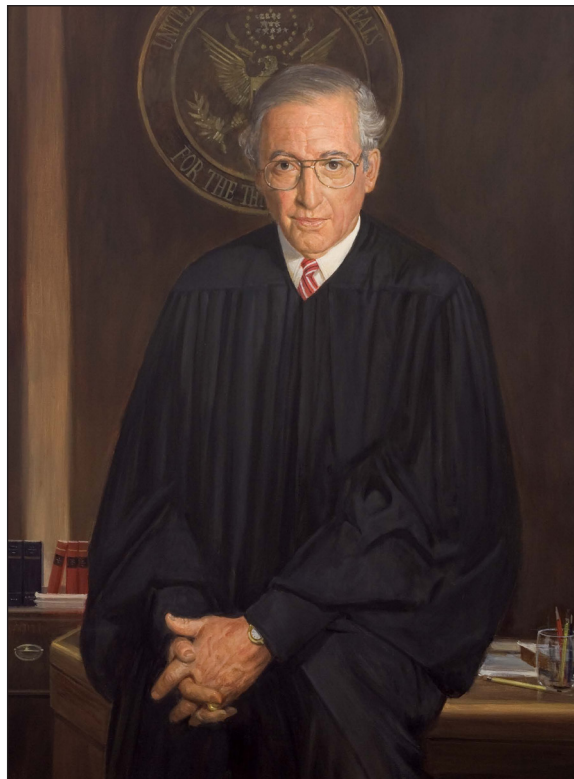
Hon. Morton I. Greenberg, Senior Circuit Judge, U.S. Court of Appeals for the Third Circuit

The increasingly loud chorus of criticism about the lack of professional diversity on the federal bench falls silent on the résumé of at least one federal judge. You do not find many Yale Law Journal alumni hanging up their shingle in a small town. And you would have to look even harder to identify former solo practitioners on the federal bench, much less on the U.S. Court of Appeals.

Yet that was the unique path that Judge Morton I. Greenberg—dubbed an “an intellectual giant” by his Third Circuit colleagues—took to the bench, a path also marked by a distinguished record of public service as a county and state prosecutor. In his more than 40 years as a state and federal judge, Judge Greenberg has accumulated a record that may appear enigmatic to those who define judges as either liberal or conservative, yet is entirely consistent with the judge’s profile as an open-minded judicial minimalist. “I have been a judge a long time,” he once remarked at a Yale symposium. “The more power you have, the more restraint you use. I have a lot of power, but I couple it with a lot of restraint.”

There were early signs that Judge Greenberg would not be driven by ideology. After graduating from Yale Law School, he became the lone registered Republican working in the Office of the New Jersey Attorney General under a Democratic governor. Then, in 1960, he opened his own practice in Cape May County. The Law Office of Morton I. Greenberg had a practice broader than that of today’s mega-firms: he represented clients from all walks of life, in all areas of law, and in all types of courts, from defending alleged criminals in jury trials to fighting big banks on behalf of wronged consumers.

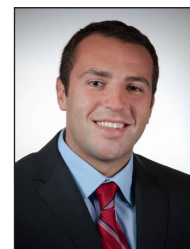
Judge Greenberg’s success as a solo practitioner was driven by one his most salient traits: kindness. “He is the most wonderful human being you will ever meet—so con-



siderate and so personable,” says Mary Ann Gartner, the Judge’s assistant of 27 years. “He has always been there for me; even though he is a very busy man, he is always willing to stop working if I need to speak with him.” Although kindness sometimes meant that he would not collect a fee, more often it led to repeat clients and referrals.

Business was good, but it could never compete with Judge Greenberg’s desire to serve. In 1970, he became first assistant prosecuting attorney in Cape May County, and a year later he returned to the attorney general’s office—this

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time, as an assistant attorney general in charge of civil litigation. His talent and skills as a litigator did not go unnoticed, and by time he turned 40, Morton joined his brother Manuel on the state bench.

Few practitioners don the robes as prepared for the job as Judge Greenberg, and his experience came in handy. He presided over a variety of jury trials and issued rulings that would later surface on bar exams. In 1979, after he had been assigned to the coveted Chancery Division, he found himself in the middle of a national crisis—the gasoline shortage—and issued a key injunction that prevented dealers in the state from closing unless they were sick or out of fuel. One newspaper article covering the proceedings entitled, “Who Is This Judge Greenberg?” polled local attorneys about the Judge; the consensus was that he was “humble,” “unusually fair,” and “brilliant.”

Federal judges took note too: Judge Robert E. Cowen, who is now Judge Greenberg’s colleague on the Court of Appeals, recalled that Judge Greenberg performed the very difficult job of a chancery division judge with “quite bit of recognition for being fair and able, which took considerable insight into

how the government works and into human nature.”

Those and other traits would earn Judge Greenberg more promotions. In 1980, he was elevated to the state appellate court, and after seven years on that bench, President Ronald Reagan nominated him to the U.S. Court of Appeals for the Third Circuit. His nomination received the rare “Exceptionally Well Qualified” recommendation from the American Bar Association, and he was confirmed

unanimously by the Senate. A colleague on the state appellate court, in a tribute to the judge, wrote that his appointment marked “a loss to the citizens of the State of New Jersey” but a gain for the country. Speaking for other judges on the bench, the colleague described Judge Greenberg as uncommonly wise and open-minded.

Open-minded is perhaps the best way to describe Judge Greenberg’s career as a federal appellate judge. He is not “doctrinaire at all,” says Judge Cowen. “He doesn’t offer knee-jerk responses to difficult legal questions. His positions are always thought out.” Speaking at a ceremonial session dedicated to unveiling Judge Greenberg’s official portrait, the late Judge Edward Becker described his good friend as having “one of the clearest and sharpest, most logical minds” that he had ever encountered. Judge (now Justice) Samuel Alito added that Judge Greenberg is “really smart. If he is not a member of Mensa, he should be. He sees connections that others never spot. He recognizes irrelevancies that the rest of us are beguiled by. It is an intellectual challenge to sit with Mort.”

He may be intellectually challenging, but Judge Greenberg is never dull. “When I see Mort in my mind’s eye,” then-Judge

Alito continued, “he has a little smile on his face and he is about to recount something that he recently found amusing. Mort’s humor is never mean and it is definitely unique. ... Our en banc conferences can be a bit tense and adversarial, but Mort could always be counted on to say something entirely extemporaneous that would break the tension and lighten the proceeding.”

Perhaps no one is better positioned to evaluate Judge Greenberg than the only sitting judge in the state who has served longer than him—his colleague on the Third Circuit, Judge Leonard I. Garth. For more than a quarter century, the two have served side by side. Judge Garth, the first speaker at Judge Greenberg’s portrait ceremony, noted that he has “stood out as one of the brainiest among the brainy, and certainly one of the speediest judges in writing and filing his opinions.” Rejecting the notion that “Mercury Mort” was his protégé, Judge Garth concluded that he is “no one’s protégé. He stands tall by himself and he always has.”

In 2000, Judge Greenberg took senior status. Six years later, he was joined on the bench by his former law clerk, Judge Michael Chagares, who had clerked for him during his first year as a federal judge. This was a special honor for Judge Chagares, not just in sharing the bench with his mentor, but in serving next to, as he put it, “a man of brilliance, fairness, integrity; a real gentleman, with a deep dedication to public service and a sterling reputation on the bench.” Of course, in accepting the commission, Judge Chagares understood that he was subjecting himself to Judge Greenberg’s characteristic dry wit. The first time they were on a panel together, Judge Greenberg recounted a mistake that a law clerk had once made. Although he would not name names in open court, he chuckled, he did reveal that the law clerk was now a Third Circuit Judge.

At 81, Judge Greenberg shows no signs of dulling his wit or slowing down. With almost 500 published opinions under his belt—and hundreds more unreported—plus more than 150 concurrences and dissents, Judge Greenberg continues to be a prolific writer. But true to his humble roots, Judge Greenberg rarely writes for anyone but *The Federal Reporter*. On one occasion, the judge felt compelled to make an exception, revealing his deep respect for the judiciary. Responding to an article that referred to a “lowly Municipal Court bench,” Judge Greenberg wrote that, “I have never had occasion to have dealings with that court, but I can assure you that it is not lowly.”

Looking at Judge Greenberg’s portrait at the ceremony, U.S. District Court Judge Anne Thompson—who has sat in the Trenton, N.J., courthouse with Judge Greenberg since his appointment—wished that future generations “see not just the learned judge, but rather ... the total lack of pretension, the complete humility, the zest for life—the unvarnished love for people. ... These are the qualities that distinguish this brilliant judge.” Not surprisingly, just minutes later, Judge Greenberg was quick to add that, “if anyone perceives any shortcomings in the portrait, he or she should attribute them to its subject rather than the artist.” ☉

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