



Hon. Shira Scheindlin

Senior Judge, U.S. District Court for the Southern District of New York

by Philip R. Schatz



Philip R. Schatz is a partner at the New York law firm Wrobel Markham Schatz Kaye & Fox LLP. He is a Second Circuit vice president for the FBA and a member of The Federal Lawyer's editorial board. Any opinions expressed in this profile are his own and not those of the FBA or his firm.

Judge Shira Scheindlin is a prodigious worker, even by the power-driven standards of the U.S. District Court for the Southern District of New York. Her law clerks are expected to work 9 a.m. to 8 p.m. every weekday and six hours on weekends, and to eat lunch at their desks.¹ She solicits overflow work from other judges. She is a prolific writer and lecturer. She exercises an hour each day. She walks across the Brooklyn Bridge and back, every day, whatever the weather.

"She has a remarkable work ethic," says former law clerk Ester Murdukhayeva, now a litigation associate at Gibson, Dunn & Crutcher.

"Her docket is always full," says former law clerk Elisha Barron, now a litigation associate at Susman Godfrey.

"Nobody works harder," says former law clerk Rachel G. Skaistis, now a litigation partner at Cravath, Swaine & Moore. "My husband was so happy when my clerkship was over and I went back to Cravath." If you know Cravath, you know that's saying something.

Her output would be impossible if she were not also a gifted multitasker. She reads slip opinions while working out. She listens to books on tape while walking to work over the Brooklyn Bridge, finishing three or more books a month. She raised two enormously talented children and is a devoted grandmother. Her son, Dov, is a violist playing with the Metropolitan Opera orchestra and the artistic director and violist for the Orpheus Chamber Orchestra; her daughter, Dahlia, with both a Ph.D. and a master's of theological studies, is a leading international public-opinion analyst and strategic consultant in Tel Aviv and a journalist for the crusading, blog-based *+972 Magazine*.

"Judge Scheindlin is the most organized person on the planet," says Skaistis.

"She doesn't make lists. She is just organized by nature," says Dov.

She is also decisive. "I wanted everything to be perfect," remembers Skaistis. "She would insist we adhere to our deadlines. She'd say, 'I am a public servant, and I have to resolve cases promptly. So make it perfect—but keep on schedule!'" Barron adds, "She'd say, 'I'm



the judge, and I have to decide. If I get reversed, I get reversed."

Scheindlin became organized by necessity. When she was 13, her beloved father died of cancer. A year later, her mother was diagnosed with cancer.² Staring at possible orphanhood, Scheindlin had to grow up fast. She was forced to work to help run the household, sometimes holding down multiple jobs. "I have always worked," she says. Her typing and shorthand skills came in handy; her first jobs included transcribing audiotapes for a psychologist and retyping form demand letters for the Internal Revenue Service. The latter job, before word processors, bordered on mind-numbing. It was the same letter, typed over and over again, changing just the names and amounts.

Scheindlin grew up in metropolitan Detroit, the middle child of three. She idolized the Detroit Tigers, sadly in decline from the glory days of the '40s, and memorized the team's batting averages. Her parents were well-educated, upwardly mobile members of Detroit's established Jewish community.

Her mother, Miriam Shapiro, was a public school teacher. Her father, Boris M. Joffe, was a Russian immigrant, a graduate of the Far Eastern Imperial University in Vladivostok, Russia. He was the director

of the Detroit Jewish Community Council and the first choice of Michigan politicians to add a Jewish presence to a board or committee. When he died, the city of Detroit named an elementary school after him. Through him, Scheindlin met many of the luminaries of local and national politics: the police commissioner, the mayor, the governor, and even Sen. Phil Hart, known as the “conscience of the Senate” for his unwavering support for civil rights and a clean environment. Through Hart, Scheindlin got a summer internship in Washington, D.C., and was privileged to see Robert Kennedy testify in support of the 1965 Civil Rights Act.

Scheindlin received a bachelor's degree in Far Eastern studies from the University of Michigan and a master's in history from Columbia University. She married another academic and taught Chinese and Japanese history at Sir George Williams University in Montreal, Canada, where she was also an acting dean. Her progress toward her Ph.D., a necessity for further academic posts, stalled at the “ABD” (all but dissertation) phase. She had her first child, Dov, and realized she needed another career. Her husband's career took her to Cornell University, and she decided to try the law. Her law school class was less than 10 percent women, and she was the only mother. She had to juggle her duties as faculty wife, mother, and law student, each pretty much full-time jobs by themselves. “That's how you get organized—when you have to do three things at once,” she says.

She graduated cum laude and joined Strook & Strook & Lavan in New York City. Within a year she was clerking for Hon. Charles L. Brieant Jr., a well loved bear of a man with a handlebar moustache. She spent four years at the U.S. Attorney's Office for the Eastern District of New York E.D.N.Y., rising to administrative assistant U.S. attorney and the deputy chief of the Economic Crimes Unit under future E.D.N.Y. judges David Trager and Edward Korman. She was general counsel for the New York City Department of Investigation. Then, in 1982, she was named U.S. magistrate judge for the E.D.N.Y.

Her remarkable organizational abilities were quickly recognized. She was named a special master on the Agent Orange cases, which were a quagmire of factual and legal complexity. She was able to steer the cases to completion. Legendary Eastern District Judge Jack Weinstein first met Judge Scheindlin as a magistrate judge and became a lifelong mentor—and unabashed fan.

“We all relied on her,” remembers Judge Weinstein. “She was always on top of her cases. She devoted an enormous amount of time and intelligence to resolving complicated legal and factual issues. She is ferociously thorough and accurate.”

In 1986, she returned to private practice and became a law partner, first at Budd Lerner Gross Rosenbaum Greenburg & Sade and then at Herzfeld & Rubin. Herbert Rubin, a New York City legend still practicing law at 98, became a lifelong mentor. “She is an enormously gifted scholar who digs deep and writes with unparalleled speed and clarity,”

enthuses Rubin. She served as a mediator for Endispute, now called JAMS. In 1994, she was tapped by President Bill Clinton and Sen. Patrick Moynihan for a position on the Southern District bench.

She hit the ground running. Although cases are randomly assigned, Judge Scheindlin has had more than her share of important cases with wide-ranging impact.

Her most famous case is probably *Zubulake v. UBS Warburg*,³ a garden-variety employment discrimination case that led to a series of landmark decisions that defined litigants' duties concerning electronic discovery throughout the country. The *Zubulake* decisions are vintage Scheindlin mastering a complex set of principles, balancing a wide variety of considerations, and finding the optimal rules to govern future performance on such issues as litigants' duties to preserve; lawyers' duties to monitor production, data sampling, and cost shifting; and sanctions for destruction of electronic evidence. They have been the benchmark for e-discovery for more than 10 years, an eternity in techno-time. It was also vintage Scheindlin that a randomly assigned case should be so closely tailored for her skills and interests: At the time she drew the case off the wheel, she had recently co-authored an article about e-discovery in federal litigation and had been immersed in e-discovery issues as a member of the advisory committee of the Federal Rules of Civil Procedure, which was considering e-discovery amendments. Her law clerk Matthew Schwartz, now a partner at Boies, Schiller & Flexner, worked on the *Zubulake* case. He says the decisions are typical of Judge Scheindlin because they “resolve issues that practitioners care about in ways that advance the law.”

Judge Scheindlin is something of a poster child for lifetime tenure because some of her decisions have generated enormous pushback from pundits and politicians.

In *New York Magazine, a Division of Primedia Magazines Inc. v. Metropolitan Transit Authority*,⁴ then-Mayor Rudolph Giuliani, soon to host *Saturday Night Live* in drag, yanked Metropolitan Transit Authority ads for New York magazine with the tagline “Possibly the only good thing in New York Rudy hasn't taken credit for,” claiming they violated his right of publicity. His thin skin was mocked from coast to coast.⁵ Judge Scheindlin ordered the ads reinstated, slyly asking, “Who would have dreamed that the mayor would object to more publicity?”

In *United States v. Awadallah*,⁶ Judge Scheindlin dismissed an indictment against a Muslim student who had been improperly detained as a material witness in the frenzied aftermath of 9/11 and was subsequently charged with perjuring himself before a grand jury. The Constitution, she wrote, protects all persons under all circumstances, in war as well as peace, quoting the venerable Supreme Court decision *Ex Parte Milligan*,⁷ which prohibited trying citizens by military tribunals when civilian courts are available. The decision was incredibly gutsy, given the post-attack hysteria, particularly since Awadallah knew some of the hijackers and was

so unpopular with Fox News pundit Bill O'Reilly that the talk-show host openly advocated for Judge Scheindlin's impeachment.⁸ Although the Second Circuit reversed the dismissal,⁹ Awadallah was eventually acquitted of any wrongdoing.

Most recently, in *Floyd v. City of New York* and *Ligon v. City of New York*,¹⁰ a series of decisions that culminated in a 10-week bench trial and a 195-page decision with 783 footnotes, Judge Scheindlin held that the New York Police Department's (NYPD) stop-and-frisk program unconstitutionally targeted people of color and ordered remedial measures and monitoring to ensure that the program was not abused. The NYPD had tried to justify its overbroad use of stop-and-frisk as being an effective tool in reducing crime. Judge Scheindlin said effectiveness was beside the point: "This Court's mandate is solely to judge the constitutionality of police behavior, not its effectiveness as a law enforcement tool." Preventive detention and coerced confessions might arguably reduce crime, but they violate the precepts of the Constitution, which "necessarily takes certain policy choices off the table." The targeting of minorities for stops violated the Constitution and was bad policy to boot:

No one should live in fear of being stopped whenever he leaves his home to go about the activities of daily life. Those who are routinely subjected to stops are overwhelmingly people of color, and they are justifiably troubled to be singled out when many of them have done nothing to attract the unwanted attention. Some plaintiffs testified that stops make them feel unwelcome in some parts of the city, and distrustful of the police. This alienation cannot be good for the police, the community, or its leaders. Fostering trust and confidence between the police and the community would be an improvement for everyone.¹¹

Former Chief of Police Raymond Kelly went ballistic, claiming that Judge Scheindlin was unleashing a torrent of increased violent crime. O'Reilly, too, went on another tear, insisting that the ruling would lead to increased crime. Experience has proved Kelly and O'Reilly wrong, as *The New York Times* notes in a year-end editorial.¹² Although stop-and-frisks have plummeted more than 90 percent, crime has remained at historic lows. It turns out the NYPD can combat crime without sacrificing the Bill of Rights. Judge Scheindlin's daughter, Dahlia, has written proudly of *Floyd* in *+972 Magazine*. Police action may bring temporary relief, but "human rights and democratic principles," she writes, "are a deeper form of security for any human society."¹³

Judge Scheindlin is most proud of the cases that resolved or helped generate a political resolution of systemic injustices. *Floyd* is one of these. So are *Peoples v. Fischer*,¹⁴ *Bentley v. Dennison*, and *Betances v. Fischer*.¹⁵

In *Peoples*, a prisoner who had suffered three years of solitary confinement for a nonviolent infraction brought a pro-se section 1983 claim against the state of New York, challenging the state's use of solitary confinement. In a cutting edge decision on the scope of the Eighth Amendment, Judge Scheindlin denied a motion to dismiss and the defense of qualified immunity by two guards. The New York Civil Liberties Union then undertook to represent *Peoples* and brought a class action in his name. In December, after several years of negotiations triggered by Judge Scheindlin's rulings, New York agreed to a major overhaul of its solitary confinement system. In *Betances*, parolees were being thrown back into jail for technical violations of post-release supervision imposed by the probation office, not the sentencing court. Judge Scheindlin denied defendants' motion to dismiss. Because only a court could impose post-release supervision, administratively imposed supervision could not be grounds for reincarceration, and New York's departments of corrections and parole could not rely upon a defense of qualified immunity. "If defendants wanted to continue imposing supervision on plaintiffs, they could have sought resentencing by a judge," said Judge Scheindlin. She granted summary judgment to plaintiffs on liability, and the case is awaiting a trial on damages sought by the thousands of class members who were wrongly incarcerated.

Those who have worked for or with Judge Scheindlin are fiercely dedicated to her. They all agree that she has a far-reaching and inquiring mind. "She is not a conventional thinker," says Skaistis. "She brings a real sense of creativity to the job of judging."

They all agree that she cares about the craft of judging. "She is very thorough and tries to anticipate and address the needs of practitioners in her decisions," says Schwartz.

They all agree that she is energized by the toughest cases. "She is incredibly curious, a passionate thinker who loves challenging cases," says Murdukhayeva.

They all agree that she doesn't dwell on decisions, once made. "Once she reaches a decision, that's it. She acts with confidence, and moves on to the next case," says Barron.

And they all agree that she has that most necessary of judicial qualities: the willingness to decide the hard cases. "She is a no-nonsense problem solver whose decisions benefit the community—truly one of a kind and a gift to the legal process," says Rubin. "She is fearless," says her son, Dov. "I try to be like her," says her daughter, Dahlia. "She is a great judge," says Judge Weinstein. ☺

Endnotes

¹Jeffrey Toobin, *Rights and Wrongs: A Judge Takes on Stop and Frisk*, THE NEW YORKER, May 27, 2013, www.newyorker.com/magazine/2013/05/27/rights-and-wrongs-2.

continued on page 35

ing business with state agencies,” with Judge Morgan as their attorney. Although “I hated to lose her as our counsel,” she acknowledges, “our loss is the judiciary’s gain.”

Immediately upon assuming the bench in 2012, Judge Morgan began presiding over many cases of public interest. For example, the battle over who would succeed former Chief Justice Catherine “Kitty” Kimball on the Louisiana Supreme Court landed on Judge Morgan’s docket early in her tenure. The consent decree reforming the New Orleans Police Department (NOPD), however, will likely stand as her greatest contribution to improving civic life in her new hometown. With Judge Morgan’s guidance, the NOPD is on the forefront of the national police reform movement, having made great strides in ensuring constitutional policing and embracing a culture of transparency. “This isn’t just some run-of-the-mill civil case,” observes Jonathan Aronie, primary monitor of the team overseeing the consent decree’s implementation. Instead, he explains, this is a case of constitutional importance to the citizens of a major American city. “[T]his case is no different from a school desegregation case, or a women’s right to vote case, or a voting rights case. And Judge Morgan gives it her total attention.” He adds that “she will not let up in any way until the terms of the consent decree—and the constitutional protections those terms reflect—are fulfilled.”

Judge Morgan’s federal service also goes beyond her assigned case duties. For example, she—along with fellow Judge Jane Triche Milazzo—helps supervise the EDLA’s Rise & Recover Re-Entry Court, a 14-month program designed to promote successful community rein-

tegration and reduce recidivism for criminal defendants on supervised release. This strong work ethic has earned her the admiration of her colleagues and law clerks. Fifth Circuit Judge Jacques L. Wiener Jr. lauds her “sharp legal mind and equally sharp sense of humor,” noting that her “record as a practicing lawyer and trial judge speaks for itself.” Alex Campbell, her first clerk, notes that her skills as an “eloquent writer” with an “incredible eye for detail” provided an enviable example of how to “distill complex issues into easy-to-understand rulings and statements of law.” For Campbell, the “opportunity to work with and learn from Judge Morgan was not only a great experience, but also a great honor.” Finally, husband Larry Feldman praises how hard she has endeavored to be “a great role model”—for both fellow attorneys and her daughters.

When she is not on the bench, “Judge Morgan’s passion for the law is rivaled only by her passion for her beloved Saints,” quips Minia Bremenstul, another former clerk. She also enjoys Jazz Fest, reading, and spending time with her husband and her two grandchildren. As for attorneys who practice before her in the EDLA, rumor has it that a witty Elvis reference never hurts. ☺

Judge Morgan’s federal service also goes beyond her assigned case duties. For example, she—along with fellow Judge Jane Triche Milazzo—helps supervise the EDLA’s Rise & Recover Re-Entry Court, a 14-month program designed to promote successful community reintegration and reduce recidivism for criminal defendants on supervised release.

Scheindlin Profile *continued from page 23*

²Happily, her mother recovered and lived to the remarkable age of 103.

³217 F.R.D. 309 (S.D.N.Y. 2003) (*Zubulake I*); 216 F.R.D. 280 (S.D.N.Y. 2003) (*Zubulake II*); 220 F.R.D. 212 (S.D.N.Y. 2003) (*Zubulake III*); and 229 F.R.D. 422 (S.D.N.Y. 2004) (*Zubulake V*).

⁴987 F. Supp. 254 (S.D.N.Y. 1997); *aff’d in part, rev. in part*, 136 F.3d 123 (2d Cir. 1998).

⁵“This is crazy stuff, even for New York City.” Eleanor Randolph, *Joke on Giuliani Just Keeps on Rolling Along*, L.A. TIMES, Dec. 4, 1997, articles.latimes.com/1997/dec/04/news/mn-60503.

⁶202 F. Supp. 2d 82 (S.D.N.Y. 2002).

⁷71 U.S. (4 Wall.) 2 (1866).

⁸Bill O’Reilly, *Impeach Judge Shira Scheindlin*, FOX NEWS, June 7, 2002, www.foxnews.com/2002/06/07/impeach-judge-shira-scheindlin.html.

⁹349 F.3d 42 (2d Cir. 2003).

¹⁰925 F. Supp. 2d 540 (S.D.N.Y. 2013); 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

¹¹959 F. Supp. 2d at 556.

¹²Editorial Board, *New York City Policing, by the Numbers*, N.Y. TIMES, Dec. 28, 2015, nyti.ms/1ZwDl2u.

¹³Dahlia Scheindlin, *How the ‘stop and frisk’ ruling helps end one occupation*, +972 MAG., Aug. 14, 2013, 972mag.com/how-the-stop-and-frisk-ruling-helps-end-one-occupation/77395.

¹⁴No. 11-cv-2694, 2012 WL 1575302 (S.D.N.Y. May 3, 2012), *amended by* 898 F. Supp. 2d 618 (S.D.N.Y. 2012).

¹⁵852 F. Supp. 2d 379 (S.D.N.Y. 2012), *aff’d*, 519 Fed. Appx. 39 (2d Cir. 2013).