

HEADNOTES

IN MEMORIAM

Remembrance of Steve Susman

PARKER FOLSE

The author is a partner with Susman Godfrey, LLP, Seattle.

Over our third pandemic cocktail last night, my wife and I began talking about Steve Susman. His presence in our lives over 40 years was so strong that these conversations still bubble up like lava, unbidden, like every other force of nature, even though his physical presence is now gone.

She said her dominant impressions of Steve were cigars, wondrous but intimidating intelligence, intense engagement, and an extravagant sense of playfulness. She didn't mention the "I can't unsee" imagery of Steve striding down the aisle on a jolting bus ride in some remote location on a firm retreat decades ago, clad only in

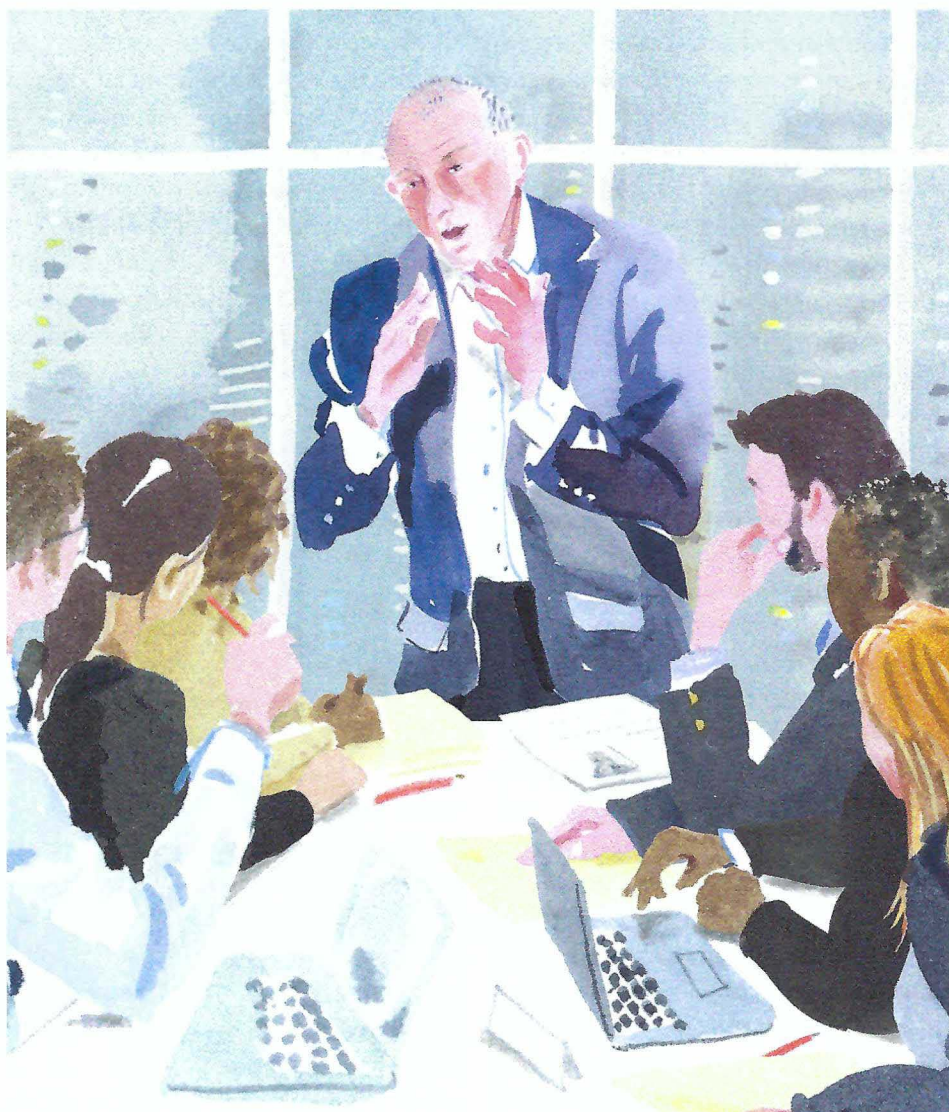
a Speedo and loudly laughing. But she has mentioned that story to me so many times, in a mixture of shock and wonder, that I felt compelled to include it here for the sake of completeness.

He gave up cigars too many years ago to count, and replaced them with blunts. He became slightly more modest in his attire, though his Spandex bike shorts didn't leave much more to the imagination. The incandescent intelligence and wild sense of playfulness? That didn't change at all. Nor did his ability to stride like a titan across the upheavals of the legal world, until the current cruelties of life took him down like some awful thunderbolt.

Where did the phrase "larger than life" come from? I did some research, and went

down a deep rabbit hole with no clear answer, because the phrase was such a perfectly blazing banner for Steve Susman. But the time I spent in that fruitless chase would have been a laughable thing to Steve, who hated wasting his own time, or anyone else's, except when he was at play in his own fields of Elysium.

He never said it, but it didn't take long to figure out that Steve believed his own time, and that of his clients, was precious. The early death of his own father seemed to chase him, and his own regard for his own brilliance was such that he measured it out. And he constantly juggled so many balls that time wasted was the risk of balls being dropped, and damned if he was going to let that happen.



He thrashed himself, his colleagues, and his clients not to waste time, to keep everyone's eyes on whatever the prize might be—and there was always a gigantic prize to be won, though in the early days of our firm, the prize was just to keep the lights on; a prize that Steve never lost sight of even after, through his prodigious talents, he had assembled enough wealth to buy multiple power utilities single-handedly.

All of us who learned how to try cases with him as legal children will never forget him. All of us who merely listened to his gravelly bark in firm meetings and marveled at his ability to cut through to the core of whatever issue might have been presented will never forget him. All of us who prospered within the organization he birthed, like Athena sprung from the brow of Zeus, will never forget him, and if we're just custodians of his memory, neither will our children or our grandchildren, because their lives have all been radically altered by the force of his life.

The system of justice in the United States has been altered by him too. At first, it was shaken like an earthquake by his pioneering of class actions and other forms of contingent fee entrepreneurship in commercial litigation. Those upheavals changed the landscape in lasting ways, in part because Steve and his fervent students in our firm brought to the plaintiff's practice the resumes, the intellectual rigor, and the straight-arrow ethics that many giant defense firms always bragged about. The rest of it was a tribute to relentless work ethic and the equally ceaseless desire of mavericks to prove not just that they belonged, but that they were better than the white-shoe elites, both of which Steve epitomized perfectly.

Steve turned the fledgling business he conceived into an astonishingly successful enterprise, but even that wasn't enough for him. Steve was never "mildly" interested in anything. If something didn't inspire his own passion, it just wasn't worth bothering with. From music to movies to art, from jogging to skiing to cycling, lots of interests

fueled the engine in his body and heart, but the most high-octane fuel was always, incomparably, the law, the art and science of trying lawsuits, and our firm.

He became a student of the slow death of jury trials and a public health expert in how to arrest the decline. Through the Civil Jury Project he founded and financed at NYU Law School, he embarked on a proselytizing mission that enlisted the aid of many hundreds of judges and thousands of practitioners around the country, the point of which was to save that critical feature of our public polity.

It would be a crying shame if his death sapped the energy of that mission. It needs to continue, even if no other single person could likely bring to the mission the remarkable combination of love for the trial practice, intellectual brilliance, and street-smarts that Steve Susman corralled within himself and kept letting out of the gate like wild horses.

All of us at Susman Godfrey will miss Steve Susman intensely. We know him better than most. It makes us treasure him all the more dearly. ■

IN MEMORIAM

Lessons from My Grandmother

CLARA SPERA

The author is an Equal Justice Works Fellow at the American Civil Liberty Union's Reproductive Freedom Project, and the granddaughter of Justice Ruth Bader Ginsburg.

My grandmother, Justice Ruth Bader Ginsburg, did not attend law school expecting to become an "impact" litigator. (The term "impact litigation" may not have even existed at the time she set off for law school, in 1956.) She did not start representing clients in gender equality cases—or any cases—until a decade after she graduated from Columbia Law School.

While my grandmother was an undergraduate at Cornell, Professor Robert Cushman, who had suffered harassment during the McCarthy period, taught her that the law could furnish a means to resist oppression. She did not translate that insight immediately into a career path. But the work that she, and others, later did made it possible for me to envision a career as a litigator, even well before I started law school.

From a young age, I knew that I wanted to be involved with issues of justice and fairness. For a long time, though, I was convinced that the correct institution to effect the kinds of changes I wanted to see was the legislative branch. I dreamed of one day being a senator or representative, authoring sweeping legislation that would correct gross inequalities.

As I came to understand my grandmother's career better, I began to see another way. As has been noted by commentators and scholars, my grandmother's strategy for effecting social change emerged through a very carefully plotted-out sequence of cases. As she famously stated, "real change, enduring change, happens one step at a time." But the risk of back-pedaling remains. Indeed, although she argued and won landmark gender equality cases in the 1970s, the fight for equality and justice for all continues today. I am a fellowship attorney at the American Civil Liberties Union, where we strive every day to preserve those victories.

One may wonder why she turned to the courts rather than the legislative branch to fight for gender equality. I believe there are two answers. First, a basic structural reason: at the Supreme Court, she had to convince only five of nine skeptical men (even if doing so required her to act as a "kindergarten teacher"), rather than a legislative chamber full of them. Second, litigation allowed her to show off her most celebrated skill: writing. I have learned in my short career as a litigator that while oral advocacy is important to civil litigation, a case rises and falls on the briefing. She shone brightest in her writing.