



Episode Title: A Conversation with Shanisha Y. Smith, Esquire

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A full recording of the podcast is available at <https://www.lawbc.com/podcasts/a-conversation-with-shanisha-y.-smith-esquire>.

Lynn L. Bergeson (LLB): Hello, and welcome to All Things Chemical, a podcast produced by Bergeson & Campbell, P.C. (B&C[®]) a Washington, D.C., law firm focusing on chemical law, business, and litigation matters. I'm Lynn Bergeson.

This week, I had the pleasure of speaking with Shanisha Smith, Health, Safety and Environmental (HSE) Counselor for LyondellBasell, about her role as counsel and the rewards and challenges of advising a major chemical producer on HSE legal and product stewardship issues. In our conversation, we learn about Shanisha's beginnings not far from here on Maryland's Eastern Shore and now living in Houston and her experience counseling LyondellBasell's, one of the world's largest chemical manufacturers, global team of HSE and product stewardship professionals on an incredibly diverse range of legal and product stewardship issues. We discuss Shanisha's impressive personal background, how it prepared her for the demands of her current job, and Shanisha's approach to counseling her client on evolving legal and stewardship topics, many of which are emerging with no clear answer. Now, here is my conversation with Shanisha Smith.

Welcome, Shanisha. I've been looking forward to this conversation because I am a huge fan of yours. Thank you for being here.

Shanisha Y. Smith (SYS): Thank you so much, Lynn. It's so great hearing that come from you.

LLB: Well, let's get right into it. You counsel your clients at LyondellBasell on what I regard, Shanisha, as an amazingly broad array of legal and product stewardship issues. Before we get into them, I would really like for you to tell our listeners about your background, because you have a very distinguished and important background that I think has contributed to your legal career. Take it away.

SYS: Thank you, Lynn. I always like to start off with something personal about my background because I like to tend to believe I am more than my work.

LLB: Good. And you are.

SYS: I was raised by my grandparents on the Eastern Shore of Maryland. What this means is very humble beginnings in a remote part of the country. No indoor plumbing, on the Chesapeake Bay, picking crabs at the age of three, wearing no shoes all summer, and going on adventures with my grandfather and my sister, getting lost in the woods, and making sure that I made it home before dusk.

Now I live in Houston, Texas, and I have a four-year-old son named George Walter, and I'm also the HSE Counsel for LyondellBasell. I manage a docket of complex HSE issues to global operations. I handle a variety of day-to-day HSE issues and provide legal advice and counsel on HSE compliance issues, including air, water, waste, hazardous chemicals, personal and process safety, product safety and stewardship, and security issues. I also represent the company in enforcement actions before agencies with jurisdiction over environmental, health and safety issues. I manage privileged investigations, incidents, commercial transactions, mergers and acquisitions, the HSE aspects of those deals, and manage and resolve disputes with third parties relating to HSE issues.

Prior to joining LyondellBasell, I worked at a big law firm and led a sophisticated energy and environmental litigation and regulatory practice, where I advised clients on federal environmental laws, including enforcement defense and compliance counseling, permitting, due diligence, and transactional support before state and federal agencies and courts. Prior to the law firm, I clerked for a federal judge in the Southern District of Texas. And there I managed a docket of 160 cases for a federal judge and wrote opinions and memoranda and dispositive complex issues from maritime issues to civil rights. I also worked at the Texas Railroad Commission, which is the state agency that regulates the gas industry here in Texas and pipeline safety. I worked at the National Hydrocarbons Commission in Mexico City during the Mexican energy reform. I've done a little bit of everything, and drawing from my diverse litigation and regulatory experience in government and private practice, I now advise internal clients on all of these issues related to environmental health and safety.

LLB: I'm especially interested in your humble origins on the flip side of the Bay Bridge, Shanisha. As you may know, I travel across the bridge every week to spend the weekends on the Eastern Shore, and I'm going to look at the Eastern Shore now in an entirely different light, knowing that you grew up there. You have just an extraordinarily diverse -- you've packed an awful lot into a few years. You've only -- I think you graduated law school about ten years ago.

SYS: Only ten years, yes.

LLB: It's just a credit to the diversity of your knowledge base and your ability to counsel on such a broad range of topics, both environmental safety, stewardship, and energy. That's more than a trifecta.

SYS: Yes. Yes, indeed.

LLB: And I know because your practice is broader than my own, Shanisha, but you work not just with other lawyers and regulatory experts, but also scientists, engineers, toxicologists, which we have on staff here. But I think when you have a diverse set of skill sets like that, do you find that you have to provide counsel in a way that resonates more with the professional with whom you are dealing, or not?

SYS: Yes. And as you mentioned, I work closely with all types of folks: scientists, engineers, toxicologists and other experts, to help the company make informed decisions that are both

environmentally sound and economically viable. As an environmental lawyer, as I like to coin myself, at a leading petrochemical company, I'm committed to ensuring that LyondellBasell operates in an environmental, sustainable manner, and this means ensuring that the company is both in compliance with a diverse body of environmental regimes, but also being a partner to the business. It does frame how I advise clients. I think, as you mentioned, my diverse background really has helped me be that business partner.

LLB: What drew you to this particular area of the law? Because when I went to law school, there was no such thing as EHS or SHE, or energy or environmental. Now, I know, there are more defined disciplines and classes in law school about these topics, but did you set out to hone your legal skills in this space, or did you happen upon this type of work by serendipity?

SYS: I think it was the latter. I always like to practice a diverse body of law, kind of like being a generalist. I thought, when I clerked, you kind of had to know a little bit about everything. I think being a generalist keeps your skill sharp, and being an environmental lawyer also provides this level of generalist and complexities that I enjoy. For me, the types of issues that I handle from day to day, such as product stewardship, sustainability, environmental justice, is at the core of everything that I care about. It's the convergence of equity, environmentalism, racial justice, social justice, and product stewardship. It's about taking responsibility for things we make and making sure that we do our part to protect the people in their environment.

LLB: Looking at your background, I see that you worked with a state civil court judge, a federal magistrate judge, two federal district court judges, and a federal appellate circuit judge. That is truly extraordinary. I'm wondering if, with that background, which -- when you're working with judges, you're at the heart of dispensing decisions and trying to come to equitable, just resolutions -- did that influence your selection of career paths, or again, did it just kind of happen on its own trajectory?

SYS: I think it just happened. One thing about this question, Lynn, is that I'm trying to figure out how did you find out all of this information? I'm like, no, no fair.

LLB: I do my homework, Shanisha.

SYS: You did your research. I think everything in life kind of prepares you for the next step. And all of those experiences working with all the levels of the federal judicial-ship, it really prepared me for my role now. There are a few key takeaways that I always draw from my clerkship experiences, not only working with just phenomenal, really intelligent individuals, which were my judges --

LLB: Right.

SYS: -- Key things that I can just always draw on when I'm practicing now and in counseling now. One of those is reading is fundamental. It sounds so basic, but sometimes you just have to sit down and read. I think it's just the fundamental skill that helps us learn, grow, and communicate effectively. Sometimes, I set reading blocks, and so I just sit and read, not for leisure, but laws or guidance documents or just --

LLB: Sure. I think it's great advice. It's kind of becoming a lost art, with so many audio opportunities and whatever. But no, reading is -- it's a luxury and a necessity.

SYS: Yes. In the many cases that I handled or assisted with the court, I realized that people just wanted their day in court. They wanted their voice to be heard. And this relates to my current practice because we champion people. The commercial folks want to tell you about an exciting deal to that legal issue; the marketing folks want to ensure that they can sell a product safely in many jurisdictions. And looking from the outside in, the community wants to communicate their needs. People just want to be heard and for you to listen.

My clerkship experiences also enhanced my critical thinking skills. Being elbow to elbow with judges for several years, I developed a keen ability in analyzing complex legal issues and making sound decisions based on facts and law. One skill that I really take back is just explaining it to myself like a middle schooler, right? If I'm able to explain a very complex issue down, the better I am to giving advice. Right? So this exposure allowed me to face problems in a logical and systemic way -- or a systematic way.

Other key takeaway messages that everyone gains from clerkships, as you know, attention to detail, strong work ethic, and also professionalism. There are just certain things that in a certain way that you carry yourself when you're on that side of the bar. And so those are a lot of the things that I take away from those clerkship experiences.

LLB: One point that you made a moment ago about appreciating that people wish to be heard. I've worked as a lawyer with many, many, many in-house counsel. One thing that has impressed the heck out of me, Shanisha, is the empathy that you exhibit toward your client. When we're on the phone together, for example, in Teams meetings, you are always seeking the views of your client, asking about what they wish, what some of their concerns are -- which I find just extraordinary. You're young, you're ten years out, but you exhibit the skills and the people skills of a seasoned practitioner, which I hope any lawyer listening to this podcast appreciates that your client is a human being. Many of the issues that we deal with, in the product stewardship area in particular, I think, involve a complex mixture of personal beliefs and values.

If you come to the job wanting to get to the best possible resolution, balancing those issues is not always easy. Your empathy skills, your listening skills, your wanting to bring these issues out on the table and talk about them make for better problem solving. Just something that I have observed about your behavior as a professional, and it's always both interested me and impressed the heck out of me, given you're relatively new to the area.

SYS: Wow! If you could see me, I'm smiling from ear to ear. Thank you. Thank you for giving me my flowers. I could just store that in my -- you are --

LLB: It's all true, Shanisha. It is. We all need to listen more.

SYS: Wow. Thank you.

LLB: In talking about the professionalism side, I think you and I last hooked up at the American Bar Association Section of Environment, Energy, and Resources annual meeting in Nashville. You're a member of the ABA section. I know I have in my career found an awful lot of support, and the section has provided really good counsel resources, writing, people that I can connect with. Those are some of the reasons that I belong to the bar. But what drove you to join the ABA?

SYS: This is a longer answer because the overall ABA, I think, is just a shared safe space, and in particular SEER, the Section of Environment, Energy, and Resources, fosters the success of

a diverse community of environmental energy and resource lawyers. Like you said, it's just a forum to exchange ideas and information, but for me it's always been a shared safe space. I was first introduced to the ABA in a different section, which was the section of litigation.

LLB: Oh, okay. Got it.

SYS: It was a program called JIOP, the Judicial Internship Opportunity Program, which pairs diverse law students with state and federal judges.

LLB: Oh, what a good idea.

SYS: It kind of steers them to eventually clerking, which I am its own success story because, I mean -- but that is how I got introduced to the American Bar in a different section. It's just a safe space, where we can share ideas and information.

LLB: I was unaware of that program. It strikes me as just a very good idea and obviously proved extremely successful and influential in the development of your career trajectory.

SYS: Yes.

LLB: Let me ask you about the product stewardship area. I think some of our listeners may or may not be aware of that particular emerging area of the law, because those of us in the chemical sector that either manufacture neat chemical substances or products in which chemicals are included, I think, are very focused on the softer side of this discipline of stewardship. It means many things to many people. As I said, it is emerging. What do you think in your background has proven to be the most helpful to you in enabling you to serve your clients as well as you do?

SYS: Ah, now I have to take it back to the top of this conversation and say my humble beginning, my grandparents, growing up poor and being a part of a marginalized community. What does growing up poor and being Black teach you? It teaches you that complex problems can be solved with some creativity. No food? Grow it. No electricity? Be efficient and get most things done during the day. Being resourceful becomes part of -- it became part of my identity.

Another thing it taught me is that, if the answer is no, at least you asked. The worst thing anyone could tell you is no, and if you don't ask the question or inquire, then the answer is already no. I think -- I had to draw back to my original, my humble beginning. Also this concept of an emergent strategy. Emergent strategy is a more flexible, adaptive, responsive approach to strategic planning and execution that focuses on continuous learning, innovation, and I think it's a valuable tool that I've used to operate in my organization and facing rapidly changing environments. A lot of it is smaller conversations with different folks. If there's a big project coming up, or I know something is ahead, it's a bunch of small mini-conversations ahead of the big one, and simple interactions, before we get to the more complex issue. I would say those two things: my humble beginning and emergent strategy.

LLB: I see that in practice because you are very good at drawing people out, in allowing them to be part of the problem solving, be part of the solution. If we have toxicologists or scientists or chemists or materials experts on our calls, I see how you allow each of them to contribute and feel part of the solution and draw out their skills. It's very collaborative, very open, very collegial. Everybody feels better about being part of the conversation. This has helped me understand where those skills that you clearly have come from.

SYS: Thank you. Thank you.

LLB: A lot of people ask me this question, Shanisha, because I was a philosophy major in college, which is one of those neither here nor there -- I become probably most eloquent after a few glasses of wine. But did you have a science background at all? And do you think that that is an essential component of this practice of law?

SYS: Absolutely not. I think everyone wants things explained to them like a fifth grader. I think the better skill is issue spotting and project management and kind of being a people person. I think there's other skills that you can draw from. You definitely don't need a science background to work in the chemical product area. It probably helps, but as you -- you were a philosophy major, and you're the best of the best. I don't think it's necessary at all. It's just more different skills, such as issue spotting, and being able to distill complex issues into smaller, digestible, understandable issues and managing people and projects.

LLB: I tend to agree. I think we have experts on staff, and enabling them to do their thing and contribute. Also just being an adult learner. I know you are very intellectually, very, very curious. You dig in on some of the more technical aspects of product stewardship, and knowing a little bit about toxicology, a little bit about chemistry, a little bit about engineering are all part of the part of the beat, right?

SYS: Yes. You mentioned the word, yes, definitely being curious, and inquisitive, is something that is a skill, or something that I would think you would need in this area.

LLB: Speaking of this area, and I know we could talk for hours on this, but the product stewardship space, the EHS space, is just exploding now, with its own set of diversity and the just sheer magnitude of the science, the policy, the chemical issues. What are some of the issues that you personally are dealing with now that you find both intellectually interesting and also challenging from kind of a personal perspective?

SYS: I would say the intersectionality of it all. Chemical management, product stewardship, sustainability, environmental justice. These are not separate topics, and each one reinforces another. We are now seeing the integration and the intersectionality of these topics that in the past, I don't think we dealt with, and we dealt with in a discrete manner. Now they're all being squished together, and we have to figure out emissions reductions, and circularity, and the safety of the products that we're putting out on the market, and how we do that from a lens of transparency. You have to look at all of these things at once in tandem, and you really can't talk about them independently: how environmental justice and other sustainability issues are showing up in product stewardship.

For example, a real recent example in the North American context is the litigation around looking at pyrolysis oil in the context of TSCA. It was the first example of chemicals management under TSCA integrated into environmental justice. There was a complaint where a non-governmental organization (NGO) claimed that the premanufacture notice (PMN) that was filed was looking at the substance and was not effectively reviewed by EPA, meaning that this particular substance was going to have increased risk to the community. There's the intersection in the TSCA PMN review process, and I don't think we've seen that before. And again, I've only been practicing for ten years.

LLB: But you're right, Shanisha. That case really forces all of us to focus on the attributes of chemical recycling, right? -- plastics recycling, and whether or not that act of recycling imposes disproportionate strains in ways that TSCA didn't fairly appreciate during the PMN

review process. It's a very complex topic, but it's an exquisitely perfect example of the intersectionality that you're speaking about.

SYS: Yes. Also in PFAS, and it comes up in spaces where we're looking at additives and in the product space where there would be an allegation of the safety of the material in conjunction of where and how it's released and with operations and product disclosures. The intersectionality of it all, that's where the challenge is. That's where it's really interesting to see how it all intersects and it's merging together. Another interesting project is the closure of our refinery business. We announced plans to delay our oil refining business exit from year end 2023 -- this year -- to no later than the end of the first quarter of 2025. That decision, the decision to cease operation of the refinery, remains intact, but now we're looking at enabling our circular and low-carbon solutions business -- which is one of the three pillars of our company strategy, and so there are multiple options that are being evaluated, including recycling, renewable-based feedstocks, and green and blue hydrogen. A lot of this will have a lot of emphasis in our product portfolio. This supports our ambitious sustainability goal to produce and market 2 million metric tons of recycled and renewable-based polymers annually by 2030. That's another interesting topic, and so there's a bunch of different stuff, but those are the things that pop out right now for me.

LLB: All of them could have their own day-long program, let alone a half-hour podcast. PFAS alone, I would imagine, is just an area that I know we are spending more and more and more and more time on. Some of the stewardship issues, the scientific issues, the way the European Union, Great Britain, the United States, Canada are all approaching this issue in a way that is just maddeningly inconsistent. We can't agree on anything -- definitions, regulatory approaches, whatever -- but I would imagine that that topic, among many of the others that you deal with, are proving to be both, again, fascinating and maybe a little frustrating because you're plowing new legal approaches here. These issues are new to the profession. They're new to the science and new to those of us that are trying to provide wise counsel on how best to address these issues.

SYS: Yes.

LLB: What advice do you have for lawyers or law students listening to this podcast or others in this space if they are thinking about a career in chemical product law, regulation, and litigation?

SYS: Yes. I would say be open, be flexible. Never in a million years would I thought I would have landed here, but I'm loving it. It's very -- I love complex issues. I love digging in. Just be open. Don't be so tied to a script that you have for yourself. Listen, be open, engage, and be flexible.

LLB: I've certainly seen you exhibit all of those practices, Shanisha, in dealing with your client. You just make people feel very comfortable and very special, and I think that's important in the practice of law to make sure that our clients are comfortable with us as outside sources of legal counsel. Be open, receptive, and engaging, right?

SYS: Yes.

LLB: One final question before I let you go. You've been very gracious with your time. Being the supremely successful lawyer and businessperson that you are, what personal observations can you share with our listeners on how to be successful in your work and to gain the confidence of your clients, which to me is just one of the most important things in being a

lawyer, making sure that our clients trust us and know that we are there and have their backs?

SYS: Yes. This is the question that I pondered on the most. Personally, it really boiled down to three things. One, trust yourself. Again, this is a relationship. We're in the business of relationships, and it's so imperative to being a successful lawyer and/or businessperson that you picture relationships as a high priority. In order to do that, you have to trust yourself. People are not going to trust you if you don't trust yourself. It first starts with you. Trust that you have what it takes, that you exhibit the confidence, that you've done the work, that you've done the research, that you've gotten this far, and just trust yourself. Then others will see that. Once they see that in you, then they will begin to trust you. And then it's a two-way relationship, and be consistent with it. Don't one day say, "Okay, I really did a good job. I trust myself" and then the next day fall through. You have to be very consistent.

Second, I would say set clear goals and take action. Set the goals, but also take action on those goals. And then lastly, I would say develop a growth mindset and embrace challenges as opportunities for growth.

LLB: Good advice, especially the trust yourself part, because confidence -- being confident, demonstrating confidence -- is absolutely essential for this type of work. Totally agree.

Shanisha, I've really enjoyed learning a little bit more about your background, which is astonishing. I can't believe that you grew up maybe 20 miles from where I hang out every weekend. It's a lovely part of the state, but it is, as you suggest, remote.

SYS: Yes, yes, it is. Yes. And thank you so much, Lynn. This really has made my day.

LLB: Appreciate you being here, Shanisha, and thank you for allowing me to share some time with you. Really appreciate it. Take care now.

SYS: Thank you.

LLB: Thanks again to Shanisha for speaking with me today about her career and how it has prepared her to counsel EHS and product stewardship professionals at LyondellBasell on a broad and uniquely unsettled area of law and stewardship issues.

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