

American University Law Review

Volume 57 | Issue 6

Article 1

2008

Tributes: The Honorable Irma S. Raker

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Recommended Citation

Bell, Robert M. et al. "Tributes: The Honorable Iram S. Raker." *American University Law Review* 57, no.6 (October 2008): 1547-1585.

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Tributes: The Honorable Irma S. Raker

Keywords

Tribute, Honorable Irma S. Raker, Judge

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TRIBUTES:
THE HONORABLE IRMA S. RAKER

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I. TRIBUTE TO THE HONORABLE IRMA S. RAKER

THE HONORABLE ROBERT M. BELL*

Irma S. Raker has been a distinguished and invaluable member of the Court of Appeals of Maryland since January 7, 1994, and, for the last four and one-half years, its Senior Judge.¹ Only the second woman to serve on the court, Judge Raker brought a wealth of experience, as an accomplished prosecutor, a private practitioner, and a respected jurist. Indeed, having spent more than a decade as a trial judge, both on the district court and the circuit court, she was the first of her gender to bring such experience to the work of the court.

Undergirded by this experience and reflecting the confidence it inspired, Irma entered into the work of the court enthusiastically, hitting the ground running. Since joining the court, she has proven to be a great asset, an assiduous worker, an effective, scholarly, and articulate opinion writer, a willing team player, and a very gracious and valuable colleague.

To be sure, one of her interests was, and still is, the criminal law—in which she also was, and remains, a real expert. Nevertheless, whatever the assignment, whatever the subject matter and however complex or mundane, Irma's enthusiasm did not flag or ebb. In fact, her approach remained consistent: straight-forward, intelligent, analytical, and tempered by a healthy dose of common sense. The product predictably, given the methodical approach she took, was outstanding: readable, without being banal; thorough, but not opaque; scholarly, rather than pedantic. Her opinions were crafted with care and thoughtfulness.

That same care and thoughtfulness characterized the manner in which Judge Raker considered and critiqued the opinions of her colleagues. Her intention always was to improve the opinion or

* Chief Judge, Maryland Court of Appeals, 1996–present. Judge, Maryland Court of Appeals, 1991–1996; Judge, Court of Special Appeals, 6th Appellate Circuit (Baltimore City), 1984–1991; Associate Judge, Baltimore City Circuit Court, 8th Judicial Circuit, 1980–1984; Judge, District Court of Maryland, District 1, Baltimore City, 1975–1980. J.D., *Harvard University Law School*, 1969; A.B., *Morgan State College*, 1966. Chief Judge Bell was the first African-American to serve as Chief Judge of the Maryland Court of Appeals.

1. Judge Raker acceded to the position of “Senior Judge” upon the retirement of the Honorable John C. Eldridge on November 13, 2003. Although, unlike Judge Eldridge, Judge Raker was not, in fact, the senior most member of the court, the position has come to refer to the most senior judge, other than the Chief Judge, to whom certain administrative responsibilities are entrusted and on whom the responsibility rests to fill in for the Chief Judge.

decision-making and reflect credit on the court, even when she did not agree with the opinion or decision and it did not reflect her view. When that occurred, Irma did not hesitate to write separately, whether in dissent or concurrence, expressing her own views clearly and forcefully for the elucidation of the reader and future lawyers, judges, and courts.

Irma Raker's value and contribution to the court consists of more, much more, than opinion writing and the substantive work of the court. She has been an indispensable colleague, a team player, and a tireless worker on behalf of the Judiciary.

Collegiality and civility are terms with which Irma relates and concepts with which she not only subscribes, but practices. From the outset, she has contributed to the court's collegiality. She was an early supporter, if not the source, of the idea of an annual court dinner, at which the judges and their spouses could get to know each other and enjoy each other's company. Moreover, as a member of Network 2000, she has invited the court to attend luncheons at which prominent women speakers present, the idea being for the court to share the occasion.

Judge Raker is civil in her discourse and is not shy about promoting civility. Perhaps because she was a trial judge and, therefore, could relate very easily to and appreciate the difficulty of discharging that responsibility, she always noticed, and was quick to flag uncivil or insensitive comments. More than that, however, she always, albeit with humor and style, advocated for their moderation or elimination. In this, she was not only serious, but persistent. To this, Judge Cathell can and does attest. He publicly has acknowledged her influence on him in this regard, dubbing her, in effect, "the nice police."

While each judge on the court, by virtue of his or her representation of his or her judicial circuit, plays a role in, and, in fact, is deferred to with regard to, administrative decisions affecting that circuit, some have taken on, and discharged, additional and important responsibilities. Irma is one of those judges. For more than eleven years, beginning in 1997 and continuing until her retirement, she chaired the Judicial Compensation Committee of the Maryland Judicial Conference. Because the responsibility of that committee is to work with the Maryland Judicial Compensation Commission as it determines whether Maryland's judges have earned an increase in salary and, if so, how much, hers was a significant and heavy responsibility, indeed. That legislative involvement—in the form of lobbying, schmoozing, and testifying—was also required and

did not lessen, but rather, increased, the weight of her charge. She was good at it; one might say she was a natural. She accepted the assignment with relish and discharged it admirably and flawlessly. As a result, on more than one occasion, she and her committee successfully represented the judiciary, obtaining from the legislature well-deserved, fair compensation for Maryland judges. Her efforts were aided by her appreciation of the need for better channels of communication among the different branches of government, something she sought to facilitate by hosting an annual dinner at the court for female legislators and judges.

April 8, 2008, was the last day that Irma S. Raker would sit with the court as a regular member of the court. Recognizing the fact, I opened that session of court with these remarks:

Today is a bittersweet day for the court In January of 1994, a young woman joined the Court of Appeals, Irma Raker, and she has served this court with distinction since that time. She happens to be, for me, the last link to the old court. I came on the court in '91, and we have served together since 1994. She's tenacious, she has a strong intellect, she is very concerned about civility, and she has been a probing member of this court for all of those years. And for the last five years she has been our senior judge, taking responsibility for many of the administrative duties of the court. That, too, she has done with distinction.

All the members of the court congratulate her on a job well done and wish her Godspeed in the respite that she has earned and also look forward to her continued service as a recalled member of the court, although the Constitution says that she is senile as of April the 24th.

We look forward to her continued service and all of the experience she has amassed over the many years. We're going to miss you.²

We are, indeed, going to miss her, I perhaps most of all.

2. See Maryland Court of Appeals Webcast, <http://mdcourts.gov/coappeals/webcastarchive.html#april> (click the docket number for "Attorney Grievance Commission of Maryland v. David L. Zeiger" under the April 2008 schedule).

II. JUDGE IRMA S. RAKER: *QUO VADIS?*³

THE HONORABLE GLENN T. HARRELL, JR.*

I consider it a *shanda*⁴ that the Maryland Constitution's mandatory retirement at age seventy claimed another of the finest judges ever to sit on the Court of Appeals of Maryland (our State Supreme Court), Judge Irma S. Raker. There is no doubt that she is at the peak of her experiential and intellectual powers as she is forced to the "bench," if you will. Thankfully, she will continue to sit with the Court until her successor is duly appointed and invested⁵—a process in Maryland that may take from a couple of months to as long as nine months or more⁶—and also may be recalled to sit with us in situations of recusal, illness, or other absence of a regular court member. For that much, I am thankful.

Judge Raker is special. She is only the second woman to sit on the court of appeals in its long and storied history.⁷ While serendipity contributed to some degree in this achievement, the luster of her

3. "Whither thou goest?" As a failed altar boy, I am not uncomfortable with Latin. As I shall explain momentarily, Judge Raker unintentionally expanded my command of languages by encouraging me to learn Yiddish, so that I potentially might be pedantic in three languages.

* Judge, Maryland Court of Appeals, 1999–present. Judge, Court of Special Appeals, At Large, 1991–1999. Associate (1973–1977) and Partner (1977–1991), O'Malley, Miles & Harrell. Associate County Attorney, Prince George's County, 1971–1973. J.D., *University of Maryland School of Law*, 1970; B.A., *University of Maryland*, 1967.

4. ELLIS WEINER & BARBARA DAVILMAN, *YIDDISH WITH DICK AND JANE* 99 (Little, Brown & Co. 2004) (defining *shanda* as a "pity . . . a scandalous shame"). Why Yiddish? I'm glad that you asked. Judge Raker and Judge Alan M. Wilner, another former colleague of mine on the Court of Appeals of Maryland, engaged for a number of years in a cultural conspiracy to block my use of Yiddish words and phrases in opinions that I authored for the Court. Their baseless claim was that I, as a *goy*, did not use the words and phrases correctly. As they are retired now, I shall do as I please.

5. Judge Dale R. Cathell, who celebrated his seventieth birthday on July 30, 2007, continued to sit with the Court through its June 2008 sessions. His successor, Judge Sally D. Adkins, finally was appointed in early June 2008 and invested on June 25, 2008.

6. Even at this sometimes glacial pace, Maryland is the hare to the federal tortoise in filling judicial vacancies, as witnessed by the situation in the U.S. Court of Appeals for the Fourth Circuit. See Jerry Markon, *Bush's Picks for Court Spur Criticism by Warner, Webb*, WASH. POST, Sept. 7, 2007, at B05 (describing confirmation battle in U.S. Senate over nominees).

7. The Maryland Constitution of 1776 gave the court its name. See Maryland Court of Appeals—Origins & Functions (2008), <http://www.msa.md.gov/mdmanual/29ap/html/apt.html>. The roots of the court, however, antedate 1776 in that the Provincial Court hearing writs of error on appeal traces its roots to shortly after the founding of the Colony of Maryland. *Id.* Thus, a legitimate claim may be maintained that the Court of Appeals and its immediate predecessor may, by tacking, be the oldest state appellate court in the country.

preceding legal and trial court careers placed her squarely in the path of history to succeed Judge Rita Davidson, the first female judge on the Court of Appeals of Maryland.⁸ Deferring law school attendance at the Washington College of Law at American University until after she began her family, Judge Raker, upon graduation and admission to the Bar of Maryland in 1973, served as a prosecutor in the Office of the State's Attorney for Montgomery County, Maryland (1973–1979); a partner in a law firm in that County (Sachs, Greenebaum & Taylor, 1979–1980); a judge of the District Court of Maryland, sitting in Montgomery County (1980–1982); and a judge of the Circuit Court for Montgomery County (1982–1994), before her appointment in 1994 to the Court of Appeals of Maryland. Because other tributes will elaborate on many of her accomplishments, I am free to reminisce about my personal experiences as her colleague since 1999, when I joined the court.

When I joined the court, after eight years on the Court of Special Appeals (our state intermediate appellate court), I thought I was ready for the “Big Show.” Judge Raker, by that time, was a firmly established star of the “show”; indeed she was one of its preeminent minds and personalities. A cocky new judge needed to be shown the ropes. Judge Raker was up to the task. The modality of the lesson was the case of *Metheny v. State*.⁹

While *Metheny* was not the first opinion for the court assigned to me following my investiture on September 10, 1999, it was the first hotly contested one. *Metheny* essentially was a death penalty case.¹⁰ Joe Roy Metheny stood convicted of first degree premeditated murder and robbery.¹¹ His eligibility for the sentence of death sprang from the State's contention that his murder of a prostitute was committed in the course of robbing her,¹² an aggravating factor under Maryland capital punishment law.¹³ Metheny hired the victim to come to his trailer and have sex with him.¹⁴ While partially disrobed and having sex with him, the victim was strangled by

8. Being a pathfinder is not without its moments of humility. Judge Raker reports that, when she first sat with the court in the middle 1990s, its male members frequently and absentmindedly called her “Rita” during the court's conference. Good-naturedly, Judge Raker responded by commissioning and wearing to one conference a T-shirt that proclaimed on its front, “I am not Rita.”

9. 755 A.2d 1088 (Md. 2000).

10. *Id.* at 1092.

11. *Id.*

12. *Id.* at 1094.

13. *Id.* at 1097.

14. *Id.* at 1094.

Metheny.¹⁵ He killed her purely for his personal pleasure. He buried her body in a grave separate from another hole he dug, into which he placed her clothing and purse.¹⁶ It was the post-mortem separation of the victim from her personal belongings that was argued and found to constitute a robbery.¹⁷

Although the court was unanimous in its belief that the afterthought robbery in this case, if indeed it was a robbery at all, could not serve as the predicate statutory aggravator to justify the death penalty, it was divided on the question of whether the facts supported the conclusion that a robbery occurred.¹⁸ The outcome turned on how the court construed an earlier case, *Stebbing v. State*,¹⁹ which determined that the use of force or violence, or the threat of force or violence, as an element of the crime of robbery must precede or be concurrent with the formation of the intent to steal.²⁰ The deadlock was Judge Raker's to break.

I wished to retain the privilege of authoring the majority opinion for the court. I knew, therefore, that I needed to persuade Judge Raker to my view if I was to accomplish that goal. I wrote at least a half-dozen versions of an analysis affirming the robbery conviction before discovering the one that satisfied her. In the course of reaching that point, we had innumerable telephone conferences and at least two trips from my chambers to her chambers in Montgomery County so that I could practice face-to-face advocacy skills. Judge Raker was rigorous in her intellectual demands, and no less so in her compelled refinement of my written analysis. I recall that it took approximately six months to reach a meeting of the minds on the issue, an issue that was not even the flagship one in the case. Between my doggedness and her high standards, a vastly improved product resulted. The experience drove home for me (a lesson that I remember obviously to this day) that everything that we include in an opinion of the Maryland high court—because of the scrutiny it receives and the courses of conduct charted in reliance on our words—requires the most careful thought and expression of those thoughts. Not only has Judge Raker hued to those standards in her own work, she converted me to a true believer as well.

Judge Raker's opinions, whether for the court or writing for herself, are among the most learned produced each term.

15. *Id.*

16. *Id.* at 1095.

17. *Id.* at 1097–99.

18. *Id.* at 1118–20.

19. 473 A.2d 903, 913–15 (Md. 1984).

20. *Metheny*, 755 A.2d at 1119.

Committed to rigorous application of logic,²¹ leavened by pragmatism, she authored most recently (within the last three years as a slice of time) *Montgomery Mutual Insurance Co. v. Chesson*,²² *Neifert v. Maryland Department of the Environment*,²³ *Bernadyn v. State*,²⁴ *Lubin v. Agora*,²⁵ and *Consumer Protection Division v. Morgan*,²⁶ to name a few.

Judge Raker recently was published in the *Mississippi Law Journal*.²⁷ Previously, her article on “No Knock” entries was published in the law review of her alma mater.²⁸

The professional honors accorded her are substantial. Most recently she was selected in August 2007, as one of five women nationally to receive the American Bar Association’s (ABA) Margaret Brent Women Lawyers of Achievement Award at the ABA’s annual meeting in San Francisco.²⁹ The *Daily Record*, Maryland’s law and business newspaper, selected her in 2001 as one of its Leadership in Law honorees.³⁰ Moreover, the *Daily Record* on three separate occasions included her as one of Maryland’s “Top 100 Women.”³¹ The Washington College of Law selected her as Alumna of the Year in 1999,³² as did her undergraduate university, Syracuse University.³³ The Criminal Law Section of the Maryland State Bar Association

21. She once “forced” the judges of both Maryland appellate courts to attend a day-long presentation on logic, presented by a law school professor. Reasonable people are not able to agree whether her good intentions resulted in a noticeable improvement in our work product.

22. 923 A.2d 939 (Md. 2007) (exploring the motion in limine process for vetting proffered novel scientific evidence under Maryland’s adherence to the *Frye-Reed* standard).

23. 910 A.2d 1100 (Md. 2006) (involving a complex constitutional takings claim).

24. 887 A.2d 602 (Md. 2005) (exploring nuanced hearsay evidence questions).

25. 882 A.2d 833 (Md. 2005) (declining to enforce Securities Commissioner’s subpoenas for subscriber lists for publisher’s newsletter).

26. 874 A.2d 919 (Md. 2005) (analyzing a collection of complicated consumer protection cases).

27. Irma S. Raker, *Fourth Amendment and Independent State Grounds*, 77 MISS. L.J. 401 (2007).

28. Irma S. Raker, *The New ‘No-Knock’ Provisions and its Effect on the Authority of the Police To Break and Enter*, 20 AM. U. L. REV. 467 (1970–1971).

29. American Bar Association, Previous Margaret Brent Women Lawyers of Achievement Award Recipients, <http://www.abanet.org/women/margaretbrent/pasthonorees.html> (last visited June 1, 2008).

30. The Daily Record’s Leadership in Law, <http://www.mddailyrecord.com/events.cfm?fuseaction=eventDetail&eventID=6&scheduleID=43&pageContent=Winners> (last visited June 1, 2008).

31. The Daily Record Weblog, Maryland’s Top 100 Women, http://www.mddailyrecord.com/_images/article/winners2008.pdf (last visited June 1, 2008) (listing all the winners since 1996–2008; Judge Raker was recognized in 1997, 1999, and 2001).

32. Maryland Court of Appeals, Former Judges, Irma S. Raker, <http://www.msa.md.gov/msa/mdmanual/29ap/former/html/msa11659.html> (last visited June 24, 2008).

33. 2007 Margaret Brent Awards, Irma S. Raker, <http://www.abanet.org/women/bios/RakerBio.pdf> (last visited June 24, 2008).

awarded her the Robert C. Heeney Award in 1993.³⁴ This was followed by the Maryland Women's Law Center's Dorothy Beatty Memorial Award in 1994.³⁵ Truly, I could go on and on.

Judge Raker served as the voice of one of my better angels, whispering in my ear calming and corrective advice whenever my poison pen became unduly harsh in a draft opinion or my conduct betrayed the latent benevolent despot that lurks beneath a benign exterior. Without her regular reminders of "Thou are mortal," I worry that I may run onto my sword one day soon. I hope that she does not become so busy in retirement—with alternative dispute resolution work, sitting in the trial courts as a retired judge, or traveling with her husband, Sam—that she has not the time for an occasional telephone schmooze³⁶ with a former colleague. May retirement be a *simcha*³⁷ and may she always remain my *chaver*.³⁸

III. THE HONORABLE IRMA S. RAKER: LEADING THE WAY TOWARD CLARITY IN CRIMINAL JURY INSTRUCTIONS IN MARYLAND

THE HONORABLE MARY ELLEN BARBERA*

The Honorable Irma S. Raker is a remarkable woman. She has excelled as a prosecutor, adjunct professor of law, and judge. Not long into her career, Judge Raker was appointed to the District Court of Maryland. She rose quickly to the Circuit Court for Montgomery County and for the past fourteen years has served with great distinction on the Court of Appeals of Maryland. Judge Raker has garnered universal admiration for her legal acumen, prodigious work ethic, unwavering commitment to public service, and seemingly limitless store of energy. Moreover, she has a special place in the minds and hearts of Maryland's women lawyers and judges for having blazed the trail for those who followed her. Simply stated, for many of us Judge Raker is our role model.

34. *Id.*

35. *Id.*; *supra* note 32.

36. "Schmooze" has been so long a regular part of contemporary spoken English that it does not need special translation.

37. WEINER & DAVILMAN, *supra* note 4, at 102 ("A blessing. A happy joyous occasion that merits celebration.").

38. *Id.* at 87 ("... best pal. Friend...").

* Associate Judge, Maryland Court of Special Appeals, 2002–present. Legal Counsel, Office of Governor, 1999–2002. Deputy Legal Counsel, Office of the Governor, 1998–1999. Deputy Chief, Criminal Appeals Division, Office of the Maryland Attorney General 1989–98. Assistant Attorney General, 1985–1989. Law Clerk, the Honorable Judge Robert L. Karwacki, Court of Special Appeals, 1984–1985. Adjunct Professor, *American University, Washington College of Law*, 1993–present. J.D., *University of Maryland School of Law*, 1984; B.S., *Towson State University*, 1975.

I met Judge Raker while I was an Assistant Attorney General in the Criminal Appeals Division of the Office of the Attorney General of Maryland. After Judge Raker ascended to the Court of Appeals in 1994, I enjoyed the intellectual challenge of arguing before her and her colleagues on that court. Long before I met Judge Raker, however, I was aware of her excellent reputation as a judge and expert in criminal law.

As early as 1985, I knew that Judge Raker was leading a small cadre of some of the best criminal law practitioners and judges in Maryland in a multi-year project to craft pattern criminal instructions. The first portion of the much-anticipated collection of those instructions, *Maryland Criminal Pattern Jury Instructions*, was published in 1986.³⁹ Under Judge Raker's continued leadership, the book has been expanded and refined during the ensuing twenty-two years, and it remains one of the best sources not only of carefully written instructions, but of extensive commentary on Maryland's criminal law. The ongoing work of producing and publishing *Maryland Criminal Pattern Jury Instructions* is only one of the many projects to which Judge Raker has lent her considerable talents over the years. And it is a project of which Judge Raker should be particularly proud. This tribute to Judge Raker focuses on that work.

In 1981, Irma Raker, then a judge of the District Court of Maryland and alumna of the Montgomery County State's Attorney's Office, was one of a group of judges and lawyers who conceived of crafting and compiling, in a single volume, pattern jury instructions for use at criminal trials throughout Maryland. The project was modeled on the *Maryland Civil Pattern Jury Instructions*, the first edition of which was published in 1977.⁴⁰ The charter members of the Subcommittee to Draft Criminal Pattern Jury Instructions were the great criminal law experts of the day.⁴¹ With Judge Raker as Chair, the committee

39. MD. STATE BAR ASS'N STANDING COMM. ON PATTERN JURY INSTRUCTIONS, *MARYLAND CRIMINAL PATTERN JURY INSTRUCTIONS* (Md. Inst. for Continuing Prof'l Educ. of Lawyers, 1st ed. 1986).

40. MD. STATE BAR ASS'N STANDING COMM. ON PATTERN JURY INSTRUCTIONS, *MARYLAND CIVIL PATTERN JURY INSTRUCTIONS* (Md. Inst. for Continuing Prof'l Educ. of Lawyers, 1st ed. 1977). The subcommittee to draft criminal pattern jury instructions and its "sister" subcommittee to draft civil pattern jury instructions are overseen by the Maryland State Bar Association's Standing Committee to Draft Pattern Jury Instructions. For many years Judge Raker has been the Chair of the oversight committee, while continuing to chair the ongoing work of the criminal pattern instructions subcommittee.

41. In addition to Judge Raker, the charter members of the pattern criminal instructions subcommittee included Fred Warren Bennett, the Honorable Deborah K. Chasanow, the Honorable Howard S. Chasanow, M. Michael Cramer, Karl G. Feissner, Alan J. Goldstein, Deborah E. Jennings, the Honorable Jacob S. Levin, the Honorable Charles E. Moylan, Jr., the Honorable Joseph F. Murphy, Jr., the

met regularly and worked steadily to craft instructions that are accurate statements of the law, unbiased and free of argument, and clear to the average juror.

Because of the enormity of the task, the committee published its work in stages. The first portion of *Maryland Criminal Pattern Jury Instructions* was published in 1986,⁴² and, by 1991, the committee had completed its original goal. With the 1991 printing, the book contained forty-two introductory, cautionary, general, and evidentiary instructions, verdict sheets covering various matters, and nearly one hundred instructions on offenses, defenses, and parties.⁴³ Many of the instructions were accompanied by notes on use and comments that summarized the supporting legislation and case law.⁴⁴ Also included were a detailed, user-friendly index and an extensive table of authorities.⁴⁵ The introduction to the 1991 edition describes the committee's "evolving work product," as reflecting "five years of legislation and judicial interpretation since the 1986 printing."⁴⁶ The introduction closed with the following commitment: "Although this project, as originally envisioned, is now complete, the committee plans to provide annual supplementation and an expanded scope of coverage."⁴⁷

In the years since the 1991 publication of *Maryland Criminal Pattern Jury Instructions*, the indefatigable Judge Raker has held the committee to its commitment. The committee meets nearly every month to update, refine, and expand upon earlier versions of the text. The composition of the committee has changed somewhat over the years, but Judge Raker has kept the core of it intact. The Honorable Charles E. Moylan, Jr., one of the charter members of the committee and a member to this day, describes Judge Raker's influence on the committee's ongoing work:

Over more than a quarter of a century, a galaxy of lawyers and judges have come and gone, but from the beginning, Irma has been the center of gravity around which all others orbited. On my calendar to this day, I simply designate my evening assignment as "Irma's Committee." It is hard to remember that as we first

Honorable Andrew L. Sonner, and the Honorable Raymond G. Thieme, Jr. Professor Byron L. Warnken served as Reporter.

42. MARYLAND CRIMINAL PATTERN JURY INSTRUCTIONS (1st ed. 1986), *supra* note 39.

43. MD. STATE BAR ASS'N STANDING COMM. ON PATTERN JURY INSTRUCTIONS, MARYLAND CRIMINAL PATTERN JURY INSTRUCTIONS (Md. Inst. for Continuing Prof'l Educ. of Lawyers, 3d ed. 1991).

44. *Id.*

45. *Id.*

46. *Id.* at xvii.

47. *Id.*

gathered in 1981, Irma Raker was still in her rookie year as a district court judge. She was, however, then as now, the energizing force that transformed a mere committee into an institution. It is a coincidental tribute to that institution that what purports to be a collection of pattern jury instructions has, as a practical matter, come to be accepted as an authoritative textbook on the criminal law of Maryland. Irma has been the engine that made this happen.⁴⁸

As a current member of the committee, I can confirm Judge Moylan's testament to Judge Raker's leadership. Judge Raker requires consistent hard work from every member of the group, and no one works harder than the judge herself. She encourages lively debate on the substance of the instructions. She insists, moreover, upon exacting attention to the nuances of language and syntax to ensure that the instructions correctly state the law *and* are understandable to the average juror. It is not uncommon for the committee to devote multiple meetings to drafting and editing a single instruction. Only when Judge Raker is satisfied that an instruction represents the best efforts of all of us does she pronounce our work on it "a wrap."

The fruit of Judge Raker's and the committee's recent labors is the 2007 Supplement.⁴⁹ *Maryland Criminal Pattern Jury Instructions* now contains nearly 200 pattern instructions, many accompanied by notes on use; more than 300 pages of comment; and verdict sheets on such matters as the death penalty, life without parole, insanity, and lesser included offenses.⁵⁰ Nevertheless, the work continues. Judge Raker has charged the committee with the critical task of bringing the book in step with current law, which requires re-examining every instruction and comment in the book, editing and correcting the text where necessary, and adding new instructions.

48. Email from The Honorable Charles E. Moylan, Jr., Judge, Court of Special Appeals, 1970–2000, to Mary Ellen Barbera, Associate Judge, Maryland Court of Special Appeals, 2002–present (July 8, 2008 12:20 EST) (on file with author).

49. MD. STATE BAR ASS'N STANDING COMM. ON PATTERN JURY INSTRUCTIONS, MARYLAND CRIMINAL PATTERN JURY INSTRUCTIONS (Md. Inst. for Continuing Prof'l Educ. of Lawyers Supp. 2007). When the committee published the 2007 supplement, Judge Raker was, of course, Chair, and the members were Gary E. Bair, myself, Fred Warren Bennett, the Honorable Stuart R. Berger, Robert C. Bonsib, I. Matthew Campbell, Jr., Deborah E. Jennings, the Honorable Michael D. Mason, the Honorable Charles E. Moylan, Jr., the Honorable Joseph F. Murphy, Jr., Scott G. Patterson, Sarah P. Pritzlaff, Brian D. Shefferman, the Honorable Andrew L. Sonner, the Honorable Richard H. Sothoron, Leonard R. Stamm, Peter D. Ward, and Professor Byron L. Warnken. Professor Michael Millemann served as Reporter.

50. MD. STATE BAR ASS'N STANDING COMM. ON PATTERN JURY INSTRUCTIONS, MARYLAND CRIMINAL PATTERN JURY INSTRUCTIONS (Md. Inst. for Continuing Prof'l Educ. of Lawyers, 11th ed. 2007 & Supp. 2007).

The Honorable Robert C. Murphy, then chief judge of the Court of Appeals of Maryland, authored the preface to the 1991 printing of *Maryland Criminal Pattern Jury Instructions*.⁵¹ Chief Judge Murphy described the book at that time as “one of most uncommon strength,” and he predicted that the work “will forthwith accompany every criminal law practitioner, old hand and neophyte alike, to the trial table.”⁵² Chief Judge Murphy’s prediction about the value of *Maryland Criminal Pattern Jury Instructions* has come to pass. The book likely rests within easy reach of every Maryland trial judge and, I would wager, most criminal law practitioners. The pattern instructions are read aloud to juries every day throughout Maryland, and the comments are regularly consulted for their concise summary of relevant case law on virtually any criminal law subject.

The criminal pattern jury instructions, moreover, have stood the test of time and the scrutiny of Maryland’s appellate courts. The appellate courts routinely approve various pattern instructions, either expressly or implicitly, and those courts often encourage trial judges to rely on the relevant pattern instructions when charging their juries. The Court of Appeals of Maryland now requires that MPJI-CR 2:02,⁵³ the pattern jury instruction that explains the presumption of innocence and the reasonable doubt standard of proof, be given in all criminal jury trials.⁵⁴

I believe I can speak for my committee colleagues past and present in saying that, but for Judge Irma Raker’s stalwart leadership and unstinting devotion to the task, *Maryland Criminal Pattern Jury Instructions* would not be the invaluable tool for judges and practitioners that it has been and is today. We all should be most grateful to Judge Raker for this wonderful work.

51. MARYLAND CRIMINAL PATTERN JURY INSTRUCTIONS (3d ed. 1991), *supra* note 43, at xiii.

52. *Id.*

53. *Id.* at 2:02.

54. *See Ruffin v. State*, 906 A.2d 360, 371 (Md. 2006) (holding “that in every criminal jury trial, the trial court is required to instruct the jury on the presumption of innocence and the reasonable doubt standard of proof which closely adheres to MPJI-CR 2:02”).

IV. TRIBUTE TO THE HONORABLE IRMA S. RAKER

THE HONORABLE ANDREW L. SONNER*

If Rip Van Winkle had been a Montgomery County lawyer who fell asleep in 1968 and came back to a bar association luncheon this year after fifty years of deep sleep, he would notice some profound changes. When he went to sleep, the bar association had about 250 members, mostly men working as single practitioners. Today he would be taken aback by the huge number of women sitting at the lunch tables and leading the bar association as officers. When he went to sleep there were very few female lawyers, family law practitioners mainly, but after a few conversations with the women seated around him today, he would quickly see that wherever the men practice there are women there as well. Probably the most startling change of all is that in the State's Attorney's office the women outnumber the men. Irma Raker was the lead-off female lawyer who changed that. Most would correctly call the change a reform.

Just a few years before Irma Raker came to Montgomery County, when I was the deputy to William A. Linthicum, the first full-time state's attorney, we considered a female applicant, the wife of a lawyer. Although we thought she might be able to handle cases in juvenile court, we did not believe that she would be able to handle the assaults, rapes, robberies, and burglaries that were our regular fare. We worried about how she would fit in with a fraternity of lawyers with our bawdy humor, off-color jokes, and conversations similar to what one might hear in an army barrack. We also worried that she would not command respect from the police nor engage in frank discussions with them and us about the details of rape, child molestations, and sodomy cases that were part of the day-to-day fare in the office.

The first year into my twenty-five years as State's Attorney, Irma Raker's criminal law professor at American University, Washington College of Law, David Aaronson, invited me to talk to one of his classes about prosecution. I had graduated from American University in 1963, when there were two females among the eighty-nine students in the graduating class, but I could see that the student body had

* Judge, Court of Special Appeals, 7th Appellate Circuit (Montgomery County), November 1996–July 2004. State's Attorney, Montgomery County, 1971–1996. Deputy State's Attorney, Montgomery County, 1967–1971. J.D., *American University, Washington College of Law*, 1963.

markedly changed. Professor Aaronson's class appeared to be almost half young women. That was in the early seventies, which was a time of profound change in American society, and the study of law was no exception. Some of the students were openly hostile, even obnoxious, to prosecution. They challenged authority and those representing law enforcement. That included me, the chief law enforcement officer in Montgomery County.

During a break, one of the more polite students, a young woman, came up to me and wanted to discuss "No Knock" legislation. Congress had recently enacted a crime bill that codified the circumstances under which police could apply for special permission from the court not to knock before entering with a search warrant.⁵⁵ It so happened that I had just read a law review article in the *American University Law Review* on that very subject. When I told the young woman about it, she replied, "I know; I wrote it!"⁵⁶ Of course, that young woman was Irma Raker.

A few months later, when she applied for a position as an assistant state's attorney, I remembered that class, her article, and our conversation. Then, as now, there was fierce competition for jobs as prosecutors because it was a great way to break into the profession, acquire trial experience, and meet the other lawyers at the bar. Irma Raker's qualifications, however, earned her the appointment. She had been an outstanding student and had written on criminal law. It did not hurt that she had been mature and courteous to me when I was a guest at class. I want to say clearly: we selected her not based on some program designed to solicit or increase the number of female prosecutors. She won out over the male applicants because we believed, after interviewing her and considering her qualifications, that she would be better able to handle the prosecutorial power and discretion than her competition.

Irma Raker's first day as a prosecutor in district court has become one of the legends of the Montgomery County bar. At the time, the assistant state's attorneys' office in Silver Spring was a small, one-room office with no windows, located around the corner from the courtroom. District court prosecutors showed up before court, met with defense attorneys, and interviewed police and other witnesses in that little office with a few chairs and one old metal desk. On her first day, a Montgomery County officer knocked, opened the door, and saw Assistant State's Attorney Irma Raker behind the desk. In his

55. District of Columbia Court Reform and Criminal Procedure Act, Pub. L. No. 91-358, 84 Stat. 473 (1970).

56. Raker, *supra* note 28.

police command voice he asked, “Where is the state’s attorney?” Irma Raker replied, “I’m him!”

Irma Raker was followed shortly thereafter by Judy Catterton, Debby Jennings, and Martha Kavanaugh. All of them were quick learners, skilled defenders of the state’s cases, and always hard workers. They were willing to devote time at all hours to meet with police officers who worked varying shifts. As the almost all male Montgomery County Department of Police became familiar with those first female prosecutors, any reluctance to work with them vanished because of their trial skills and favorable results in court. Irma Raker led the women (and men) in forming solid and sensitive working relationships with detectives, special assignment teams, and patrol officers.

Irma Raker, however, was much more than just the first woman in the Montgomery County State’s Attorney’s Office. From the beginning, she stood out. Not to take anything away from any of the other fine men and women who worked with her, but she quickly became the “go to” person in the office—the expert lawyer who would most likely know the law and help analyze the legal problems that bedevil all prosecutors in applying the law to the facts and preparing for trial. It was not long before she was recognized outside the office and in the legal community, not as a woman prosecutor oddity, but as one effective lawyer with personal and diplomatic skills to complement her legal ability.

In the 1970s, rape laws throughout the country were undergoing reform, and an active woman’s lobby called for more sensitive treatment by police and prosecutors. Irma Raker responded on behalf of the office and took the lead in working with police and trial attorneys by designing a “kit” with instructions on preserving evidence, taking statements, and handling victims. It had been standard case-screening practice to require alleged rape victims to take polygraph tests. That ended with Irma Raker’s leadership. Her contributions remain today as standard practice.

Irma Raker tried many cases during her six years in the State’s Attorney’s Office. To describe them would take more words than allotted to me for this article. Suffice it to say that many of her well-prepared and tried cases contributed to the reputation she earned on her way to becoming a judge.

In 1979, Irma Raker left the State’s Attorney’s office and accepted an offer to go into private practice with a Washington, D.C. law firm. Those of us who remained accepted her decision to leave, but it was hard to see her go. She had developed into a major force in the

office. However, she did not stay away from us for long. In less than one year, she came back to Maryland, not as a prosecutor, but as a district court judge. She was there for two years. After Governor Hughes appointed her to the circuit court, she ran in a contested election in 1982 and earned a fifteen-year term. Before the end of that term, however, Irma Raker was appointed to the court of appeals, Maryland's highest court.

This is not the place to review all of Judge Raker's cases on the circuit court or on the court of appeals either. It also is too early to do so; she may be called back as a senior judge to sit for many years. It is regrettable that the Maryland Constitution requires judges to leave full-time service at three score and ten years, but it is likely that the legal community has not seen the end of Irma Raker. Her energy, her wide command of the law, and her wisdom are all a resource that will undoubtedly remain with the profession for many years wherever she goes.

V. REFLECTIONS: THE HONORABLE IRMA S. RAKER—JUDGE,
TEACHER, AND ROLE MODEL

DAVID E. AARONSON,* ELIZABETH I. BOALS,**
AND ANTHONY C. MORELLA***

A. *Determination to Become a Lawyer*

I always wanted to be a lawyer, from the time I was small girl. My father was a sole practitioner, practicing general law and criminal defense in New York City. I used to go to his office with him when I was small, and I recall watching him preparing his cases at night at the dining room table at our home in Brooklyn. And so it began for me.⁵⁷

Judge Raker started law school at American University, Washington College of Law (WCL), at age thirty-two. She deferred her legal

* David E. Aaronson, B.J. Tennyson Scholar and Professor of Law, *Washington College of Law, American University*. He co-directed the Trial Advocacy Program with Professor Anthony C. Morella from 1981–2004. He became Director of the Trial Advocacy Program in 2004 upon Professor Morella's retirement.

** Elizabeth I. Boals, Assistant Director of the Trial Advocacy Program, *Washington College of Law, American University*. Ms. Boals has worked with the Trial Advocacy Program since 2005.

*** Anthony C. Morella, Professor Emeritus, *Washington College of Law, American University*. Professor Morella taught at the *Washington College of Law* for 44 years until his retirement in 2004. He co-directed the Trial Advocacy Program for over 30 years.

57. Irma S. Raker, "Reflections" (Apr. 22, 2008) (unpublished – copy on file with authors).

education to start her family. Her three children were ages three, five, and eight when she started law school. She drove carpools, attended PTA meetings, participated as a scout leader, and went to classes. When her kids were unable to go to public school because of minor aches or pains, she brought them to class and told them to be “quiet and color.” And so it began for her two daughters who are now lawyers.⁵⁸

Judge Raker’s delayed start did not stop her from excelling as a law student at WCL and in the legal profession. She was a student in Professor Aaronson’s Criminal Procedure class in 1970. There were relatively few women law students at that time. Ms. Raker frequently volunteered in class, did not hesitate to disagree with her instructor, and thoughtfully, and sometimes tenaciously, defended her position. One such disagreement, concerning exceptions to the rule that police must “announce their authority and purpose” before forcibly entering a home to execute a search warrant inspired her to write a student note for the *American University Law Review* that was later published.⁵⁹ She earned the highest grade in Professor Aaronson’s class and received the American Jurisprudence Award. Also, she received the highest grade in Torts and Modern Land Transactions. She served as Associate Editor of the *American University Law Review* in 1972.⁶⁰

B. Her Public Service as a Prosecutor

Judge Raker pioneered new pathways for women litigators beginning with her first legal job. Following in her father’s footsteps, she knew that she wanted to litigate criminal cases, but as a prosecutor. At that time, Washington, D.C. area prosecutors’ offices,

58. Today Judge Raker’s youngest daughter, Leslie Janis, Esq., has her own criminal legal practice and three children of her own. “Mom has always juggled family life and work pressures extremely well,” Leslie claims.

I was three when she started law school and often would bring my coloring books and sit in the back of her law class. During the years our mom was a prosecutor, my siblings and I felt like she was around, even if she was preparing for trial while taking us to the pool. We have vivid memories of our dinner table discussions centering on her criminal cases that she prosecuted that week. As a judge, she even allowed us to go with her to the police station late at night when she needed to review and sign search warrants. I am certain all of our exposure to criminal law greatly influenced my decision to become a prosecutor and my sister’s decision to become a lawyer as well.

Interview by Andrea Leahy-Fuchek with Leslie Janis, Esq. (May 1, 2008) (on file with authors).

59. Raker, *supra* note 28.

60. Judge Raker received her Juris Doctor from Washington College of Law in December 1972.

as well as litigation sections of downtown private law firms, seldom hired women litigators. She informed Professor Aaronson that she was applying for a position as an Assistant State's Attorney in Montgomery County, Maryland. One obstacle—this office had never hired a woman litigator. Professor Aaronson recalls contacting Andrew L. Sonner,⁶¹ then State's Attorney, highly recommending Irma Raker and suggesting that he read her law review note. Judge Sonner had only recently become the State's Attorney and, in one of many innovations to follow, he hired her as the first woman Assistant State's Attorney in Montgomery County. Judge Raker served as Assistant State's Attorney from 1973–1979, becoming head of a division prosecuting felony cases. In that capacity, she helped train less experienced prosecutors and served as a role model for women following in her footsteps. Ms. Raker joined a private law firm in 1979, practicing law for less than a year.

C. Judicial Service as a Trial and Appellate Judge

She was appointed in 1980 to serve as a judge on the District Court for Montgomery County and, in 1982, she was appointed to the Circuit Court for Montgomery County. During her tenure on the Circuit Court from 1982–1994, Judge Raker decided a number of seminal cases, such as *Burning Tree Club, Inc. v. Bainum*, which was affirmed by the Maryland Court of Appeals.⁶² Burning Tree Country Club had a policy of not admitting women members. Applying Maryland Equal Rights Amendment,⁶³ Judge Raker declared unconstitutional a statute giving preferential tax assessments to private country clubs operating with the primary purpose of serving or benefiting members of a particular sex.⁶⁴ In 1994, Judge Raker became the second woman to be appointed to the Court of Appeals, Maryland's highest court, serving until her retirement in April 2008. She compiled a distinguished record as a fair-minded, thoughtful, intellectually keen, practical, and dedicated jurist, gaining the respect

61. Andrew L. Sonner served as Deputy State's Attorney, Montgomery County, 1967–1971. He served as the State's Attorney, 1971–1996. He was appointed Associate Judge, Maryland Court of Special Appeals, in November, 1996, and served until July 11, 2004, when he retired as an active judge. He continues to hear cases as a senior judge. Judge Sonner has authored numerous publications in professional journals. He received the Washington College of Law Distinguished Alumni Award in 1979.

62. 501 A.2d 817 (Md. 1985).

63. Article 46 of the Maryland Declaration of Rights, commonly known as the Equal Rights Amendment (E.R.A.), was adopted in November, 1972. It provides: "Equality of rights under the law shall not be abridged or denied because of sex." MD. CONST. DECL. OF RTS. art. 46.

64. 501 A.2d at 817.

both of plaintiff and defense lawyers in civil cases and defense attorneys, as well as prosecutors, in criminal cases. Some of her noteworthy opinions are the topic of other contributors to this tribute. She plans to continue to serve on various courts in Maryland as a senior retired judge.

*D. Her Career as an Adjunct Faculty Member Teaching
Trial Advocacy Courses*

In January, 1982, Judge Raker was recommended by Professors Anthony C. Morella and David E. Aaronson, then, co-directors of WCL's Trial Advocacy Program, for an adjunct faculty appointment to co-teach a section of Criminal and Civil Trial Advocacy. Now in her twenty-sixth year of teaching, she is the Program's senior adjunct faculty member and has taught more than five hundred law students trial skills.

Judge Raker brings a rich background to teaching trial advocacy courses and diverse experience as an accomplished litigator, service as both a trial and appellate judge, a practical understanding and appreciation of the professional standards for lawyers, including legal ethics, and an ability to serve as a role model, especially for woman students considering a litigation career.

The trial advocacy courses Judge Raker teaches are based on the theory of experiential learning or learning by doing. Students are divided into litigating teams and "try" three cases in a simulation mode throughout the semester. The focus is on learning trial skills, such as developing a theory of the case, trial themes, strategy, opening statements, direct and cross-examination of lay and expert witnesses, closing arguments, legal ethics, and the psychology of persuasion. Judge Raker has instituted innovative teaching techniques, using rapid "skill drills" to improve foundational trial techniques. She tailors her classes to her students' needs by having each student research the procedural rules of the jurisdiction in which they intend to practice after graduation.

Judge Raker's teaching excellence is evident from examining her teaching evaluations. She is consistently ranked at or near the top of the evaluation scale. An evaluation form consisting of twenty-one questions is administered to students in all WCL courses and seminars at the end of each semester. The "bottom-line" question, #21, asks students to rank "Overall, Prof. Effective" on a 5-point scale from "strongly disagree" = 0.00 to "strongly agree" = 5.0. Judge Raker's teaching evaluations for thirteen courses, from Fall 2001, through Fall 2007, are as follows:

Criminal Trial Advocacy (Fall 2007)	4.91
Civil Trial Advocacy (Spring 2007)	4.92
Criminal Trial Advocacy (Fall 2006)	5.00
Civil Trial Advocacy (Spring 2006)	4.90
Criminal Trial Advocacy (Fall 2005)	4.67
Civil Trial Advocacy (Spring 2005)	4.93
Criminal Trial Advocacy (Fall 2004)	5.00
Civil Trial Advocacy (Spring 2004)	5.00
Criminal Trial Advocacy (Fall 2003)	5.00
Civil Trial Advocacy (Spring 2003)	4.91
Criminal Trial Advocacy (Fall 2002)	5.00
Civil Trial Advocacy (Spring 2002)	4.93
Criminal Trial Advocacy (Fall 2001)	5.00

Her students rank her as one of the very best teachers at WCL.

Maryland's courtrooms and those of other jurisdictions are filled with skilled trial lawyers who benefited from taking one of Judge Raker's trial advocacy courses. To obtain greater insight into Judge Raker's strengths as a teacher and impact on her students, consider the comments of two of Judge Raker's former students. Andrea Leahy-Fuchek, Esq., a litigator who practices in Maryland, stated that it was Judge Raker's training that gave her the ability and the confidence to present her cases as a young Associate County Attorney: "It was my first day in District Court, and I had an intimidating stack of building code cases to handle. When the Judge called the first case, it was the training I received in Judge Raker's classroom that I relied upon the most."⁶⁵ Ms. Leahy-Fuchek recalls a humiliating experience in Judge Raker's trial practice class when she was assigned the direct examination of a witness and the introduction of several business records. She said that Judge Raker made her go back and start over again and again, instructing her where to stand and how to lay a proper foundation. More importantly, "I learned how to develop and implement a successful strategy for eliciting truthful and compelling testimony."⁶⁶

Christopher Fogleman recalls the emphasis Judge Raker placed on ethical issues, trial strategy and tactics. He stated:

65. E-mail from Andrea Leahy-Fuchek to David Aaronson (May 1, 2008) (on file with authors). She later became Chief Counsel to the Governor of Maryland and an Assistant United States Attorney.

66. *Id.*

To Judge Raker, the discussion did not end with the answer of whether one *may* properly ask a question, offer an exhibit, make an objection or argue an issue. Judge Raker only considered the discussion complete after thorough consideration of whether one *should* ask a question, offer an exhibit, make an objection or argue an issue.⁶⁷

Mr. Fogleman says that Judge Raker continues to be a mentor and role model to many of her former students.⁶⁸

E. Her Contributions to the Larger Legal Community

Judge Raker has made important contributions to the WCL community in addition to teaching criminal and civil trial advocacy courses. She has been an active alumna and served on the Dean's Advisory Council for eight years. Also, she volunteers her time to serve as a judge in moot court and in mock trial competitions hosted by WCL. Recently, she served on a three-judge panel for the final trials of the National High School Moot Court Competition. In 1999, she was awarded the Washington College of Law Distinguished Alumna Award.

Judge Raker has contributed to the Maryland legal community and the larger community in many ways, including service as a member of the Montgomery County Sexual Offenses Committee, a member of the Montgomery County Task Force on Battered Spouses, and an elected member for five years of the Board of Governors of the Maryland State Bar Association (MSBA). From 1980 to the present, she has served on the MSBA Standing Committee to Draft Pattern Jury Instructions in Civil and Criminal Cases and has chaired the Subcommittee to Draft Pattern Instructions in Criminal Cases. She also served as Chair, MSBA's Criminal Law and Practice Section Council.

Judge Raker has served in several leadership positions in the American Bar Association (ABA). In 2006, Judge Raker served as Chair of the ABA Criminal Justice Standards Committee Task Force on Diversion and Special Courts. She also served as Chair of the ABA Criminal Justice Standards Committee from 2002–2004.

Judge Raker has been recognized with numerous awards for her service to the legal profession. In 2007, Judge Raker was selected as a recipient of the prestigious ABA's Margaret Brent Award for her

67. *Id.* Shortly after completing Judge Raker's trial practice class, Christopher Fogleman became an Assistant Public Defender in the Montgomery County, Maryland, Public Defender's Office and won acquittals in armed robbery, kidnapping and homicide cases.

68. *Id.*

contributions to women in the legal profession. Criteria for honorees of this award are that they have influenced other women to pursue legal careers, opened doors for women lawyers historically closed to them, and that they advanced opportunities for women in law practice. Judge Raker is in good company with past honorees, such as U.S. Supreme Court Justices Sandra Day O'Connor and Ruth Bader Ginsburg.

F. Conclusion

While pursuing a career as a prosecutor and a judge, Irma S. Raker has been an outstanding teacher, mentor, and role model for WCL students. The students say it best as they characterize Judge Raker as "kind, helpful and encouraging," "experienced and knowledgeable," and "first among the best at WCL." We congratulate Judge Raker on her retirement from active status as a judge of the Court of Appeals of Maryland, and look forward to many years of continued participation in WCL's Trial Advocacy Program.

VI. TRIBUTE TO AN OUTSTANDING TEACHER

BRUCE A. FREDRICKSON*

I have had the privilege and wonderful opportunity to teach trial advocacy with Judge Raker for over twenty years now. As I introduce Judge Raker to our students every semester, I explain that Judge Raker brings a truly unique perspective to our classroom having served as an appellate judge, as a trial judge, as a trial lawyer in private practice, as a prosecutor, as a teacher of trial advocacy, and last but not least, as a student of trial advocacy in this very class at American University. Judge Raker shares these invaluable experiences with her students every night in class and outside the classroom setting as well.

For instance, as a former prosecutor and trial lawyer, Judge Raker introduces the students to a wide variety of trial tactics and techniques of persuasion from the use of demonstrative evidence to effective cross-examination to persuasive argument for both the jury and the judge. With Judge Raker on the bench, the student trial lawyers learn the technical aspects of the trade through her rulings

* A professor of Trial Practice at American University, Washington College of Law since 1986, Bruce A. Fredrickson is a founding partner of Webster, Fredrickson, Correia & Puth, PLLC, where he directs the civil litigation practice focused on the representation of employees in discrimination cases and related matters.

on evidentiary issues, motions, and objections (and it does not get any more real with an experienced judge at the helm) and her detailed explanations for her rulings. Through Judge Raker, the students also learn to try cases with a vigilant eye on the appellate record.

Having been a student in this very class herself, Judge Raker brings a warmth and concern for each individual student, and the students leave the course knowing of her interest in them as individuals and as budding lawyers. She never fails to invite the students to her chambers when they are in the courthouse or in Annapolis, and she is happy to talk trial strategy with those lucky students who serve as law students in court or participate in student trial competitions and moot courts. Judge Raker has fondly recounted to me the night she and her fellow students went to dinner at the home of Justice Goldberg, who was her teacher, and she honors this memory each semester by inviting the entire class to her home for a potluck dinner. And perhaps the happiest memory for some is Judge Raker's greeting as new members of the Maryland Bar when they are sworn in by the Maryland Court of Appeals!

I leave the final judgment on Judge Raker's career as teacher to those who mean the most—her students. Here is a sampling of quotes from her former students:

Each and every time any of us appeared before her in class, she expected the very best from us, and in doing so, taught us to expect the very best from ourselves.

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If anyone asks me about my legal education at WCL I always mention the trial practice course taught by Judge Raker and I gush about how valuable it was. I am still struck to this day that Judge Raker took the time to teach and be so engaging with the students. I will remember her as someone that always had time to speak with students about legal issues and how approachable and genuinely interested she was in each of my questions.

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I was a student of Judge Raker's in 1985–86. She was a fantastic trial practice teacher. There were two things I learned from her which have helped me succeed as a trial lawyer. These are not things she said but impressions I was left with after taking the class. 1. You can never be too prepared when you are trying a case; and 2. Creative use of the rules can lead to the admission of evidence which supports your case, while simply reciting the rule will lead to its exclusion.

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What particularly stands out in my mind about Judge Raker is the fact that she is truly committed to guiding her students so that we may not just become good lawyers but may also become greater citizens who can use the law to serve our fellow men and women, our communities, our country and our world.

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There was one class after spring break when I was completely unprepared, confused, and I gave a direct examination from the OPPOSING counsel's point of view. Needless to say, opposing counsel had no questions on cross. I was embarrassed, and felt I could quickly write up a dynamic direct during the break and redeem myself. Judge Raker was not having it. She let me—and the rest of the class—know that in the real world you get one shot and if you mess it up there are no “re-tries.” I am so thankful for that lesson, and glad that it happened with a fictional client. It has definitely helped me pay closer attention to details as I practice out here in the “real world.” Thanks Judge Raker.

—

I also feel blessed to have been able to experience Judge Raker's genuine warmth, kindness and generosity. Perhaps the fondest memories that I have of my entire three years in law school are the dinners that Judge Raker graciously hosted at her home for the students at the end of the semester. I am grateful to have had the opportunity to attend not just one, but two of Judge Raker's dinners. (Not even Martha Stewart could have been a better host!)

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Not only was my class with Judge Raker a wonderful experience, I also have fond memories of her outside of the classroom. She was very willing to have me meet with her in her chambers for advice on future directions. During the swearing in of new attorneys for the Maryland Bar, she came up to me after the ceremony to personally congratulate me. I am now a litigator and my experiences with Judge Raker have definitely helped me in my career and in the knowledge that judges can be great people as well as great jurists.

—

Judge Raker taught me that acknowledging the little things and always being prepared for the unexpected will distinguish a responsible, respected, lawyer from those just trying to “go with the flow.”

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Judge Raker taught us to advocate with intelligence and integrity to ensure that the judicial system and our reputations are never compromised. She continues to reach out to her students and inspire us to reach our true potential, and for this we will be forever grateful.

Judge Raker: There can be no doubt—you have touched many students' lives in a most meaningful and positive way! Thank you so much for your many long-lasting contributions.

VII. TRIBUTE TO THE HONORABLE IRMA RAKER
UPON HER RETIREMENT

BARLOW BURKE*

Judge Raker's name appeared in the *Maryland Law Reports* long before she became an attorney and a judge.⁶⁹ Her husband had been injured in an automobile accident around River Road's intersection with Seven Locks Road in Montgomery County, Maryland. Shortly thereafter, a shopping center developer proposed the construction of a center near that intersection. The developer filed for an administrative application for a special exception. This is a type of land use permitted in the county code only with the special permission of the county's Board of Zoning Appeals, with a public hearing required by the Board. The local residents were opposed, and some appeared at the hearing. Now usually the testimony of residents in such proceedings is vague, anecdotal, and politely received, with little cross-examination. After all, what land use attorney wants to be known as a person willing to harass residents volunteering their time?

But Irma Raker was one of the opponents in this case. She investigated the frequency of accidents on River Road, submitting to the board "a detailed list of accidents which occurred in the immediate vicinity of the River Road-Seven Locks Road intersection during 1966 and part of 1967."⁷⁰ Her list included the exact date and time, the day of the week, the location and the number of persons killed or injured in each accident, and was accompanied by a diagram of the intersection that showed the numerous cautionary traffic signs

* Professor of Law, American University, Washington College of Law. LL.B., University of Pennsylvania Law School, 1996. LL.M., Yale Law School, 1970. S.J.D., Yale Law School, 1977.

69. See *Eger v. Stone*, 253 A.2d 372 (Md. 1969) (discussing Irma Raker's involvement in a zoning dispute over a proposed shopping center).

70. *Id.* at 376.

on River Road in front of the subject property.⁷¹ Over the objection of the developer's counsel, the Board admitted her statistics—twenty-five accidents, seventeen injuries and one fatality, ten occurring within normal nine to five shopping hours—into evidence.

The Board denied the developer's application, disapproving it in part on the basis of Irma Raker's testimony, but the circuit court found insufficient evidence for doing so. The residents' attorney appealed, and in the court from which Judge Raker is now retiring, the circuit court's decision was reversed. In an opinion still regarded by land use attorneys as precedent in Maryland, the court held that the testimony of a traffic expert

. . . confirmed in part by testimony elicited on cross-examination of the experts of the applicants as well as the testimony of Mrs. Raker constituted sufficient evidence to make the matters before the Board 'fairly debatable' so that its decision denying the application for the special exception was not arbitrary and capricious and the decision of the Board could not be successfully challenged in court

This rule will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on the evidence. In the instant case, but for the rule, we might well have reached the conclusion reached by the learned lower court, but in enforcing the rule we are obliged to say that reasonable persons could have reached a different conclusion on the evidence so that the issues were fairly debatable, and hence, the decision of the Board must be sustained.

The lower court, in our opinion, . . . in effect, disregarded Mrs. Raker's testimony on the ground that it was 'hearsay'. We have recently decided, however, that not only is hearsay evidence admissible in administrative hearings in contested cases but that such evidence, if credible and of sufficient probative force, may indeed be the sole basis for the decision of the administrative body In our opinion the testimony of Mrs. Raker was clearly admissible in evidence and was of sufficient credibility and probative force to support, at least, Mr. Thomas' opinion that a traffic hazard would arise as a result of the granting of the special exception.⁷²

Hearsay? How dare they? Nonetheless, the standard for credibility of lay witnesses in zoning cases, acceptance of citizen testimony as establishing the basis for an application's denial, and acceptance of

71. *Id.*

72. *Id.* at 376–77 (cited in Marc A. Greidinger et al., *Survey: Developments in Maryland Law, 1987–1988*, 48 MD. L. REV. 785, 799 (1989)).

hearsay in an administrative forum stand today as well-established principles of land use law and procedure in the state.⁷³ This was all Judge Raker's doing, and perhaps her reason (I don't know for certain) for attending law school. She enrolled at American University the next fall, shortly after the opinion in *Egar v. Stone* was handed down.

Judge Raker was a second-year student when I began teaching at the law school. She was a student of mine in the fall of 1971, in an elective course then entitled "Modern Land Transactions." She was part of a first wave of female students to hit the law schools of this country in the wake of the women's movement. Unlike later female law students, Irma's generation had often married, started a family, and enrolled their children in elementary school. This created the conditions in which their daytime hours were then free enough for them to return to graduate and professional school. It was an exciting time to teach, just as it must have been to teach in the post-WWII period, when a wave of college bound veterans hit our campuses using the GI Bill. Irma and her generation were motivated, appreciated the opportunity to go to law school, and were eager participants in class discussions.

The academic year 1971–1972 was my second year of law teaching at American University, so I am not sure just how "modern" the transactions were that we discussed in class. In any event, in the law student parlance of the day, Irma "got the book" in the course—meaning not that she had it thrown at her, but rather that she wrote the best final examination in the course.

A Supreme Court Justice—Potter Stewart, I think—once said that the job of an appellate judge is much like that of a student. Just as students are required to take an examination after studying, an appellate judge must spend countless hours after the oral argument writing the opinion. So I am going to examine two of my former student's "examination papers" in this tribute.

Judge Raker has written brilliantly and extensively in her principled dissents on death penalty cases,⁷⁴ on the right to marry,⁷⁵

73. See, e.g., *Tauber v. County Bd. of Appeals*, 262 A.2d 513 (Md. 1970) (holding that hearsay evidence is admissible in administrative hearings, and may in fact serve as the sole basis for an administrative decision); Arnold Rochvarg, *Hearsay in State Administrative Hearings: The Maryland Experience and Suggestions for Change*, 21 U. BALT. L. REV. 1, 18 (1991) (discussing the role of hearsay evidence in administrative hearings, and arguing that Maryland courts should adopt a uniform approach towards the treatment of hearsay evidence).

74. See, e.g., *Evans v. State*, 886 A.2d 562, 584–85 (Md. 2005) (Raker, J., dissenting) ("We pay mere lip service to the principle that death is different and yet continue to impose a lower level of certainty in the death penalty context than we do

and in cases involving women's rights.⁷⁶ However, I am a teacher of property and real estate subjects, about which she has written less extensively. That's not her fault: Judge Cathell and Judge Harrell generally have the laboring oar in these cases. Nonetheless, when assigned, she performs up to their exacting standards. (Over the years, I have also learned to read the first paragraph or so of her dissents. There she always goes to the heart of the dispute with the majority and spells it out in trenchant terms.⁷⁷) In addition, lest there be any doubt, let me say that I would still award Judge Raker the "best in class" award for the real estate transaction opinions I am going to discuss. However, in the tradition of professional and professorial analysis, and because she needs no more praise from me, I will be analytical as well as laudatory.

A. *Myers v. Kayhoe*⁷⁸

This opinion resolved a dispute between a vendor and purchaser of real property involving an interpretation of a financing condition in a contract of sale. The Purchaser had paid a \$2,000 deposit and a date was set for closing, but time was not of the essence in the contract.

for other lesser important interests in Maryland."); *Miller v. State*, 843 A.2d 803, 833–50 (Md. 2004) (Raker, J., concurring in part and dissenting in part) (arguing that in order to impose a death sentence, a jury must find that aggravating factors outweigh mitigating factors beyond a reasonable doubt, rather than by a preponderance of the evidence); *Oken v. State*, 835 A.2d 1105, 1158–74 (Md. 2003) (Raker, J., dissenting) ("I would hold that portion of the Maryland Code . . . that provides that punishment shall be death if the sentencing authority finds that the aggravating factors outweigh the mitigating factors by a preponderance of the evidence violates due process . . ."); *Borchardt v. State*, 786 A.2d 631, 665–84 (Md. 2001) (Raker, J., dissenting) ("Evolving standards of decency cry out that, if a society is to impose death as a penalty, it should do so on no less a standard than beyond a reasonable doubt that the sentence is fitting and appropriate for the particular offender.").

75. See *Conaway v. Deane*, 932 A.2d 571, 635–93 (Md. 2007) (Raker, J., concurring in part and dissenting in part) (distinguishing between the right to marry and an entitlement to rights created by marriage).

76. See *Burning Tree Club, Inc. v. Bainum*, 501 A.2d 817 (Md. 1985) (involving a property tax exemption case for a country club refusing to admit women as members, heard by Judge Raker as a trial judge).

77. See *Hemming v. Pelham Wood Ltd. Liab. Ltd. P'ship*, 826 A.2d 443, 460–63 (Md. 2003) (Raker, J., dissenting) ("The entire basis of the majority opinion rests upon inadequate lighting in the rear of the apartment building. The majority holds that because the landlord provides exterior lighting . . . it had a duty to adequately maintain that lighting. From this duty . . . the majority makes the unjustified leap in logic that somehow the landlord is then responsible for violent criminal activity that occurred within the demised premises and not within the common area The only way the majority can reach their desired result is to cobble together the line of cases in Maryland imposing a duty for liability for physical harm which occurred in the common areas with the line of cases finding liability for demised premise damage resulting from a cause originating in the common area. This is a novel theory, unsupported by any authority or case law in the country.").

78. 892 A.2d 520 (Md. 2006).

The financing condition (paragraph 20 of the contract) provided:

Buyer agrees to make written application for the financing herein described [in the next paragraph (number 20) of the contract, calling for a 30 year mortgage loan for \$245,000 at 7% interest] within five (5) days from the date of Contract Acceptance. If such written financing commitment is not obtained by Buyer within thirty (30) days from the date of Contract Acceptance, this Contract of Sale shall be null and void . . . and all deposits hereunder shall be disbursed in accordance with the terms of this Contract.⁷⁹

The next paragraph (numbered 21) of the contract “specified conditions under which the requirements” of the preceding two paragraphs “could be satisfied by alternate financing,” and provided that “nothing in this paragraph shall relieve Buyer of the obligation to apply for and diligently pursue the financing described” in the preceding two paragraphs.⁸⁰

The purchasers filed one application, which was rejected. Purchasers thereafter claimed that they had met their obligations to pursue financing diligently and refused to go forward with the contract. When the vendors objected and refused to return the deposit, the purchasers sued for breach of contract and failure to return the deposit. On cross motions for summary judgment, the trial court granted the purchasers’ motion, ordering the return of the deposit.⁸¹

The court found that the contract was governed by an “objective theory of contract interpretation, giving effect to the clear terms of agreement, regardless of the intent of the parties at the time of contract formation.”⁸² Here, the language that “buyer agrees to make written application” would mean that a reasonable person would assume that an indefinite article “a” was intended to precede “written application,” meaning that the purchaser would make at least one application. Therefore, the court held that the purchasers “would only need to make one written application for the financing described”⁸³

This express language, the court said, trumped the implied obligation in every such contract condition to pursue the financing spelled out in the contract in good faith and with reasonable

79. *Id.* at 524. This condition appears in the standard form drafted by the Maryland Association of Realtors. *Id.* at n.1.

80. *Id.* at 524.

81. *Id.* at 525.

82. *Id.* at 526.

83. *Id.* at 527.

promptness. An express term negates any such implied and inconsistent duty.⁸⁴

*B. Cochran v. Norkunas*⁸⁵

In this case, Judge Raker decided that a letter of intent was an agreement to agree and that the parties were not bound to it.⁸⁶ Once again, the discussion began with the rule that the contract was governed by the objective theory of contract interpretation.⁸⁷ Are you hearing an echo of the last case here? Three of the five paragraphs of the letter referenced the use of provisions in the standard form Maryland Association of Realtors contract of sale.⁸⁸ Judge Raker must be an expert on this, right? The letter called for delivery of the standard contract to the vendor within two days. That delivery occurred and the vendor signed the contract, but did not return it, leaving the letter as the cornerstone of the agreement between the parties. Noting that the letter did not contain any promise to negotiate open terms, and that it referenced at least three terms that would have to be included in a final agreement, Judge Raker found that there was no contract capable of specific performance on behalf of the prospective purchasers.⁸⁹ Meanwhile, instead of reviewing similar cases from other states, Judge Raker takes us on a trip through the pages of the leading treatise writers on the law of contracts—Alan Farnsworth, Samuel Williston, and Arthur Corbin—as well as the Restatement of Contracts. She provides a summary of the law in this area, dearly loved by real estate developers, though not by their counsel.⁹⁰

These two cases have something in common. In each, Judge Raker invokes the objective theory of contracts. She could have expanded the duties of the purchaser in *Myers*, taking the “application” language as signifying a duty to file an application, incorporated by

84. *Id.* Did not paragraph 21 make the implied obligation express? It referred to “financing,” not an application and commitment, so does not that imply an obligation on the purchasers to keep going, applying for another loan from another lender? At least to keep going up to the 30 day time limit for obtaining a commitment? No, Judge Raker must have thought, because the specific requirement of “an application” again trumps a general requirement for “financing.” The financing to which a good faith effort applies refers to the application’s terms. Therefore, when it is filed, it must contain reasonable, market-driven terms—an interest rate available in the market, a loan of a length offered by lenders, etc.

85. 919 A.2d 700 (Md. 2007).

86. *Id.* at 712–13.

87. *Id.* at 710.

88. *Id.*

89. *Id.* at 712–13.

90. *Id.*

reference into the contract's financing condition as representative of the type of application called for, and then required that it be filed repeated times. This is the sort of interpretation used, for example, by courts imposing an implied duty of good faith and fair dealing.⁹¹ Similarly, she could have incorporated the standard form contract into the letter of intent, finding that the parties had a reasonable expectation that the letter would ripen somehow into a binding contract. She took neither course. She did what practitioners of "Modern Land Transactions" typically do—she let the documents speak for themselves. She let the documents, not the surrounding circumstances nor the expectations of the parties as they might be shown outside the four corners of the documents, control.

So Judge Raker learned something long ago, in the Modern Land Transactions course, and used her training well. No teacher could ask more of a former student! By any "objective" measure, she has been a great judge. Her law school is proud of her, and I am grateful for her service to the judiciary of Maryland and to the profession. I look forward to her sitting as a senior judge, specially assigned.

VIII. THE HONORABLE IRMA S. RAKER: A VALUED FRIEND

LINDA D. SCHWARTZ*

When asked to write a few words regarding my personal reflections on the Honorable Irma S. Raker, Judge of the Court of Appeals of Maryland, in honor of her retirement from the Court, I must admit that I hesitated before accepting the opportunity. This hesitation was motivated neither by any reticence in my personal regard for her nor by any lack of admiration for her professional talent; but rather, by my heightened sense of privacy regarding our lengthy and close relationship. But then it occurred to me that the personal side of Judge Raker should be revealed and preserved along with her very considerable professional accomplishments.

I remember vividly the first time that I met Judge Raker. She was in the *Law Review* office efficiently marshalling a myriad of editorial matters, and I was a new staff member who was struggling to figure out what working on that journal was going to entail. She was welcoming and warm, but also assertive and instructive. She had a

91. *E.g.*, *United Cal. Bank v. Prudential Ins. Co. of Am.*, 681 P.2d 390, 427 (Ariz. Ct. App. 1984) (holding that where there are no contrary intentions, there is an implied obligation to deliver marketable title on the part of the purchaser).

* Attorney-at-Law, Paley Rothman. J.D., *American University, Washington College of Law*, 1973.

job to do, and she was getting it done. Little did I know at the time that she moved quickly and decisively because she was a law student, a wife, and a mother of three children, ages three, six and eight. She was effectively keeping all aspects of her life in balance. Although I did not have the same family pressures, we connected on a spiritual basis.

After graduation, each of us decided to practice law in Montgomery County, Maryland, which enabled our paths to cross frequently and our friendship to grow steadily. In 1973, she became a trailblazer in an otherwise male-dominated profession when she was appointed as the first woman Assistant State's Attorney for Montgomery County. However, those who knew her at that time would agree that she did not view herself or her novel position as breaking ground merely for its own sake. Primarily committed to the pursuit of excellence, she strived ambitiously to become not just an effective prosecutor, but a superlative one. Ultimately, she transcended any inference of preferential treatment due to gender discrimination simply by being better than most of her peers. In the final analysis, she was able to succeed in attaining the goals that she established for herself because her colleagues at the bar, whether male or female, appreciated her talents and her gracious manner even though she challenged their respective legal skills.

When I think back to our early years of practice, I am struck by the memory of Judge Raker's consistently warm and vivacious personality. She just as easily laughed and traded stories with the police and her office personnel as she crafted the most perceptive legal arguments. A capable practitioner, she epitomized an astute strategist of the law. She would roll up her sleeves when presented with difficult issues and create imaginative and well-reasoned approaches. Throughout her career, she applied these same qualities and skills in each of her professional endeavors. She stands as a formidable lawyer and judge, one to admire and to emulate.

I could write many more paragraphs about Judge Raker's accomplishments. However, other colleagues will do so in this volume of the *Law Review*. Instead, I wish to affirm that I, like many others, value her as a precious and concerned confidant and friend. You can chat informally with her and know that what she learns during the conversation will not become part of the cocktail party circuit. She will support you through family tragedies either by just listening to your concerns and problems or by attending memorial services for your family members. She rebuffs self-importance and arrogance, while giving of herself and her time.

Prior to writing these few words, I asked Judge Raker how she would characterize her time at law school. She stated that Professor Allen King, the acting dean at the time she applied for admission, listened to her intently during an interview and that he clearly understood her passion to become a lawyer. In fact, he allowed her to attend as a part-time student so that she could fulfill both her personal family obligations and her pursuit of a law degree. She believed that he heard her voice as a young woman and that he was willing to bend the rules to accommodate her needs.

When asked about the individuals who contributed to her professional development, she easily replied that Professors Anthony Morella and David Aaronson served as role models and mentors throughout her career. Through their efforts, she honed her trial advocacy skills. Today, she and Professors Morella and Aaronson team teach the law school's civil and criminal trial advocacy classes. In addition, she remarked that she continues to nurture her close relationship with Professor Barlow Burke.

She also commented upon her fond memories regarding the incisive analyses of criminal law and procedure issues provided by Professor Barney Welsh, now deceased, a then prominent criminal law practitioner in Montgomery County, Maryland. Finally, she expressed that she takes pride in having received three book awards for earning the highest grades in Torts, Criminal Procedure and Modern Land Transactions. She chuckled when she declared that her crowning achievement was the book award that she received from Professor Burke in Modern Land Transactions because she was astonished that she had written the best exam. Do not think for one moment that her exam was less than exemplary. She was (and remains) a careful and brilliant scholar of the law as well as an accomplished writer.

While she has retired from a full time position on the court, I am confident, nonetheless, that she will continue to contribute to the legal profession and to the community in which she lives. I know that she has not yet finished her professional mission. I am eager to learn where her interests and opportunities lead her, and I look forward to many more years of our close personal friendship.

IX. THE HONORABLE IRMA S. RAKER: WHAT A LADY, WHAT A JUDGE!

GERARD M. BABENDREIER*

“Babo, Please come to my office right away!” I heard Judge Raker call across her chambers. It was Monday, August 24, 1998, my first day on the job as a rookie judicial law clerk, fresh out of law school, and my new boss had just issued her first command to me. I was immediately struck by the fact that the judge had employed my long-held nickname, which I had earned back in 1976 during the seventh grade and which I greatly preferred, much to my dear mother’s chagrin, over my given name.

As I immediately hurried toward Judge Raker’s office, all the while pondering and appreciating her informal command, I heard Kathy Parker, the judge’s secretary of many years, gently rebuking her, “You can’t call him by that name, Irma!”—yet another rather arresting informality. The judge replied, “Well, of course I can, so long as he doesn’t mind.” Mind I did not, and this first moment of my official employment with Judge Raker came to be the initiation of the most comfortable and ease-filled—as well as one of the most demanding, stimulating, and enriching—jobs I have ever held in the legal profession.

I myself never ascended (or descended) to the point of addressing the judge by her first name. Nevertheless, I came to realize from that first official exchange, during my two years of clerkship for her, and throughout my decade-long friendship with her, that the Honorable Irma S. Raker, Associate Judge of the Maryland Court of Appeals, having attained as exalted a judicial role as one can hope to achieve in any state, never once lost her lack of pretense, her facility for ease, or her sense of self. Quite simply, Judge Raker has always exuded and embodied that rarest combination of attributes, gentility marked by humility, which many of her professional brethren, both attorneys before the bar and judges behind the bench, would be well-served to imitate.

Indeed, her humble approach to all others is a characteristic that puts Judge Raker in the most excellent company of fellow jurists. It was similarly said of United States Supreme Court Justice William J. Brennan, Jr., upon his retirement from our nation’s highest court, that his most distinctive quality was his indistinguishable treatment of

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all others.⁹² No matter how different each person he encountered on a daily basis might have been, he regarded each person in the same way. Whether a fellow Justice with whom he was deliberating, an oral advocate before the bench whom he was querying, the security guard by whom he was admitted entrance to the Court each morning, or the janitor whose continual service provided him a clean office every night, each man or woman was viewed and treated with identical accord by Justice Brennan.

In the same way, Judge Raker has always seen all people, no matter how unequal in other respects, as deserving of equal respect. She has, therefore, afforded them equal treatment, not only under the law, but within her presence. It is perhaps mostly because of her unfailing recognition of the human dignity in others that Judge Raker has unceasingly earned and retained an undying respect and admiration from her former colleagues on both the trial and appellate benches, from the countless counsel who have practiced and argued before her, and possibly even from the innumerable citizens—from the loftiest to the lowliest of circumstances—who have benefited from almost three decades' worth of her wise and far-reaching decisions.

It is nevertheless certain that her greatest admirers are numbered in the significant body of her former judicial law clerks, the vast majority of whom regale her on a virtually annual basis for being both a phenomenal "first boss in the law" and a continued legal mentor to each of us. I have the enviable privilege of representing them in paying special tribute on this far more momentous occasion than our yearly gathering, the retirement from the Maryland Court of Appeals of this honorable yet humble woman. One particular example emblematic of this core characteristic of Judge Raker, and an undoubtedly fond memory for all her appellate law clerks, is the repetition of excursions that, though far from routine, we would nevertheless regularly take with her throughout Annapolis after hearing oral arguments each month. These jaunts often included a visit to the various clothing boutiques, antique shops, and wine sellers that dot the capital city's harbor streets, yet *always* ended with a stop at the Goodwill Store, where the judge would often cajole us into buying the best bargains then available. A decade later, I still receive grief from my wife for some of those purchases!

92. See Martin Tolchin, *Vacancy on the Court: A Man in Close Touch with People as Well as with History*, N.Y. TIMES, July 22, 1990, § 1, at 22 (explaining that "judges or writers, politicians or their secretaries, journalists or gardeners" could expect the same conversation with Justice Brennan).

Humility, however, is not the only hallmark of Judge Raker's personality, nor of her distinguished legal career. While I have only personally witnessed the outstanding qualities she has shown during her appellate judgeship—most notably her supreme intelligence, her clear and succinct writing, her devotion to the rule of law, and her distaste for any intellectual dishonesty—I have nonetheless heard countless renditions from fellow attorneys in the field and many visitors to her chambers of the outstanding abilities and numerous achievements that mark the judge's prior civil service. As a criminal prosecutor and later circuit court judge in Montgomery County, Maryland, Judge Raker was most renowned for her tireless devotion to the law, her complete and disinterested fairness toward all parties, and her unparalleled compassion, particularly for victims of violent crime, as well as the "the little guy."

Judge Raker's great sympathy for others in difficult situations is something I personally experienced on two occasions, one marked by my own hubris, the other by an unfortunate tragedy that befell my family a few years back. The first of these encounters with her kindness occurred upon my initial meeting with the judge in August 1996, during the summer respite between my first and second years of law school. At that time, I was serving as an unpaid intern to Andrew L. Sonner, then the State's Attorney for Montgomery County, Maryland, just a few months before his own ascendancy to the appellate bench as an Associate Judge of the Maryland Court of Special Appeals. One of my assignments that summer was to write and distribute the office's internal weekly publication of *You Should Know*, an unbound, single-stapled, short document intended to provide a quick identification and synopsis of key appellate decisions issued in Maryland during the preceding week, particularly those relating to criminal law.

One such decision was *Tyler v. State*,⁹³ in which the court of appeals unanimously reversed the defendant's criminal conviction for first degree murder and use of a handgun in the commission of a felony.⁹⁴ The court held that the State may not introduce as a prior inconsistent statement the prior statement of a witness who takes the stand but refuses to testify.⁹⁵ Though I was just a legal neophyte who had not yet taken a basic course in Evidence (such being a second-year phenomenon at my law school), I nevertheless boldly attempted to explain to all of Montgomery County's practicing prosecutors how

93. 679 A.2d 1127 (Md. 1996).

94. *Id.* at 1128.

95. *Id.* at 1131.

the State's highest court had "gotten this one wrong," and why the intermediate appellate decision of the Maryland Court of Special Appeals affirming the defendant's conviction in *Tyler v. State*,⁹⁶ authored by Judge Charles E. Moylan, Jr., was a far more convincing and astute rendering of the law. Where typical entries in *You Should Know* usually constituted no more than a paragraph or two of double-spaced type on a single page, my diatribe against the decision of Judge Raker and her colleagues on the higher court was a five-paged, single-spaced tome (which itself still paled in comparison to Judge Moylan's one hundred-plus-paged exegesis in the *Maryland Reporter*).

Unbeknownst to me, State's Attorney Sonner, whether won over by legal analysis or merely amused with my folly (he has still yet to tell me which), decided to share my writing with his very close friend, Judge Raker, who had served as one of his top, and first female, prosecutors during the 1970s. One morning shortly thereafter, I was told to report to Judge Raker's chambers, which were located a couple floors below the prosecutors' offices in the Montgomery County courthouse. Dutifully obliging, I met with the judge for a one-hour session during which she tested me vigorously on my legal theories and conclusions, proving me wrong virtually every step of the way. As she succinctly summarized the court's decision, "Though publicly controversial [the murder victim in the *Tyler* case was Jay Bias, the younger brother of Len Bias, the University of Maryland basketball star whose life had tragically ended years earlier], the decision was not legally so—hence the 7-0 unanimous result." Obviously, Judge Raker held the upper hand that day (and every day thereafter, of course). She nevertheless treated me with the utmost dignity, never once trying to make me feel inferior or insignificant, whether in her presence or in the discussion itself, each of which were merely self-imposed realizations. Thus, surely it was either pity or compassion that led her to offer me a clerkship briefly thereafter.

A more important and most poignant recognition of Judge Raker's empathy for others came through in an exceedingly kind intervention she bestowed upon my brother and sister-in-law after the slaying of their oldest son in Germantown, Maryland, in June 2005. Shortly after the arraignment of the third suspect, who was the chief defendant and later the only defendant convicted of first degree murder, I stopped by the judge's chambers and asked her if she would mind meeting with my slain nephew's parents, just so they could see a caring person within the judiciary and gain a sense that

96. 660 A.2d 986 (Md. 1995).

the “system” would handle the resolution of their son’s senseless death with the appropriate attention and fairness, not only to the defendant’s constitutional and trial rights but also to their own concerns as aggrieved citizens and grieving victims. Having asked for and expecting only several minutes of her time, given both the judge’s normally hectic schedule and my previously unannounced arrival, I was floored when she spent close to two hours with my brother and sister-in-law, answering all of their questions with clarity and conviction and offering them her heartfelt condolences and consolation for their tragic loss. This private session with Judge Raker in her chambers just after the horrific crime had occurred proved to be a turning point in my family’s recovery from the tragedy and yet another watershed milestone in nurturing my endless respect and appreciation for all that she stands for, and more so, for all that she is. Indeed, I often recall my sister-in-law’s turning to me and saying in the hallway afterwards, “Wow, what a classy lady—and what a great judge—your judge is!” Swelling with both gratitude and pride, I replied, “Yes she is, yes *my* judge is!”

Now, claiming a judge for whom you clerked to be your very own judge is a penchant among us former clerks. All along, however, my fellow colleagues and I have naturally recognized Judge Raker, and do so ever more upon this important occasion of her retirement from the Court of Appeals of Maryland as only its second, esteemed female member, to belong to all of Maryland and to hold a very special place in our state’s grand judicial history. Indeed, what a lady, and what a judge!