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BERYL LEVINE: THE PERSON AND THE JUSTICE

HONORABLE GERALD W. VANDEWALLE*

I am pleased the North Dakota Law Review provided an opportunity to acknowledge, in writing, the tenure of Beryl Levine on the North Dakota Supreme Court. The dedication of this issue of the Law Review to Justice Beryl Levine is most welcome because Justice Levine foreclosed any public acclamation by her dogged, but typically modest, refusal to allow a retirement “bash” at which she could be properly eulogized. The opinions Justice Levine wrote for the court will stand as a testimonial to her prowess as a justice, and now, future generations will be able to glimpse the person who was the justice.

Justice Levine and I, at one time, shared an interest in common—competitive bridge. I missed her as part of the bridge tournament scene and learned she was enrolled in law school. When teased about the doctor’s spoiled wife going to work, Beryl would smile and say “that’s the spoiled doctor’s wife.” The love for the law quickly replaced the love of bridge. Justice Levine did not return to the bridge table, but our mutual interest provided the commonality for discussion of many far-ranging issues.

When Justice Levine came to the court, it was clear she intended to be and was “one of the guys.” “Guys,” I was to learn from her, is a gender neutral term. Justice Levine is proud of and is acknowledged as the first woman to serve on the North Dakota Supreme Court. However, to limit her place in the history of the court to that fact, significant and historic though it is, does not alone do justice to the Justice. Any justice, in this case a woman justice, of modest ability would lay claim to the same place in history. But Justice Levine was no ordinary person; she brought to the court not only her womanhood but also a superior legal mind. That legal mind, combined with an unrelenting drive for excellence for the end product of the court as well as her own personal work, spurred all of us to critically examine our positions. The discussions over legal issues before the court, and some not before the court, are cherished memories. The thoughts and ideas we exchanged continue to revolve in my mind.

Beryl Levine’s reputation for her skill as a trial advocate preceded her to the bench. I expect she was a rugged adversary. The demand for excellence from herself and others accompanied Justice Levine to the bench and her probing questions to counsel during oral argument are

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well-known among the bar. What may not be as well known to those who only saw her in the courtroom is the warmth of Beryl Levine as a person. I am not sure she totally realizes the charisma she held for those who knew her as a person. If she did realize it, she concealed that awareness well. She was seldom alone in a crowd. From my travel out of state, I know that once having met her, people remembered Justice Levine with admiration and affection.

Justice Levine is, I believe, one of the best writers in the court's history. That talent of expression is also present verbally—she is a fine orator and no one nods off during one of her speeches. The invitations asking her to speak were many. Unfortunately, the lack of time for preparation caused her to decline several. Those invitations were born not alone out of the uniqueness of her position as the first woman justice, but out of the well earned reputation as an orator. She was eloquent. On a subject close to her being, she was a passionate speaker. The combination could be spell binding. Justice Levine's ability to "turn a phrase" was the envy of all of us. Several of those phrases are already a part of the legal lexicon of our state's jurisprudence and she has been quoted by the United States Supreme Court.¹

For all her many talents, my obvious admiration for Beryl Levine, the Justice, is most inspired by her respect for the rule of law. If the rule of law required a result different than she desired, the rule of law was to be followed. Only in rare instances, and only after deep research and reflection, would she seriously consider a change in the court's position.² This strength to put personal beliefs and prejudices aside for

1. See *United States v. Virginia*, 116 S. Ct. 2264, 2287 n.20 (1996). Justice Ruth Bader Ginsburg, in the Court's majority opinion, quotes Justice Levine's comments from her presentation at the Eighth Circuit Judicial Conference in Colorado Springs, Colorado, on July 17, 1987:

"Plato questioned whether women should be afforded equal opportunity to become guardians, those elite Rulers of Platonic society. Ironically, in that most undemocratic system of government, the Republic, women's native ability to serve as guardians was not seriously questioned. The concern was over the wrestling and exercise class in which all candidates for guardianship had to participate, for rigorous physical and mental training were prerequisites to attain the exalted status of guardian. And in accord with Greek custom, those exercise classes were conducted in the nude. Plato concluded that their virtue would clothe the women's nakedness and that Platonic society would not thereby be deprived of the talent of qualified citizens for reasons of mere gender."

Id. (citing Honorable Beryl Levine, *Closing Comments*, 6 LAW & INEQ. J. 41, 42 (1988)). For my part, I liked the portion of the speech wherein Justice Levine said:

I suppose that the response of the original intentionalists among you to the panelists' concern that that philosophy of constitutional interpretation raises grave implications for the status of women in our society, would be, in the tongue of the Romans, *sic biscuitas disintegrans*—that's how the cookie crumbles. Let me say then to those who share the concern of the panel, and with apologies to Cicero, and with true *ad hominem* logic: *nonlite te bastardes carborundorum*—don't let the bastards get you down.

Honorable Beryl Levine, *Closing Comments*, 6 LAW & INEQ. J. 41, 42 (1988).

2. Although my respect and admiration for Justice Levine is, by this time, quite apparent, the reader should not conclude we always agreed on the rule of law, or when it should be changed. See,

the rule of law is the hallmark of Canon 3(B)(5) of the Code of Judicial Conduct.³ We all strive for that ideal. Justice Levine came closer to fulfilling it than most of us.

I do not intend that the reader be left with an impression that Justice Levine's time on the bench did not have its downside. She spent endless hours working in her office and her apartment and, although she seldom talked about it, separation from home and family took its toll. Yet she placed the work of the court ahead of her personal schedule. And, there were those who questioned motives when stereotypical images were attacked in her writing. But, I expect Justice Levine agrees there were many more positive occasions. I recall her reveling in her work to the extent she would remark "and to think I actually get paid for doing this." I encouraged her to stay away from legislators while in that euphoric mood!

Justice Levine would not want me to understate the importance of her position as a woman—the first woman—on the North Dakota Supreme Court. She was keenly aware of her obligation, of her "firstness," and of her womanhood on the court. But she was far more than a female figurehead or a "token" female on the court. She keenly felt an obligation to correct the gender inequities which exist in our law. Justice Levine exposed us, as only a colleague on the bench can do, to points of view that otherwise may have gone unnoticed or been ignored. Her position is perhaps best reflected by the words of Elizabeth Cady Stanton when she wrote: "all laws which prevent women from occupying such a station in society as her conscience shall dictate, or which place her in a position inferior to that of man, are contrary to the great precept of nature, and therefore of no force or authority."⁴

And, she knew that her presence alone on the bench was a sign to the many young students, girls and boys, who visit the supreme court, that it is normal for women to occupy high profile positions of trust and authority. Because she was the first woman to sit on the court, Justice Levine knew she was watched more critically than the rest of the court. As a result, she had a concern, unwarranted in my mind, that she might

e.g., *Bulman v. Hulstrand Const. Co.*, 521 N.W.2d 632, 641 (N.D. 1994) (VandeWalle, C.J., dissenting). Our disagreement on the law obviously did not translate into any personal bad feeling. The work of the court is well-served when disputes over legal issues are devoid of personality clashes.

3. Canon 3(B)(5) of the Code of Judicial Conduct provides:

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

4. 1 HISTORY OF WOMAN SUFFRAGE, 1848-1861, at 72 (Elizabeth Cady Stanton, et al. eds, New York, Fowler & Wells 1881).

be found wanting. But failure is not something that is a part of Beryl Levine's psyche. Her efforts not only make it easier for other woman to follow her to the bench, her success should encourage them to do so.

Those efforts, only a few of which I mentioned, culminated in national recognition when on August 4, 1996, at the National Convention of the American Bar Association in Orlando, Florida, the coveted Margaret Brent Women Lawyers of Achievement Award was bestowed on Justice Beryl Levine. By her efforts as a woman lawyer and Justice, Beryl Levine brings honor to the State of North Dakota as well as to her family.

Whether she intended it or not, Justice Levine has established a standard of excellence that all of us, woman or man, on the bench, or who aspire to come to the bench, will be hard pressed to reach. Justice Beryl Levine will be remembered as a great jurist who was a woman.