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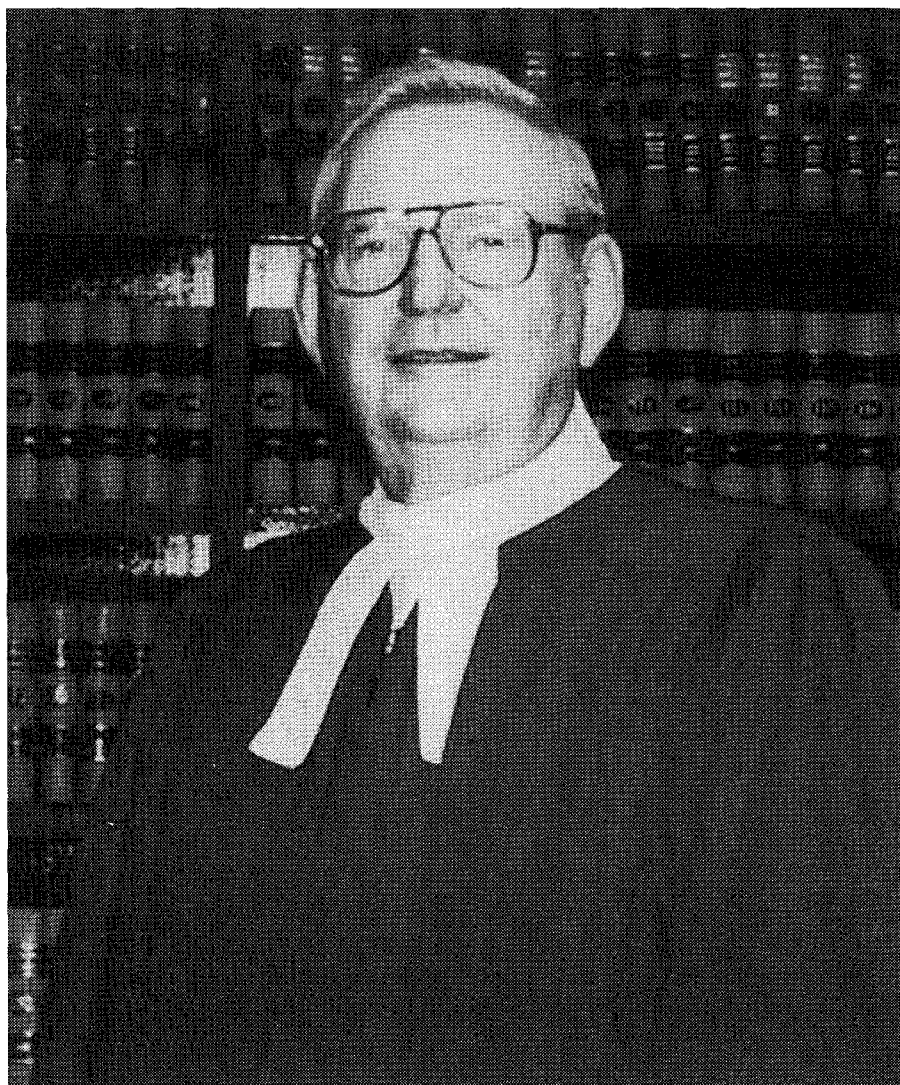
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# Tributes to Judge Lawrence F. Rodowsky

## **Authors**

Peter F. Axelrad, Alan M. Wilner, Ellen L. Hollander, Pamela J. White, William L. Reynolds, Jana Singer, Gordon G. Young, Mary H. Keyes, and Kenneth Turnbull



JUDGE LAWRENCE F. RODOWSKY

The editors of the *Maryland Law Review* dedicate  
this issue to Judge Lawrence F. Rodowsky.



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## Tributes

### TRIBUTES TO JUDGE LAWRENCE F. RODOWSKY

#### INTRODUCTION

PETER F. AXELRAD\*

Judge Lawrence F. Rodowsky is an example, to lawyers and judges alike, of how an appellate judge should work. Judge Rodowsky has, through hard work and inescapable intelligence, contributed to the body of law in Maryland for over twenty years. His careful research and articulate writing has guided a generation of lawyers in this State. But, most of all, Judge Rodowsky's warmth and sincerity is the quality that the lawyers of Maryland cherish the most. He has many true friends and probably no enemies. And he cares about the quality of justice dispensed in the state of Maryland and strives always for excellence.

Judge Rodowsky was first an active trial practitioner before being appointed by Governor Hughes to the Court of Appeals in December 1979. He is a former Chair of the Maryland State Bar Association, Section of Litigation. He has worked diligently to level the playing field for women lawyers as well as women litigants. In that vein, he served as the Chair of the Committee on Gender Equality, appointed by the late Chief Judge Robert C. Murphy.

I am proud to call Larry Rodowsky my friend. He and Colby are a part of the fabric of our lives. He is my former law partner and frequent lunch companion. He and another friend, the late Judge Frank A. Kaufman, "presided" over our marriage. And I am only one of

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\* Partner, Council, Baradel, Kosmerl & Nolan, P.A., Annapolis, Maryland.

hundreds of people Larry has befriended. Simply put, he cares about people, both on and off the bench.

I am thankful that Judge Rodowsky's *alma mater*, the University of Maryland, has decided to dedicate this issue of the *Maryland Law Review* to one of its most distinguished and beloved graduates. Judge Rodowsky's scholarship and leadership are the perfect role model for either lawyer or judge. And his love for the law is truly inspirational.

#### A TRIBUTE TO JUDGE LAWRENCE RODOWSKY

ALAN M. WILNER\*

Participating in a tribute such as this is a daunting task. Judge Rodowsky's contribution to the law and jurisprudence of this State has been so enormous that one hardly knows where to begin, or end. Others, I expect, will focus on some of his opinions for the Court of Appeals, on his work with the Gender Equality Committee or the Rules Committee, or on some of the cases with which he was involved as an attorney. I prefer to write about my perceptions of him as a colleague, gained during the four-plus years we served together on the Court of Appeals.

Appellate courts are often judged in terms of the particular qualities of the individual judges serving on them. We sometimes hear, "Judge X writes really well," "Judge Y is a true expert in products liability," or, regrettably, "Judge Z hasn't a clue." Appellate courts are much more than the sum of the particular talents of their members, however. They are, or should be, collegial courts, to the end that their opinions, though drafted by individual members, are really the collaborate product of all of the judges. Each judge brings to the table his or her wisdom, experience, philosophy, and personality, and all of those things enter the mix and define both the court and its work product.

Larry Rodowsky brought to the Court of Appeals a positive abundance of all of those things—innate wisdom and intelligence, a wealth of experience in the practice of both public and private law, a philosophy founded on the precept that the function of law is to promote justice and that the function of the court is to apply the law in a just manner, and a personality that was both engaging and soothing. Through his service in the Attorney General's Office from January 1960 to January 1962, and through his work thereafter with the law firm of Frank, Bernstein, Conaway & Goldman, Judge Rodowsky knew

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\* Judge, Court of Appeals of Maryland.

and was able to articulate how law should be practiced and how the court system ought to operate. Whether the issue was some arcane principle of property or commercial law, a broad tenet of constitutional law, or some detail of the litigation process, his views were always listened to with great respect—even if other judges disagreed with him—because his colleagues knew that those views were well-researched and carefully thought through.

However bright the individual judges may be, the court suffers if they are unwilling or unable to listen with respect to the differing and dissenting views of their colleagues, to step back and reexamine their own views and positions in light of what other judges are saying, and to attempt to accommodate those differing and dissenting views whenever possible, without sacrificing their own principles and beliefs. Larry Rodowsky excelled in that regard. As each case or proposed opinion was presented for consideration, he would listen carefully to the discussion around the table, and he was not averse to modifying language in his draft opinions or even changing his mind on the merits of an issue when convinced that the other view was, indeed, the correct one. More often than not, he was the *convincor*, causing others to consider changes, rather than the *convinced*. Throughout it all, though—however intense and passionate the debate—he never once lost his temper, made an inappropriate remark, or let pride, ego, or unreasoned stubbornness get in the way of conciliation and compromise.

That attribute of collegiality made the Court a far better tribunal than it otherwise would have been. It allowed the debate and discussion to remain at a higher intellectual level, it encouraged constructive give-and-take, and it made court conferences something that judges looked forward to.

For no reason other than the number of trips the earth has made around the sun since the day Judge Rodowsky was born, his full-time service as a judge has come to an end. Fortunately, the orbital movement of our planet has not diminished either his intellect or his willingness and ability to make further judicial contributions. With pleasure and gratitude, the Court of Appeals has recalled Judge Rodowsky, as a retired judge, to sit from time to time on both the Court of Appeals and the Court of Special Appeals, so that the State and its citizens may continue to benefit from his wisdom, experience, and good cheer.

## LAWRENCE RODOWSKY: A MAN OF MANY TASTES AND TALENTS

ELLEN L. HOLLANDER\*

I was not familiar with the delicacy of Braunschweiger until 1975, when I joined the Baltimore law firm of Frank, Bernstein, Conaway & Goldman. There, I first met Lawrence F. Rodowsky, an esteemed partner in the firm. At the litigation department's luncheon meetings, Braunschweiger was one of Larry's favorite selections. I soon realized that Larry's legal prowess was as legendary as his culinary taste.

Even to a legal novice, Larry's brilliance was immediately apparent. Yet he was equally admired for his modesty and unpretentiousness. Larry's unflappable, studied, and steady manner never masked his deep and abiding passion for the law—a passion exceeded only by his complete devotion to his family and his unbridled enthusiasm for the Baltimore Colts.

As a newcomer to the firm, I initially worried about how I might fare in my assignments from Larry, because he was not especially prone to chit chat. Moreover, given the challenging cases in which he was always involved, I was not sure if I would fully understand the tasks. Happily for me, Larry was a master at making some of the most complex and convoluted cases seem easy. I soon realized that Larry's seemingly quiet manner was merely a veneer. Larry was then, as he is now, a gentle and humble person, amazingly patient, down-to-earth, and, to my relief, eminently approachable.

Larry continuously amazed us with his ability to find some of the most boring subjects interesting. Indeed, no subject of the law was ever too dull or too technical for Larry; the more obscure the matter, the more Larry seemed to revel and thrive. My colleagues and I were also in awe of Larry's incredible talent for synthesizing the facts and analyzing every nuance of the law. He was equally adept at crafting legal theories to advance his position, frequently contributing to the development of the law in this State. Larry's vision of the law, and his recognition and respect for what it could achieve, provided an inspiring example to many younger lawyers in our office.

Larry is the epitome of the best in the legal profession. While working with Larry, I gained significant insight into his formula for success. His clients were of paramount importance. Although Larry brought to the practice of law an unparalleled dedication to his clients' causes, he never sacrificed his civility or his integrity. Larry's meticulous attention to detail and his work ethic, combined with his

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\* Judge, Court of Special Appeals of Maryland.



fervent pursuit of excellence, are among his many hallmarks. The examples Larry provided about the importance of careful and thorough preparation will continue to inform those of us who were privileged in the early stages of our careers to work with such a legal giant.

Larry's unique talents have been matched by his tireless commitment to promoting gender equality at the bench and bar. Some may not realize, however, that Larry took up the cause of gender equality well before it became popular to do so. As a devoted father of five girls (and one son), and husband of a successful author, Larry has long practiced what he preaches. Certainly, at our firm, Larry was a person ahead of the times in regard to promoting the cause of women, and I know that first hand.

When I joined Frank, Bernstein, Conaway & Goldman, the large influx of women to the profession was really just beginning. At that time, only two other women lawyers (Ann Turnbull and Ellie Carey) were then employed by the firm. Three-and-a-half years later, in 1978, I became the firm's first pregnant associate. Upon entering Larry's office to tell him of my news, I was not sure how he would react. Admittedly, I was quite nervous. As soon as I disclosed my situation to Larry, I was met with a deafening silence, which certainly heightened my anxiety. My concerns escalated when Larry turned around in his swivel chair, his back to me, and seemed to stare into space. I was left to stare at Larry's prized, stuffed blue marlin, hanging on the wall behind his desk. In his characteristic way, Larry pensively and carefully considered the matter at hand for what seemed like an interminable period of time. The silence continued. Then, with great aplomb, Larry matter-of-factly said: "Well, I guess we'd pay a guy if he had the DTs, so we'll just pay you." And, with his enthusiastic support, as well as the support of an enlightened partnership, my circumstance became a non-issue for me and, in the years that followed, for several other female lawyers at our firm.

How honored and privileged I was when, in 1980, Larry invited my husband and me to his investiture ceremony at the Court of Appeals. Truly, it was a joyful and glorious day for all Marylanders when Larry ascended to the Court. Larry's position on the State's highest Court was much deserved, and was a fitting tribute to his remarkable career. His obvious belief in the rule of law undergirds the many landmark opinions that he authored for that distinguished Court.

It has been my enormous good fortune to know such a superb attorney and judge, whose record as an outstanding public servant is just one of his many notable legacies. With his abounding talents, his unwavering decency and honesty, and his perpetual good humor,

Larry Rodowsky is a true luminary. He helped to light the way for many young lawyers by encouraging us to develop our own talents. Moreover, the high standards he set inspired us to meet his expectations. Larry's example of an outstanding practitioner and jurist will resonate forever with me and so many others.

COACH LARRY RODOWSKY

PAMELA J. WHITE\*

It is no secret that Larry Rodowsky is an avid fan of Baltimore's professional sports teams. It is no surprise that Judge Lawrence F. Rodowsky is a good sport and team player in all of his professional activities. It is noteworthy that Judge Rodowsky served with distinction as the first team captain and MVP of the Maryland Select Committee on Gender Equality beginning in 1989.

Judge Rodowsky had been sitting on the Maryland appellate bench for ten years when he joined twenty judges and lawyers appointed to the Select Committee by Chief Judge Robert C. Murphy and the Maryland State Bar Association's Robert W. Titus.<sup>1</sup> Judge Rodowsky and the Select Committee members were to begin the daunting process of eliminating gender bias from the Maryland judicial system. Judge Rodowsky "brought stature, integrity and honesty to the whole process."<sup>2</sup>

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1. The original members of the Select Committee included Vice-Chairs William B. Dulaney (Carroll County) and Hon. James S. McAuliffe, Jr. (Montgomery County Circuit Court), with Hon. David Ross (Baltimore City Circuit Court), Hon. Raymond G. Thieme, Jr. (Anne Arundel County Circuit Court and Chair of Conference of Circuit Court Judges), Hon. Robert F. Sweeney (Chief Judge, District Court of Maryland), Hon. Rosalyn B. Bell (Court of Special Appeals), Hon. William H. Adkins, II (Talbot County District Court and Vice Chair of Executive Committee of Maryland Judicial Conference), Barbara Kerr Howe (Baltimore County Circuit Court), Hon. Clayton Greene (Anne Arundel County District Court), Hon. Keith E. Mathews (Baltimore City District Court), Hon. Theresa A. Nolan (Prince George's County District Court), Eric M. Johnson (Montgomery County), James C. Chapin (Montgomery County), M. Albert Figinski (Baltimore City), L. Paige Marvel (Baltimore City), M. Peter Moser (Baltimore City), Pamela J. White (Baltimore City), Lynne A. Battaglia (Howard County), Edward P. Camus (Prince George's County), and Linda H. Lamone (Anne Arundel County).

Of this group, Judges Bell and Adkins, and attorneys Moser and Lamone, also had served as members of the Special Joint Committee on Gender Bias in the Courts. That Committee was chaired by Judge Hilary D. Caplan and included reporter Karen Czapan-skiy, Hon. Marvin J. Garbis, Hon. William D. Missouri, and Hon. Louise G. Scrivener. Deborah Unitus of the Administrative Office of the Courts has staffed both Committees and continues to serve the Select Committee.

2. Videotape: The Committee on Gender Equality, Ten Year Anniversary (presented April 26, 1999) (remarks of Linda Lamone) (on file with author).

The purposes of the Select Committee had been determined in the landmark Report of May 1989 by Chief Judge Murphy's Special Joint Committee on Gender Bias in the Courts. That Report had followed more than two years of case studies, surveys, and public hearings to conclude, simply and unequivocally, that "gender bias exists in the courts of Maryland, and it affects decision-making as well as participants."<sup>3</sup> The Report explained:

Gender bias exists when people are denied rights or burdened with responsibilities solely on the basis of gender. Gender bias exists when people are subjected to stereotypes about the proper behavior of men and women which ignore their individual situations. Gender bias exists when people are treated differently on the basis of gender in situations where gender should make no difference. Finally, gender bias exists when men or women as a group can be subjected to a legal rule, policy or practice which produces worse results for them than for the other group.<sup>4</sup>

With his appointment of Judge Rodowsky to head the new implementation committee, Chief Judge Murphy reflected the commitment of the Maryland judiciary to four purposes:

- 1) In consultation with the Maryland Institute for Continuing Professional Education for Lawyers, Inc. (MICPEL) and the Judicial Institute of Maryland, to assist in the development and scheduling of educational programs for members of the bench and bar designed to educate attorneys and judges of the means by which gender bias may be eliminated in the Maryland legal system.
- 2) To monitor and report on the progress in achieving gender equality in the Maryland legal system.
- 3) To monitor and make periodic reports on the status of implementation of recommendations of the Special Joint Committee on Gender Bias in the Courts.
- 4) To make periodic reports to the Chief Judge of the Court of Appeals of Maryland and to the President and Board of Governors of the Maryland State Bar Association on the work of the Committee.<sup>5</sup>

Little in Judge Rodowsky's litigation and judicial experience suggested that he was the right player at the time to focus on problems of

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3. MD. SPECIAL JOINT COMM. ON GENDER BIAS IN THE COURTS [hereinafter REPORT OF 1989], Introduction at ii (May 1989).

4. *Id.* at iii.

5. MINUTES OF SELECT COMM. ON GENDER EQUAL. (Inaugural Meeting, July 25, 1989).

gender bias in Maryland courts or to advance the interests of women in the administration of justice. But his key role to promote judicial education provided a solid foundation for the projects of the Select Committee. Judge Rodowsky had been a member of the Judicial Institute of Maryland since 1981, and became Chair in 1987. The Judicial Institute is a critical resource to prepare Maryland's judges to meet increasingly complex challenges in the administration of justice.

Judge Rodowsky's agenda for the new Select Committee focused on judicial education and mandated: "Education concerning domestic violence cases is the highest priority objective for our committee."<sup>6</sup> This agenda priority followed from the 1989 Report's horrific case studies regarding the judicial system's failure to appreciate the sources, consequences, and solutions for domestic violence.

Beginning with Judge Rodowsky's ambitious schedule of educational bench meetings throughout the State,<sup>7</sup> fundamental changes occurred in the ways that all Maryland courts address problems of domestic violence and broader issues in family law. Twenty-five members of the bench and bar teamed with members of the Select Committee for intensive facilitators' training to conduct meetings with every circuit and district court bench from November 1989 through October 1990. Maryland's judges learned of particular problems facing the courts in cases of domestic violence. Similar educational programs were brought to the District Court Commissioners. The 1989 Report had recommended, and Judge Rodowsky's Committee was instrumental to promote:

- continuing education of all court personnel as to the nature, characteristics, defenses and impact of domestic violence;
- rules changes to resolve substantive and procedural problems of domestic violence matters in the courts;
- altered calendar preferences, uniform procedures to address domestic violence matters; coordinated civil and criminal proceedings; pilot program to prioritize civil protective orders in domestic violence matters;

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6. Letter from Lawrence F. Rodowsky, Associate Judge, Court of Appeals of Maryland, to Members of the Joint Committee on Gender Equality (Sept. 1, 1989) (on file with author).

7. Chief Judge Murphy also committed considerable judicial time and resources and provided his own "full support" to education in solving problems of gender bias which exist in our legal system. Letter from Judge Robert C. Murphy, Chief Judge, Court of Appeals of Maryland, to Pamela J. White (Aug. 24, 1989) (on file with author).

- monitoring and evaluating court personnel for gender neutrality in domestic violence matters, child custody and support matters, alimony and property disposition.<sup>8</sup>

Through the ensuing ten years,<sup>9</sup> the Select Committee addressed revisions to the Family Law article of the Maryland Code and monitored initiatives to combat domestic violence. The Family Violence Council is a visible, effective partnership of the judiciary and executive branch leadership, instrumental to promote educational programs for judges, mental health practitioners, 911 call-takers, and community groups. Orders of protection are now available to persons seeking protection from an abusive spouse in a marriage or to persons living together.

The 1989 Report contemplated changes in domestic or family law. Upon considering the existence of gender bias in child custody decisionmaking, the 1989 Report indicated that both men and women are disadvantaged by biased attitudes of some judges who believe that “men are unfit for custody because of their sex, and that men should not become too involved with their children.”<sup>10</sup> On the other hand, the Report noted the belief of some judges that “women are unfit for custody if they engage in sexual conduct, are economically inferior to the father, work outside the home, or do not fulfill the judge’s concept of a perfect mother.”<sup>11</sup> The Report recommended:

- continuing education of all court personnel as to relationship of gender with economic considerations, stereotypical preferences, and attention to parental sexual activities, in domestic violence, child custody and child visitation matters;
- develop guidelines and continuing education as to economic costs of childrearing, economic consequences of divorce, wage earning potential of economically dependent spouses, and importance of enforcement and collection of child support awards.<sup>12</sup>

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8. Judge Rodowsky was honored for his leadership efforts at a ten-year anniversary celebration of the work of the Select Committee on April 26, 1999. At that time the Select Committee prepared a written program, videotaped commendations of Judge Rodowsky, and released a number of retrospective articles on which this piece has relied. See, e.g., Pamela J. White, *Gender Equality—Are We There Yet?*, 32 MD. BAR J. 13 (1999); *Gender Equality and Diversity in Maryland’s Courts: 10 Years After the Report*, DAILY RECORD, Apr. 22, 1999, at 1C.

9. REPORT OF 1989, *supra* note 3, Executive Summary § 1, at vii-xi.

10. *Id.*, ch. 2, at 42.

11. *Id.*

12. *Id.* at 42-43.

Perhaps the single most visible development in court administration in the 1990s was the development of family courts in several jurisdictions. In addition, in Judicial Institute courses, judges and masters were informed about problems of gender prejudice and stereotyping in awards of child custody and visitation. Other less visible educational developments impacting the courts were promoted by the Select Committee. The Maryland Board of Law Examiners was urged, successfully, to include "family law" as a subject matter for examination of applicants for admission to the Maryland bar. Judge Rodowsky's logic was compelling in his explanation to Board of Law Examiners Chairman Charles Dorsey:

If Family Law is a compulsory subject on the bar examination, more law students will study that subject in law school. Presumably the law professors will present custody, spousal and child support, equitable division of marital property, and protection from domestic violence without predispositions and stereotyping based on sex. Absent a law school background in the subject, many new lawyers may learn some aspects of Family Law from more experienced practitioners who may be less gender equality enlightened than the academics.<sup>13</sup>

Judge Rodowsky's agenda set a high performance standard for his successor committee chairs.<sup>14</sup> The Honorable Lynne Ann Battaglia, United States Attorney, issued the Select Committee's Report in 1992, identifying progress in the quality of judicial education programs.<sup>15</sup> By 1992, gender issues were being addressed in Judicial Institute programs, while bench and bar seminars also focused on particular problems of sexual harassment in the legal workplace. MICPEL programming for lawyers had not been too far removed from Judge Rodowsky's agenda.<sup>16</sup> Beginning in 1990, the Select Committee identified itself as a resource "to incorporate gender equality concepts into the regular continuing professional education courses presented

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13. Letter from Lawrence F. Rodowsky, Associate Judge, Court of Appeals of Maryland, to Charles Dorsey, Chairman, Maryland Board of Law Examiners (1990) (on file with author).

14. Select Committee chairs following Judge Rodowsky were Judge James S. McAuliffe, Lynne A. Battaglia, Esq., Judge Theresa A. Nolan, Pamela J. White, Esq., and Judge Ann S. Harrington.

15. MD. JUDICIARY & THE MD. STATE BAR ASS'N, REPORT OF THE SELECT COMMITTEE ON GENDER EQUALITY (OCT. 1992).

16. MICPEL is the continuing legal education arm of three sponsoring organizations, created in 1976 by the Maryland State Bar Association, the University of Maryland School of Law, and the University of Baltimore School of Law.

through MICPEL.”<sup>17</sup> The Select Committee also became a resource to the faculty of the mandatory professionalism course for new admittees to the Maryland bar. Following Rule 11 of the Rules Governing Admission to the Maryland Bar, a diverse faculty representing the best of the Maryland bench and bar was prepared to identify unacceptable instances of gender bias in law practice.

Judge Rodowsky and members of the Select Committee worked directly with the Maryland State Bar Association and local bar groups<sup>18</sup> to fulfill one of the recommendations of the 1989 Report: to “develop and conduct informational campaigns designed to make members aware of the incidents and consequences of gender-biased conduct toward women litigants, lawyers, and witnesses on the part of judges, lawyers, and court personnel.”<sup>19</sup> The 1989 Report had explained the need for restating the highest standard of unbiased courtroom conduct by judges and lawyers:

Once in the courtroom, female witnesses and parties reported that their testimony is treated as trivial and dismissed . . . . Comments are made about their personal appearance; they are treated disrespectfully with informal and condescending modes of address; and their sexuality is made the subject of judicial attention . . . .

Female attorneys find that the court can be an environment which is uncomfortable and sometimes hostile. Sexually-oriented jokes are not uncommon; nor are conversations between judges and male counsel which exclude female counsel. Some lawyers report being propositioned by judges, which contributes to their discomfort.<sup>20</sup>

In addition to educational programs of the bench and bar, the 1989 Report recommended that judges ought to “monitor behavior in courtrooms and chambers and swiftly intervene to correct lawyers, wit-

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17. Letter from Judge Lawrence F. Rodowsky, Chair, Select Committee on Gender Equality, to Robert H. Dyer, Jr., Executive Director, MICPEL (Apr. 24, 1990) (on file with author).

18. According to 1999 minutes of the Gender Issues Committee of the Bar Association of Baltimore City, that Committee works: (1) to monitor the progress and improve the condition of women in the legal profession; (2) to provide lawyers with an opportunity to share concerns and communicate with one another in a supportive forum; and (3) to promote the participation of the BABC in substantive areas of law and legislation that present issues of particular concern to women in the profession, and to those who seek legal services.

19. MD. JUDICIARY & THE MD. STATE BAR ASS'N, *supra* note 15. The Select Committee's effort in the 1990s also extended to promoting civility codes, proposing changes to the Code of Professional Conduct, reviewing judicial selections and the work of the Governor's Nominating Commissions, and promoting increasing numbers of women on the bench.

20. REPORT OF 1989, *supra* note 3, Executive Summary § 4, at xxxiii, xxxv.

nesses, and court personnel who engage in gender-biased conduct.” Similar findings by task forces in court systems across the country and attorney surveys confirmed that “many lawyers think judges should intervene to remedy inappropriate behavior.”<sup>21</sup> Some states also have adopted disciplinary rules specifically barring gender, racial, and other discrimination by lawyers. District of Columbia Rule of Professional Conduct 9.1 provides for disciplinary sanctions of a lawyer for discrimination “against any individual in conditions of employment because of the individual’s race, color, religion, national origin, sex, age, marital status, sexual orientation, family responsibility or physical handicap.”<sup>22</sup>

In Maryland, judges are now duty bound by the canons of judicial conduct not to manifest bias or prejudice in the performance of their judicial duties on the basis of sex, or to permit staff, court officials, and others subject to their direction and control to do so.<sup>23</sup> A judge’s Adjudicative Responsibilities are described in Canon 3, among them:

A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socio-economic status, against parties, witnesses, counsel or others.<sup>24</sup>

A Maryland judge’s particular responsibilities not to engage in or to permit others to engage in sexual harassment is further explained by commentary to Canon 3:

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge’s direction and control.<sup>25</sup>

Codes of Conduct and civility guidelines published by bar groups in the 1990’s, including the Maryland State Bar Association,<sup>26</sup> emphasized the responsibility of judges and lawyers to demonstrate respect for each other and, thereby, the judicial system. Judicial Institute courses provided practical guidance to the bench; for example:

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21. *What Judges Can Learn from Gender Bias Task Force Studies*, in JUDICATURE, 15, 18-19 (July-Aug. 1997); see also White, *supra* note 8, at 13-17.

22. D.C. R. PROF’L CONDUCT 9.1 (2001).

23. See MD. R. 16-813 (1998); see also M. Peter Moser, *What Maryland Lawyers Should Know About the Judicial Conduct Code*, 31 MD. BAR J. 26 (1998).

24. MD. R. 16-813 Canon 3(10).

25. *Id.* Canon (8)-(9) cmt.

26. Judge Rodowsky is a long-time MSBA member and former Chair of the Litigation Section.



- Use gender neutral language in all court correspondence. Use “Dear Counsel” and, where appropriate, include reference to he/she, him/her. Direct staff to do likewise.
- Edit your jury instructions to use gender neutral language. The plural (witnesses/they) is helpful. Use he/she, her/him as necessary.
- Set an example by not engaging in or permitting sexist jokes and inappropriate comments about women in chambers, the courtroom or at professional gatherings.
- Intervene when an attorney, witness, jury or other individual under your supervision speaks or behaves inappropriately toward women during trial or in other professional settings.<sup>27</sup>

During Judge Rodowsky’s tenure as captain and team member of the Select Committee on Gender Equality, “substantial progress” was made on several critical recommendations of the 1989 Report. Judge Rodowsky called the early plays, successfully, as the Select Committee developed momentum to challenge gender bias in our judicial system.

#### A TRIBUTE TO LARRY RODOWSKY, A VERY NICE GUY

WILLIAM L. REYNOLDS\*

Larry Rodowsky has lived an extraordinarily rich professional and personal life. First, he has been a great success as a person. Everyone who knows Larry knows of his devotion to his family, of his great affection for his wife, Colby,<sup>28</sup> and their six children and thirteen grandchildren. His friends are legion, for he is a man of loyalty who also is great fun to be around—Larry has a wry, self-deprecating sense of humor and a deep, share-this-with-me chuckle of a laugh. How could one not like to be around him? He also has a fund of good stories—jokes, of course, but also tales about the practice of law and the many who practice it. One thing is missing from those stories, however; there is never even a hint of malice toward anyone in any of them (well, except maybe umpires and referees). That is not to say Larry is lacking in critical faculties; rather, his criticism never is made out of spite or a desire to belittle. And, of course, there is Larry’s love affair with sports, and especially with the great Baltimore game of la-

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27. MD. JUDICIARY & THE MD. STATE BAR ASS’N, *supra* note 15; *see also* White, *supra* note 8, at 13-17

\* Jacob A. France Professor of Judicial Process, University of Maryland School of Law.

28. Colby writes realistic novels for children and young adults. My two daughters loved her books and were star-struck when they met her one day.

crosse. (I wish that I had seen him on the lacrosse field—that would have been a sight.)

Larry's professional career has been varied and uniformly successful. He graduated from this Law School in 1957, where he was co-editor of this Review and graduated first in his class. After graduation, he clerked in federal court for the legendary Calvin Chesnut. He then joined one of the predecessor law firms to the late and much lamented Baltimore firm of Frank, Bernstein, Conaway & Goldman. There, Larry became what today we would call a litigator. If truth be told, however, Larry really was just a lawyer, albeit a specialist in litigation. A small, full-service firm, as Frank, Bernstein then was, necessarily requires that each of its attorneys be able to do just about anything. And that Larry did, handling, I have been told, corporate and even tax matters with aplomb. (How many of today's litigators could say the same?) But it was in court that Larry really made his mark. He was involved in many of the landmark cases of this State in the 1960s and 1970s.

Larry's partners, of course, admired him greatly, and his associates were in awe of him.<sup>29</sup> He was respected as much for his integrity as he was for his legal prowess.

Governor Hughes appointed Larry to the Court of Appeals in 1980, an honor that Larry certainly had earned. On the Court, he rapidly won a reputation for careful opinions which reflected the common sense derived from years of practice. He became known as the Court's expert on commercial law, and he played a large role in making that body of law modern and sensible. Sometimes, it was his role to play Cassandra: witness his concurrence in the *Poffenberger* case<sup>30</sup> where he warned, all too presciently, of the dangers of wide-spread adoption of the "discovery" rule as an exception to the statute of limitations.<sup>31</sup> (Academic honesty—or maybe sour grapes—however, compels me to reveal my long unhappiness with Larry's continued refusal to abandon the Vested Rights/First Conflicts Restatement approach

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29. It is not clear, however, that awe of a partner is a good thing in an associate. One of the stories told about Larry—this one by several of his former associates—is that they would go to his office for an assignment and listen spellbound to Larry for half an hour. Naturally, no questions were asked of Larry. The associate would then return to the library to begin research, only to realize as he glanced through his notes, that he had been asked to research "the law." It would take a while for the associate to return to Larry to ask questions; not that Larry would have yelled at them. Rather it was hard for them to admit that they had not lived up to Larry's exacting standards. Alas, I only worked in practice with Larry as a Summer Associate, and he only gave me one assignment (no doubt for good reason).

30. *Poffenberger v. Risser*, 290 Md. 631, 431 A.2d 680 (1981).

31. *Id.* at 639-40, 431 A.2d at 681-82 (Rodowsky, J., concurring).

to choice of law questions.<sup>32)</sup> Always, however, common sense and moderation marked his opinions.

It was a pleasure to watch Larry on the bench. He was a gentle judge, never trying to humiliate counsel or to show off his vast store of knowledge. Indeed, he did not ask many questions, preferring to let counsel proceed on her own. But when he did raise an issue, counsel knew that it was about something that was bothering Larry and that the question went to the heart of how he would resolve the case. Indeed, his ability to spot the hole in a case was uncanny—a result, no doubt of his intense preparation and instincts developed from years of practice. I can remember working on cases where much time was spent by counsel in camouflaging weak spots and debating how to handle questions about them if they should arise in argument. Invariably, about fifteen minutes into argument, Larry would lean back, look counsel in the eye, and ask the dreaded question. It was always a zinger.

I had the good fortune to serve on the Board of the Maryland Judicial Institute during the dozen years that Larry chaired it. He ran the Institute from its inception, and he did a splendid job, developing a sound curriculum and an outstanding faculty while also obtaining permanent facilities and luring a staff of real quality to work for the Institute. Under Larry's guidance, the Institute became a strong force in the work of the judiciary of Maryland.<sup>33</sup>

Larry's extracurricular work for the Judicial Institute continued his long tradition of public service. While in practice, he had been a long-time member of the Maryland Rules Committee, and while a judge, he had chaired the MSBA's Section on Litigation. Most important, however, was his work as Member (and first Chair) of the Gender Equality Committee, a group that has done much to call attention to, and then help to eradicate, gender bias in the courts of this State. Last, but by no means least, Larry was an Adjunct Professor at this Law School for more than a dozen years; his specialty was the arcane world of Maryland Procedure, a subject about which it is safe to say he has no equal. Larry's retirement has not ended his public service, of course, and he remains a very active "retired" judge.

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32. Larry's views on the topic are best seen in *Bethlehem Steel Co. v. G. C. Zarnas & Co.*, 304 Md. 183, 195, 498 A.2d 605, 611 (1985) (Rodowsky, J., dissenting).

33. Larry insisted that the Institute include what he called "stretch" courses in its curriculum—courses which might have little immediate value, but would *stretch* the minds of the judges. Thus, we have offered a number of courses in jurisprudence, law and literature, and even one on the law of the European Union. The stretch courses have proven popular with the judges.

There is an old cliché about “having lived greatly in the law.” Shopworn the adage may be, but it perfectly describes Larry’s life and career. He loved practice and excelled at it. He loved judging and excelled at that, as well. He loved doing good works, and, of course, he also excelled at that. And most important, he has loved life, and he has excelled at that.

Larry’s career serves as a model for the dedicated and successful professional. Beyond that, however, his career shows that success does not require neglecting family and friends. Well done, Larry.

LARRY RODOWSKY: INSEPARABLY, JUDGE AND EDUCATOR

JANA SINGER\* & GORDON YOUNG\*\*

We have known Larry for approximately the same amount of time and in the same way, having worked with him to prepare and teach courses to his fellow judges at the Judicial Institute of Maryland. All three of us twice taught a contracts course together at the Institute. At the slightly different times each of us first taught the course, each had recently joined the Maryland faculty, and knew relatively little about Maryland contract law. We quickly discovered that Larry had written many of the opinions that we would be discussing with his fellow judges. How, we wondered, would a Court of Appeals judge react to having his opinions dissected and, perhaps, critiqued? No need for worry: Larry was generous in sharing his knowledge and gracious in having his opinions critiqued. He genuinely enjoyed the intellectual interchange and was open to a wide range of views—even those coming from neophyte law professors.

Larry has also been a member of the Board of Trustees of this Law Review for much of the time since at least 1980. During that period, it seems that either one or the other of us has been the faculty advisor to the Review and, as a result, had the pleasure of working with Larry at Board meetings. Larry was the perfect Board member—engaged and ready with constructive suggestions, but extremely respectful of student work and decisionmaking. Larry’s commitment to student learning extended as well to his work as a judge. Indeed, both of us have seen some of our best students enjoy the great good fortune of becoming Larry’s students, as clerks in his chambers. They visit us with stories of a wonderful year, professional growth, and having acquired a life-long mentor and friend. Several of those former

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judicial clerks returned to the Law School last fall to pay tribute to Larry at a reception in his honor sponsored by the Law Review.

It takes no more than one intensive joint endeavor with Larry to discover that he is a brilliant judge, a warm and generous human being, and a man of the highest integrity. In leafing through a dictionary the other day one of us had occasion to find the word "judge." We both agree that, had it been an illustrated dictionary, Larry's picture should have appeared there.

#### SOFT-SPOKEN GREATNESS: A CLERK'S TRIBUTE

MARY H. KEYES\*

Sadly, the modern era has largely forsaken the regard of heroes.<sup>34</sup> I am pleased that the *Maryland Law Review* has devoted these pages in tribute to one of my greatest professional and personal heroes—the Honorable Lawrence F. Rodowsky (hereinafter "The Judge"). I am honored to have been asked to participate in that tribute.

Socrates wrote that four abilities belong to a judge: the ability "to hear courteously, to answer wisely, to consider soberly, and to decide impartially." The Judge possesses each of these abilities in abundant measure, and he unflinchingly applied these abilities in his twenty years on the Bench of the Court of Appeals of Maryland. The Judge possesses a fifth quality, one which animates his immeasurable abilities as a judge: a deep, indefatigable sense of humanity. The Judge's humanity, although expressed quietly, is so formidable that I have come to think of him as a remarkable human first, and as one of the finest jurists to have ever graced the Bench of this State, second. It is to The Judge's humanity that I pay tribute.

I had the enormous good fortune to serve as a law clerk to the Honorable Lawrence F. Rodowsky for the September 1997 term of the Court of Appeals. I also had the wonderful opportunity to be admitted to the Maryland Bar with my Judge on the Bench. Shortly before my admission to the Bar, my mother was diagnosed with an aggressive cancer that required her to undergo chemotherapy treatments. The Judge, aware of this fact, had asked whether my mother would be able to attend the bar admission ceremony. When I informed him that both she and my father would be in attendance, he instructed me to park in "his spot," just feet from the door of the Robert C. Murphy

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34. This piece was written prior to the events of September 11, 2001. In the wake of the tragedies of that day, we have witnessed the appropriate elevation of many individuals to the status of hero.

Courts of Appeal Building. The authority with which he imparted the instruction foreclosed the possibility of protest. When we arrived for the ceremony, I pulled into The Judge's spot, which was closer to the door than any of the other six judges' spots. Over the placard that read "The Hon. Lawrence F. Rodowsky" was a piece of construction paper with the words "Reserved for M. Keyes" scrawled in The Judge's handwriting. I do not know how far The Judge had to walk on that cold and rainy December day to get to the courthouse, but I do know that my mother only had to take a few steps. The experience touched me profoundly, so much so that I have kept the piece of construction paper with the words "Reserved for M. Keyes" displayed prominently in my office as a constant reminder that decency should always stand ahead of station.

The Judge whispers his humanity, much like he does his brilliance and his humor. His acts of kindness are always under his breath, out of earshot, and utterly without flourish. They are never intended for public consumption or for self-aggrandizement. The Judge's humanity, coupled with his unassuming, self-effacing demeanor, have endeared him to everyone in the Maryland legal community and beyond. I have never met a member of the Bench or Bar who had a disparaging word to say about The Judge. In fact, I have never met a member of the Bench or Bar who expressed anything but reverence, bordering on awe, for The Judge. The loyalty and affection he has engendered in his friends and colleagues became readily apparent to me when I had the opportunity to accompany him to lunch. Walking with him from his chambers in the Clarence M. Mitchell, Jr. Courthouse to a downtown eatery some four blocks away can be a half-hour proposition. The Judge's strides seem to be arrested every step or so by some enthusiastic colleague who wants a word or simply to exchange a greeting. This popularity, this high regard in which The Judge is held is perhaps the greatest testimony to his humanity. The Judge once related to me the management strategy of Casey Stengel, the former manager of the New York Yankees. It is as follows: "The key to managing is to separate the players who hate you from those who haven't made up their minds."<sup>35</sup> There is no one in either category when it comes to The Judge.

As an additional measure of The Judge's humanity, I offer his humor. I offer especially his humor. Prior to beginning my clerkship, I had been warned that The Judge had a sense of humor that was so

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35. Though The Judge quoted Mr. Stengel, it should be noted that he is a die hard Orioles fan.

dry, so deadpan, that it was difficult to determine when he was being serious and when he was joking. Not wanting to start off my legal career by laughing at a serious pronouncement of a member of the Court of Appeals of Maryland, I decided to take The Judge seriously unless he smiled. I learned just hours into my clerkship that this is not an effective strategy. It was mid-morning of my first day when The Judge emerged from his chambers and approached my desk with instructions. He informed me that he had just authored an opinion in a capital murder case that vacated a decision of the Court of Special Appeals and remanded the case to the trial court. My job, he said, was to gather up the exhibits that had been sent up from the trial court so that they could be returned thereto after the opinion was issued. I responded with considerable confidence that I had already done so at the direction of Terri Witthauer, The Judge's longtime secretary. The Judge seemed pleased with that response and began to turn away from my desk. Just as I started to exhale, however, he turned back to me and said, "You have the gun, right?" Before I could answer, he turned away and ensconced himself in his chambers. He was not smiling. He was serious. The murder weapon. I had not seen the murder weapon when gathering up the exhibits. It is my first day, my third hour of my first day, and I have lost the murder weapon. I was consumed with what I can now identify as professional panic. Without the murder weapon, the criminal defendant would not be able to be retried. The family of the victim would hate me. The Judge would fire me. My nascent career would be over. I could not let this happen. I steadied myself and began to turn the chambers upside down and inside out in search of The Gun. I even went so far as to march down the hall to the Baltimore City Bar Library to ask the librarian whether my predecessor clerk had, perchance, left a gun in the library. The librarian was shocked. This torture, this searching for The Gun continued for what seemed to be interminable hours. Finally, defeated, I settled down in my chair and began to think about how I was going to tell The Judge. It was at this time, shortly after 6 p.m., that he emerged again from his chambers, put on his coat, walked past my desk toward the door, and, without so much as glancing at me (and certainly without smiling), said, "I was joking about the gun." A dry sense of humor indeed.

The day-to-day practice of law, the day-to-day engagement in any vocation, tends to conspire against self-awareness. We forget to give due consideration to what kind of people to be, to how to conduct ourselves when going about the business of our profession. The Judge has provided me and everyone else fortunate enough to encounter

him in professional life with an excellent example in that regard, with a blueprint of sorts. According to that blueprint, we should construct our professional lives along the lines of implacable honesty, unassailable integrity, dignity, hard work, kindness, decency, humor, and humanity. The Judge's legacy, then, is not simply the impressive body of work he produced, but the example he provided as he produced it.

Thank you, Judge. I am indebted to you as a mentor. We are all indebted to you for your example.

CLERKING FOR THE HONORABLE LAWRENCE F. RODOWSKY

KENNETH TURNBULL\*

With my co-clerk Robert Gaumont, I had the honor of clerking for Judge Rodowsky (or "the Judge" as we called him) for the September 1999 term of the Court of Appeals. At a recent dinner given by Judge Rodowsky's former clerks, I realized that each of us had his or her own story of how the Judge had let us see the grandeur of the law, revealing for the first time the depths of the common law tradition and its vitality—right here, right now. Each story involved a different case, yet each story was recognizable to the other clerks, for example, in the phrase "the more dust the better," which describes Judge Rodowsky's preference for the date of the sources to be consulted and cited in his opinions. I think that each clerk also liked that phrase because it served as an ironic indication that, far from dwelling in scholarly aloofness, Judge Rodowsky sympathetically read the record and approached each case with a worldly (but not cynical) sense of the types of parties and witnesses and lawyers involved, and how law is practiced in the real world. You could feel that Judge Rodowsky had tried cases and been a partner in one of this city's best law firms.

One case on which I assisted Judge Rodowsky especially comes to mind.<sup>36</sup> It concerned whether a suit under Maryland's Consumer Protection Act<sup>37</sup> is a "statutory specialty," *i.e.*, a cause of action, similar to one founded on a contract under seal, that is entitled to an extended twelve-year limitations period under MD. CODE ANN., CTS. & JUD. PROC. § 5-102(a)(6) (1998). By examining a prior version of section 5-102, Judge Rodowsky discovered the term "statute merchant," which had been dropped during the 1974 Code revision due to the term's unknown significance. At his direction, I found, in the basement of

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36. *Greene Tree Home Owners Assoc. v. Greene Tree Assocs.*, 358 Md. 453, 749 A.2d 806 (2000).

37. MD. CODE ANN., COM. LAW II §§ 13-101 to -501 (1990).



the Baltimore City Bar Library, with its collection of English sources (all of them dusty), the *Statutum de Mercatoribus*, 11 Edw. 1 (1283)—the original English statute from which this term was derived. In essence, the statute provided a procedure for a debtor to acknowledge his debt before a tribunal so as to facilitate the creditor's subsequent recovery in the event of default.

Like an archeologist who unearths a hidden foundation, and then reconstructs each successive layer above it, Judge Rodowsky was able to trace forward—from 1283 to the present—the history of statutory specialties, through both English and American decisions, so as to arrive at the conclusion that suits founded on a statute are “specialties” only if they involve liquidated sums. The suit before the Court did not involve such a sum. Although the same result could have been reached on a “public policy” interpretation of the Consumer Protection Act, Judge Rodowsky's decision is far more convincing, because it is based on the historical reality of the creditor-debtor relationship, out of which statutory specialties grew.<sup>38</sup> As the word “archeologist” suggests, that historical reality was in no way visible prior to Judge Rodowsky's significant efforts to discover it.

This case is just one example. As a clerk, I saw Judge Rodowsky apply his gifts to every case, not only the ones calling for a special degree of scholarly attention. For example, in a decision that affects voir dire in criminal trials every day, Judge Rodowsky held that a judge must propound a requested voir dire inquiry seeking to discover bias based on the self-identified race or ethnicity of the accused.<sup>39</sup> In this decision, too, I felt the presence of the objective world, in this instance through Judge Rodowsky's common-sense understanding of how human nature works.

In law school, I had heard repeatedly the common wisdom that all judges are result-oriented, affected by their unconscious biases, and ultimately arbitrary. Now I can say that this is just wrong. While clerking for Judge Rodowsky, I observed first hand true independence of mind. While I believe this independence of mind to be rooted in Judge Rodowsky's grasp of the common law tradition and human nature, I doubt that he would put it that way. Instead, I recall Judge Rodowsky emerging from his office to say: “Well, the opinion just won't write”—meaning that he could not develop into a coherent

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38. I say “Judge Rodowsky's decision,” but the Judge always emphasized that the Court's opinions were just that, and not opinions of an individual judge. The process by which the Court of Appeals approves opinions in conference is a closed one, even to clerks.

39. *Hernandez v. State*, 357 Md. 204, 742 A.2d 952 (1999).

whole his original intuition of the legal issue, and that he would have to change his approach, and sometimes even the previously anticipated result. That was when, convinced that there must be a not-yet-found case somewhere that addressed the issue, Judge Rodowsky usually sent a clerk back to the library.

Thanks, Judge.