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Tributes

TRIBUTES TO JUDGE ALAN M. WILNER

A TRIBUTE TO THE HONORABLE ALAN M. WILNER

ROBERT M. BELL*

I did not give a State of the Judiciary Address this year. Had I done so, I am sure that, in order to place in perspective and to give context to Judge Alan M. Wilner's stellar career, specifically as it relates to the significance to Marylanders of its culmination on the Court of Appeals, I would have reported to the Legislature and the public at large on the number of opinions he has authored, breaking them down into majority, concurring, and dissenting opinions. I also likely would have sought to discern an area, or areas, of the law in which he excelled or demonstrated a special interest or proclivity. While the first would have been easy, the latter would have proven, if not impossible, quite difficult. That is because Judge Wilner has demonstrated an interest and a facility with the law in all its aspects, whatever the issue or area. Whether the problem involved administrative law principles, constitutional classifications, criminal law, or application of another of the many legal issues with which appellate courts, including this Court, regularly are confronted, Judge Wilner's approach was always the same—thorough, reasoned, principled and, most important, readable and understandable. There simply was no niche into which he could be placed, other than the one designated “excellent.”

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* Chief Judge, Court of Appeals of Maryland.

In that way, Alan Wilner has given exemplary service to the Maryland Judiciary, directly, and to the Maryland citizenry, in a number of capacities for almost thirty years, as an associate judge of the Court of Special Appeals, as its Chief Judge, and, doing double duty as the Chair of the Standing Committee on Rules of Practice and Procedure. Since 1996, he has been a very valuable member of the Court of Appeals. We will miss him.

Not only has Judge Wilner been acclaimed, appropriately, for his intellect and his ability to analyze and synthesize complex legal arguments and to see the long view, especially as relates to the best interest of the legal profession and its future, there are some perhaps lesser-known contributions that are just as important.

Judge Wilner has applied his many and diverse talents to judicial education and the rulemaking process, with positive results for the improvement of the administration of justice. As the chair of the board of directors of the Judicial Institute of Maryland, a position he undertook in 1999, Judge Wilner oversaw the creation of a progressive framework that matched judges with various levels of experience and particular preferences with an expanded range of courses. The concept was that a core of courses would be offered to judges on a two and three year cycle. This strategy offered programs that followed pre-approved syllabi, building one upon another.

He also ushered in the development of a multi-year, multi-day, and most important, multi-disciplinary, business and technology curriculum. Modeled on the existing criminal law curriculum, the Judicial Institute established a multi-disciplinary committee comprised of judges designated to the Business and Technology Case Management Program, as well as representatives of the bar, academia, and the business community to develop a plan for this curriculum.

Judge Wilner understood and appreciated, as well, the need for faculty development. Thus, Judge Wilner encouraged the creation of an action plan which envisioned judges and Maryland educators attending faculty development workshops and replicating them for others, who would be instructors in judicial education. Moreover, Judge Wilner advocated and was instrumental in developing courses for Orphans Court judges.

Alan's natural intellectual curiosity and unwavering commitment to the improvement of the practice of law were evident and well-utilized in the rulemaking process. The legal profession is the better from his talent for listening and capturing disparate voices and masterfully weaving them, in concept and word, into an intricate legal framework.

Under Judge Wilner's leadership, the Rules Committee made significant accomplishments. These include the first codification of evidence in Maryland; the first probate rules in Maryland; revision of the appellate review rules; rescission of the so-called "lettered" Rules, pertaining to special proceedings, and replacing them with the new, revised Title 9, Chapter 100 Rules; creation of a special docket for asbestos cases; adoption of e-filing rules applicable to the circuit courts; and the major revision of the Rules governing the Commission on Judicial Disabilities. While a member of the Court, Judge Wilner's unique talents were well used. He was recruited, and willingly served on Court subcommittees relating to attorney discipline (with Judge Glenn T. Harrell) and access to court records (with Judge Lynn Battaglia).

In retirement, Judge Wilner remains a valuable resource. He has agreed to contribute time and energy to the revision of the judges' benchbook, many sections of which sorely need it, a thankless task of enormous importance. He has also agreed to sit with the Court, as and when we need him to.

As important as Judge Wilner's contributions to the legal profession, he has always been a true gentleman in every sense, whose presence on the Court, as colleague and friend, will, I repeat, be missed.

JUDGE ALAN M. WILNER, PUBLIC SERVANT: THE MAN WHO NEEDS NO SLEEP

LAWRENCE F. RODOWSKY*

If one were to poll the Maryland Bar for its collective opinion of Judge Alan M. Wilner, the unanimous response would be "a gentleman and a scholar."¹ Most of these responses would be based on his judicial opinions. In this tribute, however, I shall not focus on Judge Wilner's contribution to the decisional law of Maryland, through the more than 750 published opinions that he has authored with clarity and sound judgment. These aspects of his work are, or should be, generally known to the audience of this publication. What is less generally known is Judge Wilner's lifetime of pro bono work in areas of the law other than appellate decisions.

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1. For a translation of the quoted words into Yiddish by Judge Wilner's judicial *landsmann*, see Glenn T. Harrell, Jr., *Tributes to Judge Alan M. Wilner*, 66 MD. L. REV. 840, 840 n.1 (2007).

Early in his professional career, Judge Wilner was exposed to public law and service. For three years, he was mentored by Joseph Sherbow, who had headed a Commission on Distribution of Tax Revenues for Governor Herbert R. O'Connor in 1946; by Edward F. Shea, Jr., later to be the prime mover in Maryland of the return to professionalism; and James J. Doyle, Jr., who was to become a highly respected government relations practitioner, i.e., lobbyist. Judge Wilner learned, first hand, the inner workings of state government during a two and one-half year tour of duty as an Assistant Attorney General. There followed four years at what is now Venable LLP, where he practiced with another young lawyer, Paul S. Sarbanes, and with Frances D. Murnaghan, Jr. Judge Wilner returned to state service in 1971 to work on the legal staff of Governor Marvin Mandel with Judge Wilner's later colleague on the Court of Appeals, Judge John C. Eldridge. Upon the latter's appointment to the bench in January 1974, Judge Wilner became Counsel to the Governor and Chief Legislative Officer.

Apparently finding insufficient intellectual stimulation in putting out fires during his day (and night) job with the Governor, Judge Wilner undertook pro bono public service as well. He chaired gubernatorial task forces on aggressive offender treatment and on implementation of the Equal Rights Amendment. He also began his work with the Committee to Revise the Annotated Code of Maryland, a project which increasingly was to consume his time.

Judge Wilner's appointment to the Court of Special Appeals in 1977 was widely acclaimed. He won his statewide retention election to that court in 1978, but failed to carry Cecil and Dorchester Counties. Judge Thomas Hunter Lowe, of Talbot County, investigated what went awry. He reported that the question on the ballot, "Should Judge Wilner Be Retained In Office," caused many voters to conclude that some question had been raised about Judge Wilner's suitability, so that they prudently voted "No."

Shortly after Judge Wilner assumed the bench, judges and others at the Baltimore County and Courts of Appeal courthouses noticed that, no matter how early—how extra early—they might arrive at work, Judge Wilner's car was there. He was already at work. That, of course, explained the unfailing promptness with which opinions assigned to him were circulated. But there was much more going on.

While breaking in as the "baby" judge on the Court of Special Appeals, Judge Wilner chaired the Code Revision Committee on the Education Article, enacted in 1978. He chaired the Committee on the State Government Article, adopted in 1984.

Also in 1984, Judge Wilner accepted appointment to the Court of Appeals Standing Committee on Rules of Practice and Procedure and, one year later, became Chair of that Committee. A common denominator of members of that Committee is a lack of reluctance to express individual views, so that steering the Rules Committee to a finished product is no easy task.

By 1985, the project to recodify the Maryland Code had been in progress for fifteen years. That year, the Legislative Policy Committee restructured the process and named Judge Wilner as overall Chair, a job which he continues to fulfill to this day. This appointment was, in the eyes of many observers, a recognition that Judge Wilner was the person who would devote the time necessary to keep this enormous and complex undertaking moving. In addition to overseeing the work of the Code Revision Commission, Judge Wilner assumed direct responsibility for the State Finance and Procurement Article, enacted in 1988.

As if he did not have enough to do, in 1990 Judge Wilner accepted designation as the Chief Judge of the Court of Special Appeals. The job involves much more than sitting in the center on ceremonial occasions. The Chief Judge of that very busy court considers each motion that is filed, in addition to administering the docket, supervising the clerk's office, and writing a proportionate share of the opinions.

Judge Wilner's appointment to the Court of Appeals in 1996 did not diminish his capacity for pro bono projects. He chaired the Revision of the Correctional Services Article, enacted in 1999, and the Revision of the Criminal Law Article, enacted in 2002. He also has served on numerous Judicial Conference committees. In 2000, he accepted responsibility, as Chair of the Maryland Judicial Institute, for the continuing legal education of all of Maryland's appellate, circuit, and district court judges. And, did I mention that, for years, he has taught alternative dispute resolution at the University of Maryland and University of Baltimore Law Schools?

In 1996, Judge Wilner began yet another career, that of diplomat to Russia. He traveled *in December* to Petrozavodsk, near the Arctic Circle, to meet with representatives of the St. Petersburg/Leningrad Oblast, in an exchange program. Due in large measure to Judge Wilner's leadership, Maryland and the Leningrad Oblast became sister regions. Annually thereafter, Maryland lawyers and public officials have presented programs in Russia, or Judge Wilner's legal subcommittee of the Maryland Sister State Program has presented programs here for its Russian guests.

An experience in 2005 again demonstrated for me Judge Wilner's extraordinary capacity to couple analysis of legal concepts with attention to detail. The Committee to Revise the Maryland Lawyers' Rules of Professional Conduct, which I chaired, was reporting to the Court of Appeals. The basis of our project was the "Ethics 2000" Report of the American Bar Association. Our Committee proposed modifying the ABA rules for adoption in Maryland. Giving our thousand page report his usual careful reading, Judge Wilner made many improvements in the final product. In particular, on the vexing relationship between Rules of Professional Conduct and malpractice liability, Judge Wilner crafted standards, adopted by the Court, for determining when a rule violation could be evidence of negligence.

The saying that a person has devoted a lifetime to public service ordinarily refers to one's workdays. Judge Wilner has devoted not only a lifetime of workdays, including holidays, to public service, but also his nights and weekends. Truly, the people of Maryland are in his debt.

JUDGE ALAN M. WILNER

A *MENTSH*. A *TALMID KHOKHEM* EVEN.¹

GLENN T. HARRELL, JR.*

It is a privilege to have served with Judge Wilner, on one court or another, since 1991, give or take a couple of years when he migrated before me to the Court of Appeals of Maryland. According to my Pocket Day Timer from 1991,² we first met on Wednesday, 8 May 1991, at 10:00 a.m. in his chambers in Towson. I just was appointed by Governor William Donald Schaefer to the Court of Special Appeals, but had not yet assumed the office. Alan Wilner, then-Chief Judge of the Court of Special Appeals, summoned me to Towson for an orientation of sorts. After eighteen years in private practice and never hav-

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* Judge, Court of Appeals of Maryland.

1. Once I employed a Yiddish phrase in a draft opinion for the Court of Appeals. My colleagues, Judges Irma S. Raker and Alan M. Wilner, maintained that I was not entitled to use Yiddish because I was not Jewish. I yielded on that occasion because I needed their votes. Today, I defy their cultural censorship.

A *mentsh* is "a human being in the finest sense of the word." RABBI BENJAMIN BLECH, *THE COMPLETE IDIOT'S GUIDE TO LEARNING YIDDISH* 236 (2000). *Talmid khokhem* means "student of wisdom." *Id.* at 237.

2. Memory failing, I save my pocket calendars for such an occasion.

ing sat on a trial court bench, I had little clue about what I had gotten myself into. After he explained to me that I was about to become a member of the hardest working intermediate appellate court in show business,³ Chief Judge Wilner offered to help me carry to my car the three boxes of briefs and record extracts for the cases on which I would be sitting during the June oral arguments. Upon reaching the basement garage of the Towson courthouse, he laid eyes for the first time on my champagne-colored Jaguar XJS, a prize from a modestly successful law practice. As we crammed the boxes into the cramped (at best) back seat and trunk of the vehicle, he noticed my host of tennis rackets and related gear. Pausing for dramatic effect, he opined: "You really are going to have to get rid of this car and those rackets. A judge can't drive a car like that and you won't have any time to play tennis." As it turns out, he was close to right on both scores.⁴ Thus began our relationship.

I have come to know the man pretty well. He is a native Baltimorean, educated in the City's public schools. He has not strayed from those roots. He graduated from The Johns Hopkins University in 1958 with a Bachelor of Arts degree, the University of Maryland School of Law in 1962,⁵ and Johns Hopkins again in 1966 with an M.L.A. degree (apparently earned at night). Fresh from law school, Alan became an associate at two venerable Baltimore law firms, first Sherbow, Shea & Doyle and then Venable, Baetjer & Howard. He was enticed from private practice by the Honorable Thomas B. Finan, Attorney General of Maryland, to serve from 1965 to 1968 as an Assistant Attorney General.

In the course of his service in the Attorney General's Office, Alan Wilner caught the eye of John C. Eldridge, Esquire, then Chief Legislative Counsel to Governor Marvin Mandel. Alan was purloined from the Attorney General's Office by Jack Eldridge to serve as his Assistant Legislative Counsel until 1974 when, upon Jack's appointment to the Court of Appeals by Governor Mandel, Alan was named Chief Legislative Counsel. He served in this capacity until 1977 when he was appointed by Governor Mandel to the Court of Special Appeals.⁶ He was named Chief Judge of the intermediate appellate court in 1990.

3. Apologies to the late James Brown for perversion of his musical motto.

4. The Jaguar committed virtual suicide shortly thereafter by bleeding out its fluids from every seal fitting. I reduced the number of tennis rackets to two which, to this day, seems adequate to the time left to play anymore.

5. Judge Wilner was Order of the Coif.

6. It is noted that Governor Mandel had a generous approach to firing staff.

Judge Wilner has been a role model for many of us. I observed the daily diplomacy he practices;⁷ the scholarship of his opinions, his questioning at oral argument, and his participation in discussion during court conferences; and, his senses of industry and organization in giving generously of his time to so many extracurricular endeavors.⁸ We all would do well to try and follow closely this path.

This is not to say that Alan Wilner inspires stunned awe in everyone that he meets. While remaining behind on the Court of Special Appeals after Judge Wilner departed in 1996 for the Court of Appeals, I had occasion to author an opinion for the intermediate appellate court in a case involving Maryland's cy pres doctrine, *Gallaudet University v. National Society of the Daughters of the American Revolution*.⁹ In the course of the opinion, I analyzed a relevant opinion of the Court of Appeals which, in turn, had been the topic of a case note in the *Maryland Law Review*.¹⁰ The case note was authored by Alan M. Wilner while a law student. I had this to say about that fact:

Arguably the case note's persuasive force is enhanced by the fact that its author, Alan M. Wilner, a charismatic young law student at the time, is currently a . . . judge on the Maryland Court of Appeals and was formerly Chief Judge of this Court. On the other hand, we note that, similar to the desired qualities of the nose, body, and color of a wine often being correlated with the acquired art of the winemaker, so too is the soundness of a legal scholar's reasoning usually linked with his experience. While recent vintages of Judge Wilner's jurisprudence have added to his reputation as a "well-respected jurist" see, e.g., *Baltimore Magazine* 85, *The 200 Best Things About Baltimore* (July 1997) (bestowing upon Judge Wilner the honor of "Best Judge"), in light of Judge Wilner's then embryonic legal scholarship, 1962 may not have been an equally good year.¹¹

7. He chaired the Court of Appeals's Standing Committee on Rules of Practice and Procedure, one of the most vital judicial agencies, from 1985 to 1996. With over twenty members drawn from the bench, the bar, and the legislature, diplomacy was a key skill to govern such a diverse body.

8. For example, he chaired the Code Revision Committee's articles review on education, state government, state finance and procurement, correctional services, and criminal law. He also chaired the Board of Directors of the Judicial Institute of Maryland, the continuing legal education arm of the Maryland Judiciary.

9. 699 A.2d 531 (Md. Ct. Spec. App. 1997).

10. Alan M. Wilner, Note, *The Cy Pres Doctrine Explored*, 22 MD. L. REV. 340 (1962).

11. *Gallaudet Univ.*, 699 A.2d at 548 n.17.

I offer here a tribute to a splendid judge who has written tributes for other splendid judges of this Court.¹² Like them, Judge Wilner has contributed so much over his professional career, particularly as a judge, that his place in the wholly imaginary Maryland Judiciary Hall of Fame is assured. His opinions will guide the Court of Appeals, the rest of the Maryland bench, the bar, and the public, and rightfully so, for decades to come. While I wish the legal consequences of his reaching seventy years of age were otherwise, as it is said *amol muz men oyfsheren*.¹³

ALAN WILNER: A LAWYER'S JUDGE

WILLIAM L. REYNOLDS*

Alan Wilner graduated from Johns Hopkins University in 1958 and the University of Maryland School of Law in 1962. He was an evening student who eventually became the law clerk for Judge Joseph Allen of the Supreme Bench of Baltimore City during his final year of law school. Alan also earned an M.A. in Liberal Arts in 1966 from Johns Hopkins University. After law school, Alan worked in private practice and then joined the office of the Attorney General of Maryland. There, he did the general practitioner list of things that Assistant Attorney Generals did in those days before extreme specialization. Alan then returned to private practice spending almost four years at Venable, Baetjer & Howard (now known as Venable), before returning to public practice. This time he served as the lawyer for both Governor Marvin Mandel and, briefly, Acting Governor Blair Lee. In that capacity, he served with John C. Eldridge, whom he later joined on the Court of Appeals of Maryland.

Governor Lee appointed Alan to the Court of Special Appeals in 1977; he served there for almost twenty years, and he was Chief Judge from 1990–1996. He was then named by Governor Parris Glendening to the Court of Appeals in 1996 where he served until his retirement in early 2007.

12. See Alan M. Wilner, *A Tribute to Judge Lawrence Rodowsky*, 60 MD. L. REV. 786 (2001); Alan M. Wilner, *A Humble Giant*, 56 MD. L. REV. 631 (1997).

13. "Sometimes you've got to stop."

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Alan is a lawyer's judge.¹ At argument, he does not ask unnecessary questions, nor does he try to embarrass counsel. Rather, his questions are directed at critical problems that bother him; he is not interested in scoring "style points," but in getting answers. It is true that he might crack a joke during argument and give his delightful, lopsided smile. But his jokes are not meant to harm, but to lighten the tension. Lawyers appreciate that—very much.

Alan's opinions also delight lawyers. They are comprehensive, discuss the issues sensibly, and do not stray far from the facts; in other words, Alan takes the case as it is given to him, rather than as he wished it had been presented. The opinions contain ample history and precedent, but they are not over-long, and they are not laden with string citations. They are clear, and the reader can understand the rule laid down as well as the reasons for the rule. All of this seems simple enough, and surely it should be. Nonetheless, far too many opinions fail to measure up to this standard.

Alan's opinions are far more than "merchantable," however. They are also right. His common sense and learning almost invariably lead to the right result, or, at least in areas I don't know well, they seem right. Moreover, the opinions, although not flashy, are certainly not dull. Although Alan wears his learning lightly, that learning and his quiet sense of humor make for good reading. I especially like the opinions where he is frustrated with one of his colleagues; the frustration, although expressed gently, is clearly there.

Appellate judges, of course, earn their keep by deciding cases. The good ones do many other things as well. Alan served for many years as the dedicated and effective head of the Maryland Judicial Institute (think CLE for judges), and he has headed any number of law reform projects in Maryland and elsewhere.² I have served with Alan on the Institute and other efforts and found him an excellent leader: knowledgeable, hard-working, and excellent at obtaining compromise. He has done much good in those roles.

Alan is also a teacher. For two decades he has taught a course in ADR at both of this State's law schools. Students like him for the same reason that lawyers do—he is patient, lucid, and demanding (but in a nice way). When he started teaching ADR the course was a fringe subject, and now it is mainstream—obviously, he saw the future and decided to explore it.

1. I use the present tense because Alan is still an active presence on both of Maryland's appellate courts.

2. He also has long been a member of an ABA Project involving the quality of justice in Russia.

Alan is a genuinely nice guy. His law clerks like him, lawyers like him, and judges like him. He has a genuine interest in both issues and person, an interest that comes through in everything he does. Finally, on a personal note, although I cannot remember how or when I met him, we have been friends for more than a quarter century. That friendship has proven to be richly rewarding. I hope that it lasts for another quarter century.

A LAW CLERK'S PERSPECTIVE

CATHY BRICE HIRSCH*

I had the honor of serving as Judge Wilner's law clerk during the 1988 term, when he was an Associate Judge on the Court of Special Appeals. At a retirement dinner given for the judge last fall by his former clerks, I was struck by the realization that I am just one of about fifty lawyers who consider him to be a role model and mentor.

When I made the decision to pursue an appellate clerkship, I was advised by numerous members of the legal community that Judge Wilner was the judge to whom I should apply. He was perceived as the epitome of everything a judge should be: brilliant, wise, patient, and fair. Luckily for me, I followed the advice and somehow managed to convince Judge Wilner to hire me. Everything I had heard about him proved to be true.

Like the other fifty or so former clerks who attended the retirement dinner for Judge Wilner, I found my clerkship to be exactly what an appellate clerkship should be. Judge Wilner didn't set strict guidelines for us to follow. He didn't micromanage our research assignments or establish a format for our memos. Instead, he provided an example that we strove to emulate.

None of us ever really knew what time Judge Wilner arrived at work. No matter how early we arrived in the morning, he was already there. If he left the courthouse in the evening before we did, it was to teach a law school class or chair a Rules Committee meeting. He assigned us work based on our aptitude and eagerness, and the degree of difficulty of the work increased as his confidence in our competence grew. The most challenging cases always remained on Judge Wilner's desk. The more complicated—even esoteric—the issues, the more he liked them.

Back in the days of my clerkship, when the only computer in the office sat on the desk of the judge's secretary, Judge Wilner handwrote his opinions on legal pads, dipping his fountain pen into a bottle of ink that he kept on his desk, and skipping every other line to save room for correction in the unlikely event that he made a mistake. My co-clerk and I handwrote our memos in a similar fashion. Judge Wilner found a use for the skipped lines on our memos, and for scissors and tape as well. Our fledgling attempts at drafting opinions turned into what looked at first like jigsaw puzzles but eventually became the judge's trademark concise, but thorough and well-reasoned, expositions of the law.

Despite a schedule that would be overwhelming even if spread among ten judges, Judge Wilner never appeared to be hurried. He was never too busy to hash out a problematic case with a clerk. That is not to suggest that he coddled us. A raised eyebrow was enough to let us know that never again should we ask the judge a question that could readily be answered by reviewing the record or conducting research. Occasionally, we made it all the way back to our desks before realizing we'd been zapped by the judge's dry wit. Nevertheless, Judge Wilner was, and is, unfailingly polite, soft-spoken, and professional. In the nearly twenty years I have known Judge Wilner, I have never heard him raise his voice.

I have remained in close touch with Judge Wilner in the many years since my clerkship, as have most of his other former clerks. Unlike the others, I have had the added good fortune of working just down the hall from him. I have also had the pleasure of serving on two of the many Code Revision subcommittees that he has tirelessly chaired. Judge Wilner remains as calm and unhurried as ever. He makes it all look easy.

At the retirement dinner last fall, the judge apologized to all of his former law clerks for what he apparently feels was a failure on his part to develop more personal relationships with us. I was surprised, to say the least, to hear such a sentiment expressed by the man who handwrote letters—no doubt using the aforementioned fountain pen—to each of my daughters upon the occasions of their births. As we walked to our cars after the event, several other former clerks shared similar memories: Judge Wilner dancing at one law clerk's wedding; Judge Wilner rocking another law clerk's crying baby at an office crab feast; Judge Wilner relating the story of his young son pouring water into the judge's ear as he slept, to see if it would come out the other side. It was unfathomable to any of us that a man of

such accomplishment and such kindness could have anything to regret.

Judge, you have provided your former law clerks and the entire legal community with a model of achievement, professionalism, and civility. In thanking you, I speak for all of us.