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Tributes

A TRIBUTE TO THE HONORABLE GLENN T. HARRELL, JR.

MARY ELLEN BARBERA*

The retirement of the Honorable Glenn T. Harrell, my colleague on the Court of Appeals, took place just over a year ago as I write this Tribute. He has continued to sit on special assignment, so perhaps his absence from the Court has not yet presented itself as forcefully as it might. The writing of this Tribute compels me to come face to face with Judge Harrell's retirement and appreciate anew his contributions to the Court and to the development of Maryland jurisprudence.

Simply put, Judge Harrell is a force unto himself, his appellate presence one of intellectual prowess, integrity, and rigor, spanning more than twenty-four years. By the time I was appointed to the Court of Appeals in 2008, Judge Harrell was already the Senior Judge and in his ninth year on the Court, having previously served for more than eight years as a judge on the Court of Special Appeals. The role of Senior Judge, fulfilled by the associate judge who has served longest on the Court of Appeals, is one of unrelenting responsibility. Judge Harrell seamlessly performed the duties of Senior Judge, while also quietly and adroitly tackling a number of other issues confronting the Judiciary.

Judge Harrell's devotion to the Judiciary and to the law is matched only by the power of his keen intellect. The legal community is well aware of his ability to produce finely crafted opinions of law, as equally fluent on the subject of land use as with administrative, contractual, and criminal matters. His opinions—and dissents—reflect the clarity of his reasoning; the arrow of logic flies always in a straight and traceable line. Most important, perhaps, is that Judge Harrell's head always leads his work, even when his heart might take him to another conclusion. Most wonderful, perhaps, is his ability to inject apt pop cultural analogies and humor into his work without diluting its scholarly impact.

When Judge Harrell dissents, those in the majority are compelled to tighten their reasoning and produce stronger opinions as a result. It has been reported in the press that Judge Harrell is most proud of his dissent in

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Coleman v. Soccer Ass'n of Columbia,¹ in which he urged that the Court of Appeals reject contributory negligence. Judge Harrell's introductory paragraph is among his most memorable:

Paleontologists and geologists inform us that Earth's Cretaceous period (including in what is present day Maryland) ended approximately 65 million years ago with an asteroid striking Earth (the Cretaceous–Paleogene Extinction Event), wiping-out, in a relatively short period of geologic time, most plant and animal species, including dinosaurs. As to the last premise, they are wrong. A dinosaur roams yet the landscape of Maryland (and Virginia, Alabama, North Carolina and the District of Columbia), feeding on the claims of persons injured by the negligence of another, but who contributed proximately in some way to the occasion of his or her injuries, however slight their culpability. The name of that dinosaur is the doctrine of contributory negligence. With the force of a modern asteroid strike, this Court should render, in the present case, this dinosaur extinct. It chooses not to do so. Accordingly, I dissent.²

Judge Clayton Greene, the one among us currently on the court to have served the longest with Judge Harrell, put it this way:

Judge Glenn T. Harrell, Jr., often reminded his colleagues on the appellate bench that “life is too short to drink bad wine.” He was not just the resident connoisseur of fine wines; he was also a superb administrator as the long-standing Senior Judge of the Court of Appeals.

Glenn is a master at thinking his way through legal problems and crafting exceptionally clear, concise, well-reasoned, and colorful legal opinions. During my 28 years as a judge, I have never worked closer, on a regular basis, with a judge who was more organized and clear in both oral and written expression than my pal, Glenn Harrell. He certainly has left his mark on the Court of Appeals.

Indeed, Glenn Harrell has done just that.

Judge Harrell and I did not always agree and wrote on opposite sides in more than one case. In one of those instances, he authored the majority opinion, *King v. State*,³ and I wrote the dissent. When the Supreme Court granted certiorari, Judge Harrell and I attended the arguments with our clerks. We were not competitors, as one might suppose; rather, we shared a mutual interest in witnessing the oral argument, first hand, and attempting to detect

1. 432 Md. 679, 69 A.3d 1149 (2013).

2. *Id.* at 695–96, 69 A.3d at 1158 (Harrell, J., dissenting).

3. 425 Md. 550, 42 A.3d 549 (2012).

what hints the Justices' questions might give as to the outcome of the case. Afterward, we had lunch and discussed the case. Our excursion to the Supreme Court was for me and, I hope, for him a celebration of friendship and mutual respect.

Judge Harrell's commitment to the advancement of the law is not limited to the great body of appellate opinions he has produced. He is generous with his knowledge and, in doing so, has demonstrated over the years true talent as a teacher, whether of law students, lawyers, or judges. Judge Harrell's resume on the subject is impressive and too long to recount in full here. I am compelled, though, to highlight just a few examples of his leadership role in legal education. He served as Chair of the Board of Directors of what then was called the Judicial Institute, which to this day is the arm of the Maryland Judiciary that provides continuing legal education of our judges. Judge Harrell has served for many years on the faculty of numerous courses on a variety of subjects. He was a member of the Board of Directors of the Advanced Science and Technology Resource Adjudication ("ASTAR") Project, a consortium of state judiciaries that aimed to train judges in managing litigation involving, in Judge Harrell's words, "'cutting edge' bioscience and biotechnology"; in that position, he also served as Chair of the Education Policy & Standards Committee. He is, moreover, a regular lecturer at state, local, and specialty bar association educational programs.

Judge Harrell and I have much in common, more than might first meet the eye. We share with one another and our colleagues a love for the law, for the intellectual challenge of appellate litigation, and for the sanctity of the Rule of Law. We also have a love of the movies and popular culture, as any who have read his works know all too well. In the midst of the Court's serious and weighty work, there was joy and laughter, brought forth by Glenn Harrell. His was a presence that built collegiality and consensus.

Glenn Harrell is much admired; he also is well loved. For the too brief a time, despite his many years of service, that Judge Harrell graced the halls of the Robert C. Murphy Courts of Appeal Building as an incumbent judge, he was a gentleman and a scholar, though not one of a by-gone era; rather, he was and will remain a gentleman—a judge—who, while reveling in the present, has forged the law and the Court toward the future.

**A TRIBUTE TO JUDGE GLENN T. HARRELL, JR.
“ONCE A DIRT LAWYER, ALWAYS A DIRT LAWYER”¹**

JAMES A. KENNEY, III*

I have been asked to address Judge Harrell’s impact on Maryland law in the perceived Alice-in-Wonderland world of land use regulation. Land use is but one segment of his contribution to the law and to the Judiciary, but it is a very important segment and a significant part of his judicial legacy.

Like many areas of the law, it employs a special language and terms of art (incantations, if you will), such as “change or mistake,” “fairly debatable,” “special exceptions,” “Euclidean and floating zones,” “overlay zones,” “general plans,” and “sector plans.” It is governed by statutes, local ordinances and regulations circumscribed by constitutional principles of property rights and due process, and, because it involves balancing fairly the rights and reasonable expectations of landowners, neighbors, and the community, issues are hotly contested and resulting disputes protracted.

Judge Harrell entered into this arena as a soon-to-be law graduate in 1970, when he accepted a job as an associate County Attorney in Prince George’s County. When he began after graduation, he was assigned, without being asked, to advise the County Council in its capacity as the final zoning authority for that county. In his words, and like many of us who have labored in the land use vineyards (if not most), he “stumbled” into what would become a “calling.”

A few years later, having learned much about land use law and its practice, he moved on to private practice and the representation of non-governmental clients. Although his need to resort to judicial review in his practice was not frequent (most often to protect a client’s victory at the agency level), he found that courts did not provide an especially satisfying venue for the resolution of land use disputes. One factor in that realization was the fact that most judges came to the bench from other practice

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1. According to www.dirtlawyer.com, “Dirt Lawyer” is a slang term used in the real estate business for a lawyer who obtains governmental approvals. According to the same site, dirt lawyers are “land use lawyers” within a “subspecialty” of real property law. The Dirt Lawyer’s Blog states that being a dirt lawyer “is not a bad thing.” THE DIRT LAWYER’S BLOG, <http://dirtattorney.blogspot.com/> (last visited Aug. 26, 2016). The title of this tribute is the title of the keynote address given by Judge Harrell at the American Law Institute (ALI)-American Bar Association (ABA) 2007 Land Use Institute in San Francisco, California. See The Honorable Glenn T. Harrell, Jr., Court of Appeals of Maryland, Richard F. Babcock Annual Faculty Keynote Address at the ALI-ABA Land Use Institute (Aug. 17, 2007), http://files.ali-le.org/thumbs/datastorage/skoobesruoc/pdf/CN005_chapter_62_thumb.pdf.

* Senior Judge, Court of Special Appeals of Maryland; Former Chair, Governmental Regulation of Land Use Committee, Real Property Section of the ABA; Advisor to the National Conference on Uniform State Laws on Planned Communities.

backgrounds and therefore were often unfamiliar with and not particularly interested in land use law. This, I believe, greatly influenced his appellate opinions and his later teaching efforts in this area of the law.

When, as a newly appointed judge on the Court of Special Appeals, he was confronted with a substantive area of the law with which he had not been particularly familiar in his prior practice, he engaged in a thorough review of the subject that was reflected in the resulting opinion. He came to understand that such opinions, coupled with his practice background, were effective vehicles to teach both lawyers and judges about land use law. In short, his opinions became teaching opinions or primers for both the bench and bar.

As Stanley D. Abrams, an acknowledged dean of the Maryland land use bar and whose book, *Guide to Maryland Zoning Decisions*, sits near at hand to members of the land use bar, wrote in response to my inquiry regarding Judge Harrell's opinions:

His written Opinions have advanced land use law from a rather primitive state to where the State of Maryland is recognized as a leader in clarifying, refining and expanding this important area of law—which is so important in the growth and protection of our economy and public and private property rights. His written Opinions are teaching instruments containing historical background, recognition of precedent and well-reasoned approaches to various Zoning and Land Use Law issues and cases.

That said, I find it somewhat ironic that the instruction that came with this assignment states that, “if the tribute is to be footnoted at all, it is footnoted very lightly.” Such an instruction would cramp Judge Harrell's writing style because, in his view, a page without a footnote is an opportunity lost. A recent opinion, *County Council of Prince George's County v. Zimmer Development Co.*,² is a good example: as published in the Atlantic Reporter, Third Series, the case is fifty-eight pages and ninety-seven footnotes. But, for both the experienced and the novice practitioner, there is much to be learned in his many and often extensive footnotes.³

Judge Harrell has not been content to restrict his missionary efforts to the pages of the Maryland Reports and the Maryland Appellate Reports. He has taken his show on the road by participating regularly in presentations at the Land Use Institute/Land Use Roundtable (sponsored first by MICPEL and now the Real Property, Planning and Zoning Section of the Maryland Bar). He has taught Land Use Litigation and Real Property courses for Maryland judges at the Judicial Institute and spoken on land use matters to the Real Property Planning and Zoning Section of the Maryland Bar, the

2. 444 Md. 490, 120 A.3d 677 (2015).

3. See, for example, a footnote spanning approximately two entire pages in *People's Counsel for Balt. Cty. v. Loyola Coll. in Md.*, 406 Md. 54, 76 n.23, 956 A.2d 166, 179 n.23 (2008).

Maryland Association of Counties (MACO) and the Maryland Municipal League (MML). In recognition of his expertise and interest in this area of the law, he was appointed chair of the Maryland General Assembly's Land Use Article Code Revision Committee. In addition, he has reached beyond the boundaries of the Free State to address the American Law Institute (ALI)-American Bar Association (ABA) Land Use Institute in San Francisco, Boston, and San Diego.

Over the years, I have been able to participate with him in many of these presentations. These experiences are usually pleasurable, but in full disclosure, his apparel selection and sense of showmanship may be a little over the top. I recall one Judicial Institute program in which he asked the presenters to wear formal wear. At other of these events, his choice of dress has involved shorts, Hawaiian shirts, and boat shoes. This is not so bad at summer State Bar presentations in Ocean City but is very uncomfortable in near freezing weather at mid-winter presentations in Baltimore County.

What I have learned in our nearly twenty years as colleagues is that Judge Harrell is, at heart, a judge who sees himself as a teacher; and in the land use arena, he is particularly zealous in his desire to teach those who may not know or appreciate this important area of the law. He brings to this effort a bigger-than-life personality, a "get it done" work ethic, and a droll, and sometimes dark, sense of humor (think Monty Python). His opinions have included Grateful Dead lyrics,⁴ a fictional Book of Land Use,⁵ quotes of Robert Frost⁶ and Ronald Reagan,⁷ and references to the Harry Potter series.⁸

His sartorial deficiencies are easily offset by his fondness for good wine, good food, and good company, and his willingness to seek them out and organize such gatherings wherever we might be. Few people are more gracious and generous with their time and talent. From a friend and one dirt lawyer to another, this tribute is well-deserved, but it is merely a footnote to an overall distinguished professional and judicial career. I have no doubt that in senior service to the two Maryland appellate courts his contributions to the Judiciary, the bar, and the citizens of Maryland will continue and be greatly appreciated.

4. *Montgomery Cty. v. Bhatt*, 466 Md.79, 81, 130 A.3d 424, 425 (2016).

5. *Cty. Council of Prince George's Cty. v. Zimmer Dev. Co.*, 444 Md. 490, 501, 120 A.3d 677, 683 (2015).

6. *Webb v. Nowak*, 433 Md. 666, 668, 72 A.3d 587, 588 (2013).

7. *Litz v. Md. Dep't of Env't*, 446 Md. 254, 257, 131 A.3d 923, 924 (2016).

8. *People's Counsel for Balt. Cty.*, 406 Md. at 106 n.33, 956 A.2d at 197 n.33.

TRIBUTE TO JUDGE GLENN T. HARRELL, JR.

STEVEN I. PLATT*

When The Honorable Mary Ellen Barbera, Chief Judge of the Court of Appeals of Maryland, approached me during the most recent Joint Judicial Conference at the Maryland State Bar Association (“MSBA”) meeting and, very inconspicuously, told me that she needed to talk to me I instinctively thought, “What have I done wrong?” She asked me to move to a short but safe distance away from my friend and then-recently retired Judge Glenn T. Harrell, Jr., who was seated nearby. Relief came quickly. Chief Judge Barbera quietly advised me that the *Maryland Law Review* had decided to honor Judge Harrell in its forthcoming Volume and she wanted me to join her, Judge Robert Zarnoch, and other distinguished friends and colleagues of Judge Harrell in writing a tribute to be published in its first issue of Volume 76. It is my honor and pleasure to do so.

Chief Judge Barbera ended our short discussion by repeating her admonition: “this must remain quiet and confidential.” Why the secrecy? Anyone who knows Glenn Harrell knows the answer to that question. Notwithstanding a recent spate of unsought recognition in the form of receiving the H. Vernon Eney Award from the Maryland Bar Foundation and the “Judge of the Year Award” from the MSBA Litigation Section, now renamed “The Honorable Glenn T. Harrell, Jr. Award of Judicial Excellence,” as well as other honors, Judge Harrell has not sought this recognition. In fact, for years he has done what he could to forestall any recognition whatsoever—and the limelight that always briefly accompanies it. That is why those of his friends and admirers who nominated him for the H. Vernon Eney Award had to make sure he didn’t know we were doing it until it was too late to stop us and why his “anonymous” nomination for the MSBA Litigation Section Judge of the Year Award was just that—anonymous. I am firmly convinced that if Glenn Harrell had found out about this latest planned Tribute, there would possibly have been a clandestine visit to the editorial officers of the *Maryland Law Review*, the surgical efficiency of which would have no doubt rivaled the “Raid on Entebbe” in a search and destroy mission for the texts of any tribute to “His Honor” that could be found.

Well, he didn’t find out. So here is Issue 1 of Volume 76 of the *Maryland Law Review* with its tributes to Judge Harrell. I will leave it to Chief Judge Barbera and others to memorialize his professional, judicial,

legal, and civic accomplishments, which are extensive. I will also leave it to them to describe what it has been like working with him on these many contributions to the administration of justice and the resolution of many of the most important issues which affect the intersection of law, economics, politics, and culture in our state and nation. Rather, as his friend of over forty years, I will try to do a bit of analytics on the character traits that I have observed which shaped the legacy that others will attempt to document and describe.

Glenn T. Harrell, Jr., also known as “The Crown Prince of Footnotes,” “The Gangster of Law,” “The Great and Powerful Oz,” “The King,” “The Pop Culture Judge,” “Bear,” or just plain “Glenn,” began his legal career after graduation from the University of Maryland School of Law with a J.D. in 1970 by working his first few years in the Prince George’s County Office of Law (now the County Attorney’s Office). That same year, Prince George’s County’s government was reorganized as a result of the voters of that county choosing to replace their previous government of County Commissioners with a charter government designed to make their government more efficient, more transparent and more accountable. There were lots of interesting, previously unanswered, controversial, and cutting-edge legal and ethical issues for the new and young County Attorney’s Office to address. The charter government’s first County Attorney, Walter H. Maloney, assembled a group of bright young Associates to support him in taking on that challenge.

In what was to emerge as a clear pattern for the rest of his career, Glenn T. Harrell, Jr. was not only among them, but was one of their leaders. He took the lead on controversial legal questions related to land use in a County where decisions on these issues previously appeared to have little relationship to the rule of law and a lot more to personalities and politics. Reform, which the citizens of the County had voted for, was on the way, and the articulation of the new order was in many cases expressed by opinions authored by Associate County Attorney Glenn T. Harrell, Jr.

That beginning led to Glenn Harrell’s next career move which was to become an associate (1973–1977) and then a partner (1977–1991) in what would become the law firm of O’Malley, Miles & Harrell. There, he further developed his expertise in the area of land use law and extended it into the broader area of administrative law. His expertise and influence over the development of the law in this area was recognized by his being elected as Chair of the Administrative Law Section of the MSBA in 1984–1985 as well as becoming an influential member of the MSBA Delivery of Legal Services Section, and the Real Property, Planning and Zoning Section.

During this period, Glenn T. Harrell, Jr. became a frequent lecturer on administrative law, land use, and attorney/judicial ethics. He was constantly and increasingly in demand by legal, judicial, and community organizations.

That demand has only increased as the years have gone on. In the face of that, Judge Harrell has never been unwilling to share his expertise in an effort to improve the performance of both the Bench and the Bar in our state and indeed around the country.

On May 28, 1991, Glenn T. Harrell, Jr. was sworn in as a judge of the Court of Special Appeals, At Large, by Governor William Donald Schaefer, recognizing Judge Harrell's intellect, leadership, and work ethic. It was during this period, somewhat similar to his early years as a young lawyer in Prince George's County, that Glenn Harrell was called upon when a special combination of intellect, interpersonal skills, and leadership was needed, this time by Maryland's Judiciary.

In the early 1990s, the Judicial Disability Commission and its processes had come under fire. The types of issues raised had clearly undermined the public's trust and confidence in the Commission and the integrity of its processes. First as a member from 1995–1996 helping then-Chair Judge Barbara Howe, and then more directly as Chair from 1996–1998, Judge Harrell led the effort to redesign and reconfigure the structure of the Commission and reform its processes so as to restore public trust and confidence in the Judicial Disability Commission. There is no doubt that he succeeded and Maryland has a functioning Commission that it can be proud of as a result of his leadership and intellect.

In 1999, Governor Glendening, recognizing Judge Harrell's many contributions to the administration of justice, to the Bar, and to the citizens of Maryland, elevated Judge Harrell to Maryland's highest court, the Court of Appeals of Maryland, from the Fourth Appellate Judicial Circuit (Prince George's County).

Since 1999, Judge Harrell has been a leader in judicial education. He chaired the Board of Directors of the Judicial Institute of Maryland (2006–2009). During that period of time he coordinated judicial education in our state, which was recognized in the media more than once during his term for its excellence. He also served as the Designated Judge for the Advanced Science and Technology Adjudication Resource (“ASTAR”) Center Program (2006–2009). He was one of only two judges in the country to be recognized as a “Senior Fellow” of ASTAR, Inc. At the same time, he served as an adjunct professor of legal writing at the University of Baltimore School of Law (1997–2003) as well as Chair of the Land Use Article Review Committee (2009–2012).

During his tenure on the Court of Appeals, Judge Glenn Harrell worked with his friend and colleague, Judge Alan Wilner, current Bar Counsel, Glenn Grossman, and the Rules Committee to restructure the Maryland Rules and the administration of attorney disciplinary proceedings in the state. They succeeded in establishing a fairer and more efficient process than what

preceded it. In addition, his leadership, support, and collaboration with Judge Irma Raker (Ret.) on the Access to Justice Commission, which Judge Raker chaired, dramatically increased access to justice for many citizens who heretofore did not enjoy or understand that they could be heard and understood by the justice system.

All of these accomplishments result from that special combination of intellect, leadership, and work ethic laced with his well-recognized sense of humor. That sense of humor has been shaped by his ability to recognize irony in almost any situation and apply it unsparingly to himself and his activities. These qualities were noticed in Glenn T. Harrell, Jr. initially as a young County Attorney and further developed and tested throughout his career in times of need or even crisis by his community, his profession, and the institutions of the Judicial Branch of Government. Underlying it all, as numerous friends and colleagues have attested when he's not around, he is a very special, essentially humble person who approaches every task he undertakes seriously, but himself, less so. He understands the complex relationship between human nature and economics, psychology and culture, and can explain it better than most in plain English—with, of course, the necessary footnotes.

In closing, I cannot think of a better way to describe my friend Glenn T. Harrell, Jr. and to explain the reasons for his multifaceted accomplishments than the description provided to Glenn's friend, Ann Sheridan, Esquire, by his long-time administrative assistant, Ann Kaiser. Glenn's legendary love of fine food and great wine (and his ability to judge both) inspired Ann to use *The Wine Advocate* rating system to characterize Judge Harrell as a "96-100," which refers to "an extraordinary wine of profound and complex character . . . worth a special effort to [know]."¹ It has been my pleasure to know him and I hope to have provided here an insight to all who have not already heard about him and his contributions to our state and nation.

PRACTICAL PROGRESSIVE OR PROGRESSIVE PRAGMATIST? THE PUBLIC LAW DECISIONS OF JUDGE GLENN T. HARRELL

ROBERT A. ZARNOCH*

Because Judge Glenn T. Harrell's frequent use of pop culture references and of humorous quips in his opinions has been well chronicled in another

1. See *The Wine Advocate Rating System*, EROBERTPARKER.COM, <https://www.erobertparker.com/info/legend.asp> (last visited Aug. 26, 2016).

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* Senior Judge, Court of Special Appeals of Maryland.

forum¹—as much as I would like to, I will not examine that fascinating topic here. Rather, I will take aim at a sampling of Judge Harrell’s Public Law opinions, such as those involving administrative law, statutory construction, and constitutional law. In my view, these decisions reveal Judge Harrell to be a fierce advocate for administrative due process, a staunch defender of property rights, and a moderate, practical, and progressive voice on constitutional and statutory law issues.

ADMINISTRATIVE LAW

In *Mehrling v. Nationwide Insurance Company*,² an insurance agent challenged the termination of her contract in a proceeding before the Insurance Commissioner. The Court of Appeals reversed the lower court and the adverse decision before the agency, and remanded. Speaking for the Court, Judge Harrell concluded that the agent could offer evidence in support of her exception to an Administrative Law Judge’s (“ALJ”) ruling as long as there is compliance with due process. In addition, Judge Harrell held that the final agency decision failed to provide “adequate factual findings and a clear statement of the rationale for the agency’s conclusions so as to permit ‘meaningful’ judicial review.”³

In another insurance case, *Maryland Insurance Commissioner v. Central Acceptance Corp.*,⁴ the Court held that the Commissioner could issue a cease and desist order prohibiting an unfair method of interest calculation by premium finance companies. The industry primarily attacked the Commissioner’s undue “command influence” over the agency adjudicator’s decision. Judge Harrell’s opinion rejected this contention, noting that the adjudicator was called upon to decide only questions of law, not disputed questions of fact, and judicial review was available to cure any errors of law.⁵ He wrote that the Commissioner’s delegation to the adjudicator to decide the case “does not make her *a fortiori* a slavish lapdog subject to the Commissioner’s will.”⁶ In a pointed footnote, Judge Harrell noted that the agency adjudicator was “an attorney admitted to the Maryland Bar and bound

1. See N. Tucker Meneely, *The Resident Humorist on the Court of Appeals*, DAILY RECORD (Apr. 2, 2015), <http://thedailyrecord.com/2015/04/02/the-resident-humorist-on-the-court-of-appeals/>.

2. 371 Md. 40, 806 A.2d 662 (2002).

3. *Id.* at 66; 806 A.2d at 678; see also *Fowler v. Motor Vehicle Admin.*, 394 Md. 331, 353, 906 A.2d 347, 359 (2006) (“Administrative law judges must fully explain their decisions so that this Court and others may perform the function of review accurately and effectively.”).

4. 424 Md. 1, 33 A.3d 949 (2011).

5. *Id.* at 19, 33 A.3d at 960.

6. *Id.* at 24, 33 A.3d at 963.

by her oath to uphold the U.S. and Maryland Constitutions, including the protections of due process of law.”⁷

Keeping ALJs on their Due Process toes was not just a subject of Judge Harrell’s opinions. For many years, he would annually address the ALJs of the Office of Administrative Hearings to update them on significant administrative law decisions.

One important administrative law decision of Judge Harrell involved a bypass of the administrative process. In *Adamson v. Correctional Medical Services, Inc.*,⁸ the Court of Appeals via Judge Harrell concluded that a prisoner was not required to exhaust his administrative remedies before bringing a malpractice action against a prison medical services provider under contract with the Division of Correction. Interpreting the Prisoner Litigation Act,⁹ Judge Harrell found that the statute was not intended to shield private medical contractors from malpractice claims by prisoners.¹⁰

Another very significant administrative law decision of Judge Harrell curtailed the power of local government to create exceptions to the State’s Public Information Law.¹¹ In *Police Patrol Security Systems, Inc. v. Prince George’s County*,¹² the County argued that one of its ordinances justified non-disclosure of personal information supplied by residents who applied for alarm user registration permits.¹³ The Court rejected this contention. Judge Harrell wrote that “the General Assembly never intended to give counties the right to create additional or new non-disclosure exceptions not contemplated within the MPIA by declaring information ‘confidential’ in local laws.”¹⁴

CONSTITUTIONAL LAW

Judge Harrell has described *Conaway v. Deane*,¹⁵ as one of his most difficult cases. There, the Court by a 4-3 vote upheld Maryland’s law banning same sex marriage. Judge Harrell’s nearly ninety-page opinion reflected the view of a majority of state courts that had considered the issue, all of which were abrogated when the U.S. Supreme Court decided *Obergefell v. Hodges*.¹⁶ Judge Harrell concluded his opinion on this note:

7. *Id.* at 24 n.12, 33 A.3d at 963 n.12.

8. 359 Md. 238, 753 A.2d 501 (2000).

9. MD. CODE ANN., CTS. & JUD. PROC. § 5-1001, *et. seq.* (West 2016).

10. *Adamson*, 359 Md. at 269, 753 A.2d at 518.

11. MD. CODE ANN., STATE GOV’T §§ 10-611 to 10-628 (current version at MD. CODE ANN., GEN. PROVIS. § 4-101, *et. seq.* (West 2016)).

12. 378 Md. 702, 838 A.2d 1191 (2003).

13. *Id.* at 711, 838 A.2d at 1196.

14. *Id.* at 714, 838 A.2d at 1198.

15. 401 Md. 219, 932 A.2d 571 (2007), *abrogated by* *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

16. 135 S. Ct. 2584 (2015).

In declaring that the State's legitimate interests in fostering procreation and encouraging the traditional family structure in which children are born are related reasonably to the means employed by Family Law § 2-201, our opinion should by no means be read to imply that the General Assembly may not grant and recognize for homosexual persons civil unions or the right to marry a person of the same sex.¹⁷

Of course, the General Assembly responded to the invitation, and in 2012, enacted a law permitting same sex marriage in Maryland.

Judge Harrell's next encounter with same sex marriage struck a very different note. In *Port v. Cowan*,¹⁸ the Court considered whether the State must recognize an out-of-state same sex marriage in a Maryland divorce action. Writing for a unanimous Court, Judge Harrell answered in the affirmative. He said that the out-of-state same sex marriage was not repugnant to state public policy and that a "valid out-of-state same-sex marriage should be treated by Maryland courts as worthy of divorce . . ."¹⁹

Two of Judge Harrell's most notable constitutional law decisions are *Muskin v. State Department of Assessments & Taxation*,²⁰ and *State v. Goldberg*.²¹ Both cases dealt with the constitutionality of ground rent reform legislation enacted by the General Assembly in 2007. Under the statute, ground rent owners had to register their interest with the State Department of Assessment by a statutory deadline. Upon failure to register, the Department would issue an extinguishment certificate transferring the reversionary interest from the ground lease holder to the ground rent tenant. Judge Harrell concluded that the statute operated retrospectively to divest the vested rights of ground rent owners and took property without just compensation. In *Goldberg*, the Court examined another feature of the legislation, such as the replacement of an ejectment remedy with a lien-and-foreclosure process for certain defaulting lessees. Once again, Judge Harrell found that the statute resulted in a retroactive impairment of a vested right. He said that the right of re-entry in the ground rent lease was "part of the bundle of rights, which is essential to the nature of ground rent leases."²² Because the right of re-entry is vested, the Court held that the statute unconstitutionally impinged on that vested right.²³

17. *Conaway*, 401 Md. at 325; 932 A.2d at 635.

18. 426 Md. 435, 44 A.3d 970 (2012).

19. *Id.* at 455, 44 A.3d at 982.

20. 422 Md. 544, 30 A.3d 962 (2011).

21. 437 Md. 191, 85 A.3d 231 (2014).

22. *Id.* at 217, 85 A.3d at 247.

23. *Id.*

Another significant property rights opinion authored by Judge Harrell is *Litz v. Maryland Department of the Environment*,²⁴ There, by a 4-3 vote, the Court held that a government agency's failure to regulate "in the face of an affirmative duty to abate a known and longstanding public health hazard," could justify a claim for inverse condemnation.²⁵ Writing for the Court, Judge Harrell also concluded that the damages cap of the tort claims acts did not apply to such a claim.²⁶

STATUTORY CONSTRUCTION

A number of Judge Harrell's statutory construction cases reveal a progressive streak. In *Maryland Department of the Environment v. Underwood*,²⁷ the State sought reimbursement for expenditures incurred in removing scrap tires from the owners' land. The owners tried to assert an equitable defense. However, Judge Harrell, writing for the Court, said the state environmental laws did not permit it. Although the State won that issue, it failed to convince the Court or Judge Harrell that the property owners were not entitled to a jury trial on the amount of the reimbursement.

In a big victory for discrimination plaintiffs, the Court, in *Washington Suburban Sanitary Commission v. Phillips*,²⁸ held that a bi-county agency was not exempt under a county ordinance that authorized a damages action for race-based employee discrimination. The Court, through Judge Harrell, said the WSSC was not a state agency exempt from the force of the county ordinance. He took particular note of the agency's unique hybrid characteristics, including its autonomy from the state, local control that was exercised over its employment actions, and the Court's duty to construe remedial statutes in favor of the claimants.

CONCLUSION

This mini-summary of case law does not begin to do justice to the rich, varied jurisprudence Judge Harrell has left us in his nearly sixteen years on the Court of Appeals. His clearly articulated opinions that never leave the reader guessing, his commonsense approach to complicated legal questions, and his wit and wisdom are enviable qualities for an appellate judge. He will surely be missed as a regular member of the Court.

24. 446 Md. 254, 131 A.3d 923 (2016).

25. *Id.* at 272, 131 A.3d at 934.

26. *Id.* at 276, 131 A.3d at 936.

27. 368 Md. 160, 792 A.2d 1130 (2002).

28. 413 Md. 606, 994 A.2d 411 (2010).