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A TRIBUTE TO JUDGE IRVING A. LEVINE

HONORABLE RITA C. DAVIDSON*

On October 2, 1978, Irving A. Levine, Associate Judge of the Court of Appeals of Maryland, was suddenly stricken and died. He had served as a member of the Court of Appeals since 1972, and before that as a Judge of the Circuit Court for Montgomery County. His loss will be felt not only by his family, friends, and colleagues, but by the citizens of the State of Maryland whom he devotedly served.

As a trial judge, Judge Levine was noted for his insistence upon excellence in his courtroom. He worked unending hours to prepare properly for each day's assignment and he required that attorneys appearing before him maintain similar standards. Yet it was not until he reached the appellate bench that he found his place, for there he was able to devote himself totally to what he loved best — the world of intellect and ideas.

He loved his work with a passion and pursued it with an indescribable intensity. His life was disciplined, ascetic, and almost monastic as he directed all of his energies to his study of the law. His personal standards of scholarship compelled him to read everything that was written on a subject before he wrote about it in a decision. He acquired encyclopedic knowledge about the issues before him.

At times the warmer and more loving side of his character, as well as his sense of humor, became obscured by an almost awesome aura of intellectuality. But those who knew him best were not misled by his dazzling scholarship, his fierce self-discipline, or his intense concern for the law. They understood that the drive for intellectual perfection was not an end in itself, but rather a reflection of his deep concern for people. He sought to use the power of ideas and the potency of words to make the world a better place.

In his written opinions for the Court of Appeals, Judge Levine made major contributions to many fields of law, particularly in the areas of punitive damages, defamation, and administrative law. The

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essence of his greatness, however, lay in his ability to understand the changing world around him and the demands that an evolving complex society places upon the individual. His view of the law was best expressed in his concurring opinion in *State v. Williamson*.¹ There he said: "The common law . . . is not a static body of absolute and unyielding principles. Rather the genius of the common law lies in its capacity to respond to the everchanging needs and conditions of human society."² His opinions reflect his effort to make certain that the individual is not crushed either by the largeness of the free marketplace or the vastness of the State. Worrying incessantly about the plain, ordinary person struggling against enormous societal forces, he worked to balance the scales so as to give the individual a fair chance. Some examples of decisions in which he spoke for the court are illustrative.

In *Maryland Board of Pharmacy v. Sav-A-Lot, Inc.*,³ the question was whether a law that banned the advertising of prescription drug prices was valid. The court held that it was not. In his opinion, Judge Levine recognized that the ban on advertising prescription drug prices imposed a burden on senior citizens and members of modest or low income groups because, as a practical matter, it prevented comparison shopping in a market in which wide price discrepancies prevailed. This opinion was one of the first in the United States to extend such protection to the consumer. In a later case, the United States Supreme Court reached the same result.⁴

In another case, *Fairchild Industries v. Maritime Air Service, Ltd.*,⁵ the question presented was whether the words "as is," appearing in the midst of the provisions of a lengthy sales contract, constituted a valid disclaimer of a warranty. The court held that while the words "as is" were a valid disclaimer of an implied warranty under the Uniform Commercial Code, they must be conspicuous and may not be buried in the middle of a long and complex contract. In his opinion, Judge Levine looked to the purpose of the Code, which is to protect the unwary buyer from surprise by making certain he is aware of disclaimers. He recognized that it does not matter whether a person understands a disclaimer if he does not see it.

1. 282 Md. 100, 382 A.2d 588 (1978).

2. *Id.* at 114-15, 382 A.2d at 596 (Levine, J., concurring).

3. 270 Md. 103, 311 A.2d 242 (1973).

4. *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976).

5. 274 Md. 181, 333 A.2d 313 (1975).

Judge Levine also made contributions to the field of medical malpractice. In *Raitt v. Johns Hopkins Hospital*,⁶ he wrote that there is no absolute requirement that a medical doctor appearing as an expert witness in a malpractice suit must practice or reside in the community in which the suit arose. The practical effect of that decision was to facilitate recovery in medical malpractice actions by eliminating the requirement that a complaining party find a doctor willing to testify against a colleague from the same community.

In *Sard v. Hardy*,⁷ Judge Levine wrote an opinion that brought the doctrine of informed consent to the State of Maryland. The doctrine requires that before a medical doctor may subject a patient to a medical procedure, the doctor must explain the nature of the ailment, the nature of the proposed treatment, the possibility of success of the contemplated treatment, the alternatives available, and the risk of adverse consequences, to enable the patient to make an intelligent and informed choice as to whether to undergo the proposed procedure. The court held that if a doctor failed to give a patient material information, the patient could recover damages for malpractice, even if he had consented to the treatment.

In each of these cases, Judge Levine demonstrated his determination to help the ordinary person to cope with the complexities of modern life and to assure him a fair chance to deal with institutions and technologies possessing power and knowledge far beyond his own. His concern was no more clearly expressed than in the opinions he wrote in the field of criminal law. There he championed the rights given to accused persons by the Constitution of the United States. The propositions that no one should be convicted by evidence obtained by illegal searches and seizures, that no one should be convicted by means of an involuntary confession, and that every accused person should have adequate representation were regularly reiterated in both his majority and dissenting opinions.⁸

Judge Levine's life and work reflected the biblical injunction to judges of old, "Justice, justice shall ye seek." His search is now ended, but his writings will remain as a constant reminder of what justice is all about.

6. 274 Md. 489, 336 A.2d 90 (1975).

7. 281 Md. 432, 379 A.2d 1014 (1977).

8. *E.g.*, *State v. Wilson*, 279 Md. 189, 367 A.2d 1223 (1977); *State v. Blizzard*, 278 Md. 556, 575, 366 A.2d 1026, 1037 (1976) (Levine, J., dissenting); *State v. Renshaw*, 276 Md. 259, 347 A.2d 219 (1975); *Mobley v. State*, 270 Md. 76, 90, 310 A.2d 803, 811 (1973) (Levine, J., dissenting).