

## In Memoriam: The Honorable Howard S. Chasanow

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# **In Memoriam: The Honorable Howard S. Chasanow**

## **IN MEMORIAM: HOWARD CHASANOW**

WILLIAM L. REYNOLDS\*

The untimely death of Howard Chasanow in April of 2017 has prompted many fine recollections of Howard by his colleagues and friends, some of which can be found below.

I knew Howard for a very long time. Both he and his equally wonderful wife Deborah came into my frame of reference many years ago at the Law School; we all go back so long that I cannot put a date on it. But both Howard and Debbie became wonderful additions to our faculty, both as teachers and friends. They have been delightful companions, intelligent, friendly, witty, and simply really nice. Even after retirements threatened to separate us, the Judges Chasanow had dinner with Professors Ted Tomlinson, Alan Hornstein, and me. Those evenings were wonderful.

Howard's original teaching and scholarly interests were in criminal law, but over the years those interests shifted. He became an expert on administrative law, and then he became one of the trio (along with Professors Lynn McClain and Alan Hornstein) who dragged Maryland evidence law—kicking and screaming—into the modern world. Howard also worked diligently for the Maryland Judicial Institute. His programs were always received with great enthusiasm, and he continued them by popular demand even after his retirement.

Howard was a terrific judge. He wrote opinions that were clear and thoughtful. One always knew what Howard was saying. Lawyers liked to read them for that reason. That is high praise for any judge.

Following his retirement, Howard became a mediator. And what a mediator! He quickly became perhaps the most sought-after mediator in Maryland. Not only did his sharp, incisive mind illuminate the issues, with all of their strengths and weaknesses, but his personality made everyone want to come together: The combination of analytic brilliance and personal charm proved irresistible. No wonder he was the star.

Howard formed many deep friendships in his life: law clerks, law professors, fellow attorneys, judges, and ordinary citizens all thought the

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world of him. Best of all was his wonderful wife Debbie—what a wonderful couple they were.

I shall sorely miss Howard. But the loss extends far beyond his immediate circle, for Maryland has lost a truly first-rate legal mind, and an all-around wonderful guy.

### HOWARD S. CHASANOW—A REMEMBRANCE

JOHN BAINBRIDGE, JR.

The sighs were devastating. Not always, but they might signal displeasure at the prose he was reading.

My prose.

Other than the soft clacking of a keyboard a few feet away, rarely were there other sounds in Howard S. Chasanow's chambers while the Maryland Court of Appeals judge scrutinized, word-by-word, a draft opinion I had written as one of his two law clerks. Carefully arrayed before him, left to right in order of their appearance in the opinion, stood the sources summoned to support the conclusion I had been ordered to reach, relevant pages flagged by paper markers. I sat at my clerk's desk, back to The Judge but well within earshot. I appeared to be working, which I was, but only to the extent possible under the circumstances. Concentration could never be so deep that I couldn't hear telltale murmurs that might emerge from the man behind me.

It was not that my boss at the time would bully a subordinate or use his position to be unfair about petty matters. Or that his exalted status as a judge on the state's highest court by itself humbled me. Rather, the fear was that, despite my best efforts, the draft I had turned in was not up to the exacting standards set by the Honorable Howard Stuart Chasanow. A sigh or two would tell me.

When he ascended to take a seat on the Court of Appeals, there was talk that this was the perfect match for him. Chasanow had turned in a good performance as a trial judge with a mind rich in the law's details and precision yet speedy in its application to the real-world dramas playing out in the courtroom where he held sway. So deft, so reliably accurate was he that other judges regularly sought his advice when stumped or when time prohibited more than cursory research in the midst of trial. They even gave him a nickname to suit his talents: The Computer.

Devotion to the law, not bending it to suit his preferences, was a guiding principle for Chasanow. In the spring of 1979, William Joseph Parker, a man who had raped and murdered a thirteen-year-old girl, stood before him, awaiting a sentence that could be either death under Maryland's new capital-

punishment statute or life in prison with eventual parole a possibility. The statute said that a murderer could be executed if the killing took place during “rape or a sexual offense in the first degree.” In a compromise behind closed doors, Parker’s jury had found him guilty of second-degree rape. Did the lack of a comma after “rape” in the law mean that Parker could not be sentenced to death?

The night before passing sentence, Chasanow got little sleep, as he pored over books of law and grammar to find the answer. By morning, he knew what it was. “[T]he legislature’s intent was to apply capital punishment only in [murder] cases where first degree rape is the aggravating offense,” he told Parker at sentencing. “Mr. Parker, I have done my very best throughout this trial to stay unemotional and detached,” Chasanow said softly in a voice shaking with emotion. “But I can’t help but be reminded again and again of the crime you committed as I hope you will during the remainder of your sentence.”<sup>1</sup>

Given his prowess in the law, it was natural that Howard Chasanow eventually wended his way upward to the Court of Appeals, where the legal world’s most intricate challenges are standard fare. And where sloppy craftsmanship has no place; this I learned personally.

In one draft I had not followed proper form when citing a New York case. This failure elicited more than a sigh. You *must* be precise, Chasanow scolded with a touch of irritation (or was it barely suppressed anger?). In a high court opinion, there is no room for flaws—not in style, not in reasoning, not in scholarship, he admonished. Sloppiness could betray weakness in substance and exacting analysis, neither of which must ever be sacrificed en route to the result the law demands. Judge Chasanow was not unkind, though. Early in my clerkship I wondered whether I was up to the tasks required not just of Court of Appeals law clerks, but by this particular judge. “Don’t worry,” he told me, “you’re just intellectually flabby; you’ll get back into shape.”

Judge Chasanow chose to leave the Court of Appeals before reaching the mandatory retirement age of seventy. To some this might not have made sense, given his love of the law and his ability to master its intricacies. But the rarified atmosphere up there lacked what he also loved: the interplay of people before their cases were reduced to dry transcripts and legal briefs. So Chasanow spent his last years as a mediator, guiding opposing parties to

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1. John Feinstein, *Archard Girl’s Slayer Gets Life Term*, WASH. POST (May 16, 1979), [https://www.washingtonpost.com/archive/local/1979/05/16/archard-girls-slayer-gets-life-term/f84c93f8-abe1-4da6-940c-3787938950aa/?utm\\_term=.0b5d939bfdb6](https://www.washingtonpost.com/archive/local/1979/05/16/archard-girls-slayer-gets-life-term/f84c93f8-abe1-4da6-940c-3787938950aa/?utm_term=.0b5d939bfdb6).

common ground without courtroom combat. It was a role well-suited to a mind, a temperament, and a soul such as his.

### TRIBUTE TO THE HONORABLE HOWARD S. CHASANOW

THE HONORABLE PETER B. KRAUSER

I am deeply honored to have been given the opportunity to express a few thoughts about one of Maryland's finest jurists, the Honorable Howard S. Chasanow. Scholar, jurist, teacher, mentor, and mediator, Judge Chasanow's contributions to the law, our legal community, and our legal processes, over the past fifty years, have earned him the admiration and heartfelt gratitude of both bench and bar.

Judge Chasanow served on Maryland's District Court, Circuit Court, and Court of Appeals. In each of these capacities, he was by all accounts, a model of judicial comportment. Fair, just, gracious, and compassionate, he treated all that appear before him with unfailing courtesy, leaving the well-prepared impressed with his well-known mastery of the law and the less prepared grateful for his patience and understanding. To Judge Chasanow, his judicial robe was a symbol, not of rank, but of responsibility, and it was to be donned, not with hubris, but with humility, as he unfailingly did.

But his contribution to the Maryland Judiciary went far beyond his exemplary comportment. His opinions were nothing less than lessons in opinion writing. Clear, concise, and compelling, they always unfolded with a logical precision, while conveying Judge Chasanow's unflagging commitment to the rule of law and the public welfare. But his devotion to the rule of law never blinded him to the realities of everyday life. In fact, he would never hesitate to interpret and apply abstract legal principles so that they met the problems and demands of the real world. And that "commonsensical" approach to legal interpretation earned him both the gratitude of the bar and the praise of legal scholars.

Moreover, his opinions played an important and pivotal role in the development of Maryland law. In fact, they often brought order and clarity to what had been, to put it charitably, "confusing areas" of that law. To select just one example, he is widely credited with clarifying, in a sequence of opinions, such evidentiary doctrines as "verbal completeness," "opening the door," and "curative admissibility,"<sup>1</sup> with what two legal scholars described as "his characteristic analytic precision."<sup>2</sup>

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1. *See, e.g.*, *Conyers v. State*, 345 Md. 525, 541–46 (1997); *Clark v. State*, 332 Md. 77, 84–93 (1993); *Richardson v. State*, 324 Md. 611, 622–23 (1991).

2. Alan D. Hornstein & Nichole G. Mazade, *A Match Made in Maryland: Howard Chasanow and the Law of Evidence*, 60 MD. L. REV. 315, 321 (2001).

And, when Judge Chasanow left the bench, his contributions to the salutary expansion of Maryland's legal processes only accelerated, as that departure quickly led to his emergence as Maryland's premier mediator and with good reason. The efforts Judge Chasanow made to prepare himself for each mediation frequently exceeded the preparation engaged in by even the most diligent of participating counsel. Studying, with an almost compulsive thoroughness, all of the materials relevant to the mediation at hand, conducting a wide-ranging research into all potentially pertinent areas of the law, and holding thorough and comprehensive pre-mediation discussions with counsel until he had a full, rich, and complete understanding of the differences between the parties, he was frequently able to resolve what most would consider unresolvable conflicts. Indeed, his level and degree of success was astounding, given that he was frequently invited to mediate the most intricate and complex cases, involving purportedly unyielding parties. But, to these mediations and others, he brought what the parties later described as a sympathy and understanding of their plights and positions, a personal and unrelenting dedication to achieving a result that would best benefit all parties, and a seemingly inexhaustible patience coupled with a compassionate persistence.

Finally, I wish to address a less public but no less noteworthy aspect of Judge Chasanow's contributions to the legal community. At every level of his professional life, Judge Chasanow mentored countless law students, law clerks, lawyers, and judges. Always kind, gracious, and caring, he had a talent for helping you to see what you preferred to ignore, to do what you wished to avoid, and thereby to become what you always wished to be. It is in that regard that a line from William Wordsworth's poem, *Tintern Abbey*, always comes to mind when I think of Judge Chasanow. It reads: "that best portion of a good man's life; his little, nameless, unremembered acts [o]f kindness and of love."<sup>3</sup> As so many can attest, that was not just the best portion of Judge Chasanow's life; that *was* his life. He will be sorely missed.

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3. WILLIAM WORDSWORTH, LINES, COMPOSED A FEW MILES ABOVE TINTERN ABBEY, ON REVISITING THE BANKS OF THE WYE DURING A TOUR JULY 13, 1798, at ll. 34–36 (London, J & A Arch., 1798).

**A TRIBUTE TO THE HONORABLE HOWARD S. CHASANOW**

JUDGE JOSEPH F. MURPHY, JR. (RET'D)\*

Thank you for the opportunity to write about Judge Chasanow's enormous contributions to the bench, to the bar, and to the citizens of Maryland. Those contributions include service on the Court of Appeals' Rules Committee, on the legislatively established Committee to Revise Article 27, and on the MSBA's Committee on Criminal Pattern Jury Instructions. As I am confident that other contributors will comment upon the opinions Judge Chasanow authored while serving on the Court of Appeals, I wish to emphasize his tireless contributions to his fellow judges.

The first portion of this tribute was actually written over thirty years ago, while Judge Chasanow was serving on the Circuit Court for Prince George's County. The following two paragraphs were included in a letter dated June 25, 1987 that I wrote to Governor William Donald Schaefer in support of Judge Chasanow's appointment to the Court of Appeals:

Before he became a District Court Judge, Howard Chasanow was well known for his impressive academic achievements and for his outstanding legal work, during his important public service and as a private practitioner. While in the Prince George's County State's Attorney Office, Judge Chasanow taught Maryland State's Attorneys Association continuing education courses to prosecutors throughout the State, thereby enhancing the quality of law enforcement in every jurisdiction. He has always been active in bar association educational matters, including service as Chairman of two Maryland State Bar Association Sections. Over the years, he has continuously taught complicated law school courses, as well as important MICPEL and Maryland Judicial Institute programs.

As a Director of the Judicial Institute, I review all course evaluations turned in by the judges who attend its programs, so I have personal knowledge that Judge Chasanow repeatedly gets the highest ratings for his work. His tireless contributions to the education of Maryland lawyers and judges have justifiably earned him the admiration and respect of our state's entire bench and bar. In fact, because he is one of the very few judges in the United States selected to teach courses for both the National Institute of Judicial Education and the National Judicial College, Howard Chasanow's excellent reputation extends far beyond Maryland's borders, and I am convinced his appointment would immediately increase the stature of our highest court.

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Continuing judicial education has always been a priority of the Maryland Judiciary. At this point in time, the Judicial College of Maryland (established by a November 23, 2015 Administrative Order) serves as the primary entity through which continuing education programs are provided to judges (and magistrates, and commissioners), all of whom are required to attend – each calendar year – one or more programs with an aggregate scheduled length of 12 hours. During Judge Chasanow’s tenure, the Judicial Institute of Maryland provided those programs. The Judicial Institute’s records include the following COURSE DESCRIPTIONS of programs presented by Judge Chasanow:

SCIENCE IN THE COURTROOM–APRIL 20, 2001

Course will deal with variety of issues, including the kinds of scientific issues likely to come before the courts, the role of the judge as gatekeeper in allowing scientific evidence, the requirements of Frye/Reed and the distinctions between those requirements and the requirements of Daubert; special “hot topics” and recent decisions.

Coordinator/Instructors: Judge Joseph F. Murphy, Jr. and Judge Howard S. Chasanow

EVIDENCE–MARCH 27, 1998

What’s new? Judge Howard S. Chasanow will discuss new trends and new decisions on evidence in the Court of Appeals of Maryland. Chief Judge Joseph F. Murphy, Jr. will discuss new evidence decisions and potential new evidence rules. Professor Lynn McLain will discuss emerging new evidentiary issues on the national scene and in federal courts.

MARYLAND EVIDENCE LAW–APRIL 10, 1992

Hon. Howard S. Chasanow, Hon Joseph F. Murphy, Jr., and Professor Lynn McLain will present a lecture/discussion program that balances substantive law with judicial procedure for admission or exclusion of evidence.

THE MARYLAND LAW ON EVIDENCE–APRIL 18, 1991

Hon. Howard S. Chasanow, Hon. Joseph F. Murphy, Jr., and Professor Lynn McLain balance the substantive law and judicial procedures for admission or exclusion of evidence. Because of the broad scope of this topic, the faculty’s material will be limited to the more frequent and troubling evidentiary issues confronting the trial judge.

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HEARSAY SEMINAR—MARCH 10, 1988 AND SEPTEMBER 14, 1989

Judge Howard S. Chasanow will discuss selected hearsay exceptions, including business records, refreshed recollection and former testimony. Judge John F. McAuliffe will discuss hearsay exceptions encompassed by what was formerly known as the *res gestae* rule.

HEARSAY—OCTOBER 30, 1987

Deborah K. Chasanow, Esquire and Hon. Howard S. Chasanow demonstrate that solving hearsay problems involves more than the “Younger nose.” Through videotape interaction and case discussion the class will actively apply the lecture material to factual situations.

CHILD ABUSE—MARCH 21, 1986

Dr. Charles Shubin, a pediatrician and chairman of the Governor’s Task Force on Child Abuse and Neglect, and Dr. Leon Rosenberg, a child psychiatrist on the staff of the Johns Hopkins University, will address an abused child’s physical trauma and psychological injury. Judge Howard Chasanow will focus on the child as a witness. James Olsson, Ph.D. will lead a panel discussion on child abusers, their therapeutic and security needs.

MOTIONS TO SUPPRESS EVIDENCE—SEPTEMBER 19 & 20, 1985

Judge Charles E. Moylan, Jr., Judge Howard S. Chasanow, Deborah Chasanow, Esquire and Professor Ronald Carlson, the John Byrd Martin Professor of Evidence, University of Georgia will present a two day evidence program. Topics include hearsay, constitutional standards, and recent Supreme Court and Maryland case law.

EVIDENCE—MARCH 29, 1984

Judge Howard S. Chasanow and faculty, including Professor John Brumbaugh of the University of Maryland School of Law will discuss selected evidentiary problems. Topics will include the best evidence rule, business and official records, husband/wife privilege, and past recollection recorded/present recollection refreshed.

SENTENCING—JANUARY 27, 1983

One of the most difficult procedures in the art of judging, sentencing, is thoroughly considered in this course. Judge Marshall A. Levin concentrates on the history and philosophy of sentencing and punishment. Judge Howard

S. Chasanow addresses the procedures governing sentencing and the case law on reversible error.

I know of no one who has contributed more generously to the continuing education of Maryland judges than the Honorable Howard S. Chasanow. As Dean Tobin stated so well on behalf of the Maryland Carey Law community, “Howard was an amazing contributor to the legal profession, the State, and the law school. . . . He loved Maryland and we loved him. He will be sorely missed.”

### **A TRIBUTE TO THE HONORABLE HOWARD S. CHASANOW**

THE HONORABLE DENNIS M. SWEENEY

When Howard Chasanow retired from the Court of Appeals in 1999, I, a trial judge in Howard County, was surprised and a bit dismayed. I knew him at that time primarily from reading his opinions and hearing him instruct trial judges at the Judicial Institute. For almost a decade, he had been a clear and learned voice on the Court for common sense approaches to the tasks of adjudicating cases in the trial courts in fair but expeditious fashion. At the time, he still had another eight years before mandatory retirement would have required his departure. It seemed an unnecessary loss of a superb appellate jurist who could articulate the law with wisdom and intelligence.

I next saw Judge Chasanow when he came to the Howard County Circuit Court one morning shortly after his retirement to fulfill the role of “settlement judge” on our civil docket. It was a bit jarring to contemplate. Leaving a perch on Maryland’s highest court after deciding complex constitutional and statutory issues, Howard was now rummaging through our settlement docket of auto accident cases, business disputes and real estate matters, some of which had self represented parties. I expected him to be frustrated that his prodigious talents were being squandered on what could have been seen as the detritus of our docket.

Yet, when Howard emerged from a day of meeting with parties and counsel in a conference room, he would stop by chambers to give an enthusiastic report on which cases settled and which ones needed more work. He took obvious joy in those that settled and viewed the ones that did not as continuing challenges for which he offered advice about how to proceed. Often, he would suggest that a case be set in for another session with him after counsel and the parties had internalized the pointed advice he had provided. When I asked him about how he compared this work to being an

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appellate judge, he responded that settling cases was so much more satisfying, especially when he could help real persons appreciate the advantages of ending a lengthy legal dispute with a resolution, even if it was not what the party may have originally envisioned.

From these origins, Howard's second career as a mediator grew. He opened his own mediation practice in Greenbelt and later established the Maryland office for JAMS, a national dispute resolution service. Howard quickly became one of the most sought after mediators in Maryland and the District of Columbia and routinely would earn the top area mediator rating in the various legal publications.

Successful mediation of legal disputes is a difficult art. In a complex case, the parties and lawyers are likely to have been deeply enmeshed in the matter for many months, perhaps years. Experienced and skilled lawyers arguing among themselves have not been able to settle the matter. The parties often come to the mediation with a potentially toxic brew of anger, bravado, frustration and defiance, and occasionally one or more of the attorneys may be stirring the pot. It is incumbent on the mediator to master not only the facts and law of the underlying legal disputes, but to discern how and when to approach the parties and lawyers in a way that acknowledges their deeply felt feelings and concerns but moves them to a place where a resolution can be obtained.

When faced with such cases Howard applied his own unique style to the mediation. He prepared obsessively but frequently billing for only a fraction of the time expended. Besides requiring detailed mediation statements well in advance of the session, he would always meet or talk on the telephone with the lawyers individually in advance of the mediation. He found that an attorney will often be more candid in that conversation than she can be at the mediation session when the client is present.

In the mediation session, Howard was a calm but serious presence commanding the attention of all with a precise sense of when to let a party or counsel emote and when to cut them off firmly but diplomatically to refocus on the issues at hand. Occasionally, Howard would determine that an attorney was not, in Howard's view, negotiating with the intention of actually resolving the claim and seemed to be wasting everyone's time and money. If Howard could not dissuade the attorney from this course by a private sidebar session, he would place him on the "no fly" list, meaning that he would not schedule any more mediations with that counsel. The "no fly" list took on the status of legend—a notorious listing that lawyers took pains to avoid by engaging in good faith and serious negotiations and encouraging their clients to do so.

Howard also viewed a mediation case as concluded only when it reached final resolution. If a case did not resolve on the day of the mediation session, he would stay involved to find the elusive key that would move the parties to reconvene. It was common for lawyers, after an unsuccessful mediation session, to receive calls from Howard even weeks or months later proposing fresh ideas for how the case could resolve; oftentimes this would renew discussions that lead to a settlement.

As he approached his eightieth birthday, Howard spoke of trying to slow down and diverting his mediation clients to other JAMS neutrals. Despite this intention, his enthusiasm for mediation did not wane and his popularity as one of the top mediators in the Maryland-District of Columbia area did not lessen.

At Howard's funeral service, Rabbi Jonathan Cohen eulogized Howard's service as "a born mediator, a gifted listener" by explaining how the role of the wise mediator was deeply engrained in the Jewish religious and cultural traditions. Citing the Talmud, Rabbi Cohen told how Aaron, the brother of Moses and the first High Priest, was beloved by the people for the mediation service he performed:

While Moses was stern and uncompromising, brooking no wrong, Aaron went about as the compromiser, pacifying a marital quarrel whenever he saw a man and wife estranged from one another; or bringing antagonistic neighbours into a state of harmony; or winning evil-doers back into the right way by his friendly words. For this reason, there was even more mourning among the people when Aaron died than there was when Moses passed away.<sup>1</sup>

Howard Chasanow, a modern day Aaron and treasure of the Maryland legal community, lived his second career and life as mediator in this great tradition.

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1. Rabbi Jonathan Cohen, Mishkan Torah Synagogue, Eulogy at The Honorable Howard S. Chasanow's funeral service (Apr. 5, 2017) (on file with author).