Tributes to Judge Rita C. Davidson

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Recommended Citation
Tributes to Judge Rita C. Davidson, 44 Md. L. Rev. 229 (1985)
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TRIBUTES TO JUDGE RITA C. DAVIDSON

Rosalyn B. Bell*

When the Honorable Rita Charmatz Davidson entered a room or a courtroom, everyone knew she was there. Her presence caught one's attention, not so much because of her physical stature, but because of the intensity of her thoughts and purposes. Rita Davidson's achievements opened many doors for women in the legal field, yet she kept her accomplishments in perspective and did not hesitate to applaud the success of other women. Her dedication to every challenge remained strong even when her stance met with opposition.

The series of Rita Davidson's "firsts" began in 1967, when she became the first person to serve as a zoning hearing examiner for Montgomery County, Maryland. In 1970 she moved on, becoming the first woman to serve in the governor's cabinet as Secretary of the Department of Employment and Social Services. Two years later, she began her judicial career, sitting on the Court of Special Appeals of Maryland from 1972 to 1979, and joining the Court of Appeals of Maryland in 1979. Judge Davidson was the first woman to serve on either of these appellate courts.

It is significant to note, however, that Rita Davidson's accomplishments extended far beyond her achievement of these many "firsts." Her concern for the underdog and the disadvantaged did not wane despite lack of support for her position. In fact, Judge Davidson was known for submitting numerous dissenting opinions during her judicial career. Although she often became disheartened by the frequency with which she felt the need to indicate disagreement with the majority, Rita Davidson believed in her views and

* Associate Judge, Court of Special Appeals of Maryland.
continued to express them. While perhaps having no discernable effect initially, Judge Davidson's dissents often anticipated imminent changes in the law.

One such opinion of which she was particularly proud, *Sard v. Hardy*, concerned the informed consent doctrine. The case involved a woman who, after two difficult pregnancies and births by caesarian section, became pregnant a third time. A few weeks before giving birth, her physician advised her against future pregnancies and made several suggestions concerning birth control methods. Relying upon the physician's representation that tubal ligation would guarantee sterility, the woman chose to undergo the operation. The surgery was performed immediately after the third caesarian section.

Despite this operation, the woman became pregnant again and filed suit against her physician for malpractice. She alleged that the physician had failed to inform her that tubal ligation did not always prevent pregnancy, and that the physician had not informed her of all the alternatives to the surgical procedure. The Circuit Court for Talbot County directed a verdict in favor of the physician, and the majority of the Court of Special Appeals affirmed.

Judge Davidson, then an Associate Judge on the Court of Special Appeals, argued strongly in her dissent that the issue should have been submitted to the jury. Emphasizing the relationship between a physician and patient as one based on trust and confidence, she explained that a physician has "an obligation to disclose to the patient all material facts reasonably necessary to provide the basis of an informed intelligent decision as to a proposed treatment." Judge Davidson concluded that the information given Mrs. Sard was insufficient to make an informed decision, and stated that it was significant that there was "one chance in fifty that [a patient] would derive no benefit from the operation."

Judge Davidson's view was adopted by the Court of Appeals, which held "the scope of the physician's duty to inform is to be measured by the materiality of the information to the decision of the patient." The court further noted that the evidence "taken together, was sufficient in this sterilization case to warrant submission to the jury the question whether the information withheld . . . was

2. *Id.* at 239, 367 A.2d at 538 (Davidson, J., dissenting).
3. *Id.* at 247-48, 367 A.2d at 542 (Davidson, J., dissenting).
4. *Id.* at 253, 367 A.2d at 545 (Davidson, J., dissenting).
material to the patient's decision.\textsuperscript{6}

While the \textit{Sard} case illustrates Judge Davidson's role in effecting change in the law by speaking contrary to the majority, there were also times when she did not meet with such success. For example, Rita Davidson repeatedly declined to uphold death penalty sentences, and often received criticism for her attempts to safeguard the rights of criminal defendants. Despite the frequent unpopularity of her views, she did not retreat; she remained a forceful advocate of ideas in which she believed. Rita Davidson refused to accept a principle or rationale simply because the majority did. Each decision had to be appropriate, both in the particular case and in her view of future ramifications.

Judge Davidson's refusal to abandon the fight to protect the rights of the powerless and disadvantaged was more important than her many "firsts." Perhaps this persistence is her greatest legacy.

\textsuperscript{6} \textit{Id.} at 446, 379 A.2d at 1023.
KAREN CZAPANSKIY*

I met Judge Davidson one evening twelve years ago when she interviewed me for the position of law clerk. It was a serendipitous event: she, just appointed to the Court of Special Appeals, was seeking a clerk; I was seeking a clerkship. Actually, as I was soon to discover, she wanted a legal and personal aide-de-camp. During my clerkship, I worked on her cases as all clerks do for all judges. I also drove her to court, to campaign appearances, and to her dog’s kennel. We shopped together for her clothes; I kept her in cigarettes, snacks and lunches; and I sewed hems in her dresses. She needed a clerk in January, in the middle of my last year of law school. So I changed my schedule, delayed some courses until the following summer, took the bar exam six months late, and commuted the long distance to work in a twelve-year-old car. What made it worthwhile was simple: Rita Davidson.

From our first meeting, I understood that the Judge was unique, special, perhaps larger than life. In time I learned that she had always been a groundbreaker, starting at least as early as her days at Goucher where she battled the gym requirement. She was the first zoning hearing examiner for Montgomery County. She was the first woman to sit in the cabinet of a governor of Maryland. She was the first woman appointed to any appellate bench in the history of Maryland. And then she was the first to serve on its highest court. But I do not think her uniqueness came solely from her titles. I think it came instead from her abundant enthusiasm for people and from her integrity.

For Rita Davidson, the substance of life was people. She cared for people, cared about people, cared with people. Her dedication to the law was founded on the principle that the law serves people. Her initial test of the correctness of a legal rule was whether it benefitted people. To the Judge, a rule that denied people compassion and fairness was suspect.

Along with her other law clerks, I was often the subject of the Judge’s interest in people. My position was not always comfortable. When she found my research, analysis, or expression deficient, she would say so. Her criticism of my work was purely that, however; it was never personal. She respected me just as I respected her. When she engaged another’s mind, she always expected to learn and to grow.

The Judge let every person’s humanness touch her. That per-
son may have been more or less brilliant, more or less honest, more or less noteworthy, but that person was never less than a person. Instinctively, she followed the dictates of the philosopher Maimonedes, who said that the best form of charity is to make it possible for another person to be autonomous. A person in trouble is not an object of pity, but someone whose full potential has not been realized. Judge Davidson showed unstinting respect for human potential. As her clerk, I was a new, untested lawyer with much to learn, but to Judge Rita Davidson I was a person, and therefore full of potential. Her respect inspired me and many others to realize our potential and gain autonomy.

A typical experience with the Judge started one day when, as usual, we were working while the rest of the world was on vacation. The phone rang; it was my husband telling me that our apartment was on fire and he had just escaped. I informed the Judge, who replied, “I love a fire! Let’s go.” So we went home to watch the fire. By the time the morning was over, my husband and I were without a home. “No problem,” said the Judge; “come to my house.” So we did, along with our three cats and my charred bar review notes. We stayed until after the bar exam, several weeks later. Somehow, with Rita, it just seemed the most natural thing in the world for me to be living in her house and studying for the bar exam in her study while she did without me for a couple of weeks at the office. The hierarchy of our situation—she was, after all, the judge and I the clerk—could not interfere with her caring for another human being in need of help. She thrived on nourishing others.

Her enthusiasm for literal nourishment was legendary. When she was learning Chinese cooking, my husband and I frequently enjoyed her multi-course feasts. I was constitutionally unable to eat as much as the Judge, so I was dubbed the “food fink.” I bowed to the master, and marvelled that her enthusiasm for life equalled her enthusiasm for food. All her appetites were large, whether they were for people, for joy, for beauty, for music, for knowledge, or for food. She experienced life’s fullness and abundance.

The Judge saw herself as a perpetual learner. She was always doubting, always questioning whether she was doing the right thing. She even attributed her success in life to “miracles,” not to her intelligence, wit, ability, or hard work. When we were reading cases, her refrain was always “I don’t understand.” Everyone had something sensible to say, so her lack of understanding could not mean the case didn’t make sense; the reason had to be that she had not yet
discerned its meaning. Her need to understand and her capacity to perceive and question assumptions, whether her own or another’s, were at the heart of her integrity. Integrity is a quality with many definitional levels; all applied to the Judge.

Integrity encompasses honesty. The Judge displayed personal honesty with herself and her friends. She never left one in doubt regarding her opinions of one's conduct, although her opinions were often cloaked in humor. I remember well how she teased me about my first job after the clerkship. I became a supervisor in the clinical program at American University before I had ever represented a client. Despite my fears about the job and my defensive-ness about my lack of experience, she disarmed me with the sincerity of her amusement. At another time, in a memorable speech, she mused about gender discrimination. She remarked that she was at a loss to understand why women were said to be bad workers because of their hormone make-up. As she understood the facts, the same hormones that may make women aggressive and unpredictable once a month are running around in men's bodies every day!

The intellectual honesty the Judge demanded of herself made it impossible to label her politically. She was neither liberal nor conservative; she was deciding cases. The precedents would control her decision once two criteria were met: She had to be sure she knew what the precedents meant, and she had to be sure that they still fit the requirements of social conditions. She understood the job of the common law judge as finding ways to solve people’s problems in a real world. To do that, one needed cases to know what other judges had said about the same kinds of problems when they tried to solve them. At the most fundamental level, a common law judge determines whether an earlier case decides the case at hand by comparing their facts. To Judge Davidson, this was a rigorous exercise demanding exquisite care; the record was dissected and the evidence examined, reexamined, and re-reexamined. The record alone was inadequate for her purpose, however, since a judge in 1984 never saw the facts in the same context as a judge in 1884 or 1964. Whatever made the continually changing social context different also had to be examined. When she perceived differences that were determinative, she would try to reformulate the rule of law. Many would call this activist judging; to her, it was the heart of the common law process.

Integrity also signifies the quality of completeness, the state of being entirely whole. The Judge would have joined in an opinion
labelling her honest and full of character, but she would have dissented from being labelled whole or complete. She felt she had too much to learn, to experience, to understand, to accomplish. She sought perfection and knew she would never achieve it. But wholeness and perfection are different, and it was her quest for perfection that gave her wholeness. She knew her goal: She wanted to do whatever she did in the best way she could. Rarely does one encounter a person whose life is both so focused and so appropriate to her soul.

She was my mentor. In her abundance and enthusiasm, she called me her “firstborn.” And she made me feel as if that were true. She offered her life for examination, but she never believed others would or should repeat her experience. She knew the uniqueness of each person’s journey. Her own, full of compassion, love, life, and integrity, ended too soon.
A serious review of the life of Rita C. Davidson would likely focus upon her many achievements, or upon the principal attributes of her unique character. Her major achievements, of course, included her service in high public office, beginning as a member of the governor's cabinet as Secretary of the Department of Employment and Social Services (now the Department of Human Resources), continuing thereafter as Associate Judge of the Court of Special Appeals of Maryland, and, from 1979 until her death, as Associate Judge of the Court of Appeals of Maryland. She was the first woman ever to serve in these offices. More importantly, she will be remembered for the outstanding manner in which she discharged her responsibilities in each of them. The hallmarks of Rita's character included her interest and involvement in the political process; her concern for the underprivileged; her commitment to reforming law and public policy where necessary, in her view, to better serve her fellow citizens; as well as her integrity, erudition, perseverance, vision, and constant good humor in dealing with friend and foe alike.

Any one of these achievements or attributes could itself be the subject of lengthy reflection. However, in this tribute, I would like to describe an often overlooked episode in Rita's life which both epitomizes her spirit and exemplifies the meaningful and lasting contributions she made to the commonweal during her all-too-brief tenure among us. It concerns a land use dispute which ultimately found its way to the Court of Appeals of Maryland and resulted in a decision known as Hyson v. Montgomery County Council, a landmark in the fields of administrative and land use law. Ironically, Rita represented the losing appellants in Hyson. Yet, her legal arguments as to the nature of the rezoning proceeding and the proper role of the court in reviewing zoning decisions were fully embraced by the court and resulted in a ruling that not only reformed the land use regulatory process in Maryland, but had national implications as well. The story is as follows.

Prior to Hyson, courts in most states adhered to the view that the rezoning function, as performed by the local government legislative body, was essentially legislative in character. The Court of Appeals of Maryland, while sharing this view, had indicated in a series of cases beginning in the early 1960s that the legislative charac-

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ter of the zoning decision did not preclude the local legislative body from acting in an administrative or quasi-judicial capacity in hearing a piecemeal rezoning case and in performing related functions prior to reaching its decision. Nevertheless, uncertainty existed as to whether and to what extent participants in rezoning proceedings were entitled to procedural due process rights. It was through Rita's efforts in *Hyson* that this uncertainty ended.

*Hyson* involved an application for commercial rezoning of a four-acre tract in Montgomery County to accommodate a supermarket. Rita, who was in private law practice at the time, represented a number of citizens in opposing the rezoning. Her unsuccessful efforts to cross-examine the applicant's witnesses at the public hearing before the County Council formed the crux of the *Hyson* appeal. The appeal was pursued with vintage Davidson thoroughness, prompting the court to observe in the opening sentence of its opinion: "Appellants, apparently in an effort to be certain they have overlooked nothing that may aid them, have assigned 10 alleged errors some of which overlap."

*Hyson* firmly established the principle that the zoning function, as performed by the local legislative body, is not solely legislative in character; that while the zoning decision itself may be legislative or "quasi-legislative," the proceedings behind it, including the public hearing, are adjudicatory in character; and that the legislative body is performing a quasi-judicial function in determining adjudicative facts in zoning proceedings. Thus, where the tribunal is required to hold a public hearing and decide adjudicative facts based upon the evidence of record, "a reasonable right of cross-examination must be allowed the parties."

*Hyson* in effect bifurcated the zoning function, and in so doing may have also provided the most reasonable compromise yet devised to facilitate judicial review of zoning decisions of local legislative bodies. Defining the appropriate role of the judiciary in such cases has proven to be an elusive goal for courts around the country. Some, perceiving the zoning function to be purely legislative, tend to restrict their role to a cursory review of the record and give short shrift to the procedural due process claims of the parties. Meaningful review of zoning actions in such courts often does not occur. Other courts treat the entire zoning function (decision and

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3. 242 Md. at 59, 217 A.2d at 581.
4. Id. at 67, 217 A.2d at 585.
proceedings) as quasi-judicial, based upon the perceived inferior status of the local legislative body. Their review, uninhibited by the doctrine of separation of powers, can be so pervasive as to obliterate *stare decisis* and make the court itself something of a super zoning tribunal.\(^5\)

The *Hyson* approach, as advocated by Rita, successfully bridged the gap between these two extremes. It leaves virtually undisturbed the traditional “presumption of correctness” that attaches to challenged zoning decisions (based upon the separation of powers concept embodied in the federal and Maryland constitutions), while simultaneously recognizing that the court may intervene to protect the procedural due process rights of parties to the proceeding. The rule of *Hyson* has survived intact for nearly two decades.\(^6\) Whether this is due more to the pragmatism of the decision or its ingenuity remains to be debated.

The *Hyson* case is generally credited as having led to the establishment of the zoning hearing examiner system in Maryland. Maryland's zoning hearing examiner system has in turn become something of a model for the nation and has been emulated in several states. Here, too, Rita played a major role. She became the first zoning hearing examiner in Montgomery County, serving in this position from 1967 to 1970. Her written reports and recommendations were of such a consistently high caliber as to become the standard for her successors. Former Judge Wilson K. Barnes of the Court of Appeals once characterized Rita's reports in a highly contested case as “perhaps the clearest and most comprehensive analyses of all relevant zoning factors in regard to a subject property I have yet seen.”\(^7\) She pioneered in establishing rules of practice and procedure for zoning hearing examiners and assisted other jurisdictions in developing their own hearing examiner systems.

Maryland courts, in reviewing the actions of zoning bodies, have accorded great weight to the recommendations of zoning hearing examiners. While acknowledging the ultimate authority of local legislative bodies in such matters, the courts have held that where the legislative body's decision is contrary to the recommendation of the hearing examiner, the decision must be based upon the legislature's own independent analysis of the evidence and must be sup-

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ported by its own specific written findings of basic facts and conclusions of law. In actual fact, zoning bodies have followed the recommendations of the hearing examiners in well over eighty percent of the cases. This is because the record in a case involving a hearing examiner is likely to be more fully developed and the decision more thoroughly considered. The end result has been a marked decrease in court appeals in such cases.

Suffice it to say that the general public and the legal profession are indebted to Rita Davidson for the *Hyson* ruling and all that it spawned. However, her contributions to the field of land use law did not end with *Hyson*. During her years as a member of the judiciary, she authored several important opinions on this subject. The quality of her opinions was in keeping with the tradition of excellence for which Maryland courts have long been known in land use law.

As noted above, Rita actually lost the *Hyson* case. The court, perhaps motivated by a desire that its ruling be prospective, concluded that while Rita was correct on the law regarding the adjudicatory character of the zoning proceeding, it could find no denial in the record of any specific request by her to cross-examine. Many who were present at the hearing on that evening long ago would respectfully disagree with the court on this point. Be that as it may, Rita may have lost a battle, but with the *Hyson* ruling, she made an important and lasting contribution toward improving the process by which government regulates the use of land.

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10. Maryland has been recognized as one of four leading states in land use case law. See 1 N. Williams, *American Land Planning Law* § 6.02 (1974).
Judge Rita C. Davidson was my colleague on the Court of Appeals of Maryland from her appointment in 1979 until her untimely death on November 11, 1984. Throughout her legal career, Judge Davidson committed herself to the needs of the people she believed were underrepresented in government and strove to address what she perceived as an imbalance between government and the individual. When Judge Irving A. Levine of the Court of Appeals died in 1978, Judge Davidson wrote that "[h]is 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." The words Judge Davidson wrote of Judge Levine embody her view of the function of the public servant.

Judge Davidson's concern for the rights of individuals was manifest in opinions she wrote for the Court in such criminal cases as Powers v. State, Howell v. State, Scott v. State, and in the plurality opinion in Foster v. State. Powers extended the doctrine of collateral estoppel in criminal cases, holding that under certain circumstances a retrial of the defendant on a count was precluded even though there had been a hung jury with respect to that count. Judge Davidson's opinion in Howell reinforced an accused's constitutional right to counsel, holding that an unrepresented defendant could not be required to choose between the right to counsel and the statutory right to be tried within 180 days. In Scott, Judge Davidson recognized the particular unfairness to an accused in a death penalty sentencing proceeding unless, "in the face of the unique severity of the death penalty, the type of admissible evidence is more circumscribed than in a non-death penalty case." Judge Davidson's Foster opinion took the position that the exclusion, under the hearsay rule, of relevant and sufficiently reliable exculpatory testimony deprived the defendant of her federal constitutional right to present evidence on her own behalf.

* Associate Judge, Court of Appeals of Maryland.
6. 297 Md. at 252, 465 A.2d at 1135.
In some cases, however, Judge Davidson’s advocacy of individual rights placed her in unpopular positions with large segments of the public, as well as at odds with the majority of her colleagues on the Court of Appeals. It is in her dissenting opinions that her commitment to the individual is most apparent. For example, she vigorously challenged all impositions of the death penalty. Judge Davidson never voted to affirm a death sentence, often being the lone dissenter. She also dissented from the Court’s determination that the Maryland State Police sobriety checkpoints did not violate individual constitutional rights, commenting: “In balancing the societal interest in protection from drunk drivers against the individual interest in protection from unreasonable governmental action, I can only conclude that in this case, the individual rights accorded by the Constitution must prevail.”

In her concern for individual rights, Judge Davidson often seemed to have little tolerance for arguments against her positions based on practical consequences. Some critics might say that if she saw a flaw in the system which she perceived as causing injury to an individual, she would not permit the flaw regardless of the effect upon the system. On the other hand, Judge Davidson firmly believed that consequential problems in the administration of the judicial or executive branches of government furnished no ground for what she viewed as compromising the rights of an individual charged with a criminal offense.

Turning to civil cases, Judge Davidson was a strong champion of providing an individual with effective redress for injuries. Thus, she became one of the few judges in the country to urge recognition of a cause of action for professional educational malpractice. And in *Harrison v. Montgomery County Board of Education*, Judge Davidson dissented from the majority’s refusal to abandon the doctrine of contributory negligence as a bar to recovery in negligence cases. She evidenced little patience for the Court’s deference to the legislature as the preferred source of change for this particular doctrine, advocating instead a more activist approach. She labeled the contributory negligence doctrine unfair and “a harsh and arbitrary rule

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because [of] its ‘all or nothing’ approach.”

Her activism was apparent also in her concurring and dissenting opinion in *Murphy v. Baltimore Gas & Electric Co.*, in which she urged the abolition of the common law distinction regarding the duties owed to persons properly on land (invitees and licensees) and the duty owed to trespassers.

In other civil areas, however, Judge Davidson authored majority opinions which have become recognized as leading expositions of the law. Two marital property opinions, *Harper v. Harper* and *Grant v. Zich*, are prime examples. In *Harper*, Judge Davidson applied a statute embodying the “source of funds” theory of marital property. Under this theory, “when property is acquired by an expenditure of both nonmarital and marital property, the property is characterized as part nonmarital and part marital.” *Zich*, which was Judge Davidson’s next to last majority opinion, held that the source of funds theory contained in the marital property statute also applied to property titled as tenants by the entirety, and that, for the purpose of characterizing property as marital or nonmarital, the statute overturned the prior law that a presumption of gift arose from titling property as tenants by the entirety.

Although *Harper* and *Zich* apparently brought Judge Davidson some criticism from a few persons in the women’s rights movement, because of the decisions’ perceived unfair effect on women, her opinions in those cases simply applied the plain language of the marital property statute. Actually, Judge Davidson’s opinions reflected her vigorous opposition to distinctions in the law based on sex. Thus, in *Kline v. Ansell*, the Court of Appeals, in an opinion by Judge Davidson, held that because only a man could sue or be sued in a common law action for criminal conversation, the cause of action violated Maryland’s Equal Rights Amendment and could not “be reconciled with our commitment to equality of the sexes.” In *Turner v. State*, Judge Davidson, writing for the Court, determined that the so-called “Female Sitters Law,” which made it illegal to employ a woman to circulate among patrons of an entertainment estab-

11. Id. at 465, 456 A.2d at 906.
13. 294 Md. 54, 448 A.2d 916 (1982).
15. 294 Md. at 80, 448 A.2d at 929.
17. Id. at 593, 414 A.2d at 933.
lishment and "produce sales" of food or beverages, violated the Equal Rights Amendment because, under the statute, a man could be employed as a "sitter" but a woman could not be so employed.

An area in which Judge Davidson's expertise has been particularly recognized is administrative law. *Maryland Commission on Human Relations v. Bethlehem Steel Corp.* demonstrated her mastery of administrative procedure and adeptness at interpreting federal and state statutory provisions pertaining to administrative remedies. One aspect of administrative law in which Judge Davidson's proficiency was unchallenged was zoning. In *Schultz v. Pritts*, she developed, through exhaustive research and detailed reasoning, the standard by which to judge special exemptions. She was able in this and similar opinions to translate legal concepts in arcane areas of the law into readable yet authoritative opinions.

Judge Davidson's majority and dissenting opinions influenced and will continue to influence the course of the law in Maryland. My colleagues and I shall miss her greatly.

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Rita C. Davidson was a Judge on the Court of Special Appeals from November, 1972, until her appointment to the Court of Appeals in January, 1979. During the time Judge Davidson served on the Court of Special Appeals, she demonstrated repeatedly that she was a person of large intellect and of great compassion for people. I am certain that if there were anything good to be said of the worst of people, Rita would say it.

While Judge Davidson was on this court, she was instrumental in bringing about a material change in the court’s philosophical approach to sixth amendment speedy trial rights. Her contribution to that area of the law is without peer. Similarly, Judge Davidson made a considerable imprint on the law of zoning. Her endeavors in that field are renowned.

A major contribution to the law of Maryland was made by Judge Davidson in an opinion she wrote while a member of this court: Bel Pre Medical Center, Inc. v. Frederick Contractors, Inc.1 In what the Court of Appeals termed “a scholarly opinion,”2 she traced the history of arbitration in the United States and explained the Maryland Uniform Arbitration Act. Although the Court of Appeals reversed, on other grounds,3 Rita’s opinion serves as a lighted beacon to guide lawyers and judges through the reefs of arbitration law. When she became a judge on the Court of Appeals, Rita continued to pen learned opinions on the subject of arbitration.4

During her years on the bench, Rita established in everyone’s mind that she was philosophically liberal, physically courageous, and mentally persistent. Judge Davidson was a devoted public servant who did not fear to toss tradition and precedent to the winds whenever she believed that being bound by those two legal precepts restrained the rights of the people. Rita strove to make the law serve what she believed were the best interests of society.

Following Rita’s appointment to this court, she and I became good friends. To be in her company was a delight. She was articulate, logical, and forceful, and she possessed a keen sense of humor.

* Chief Judge, Court of Special Appeals of Maryland.
3. See id.
Rita was a person of many interests—the law, politics, government, the arts, literature, and the Washington Redskins.

Whenever my thoughts focus on Rita, I recall the two occasions on which my wife and I spent several days with Rita, her husband, and her family at Cape Hatteras. One could not be with Rita very long before discovering that, in addition to her other attributes, Judge Rita Davidson was a devoted wife and mother. She was also an excellent cook. Having partaken of some of her culinary creations, I am firmly convinced that had she not aspired to become a judge, she would have been one of the world’s most famous chefs.

The illness that claimed her life, and thereby caused untold sorrow and pain to many, first occurred in 1975. Rita fought the disease with all her strength and will. She fought cancer just as she fought other battles—with a determination to win. She gave no quarter. Despite the pain and suffering she must have endured, she continued to be Rita—cheerful, considerate, and compassionate. That Rita loved life is reflected, I think, in her approach to the death penalty. She firmly believed that life was too sacred to be taken by the State as retribution.

Much laudatory language has been used since Rita’s death to describe her many deeds and accomplishments, yet she needed none, for by her own acts she carved her permanent niche in Maryland history.

Rita is gone. Gone too is her friendly smile, her encouraging words, and the warmth of her greeting: "Hello, my friend!"
Exuberant. Vital. Compassionate. Courageous. Curious. "First-ever." Professional. These are a few of the many adjectives that could be used to describe Rita Davidson. She was an extraordinary woman, a larger than life figure who transformed those whose lives she touched.

I met Rita for the first time when I took a class of first-year law students to see an argument in the Court of Appeals, as a prelude to their own moot court arguments. Rita agreed to talk to the class about what it was like to be a judge on a court of last resort. Although I had heard much about Rita from my colleagues Oscar Gray (a classmate of hers at Yale) and Ken Abraham, I was not prepared for Rita in person. It was an extraordinary performance—an evocation of the responsibility, frustration, and loneliness as well as the exhilaration which she sometimes felt in that position. Her candor captivated and astonished the class, and they would not let her go.

That was typical of Rita. As I came to know her better over the years, I realized that her enormous zest for life and her great concern for others infused all that she did. But I don't want to give the wrong impression. She was not your ordinary staid and sober liberal. She loved life. She enjoyed, for example, the cocktail parties given by the American Law Institute, taking great pleasure in introducing her many friends to one another. Rita was also good company, educated and full of bounce. Well I remember one dinner David and she gave for some of us from Maryland. The dinner, superbly done home Chinese cooking, was served by our kimono-clad hosts; the conversation ranged from the current Supreme Court to Montgomery County politics to recounting scurrilous stories of graduates of the Yale Law School. (I was the only guest not a graduate of that sometimes-august institution.) Rita's playfulness also manifested itself when she challenged Dean Kelly in one of the Law School's annual debates over the relative virtues of the latke and the hamantasch. Not only did she devour Mike, but she had printed up and distributed a paper full of news stories extolling the virtues of the latke—an enterprise which must have occupied a good deal of her time.

So far I have talked only of Rita, the person. That is the way I

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* Professor, University of Maryland School of Law.
1. This, of course, was difficult because Mike Kelly, as everyone knows, is a "noted Talmudic scholar."
remember her. Of course, she was more than that. She had a splendid career before she ascended the bench and became Maryland's first female appellate judge. And what a judge she was. Staunchly liberal, concerned about the rights of the poor and oppressed, Rita often was in the minority on a court usually a good bit more conservative than she; she helped balance the court ideologically. Thus, her positions on the death penalty, on protecting the rights of accused criminals, and on ensuring the widespread application of Maryland's equal rights amendment were natural positions for her to take. And her interest and expertise in administrative law, gained in part through her years of service in state and local government, were widely recognized.

Perhaps less widely recognized were the interest and expertise she showed in tort law. This is an area where the Court of Appeals has generally refused to follow the current trends of other jurisdictions. Rita, however, actively sought to make Maryland tort law more modern. In this she sometimes succeeded. When she won, her opinions were definitive; when she lost, her dissents could be devastating.  

What I remember most about Rita as a judge, however, is her interest in her craft. Concern for proper judicial decision-making techniques is a hobbyhorse of mine, so I am a little unbalanced in talking about it. Nonetheless, I am astonished at how very few judges are deeply interested in thinking and talking about how they go about what their profession demands of them: construing statutes, interpreting precedents, making new law. Rita was an all-too-rare exception.

Rita also served a vital role, one in which I am sure she took great pride, as a model for women lawyers and law students. She was greatly admired among the women at the Law School, not only for her accomplishments as pathfinder, but for her very real accomplishments at bar and bench. Rita's ability to perform her job at a very high level while remaining a most human judge encouraged women lawyers greatly. In recounting her many successes in life, it should be remembered that this was far from the least of her accomplishments.

It seems so unfair that one who loved life as much as Rita Da-

vidson did, and who added so much to the world about her, should
die before her time. It would be wrong, however, to think of her life
as unfulfilled. As wife, mother, politician, judge, and friend she was
an extraordinary woman. Her accomplishments—personal and
professional—far exceeded those which most of us achieve within
our few precious years. Holmes once said that, “as life is action and
passion, it is required of a man that he should share the passion and
action of his time at peril of being judged not to have lived.” Rita
easily met Holmes’ standard. Let us not grieve, but praise and strive
to emulate.
I would like to share a few memories of Rita Charmatz Davidson—as a supportive classmate in law school, as a gritty woman gaining a foothold in the legal profession in the fifties and sixties (before the feminist movement got underway); as a wife and mother engaged in the acrobatics of job and family; as an indomitable public servant determined to make government work for all the people; as a tough-minded, soft-souled judge, refusing to be isolated from the real world, dedicated to developing a set of rules by which a whole society could live peaceably and justly.

We were an improbable lot, the ten women who entered Yale Law School in 1948. We were shunted off-campus to a ramshackle old dorm on Hillhouse Avenue, literally next to the railroad track. Every night when the library closed at 10:00, we grabbed our books, cajoled some companion—male or female—to accompany us home through the darkened New Haven streets, and talked late into the night of life, careers, men, and the law—usually in that order. At exam time, we shared notes, food, kettles of coffee and, covertly, copies of the Ladies Home Journal. We warded off overly exuberant suitors, telephone breathers, the blues, and professors who liked to call on the "girls" for a break in the classroom grind. I read much now about how exploited we were then, how despairing we should have been about our futures and the doors out there that were closed to us. But, I'll file a dissent. We were outrageously upbeat—we laughed a lot, joked about the faculty and our male colleagues, socialized normally (sometimes extravagantly) and believed against all logical expectations that we would do just fine on graduation.

Among us, Rita was most spectacularly defiant—sensing the absurd, piercing pretentions, leaping for the dialectic jugular, rauously challenging the pseudo-sophistication that permeated law school. She laughed often and loud—I can hear her now in our "Ladies Lounge," where we stored our books, clothes, secrets, and occasional heartaches and refueled between classes for our forays into a man's world. Rita was never an invisible woman; she was, even then, a big person, operating on a grand scale. She met life head on. When she entered the legal profession, it was on the same terms.

I suppose, looking back, that the most improbable thing about us was that we did not doubt for a moment we would make it, how-

* Judge, United States Court of Appeals for the District of Columbia Circuit.
ever each of us defined that goal. We were confident, with the sureness of inexperience, that we would somehow contribute to the development of the law and, since we went to Yale, to public policy as well. Naive, unaware, not yet exposed to the world's slights, . . . in the end, most of us did make it, Rita heading the march.

Rita married Dave Davidson, a classmate, shortly before we graduated. I married a classmate too, and for a time our lives separated. When next I saw her, we were both suburban Maryland housewives, mothers, and lawyers. Rita was pursuing simultaneously Dr. Spock, ward politics, zoning appeals, and the Stevenson campaign. She was gearing up. For our generation of women it was not a straight course—lots of detours, dead ends, false starts, bruises, a few unlikely breaks. We built our own career ladders.

I remember one incident as typical of our manic lives then. My husband and I were living in a cramped three room apartment; our second child had just been born. We desperately needed a party with our friends. Of course, at 4:00 on Saturday afternoon the baby came down with a high fever. In a daze, we cancelled the party and somehow forgot to call the Davidsons. They arrived, festively unaware, to find me overwrought, the apartment a mess, a baby wailing, a sister miserably neglected. Rita promptly took over, turning an embarrassment into a happening. She and Dave prepared the food, my husband flooded us with martinis, I tended to the baby, the Davidsons entertained our daughter, and after the doctor had come and gone (yes, they made house calls in those days)—we had our party. Much later, unresentfully, she told me her whole family had come down with the same bug. In those days, we laughed a great deal as an antedote against tears and persevered.

Over time, we heard much more about Rita Davidson as she placed her indelible mark on Maryland. She was an indefatigable campaigner for candidates and causes in which she believed. She spellbound her audiences—her voice boomed, she rocked with laughter, she joked one moment, sternly admonished the next. Success was always certain. She handled the polls and followed the polls, she knew when to conciliate and when to hold firm. One night on the 6:00 news we watched Rita plead the unpopular cause of welfare mothers in Maryland threatened with benefit cutoffs. They had a champion. She wheedled, stomped, hollered in public and patiently persuaded in private until she got what she wanted—not for herself but for her constituency, the poor and the powerless. She was a force not content to confine herself to the lecture hall and the law reviews, though her intellect was a formidable one. She was
on the barricades in the sixties and seventies—for women of course, but for all the disadvantaged. She spoke their language, fought their fights in the executive mansion, in the legislature, in the grass-root precincts. Her hands were dirty; her soul was always pristine.

When the women’s movement took off in the mid-seventies, and women judges became more than tokens, it seemed inevitable that Rita would go on the bench, and she did—first to the intermediate appellate court, then to the Court of Appeals of Maryland. I remember the great adoring bash her friends threw for her when she first ascended into that rarified atmosphere. I wondered if all her zest, her uninhibited energies, her great enthusiasms, her defiance of convention, could be channelled into mere oral arguments and printed words. There was no need to worry; all the vital, hard, searing human questions in the law came to Rita’s court—the death penalty, abortion, rights of abandoned spouses, interracial custody fights, affirmative action, sex discrimination.

Sometimes hers was a solitary voice; she dissented often and effectively. One of her last dissents challenged the imposition of the death penalty on a seventeen year old.¹ I am told she did not hesitate to button-hole colleagues, to argue and reargue her convictions. She was not content to polish a phrase at the expense of building a consensus. On the court as in the field, she shot the moon. Withal, she lectured often to community groups, ran for reelection to the court, developed a coterie of clerks and youthful admirers from Maryland’s law schools, actively participated in the Women’s Bar and in the National Association of Women Judges. Rita did more for the cause of state courts than a hundred symposia.

After the fact, I learned of her first bout with cancer. But she looked great, talked great, increased the pace of her schedule, maximized in every way the eight years bonus of life she was given. She performed her daughter’s wedding ceremony, came to our thirtieth law school reunion, and once again, long into the night, we reminisced about the way we were. And then very quickly it was over, characteristically for Rita without self-indulgence or self-pity. At her funeral service, a vast gathering of friends and colleagues spilled out of the sanctuary. In many ways it reminded me of the celebration when she became a judge, although I liked that one a lot better. I counted at the service several of our band of ten women who entered law school together more than thirty years ago. I heard by

phone and letter from the rest. Our ranks had been irreparably broken.

There are all kinds of pioneers; Rita was surely one. She knew well the adage that "one act of injustice tilts the scales of the universe in the direction of evil." She spent her life tilting them back.