



ADVANCE SHEET – October 14, 2022

President's Letter

The death of one of our former Board Members (and one of my former partners) Judge Lawrence Rodowsky at the age of 91 brings back memories. As a fledgling associate at Frank, Bernstein, Conaway and Goldman in the fall of 1964, Larry introduced me to my first major case. He arrived in my small associate's office and observed "I understand you're interested in constitutional law. We have just been engaged in the state reapportionment case." "Which side are we on," I inquired. "The Eastern side," he laconically replied.

One of our first meetings with "the Eastern side" took place in the salubrious environment of Burke's bar at the corner of Light and Lombard Streets, now unhappily extinct. There we met with our clients, State Senators Harry Hughes (in whose gubernatorial administration I was to serve 14 years later) and State Senator John-Clarence North. The proceedings were occasionally interrupted by Senator North's periodic salutes to the bartender; it was his habit to raise two fingers in the air at the end of an outstretched arm rather in the manner of a Fascist salute, while bellowing "Beefeater!" (In spite of this seeming bibulous propensity, Senator North later became the first chairman of the Chesapeake Bay Critical Areas Commission, and a very good one).

The task that confronted us was a very difficult one. The Supreme Court had already decided *Reynolds v. Sims*, with its one-man, one vote standard for state legislatures, though it was not yet completely wedded to a rule, generated from nowhere, limiting the permissible deviation in size between largest and smallest district to 10% or 15%. The problem was that the deviations under the plan we were defending were 6 to 1 for the Senate and 2 to 1 for the House of Delegates. In the final event, we successfully defended the House plan but lost 5 to 2 in the Court of Appeals on the Senate plan, the Supreme Court denying certiorari.

The case was great fun, largely because of our charming adversaries, Deputy Attorney General Robert Sweeney (under whom I later served in the Attorney General's office) and Alfred L. Scanlan of the Washington firm of Shea and Gardner, whose major client was usually the United States Catholic Conference. Scanlan was used to defending church-state cases brought by Montgomery County 'limousine liberals', but in this case he was the champion of the League of Women Voters, the AFL-CIO, and an assortment of his usual adversaries.

Larry and I prepared a brief urging that the appropriate standard of review was whether population was totally submerged so as to render majority rule impossible; the appropriate standard being whether the minimum population necessary to elect a majority was 40% or more, outlier districts being irrelevant. (Professor Michael Mc

Connell has recently proposed a similar standard). We also pointed out that Maryland because of its tradition of county-level local legislation and its paucity of municipalities had an unusually strong case for separate county representation in both houses; that its demise would lead (as Justices Frankfurter and Harlan both predicted) to virulent partisan gerrymandering; that the effect of reapportionment would be to benefit prospering suburbs at the expense of economically declining rural areas; and that the effect of creating “jurisdictions of strangers and neighborhoods without traditions” would be to aggrandize the power of the Governor and mass media at the expense of the legislature.

When Scanlan complimented Larry on our brief, saying that if it had been filed two years earlier, the Supreme Court’s standard might have been different, Larry, with characteristic modesty, said that I had written most of it. Scanlan then bestowed a backhanded compliment, reported to me by Larry: “He’s kookier than the kooks I’m representing!”

The lengthy dissenting opinion of Judges Barnes and Horney quoted copiously from our brief, which also featured two affidavits on measures of compactness prepared by a hitherto unknown University of Maryland political scientist named Parris N. Glendening. Some forty years later, Chief Judge Robert Bell, quoting the discussion of compactness in the Barnes dissent, invalidated a reapportionment plan propounded by Governor Glendening, who by then had become a skilled gerrymanderer, citing the number of crossings of county lines. In the most recent reapportionment case, decided two months ago, a 4-3 majority of the Court of Appeals unconvincingly distinguished Judge Bell’s opinion, after first invoking various disputed privileges in order to adopt a ‘hear no evil, see no evil’ approach to partisan gerrymandering.

Larry’s practice at Frank Bernstein largely involved the consumer credit industry and the interpretation of various small loan, second mortgage, usury, and banking laws. On September 12, 1978, Larry was gratified when Harry Hughes, for whom he served as campaign treasurer, unexpectedly won the Democratic nomination for Governor of Maryland. On December 18, 1978, a day that will live in infamy, the Supreme Court, in a unanimous opinion by Justice Brennan, who was always eager to do down state governments, suddenly held that a hitherto neglected provision of the National Banking Act of 1863 substantially pre-empted all state consumer credit regulations, setting the stage for the Maryland and federal savings and loan crises of the 1980s. The effect of this was to virtually abolish Larry’s law practice at one fell stroke. I have often imagined that he spent the ensuing months prior to his appointment to the Court of Appeals telling his clients to ignore all the advice he had given in the previous ten years.

Notwithstanding his gratitude to the Governor for thus rescuing him, Larry declined to be sworn in in the Governor’s conference room under the portrait of the autocrat Charles I, enabler of the ‘thorough’ dictatorship of the Earl of Stafford and a standing army. Instead, he expressed the view that judges should be sworn in in courtrooms, a view unfortunately not shared by recent Supreme Court nominees of both parties.

When he was sworn in, Larry delivered a short and modest speech paying tribute to his parents and expressing his purpose to in a small way see to it that the Anglo-American system of justice continued for a long, long time. As a judge, he delivered on this commitment. His private sector background, unusual on the recent court, made him the resident expert in commercial and real estate cases. His opinions were not ‘showy’, but were lengthy, thorough and convincing.

He and our Board Member Judge Charles Moylan shared chambers immediately

adjacent to the Library once occupied in my day as a Court of Appeals clerk by Chief Judges Brune and Henderson. They took full advantage of this propinquity, not sharing today's credulous faith in Boolean searches and computer research; both continued to serve as substitute judges for long beyond normal retirement age. One of Larry's last contacts with the Library reflected his commitment of a lifetime to a legal system 'having its roots in English soil'; he called to thank us for including in the Bar Library Advance Sheet the opinion of the British Supreme Court invalidating the Johnson government's effort to prorogue the sitting of Parliament.

George W. Liebmann

Please Submit Your Memories

When Judge Rodowsky retired from the Court of Appeals an event was held in his honor at Martin's West which was attended by one of the largest assemblages of members of the bench and bar that I can remember ever being in the presence of. He was that type of man with that many friends and admirers. If you would like to submit your own remembrance/tribute to the judge, please send it to jwbennett1840@gmail.com and we will run it in an upcoming issue of the *Advance Sheet*. - J.B.



On Wednesday, October 26, 2022, at 5:00 p.m., John Bainbridge, Jr. will speak on his new book *Gun Barons: The Weapons That Transformed America And The Men Who Invented Them*. The presentation will be by way of Zoom. I hope that you might be able to join us for what should be a fascinating program.

John Bainbridge, Jr. is a freelance writer and former reporter for *The Baltimore Sun* and legal affairs editor for *The Daily Record*. In addition to writing *Gun Barons: The Weapons That Transformed America and the Men Who Invented Them* (St. Martin's Press 2022), he coauthored the nonfiction book, *American Gunfight: The Plot to Kill Harry Truman and the Shoot-out that Stopped It* (Simon & Schuster 2005). Mr. Bainbridge has written articles for magazines, including *Smithsonian* and *Audubon*. He is an attorney who practiced law in both the public and private sectors.

Guns, “gun culture,” and gun control have long been subjects of intense emotion

and controversy, increasingly so in recent years. Yet the personal stories of the 19th Century entrepreneurs whose names evoke images of guns have yet to be told in a single, comprehensive narrative in the context of the Industrial Revolution they helped propel. *Gun Barons* tells their stories – which have, surprisingly, largely unexplored connections – and their role in the country’s rise to power. These men were bold individuals who took risks, sometimes signing contracts to make guns when they lacked the factories, workforce, and machinery to do the jobs. Yet they came through in the end.

The subject matter of *Gun Barons* is not only of national interest but has a couple of local angles. Samuel Colt spent time in Baltimore, employing a local gunsmith to make patent models for his revolutionary revolver. Oliver Winchester lived here and started a successful clothing business in town that launched him to eventually becoming a titan of American industry.

Time: 5:00 p.m., Wednesday, October 26, 2022.

R.S.V.P.: If you would like to attend (by Zoom), telephone the Library at 410-727-0280 or reply by e-mail to jwbennett1840@gmail.com. A Zoom link will be forwarded the week of the program.

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LAWRENCE RODOWSKY: A MAN OF MANY TASTES AND TALENTS

Ellen L. Hollander

I was not familiar with the delicacy of Braunschweiger until 1975, when I joined the distinguished (now defunct) Baltimore law firm of Frank, Bernstein, Conaway & Goldman. There, I encountered Lawrence F. Rodowsky, an esteemed partner of the firm. At the litigation department's luncheon meetings, Braunschweiger was one of Larry's favorite selections. I soon realized that Larry's legal prowess was as legendary as his culinary taste.

Even to a young and inexperienced lawyer, Larry's brilliance was immediately apparent. I, like so many others, was in awe of his extraordinary intellect. Unflappable and steady, Larry was equally admired for his collegiality, his modesty, his humility, and his dry wit. His deep and abiding passion for the law was exceeded only by his complete devotion to his family and his unbridled enthusiasm for the Baltimore Colts.

Larry was the epitome of the best in the legal profession. No subject of the law was ever too arcane for him; the more obscure the matter, the more Larry seemed to revel and thrive. I particularly admired Larry's incredible ability to synthesize complex facts, analyze every nuance of the law, and craft legal theories to advance his client's position.

Working with Larry provided insight into his formula for success. Larry's meticulous attention to detail and his unparalleled work ethic, combined with his fervent pursuit of excellence, were among his many hallmarks. Moreover, he never sacrificed his civility or his integrity. The high standards Larry set continue to inform those of us who were privileged to work with such a legal giant.

We also learned from Larry the importance of striving to improve our profession. For example, Larry selflessly gave of his time from 1969 to 1980, serving with distinction as a member of the Court of Appeals Standing Committee on Rules of Practice and Procedure. Larry also was committed to promoting gender equality at the bench and the bar. As a devoted father of five daughters (and one son), and husband of a successful author, Larry long practiced what he preached. Beginning in 1989, he led the important work of the Maryland Select Committee on Gender Equality. And, he helped to educate all of Maryland's judges through his service as Chair of the Maryland Judicial Institute from 1981 to 1999.

It was a joyful and glorious day for all Marylanders when Larry ascended to the Maryland Court of Appeals in 1980. His position on the State's highest court was so well deserved, and perhaps the capstone of his remarkable legal career. Larry's obvious commitment to the rule of law undergirded the many landmark opinions that he authored for that distinguished court.

In sum, it was my enormous good fortune to know such a superb attorney and jurist. With Larry's abounding and varied talents, his gifted intellect, his unwavering decency, and his perpetual good nature, Larry Rodowsky truly was a luminary.

In Appreciation: Lawrence F. Rodowsky

by John J. Connolly

After a long day of drinking and duck hunting in southern Maryland, John Jupiter

stopped at a marina on his way home to pick up a six pack of beer. The cashier declined the sale, citing Jupiter's intoxication. Jupiter exited and returned with a shotgun. He placed the shotgun on the counter pointed at the cashier and said, "[a]re you going to sell it to me now?" The cashier replied: "Yes, sir." Jupiter tendered a \$20 bill, received \$16 change, and walked out with a six pack of Budweiser. A trial judge sentenced him to ten years for robbery. But robbery requires an intent to steal, and on appeal Jupiter argued that he intended to pay for the beer, not steal it. And he had a precedent: a fishmonger on his way to market declined to sell his fish to a traveler, who took the fish by force but left more money than the fish were worth. The judges declined to convict the traveler. Jupiter asked the Court of Appeals of Maryland to adhere to this precedent, known as *The Fisherman's Case*—decided in England circa 1584.

Now *that* was a case for Lawrence F. Rodowsky, a longtime judge of the Court of Appeals and an icon of the Maryland bar, who passed away last week at the age of 91. The appeal in *Jupiter v. State* required an academic analysis of the common law layered against more modern Maryland statutes and public policy, as well as a practical appreciation of human behavior in a quintessentially Maryland microdrama. When preparing the opinion in *Jupiter* or any other decision he wrote, Judge Rodowsky wanted to know all the facts and all the law. He often started an appellate decision by reading the record—not the record extract—from beginning to end. Because he handled so much of the chambers' workload himself, his clerks were free to find all relevant authorities. By the time he started dictating his opinion, his desk would be piled with bookmarked volumes of the Maryland Reports, treatises, and law review articles, along with the briefs and pieces of the record.

Although he enjoyed interacting with clerks, he needed little help from them. Former clerks remember instructions that went something like: "find me that case Jack Eldridge wrote explaining when exhaustion of administrative remedies is required under § 1983. It should be in volume 307." (Really, Judge, do I have to do everything around here? Can't you give me a page number?) He seldom asked a clerk to review a petition for certiorari; he was going to read it anyway, and he did not need a memo to tell him what was important to Maryland law. This left clerks free to research the briefs in great detail. In the era before electronic research really took hold, the job basically consisted of wandering through libraries reading authorities—those cited by the parties and others shelved in the same section. It was a dream job for a certain type of clerk.

For 40 years Judge Rodowsky sat in chambers adjacent to the Bar Library. He was a great friend of the Library, both as a long-term member of its board and as an active user of Library materials. He could direct clerks through the Library's spiral staircases to its anterooms and cubbyholes that held key collections on superseded statutes or English law. Former clerks of a certain era miss the tactile nature of library research and its contribution to memory. Once you learn the physical map of a law library, the structure of law itself starts to make sense. And if you recall where a treatise is shelved, you can sometimes remember what it says, and how its substance relates to other areas of law.

A bookish and reserved person who sits on a state high court could easily become a hermit. The job requires only a few days a month of oral arguments and bench conferences; the rest of the time is spent reading and writing, mostly alone. Conversations about work are mostly forbidden with persons outside the court, and a high-court judge's public utterances on any topic are scrutinized for signs of bias. Yet Judge Rodowsky, a quiet and reserved man who was comfortable with books and

ideas, was anything but a hermit. He served on committees, attended and taught training sessions, made the rounds at bar functions and holiday parties. He particularly enjoyed the company of lawyers and seemingly knew all of them who were above a certain age. He respected and admired good lawyers in every recess of the profession. Prosecutors, defense lawyers, corporate specialists, sole practitioners, plaintiff's lawyers, legal aid lawyers, public defenders, title attorneys—he seemed to understand something about all their jobs and knew why they were important.


As a practitioner, he was a generalist at a “large” (for the time) law firm, a rare bird in his era and an extinct one today. His focus was civil litigation, but he could handle corporate transactions and was conversant and sometimes expert in many of the darker corners of law, such as tax, insurance, and real estate. He claimed no expertise in criminal law yet he had handled many criminal appeals as an assistant attorney general, not to mention a federal death penalty case as a lawyer appointed by the court. By the time he became a judge he was something of a *Corpus Juris Secundum* of Maryland law.

Although he was a consummate practitioner trained at both the Attorney General's office and one of the state's leading private firms, he understood and appreciated what might be described as the other end of the bar: sole practitioners, small firm lawyers, and even “sundowners,” government lawyers who at one time were permitted to operate their own law firms on their own time, which typically meant when the sun went down on their normal workday. These lawyers sometimes appeared before the state's highest court, bringing with them their own standards of practice. One memorable brief had no table of authorities. A rookie mistake, perhaps, until you realized that the brief itself contained no citations. That would not disturb the judge, who could readily imagine a sole practitioner, having lost at trial, picking up a Dictaphone and describing his beef in plain terms to the Court of Appeals. Not every case called for the Frank Bernstein treatment. The judge could see the thread of the argument and fill in the research himself.

His own opinions were not written in the homespun, fireside-chat style that is in vogue among many judges today. He expected his readers to understand what *assumpsit* meant. He wrote for people who cared about Maryland law, and if you were one of them or wanted to be, he cared about you. His friendship with so many Maryland lawyers from so many corners of the profession was probably grounded in the common language of the law; he understood its traditions, its codes, and its protocols better than anyone. A judge writing in 1584 England was speaking to him, a brother at the bar and a fellow jurist, across the ages. Judge Rodowsky wanted to listen to the authors of *The Fisherman's Case*, but not necessarily to agree. As his opinion in *Jupiter* shows, he did everything he could to understand what they had to say.

So how did Mr. Jupiter fare before the Court of Appeals? Read [the opinion](#), the judge would have said, including the erudite dissent by Judge Eldridge. The opinions, as lawyers love to say, speak for themselves. Judge Rodowsky is gone, but hundreds of his thoughtful opinions will speak to new generations of Maryland judges and lawyers, perhaps including a lucky law clerk, 400 years in the future, whose judge wants to understand the Maryland law of robbery.

Judge Rodowsky served on the Board of the Bar Library for many years. Despite his superior intellect and judicial acumen, Judge Rodowsky was a regular guy, a down-to-earth person, who was always abreast of and eager to talk about how Baltimore's sports teams were doing. He was, at heart, through and through, a true Baltimorean.



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A Good Guy And A Fine Man

The Honorable Lawrence F. Rodowsky served on the Bar Library's Board of Directors from 1994 until 2012. During those years he was the Library's next door neighbor and on rainy, snowy, middle of the summer and middle of the winter days, my go to guy for signing checks. We would talk about family, the Orioles, Ravens and Terps as well as the Fighting Irish of Notre Dame. He always had time and even if he were pressed for it, you would never know it talking to him. You would also never know he was a member of Maryland's highest court. There was not an ounce of pretension about him.

The Judge was and is a good guy and a fine man. The essence of who we are does not stop when our heart does. A friend of mine, now gone himself, would always comment when someone passed away and had lived a good many years "Well they certainly didn't get cheated." Living to 91, the Judge "didn't get cheated." He was not only alive for those years, he lived them. His was a life well lived and the sorrow that I feel at his leaving us is made up, almost, by the happy memories of the times I shared with him.

Joe Bennett

Ivan Bates to Speak at the Bar Library

On Tuesday, December 6 at 5:00 p.m., Ivan Bates, the next State's Attorney for Baltimore City, will take part in the Library's Lecture Series. It is expected that Mr.

Bates will speak on his plans and hopes for the next four years. His remarks will be followed by the Library's traditional wine and cheese reception. We hope to see you there.

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