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Raymond L. Sullivan

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## In Memoriam Wiley W. Manuel

Wiley Manuel left his indelible mark as a lawyer, judge, and man.

The son of a pullman car porter, he began life when the black man still suffered from a panoply of forms of persecution, both subtle and overt. It was a time when, as Wiley told me, his friends would say to him that he would get nothing out of a college degree because he would end up pumping gas at a service station in any event. And if Wiley looked around him that prophecy unfortunately in many cases eventuated. Wiley would see that black lawyers not only were blocked from the large offices but in many major cities were even excluded from bar associations. Yet those obstacles did not stop Wiley from working his way through the University of California as a hospital orderly and after that, going to Hastings Law School, graduating at the top of his class, and becoming Editor-in-Chief of the Hastings Law Journal.

Wiley Manuel began his legal career when in 1953 "Pat" Brown, then Attorney General, selected him as a member of that staff. In 1971, he rose to be Chief Assistant Attorney General, assuming important supervisory responsibilities, which he excellently discharged. He became a judge of the Superior Court of Alameda County in 1976, and in 1977, Governor Jerry Brown appointed him to the Supreme Court of California.

Justice Manuel served on the Supreme Court for the relatively brief tenure of three years and nine months. During this period he authored eighty-three opinions. A review of those opinions confirms his reputation as a judicial "moderate," a pragmatist uncommitted to the competing philosophies of the judicial activists or the judicial conservatives. His opinions reflect, instead, a commitment to careful analysis of the precise and narrow issues presented by each particular case.

Perhaps the most significant of Justice Manuel's decisions are those relating to the diverse fields of real property security and the rights of criminal defendants. In *Garfinkle v. Superior Court*<sup>1</sup> Jus-

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1. 21 Cal. 3d 268, 578 P.2d 925, 146 Cal. Rptr. 208 (1978).

tice Manuel resolved a long-debated question by concluding for a unanimous court that nonjudicial foreclosure of trust deeds did not constitute state action, and thus did not violate due process clauses of either federal or state Constitutions; the decision is one of the leading cases of this court exploring the difficult and elusive concept of "state action" when a private party acts pursuant to permissive state authority.

Three months later, in *Wellenkamp v. Bank of America*,<sup>2</sup> Justice Manuel, speaking for a six to one majority, held that enforcement of a due-on-sale clause in a trust deed, when the sale did not impair the lender's security, constituted an unreasonable restraint on alienation. In *Wellenkamp*, a case that was the climax of a line of decisions dating back to *Coast Bank v. Minderhout*<sup>3</sup> and continuing through *La Sala v. American Savings & Loan Association*<sup>4</sup> and *Tucker v. Lassen Savings & Loan Association*,<sup>5</sup> Justice Manuel carefully analyzed the impact of enforcement of due-on-sale clauses. He noted that in times of inflation the enforcement of such clauses, by preventing a buyer from assuming the balance of a seller's loan, seriously hampered the sale of the property; he further observed that a lender could not reasonably assume that the sale impaired the lender's security. Thus, he concluded, automatic enforcement of such clauses unlawfully restrained alienation of property.

*Wellenkamp* had a profound impact on the housing market. With the present housing shortage and interest rates at historic highs, the ability of buyers to assume existing loans at lower rates of interest has proved a significant factor in facilitating real estate transactions. At the same time, commercial lenders, deprived of their ability to seize upon every sale to accelerate the existing loan and to make a new loan with additional charges and higher interest, have turned to alternative financing devices such as variable rate mortgages. At this time, four years after *Wellenkamp*, the shock waves of that decision have not yet dissipated, but it is possible to foresee that the final result may be a form of real estate financing fairer to both borrower and lender than the pre-*Wellenkamp* trust deed with its automatic due-on-sale clause.

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2. 21 Cal. 3d 943, 582 P.2d 970, 148 Cal. Rptr. 379 (1978).

3. 61 Cal. 2d 311, 392 P.2d 265, 38 Cal. Rptr. 505 (1964).

4. 5 Cal. 3d 864, 489 P.2d 1113, 97 Cal. Rptr. 849 (1971).

5. 12 Cal. 3d 629, 526 P.2d 1169, 116 Cal. Rptr. 633 (1974).

Turning to the subject of criminal law, I note the decision of Justice Manuel in *People v. Jimenez*.<sup>6</sup> Resolving a conflict among the courts of appeal, which in turn stemmed from inconsistent decisions of the United States Supreme Court, he concluded that under California law the prosecution must prove a confession voluntary beyond a reasonable doubt.

Subsequently, in *People v. Zelinski*,<sup>7</sup> Justice Manuel held that when a private security guard effects a citizen's arrest and searches the arrestee, that search is subject to the protective provisions of article I, section 13 of the California Constitution—the California counterpart of the fourth amendment. The issue was curiously reminiscent of the state action issue in Justice Manuel's earlier opinion in *Garfinkle v. Superior Court*.<sup>8</sup> Justice Manuel carefully distinguished *Garfinkle* in a footnote in *Zelinski*. Noting the increasing importance of private security personnel to property protection and law enforcement, he maintained that such personnel in undertaking a citizen's arrest carry out a state function and pose the same risk to the privacy rights of Californians as regular police officers. Evidence seized by private security guards, he concluded, must be subject to the same limitations on admissibility.

Justice Manuel wrote another noteworthy decision in the field of criminal procedure: *Harris v. Superior Court*,<sup>9</sup> which indicates that judges in appointing counsel should give preference to counsel familiar with the case who enjoy the confidence of the defendants.

Finally, I note a number of significant opinions of Justice Manuel in other areas of law: two carefully crafted decisions on land use law and policy: *County of Los Angeles v. Berk*<sup>10</sup> and *Furey v. City of Sacramento*,<sup>11</sup> his politically important decision in *In re Governorship*,<sup>12</sup> which defined the judicial appointment powers of the Governor and Lieutenant Governor; his analysis of the law of libel in *Forsher v. Bugliosi*,<sup>13</sup> and two recent decisions resolving complicated problems involving the ownership and division of real

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6. 21 Cal. 3d 595, 580 P.2d 672, 147 Cal. Rptr. 172 (1978).

7. 24 Cal. 3d 357, 594 P.2d 1000, 155 Cal. Rptr. 575 (1979).

8. 21 Cal. 3d 268, 578 P.2d 925, 146 Cal. Rptr. 208 (1978).

9. 19 Cal. 3d 786, 567 P.2d 750, 140 Cal. Rptr. 318 (1977).

10. 26 Cal. 3d 201, 605 P.2d 381, 161 Cal. Rptr. 742 (1980).

11. 24 Cal. 3d 862, 598 P.2d 844, 157 Cal. Rptr. 684 (1979).

12. 26 Cal. 3d 110, 603 P.2d 1357, 160 Cal. Rptr. 760 (1979).

13. 26 Cal. 3d 792, 608 P.2d 716, 163 Cal. Rptr. 628 (1980).

property in dissolution actions: *In re Marriage of Moore*<sup>14</sup> and *In re Marriage of Lucas*.<sup>15</sup>

Justice Manuel's opinions reflect his patience, his careful scrutiny of the cases, his recognition that his function as a judge was circumscribed, that he was not free to write into opinions his personal beliefs but that he was bound by the precedents. I can think of two situations that confirm this observation.

I would hazard the guess that he encountered emotional difficulty in upholding the constitutionality of the death penalty. He knew, of course, that the penalty falls heavily and even unfairly upon blacks; yet he must have put aside his feelings in the face of legal reasons which he held to be decisive. On the other hand, he believed that the lack of opportunity for employment, which is undoubtedly a major factor in the incidence of crime of all minorities, could be alleviated by special programs for employment of minorities and by consideration of race as a factor in selecting applicants for admission to professional schools. Here he could uphold such programs as lawful because they were sustained by the precedents.

My memories of Wiley likewise reflect the patience, thoughtfulness, and warm understanding of this humble man. From a collage of recollections I see Wiley at our conference table on a Wednesday carefully and fully explaining a case to which he has been assigned; I see him at oral argument in the blue-walled courtroom leaning over the bench eagerly and vigorously questioning counsel; I hear Wiley at lunch in the State's drab cafeteria telling me how much he enjoyed the debate among the justices at conference, which, in passing, he declares to be the highlight of the week; I see Wiley in my office so solicitously and politely explaining to me exactly why he cannot accept a position I have taken in a circulating opinion; I see the faces of hundreds at the funeral shaken with grief but inspired by the example of this man who had risen from the simplest of origins to a role of importance, which he performed so modestly and so nobly.

Mathew O. Tobriner\*

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14. 28 Cal. 3d 366, 618 P.2d 208, 168 Cal. Rptr. 662 (1980).

15. 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980).

\* Associate Justice, California Supreme Court.

Wiley Manuel was my friend.

For some 33 years, we shared a friendship which extended to many activities, organizations and events.

We were students together at Cal.

We were contemporaries in law school—

Wiley was at Hastings,

I was at Boalt.

We shared a love for our common profession—the law.

We worked together in NAACP, Boy Scouts,

Charles Houston Bar Association,

California Association of Black Lawyers

and the National Bar Association's Judicial Council:

We were brothers in Sigma Pi Phi Fraternity.

We served together as judges on the Superior Court of Alameda County.

We shared the fellowship and community of St. Paschal Church—though I must regretfully admit that my devotion never ran as deep as his.

Our families enjoyed regular and friendly contacts.

And we shared, over the years and today, many common friendships and acquaintances.

Yes, Wiley was my friend—and that is how I will remember him.

But Wiley was more than that; he was a man *of all the people*.

He was at once a truly gentle man—and yet, at the same time, he was a truly great man.

To know him was to like him.

To know him well was to respect him.

All who knew him admired his outstanding human qualities:

His devotion to his beloved wife, Eleanor, to his fine family and to his many, many relatives and friends;

His unmatched capacity to love, to care and to serve;

His deep and profound ability to understand, to reason and to resolve;

His great intellect and his keen wit; and above all,

His genuine humility.

He was admired too, for  
His unconquerable determination to overcome all obstacles,  
and continuously to improve himself and to achieve.

Wiley was a man of many outstanding accomplishments. Those accomplishments have been widely and frequently chronicled in other places and publications. They need not be repeated here.

Wiley refused to allow himself to be victimized by race, poverty or any other adversity, and he persistently refused to tolerate or to participate in victimization of any other person for any reason.

As an Associate Justice on our State Supreme Court, Wiley was a man

- of wisdom and vision;
- of prudence and reason;
- of fairness and justice.

His opinions showed knowledge of the law, understanding of human events, and a passion for justice, fairness, freedom and equality under law.

His passing is a great loss to all of us.

On an occasion such as this, the hearts of those who are left behind are usually filled with sadness. And if this is true today—that we, the friends, the people—of Wiley Manuel have hearts filled with sadness,—then I ask each of you to try with me to *realize* and to *remember* that Wiley Manuel's life was a great gift to all of us. We were fortunate to have had him among us for so long a time. We were fortunate to have known him, and to have shared in some part of his life.

That realization should help to fill our hearts with some feeling of appreciation and gratitude.

That is how I want to remember Wiley Manuel—for the goodness that he brought to all of us.

And, after so full and good a life, it is my profound belief and my fervent hope and prayer that he is now in his rightful place—at rest and at peace with his Maker.

Allen E. Broussard\*

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\* Presiding Judge, Alameda County Superior Court.

There is a crushing sadness in our lives when a gifted man is taken from us before his time. There is a sense of the tragic in our profession when such a man, blessed with a noble intellect, the purest integrity and an unquenchable love of the law, is suddenly wrenched from a career of service to which he has dedicated himself completely. The loss is beyond measure as the fires of his mind and heart, now extinguished, are beyond measure. Nevertheless the record of achievement remains—an embodiment, to borrow a phrase of Holmes, of “the most impressive form of our belief that to act with enthusiasm and faith is the condition of acting greatly.”<sup>1</sup> Such a man was Justice Wiley W. Manuel, Associate Justice of the Supreme Court of California.

Wiley Manuel came to Hastings in the fall of 1950, a product of the Berkeley public schools and a graduate of the University of California at Berkeley. In a law school fashioned by the genius of Dean David E. Snodgrass and adorned with such faculty names as Vold, Bogert, Fraser, McBaine and Basye, he quickly distinguished himself as an outstanding student. In his last year he served as Editor-in-Chief of the Hastings Law Journal. He graduated at the top of his class in 1953, with awards of membership in the Order of the Coif and the Thurston Society. There followed twenty-three years of extraordinary service in the California Attorney General's Office, his selection as Chief Assistant Attorney General, his appointment as Judge of the Alameda County Superior Court, and finally his elevation to the Supreme Court.

Throughout all these years Justice Manuel ideally personified the scholarly lawyer in public service. An able trial and appellate advocate for the State, a recognized authority on administrative law, an author of numerous articles on administrative law practice in California, a participant in various programs of the Continuing Education of the Bar, he exhibited a love of the law which transcended his conscientious discharge of official responsibilities and his abiding interest in bar association and community activities. It seemed almost inevitable that he would bring to the highest court of our state not only this professionalism and dedication but along

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1. THE OCCASIONAL SPEECHES OF JUSTICE OLIVER WENDELL HOLMES 6 (1962).

with them his unique personal qualities of warmth, sensitivity and compassion—in Justice Cardozo's words "a stream of tendency, whether you choose to call it philosophy or not, which gives coherence and direction to thought and action . . . an outlook on life, a conception of social needs, a sense in James' phrase of the total push and pressure of the cosmos, which when reasons are nicely balanced, must determine where choice shall fall."<sup>2</sup>

It is significant that those closest to Justice Manuel in his official and personal life have emphasized his sweetness, gentleness and humility. It is a fitting accolade. For these qualities after all are the aspects of love, and as St. Paul wrote to the Romans, "Love is the fulfilling of law."<sup>3</sup>

Raymond L. Sullivan\*

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2. Cardozo, *THE NATURE OF THE JUDICIAL PROCESS* 12 (1921)

3. *The Letter of Paul to the Romans* 13:10 (Revised Standard Edition).

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