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Judge Gerald W. Heaney: An Introspection from the Perspective of a Fourteen-Pound Walleye

Michael O. Freeman, Patrick C. Diamond,
Wally the Walleye*

Published opinions are, quite appropriately, an important measure of a judge. Whether one considers quality or quantity, the work of Judge Gerald W. Heaney is exemplary. Unfortunately, one who reads those opinions catches only glimpses of Judge Heaney's keen and infectious sense of justice. Judge Heaney's law clerks, law partners, political friends and foes, and colleagues on the bench were all privileged to get a much larger and concentrated dose of that sense of justice. That is because Judge Heaney's unpretentious good nature and kind-heartedness requires all with whom he comes in contact to consider with him, not just the law, but the connection between law, justice, and everyday life.

What sets Judge Heaney apart as both a judge and as a teacher is his ability and unswerving commitment to certain core principles. He believes that these principles should be in the forefront of both law and everyday life. In conversations about those principles and what the law should be, many of Judge Heaney's clerks and colleagues have learned a great deal about justice and have been motivated to put that commitment into the practice of law and generally in their life. Quite apart from his published opinions, Judge Heaney has created a legacy of friends, colleagues, and clerks whose sense of justice has been enhanced every day by the experience of knowing him.

On the thirtieth anniversary of his appointment to the bench, we thought it might be worthwhile to get a more com-

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plete "fishing boat view" of Judge Heaney to try to describe how such positive change occurs. On reflection, it may be that Judge Heaney's sense of justice is best conveyed from the stern seat of a fourteen-foot Alumacraft fishing boat. In any event, we will certainly treasure memories of conversations we have had with Judge Heaney in that setting. That is why we trekked north to Lake Kawawia in Ontario to interview Wally, a crafty fifty-year-old walleye who has gained a great deal of insight sitting under Judge Heaney's boat. The setting and the flavor just seem right.

Q: When did you first hear Gerald Heaney?

A: In the 1950s he was a labor lawyer in Duluth with a passion for politics. That passion led him to work and to fish with some great leaders like Senator Hubert H. Humphrey and Governor Orville L. Freeman. With all of the boat talk, it is a wonder they could catch fish. They spoke endlessly of civil rights, education, economic development (both for northern Minnesota and for everywhere else), the labor movement, and, of course, politics. You would think Judge Heaney would tire of such talk after more than forty years, but he does not. He seems to be more energized with each conversation.

Q: When did you find out Heaney would be a judge?

A: I learned in 1965. In those days, the fishing party always arrived by float plane. On one occasion the conversation was even louder than normal and Heaney's boat, never notable for its stability, was particularly boisterous. I approached cautiously and overheard Heaney and Freeman, then Secretary of Agriculture, discussing a judgeship. It seems that while the party was waiting for the float plane at Fort Francis, Ontario, Freeman received a telephone call from the White House. Attorney General Nicholas Katzenbach wanted to know if Heaney wanted to fill a newly created judgeship on the United States Court of Appeals for the Eighth Circuit. Heaney accepted from the fishing dock. Over the years, Judge Heaney hosted many guests in his boat. The judgeship did not change his outlook. From the Chief Judge to the fellow who cut his lawn, everyone received pretty much the same treatment.

Q: Tell me about the conversations you overheard.

A: Most of them were downright puzzling to me. In my world, the littlest fish gets eaten by the next littlest, and those get eaten by the medium sized and so on. Practice compassion and you'll be some northern pike's shore lunch before you can say natural selection. Yet, Judge Heaney believes humans are

different. He believes all people, but especially judges, have a duty to be compassionate and to help take care of those who are less fortunate. That came through in his boat conversations.¹

Once, in the middle 1970s, Heaney and a clerk were having a long discussion about poverty and unemployment. The clerk questioned whether society could do anything to really address either one. Heaney then asked the clerk what percentage of the clerk's salary was paid in taxes. The clerk, fresh out of law school and poor as a church mouse, answered around thirty percent. The Judge replied that if the clerk was willing to pay forty percent, and everyone else did likewise, unemployment could likely be reduced to two percent and poverty could be reduced by seventy-five percent. The clerk, who had been advocating compassion in the abstract, got real quiet. The appeal to justice was direct and personal.

So it also was in discussing affirmative action or school desegregation. The clerks in the boat always wanted to discuss it in technical and abstract ways. They would inquire about this Supreme Court case or that, *de facto* or *de jure*. But Judge Heaney would ask about affirmative action, "How did you get your first job?" The answer would inevitably be something about a relative or a friend of the family. Then Judge Heaney would ask, "If your family and friends had been shut out of the labor market, would you have gotten your first job?"²

In the area of school desegregation, Heaney would remind his boat mates that many states had run segregated and inferior school systems for minorities by law or custom for more than a century and a half. Heaney would remind the clerks of the educational advantages they enjoyed, starting with caring and educated parents and relatives. Then he would ask,

1. It is interesting to compare this view with those of the Law and Economics school of thought. The Law and Economics scholars not only believe that big fish must eat little fish, they also believe the law should facilitate such fine dining. Efficiency (that is, saving of transaction costs) is best served by structuring law and life in such a way as to deliver little fish directly to the jaws of big fish without requiring the big fish to expend time and effort actually swimming.

2. For a more complete treatment, see Gerald W. Heaney, *The Political Assault on Affirmative Action: Undermining Forty Years of Progress Toward Equality*, 22 WM. MITCHELL L. REV. 119 (1996) (discussing the merits of affirmative action).

"[H]ow could we possibly expect intentional and gross educational deficiency to be righted in a single generation?"³

On many other topics, Judge Heaney urged his clerks and others to consider justice as personal. "How much," he would inquire, "is your labor worth?" "Why then," he asked a clerk during the farm crisis of the 1980s, "is a farmer's labor worthless in the bankruptcy court?"⁴ "Do you consider it fair," he wanted to know, "that under the federal sentencing guidelines the government can increase the amount of time you would spend in prison by proving a 'sentence enhancement' to a judge with proof less than a reasonable doubt?"⁵ "If you were going to be deported, wouldn't you want to understand the proceedings?" he would ask.⁶ "If you were a student working on a newspaper, what would you learn if the school administrators censored your responsible work?"⁷ "If you were disabled from work, is it right to be forced to leave your home and all of your family and friends to find work in the national economy?"⁸

It was all about caring and compassion. To paraphrase Hubert Humphrey, it was about caring for those in the dawn of life and in the twilight of life. It was enough to make even a mean old walleye think about letting a little shiner go swimming away unharmed.

3. For a more complete treatment, see Gerald W. Heaney, *Busing, Timetables, Goals, and Ratios: Touchstones of Equal Opportunity*, 69 MINN. L. REV. 735 (1985) (providing a detailed history of discrimination in the Eighth Circuit and calling for the continued use of "race-conscious remedies").

4. See *In re Ahlers*, 794 F.2d 388, 403 (8th Cir. 1986) (considering the value of labor as part of a reorganization plan), *rev'd*, 485 U.S. 197 (1988).

5. See Gerald W. Heaney, *The Reality of Guidelines Sentencing: No End to Disparity*, 28 AM. CRIM. L. REV. 161 (1991) (explaining how federal sentencing guidelines produce unequal treatment of offenders).

6. See *United States v. Mendoza-Lopez*, 781 F.2d 111 (8th Cir. 1985) (affirming the dismissal of unlawful presence charges), *aff'd*, 481 U.S. 828 (1987). "The Immigration Law Judge (ILJ) did not adequately inform the defendants about this alternative relief The defendants did not understand the consequences of the choices that they were forced to make. . . . Because the defendants did not fully understand the proceedings, the hearing was fundamentally unfair" *Id.* at 113.

7. See *Kuhlmeier v. Hazelwood Sch. Dist.*, 795 F.2d 1368 (8th Cir. 1986) (protecting student newspaper reporters' First Amendment rights), *rev'd*, 484 U.S. 260 (1988).

8. For a more complete treatment of Social Security Disability cases, see Gerald W. Heaney, *Why the High Rate of Reversals in Social Security Disability Cases?*, 7 HAMLIN L. REV. 1 (1984) (discussing ways in which the federal government has decreased its role in providing disability benefits).

Q: If Judge Heaney ever decides to slow down, do you think he has any other career options?

A: If his boat conversations are any indication, Judge Heaney is eminently qualified to be either a general manager of a professional baseball team or a collegiate hockey coach. As to the former, beginning in 1961, when the Washington Senators became the Minnesota Twins, Heaney became an expert on the problems facing such notable ballplayers as Bob Allison, Earl Battey, Tony Oliva, Rod Carew, Kent Hrbek, and Kirby Puckett. As to the latter, Heaney understood the importance of recruiting "those Canadian kids," if the University of Minnesota-Duluth were to maintain its rightful dominant position over the University's southern satellite campus in Minneapolis and St. Paul.

Q: Anything else?

A: It has been an honor and a privilege to sit under Gerald Heaney's boat all these years. His passion and keen sense of justice have overwhelmed us all. And oh, by the way, from one friend to another, we walleye never hang out in the back bay after the middle of June.

