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Judge Gerald W. Heaney: A True Son of the Soil

Myron H. Bright*

I deem it a great privilege to participate in this tribute to my fellow alumnus of the University of Minnesota Law School, my colleague on the United States Court of Appeals for the Eighth Circuit, and my close friend, Gerald W. Heaney. I shall focus principally on my observation of Judge Heaney's work as a federal appellate judge, his contributions to the betterment of our democratic society, and to the observations of others who are close to Judge Heaney. I shall also comment on his many accomplishments. First, however, I believe it is appropriate to relate his background.

Gerald Heaney is a native Minnesotan and a true son of the soil. He was born and raised in the rural environment of Goodhue, Minnesota, where he received his early schooling and training in the well-known Minnesota work ethic. Judge Heaney attended St. Thomas College and thereafter the University of Minnesota Law School, graduating with an L.L.B. degree in 1941. He served three and a half years in the military during World War II as a private and later as an officer, serving primarily in the European Theater. He received several decorations and five battle stars. He practiced law in Duluth, Minnesota, for approximately twenty-one years, specializing in labor relations. He also found time to devote to public service in the interests of his community, the State of Minnesota, and the nation. In 1967, in recognition of Gerald Heaney's service on the University of Minnesota Board of Regents during 1964 and 1965, his fellow Regents presented him with the Outstanding Achievement Award.

President Lyndon B. Johnson appointed Gerald W. Heaney as Judge of the United States Court of Appeals for the Eighth Circuit on November 3, 1966, where he has now served for thirty years. I shall speak of Judge Heaney and his judging in

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terms of the turbulent times in which we labored. In describing judging, I am reminded of the recent description attributed to Justice Anthony Kennedy, who is quoted as follows:

Every one of my colleagues knows how lonely this job is You have your law clerks and your colleagues and the lawyers and the briefs, but in the last analysis it's your own morality, your own sense of law, your own ethics, your own commitment as a judge, your own oath to the Constitution.¹

Judge Heaney came to the court in 1966, and I joined the court less than two years later. In his thirty years on the United States Court of Appeals for the Eighth Circuit, Judge Heaney's contribution to the Eighth Circuit is best described as prodigious. Judge Heaney has authored approximately 2,350 opinions for the court and more than 336 separate opinions as dissents or concurrences. I believe this total to be a near record for any judge. Judge Heaney authored leading opinions in every area of the law, but those in the area of civil rights and equal opportunities for employment and education are especially noteworthy. Those opinions, crafted with scholarship and eloquence, demonstrate intense devotion to the promotion of equal justice under law.

Judge Heaney devoted much of his judicial efforts to the support of equal rights for all. He wrote many of the important opinions on school desegregation for the Eighth Circuit. His logical and reasonable opinions served to support and enhance the desegregation process in the large cities of St. Louis, Kansas City, and Omaha. His opinions interpreting the Civil Rights Acts of 1964 are at the forefront of those cases decided by the federal courts that helped move our country from an overtly discriminatory society to one closer to the goal of equal opportunities for all citizens regardless of race, religion, gender, age, or disability. During the Vietnam war years, his opinions expanding the meaning of "conscientious objector" saved many young men, who were conscientiously opposed to that war, from long prison terms. In the 1980s, his opinions challenged and rejected the conduct of the social security administration in its massive scale dropping of citizens from total disability benefits without good reason.² Judge Heaney is a critic of federal guidelines sentencing, giving early warning of their un-

1. Jeffrey Rosen, *The Agonizer*, THE NEW YORKER, Nov. 11, 1996, at 82, 89.

2. See Gerald W. Heaney, *Why the High Rate of Reversals in Social Security Disability Cases?*, 7 HAMLINE L. REV. 1, 8 (1984) (discussing ways in which the federal government has decreased its role in providing disability benefits).

fairness.³ Today almost all federal judges agree that these guidelines need substantial change, if not complete rejection.

In addition to his prolific output of opinions, Judge Heaney found time to author leading law review articles, to serve on district courts as a visiting district judge and to perform committee work on behalf of the Judicial Conference of the United States.

Family life, too, is important to Judge Heaney. He and his charming and friendly wife of fifty-one years, Eleanor, have two children, William and Carol Jean. He and Eleanor also have four grandchildren who greatly enjoy their grandparents.

These are not all of Judge Heaney's interests, however. He is an avid and able fisherman of the elusive walleye pike, as well as an intense fan of hockey, as those in Minnesota play with relish and hard knocks.

This description of Judge Heaney would be incomplete without a telling of his special relationship as mentor, teacher and advisor to the scores of law clerks who served him. On the occasion of the unveiling of the portrait of Judge Heaney in the St. Paul federal courtroom on May 11, 1989, Ms. Rebecca Knittle, one of Judge Heaney's early law clerks, shared with the audience a few principles law clerks learned from Judge Heaney. I repeat them with minor editing.

1. You can do important work and make a vital contribution to your society, but you don't need to drive a big car to prove it!
2. Whatever you do, don't let achievement go to your head. Give credit to others around you.
3. Be a steadfast advocate for what you think is right, regardless of changes in the political climate or the popularity of your ideas.
4. Be an advisor, friend and advocate to at least one person who is having a tough time in life and who can benefit from your caring.
5. Look for ways to advance the welfare of your community, especially taking the time to benefit low income or other disadvantaged people.
6. Love little children. Delight in them. Remember that the future belongs to children and that nobody, however grand in the eyes of the world, is too important to spend time with a child.

3. See Gerald W. Heaney, *The Reality of Guidelines Sentencing: No End to Disparity*, 28 AM. CRIM. L. REV. 161, 190 (1991) (arguing that prosecutorial discretion, among other factors, causes disparities in guideline sentencing).

7. Fear nothing.
8. Be a friend to your law clerks. Help them when they need help.
9. Be a risk-taker.⁴
10. Never forget the importance of family. Love your family members and accept them always.
11. Finally, and most importantly, make working for minority rights one of the highest priorities of your life.

Judge Heaney's life is one of great achievement, and it is appropriate that the University of Minnesota Law School now honors him. I join his many friends and admirers in a salute to a great friend, a great judge and an all-around good guy.

4. Judge Heaney hired the first woman law clerk on the Circuit when he hired Rebecca Knittle back in 1970. He also hired the Circuit's first black law clerk, Henry Jones, now a U.S. Magistrate in Little Rock, Arkansas.