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A Tribute to My Friend and Colleague: Judge Gerald W. Heaney

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Piero Calamandrei, a noted Italian scholar, teacher, and lawyer, in his work *Eulogy of Judges*,[1] observed:

> It has been said that too much intelligence is harmful to a judge, but I do not subscribe to this. I do say, however, that the best judge is the one in whom a ready humanity prevails over cautious intellectualism. A sense of justice, the innate quality bearing no relation to acquired legal techniques, which enables the judge after hearing the facts to feel which party is right, is as necessary to him as a good ear is to a musician; for, if this quality is wanting, no degree of intellectual pre-eminence will afford adequate compensation.[2]

I can suggest no more fitting prose to describe my colleague and friend for the past thirty years—Judge Gerald Heaney. This tribute brings credit not only to Judge Heaney but also to the University of Minnesota; it is only appropriate that a great university honor one of its most distinguished graduates.

Judge Heaney took senior status on December 31, 1988. As Chief Judge of the United States Court of Appeals for the Eighth Circuit, I issued the following statement:

> In my judgment, he is the most outstanding judge ever to serve, not only on the Eighth Circuit but throughout the United States in the last twenty-five years. He is the most well-prepared judge in the circuit. His industry and dedication to law are unparalleled. His compassion and understanding of human problems is unique. He is a scholar and true gentleman in all respects.[3]

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* Chief Judge, United States Court of Appeals for the Eighth Circuit.

1. PIERO CALAMANDREI, EULOGY OF JUDGES (1942). This wonderful book with its magical prose was given to me by United States Supreme Court Justice Tom Clark in 1977. The book was originally published in 1936 and has since appeared in a second enlarged Italian edition as well as a French translation. It was published in English in 1942 by the Princeton University Press. Unfortunately, it is now out of print.

2. *Id.* at 86.

3. Letter from Judge Donald P. Lay, Chief Judge, United States Court of Appeals for the Eighth Circuit, to Dean John D. Feerick, Fordham University School of Law (June 16, 1989) (on file with author).

Also at the time Judge Heaney made the decision to take senior status, Carl A. Auerbach, Dean of the University of Minnesota Law School from 1972 to 1979, wrote:

> Judge Heaney has been a brilliant jurist, whose talents were best demonstrated by his imaginative and yet careful and successful handling of school desegregation cases. On the whole, Judge Heaney has not espoused a judicial activism—except when fundamental human rights were at stake. The compassion which he demonstrated as a lawyer was not abandoned when he became a judge. He is a judge of extraordinary balance whose work is appreciated by the bench and bar throughout the Eighth Circuit and whose thoughtful opinions will shape the law in the years to come.[4]

At the same time, Chief Justice Douglas Amdahl of the Minnesota Supreme Court observed:

> [Judge Heaney's] endless effort to assure that the common man—the little people of our society—was accorded his rights and his privileges as an individual human being and as a citizen of this country are well known and widely recognized. He is a man of honor, compassion, and understanding.[5]

The above tributes confirm my own feeling; I can think of no other American lawyer or judge who is more deserving of recognition for his outstanding attributes of professional conduct, promotion of the cause of justice, and service in educating the public about the profession of law and its vital role in our democratic system of government.

Judge Heaney obtained his B.S.L. degree from the University of Minnesota in 1939 and earned his LL.B. from the University of Minnesota Law School in 1941. His military service is well-known to many. He enlisted as a private in the United States Army on July 6, 1942, and was commissioned as second lieutenant on January 2, 1943. He served as Operations Officer, Second Ranger Battalion until May 1945, when he was appointed labor relations officer for the Military Government of Bavaria. On January 18, 1946, Judge Heaney was honorably discharged as a captain of the United States Army. He was awarded the following decorations: EA ME Ribbon with five bronze stars and Arrowhead; Silver Star for extraordinary bravery in the Battle of La Pointe du Hoc at Normandy; Bronze Star, Presidential Unit Citation, and five battle stars.

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4. Letter from Carl A. Auerbach, Professor of Law, University of Minnesota Law School, to Fordham University School of Law (June 5, 1989) (on file with author).

5. Letter from Justice Douglas K. Amdahl, former Chief Justice of the Minnesota Supreme Court, to Dean John D. Feerick, Fordham University School of Law (June 5, 1989) (on file with author).

Judge Heaney's role in public service is also familiar to Minnesotans. He was appointed to the Board of Regents of the University of Minnesota by Governor Karl F. Rolvaag on February 14, 1964, and served as a Regent until June 1965. In 1967, Judge Heaney was presented the Outstanding Achievement Award from the Regents of the University of Minnesota. Judge Heaney served as one of the principal organizers of the Northeastern Minnesota Development Association, a nonprofit organization established to assist the growth and development of industry in northeastern Minnesota through a program of research, study and promotion. He served with a civic committee interested in the development of the University of Minnesota's Duluth campus, and worked actively in the Minnesota legislature from 1948 to 1966 in support of its growth and development. He also served on a Citizen's Committee before the 1957 session of the Minnesota legislature, assisting in the preparation and submission of legislation to create the Seaway Port Authority of Duluth.

In addition to his leadership in the military and in public service, Judge Heaney was instrumental in improving the educational system in Minnesota, working with the governor and the Minnesota legislature to pass a state school aid formula which remains in use today and is a model for the whole country. He was a member of the organizing committee for an educational television station for northeastern Minnesota. He was also the chairman of the Duluth Inter-Racial Council from 1949 to 1952, and thereafter continued as a member of committees interested in securing the passage of fair employment and fair housing legislation in Duluth. He assisted in the formation of and acted as a unpaid advisor to Town View Improvement Corporation, a nonprofit corporation which was organized to encourage the rehabilitation of homes in Duluth. From 1955 to 1960, he also served as a Democratic National Committeeman for the State of Minnesota.

In 1966, Congress authorized an additional judgeship for the United States Court of Appeals for the Eighth Circuit. President Lyndon Johnson appointed Gerald W. Heaney to the position. Judge Heaney served as an active circuit court judge until December 31, 1988, when he took senior status.

Judge Heaney wrote over 1500 published opinions, and authored several articles which earned him national recognition.[6]

6. Judge Heaney published the following works: *Judge Martin Donald Van*

I only mention a few of his significant decisions which have become landmarks in the law. Judge Heaney came on the Eighth Circuit Court of Appeals at a time when there was a great uncertainty in school integration case law. He became the leading writer on this issue in the court, and paved the way for school integration in Arkansas, Missouri, and Nebraska.[7]

In the area of constitutional law, two of Judge Heaney's more noteworthy dissents are found in *Perpich v. United States*

Oosterhout: The Big Judge from Orange City, Iowa, 79 IOWA L. REV. 1 (1993); *Revisiting Disparity: Debating Guidelines Sentencing*, 29 AM. CRIM. L. REV. 771 (1992); *Response to William W. Wilkins, Jr., Chairman of the Sentencing Commission*, 4 FED. SENTENCING REP. 236 (1992); *Federal Sentencing Guidelines: No Cure for Disparity*, 4 THE ASPEN INST. Q. 80 (1992); *The Reality of Guidelines Sentencing: No End to Disparity*, 4 FED. SENTENCING REP. 142 (1991); *The Reality of Guidelines Sentencing: No End to Disparity*, 28 AM. CRIM. L. REV. 161 (1991); *Jacob Trieber: Lawyer, Politician, Judge*, 8 ARK. L. J. 421 (1986); *Busing, Timetables, Goals, and Ratios: Touchstones of Equal Opportunity*, 69 MINN. L. REV. 735 (1985); *Why the High Rate of Reversals in Social Security Disability Cases*, 7 HAMLINE L. REV. 1 (1984); *The Minnesota and National Labor Relations Acts—A Substantive and Procedural Comparison*, 38 MINN. L. REV. 730 (1954); *Labor Relations—A National or a State Problem*, 26 MINN. L. REV. 359 (1942).

7. I mention only a partial list of school integration cases he has authored: Liddell v. Board of Educ., 96 F.3d 1091 (8th Cir. 1996); Liddell v. Board of Educ., 73 F.3d 819 (8th Cir. 1996); *In Re* Kansas City Star Co., 73 F.3d 191 (8th Cir. 1996); Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 17 F.3d 260 (8th Cir. 1996); Liddell v. Board of Educ., 26 F.3d 815 (8th Cir. 1994); Liddell v. Board of Educ., 20 F.3d 326 (8th Cir. 1994); Liddell v. Board of Educ., 20 F.3d 324 (8th Cir. 1994); Liddell v. Board of Educ., 988 F.2d 844 (8th Cir. 1993); Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 971 F.2d 160 (8th Cir. 1992); Liddell v. Board of Educ., 967 F.2d 1241 (8th Cir. 1992); Liddell v. Missouri, 936 F.2d 993 (8th Cir. 1991); Liddell v. Board of Educ., 907 F.2d 823 (8th Cir. 1990); Jenkins v. Missouri, 904 F.2d 415 (8th Cir. 1990); Liddell v. Board of Educ., 882 F.2d 298 (8th Cir. 1989); Liddell v. Board of Educ., 873 F.2d 191 (8th Cir. 1989); Liddell v. Board of Educ., 867 F.2d 1153 (8th Cir. 1989); Liddell v. Board of Educ., 851 F.2d 1104 (8th Cir. 1988); Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 839 F.2d 1296 (8th Cir. 1988); Liddell v. Board of Educ., 839 F.2d 400 (8th Cir.), *cert. denied*, 488 U.S. 825 (1988); Liddell v. Board of Educ., 830 F.2d 823 (8th Cir. 1987); Liddell v. Board of Educ., 823 F.2d 1252 (8th Cir. 1987); Liddell v. Board of Educ., 822 F.2d 1446 (8th Cir. 1987); Liddell v. Board of Educ., 804 F.2d 500 (8th Cir. 1986); Liddell v. Board of Educ., 801 F.2d 278 (8th Cir. 1986); Liddell v. Board of Educ., 758 F.2d 290 (8th Cir. 1986); Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 778 F.2d 404 (8th Cir. 1985); Liddell v. Missouri, 731 F.2d 1294 (8th Cir.), *cert. denied*, 469 U.S. 816 (1984); Liddell v. Missouri, 717 F.2d 1180 (8th Cir. 1983); Liddell v. Board of Educ., 677 F.2d 626 (8th Cir.), *cert. denied*, 459 U.S. 877 (1982); Liddell v. Board of Educ., 693 F.2d 721 (8th Cir. 1981); Liddell v. Board of Educ., 667 F.2d 643 (8th Cir.), *cert. denied*, 454 U.S. 1081 (1981); Adams v. United States, 693 F.2d 720 (8th Cir. 1980); Adams v. United States, 620 F.2d 1277 (8th Cir. 1980); Liddell v. Caldwell, 553 F.2d 557 (8th Cir.), *cert. denied*, 433 U.S. 914 (1977); Liddell v. Caldwell, 456 F.2d 768 (8th Cir. 1976).

Department of Defense[8] and *United States Jaycees v. McClure*.[9] His dissent in *Perpich* is from an Eighth Circuit en banc decision holding that the Militia Clause does not constrain Congress's authority to direct troops of the National Guard. Judge Heaney argued that the majority opinion "contradicts the clear intent of the founding fathers, who believed that state control over elements of the military was essential to a free and peaceful republic."[10] In *McClure*, our court's decision denied membership to women in the United States Jaycees. I dissented, and Judge Heaney dissented from the denial of rehearing en banc.[11] Judge Heaney observed in his dissent:

> Young women are entitled to share in the good jobs in our society according to their abilities. They will not share fully in these jobs, however, as long as young men are exclusively eligible for membership in the "right business organization," which gives them an edge in hiring for and promotion to leadership positions. To be sure, the Jaycees sponsor many social activities and events. They also take positions on some of the great issues of our time. But these activities are not central to their purpose. The central purpose is rather to learn the techniques and skills and to form the acquaintances that will serve as a basis for leadership positions today and tomorrow. . . .
>
> Young men have the right to associate with whomever they please, but under Minnesota law they should not be able to form an organization that is primarily business oriented and exclude young women from that organization when the effect of that exclusion is to deprive the latter of an equal opportunity for leadership positions.[12]

One of the more memorable cases in which Judge Heaney participated occurred a few years after he came on the court. In 1970, then Judge Blackmun, Judge Heaney, and I heard a case wherein a twenty-seven-year-old immigrant Jewish woman was denied citizenship in a naturalization proceeding on the basis of her assertion that she held no religious beliefs.[13] On appeal, she challenged the constitutionality of the Oath of Citizenship which was the same oath contained in the then existing Selective Service Act. The oath required an applicant to bear arms and serve in the Armed Forces unless the applicant could show she was opposed to any type of service in the Armed

8. 880 F.2d 11 (1989).

9. 709 F.2d 1560 (8th Cir. 1983), *rev'd sub. nom* Roberts v. United States Jaycees, 468 U.S. 609 (1984).

10. *Perpich*, 880 F.2d at 18 (Heaney, J., dissenting).

11. The United States Supreme Court adopted our position in its reversal. *See* Roberts v. United States Jaycees, 468 U.S. 609 (1984).

12. *McClure*, 709 F.2d at 1583 (Heaney, J., dissenting).

13. *In re* Weitzman, 426 F.2d 439 (8th Cir. 1970).

Forces by reason of "religious training and belief."[14] Belief was defined to mean "an individual's belief in a relation to a Supreme Being."[15] Judge Blackmun wrote that he found the Act to be constitutional.[16] His opinion became a dissent, because I voted to reverse on the ground that I felt that the woman had demonstrated, notwithstanding her denial, certain humanistic beliefs which have been categorized by the law as "religious."[17] Therefore, I urged that we should avoid deciding the constitutional question.[18] Judge Heaney disagreed with Judge Blackmun on the constitutional issue. He wrote that an individual's expression of conscience was, in fact, all that was necessary to comply with the citizenship oath.[19] In effect, he held the required belief in a Supreme Being unconstitutional. He observed, "We must either construe the statute as permitting all who sincerely object in conscience to bearing arms to be excused from the oath or hold that the statute is unconstitutional."[20] A short time later the Supreme Court of the United States decided *Welsh v. United States*,[21] which agreed with Judge Heaney's views.

Though it is certainly possible, space will not allow me to write more about the significant contributions Judge Heaney has made to the fabric of law in our society. I think his life is best summed up by a letter I received from three of his law clerks at the time he took senior status:

> He approaches each case as if it was the most important case he will ever decide. . . . For us, Judge Heaney is the ideal role model. He is compassionate, diligent and selfless. He has inspired us to view law as more than a vocation, to see our legal careers as a form of community service.[22]

What more needs to be said?

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14. Immigration and Naturalization Act of June 27, 1952 § 337(a), 8 U.S.C. § 1448(a) (1995).

15. *Id.*

16. *Weitzman*, 426 F.2d at 454.

17. *Id.* at 458-59. For example, Secular Humanism is acknowledged as a "religion" in *Torcaso v. Watkins*, 367 U.S. 488, 495 n.11 (1961).

18. *Weitzman*, 426 F.2d at 458.

19. *Id.* at 462.

20. *Id.* at 460.

21. 398 U.S. 333 (1970).

22. Letter from Beth Adams, David Fried, and Dan Goldfine, former law clerks for Judge Gerald Heaney, to Dean John D. Feerick, Fordham University School of Law (June 13, 1989) (on file with author).