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A TRIBUTE TO JUDGE GERALD W. HEANEY: 
THREE DECADES OF SERVICE ON THE U.S. COURT 
OF APPEALS FOR THE EIGHTH CIRCUIT

The Heaney Jurisprudence: Judicial Valor and Civic Responsibility

E. Thomas Sullivan*

When the French magistrate Alexis de Tocqueville visited America in 1831, he was particularly impressed with the young nation's judiciary. Writing in his now famous Democracy in America, he observed that "the power vested in the American courts of justice . . . forms one of the most powerful barriers which has ever been devised against the tyranny of political assemblies."1 He described the "practice of the American courts to be at once most favorable to liberty and to public order."2

In his thirty years on the federal appellate court, Judge Gerald Heaney clearly understood de Tocqueville's observation on the role of American courts in promoting liberty and public order and guarding against the tyranny of political and government forces. For Judge Heaney, every person is entitled to an equal opportunity for a quality education, a rewarding job, and a decent home.3 Whether on the bench or in public life, Gerald Heaney defined the issues from behind the scenes.4 In his modest and often quiet manner, he has ensured that our communities continue to progress and that every American's civil and human rights are respected and protected under the law.

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2. Id.
4. Id. The author describes Heaney as "one of Minnesota's most powerful and enduring public servants." Id.
When one reflects on Judge Heaney's public life, one is drawn to compare the model lawyer described by Dean Anthony T. Kronman of the Yale Law School in his book The Lost Lawyer. Dean Kronman eloquently recalls that a lawyer "stands for the value of public service and the virtue of civic-mindedness associated with it." For Kronman, the lawyer-statesman is one who cultivates practical wisdom and prudence; one who deliberately pursues the public good, demonstrating in fact that "good judgment is a trait of character." The professional career of Judge Gerald Heaney embodies such civic-mindedness and dedication to the public good, from his service as a war hero, a skilled labor lawyer, and a Democratic Party organizer, to his role as a champion of the oppressed and the underprivileged.

Gerald Heaney has dedicated his life to public service. He has served his community through his leadership in organizations to secure fair housing and employment opportunities and to facilitate efficient growth and development of industry. He has served his country as a highly decorated officer of the United States Army in World War II and for three decades as a judge on the United States Court of Appeals for the Eighth Circuit. He has served our future by defending the interests of all young Americans through his vision for an educational system that provides all citizens an opportunity to learn and develop the skills that will continue to serve America and our world into the future.

Perhaps in no other area of his public and judicial life has Judge Heaney made such a lasting contribution to society as he has in advancing desegregation in public schools. The Brown v. Board of Education decision did not mark the end of school segregation, it marked the beginning of a long and arduous battle to provide all American children with equal educational opportunities. The struggle was still in its developing stages when President Lyndon Johnson appointed Gerald Heaney to the federal court of appeals in 1966. Despite a major transformation of the Eighth Circuit during his tenure, in thirty years Judge Heaney has helped enforce desegregation orders in

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5. Dean Kronman began his teaching career at the University of Minnesota in 1975.
7. Id. at 35.
Omaha, Kansas City, St. Louis, Little Rock, and smaller towns where the vestiges of segregation still persist. His desegregation opinions, whether for the majority of the court or in dissent, stand out as models of judicial valor.

Judge Heaney’s role in the desegregation of the Omaha public schools, for example, illustrates his dedication to equal educational opportunity. In 1975, the federal government brought an action against the school district of Omaha charging school segregation in violation of the Equal Protection Clause of the Fourteenth Amendment.\textsuperscript{9} Despite Omaha’s black student population of twenty percent, more than half of the black students attended schools with black enrollment between eighty and one hundred percent.\textsuperscript{10} Nearly three-quarters of the white students in Omaha attended schools with black enrollment of less than five percent.\textsuperscript{11} The school district did not deny that the schools were segregated.\textsuperscript{12} It claimed, however, that it did not intentionally create the segregated system, but that it resulted from housing patterns in the city.\textsuperscript{13} Judge Heaney, speaking for the court, stated:

\begin{quote}
[A] presumption of segregative intent arises once it is established that school authorities have engaged in acts or omissions, the natural, probable and foreseeable consequence of which is to bring about or maintain segregation. When that presumption arises, the burden shifts to the defendants to establish that “segregative intent was not among the factors that motivated their actions.”\textsuperscript{14}
\end{quote}

The court then analyzed the school board’s actions in the areas of faculty assignment, student transfers, optional attendance zones, school construction, and school deterioration.\textsuperscript{15} It concluded that sufficient evidence existed in each area to give rise to a presumption of segregative intent.\textsuperscript{16} The school board brought no evidence to rebut this presumption, and the court held that the board had violated the Equal Protection Clause.\textsuperscript{17} Although acknowledging the painful transitions involved in

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\textsuperscript{9} United States v. School Dist. of Omaha, 521 F.2d 530 (8th Cir. 1975).
\textsuperscript{10} Id. at 533.
\textsuperscript{11} Id.
\textsuperscript{12} Id.
\textsuperscript{13} Id. at 543 n.28. The school district claimed to adhere to a neighborhood school policy. Id.
\textsuperscript{14} Id. at 535-36 (citing Keyes v. School Dist. No. 1, 413 U.S. 189, 210 (1973)).
\textsuperscript{15} United States v. School Dist. of Omaha, 521 F.2d 530, 537-46 (8th Cir. 1975).
\textsuperscript{16} Id. at 546.
\textsuperscript{17} Id. at 532-33.
\end{flushleft}
desegregation, the court provided remedies in the form of faculty and student body integration, supervision of the board’s construction decisions, and transportation provided at the school district’s expense as needed.\(^1\)

In addition to his role in combating segregation, Judge Heaney has defended individual liberties by furthering freedom of speech and religion,\(^2\) fighting gender discrimination,\(^3\) and protecting conscientious objectors.\(^4\) In *Chess v. Widmar*,\(^5\) a religious student organization at a public university alleged that university officials violated their right to free exercise of religion under the First Amendment by refusing to grant them equal access to university facilities.\(^6\) The district court held that a university policy permitting religious services on university premises would *advance* religion in violation of the free exercise clause.\(^7\) Judge Heaney spoke for the court in reversing the lower court decision, holding that once a university opens its facilities for certain groups, it must keep them open for all groups.\(^8\) “A neutral accommodation of the many student groups active at [the University of Missouri-Kansas City]

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\(^{18}\) Id. at 546-48.

\(^{19}\) See Florey v. Sioux Falls Sch. Dist., 619 F.2d 1311, 1315 (8th Cir. 1980) (holding that public schools do not violate the First Amendment by including religious materials in their curriculum, provided that the materials do not advance or inhibit religion); Teterud v. Burns, 522 F.2d 357, 360 (8th Cir. 1975) (protecting an inmate’s right to wear long, braided hair because the practice was deeply rooted in his religious beliefs).

\(^{20}\) See Junior Chamber of Commerce v. Missouri State Junior Chamber of Commerce, 508 F.2d 1031, 1035 (8th Cir. 1975) (Heaney, J., dissenting) (stating that the U.S. Jaycees is an organization dedicated to training future leaders for civic and business responsibilities and as such must make its activities available to women and men, as long as it receives substantial federal funding).

\(^{21}\) See United States v. Burton, 472 F.2d 757, 760-61 (8th Cir. 1973) (holding that “sincerely held” moral and ethical beliefs are sufficient to qualify for conscientious objector status if those beliefs, from the objector’s perspective, fall within the broad scope of the word “religious”); *In re Weitzman*, 426 F.2d 439, 460-61 (8th Cir. 1970) (per curiam) (opinion of Heaney, J.) (contending that “all who sincerely object in conscience” should be excused from taking the oath to bear arms upon naturalization, and that protection of “non-religious conscience” is necessary if freedom of religion is to be fully protected). In *Weitzman*, Judges Heaney and Lay voted to grant the petition for naturalization for different reasons; Judge Blackmun, however, voted to deny the petition. *Id.* at 440.

\(^{22}\) 635 F.2d 1310 (8th Cir. 1980).

\(^{23}\) *Id.* at 1314.

\(^{24}\) *Id.*

\(^{25}\) *Id.* at 1320.
would not constitute an establishment of religion even though some student groups may use the University's facilities for religious worship or religious teaching.  

In the context of freedom of speech, Judge Heaney authored the opinion of the court in *Kuhlmeier v. Hazelwood School District,* which later received national attention. Three high school students brought suit against their school district and principal for abridging their freedom of speech by removing their articles from the high school newspaper. The principal claimed that the newspaper was part of the school's curriculum, and that a greater degree of deference was due school administrators because the newspaper was not a genuine "public forum." The district court agreed and dismissed the students' cause of action. The court of appeals reversed, holding that student-run newspapers are public forums if they are intended to be and in fact are maintained as conduits for student viewpoints. Judge Heaney remarked,

[The newspaper] was not just a class exercise in which students learned to prepare papers and hone writing skills, it was a public forum established to give students an opportunity to express their views while gaining an appreciation of their rights and responsibilities under the First Amendment to the Constitution and their state constitution.

The Supreme Court reversed the Eighth Circuit, however, when it rejected the idea that, in this case, the school newspaper was a forum for public expression. The Court held that "school facilities may be deemed to be public forums only if school authorities have 'by policy or by practice' opened those facilities 'for indiscriminate use by the general public,' or by some segment of the public, such as student organizations." On the other hand, if the school facilities have been reserved for their intended purpose, "no public forum has been created, and school officials may impose reasonable restrictions on the

26. *Id.*
27. 795 F.2d 1368 (8th Cir. 1986).
28. *Id.* at 1371.
30. 795 F.2d at 1372.
31. *Id.* at 1373.
33. *Id.* at 267 (citing Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 47 (1988)).
speech of students, teachers, and other members of the school community." \[34\]

Judge Heaney took an active role in the battle against gender discrimination in *Brenden v. Independent School District.* \[35\] Two female students who wished to participate in non-contact sports at schools that offered no varsity teams for females brought an action claiming that a Minnesota State High School League rule that prohibits females from participating with males in interscholastic athletics violates the Equal Protection Clause of the Fourteenth Amendment. \[36\] Judge Heaney spoke for the court in striking down the rule, holding that there was no rational basis for the school's discrimination based on gender because the activities were non-contact and the females displayed the ability to compete with males. \[37\] "We recognize that because sex-based classifications may be based on outdated stereotypes of the nature of males and females, courts must be particularly sensitive to the possibility of invidious discrimination in evaluating them . . . ." \[38\]

Gerald W. Heaney has led a life of service. He has served his community, his country, and our future through his vision for education that creates opportunities for, and develops the potential of, all American children. It is through that dedication that Judge Heaney's philosophy of life and law will serve for generations to come, generations which will read the Heaney jurisprudence for its clear message on promoting liberty, on protecting individual freedoms against the tyranny of the more powerful, on ensuring equal opportunity for all people in education, in the workplace, and in living accommodations, and on pursuing the public good through civic responsibility.

At the University of Minnesota Law School, we are proud to call Judge Heaney one of our own. He honors all of us by his life-long contributions to the State of Minnesota and to the University, and, importantly, by sharing with us his philosophy on the role of public service and civic-mindedness within

34. *Id.* But cf. *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 513 (1969) (stating that students' right of expression extends beyond classroom hours and to even the most controversial subjects, as long as the expression does not "materially and substantially" interfere with discipline at the school).
35. 477 F.2d 1292 (8th Cir. 1973).
36. *Id.* at 1294.
37. *Id.* at 1294.
38. *Id.*
the legal profession and society. He has left us with an un-
common legacy.