

1997

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Recommended Citation

Underkuffler-Freund, Laura S., "Judge Gerald W. Heaney: An Admired and Respected Jurist, Mentor, and Friend" (1997). *Minnesota Law Review*. 1780.

<https://scholarship.law.umn.edu/mlr/1780>

Judge Gerald W. Heaney: An Admired and Respected Jurist, Mentor, and Friend

Laura S. Underkuffler-Freund*

It is difficult for me to adequately express, in these pages, the depth of my respect and admiration for Judge Heaney as a person, a jurist, and a friend. It seems to me that a different medium is required, one that can better reflect the richness and vibrancy of his life—something not easily done in the coldness and detachment of the written word.

I first met Judge Heaney in the summer of 1975. I had just finished my first year of night law school and was young, angry, confused, and alienated. After college, I had angrily rejected the academic world as elitist, smug, and unconcerned with the struggles of ordinary people. Law school, it seemed, was turning out to be the same. Hierarchies abounded: professors over students, lawyers over clients. Students—even exhausted night students—competed fiercely, seemingly concerned only with their own achievement. The law itself seemed to be a set of dry rules, memorized and manipulated, with no moral anchor.

I was on the verge of dropping out when I got a call from the director of the law school's placement office. An Eighth Circuit judge, it seemed, wanted someone to run the court's library in St. Paul. She pressured me to talk to him. With much reluctance, I agreed.

I will never forget my first view of the St. Paul chambers, with its polished wood and carpets, and Judge Heaney sitting behind his desk. I was not intimidated because I had decided that I did not care. The Judge asked me, "Why did you go to night school, anyway?" Suddenly, all of my anger and alienation came forth in a torrent of words. He smiled. We began to talk in a way that I have talked with few people in my life. We have been talking ever since.

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In that conversation, and in the four years of clerking for him that followed, I learned that law can matter. I learned that law need not—indeed, must not—be separated from life; that compassion enhances, rather than diminishes, the giver of it; and that there is no real choice other than to try to live according to the principles in which one believes.

The monumental achievements of Judge Heaney as a jurist are well known. Across a broad range of legal fields—civil rights, constitutional law, labor law, criminal law, environmental law, antitrust, and others—his judicial opinions have profoundly influenced the direction of the law and its meaning for the citizens of this country. He has staked his principles boldly, and has remained true, over thirty years, to what he believes this country should be.

Although Judge Heaney has written hundreds of opinions, many in famous cases, I find the core of his work in his struggle to enforce the rights of ordinary people. In the St. Louis school desegregation cases,¹ the Little Rock school desegregation cases,² the St. Louis firefighters' cases,³ and many others, he has relentlessly argued for the achievement of racial equality, and for the power and responsibility of the federal courts to work toward that end. He has argued for the equal rights of women,⁴ for the constitutional protection of citizens from police

1. See, e.g., *Liddell v. Board of Educ.*, 26 F.3d 815 (8th Cir. 1994); *Liddell v. Board of Educ.*, 20 F.3d 324 (8th Cir. 1994); *Liddell v. Board of Educ.*, 20 F.3d 326 (8th Cir. 1994); *Liddell v. Board of Educ.*, 988 F.2d 844 (8th Cir. 1993); *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.*, 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.*, 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.*, 677 F.2d 626 (8th Cir.), *cert. denied*, 459 U.S. 877 (1982); *Liddell v. Board of Educ.*, 667 F.2d 643 (8th Cir.), *cert. denied*, 454 U.S. 1081 (1981).

2. See, e.g., *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 839 F.2d 1296 (8th Cir.), *cert. denied*, 488 U.S. 869 (1988); *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 778 F.2d 404 (8th Cir. 1985) (en banc), *cert. denied*, 476 U.S. 1186 (1986).

3. See, e.g., *Firefighters Inst. for Racial Equality v. City of St. Louis*, 616 F.2d 350 (8th Cir.), *cert. denied*, 452 U.S. 938 (1981); *Firefighters Inst. for Racial Equality v. City of St. Louis*, 588 F.2d 235 (8th Cir. 1978), *cert. denied*, 443 U.S. 904 (1979).

4. See, e.g., *United States Jaycees v. McClure*, 709 F.2d 1560 (8th Cir. 1983) (Heaney, J., dissenting); *Junior Chamber of Commerce v. Missouri State Junior Chamber of Commerce*, 508 F.2d 1031 (8th Cir. 1975) (Heaney, J., dissenting).

abuse,⁵ and for the due process rights of prison inmates.⁶ He has argued for the organizational rights of employees,⁷ and for the right of aliens to understand the nature of judicial proceedings brought against them.⁸

Probably all great judges are remembered for the decisions that they rendered in the great controversies of the age—decisions regarded, after the passage of time, as landmarks in the development of legal theory and public policy. In this respect, Judge Heaney has much company. Far rarer are those great judges who share with Judge Heaney a true belief in the equality of all persons, and all concerns, before the law; and who share his commitment to the compassionate and complete consideration of every case, no matter how apparently routine (as a legal matter) the issues, and no matter how humble (even despised, in societal terms) the litigant before the court.

It is this great spirit of Judge Heaney—this ability to *imagine* justice, to *imagine* the concerns and sufferings of others—that I believe we should celebrate. It is what Charles Black has called “the humane imagination.”⁹ This is, as Black writes, “the foundation of all sympathy and empathy.”¹⁰ It is also the foundation of all strength. It seems (to use Black’s words) that this is just what the Judge has been saying to me, from the time of our first meeting and through the years since: “[L]et us . . . respect one another, care for one another, try, with the help of the humane arts, to imagine one another with growing truthfulness, hopeful that at last the Great Society . . . may ‘dwell in love, the wide house of the world.’”¹¹

5. See, e.g., *Creighton v. City of St. Paul*, 766 F.2d 1269 (8th Cir. 1985), *vacated sub nom. Anderson v. Creighton*, 483 U.S. 635 (1987); *Mattis v. Schnarr*, 547 F.2d 1007 (8th Cir. 1976) (en banc), *vacated sub nom. Ashcroft v. Mattis*, 431 U.S. 171 (1977); *Spinelli v. United States*, 382 F.2d 871 (8th Cir. 1967) (Heaney, J., dissenting), *rev'd*, 393 U.S. 410 (1969).

6. See, e.g., *McDonnell v. Wolff*, 483 F.2d 1059 (8th Cir. 1973), *rev'd in part and aff'd in part*, 418 U.S. 539 (1974).

7. See, e.g., *American Fed'n of State, County, and Municipal Employees v. Woodward*, 406 F.2d 137 (8th Cir. 1969).

8. See, e.g., *United States v. Polanco-Gomez*, 841 F.2d 235 (1988) (Heaney, J., dissenting); *United States v. Mendoza-Lopez*, 781 F.2d 111 (1985), *aff'd*, 481 U.S. 828 (1987).

9. CHARLES L. BLACK, JR., *THE HUMANE IMAGINATION* 4 (1986).

10. *Id.*

11. *Id.* at 16.

