

3-1-1998

Remembering the Fourth Circuit Judges: A History from 1941 to 1998

Recommended Citation

Remembering the Fourth Circuit Judges: A History from 1941 to 1998, 55 Wash. & Lee L. Rev. 471 (1998), <http://scholarlycommons.law.wlu.edu/wlulr/vol55/iss2/5>

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Remembering the Fourth Circuit Judges: A History from 1941 to 1998

The Editors and Staffwriters of the Washington and Lee Law Review are proud to present this retrospective look at some of the judges of the Fourth Circuit. Washington and Lee University has always enjoyed a close relationship with the Fourth Circuit. We were honored when Judge Widener, a distinguished alumnus of the Law School, asked us to update Judge McClintic's 1941 address to the Fourth Circuit Judicial Conference. Our project takes up where Judge McClintic left off. The history includes brief biographical sketches of the circuit judges who have either died or retired from the bench since 1941, as well as a sketch of Judge Elliott Northcott, who retired in 1939.

We dedicate this history to the memory of Judge Donald Stuart Russell, who passed away as we were putting the final touches on this Article. In the Fall of 1996, when Judge Russell was sitting on a Fourth Circuit panel that heard oral arguments in the Washington and Lee Moot Court Room, members of the Law Review interviewed Judge Russell. Judge Russell shared many stories and anecdotes about his former colleagues on the bench. His contribution was invaluable, and his perspectives played a key role in the development of this history. Judge Widener graciously agreed to write a tribute, which appears immediately following his foreword, to his associate and friend Judge Russell.

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Foreword

Honorable H. Emory Widener, Jr.

A few years ago, I was going through some of my father's old papers and ran across the address by Judge McClintic called "Fifty Years of the Circuit Court of Appeals for the Fourth Circuit," which was delivered by him at the Fourth Circuit Judicial Conference in Asheville on June 20, 1941, the circuit court having been created in its present form on March 3, 1891.¹ The address consisted of a character sketch of each of the former judges of the court until 1941. I circulated copies of the address, at least, to Judges Butzner, Russell, Ervin, and Wilkinson,² and after some time we decided to see if we could impose on our special relationship with the Law School at Washington and Lee to bring that fifty-year sketch up to date. The current Article will pick up where Judge McClintic left off in 1941, running through the date of publication of this Article.

The Article does not include the district judges of the circuit, although many of us were district judges. It is certain that with the business of the circuit as tangled as it is, we could not operate in nearly so efficient a manner as we do with their willing help, which is most appreciated. In token of appreciation, I will acknowledge the perennially open season on circuit judges in favor of the district judges and the lawyers.

I have heard Judge Alfred Murrah of the Tenth Circuit, himself a favorite of everyone who knew him, say that the circuit judges are the district judges' natural enemy, and I will digress a moment to tell a story that happened in Abingdon.

1. Hon. George W. McClintic, Judge, United States District Court for the Southern District of West Virginia, Fifty Years of the Circuit Court of Appeals for the Fourth Circuit, Address at the Fourth Circuit Judicial Conference (June 20, 1941).

2. Hon. John D. Butzner, Jr., Hon. Donald S. Russell, Hon. Samuel J. Ervin, III, Circuit Judges, United States Court of Appeals for the Fourth Circuit; Hon. J. Harvie Wilkinson, III, Chief Judge, United States Court of Appeals for the Fourth Circuit.

Judge Henry Clay McDowell was presiding and, after a strenuous trial of several days, directed a verdict in favor of the defendant. The lawyer representing the plaintiff was Dan Trigg, a giant of the bar and the leading lawyer in Western Virginia.³ Judge McDowell bent over to tie his shoe, and the bench, at that time being elevated some two feet above the floor of the courtroom, screened him from the sight of everyone in the room. "Damn a federal judge anyhow," Mr. Trigg exclaimed, being audible to all. Judge McDowell, of course, heard the remark, but remained stooped over and left the courtroom by a door just behind the judge's chair so that no one knew he was in the room. He later summoned all the other lawyers in the courtroom to his chambers and said that he had heard Mr. Trigg's remark. He asked the lawyers if anyone in the room knew that he had heard it. When the lawyers advised him that no one had, he stated the rule that lawyers had a constitutional right to cuss the judge and, since Mr. Trigg didn't know he had been heard, he was not going to be fined.

According to § 43(b) of the judicial code, the courts of appeal consist of the circuit judges of the circuit in regular active service.⁴ The Circuit Justice is competent to sit on the courts of appeal without further assignment, but other Justices or judges must be designated.⁵ During my time on the court, for the past 25 years, our Circuit Justice, who has been the Chief Justice, has not sat with us, although Justice Powell, after retirement, and, as well, Justice Clark, after retirement, sat with us with some regularity. I hasten to add, however, that Chief Justice Burger attended and Chief Justice Rehnquist attends our Conference with great regularity, and both were and are always welcome. Their attendance adds a lustre to our gathering that other circuits have not obtained.⁶

You will note in the sketches remarks by several of the present members of the court, especially Judge Russell. Judge Russell was a member of the bar since 1928, and the date of Judge McClintic's address was 1941, so between them they spanned the entire existence of the court. Judge Russell knew, to a greater or lesser extent, all the circuit judges since those who were the subjects of Judge McClintic's address. Other members of the court, with more years than we care to admit, have added personal knowledge of those

3. Judge McDowell, a great grandson of Henry Clay, and Mr. Trigg had been contestants for the district judgeship. Although Mr. Trigg had political as well as bar endorsement, Judge McDowell got the appointment. Influential on his behalf with President Theodore Roosevelt was John Fox, Jr., author of *The Trail of the Lonesome Pine*.

4. 28 U.S.C. § 43 (1994).

5. *Id.*

6. Hon. Lewis F. Powell, Jr., Hon. Tom C. Clark, Justices, United States Supreme Court; Hon. Warren E. Burger, Hon. William H. Rehnquist, Chief Justices, United States Supreme Court.

judges who have been members of the court between 1941 and 1998. As Judge McClintic did not, this Article will not mention current members.

At this time, I should also say that the next clerk of the court after Claude M. Dean, mentioned in Judge McClintic's address, was Richard M.F. Williams, Jr., described in Judge McClintic's address as the deputy clerk. Mr. Williams was replaced by Maurice S. Dean, who was replaced by Samuel W. Phillips (our present circuit executive), who was replaced by William K. Slate, who was replaced by John M. Greacen, who was replaced by Bert M. Montague, who was replaced by Mrs. Patricia S. Connor, our present clerk. To each of these clerks and their deputies and employees, we owe a debt of thanks for the smooth running of the court. As the clerk was in 1941, Mrs. Connor is the executive secretary and general manager of the court.

Last, but not least, I express the thanks of the court to the members of the *Washington and Lee Law Review*, who have worked hard and diligently to assemble this Article.⁷ The court is in their debt. This footnote to the judicial history of the circuit is as welcome as it is valuable.

I. Honorable Donald Stuart Russell (1971-1998)

Honorable H. Emory Widener, Jr.

Donald Stuart Russell, fittingly, was born and died on February 22, the birthday of his hero, George Washington. Judge Russell was born in 1906 and died in 1998. Because his death occurred during the latter stages of preparation of this Article, I will not try here to memorialize Judge Russell's impact on the Fourth Circuit or on jurisprudence, but will leave that to others, as it is bound to follow.

Judge Russell, as a circuit judge, was the author of 535 reported name opinions of the court of appeals and as a district judge was the author of ninety-four published opinions in *Federal Supplement* and seven in *Federal Rules Decisions*. In his service as a district judge, from 1967 until 1971, and as a circuit judge, from 1971 until his death in 1998, of course, there were thousands of other decisions in which he participated, which were per curiam opinions or which were unpublished. It is enough to say, for now, that literally until his last illness he went to the office every day and went to court every term. He never missed, except rarely for sickness. His work ethic was an example for all that is hard to follow.

7. Richard W. Smith, Development Editor; Paul M. Amore, J. Chandler Bailey, John W. Bartram, Jason J. Blake, Justin D. Flamm, Andrew J. Gottman, John D. Hamann, Kristin J. Hazelwood, Russell D. Jessee, Christine N. MacDonough, Mary E. Naumann, Matthew R. Nozemack, Russell D. Pittman, James B. Porter, Jill L. Schultz, Jennifer F. Shugars, Steven T. Speakman, Eileen M. Vachher, Maureen R. Walsh, Ellen M. Wasilausky, Staffwriters.

Judge Russell was a member of the ad hoc committee that assisted the membership of the *Law Review* in the preparation of this collection, which was in the latter stages of preparation at the time of his death.

He was born in Lafayette Springs, Mississippi, but moved to South Carolina with his mother, Lula, to her hometown of Chester after his father, Jesse, died – when he was only four years old. He was educated in the public schools of South Carolina and graduated Phi Beta Kappa from the undergraduate school at the University of South Carolina and from its law school. He further studied law at the University of Michigan. A forgotten story is that he also attended Hampden-Sydney College for a few days, but left after spending a lonely night in a cemetery near the school at the insistence of some upperclassmen. Hampden-Sydney's loss was South Carolina's gain.

Following law school, he entered practice with the J. Gordon Hughes law firm in South Carolina and after a year or so was associated in the firm of which James F. Byrnes was a member. He and Mr. Byrnes formed an instant friendship that lasted until the death of Mr. Byrnes.⁸ Donald Russell was proud to be the protégé of this most distinguished South Carolinian since Wade Hampton. About that time he married Virginia Utsey, the best-looking girl in South Carolina.

From the beginning of his law practice, he was attracted to public affairs. A full list of his public offices is beyond the scope of my remarks, but they would include: president of the University of South Carolina, Governor of South Carolina, United States Senator from South Carolina, assistant director of War Mobilization, Assistant Secretary of State of the United States, assistant director of Economic Stabilization, United States district judge, and United States circuit judge. He served as trustee of Emory University, Converse College, and Benedict College and was a member of the Wriston Committee on Reorganization of the Foreign Service. Mention of the Wriston Committee calls to mind the little-known fact that Judge Russell and Mr. Byrnes picked out a few obscure libraries and book depositories, containing no classified documents, to which they would assign employees who disagreed with their view of the conduct of foreign affairs but whom they were unable to fire.

President Ronald Reagan, another of Judge Russell's favorites, jokingly remarked once after listening to Judge Russell's long list of accomplishments, that he couldn't help but wonder what that man could have accomplished if he had set his mind to it.

Judge Russell's experience during World War II, I think, was his most notable contribution to the nation. He was at Mr. Byrnes's elbow all the time. He saw President Roosevelt almost daily. He knew Eisenhower, Patton,

8. I have called Secretary, Governor, Senator, Justice, Congressman Byrnes, Mr. Byrnes throughout, because I never heard Judge Russell refer to him in any other manner.

Admiral King, and even met Churchill. He shared Samuel Elliott Morison's conclusion that the principal architects of allied victory were Roosevelt, Churchill, Eisenhower, and King. He would tell the story of Admiral King going to the vast allied staff conferences accompanied only by a flag lieutenant, to contend with General Marshall and the other allied chiefs of staff, who were accompanied by dozens of aides and volumes of papers; and yet, King would dominate the meeting. He knew Bernard Baruch, and while others have attributed his success in making investments to Baruch, the acknowledged master, I have the feeling that his mother, Lula, had a great deal to do with his thinking. She lived to be quite old and died only a few years ago. At that time, speaking of real estate, Judge Russell said that his mother had always told him that land was meant to be purchased, not sold. So, it is easy to see the background of this dean of conservative thought.

I think the domestic accomplishment of which he was most proud was the peaceful integration of Clemson University. The Attorney General, Robert F. Kennedy, had called him at the time, offering to send United States troops to enforce the widely publicized integration of this southern agricultural and engineering school with its country background. Judge Russell told General Kennedy that he, as governor, could handle the situation, that he was determined to enforce the court orders, and that the whole affair would be more peacefully settled without federal troops than with. And it was.

I cannot leave my favorite subject without mentioning that Judge Russell taught a summer term of federal courts at the University of North Carolina at Chapel Hill and was a major in the United States Army on Eisenhower's staff for a time during World War II.

If I may be permitted a purely personal note, I have lost one of my dearest friends. I have never known anyone who contributed as much to his state and nation. He was loyal to the core. I don't believe Donald Russell ever did anything he thought was wrong. Like the Apostle Paul, he has fought the good fight, he has finished his course, he has kept the faith.

II. Honorable Jesse Spencer Bell (1961-1967)

Judge Jesse Spencer Bell was born in Charlotte, North Carolina, on April 1, 1906.⁹ He graduated from Duke University in 1927.¹⁰ He briefly attended Harvard University Law School, but soon transferred to the University of North Carolina School of Law, where he earned a bachelor of laws degree in 1930.¹¹

9. Albert Coates, *A Portrait of J. Spencer Bell*, 45 N.C. L. REV. 581, 581 (1967); *In Memoriam: Honorable J. Spencer Bell*, in 391 F.2d 5, 5 (1967) [hereinafter *Bell Memoriam*] (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

10. Coates, *supra* note 9, at 581.

11. *J. Spencer Bell*, 60, a U.S. Circuit Judge, N.Y. TIMES, Mar. 20, 1967, at 31 [hereinaf-

In 1960 and 1966, respectively, Catawba College and the University of North Carolina at Chapel Hill honored Judge Bell with the doctor of laws degree.¹² Judge Bell was admitted to the North Carolina Bar in 1929.¹³ He practiced law in Charlotte, where he attained the status of senior partner in the firm of Bell, Bradley, Gebhardt, DeLaney and Millette.¹⁴ The onset of World War II disrupted Judge Bell's legal career briefly.¹⁵ He served in the Field Artillery and quickly rose from the rank of private to the rank of major.¹⁶ In 1943, he and Katherine Castolot married.¹⁷ She remained his dear partner and friend throughout his life.¹⁸

Judge Bell dedicated much of his life to public service. He reached far beyond his local bar association to help the Charlotte-Mecklenburg community. He served on the Mecklenburg County Planning Board in the early 1950s.¹⁹ Working with no staff and few resources, Judge Bell understood the similar plight of the City Planning Board.²⁰ He helped to pass legislation that combined the two boards into one board capable of addressing the interlocking problems of the city and the county.²¹ After working with the planning boards, he became president of the Social Planning Council of the Charlotte-Mecklenburg United Service Organization.²² In that capacity, he headed a committee charged with studying the bureau of Parks and Recreation.²³ The committee produced the Allen Report, which prompted Charlotte to expand its recreation activities to serve all citizens regardless of race.²⁴ The *Charlotte*

ter *J. Spencer Bell*].

12. *Bell Memoriam*, *supra* note 9, at 6 (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

13. *Id.* at 6 (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

14. *Id.* (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

15. *Id.* (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

16. *Id.* (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

17. *Id.* (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

18. *Id.* (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

19. Coates, *supra* note 9, at 581.

20. *Id.* (examining Judge Bell's creativity in responding to needs of community).

21. *Id.* (considering Judge Bell's lobbying efforts to reform dual board system).

22. *Id.*

23. *Id.*

24. *Id.* at 581-82 (discussing impact of Allen Report).

News described the Allen Report as "a stern, relentless, carefully planned look at all sides of issues with the end result being solid foundations and sound answers."²⁵

Judge Bell did not limit his community service to local projects. He served as president of the North Carolina Bar Association and also as chairman of the bar association's committee on Improving and Expediting the Administration of Justice in North Carolina.²⁶ Through this committee, Judge Bell carried to completion "the most thoroughgoing study of the administration of justice in the Courts of North Carolina ever undertaken in three hundred years of the State's history."²⁷ Recommendations by the committee ultimately became the basis for the North Carolina Constitution's new Judicial Article, "under which a sweeping revision of the judicial system [was] proceeding."²⁸ Judge Bell's influence on the committee was so well recognized that the committee became known as the "Bell Committee."²⁹ Judge Bell also served in the North Carolina Senate.³⁰ During his three terms, he championed judicial reform and legislative redistricting.³¹

Judge Bell's devotion to serving others earned him the admiration of his community. His efforts in producing the Allen Report led to his being named as Charlotte-Mecklenburg Man of the Year in 1955.³² His work for the North Carolina Bar Association led to further awards. Judge Bell won the American Bar Association award for the most significant work in any state for the work of his committee.³³ In 1959, he received the John J. Parker Award for Conspicuous Service to Jurisprudence, the North Carolina Bar Association's premier award.³⁴

25. *Id.* at 582 (analyzing Allen Report).

26. *Bell Memoriam*, *supra* note 9, at 6-7 (statement of Henry Brandis, Dean of the University of North Carolina School of Law) (examining impact of Bell Committee).

27. *Id.* at 7 (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

28. *Id.* (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

29. *Id.* (statement of Henry Brandis, Dean of the University of North Carolina School of Law) (discussing influence of Bell on committee).

30. *Id.* (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

31. *Id.* (statement of Henry Brandis, Dean of the University of North Carolina School of Law) (considering major focuses of Bell's political career).

32. Coates, *supra* note 9, at 582 (detailing honors bestowed upon Bell).

33. *Id.* at 583.

34. *Bell Memoriam*, *supra* note 9, at 7 (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

In 1961, President John F. Kennedy appointed Judge Bell to fill a vacancy on the United States Court of Appeals for the Fourth Circuit.³⁵ Judge Bell brought the experience of his distinguished career to the bench, but perhaps more importantly, he "brought character, integrity, a mature understanding of human nature, a talent for rewarding friendship, and a continuing ability to grow."³⁶ Judge Bell wrote more than 175 opinions, of which only sixteen were dissents, in slightly less than five and one-half years on the bench.³⁷ He wrote on a variety of topics, including habeas corpus by state prisoners, income taxation, criminal evidence and procedure, and National Labor Relations Board orders.³⁸ Judge Bell's work on the bench "stood out in the eyes of his professional associates to the point that [] Chief Justice [Earl Warren] of the Supreme Court of the United States picked him to head a Committee of Federal Judges to draw up guidelines for courts, judges, and lawyers to use in protecting a citizen's rights to a fair trial and a free press."³⁹

Contemporaries described Judge Bell as a stalwart reformer who cut to the heart of judicial matters. He stressed fairness, simple thoroughness, and judicial efficiency.⁴⁰ One contemporary remembered Judge Bell as a judge who demonstrated "a superior quality of judicial craftsmanship," but who felt "no need for esoteric vocabulary [nor a desire] to intersperse income tax and patent opinions with philosophical observations."⁴¹ Another admirer, Judge Sobeloff, recalled that, when Judge Bell "joined [the] Court, the other judges were instantly captivated by his plain and incisive speech."⁴² Judge Bell had a distaste for technicalities and abhorred delay.⁴³ He preferred a more "result-oriented" judicial review.⁴⁴ Judge Samuel J. Ervin, III recounted that "Judge

35. *2 in City Area Get U.S. Court Posts*, N.Y. TIMES, Sept. 15, 1961, at 22.

36. *Bell Memoriam*, *supra* note 9, at 8 (statement of Henry Brandis, Dean of the University of North Carolina School of Law) (examining Judge Bell's unique influence on bench).

37. *Id.* (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

38. *Id.* at 9 (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

39. Coates, *supra* note 9, at 583.

40. *Bell Memoriam*, *supra* note 9, at 9-10 (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

41. *Id.* at 10 (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

42. *Id.* at 15 (statement of Clement F. Haynsworth, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

43. *Id.* at 10 (statement of Henry Brandis, Dean of the University of North Carolina School of Law)

44. *Id.* at 16 (statement of Clement F. Haynsworth, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

Winter said one time that Judge Bell did not like to sit down after the argument and discuss cases in great detail. He quoted [Judge Bell] quite frequently: 'Oh hell, cut the philosophizing, just vote. Just vote.'⁴⁵ Another admirer described Judge Bell's work as "characterized by an acute perceptiveness to the demands of conscience and fair play."⁴⁶

Judge Bell spoke with great conviction concerning human and constitutional rights by writing opinions that emphasized the importance of justice.⁴⁷ He once argued against convicting a conscientious objector by stating: "The statute gives this man exemption, the Army does not want him, the jail will not change his religious beliefs, nor will the will of the people to fight for their country be sapped by a generous adherence to the philosophy behind this law."⁴⁸ Judge Bell also faced the tough integration and education issues present in the Virginia school cases: "It is tragic that since 1959 the children of Prince Edward County have gone without formal education. Here is a truly shocking example of the law's delays. In the scales of justice the doctrine of abstention should not weigh heavily against the rights of these children."⁴⁹

Judge Bell suffered a heart attack and died on March 19, 1967.⁵⁰ His friend Henry Brandis, professor of law and dean emeritus of the University of North Carolina School of Law, spoke these final words at a memorial service before the court:

Nor should anyone doubt that in the brief time allotted him he earned a high place among that continuing company of dedicated souls who, once led and still inspired by Parker and Soper and Dobie, have made this Court—and continue to make it—one of the great courts of a nation which, more than any other in history, has staked its welfare and even its orderly existence upon the power and the wisdom and the integrity of its judges.⁵¹

III. Honorable Herbert Stephenson Boreman (1959-1971)

Judge Herbert Stephenson Boreman was born on September 21, 1897, in Middlebourne, West Virginia, and died at his home in Parkersburg, West

45. Interview with Samuel J. Ervin, III, Circuit Judge, United States Court of Appeals for the Fourth Circuit, in Lexington, Va. (Nov. 14, 1996).

46. *Bell Memoriam*, *supra* note 9, at 15 (statement of Clement F. Haynsworth, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

47. *Id.* at 11 (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

48. *Id.* (statement of Henry Brandis, Dean of the University of North Carolina School of Law) (quoting *United States v. Beaver*, 309 F.2d 273, 279 (4th Cir. 1962) (Bell, J., dissenting)).

49. *Bell Memoriam*, *supra* note 9, at 11 (statement of Henry Brandis, Dean of the University of North Carolina School of Law) (quoting *Griffin v. Board of Supervisors of Prince Edward County*, 322 F.2d 332, 348 (1963) (Bell, J., dissenting)).

50. *J. Spencer Bell*, *supra* note 11.

51. *Bell Memoriam*, *supra* note 9, at 12 (statement of Henry Brandis, Dean of the University of North Carolina School of Law).

Virginia, on March 26, 1982. As a boy, Judge Boreman attended the West Virginia public schools.⁵² He earned money by working at a local garage and at a steel factory. After graduating from high school in 1915, he attended West Virginia University, where he earned a bachelor of letters of laws degree in 1920.

From 1923 to 1927, Judge Boreman worked as an assistant United States attorney in Parkersburg. He then spent two years in private practice with the Parkersburg firm of Smith & Boreman. Judge Boreman left the firm in 1929 to serve as the prosecuting attorney in Wood County, West Virginia, where he remained until 1932 when he returned to private practice in Parkersburg. He continued in Parkersburg for twenty-two years.⁵³

Judge Boreman, the grand nephew of West Virginia's first governor, Arthur I. Boreman, enjoyed a distinguished political career.⁵⁴ He was a member of the West Virginia Senate from 1942 to 1950, during which time he was elected Senate minority leader twice. In 1948, Judge Boreman won the Republican nomination for Governor, but he lost the general election to Okey L. Patteson. Judge Boreman served on the West Virginia University Board of Governors from 1932 to 1936, as the Wood County Bar Association President in 1934, and as the West Virginia University Alumni Association President from 1956 to 1957.⁵⁵

In July 1954, President Dwight D. Eisenhower appointed Judge Boreman to the United States District Court for the Northern District of West Virginia. Judge Boreman served as a district court judge for five years. In 1958, the death of Judge John J. Parker created a vacancy on the United States Court of Appeals for the Fourth Circuit.⁵⁶ President Eisenhower nominated Judge Boreman to fill the vacancy. The Senate confirmed the nomination in June 1959, and Judge Boreman took the oath of office that same month. Judge Boreman became a senior judge two days before his twelfth anniversary on the court.

One of Judge Boreman's former clerks, Edward Colbert, remembers the judge as a man who "loved the practice of law."⁵⁷ Judge Boreman enjoyed watching lawyers interact, and he thrived in the give-and-take atmosphere of the trial court.⁵⁸ It was this love of the battle that prompted him initially to decline President Eisenhower's nomination to the Fourth Circuit.⁵⁹ After

52. JUDGES OF THE UNITED STATES 35 (1978).

53. JUDGES OF THE UNITED STATES 46 (2d ed. 1983).

54. Obituaries, *Herbert S. Boreman*, WASH. POST, Mar. 28, 1982, at B5.

55. MARQUIS WHO'S WHO, WHO'S WHO IN AMERICAN LAW 86 (2d ed. 1979).

56. J.W. PELTASON, FIFTY-EIGHT LONELY MEN 23-25 (1961).

57. Telephone Interview with Edward Colbert, Partner, Kenyon & Kenyon (Dec. 1, 1997).

58. *Id.*

59. *Id.*

declining the elevation, Judge Boreman sat by designation until someone could be found to take Judge Parker's seat. He sat for six months while his fellow judges and politicians made little or no effort to find a permanent replacement. Finally, Judge Boreman relented and accepted the nomination.⁶⁰ Judge Boreman, however, never gave up his love for the trial court. Later in life, he admitted openly that he missed being a trial judge.⁶¹

Colleagues respected Judge Boreman as a conservative and honest judge. Judge Donald S. Russell of the Fourth Circuit remembered him as "a conservative of conservatives."⁶² He was "one of the most conservative judges in a conservative circuit."⁶³ Judge Russell also claimed that Judge Boreman was "always correct."⁶⁴ When he was not, Judge Boreman was quick to admit his mistakes. In *Shiflett v. Virginia*,⁶⁵ Judge Boreman wrote:

In attempting to minimize my feeling of embarrassment in announcing withdrawal from my earlier position, I might derive some comfort from the statement attributed to . . . Mahatma Gandhi . . . "My aim is not to be consistent with any previous statement I have made on a given question, but to be consistent with truth as it may present itself to me at a given moment."⁶⁶

Judge Boreman was a true gentleman who "treated everyone with respect."⁶⁷ Despite being an elder statesman himself, he regularly assisted the aging Judge Sobeloff to his seat in the courtroom.⁶⁸ He was also a very generous judge. "He never attacked or belittled the lawyers in his courtroom no matter how ludicrous their arguments might be."⁶⁹ Further, he never antagonized the more liberal judges with whom he disagreed.⁷⁰ Judge Boreman's peers on the bench liked him so much that they affectionately referred to him as "Uncle Bo."⁷¹

Judge Boreman had several interests outside of the law. He was an accomplished pianist, a golfer, and a sports fan.⁷² He enjoyed smoking ciga-

60. *Id.*

61. *Id.*

62. Interview with Donald S. Russell, Circuit Judge, United States Court of Appeals for the Fourth Circuit, in Lexington, Va. (Oct. 31, 1996).

63. *Id.*

64. *Id.*

65. 447 F.2d 50 (4th Cir. 1971).

66. *Shiflett v. Virginia*, 447 F.2d 50, 62 (4th Cir. 1971) (Boreman, J., concurring).

67. Telephone Interview with Edward Colbert, *supra* note 57.

68. *Id.*

69. *Id.*

70. Telephone Interview with William Powell, Partner, Myers, Powell & Zivkovich (Dec. 3, 1997).

71. Telephone Interview with Edward Colbert, *supra* note 57.

72. Telephone Interview with George Hill, Judge, Fourth Circuit Court of West Virginia

rettes, looking at the river outside his office, and talking about everything from football to politics.⁷³

Finally, Judge Boreman was a "man of great and regular habit."⁷⁴ He ate lunch at the same table, at the same time, and in the same place (the Elk's Club) every working day.⁷⁵ He got his hair cut every Thursday at the same time and in the same place.⁷⁶ To Judge Boreman, routine was a way of life, and he routinely excelled in it.

IV. Honorable Albert V. Bryan, Sr. (1961-1984)

On July 23, 1899, Albert V. Bryan, Sr. was born in Alexandria, Virginia. Judge Bryan is remembered not only as a wise judge who rendered significant judicial decisions,⁷⁷ but also as a genuinely kind and beloved person who greatly adored his family and friends.⁷⁸ Borrowing the words from a Robert Burns poem, Gregory L. Murphy, a former law clerk for Judge Bryan, commented that Judge Bryan was "a gentleman and a scholar."⁷⁹

Judge Bryan graduated from the University of Virginia with a law degree in 1921, but his ties to the school did not end with the completion of his formal education. Thirty years later, Judge Bryan served as the rector of the University of Virginia, where he remained for four years. In fact, Judge Bryan apparently was most proud of this accomplishment.⁸⁰ Not only did Judge Bryan's fondness for his alma mater continue throughout the years, but his love of literature, which most likely developed during his school years, stayed with him throughout his life. Colleagues of the judge report that Judge Bryan often recited works of Charles Dickens, Anthony Trollope, Lewis Carroll, and Alfred Lord Tennyson when illustrating a point.⁸¹ Judge Bryan was a true intellect. At the same time, however, he aimed to speak in language that the common man could understand. For example, when Murphy once drafted an opinion that included the phrase "gravamen of the complaint," Judge Bryan

(Dec. 3, 1997).

73. *Id.*

74. Telephone Interview with Edward Colbert, *supra* note 57.

75. Telephone Interview with William Powell, *supra* note 70.

76. Telephone Interview with Edward Colbert, *supra* note 57.

77. *See infra* notes 93, 102, 105 and accompanying text (citing Judge Bryan's significant decisions).

78. *See infra* notes 86-87 and accompanying text (recounting example of Judge Bryan's concern for family photographs).

79. *In Memoriam: Honorable Albert V. Bryan, in* 766 F.2d LXXI, LXXVII (1985) [hereinafter *Bryan Memoriam*] (statement of Gregory L. Murphy, former law clerk for Judge Bryan).

80. *Id.* at LXXI (statement of Gregory L. Murphy, former law clerk for Judge Bryan).

81. Philip Smith, *Albert V. Bryan Sr. Dies*, WASH. POST, Mar. 15, 1984, at C7.

counseled him to change the word "gravamen" to the more easily understood word "nub."⁸²

In 1923, Judge Bryan married Marie Gasson. Judge Bryan, who fathered two sons with Marie, loved his family and was apparently especially fond of telling stories and joking with his wife.⁸³ For example, Judge H. Emory Widener, Jr. remembered Judge Bryan recounting the time when he was sued for a million dollars.⁸⁴ Upon learning this information, Judge Bryan's wife replied, "Why, Albert, that will take almost everything we have."⁸⁵ Judge Bryan's loyalty to his family lasted throughout his lifetime, as is evidenced by his reaction to the fire in 1981 that caused damage to his office at the Alexandria courthouse.⁸⁶ Apparently, eighty-two year old Judge Bryan's main concern was about smoke exposure to family photographs on his desk.⁸⁷

Judge Bryan was admitted to the Virginia bar in 1920 and practiced law in Alexandria from 1921 to 1947. He served as Alexandria city attorney from 1923 to 1928 and then served as commonwealth's attorney from 1928 to 1947. In 1947, Judge Bryan's career as a judge began when President Harry S. Truman appointed him to the United States District Court for the Eastern District of Virginia. Judge Bryan was assigned to hear cases in both Alexandria and Norfolk, and he frequently traveled to the Tidewater area as well. During the fourteen years in which Judge Bryan served as a district court judge, he authored several significant opinions.⁸⁸ Through his decisions, Judge Bryan developed a reputation for being a "legal conservative and a strict constructionist."⁸⁹

Although Judge Bryan was "a conservative in the deepest old-Virginian sense,"⁹⁰ his sense of fairness at times overrode his personal considerations, as evidenced by his most important opinions.⁹¹ Chief among these was his 1958 decision in *Thompson v. County School Board*,⁹² in which the court

82. *Bryan Memoriam*, *supra* note 79, at LXXVI (statement of Gregory L. Murphy, former law clerk for Judge Bryan).

83. *Id.* at LXXIII (statement of H. Emory Widener, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

84. *Id.* (statement of H. Emory Widener, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

85. *Id.* (statement of H. Emory Widener, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

86. See Philip Smith, *Fire Burns Chamber of U.S. Appellate Judge*, WASH. POST, July 31, 1981, at D6 (describing fire damage to Judge Bryan's chambers).

87. See *id.* (describing Judge Bryan's concern for family photographs).

88. See *infra* notes 93, 102 and accompanying text (citing significant opinions Judge Bryan authored while district court judge).

89. Smith, *supra* note 86.

90. *Albert Vickers Bryan Sr.*, WASH. POST, Mar. 17, 1984, at A16.

91. Smith, *supra* note 86.

92. 166 F. Supp. 529 (E.D. Va. 1958).

ordered the Arlington schools to desegregate in January 1959.⁹³ This decision followed a turbulent time because, in 1954, the Virginia legislature had promised to close entire local school systems if even one school within the system was desegregated by as few as one child.⁹⁴ Moreover, in 1957, the Virginia General Assembly had stripped Arlington of its right to elect its own school board.⁹⁵ The Assembly mandated that the County Board appoint the Arlington School Board because the Assembly feared that the fairly liberal elected board would comply with federal court orders to desegregate.⁹⁶ In 1959, the General Assembly dismantled the 1954 regulations to avoid closing the schools.⁹⁷ Thus, pursuant to Judge Bryan's order, four black students made history when they entered the county's all-white Stratford Junior High School on February 2, 1959, escorted by half the Arlington police force in riot gear.⁹⁸ Judge Bryan also served on the federal judicial panel that ordered desegregation of public schools in Prince Edward County.⁹⁹ Due to Judge Bryan's efforts, Virginia "was spared what could have been even worse turmoil in the early days of public school desegregation."¹⁰⁰

Judge Bryan also authored another high profile decision during his years as a federal district judge: *United States v. Horwitz*.¹⁰¹ During the 1950s, the federal government attempted to deport Sam Horwitz because Horwitz had belonged to the Communist Party from 1928 to 1929 and from 1933 to 1938.¹⁰² In 1956, however, Judge Bryan ruled in favor of Horwitz because Judge Bryan did not feel that the evidence suggested that Horwitz had the intent to overthrow the United States government.¹⁰³

In 1961, President John F. Kennedy appointed Judge Bryan to the United States Court of Appeals for the Fourth Circuit. Judge Bryan made some critical decisions during his years as a circuit judge and continued his legacy of promoting equality between the races. For example, in the case of *Griffin v. State Board of Education*,¹⁰⁴ Judge Bryan authored the opinion that struck

93. *Thompson v. County Sch. Bd.*, 166 F. Supp. 529, 531 (E.D. Va. 1958), *aff'd sub nom. Hamm v. County Sch. Bd.*, 263 F.2d 226 (4th Cir. 1959).

94. Eric Charles May, *Lawyer L. Lee Bean Jr. Dies*, WASH. POST, Dec. 7, 1989, at B6.

95. *Id.*

96. *Id.*

97. *Id.*

98. Leah Y. Latimer, *4 Recall Integrating Arlington School*, WASH. POST, Feb. 1, 1984, at A1.

99. Smith, *supra* note 86.

100. *Albert Vickers Bryan Sr.*, *supra* note 90.

101. 140 F. Supp. 839 (E.D. Va. 1956).

102. *United States v. Horwitz*, 140 F. Supp. 839, 839, 841 (E.D. Va. 1956); *see also* Richard Pearson, *Saul Horwatt Dies*, WASH. POST, June 18, 1986, at C9.

103. *Horwitz*, 140 F. Supp. at 842.

104. 296 F. Supp. 1178 (E.D. Va. 1969).

down Virginia's tuition grant program.¹⁰⁵

When writing his decisions, Judge Bryan showed great respect for the United States Constitution.¹⁰⁶ According to his son, Judge Bryan viewed the court system as a "jewel" of the Constitution.¹⁰⁷ Judge Bryan's son also noted that Judge Bryan "simply regarded anyone who didn't respect the court as an outlander."¹⁰⁸

Although Judge Bryan's love for others and love for justice go far in describing who he was, Judge Bryan's religion also played a significant role in his life. Quotations from the Bible appeared in many of his opinions.¹⁰⁹ According to Judge Widener, Judge Bryan "could scarcely engage in conversation with one of [his] intimate dissenting friends without gently reminding them of the legitimacy and ascendancy of the true faith."¹¹⁰ Moreover, Judge Bryan always managed to keep his wit. Judge Widener recalled that Judge Bryan once relied on the Bible as authority in an opinion upholding a morals statute over Judge Merhige's dissent.¹¹¹ The next time that Judge Merhige was in Alexandria, he stopped by Judge Bryan's office and said, "I was looking for a Bible and thought you might have one."¹¹² Judge Bryan answered, "You need one."¹¹³

Judge Bryan assumed senior status in 1971 and continued to serve in that capacity until his death in 1984. Even in his final years, Judge Bryan was a diligent judge who "worked almost daily" and usually went to work at around eight in the morning.¹¹⁴

On February 25, 1984, Judge Bryan suffered a heart attack at his Alexandria home. Although he underwent a nine-hour heart operation, he never recovered. Judge Bryan died on March 13, 1984.

Today, the sixty-six-year-old courthouse at Prince and Washington streets in Alexandria, Virginia, bears Judge Bryan's name. Congress passed a resolution three years after his death to rename the building the Albert V. Bryan

105. *Griffin v. State Bd. of Educ.*, 296 F. Supp. 1178, 1182 (E.D. Va. 1969).

106. *Albert Vickers Bryan Sr.*, *supra* note 90.

107. *Id.*

108. *Id.*

109. *Bryan Memoriam*, *supra* note 79, at LXXII (statement of H. Emory Widener, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

110. *Id.* at LXXII-LXXIII (statement of H. Emory Widener, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

111. *Id.* at LXXIII (statement of H. Emory Widener, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

112. *Id.* (statement of H. Emory Widener, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

113. *Id.* (statement of H. Emory Widener, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

114. *Smith*, *supra* note 86.

United States Courthouse.¹¹⁵ The building stands as a constant reminder of Judge Bryan's thirty-four years of service as both a district and circuit court judge. It remains a tribute to the man who took the effort to know the names of all of the employees of the courthouse and who earned the respect of all who had the privilege of knowing him.¹¹⁶ Perhaps Judge Widener put it best: "In sum, Judge Bryan was the epitome of everything a Virginia gentleman is supposed to be. He was everything that a judge is supposed to be."¹¹⁷

V. Honorable James Braxton Craven, Jr. (1966-1977)

James Braxton Craven, Jr., known by friends and colleagues as Brack Craven, was born on April 3, 1918 in Lenoir, North Carolina. He was the son of Methodist minister James Braxton Craven and Katherine Simmons Craven. He was also the grandson of Braxton Craven, a renown educator who had earned fame as the founder and the first president of Trinity College, which is today Duke University. Judge Craven attended North Carolina public schools in Gastonia, Charlotte, and Greensboro before obtaining a bachelor of arts degree with honors from Duke University in 1939. He appeared ready to begin a promising career in law when, in 1942, he earned a bachelor of letters of laws degree from Harvard Law School. By 1942, however, the United States had entered the Second World War, and Judge Craven felt compelled to enlist in the United States Navy. He achieved the rank of lieutenant in four years of service.

After an honorable discharge from the military in 1946, Judge Craven planned to return to North Carolina to practice law. His circuit court colleague, Judge Donald S. Russell, recalled the occasion:

Craven and [James B. McMillan] came to North Carolina from Harvard and were very sure of their superiority to all these Southern lawyers. They didn't feel they even needed to take the bar exam, and they failed it. Craven told the story often in public circles. . . . [He] recognized the infirmities of human beings, that he was not a genius, and that he could make mistakes – even from the bench.¹¹⁸

Judge Craven established his first legal practice in Morganton, North Carolina, in 1946. He rose rapidly to the top of his profession. After serving briefly as solicitor of the Burke County Court in 1947, he spent the next five years as an assistant United States attorney in Charlotte and Asheville.

115. H.R. 5470, 99th Cong. (1986); *see also* Caryle Murphy, *Courthouse Named for Judge Albert Bryan*, WASH. POST, May 7, 1987, at C7 (reporting name change of courthouse).

116. *Bryan Memoriam*, *supra* note 79, at LXXIII (statement of H. Emory Widener, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

117. *Id.* at LXXIV (statement of H. Emory Widener, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

118. Interview with Donald S. Russell, *supra* note 62.

During this period, Craven was active in politics and served for a time as chairman of the Burke County Democratic Executive Committee. He was also a member of the American Bar Association, the American Judicature Society, and the North Carolina Bar Association.

Judge Craven joined the bench in 1956 when Governor Luther H. Hodges appointed him to the North Carolina Superior Court. He served as a judge in that court until 1961, when President John F. Kennedy appointed Judge Craven to the federal bench as United States District Judge for the Western District of North Carolina. Only five years later, in 1966, President Lyndon B. Johnson named him to the United States Court of Appeals for the Fourth Circuit. During his tenure as a federal judge, Judge Craven also taught summer courses in constitutional law at the University of North Carolina, Duke University, and the University of Texas. He served as a federal appellate judge until his death on May 3, 1977. He suffered a heart attack while playing tennis at the home of Federal District Judge Robert R. Merhige in Richmond, Virginia. He was survived by his third wife, Susan Schatzel Craven and three children: James B. Craven III, Stephen K. Craven, and Elizabeth Bible Craven.

Judge Craven was a strikingly tall man. His size and bearing gave him an aura of dignity on the bench. Although he was a physically imposing figure, he maintained a warm and affectionate personality. His friend and former Harvard law school colleague, Judge James B. McMillan remarked:

From his great height (6 feet 4") he displayed the quizzical interest in other people and their identity and problems which characterized his whole life. He asked questions about what "you" think and what "you" are planning to do. First to last he showed eagerness, enthusiasm and friendliness for all sorts of people.¹¹⁹

Craven's interest in people overlapped his view of the law. Chief Judge Clement F. Haynsworth, Jr., echoing the spirit of Judge McMillan's comments, stated that Judge Craven's "notion of justice was closely related to the concept of the welfare of people. His concern was with people and individuals."¹²⁰ It is reputed that Judge Craven used to say to his family that "there are no such things as strictly legal problems; there are *people* problems some of which might have legal answers."¹²¹

119. *In Memoriam: Honorable James Braxton Craven, Jr.*, in 604 F.2d LXXX, LXXXI (1978) [hereinafter *Craven Memoriam*] (statement of James B. McMillan, District Judge, United States District Court for the Western District of North Carolina).

120. Clement F. Haynsworth, Jr., *James Braxton Craven, Jr.: A Tribute*, 56 N.C. L. REV. 191, 193 (1978).

121. *Craven Memoriam*, *supra* note 119, at LXXXIII (statement of James B. McMillan, District Judge, United States District Court for the Western District of North Carolina).

The Craven family had strong ties to the Methodist church. Judge Craven was a delegate to the Southeastern Jurisdictional Conference of the Methodist Church in 1956, 1960, and 1964. He also served as a delegate to the General Conference of the Methodist Church in 1964. Despite his commitment to the church, "Judge Craven did not flaunt his religious conviction with his colleagues" nor did he allow his religious beliefs to intrude impermissibly upon his judicial opinions.¹²²

Although active in liberal politics before ascending the bench, "Brack Craven expressed the hope that he would be 'unlabelable' as a Circuit Judge."¹²³ However, he did not hesitate to speak out on issues about which he felt deeply.¹²⁴ He was an advocate of prison reform¹²⁵ and criticized American involvement in Vietnam long before it was popular to do so.¹²⁶ Still, he was aware of the impact his personal convictions had on his duties as a judge. He once wrote:

I believe that there are only two kinds of judges at all levels of courts: those who are admittedly (maybe not to the public) result-oriented, and those who are also result-oriented but either do not know it or decline for various purposes to admit it. Those who are unaware of their result-orientation have an advantage; they get where they want to go without the inhibition of a conscious awareness of how they got there. Those who know themselves well enough to recognize their result-orientation are inhibited by the knowledge that they may put into judicial decisions value judgments that may not have enduring validity and may even turn out to be wrong. A judge who is that introspective tends to be more flexible than his less perceptive brother who knows not what he does – if only because he is aware that he is constantly choosing, usually not between right and wrong but between two goods or two evils embraced within conflicting principles.¹²⁷

Rather than considering any particular case from an ideological or political perspective, Judge Craven "was wont to approach the decision in every case or to test any tentative conclusion with the question to himself, frequently vocalized, 'Is it fair?' If he thought it unfair, he struggled toward a different result, bowing only in the face of overwhelming legal force."¹²⁸

122. Haynsworth, *supra* note 120, at 192.

123. Sam J. Ervin, Jr., *James Braxton Craven, Jr.: Seeker After Truth*, 56 N.C. L. REV. 197, 200 (1978).

124. *Craven Memoriam*, *supra* note 119, at LXXXIII (statement of James B. McMillan, District Judge, United States District Court for the Western District of North Carolina).

125. James Braxton Craven, Jr., *Foreward to Corrections: A Symposium on Prison Reform*, 45 MISS. L.J. 601, 602 (1974).

126. Ervin, *supra* note 123, at 200.

127. J. Braxton Craven, Jr., *Paeon to Pragmatism*, 50 N.C. L. REV. 977, 977 (1972).

128. Haynsworth, *supra* note 120, at 194. Haynsworth continued:

When the law and its application were clear and settled and irreversible, qualms about fairness did not lead him to rail against what he was powerless to change.

Judge Craven's philosophy is perhaps best reflected in the words of Bertrand Russell who wrote that "[t]he essence of the Liberal outlook lies not in *what* opinions are held, but in *how* they are held: instead of being held dogmatically, they are held tentatively, and with a consciousness that new evidence may at any moment lead to their abandonment."¹²⁹ Judge Craven simply described his philosophy as "pragmatism."¹³⁰ His approach allowed for a flexibility that balanced his principles against the realities of the law.¹³¹

Despite critics' attempts to characterize him as politically liberal, Judge Craven advocated political neutrality and objectivity on the bench:

The beginning of intellectual honesty in a judge is the recognition that, like other men, he has his own predilections and preferences and intellectual and philosophical attitudes that color and influence his viewpoints. Achieving it requires that he be constantly on guard against his own bias, not in pretending that there can be none. I do not believe that a judge has a duty of loyalty to a political administration with respect to any particular policy of that administration – international or domestic. Nor do I believe that he must pretend to believe that all policies or even all laws are wise and just. But I do believe that he must read, interpret and apply laws as written without regard to whether he would like to see them changed.¹³²

It remains undisputed that Judge Craven brought to the federal bench an immeasurable degree of honesty, integrity, and dignity. He continues to serve as a role model for other judges. Judge James B. McMillan provided a fitting final image of Judge Craven: "He was given to success, not failure. The manner of death, playing tennis, in Richmond after Court, symbolized his life; he had just made a successful return, had won the point, and died in mid-air, as it were, in that moment of triumph."¹³³

VI. Honorable Armistead M. Dobie (1939-1956)

Armistead M. Dobie was born in Norfolk, Virginia, on April 15, 1881. He attended the University of Virginia from which he earned a bachelor's

When, however, there was room for an honest judge to move, and his mental honesty was very evident, his concept of fairness determined his direction.

Id.

129. THE GREAT QUOTATIONS 606 (George Seldes ed., 1983).

130. Craven, *supra* note 127, at 983.

131. See *Craven Memoriam*, *supra* note 119, at LXXXII (statement of James B. McMillan, District Judge, United States District Court for the Western District of North Carolina) (noting that although Judge Craven was "principled in all his actions, he maintained a flexibility (he called it pragmatism) which permitted of a detachment defying any strictly doctrinaire identification").

132. *Lawton v. Tarr*, 327 F. Supp. 670, 671-72 (E.D.N.C. 1971).

133. *Craven Memoriam*, *supra* note 119, at LXXXIV (statement of James B. McMillan, District Judge, United States District Court for the Western District of North Carolina).

degree in 1901, a master's degree in 1902, and a bachelor of laws in 1904. Upon graduating, Judge Dobie moved to St. Louis, Missouri, and established himself in private practice. After only three short years, however, Judge Dobie returned to Virginia and accepted a faculty position at the University of Virginia School of Law. Immediately, Judge Dobie's skills as both an orator and motivator made him a favorite among the University of Virginia's students.

Frederick D.G. Ribble, former dean of the University of Virginia School of Law and one of Judge Dobie's fellow faculty members, remembered that Judge Dobie "had an alertness of mind, a sympathetic feeling for the students, and the ease of a public speaker. The result was a very popular classroom performer."¹³⁴ Judge Dobie's lectures became public events at the University. His annual Easter lecture became known as the "Dobie lecture," and law students often brought dates to the event to hear the master orator working his unique magic with the English language.¹³⁵

Aside from Judge Dobie's skills as a professor and jurist, many of his friends and colleagues remember another side of the judge with great fondness and appreciation. Judge Dobie had a remarkable spirit and tirelessly involved himself in the events of the University. For instance, Judge Dobie often gave pep talks to the football team before its Homecoming games. These pep talks were fondly remembered by former University of Virginia student and vice-president of the Richmond Bar Association, A.C. Epps:

As October came along, the predatory "Minks" from Washington and Lee University across the mountains would come over and do battle on the gridiron with the worthy "Cavaliers"; and on Friday night before such an occasion, Armistead Dobie would talk to the students and to the team. He would tell us about our school; he would tell us about our team; he would tell us about ourselves. And we would go forward from that meeting perfectly enthused and perfectly satisfied that we were invincible for the next day.

As Tennyson has said, "Charm us, orator, till the lion look no larger than the cat."

Judge Dobie, or Professor Dobie, would find characteristic paraphrase in that if I said, "Charm us, orator, till the 'mink' look no larger than the cat."¹³⁶

Before his tenure on the faculty of the University of Virginia Law School, Judge Dobie did graduate work for former United States Supreme Court Justice Felix Frankfurter. Justice Frankfurter remembered his former

134. *In Memoriam: Honorable Armistead M. Dobie*, in 311 F.2d 5, 8 (1963) [hereinafter *Dobie Memoriam*] (statement of Frederick Ribble, Dean of the University of Virginia School of Law).

135. *Id.* at 28 (resolution of the Charlottesville and Albemarle County Bar Associations).

136. *Id.* at 18 (statement of A.C. Epps, Vice-President of the Richmond Bar Association).

pupil and colleague as possessing a kindly spirit. Justice Frankfurter recalled a time when, as a graduate student, Judge Dobie broke into Frankfurter's study, exclaiming, "No wise man works all the time. A fellow has got to have a little fun, so let's go to town and have a stein of beer at Charlie Wirth's."¹³⁷ The former Supreme Court Justice also stated that "with Armistead Dobie there left the world a good deal of joyousness; not a little charm and a devotion to law in its rational sense."¹³⁸

In addition to his legal endeavors, Judge Dobie served his country during World War I. He started his service as a captain in the Army Infantry. Soon, at the request of General Cronkhite, Dobie transferred to the General's staff. The General apparently recognized the value of having someone with Judge Dobie's many abilities, including the ability to make speeches on behalf of the General.¹³⁹ Judge Dobie was also in active combat in France where he was promoted to major and received the decoration of d'Academie from the French government.¹⁴⁰

Judge Dobie's judicial career began in 1939 when President Franklin D. Roosevelt appointed him to the United States District Court for the Western District of Virginia. After less than a year in that position, the President appointed Judge Dobie to a position on the United States Court of Appeals for the Fourth Circuit. The later appointment was a result of Judge Dobie's former position at the University of Virginia Law School. Years earlier, Roosevelt's son wanted to attend the University of Virginia, and Judge Dobie helped him gain admission. Thus, although Roosevelt had previously promised the next Fourth Circuit opening to Senator Byrnes of South Carolina, the President had to back out of that promise in order to reward Judge Dobie for his efforts on behalf of Roosevelt's son.¹⁴¹

During much of Judge Dobie's time on the Fourth Circuit, Judges Parker and Soper joined Dobie on the bench. The three Judges were recognized across the nation as first-class jurists. Federal jurisdiction was Judge Dobie's particular area of legal expertise. He is the author of several books and law review articles in that area of law.¹⁴² Judge Morris A. Soper, Judge Dobie's friend and colleague on the Fourth Circuit, stated that, apart from Dobie's

137. *Id.* at 13 (statement of Felix Frankfurter, Retired Justice, United States Supreme Court).

138. *Id.* (statement of Felix Frankfurter, Justice, Retired, United States Supreme Court).

139. *Id.* at 9 (statement of Frederick Ribble, Dean of the University of Virginia School of Law).

140. *Id.* at 27 (resolution of the Charlottesville and Albemarle County Bar Associations).

141. Interview with Donald S. Russell, *supra* note 62.

142. *See, e.g.*, ARMISTEAD M. DOBIE, CASES AND MATERIALS ON FEDERAL JURISDICTION AND PROCEDURE (1935); ARMISTEAD M. DOBIE, HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE (1928); A.M. Dobie, *Recent Developments in Federal Procedure*, 21 VA. L. REV. 876 (1935); A.M. Dobie, *Seven Implications of Swift v. Tyson*, 16 VA. L. REV. 225 (1930).

"gifted intelligence . . . sharpened to a razor edge . . .," one of Judge Dobie's finest qualities was that Dobie was "the most cooperative legal person [Soper] ever met."¹⁴³ This opinion is borne out by the fact that Judge Dobie sat for over 1400 Fourth Circuit cases, yet he authored only six dissents.¹⁴⁴ However, as a remarkable testament to Judge Dobie's legal mind, the United States Supreme Court adopted the reasoning of four of his six dissents when the Court subsequently overruled the Fourth Circuit majority in those particular cases.¹⁴⁵

Judge Dobie was also involved in many of the highly controversial cases in the area of civil rights and school desegregation in the 1940s and 1950s. As early as 1949, Judge Dobie found that Pulaski County, Virginia, discriminated against black students by requiring them to travel to an adjoining county to attend the "all black" schools, but, according to the prevailing "separate but equal" doctrine of the day, Judge Dobie upheld the segregated school district.¹⁴⁶ The Supreme Court later abandoned the "separate but equal" doctrine in public education,¹⁴⁷ and Judge Dobie authored many opinions striking down segregation in Southern schools, parks, and public facilities.

Armistead M. Dobie devoted his life to the law. A bachelor until just four years before his death, Judge Dobie spent his entire life thoroughly engrossed in the noble endeavor to learn, interpret, and apply the law to the daily lives of the people who came before his court. Apparent from his many decisions, the praise of his colleagues, and the admiration of the students he taught, Judge Dobie's love of the law permeated and influenced countless lives. As John S. Battle, the former Governor of Virginia and student of Judge Dobie, stated at a memorial for Judge Dobie in the Fourth Circuit courtroom in 1963, "Judge Dobie is not dead; thousands of students of the law who sat at his feet will not forget him, and the learned opinions he wrote while a member of [the Fourth Circuit] will not die."¹⁴⁸

143. *Dobie Memoriam*, *supra* note 134, at 21 (statement of Morris A. Soper, Circuit Judge, United States Court of Appeals for the Fourth Circuit).

144. *Id.* (statement of Morris A. Soper, Circuit Judge, United States Court of Appeals for the Fourth Circuit).

145. *Id.* (statement of Morris A. Soper, Circuit Judge, United States Court of Appeals for the Fourth Circuit).

146. *See Corbin v. County Sch. Bd.*, 177 F.2d 924, 927-28 (4th Cir. 1949) (stating that, although practice of requiring black students to travel to another county to attend segregated school was discriminatory, "separate but equal" doctrine adopted by Supreme Court allowed for such practice).

147. *See Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954) (stating that "separate but equal" is inherently unequal and therefore violates equal protection clause of Fourteenth Amendment).

148. *Dobie Memoriam*, *supra* note 134, at 10 (statement of John S. Battle, Sr., former Governor of the Commonwealth of Virginia).

VII. Honorable John A. Field, Jr. (1971-1976)

John A. Field, Jr. was born on March 22, 1910, in Charleston, West Virginia, and died in his home in Naples, Florida, on December 16, 1995. Those who knew him well described him as a gracious, unassuming man who earned the respect both of his peers and of those who appeared before him in the courtroom.

After graduating from Charleston High School, Judge Field attended Hampden-Sydney College in Farmville, Virginia. Judge Field had held an interest in journalism since high school that continued through college and found an outlet through the *Farmville Herald*, a weekly publication to which he contributed student-oriented articles.¹⁴⁹ Overall, his academic performance at Hampden-Sydney was not spectacular, but in his junior year he was admitted to the Omicron Delta Kappa honorary fraternity and elected Vice President of the student body.¹⁵⁰ By far the most important event of Judge Field's college years was his introduction to Elaine C. Goode of North Carolina, a student at a nearby teachers college, who would become Mrs. John A. Field on April 1, 1933.¹⁵¹

Upon graduation from Hampden-Sydney in 1932, Judge Field announced to his father that he aspired to become a newspaperman.¹⁵² The elder Field had other plans for his son, however. By the following fall, Judge Field had matriculated at the University of Virginia School of Law.¹⁵³ Judge Field initially had difficulty in law school, but, through hard work, he earned a position as editor of the *Virginia Law Review*, became a member of the Order of the Coif, and graduated third in his class.¹⁵⁴

After graduation from law school in 1935, Judge Field returned to his hometown to work for the firm of Brown, Jackson and Knight. In 1944, however, he left the firm to join the United States Navy where he served as gunnery officer on a liberty ship. Although Judge Field's ship never saw combat, during a six-week stay in Antwerp, Belgium, he and his men dodged V-2 rockets that Germans in the neighboring Netherlands launched at the port city. Following the war, Judge Field was discharged from the Navy with the rank of full lieutenant.

Upon his return to Charleston, Judge Field set up a private law practice with George Wood and also began a political career. Judge Field was elected to the Charleston City Council in 1947 and was re-elected as president of the

149. John G. Morgan, 'Long Step' No Novelty to New U.S. Judge, CHARLESTON GAZETTE, Aug. 13, 1959, at 28.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

Council and chairman of its Finance Committee in 1951. In 1950, Judge Field lost a bid for the West Virginia House of Delegates. In 1952, he was defeated in the Republican primary for Attorney General. In 1956, he won the Republican nomination for Attorney General, but lost in the general election. In spite of these setbacks, Judge Field was held in high regard in Republican circles, and in 1957, he was named State Tax Commissioner by the newly-elected Governor, Cecil Underwood. He remained tax commissioner until his appointment as judge for the United States District Court for the Southern District of West Virginia in 1959.

Although he was a Republican, Judge Field enjoyed the esteem of both major political parties.¹⁵⁵ His political philosophy tended towards conservatism in the area of government action and spending, but he was always sensitive to the problems of the common man.¹⁵⁶ Judge Field brought both of these tenets — restraint and compassion — with him to the federal bench. According to one clerk, "The Judge was unfailingly courteous and patient to all those caught up in th[e] judicial system. He instinctively, it seemed, had a special understanding and ability to deal with people, particularly the unique people of Southern Appalachia."¹⁵⁷ At the outset of his judicial career, Judge Field made the following statement describing his conception of the ideal judge:

A judge fulfills his responsibility to the cause of justice if he conducts a court to which any attorney or litigant can come, secure in the feeling that he will get a full and impartial consideration of the case, that he will get the best that the judge can give him — an honest determination of the case."¹⁵⁸

Later in his career, he regretted the dramatic increase in the quantity and detail of the federal legislation that he was charged to interpret.¹⁵⁹ He felt that better results could be achieved with good judges and fewer rules.¹⁶⁰

In 1971, President Richard M. Nixon appointed Judge Field to the United States Court of Appeals for the Fourth Circuit.¹⁶¹ The job change came easily to Judge Field. Traditionally, newly appointed district court judges in the Fourth Circuit were asked to sit by designation on the appellate court early in their tenure.¹⁶² For most district court judges, this was a rare honor. Due to

155. *Id.*

156. Telephone Interview with William C. Field, son of Judge John A. Field, Jr. (Nov. 13, 1997).

157. Robert B. King, Address at Memorial Service for John A. Field, Jr. (Dec. 19, 1995).

158. Morgan, *supra* note 149.

159. Telephone Interview with Thomas A. Heywood, attorney, Bowles, Rice, McDavid, Graff & Love, former law clerk for Judge Field (Nov. 13, 1997).

160. *Id.*

161. Adrian Gwin, *Federal Judge Field Overrules Pomposity*, CHARLESTON DAILY MAIL, Apr. 20, 1981, at 7B.

162. Telephone Interview with Howard E. Seuffer, Jr., attorney, Bowles, Rice, McDavid,

his judicial acumen and his rapport with the circuit judges, however, Judge Field had the opportunity to sit with the appellate court in Richmond on numerous occasions between 1959 and 1971.¹⁶³ Thus, by the time he was appointed to that court, he was both comfortable with the duties of an appellate judge and "steeped in the traditions of the Fourth Circuit."¹⁶⁴

The few years immediately before and after Judge Field's appointment to the Fourth Circuit were marked by two tragic events. The first was the loss of sight in one eye.¹⁶⁵ The second was the death of his wife, Elaine, in 1973.¹⁶⁶ Happily, the couple had been blessed with two sons, John A. Field, III and William C. Field. In 1980, Judge Field married Connie Ball of Charleston.

Judge Field distinguished himself on the appellate bench through his direct method of inquiry and his terse, but soundly reasoned, opinions. When questioning counsel, he always went straight to the heart of the matter with "laser-like" precision, and his written opinions followed the same approach.¹⁶⁷ One clerk commented that "he was a man of few words – not a big fan of dicta."¹⁶⁸ But another noted that Judge Field was not opposed to "turning a lagniappe" when afforded the opportunity.¹⁶⁹ Judge Field accepted senior status in 1976.¹⁷⁰

Although Judge Field's integrity and intellect as a judge are undisputed, those who were close to him remain most impressed by his demeanor off the bench.¹⁷¹ Far from being aloof or unapproachable out of the courtroom, Judge Field addressed everyone as "Bud,"¹⁷² had a self-deprecating sense of humor, and whistled wherever he went.¹⁷³ Having survived two plane crashes, Judge Field refused to fly; his preferred mode of transportation was a wood-paneled station wagon.¹⁷⁴

In addition to his magnetic personality, Judge Field was a physically striking man. Standing more than six feet tall and weighing about 200

Graff & Love, former law clerk for Judge Field (Nov. 13, 1997).

163. *Id.*

164. *Id.*

165. *Id.*

166. Gwin, *supra* note 161.

167. Telephone Interview with Thomas A. Heywood, *supra* note 159.

168. *Id.*

169. Telephone Interview with Howard E. Seuffer, Jr., *supra* note 162.

170. THE AMERICAN BENCH: JUDGES OF THE NATION 31 (Sarah Lawrence et al. eds., 3d ed. 1985-86).

171. See *infra* notes 172-84 and accompanying text (providing comments of Judge Field's friends and associates).

172. Telephone Interview with Howard E. Seuffer, Jr., *supra* note 162.

173. Telephone Interview with William C. Field, *supra* note 156.

174. Telephone Interview with Howard E. Seuffer, Jr., *supra* note 162.

pounds,¹⁷⁵ Judge Field not only was imposing, but also was handsome in the manner of Gary Cooper or Gregory Peck.¹⁷⁶ He dressed impeccably¹⁷⁷ and kept fit playing golf.¹⁷⁸

When Judge Field made a friend, the friendship lasted for life. Every year in Charleston, Judge Field hosted a dinner for his former clerks, whom he referred to as the "Alumni Association."¹⁷⁹ At these gatherings, the judge would make a point of devoting time to each former clerk on an individual basis.¹⁸⁰ Judge Field's interest in remaining close to the Alumni Association was as genuine as its devotion to him. One episode in particular illustrates the warm, jovial relationship that Judge Field and his clerks enjoyed. Following one of the alumni meetings, after Judge Field had gone home, the clerks decided that they would commission a portrait of the judge to hang in the district court in which he had presided.¹⁸¹ At the portrait dedication ceremony the following year, Judge Field's first law clerk remarked to him, "I want to tell you that on many occasions, each of us, during our service to you, felt that we would like to hang you, and today, we have that opportunity."¹⁸² Another noteworthy illustration of the bond between Judge Field and the Alumni Association is that all but two of Judge Field's living former clerks attended his funeral in Naples, Florida.¹⁸³

Judge John A. Field died in his home in Naples, Florida, on December 16, 1995 after a short bout with cancer. Describing his father, William Field said, "In a word, he was gracious." Referring to the judge's final months, William remarked that his father was "more gracious in that situation than ever."¹⁸⁴ Judge Field himself, after discovering his terminal illness, summed up his own life in his characteristically understated way: "It's been a hell of a run."¹⁸⁵

VIII. Honorable Clement Furman Haynsworth, Jr. (1957-1981)

Judge Clement Furman Haynsworth, Jr., was born in Greenville, South Carolina, on October 30, 1912.¹⁸⁶ He came from a long line of lawyers, and

175. Telephone Interview with William C. Field, *supra* note 156.

176. Morgan, *supra* note 149.

177. Gwin, *supra* note 161.

178. Morgan, *supra* note 149.

179. Telephone Interview with Howard E. Seufer, Jr., *supra* note 162.

180. *Id.*

181. W. Warren Upton, Address Delivered at Judge Field's Portrait Ceremony (Dec. 10, 1982).

182. *Id.*

183. Telephone Interview with William C. Field, *supra* note 156.

184. *Id.*

185. Upton, *supra* note 181.

186. Alfonso A. Narvaez, *Clement Haynsworth Dies at 77: Lost Struggle for High Court*

"his quiet courtly manner marked him as a member of the South Carolina gentry."¹⁸⁷ Judge Haynsworth served on the United States Court of Appeals for the Fourth Circuit from 1957 until his death in 1989.¹⁸⁸ He served as Chief Judge of the circuit for approximately sixteen years and accepted senior status in 1981.¹⁸⁹ Judge Haynsworth was one of the most well-respected judges to serve on the Fourth Circuit. He received national attention in 1969 when President Richard M. Nixon nominated him to serve on the United States Supreme Court.¹⁹⁰ Although the United States Senate eventually declined to confirm his nomination, Judge Haynsworth is remembered fondly.¹⁹¹ Judge Donald S. Russell, who served on the Fourth Circuit with Judge Haynsworth, remarked that "[f]or more than a century, the name Haynsworth has been held high in the legal and judicial history of [South Carolina]."¹⁹² Judge Russell further commented that "Judge Haynsworth thus carried an inheritance of love of the law and of dedication to faith and truth."¹⁹³

In 1933, Judge Haynsworth graduated with high honors from Furman College, which one of Haynsworth's distant relatives had founded in Greenville.¹⁹⁴ Three years later, Judge Haynsworth graduated from Harvard University School of Law.¹⁹⁵ For the next 21 years, he worked at his family's law firm in Greenville, and he directed the firm as senior partner from 1946.¹⁹⁶

In 1957, President Dwight D. Eisenhower appointed Judge Haynsworth to a seat on the Fourth Circuit.¹⁹⁷ Within seven years, Judge Haynsworth had risen to Chief Judge of the court, making him the youngest circuit court chief judge.¹⁹⁸ Judge Russell remarked that "[h]e ran a Court where courtesy and thoughtfulness were the characteristics of the Court's proceed-

Seat, N.Y. TIMES, Nov. 23, 1989, at D21.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. Karlyn Barker, *Judge Haynsworth Rebuilds Reputation After Senate Slap at Nixon Nomination*, WASH. POST, Apr. 9, 1979, at A1.

192. *In Memoriam: Honorable Clement F. Haynsworth, Jr.*, in 924 F.2d LXXXIX, XC (1990) [hereinafter *Haynsworth Memoriam*] (statement of Donald S. Russell, Circuit Judge, United States Court of Appeals for the Fourth Circuit).

193. *Id.* (statement of Donald S. Russell, Circuit Judge, United States Court of Appeals for the Fourth Circuit).

194. Narvaez, *supra* note 186.

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

ings."¹⁹⁹ Judge Samuel J. Ervin, III, also a Fourth Circuit colleague of Judge Haynsworth's, noted that

the tone that Judge Haynsworth set for us when he was chief judge was to avoid being vitriolic and to not let personality differences work their way into our opinions. He really did a great deal to keep us from losing our collegial spirits. It was an example that he himself set. He was a real gentleman in every sense of the word.²⁰⁰

Judge Russell described Judge Haynsworth's leadership style as Chief Judge as "without any air of condescension."²⁰¹ Judge Russell also noted that Judge Haynsworth, "though Chief Judge, was always respectful of the opinions of the other members of the panel."²⁰² If judges disagreed with him on the result of a particular case, he would compliment "the expressions of the other members of the panel and then state quietly . . . with irresistible logic, generally his view."²⁰³ Judge Russell commented that "[t]he result is that ordinarily his view prevailed, not because we were simply deferring to his conclusions, but because he had, by his presentation of views, thoroughly carried us over to his conclusion."²⁰⁴ One scholar remarked that all jurists hold Judge Haynsworth in high regard and "fall all over themselves not to create any friction or faction that would disturb Clement."²⁰⁵ Judge Haynsworth himself commented that "[m]y concern is to keep an open dialogue of all the judges involved so that you don't have one or two judges getting together."²⁰⁶

In describing Judge Haynsworth's judicial philosophy, Judge Russell noted that "[h]e believed deeply that . . . Courts would be untrue to their judicial inheritance if they dealt ungenerously with rights still affected by the vestiges of technical limitations applied in an earlier era to common law pleadings."²⁰⁷ Judge Russell added that Judge Haynsworth "could dispose of

199. *Haynsworth Memoriam*, *supra* note 192, at XCI (statement of Donald S. Russell, Circuit Judge, United States Court of Appeals for the Fourth Circuit).

200. Interview with Samuel J. Ervin, III, *supra* note 45.

201. *Haynsworth Memoriam*, *supra* note 192, at XC (statement of Donald S. Russell, Circuit Judge, United States Court of Appeals for the Fourth Circuit).

202. *Id.* (statement of Donald S. Russell, Circuit Judge, United States Court of Appeals for the Fourth Circuit).

203. *Id.* (statement of Donald S. Russell, Circuit Judge, United States Court of Appeals for the Fourth Circuit).

204. *Id.* (statement of Donald S. Russell, Circuit Judge, United States Court of Appeals for the Fourth Circuit).

205. Barker, *supra* note 191 (quoting Bernard J. Ward, Professor, University of Texas School of Law).

206. *Id.*

207. *Haynsworth Memoriam*, *supra* note 192, at LXXXIX (statement of Donald S. Russell,

the most complex of cases, factually and precedentially, with language of singular simplicity, clarity, and even more amazingly, of brevity."²⁰⁸

President Nixon rewarded Judge Haynsworth's performance as Chief Judge in 1969 by nominating the judge to the United States Supreme Court to fill the seat vacated by the resignation of Justice Abe Fortas.²⁰⁹ President Nixon wanted both a "strict constructionist" and a Southerner to fill this seat, and Judge Haynsworth satisfied both requirements.²¹⁰ However, because of active opposition from interest groups and within the Senate, Judge Haynsworth was not confirmed.²¹¹

Civil rights organizations who disagreed with Judge Haynsworth's view on school desegregation, as well as those who questioned his ethics, attacked Judge Haynsworth's nomination to the Supreme Court.²¹² Civil rights groups criticized Judge Haynsworth for allowing officials to close Prince Edward County (Va.) schools rather than integrate them.²¹³ Judge Haynsworth defended himself by claiming that his opponents were "condemning opinions written when none of us was writing as we are now."²¹⁴ Further, "[w]hen asked if he had changed, [Haynsworth] responded, 'haven't we all?'"²¹⁵

Judge Haynsworth's nomination also faced opposition from ethics groups concerning "his purchase of stock in a company that had been a litigant in a case before him."²¹⁶ Judge Haynsworth addressed these concerns at his confirmation hearings and stated, "I do not think under the circumstances . . . that what I did in the decisional process in that case was done while I had any interest whatever in the case or in its outcome."²¹⁷

A further concern was that "Judge Haynsworth was said not to have recused himself from a case in which he appeared to have a financial

Circuit Judge, United States Court of Appeals for the Fourth Circuit).

208. *Id.* (statement of Donald S. Russell, Circuit Judge, United States Court of Appeals for the Fourth Circuit).

209. Narvaez, *supra* note 186.

210. John Anthony Maltese, *The Selling of Clement Haynsworth: Politics and the Confirmation of Supreme Court Justices*, 72 JUDICATURE 338, 341 (1989).

211. See Stephen L. Wasby & Joel B. Grossman, *Judge Clement F. Haynsworth, Jr.: New Perspective on His Nomination to the Supreme Court*, 1990 DUKE L.J. 74, 75-77 (describing multiple factors that defeated Judge Haynsworth's nomination).

212. *Id.* at 77.

213. Narvaez, *supra* note 186. See generally Griffin v. Board of Supervisors, 322 F.2d 332 (4th Cir. 1963) (upholding close of county schools to prevent integration).

214. Narvaez, *supra* note 186.

215. *Id.*

216. Wasby & Grossman, *supra* note 211, at 77. See generally Brunswick Corp. v. Long, 392 F.2d 337 (4th Cir. 1968).

217. RON M. MERSKY & J. MYRON JACOBSTEIN, 10 THE SUPREME COURT OF THE UNITED STATES NOMINATIONS, 1916-1972, at 272 (1975).

interest.²¹⁸ During this time period, the Senate carefully scrutinized ethics complaints in light of Justice Fortas's resignation under charges of conflict of interest.²¹⁹ Opposition proved to be too much for Judge Haynsworth's nomination. Even though the Senate Judiciary Committee approved his nomination, the United States Senate voted against his nomination fifty-five to forty-five.²²⁰ Justice Harry Blackmun eventually took Justice Fortas's seat.²²¹

In 1969, Judge Haynsworth was named "South Carolinian of the Year" for having a "significant influence on the news."²²² He remarked, "[m]y contribution was entirely passive."²²³ Judge Russell offered a less humorous interpretation of Judge Haynsworth's defeat in the Senate. He commented that "[t]he denial of his confirmation was a shocking injustice, unfairly imposed upon a jurist of the highest ability and of unblemished character, on the basis of spurious charges."²²⁴

To his credit, Judge Haynsworth returned to the Fourth Circuit after losing the Supreme Court nomination.²²⁵ He told President Nixon that "he was interested in 'doing what I can now to serve my country.'²²⁶ Judge Ervin stated that "Judge Haynsworth is one of my judicial heroes. One reason I feel that way is that after the Senate failed to confirm him, he didn't quit. He stayed on the Fourth Circuit."²²⁷ In 1981, Judge Haynsworth assumed senior status, but maintained a full-time calendar.²²⁸

Judge Haynsworth died on November 22, 1989 at the age of seventy-seven.²²⁹ He is remembered as "a respected judge whose life was caught up in the flow of national political history and who, despite considerable adversity, went on to give extended service to the lawyers, judges and people of his circuit."²³⁰

218. Wasby & Grossman, *supra* note 211, at 77. See generally *Darlington Mfg. Co. v. NLRB*, 325 F.2d 682 (4th Cir. 1963).

219. Wasby & Grossman, *supra* note 211, at 77.

220. Maltese, *supra* note 210, at 341; Narvaez, *supra* note 186.

221. Narvaez, *supra* note 186.

222. Barker, *supra* note 191.

223. *Id.*

224. *Haynsworth Memoriam*, *supra* note 192, at XCI (statement of Donald S. Russell, Circuit Judge, United States Court of Appeals for the Fourth Circuit).

225. Wasby & Grossman, *supra* note 211, at 74.

226. Maltese, *supra* note 210, at 347.

227. Interview with Samuel J. Ervin, III, *supra* note 45.

228. Narvaez, *supra* note 186.

229. *Id.*

230. Wasby & Grossman, *supra* note 211, at 80.

IX. Honorable Elliot Northcott (1927-1939)

Judge Elliott Northcott was born in Clarksburg, West Virginia, on April 26, 1869, to Robert Saunders Northcott, a brigadier-general during the Civil War, and Mary Cunningham Northcott. Judge Northcott attended Northwestern Academy in his home town and McCabe University School in Petersburg, Virginia. He worked at his brother's store in Greenbrier County, West Virginia, before moving to Cambridge, Nebraska, where he worked as a bank teller.

After studying law at the University of Michigan, Judge Northcott returned to West Virginia in 1891 to open a law practice in the upper-floor office of his brother's Huntington general store. In 1893, Judge Northcott married Lola Beardsley. They had one child, a son named Andrew. Judge Northcott was a Republican and was active in local politics. In 1900, he became a member of the West Virginia Republican Executive Committee and served as its chairman from 1904 to 1908. He also served on the Board of Regents of West Virginia's normal schools.

Judge Northcott was appointed as Huntington's city attorney in 1897. After serving one year in that position, he was named Assistant United States attorney for the Southern District of West Virginia. In 1905, he became United States attorney for the district, a position he held until 1909 when President William H. Taft appointed him as an envoy to Columbia. Judge Northcott was later assigned to diplomatic stations in Nicaragua and Venezuela. During Judge Northcott's four years as a diplomat, he witnessed seven revolutions.²³¹

Shortly after Judge Northcott's return to Huntington, Governor H.D. Hatfield appointed him to the West Virginia Public Service Commission. Judge Northcott soon became Chairman of the Commission. He resigned when Governor Hatfield left office in 1917.

Northcott re-entered federal service in 1922 as United States attorney in Huntington. In 1927, President Calvin Coolidge appointed Judge Northcott to the United States Circuit Court for the Fourth Judicial District (the predecessor to the United States Court of Appeals for the Fourth Circuit). At a party to celebrate his seventieth birthday, Judge Northcott described his appointment to the Fourth Circuit as the second most important event of his life — second only to his marriage.²³²

On October 15, 1939, Judge Northcott entered "qualified retirement."²³³ He vowed to return to the bench "when called upon" and said that he would

231. *Judge Northcott Dies in Florida*, CHARLESTON GAZETTE, Jan. 4, 1946, at 1; *Retirement of Northcott Announced*, RICHMOND TIMES-DISPATCH, Oct. 13, 1939, at 6.

232. *Retirement of Northcott Announced*, *supra* note 231.

233. *Id.*

"probably be in Richmond twice a year for the court's terms."²³⁴ After nearly seven years in semi-retirement, Judge Northcott became ill while spending the winter in Boca Grande, Florida. He fell into a coma in late December and died on January 3, 1946. Judge Northcott, a thirty-third degree Mason and a member of the Guyandotte Club, was buried in Huntington.²³⁵

X. Honorable John Johnston Parker (1925-1958)

Judge John Johnston Parker was born in the small town of Monroe, North Carolina, on November 20, 1885. As a youth, Judge Parker was extremely intelligent and took an early interest in politics and public affairs.²³⁶ Even as a child, he had an opinion on almost everything.²³⁷ His brother, Samuel Iredell Parker, remarked that the judge "was a lawyer even as a boy."²³⁸ While still in high school, Judge Parker decided that he wanted to become a lawyer. He enrolled at the University of North Carolina at Chapel Hill to pursue his dream. He financed his education by selling suits for a Baltimore clothing firm and by teaching an introductory undergraduate course in Greek.²³⁹ Judge Parker attended Chapel Hill for both his undergraduate and legal education and remained loyal to the institution throughout his career. According to his son Francis, Judge Parker's only hobby was the University of North Carolina.²⁴⁰ The University remembers Judge Parker through the John J. Parker International Law Society.

After graduating from law school in 1908, Judge Parker began practicing law in Greensboro, North Carolina. He immediately became very active in Republican politics in Greensboro and was nominated as a candidate for the United States House of Representatives in 1910. His congressional candidacy proved unsuccessful, but ten years later Judge Parker received the Republican nomination for Governor. Judge Parker lost again, but garnered the largest Republican vote ever cast in North Carolina.²⁴¹ His defeat ended his political career, and he subsequently accepted a position as a partner with a successful Charlotte law firm.

234. *Id.*

235. *Judge Northcott Dies in Florida, supra* note 231.

236. WILLIAM C. BURRIS, *DUTY AND THE LAW: JUDGE JOHN J. PARKER AND THE CONSTITUTION* 13 (1987).

237. *Id.*

238. *See id.* (quoting Samuel Iredell Parker, brother of Judge Parker).

239. *Id.* at 15, 17.

240. *Id.* at 14.

241. *See id.* at 57 (stating that Parker amassed 230,000 votes). Parker's total exceeded by nearly 63,000 votes the total number of votes ever received by a gubernatorial candidate of either party prior to the election. *See id.* (providing comparison).

On October 3, 1925, President Calvin Coolidge appointed Judge Parker to the United States Court of Appeals for the Fourth Circuit. Five years later, Supreme Court Justice Edward T. Sanford died, and speculation began about possible replacements. Because Justice Sanford had been a Southern Republican similar to Judge Parker, Parker's name was high on the list of possible replacements. On March 10, 1930, President Herbert Hoover sent Judge Parker's name to the Senate for confirmation. The nomination appeared to have adequate support, leading Chief Justice Charles Evans Hughes to write to Judge Parker: "Congratulations, I look forward with the greatest pleasure to our collaboration."²⁴²

The congratulations proved premature as powerful interest groups such as the American Federation of Labor (AFL) and the National Association for the Advancement of Colored People (NAACP) voiced objections to Judge Parker's nomination. The AFL objected based upon Judge Parker's Fourth Circuit opinion affirming a lower court injunction that prevented mine workers from joining a union.²⁴³ Although Judge Parker's opinion rested firmly on *stare decisis*, the AFL argued that he harbored anti-labor sentiments.²⁴⁴ The NAACP pointed to controversial racial remarks that Judge Parker made in a speech that he gave in 1920 gubernatorial campaign speech.²⁴⁵

On May 7, 1930, the Senate narrowly voted to reject Judge Parker's nomination for the United States Supreme Court.²⁴⁶ Most observers credit the NAACP for the outcome.²⁴⁷ Senator Henry Allen of Kansas asserted that the race issue was "the thing that really beat him" and added that "everybody down here realizes that."²⁴⁸ The NAACP's role in Judge Parker's rejection was quite ironic because, as a lawyer in Monroe from 1909 to 1922, he had many black clients and the town recognized him as "a friend and defender of black people."²⁴⁹

Although the Senate denied Judge Parker a seat on the Supreme Court, his nomination made him a nationally known figure. To his credit, Parker saw in his defeat the opportunity to "develop as a judge and . . . aid in the

242. *Id.* at 74 (quoting Charles Evans Hughes, Chief Justice, United States Supreme Court).

243. See Daniel A. Reznick, *What Would Follow a Bork Loss?*, WALL ST. J., Oct. 6, 1987, at 34 (discussing Parker's opinion in *United Mine Workers v. Red Jacket Consol. Coal & Coke Co.*, 18 F.2d 839 (4th Cir. 1927)).

244. *Id.*

245. *Id.*

246. BURRIS, *supra* note 236, at 92.

247. Peter G. Fish, *Spite Nominations to the United States Supreme Court: Herbert C. Hoover, Owen J. Roberts, and the Politics of Presidential Vengeance in Retrospect*, 77 KY. L.J. 545, 558 (1989).

248. See *id.* (citation omitted).

249. BURRIS, *supra* note 236, at 30. The vote was 41 to 39. *Id.*

development of the law and in the solutions of the problems with which the country [was] faced."²⁵⁰ Consequently, Judge Parker focused his energy on improving the efficiency of the Fourth Circuit.²⁵¹ He became chief judge of the Fourth Circuit in 1931 and eventually achieved the status of senior appellate court judge in the nation. Judge Parker believed that the first duty of the United States Courts of Appeals was to interpret the law consistently.²⁵² He rarely wrote a dissenting opinion because the court almost never handed down an opinion that he thought was decided wrongly.²⁵³ During much of Parker's leadership, the Fourth Circuit consisted of only three judges and managed a larger case load than any other appellate court.²⁵⁴ According to current Fourth Circuit Judge Samuel J. Ervin III, "He was the Chief Judge when there were only three judges on the court – far more prestigious back then."²⁵⁵ Judge Parker felt that the court should sit in different cities in the circuit to maintain close contact with the judges and lawyers in the different states.²⁵⁶ He also urged *per curiam* opinions because he disfavored opinions filled with unnecessary details.²⁵⁷

Judge Parker constantly worked to improve the administration of justice in the federal and state courts. He established the Fourth Circuit Judicial Conference in 1931.²⁵⁸ Judge Parker referred to the conferences as "schools of jurisprudence."²⁵⁹ Congress adopted Judge Parker's model in 1939, when it required that all judicial circuits hold annual meetings to discuss their affairs.²⁶⁰ Judge Parker became very involved with the American Bar Association, which awarded him the ABA Medal for Distinguished Service in 1943.²⁶¹ Judge Parker ultimately became an international figure by serving as an alternate judge at the post-World War II Nuremberg trials.

Fourth Circuit Judge Donald S. Russell once remarked that Judge Parker was

one of the most thoughtful men I ever knew. And he was a great judge. All of his opinions were short, pithy, and right to the point. He would help

250. *See id.* at 102 (quoting Judge Parker).

251. *See id.* at 133 (noting that "the Fourth Circuit Court was to be the focus of his world for the remainder of his life").

252. *Id.* at 134.

253. *Id.* at 135.

254. *Id.* at 136.

255. Interview with Samuel J. Ervin, III, *supra* note 45.

256. BURRIS, *supra* note 236, at 136.

257. *Id.* at 138.

258. *Id.* at 150.

259. *Id.* (quoting Judge Parker).

260. *Id.*

261. *Id.* at 151.

mentor young lawyers. He took a real interest in bringing them along and would do anything to help them out and build their confidence.²⁶²

In 1958, while attending a meeting of federal judges in Washington, D.C., Judge Parker suffered a heart attack and collapsed in the arms of Judge Clement Haynsworth.²⁶³ Judge Parker passed away the following day at the age of 72.

Although Judge Parker attained international status as a judge, he never really left his southern roots of Monroe, North Carolina. Throughout his life he read the *Monroe Journal*, his hometown weekly newspaper, and visited his friends and relatives back home as often as possible. Judge Parker's son remarked that "[his father] believed Monroe and Union County were the best places on earth."²⁶⁴ He represented the Fourth Circuit and the state of North Carolina with great pride – "Judge Parker is to all North Carolina lawyers a figure of great dignity and majesty."²⁶⁵

XI. Honorable Emory M. Sneed (1984-1986)

Emory M. Sneed was born on May 30, 1927, in Wilmington, North Carolina. He had a diverse and full career before cancer ended his life in 1987 at the age of 60. During his life Judge Sneed served his country as a soldier, brigadier general, and chief judge of the Army, noted scholar and law professor, chief counsel to the United States Senate Judiciary Committee, partner in a large South Carolina law firm, and judge on the United States Court of Appeals for the Fourth Circuit.²⁶⁶ Upon Judge Sneed's death, United States Senator Strom Thurmond remembered him as "a man for all seasons. He was a man of unquestioned character and integrity. He was a man of great courage – physical courage on the field of battle, moral courage in civilian life; a man of great capacity and ability, and yet a man of tremendous compassion."²⁶⁷

Judge Sneed received his bachelor of science degree in 1949 and his juris doctor degree in 1953 from Wake Forest University.²⁶⁸ He received a certificate from the Hague Academy of International Law in the Netherlands in 1961, and he also was a 1972 graduate of the Management Program for

262. Interview with Donald S. Russell, *supra* note 62.

263. John P. MacKenzie, *The Editorial Notebook; A Judge for Life*, N.Y. TIMES, Dec. 5, 1989, at A34.

264. See BURRIS, *supra* note 236, at 32 (quoting Francis I. Parker, son of Judge Parker).

265. Interview with Samuel J. Ervin, III, *supra* note 45.

266. See Thomas C. Hildebrand, II, *Soldier, Counsellor, Professor and Father: Emory M. Sneed Brings Wealth of Experience to New Post as Fourth Circuit Judge*, WAKE FOREST JURIST, Spring 1985, at 12, 12.

267. 133 CONG. REC. 25,170 (1987) (statement of Sen. Thurmond).

268. Hildebrand, *supra* note 266, at 12.

Executives at the Graduate School of Business at the University of Pittsburgh. After building an impressive academic record, Judge Sneed enlisted in the United States Army.

Like many who would sit on the Fourth Circuit, Judge Sneed entered the military to fight in World War II. He entered as a private in 1945 and served as a gunner, a battery commander, and a company commander.²⁶⁹ Judge Sneed returned briefly to civilian life, but re-entered the military during the Korean Conflict. Again, he saw action as an infantryman. At the conclusion of his service in Korea, Judge Sneed joined the Army's Judge Advocate General's (JAG) Corps, where he became brigadier general and later chief judge of the Army.²⁷⁰ While with the JAG Corps, Judge Sneed once more returned to military action, this time in Vietnam. He frequently accompanied helicopter gunships on their rounds in order to "stay in touch with the men he represented."²⁷¹ Throughout his distinguished military career Judge Sneed earned two dozen medals and awards, including three Legion of Merits, an Air Medal, a Senior Parachute Badge, and a Republic of Vietnam Parachute Badge.²⁷² Judge Sneed has been described as a man who "has served wherever his Nation needed him most."²⁷³

After retiring from the Army, Judge Sneed began a second career. He accepted a position on Senator Thurmond's staff in 1975 and served as both legislative assistant and administrative assistant until 1977. Specializing in antitrust legislation, he also served as Senator Thurmond's counsel on the Antitrust and Monopoly Subcommittee of the Senate Committee on the Judiciary.²⁷⁴ Judge Sneed later served as the minority chief counsel and staff director to the full committee. Then in 1981, after the Republican party became the majority party, he served as the committee's chief counsel.²⁷⁵ According to Senator Thurmond, "no one has ever served on the staff of a U.S. Senate committee who was more able, more dedicated, more sincere and loved his country more than Judge Sneed."²⁷⁶ Others shared this sentiment. Senator Edward Kennedy, a leading Democrat, said of Judge Sneed's time as the Republican-appointed minority chief counsel, "[H]e did not represent just the minority, he represented the finest traditions of the Judiciary Committee."²⁷⁷ Even after the Republicans took control of the Senate and

269. 133 CONG. REC. 25,170 (1987) (statement of Sen. Thurmond).

270. Hildebrand, *supra* note 266, at 12.

271. *Id.*

272. 133 CONG. REC. 25,170 (1987) (statement of Sen. Thurmond).

273. Hildebrand, *supra* note 266, at 12 (quoting 127 CONG. REC. E3095 (1981)).

274. 133 CONG. REC. 25,170 (1987) (statement of Sen. Thurmond).

275. *Id.* (statement of Sen. Thurmond).

276. *Id.* (statement of Sen. Thurmond).

277. *Id.* at 25,171 (statement of Sen. Kennedy).

Judge Sneed became chief counsel to the committee, Democrats, such as Senator Fritz Hollings, remarked "on how fair Emory treated them in every respect – and how he saw no difference in responding to the concerns of the majority and minority alike."²⁷⁸

Judge Sneed drew on his experiences in Washington throughout his career.²⁷⁹ After leaving the Senate, he found success as a lecturer in antitrust law and associate dean at the University of South Carolina School of Law. As an educator, Judge Sneed held the strong belief that law students should try to gain practical experience while in law school and that the best way to do so was through clerking with a member of the judiciary.²⁸⁰ Judge Sneed also excelled as an antitrust law scholar. He published several major articles appearing in *The Antitrust Bulletin* and in the *Harvard Journal on Legislation*.²⁸¹ He also participated in seminars at Harvard Law School, the John F. Kennedy School of Government, and the Brookings Institute.²⁸²

Upon leaving the University of South Carolina, Judge Sneed joined the South Carolina law firm of McNair, Glenn, Konduros, Corley, Singletary, Porter & Dibble, later known as the McNair Law Firm. He again specialized in antitrust law and represented clients from major cities across the United States.²⁸³ One of his most interesting assignments was the representation of T. Boone Pickens during Pickens's Gulf Oil takeover bid.²⁸⁴

In 1984, Congress created an eleventh seat on the Fourth Circuit Court of Appeals. The opening created what some saw as a "major opportunity for [President Ronald] Reagan to influence the philosophy and direction of the federal judiciary."²⁸⁵ Judge Sneed's former mentor Senator Thurmond recommended him for the post.²⁸⁶ President Reagan appointed the judge that same year. Consequently, some labeled Judge Sneed "as an ultra-right 'Reaganite' appointee." Judge Sneed, however, maintained that his views were "centrist."²⁸⁷ He acknowledged that he was "tough on criminals," but

278. *Id.* (statement of Sen. Hollings).

279. Hildebrand, *supra* note 266, at 13. Judge Sneed claimed that the most valuable lesson he learned from his experience with the Senate Judiciary Committee was the importance of compromise with respect to nonessential items. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.*

285. Philip Smith, *Six Chosen by Reagan for New Court Posts*, WASH. POST, Aug. 2, 1984, at A14.

286. Deaths, *Emory Sneed*, ASSOC. PRESS, Sept. 24, 1987, available in 1987 WL 3178165.

287. Hildebrand, *supra* note 266, at 13.

said that he was not a "right-winger" as "his eclectic experiences in life [taught] him to view a matter from all angles."²⁸⁸ Judge Sneed once said that his ability to see all the angles of a matter came from his "having to compromise in the Senate and from serving in so many roles in the Army."²⁸⁹ Judge J. Harvie Wilkinson, III, also a Reagan appointee to the Fourth Circuit, said of his colleague, "[H]e was one of the nicest, warmest, most gregarious people, and he had a lot of common sense."²⁹⁰

Less than two years after his appointment to the bench, Judge Sneed resigned and returned to private practice with the McNair Law Firm. His daughter's marriage had just ended, and Judge Sneed wished to provide financial help for her and her two young children. Upon announcing his retirement, Judge Sneed said that he did not see any other course but private practice because he could not "put aside a nest egg" while serving as a judge on a federal salary.²⁹¹ Judge Sneed's decision was controversial because he announced it at a time when a record number of federal judges were leaving the judiciary because of financial and family obligations,²⁹² but his colleagues seemed to understand his decision. Fourth Circuit Judge Samuel J. Ervin, III recently remembered: "He left the court because of financial trouble in his family. We could all appreciate his situation."²⁹³ Judge William W. Wilkins, who still sits on the Fourth Circuit, replaced Judge Sneed.²⁹⁴

Sadly, Judge Sneed developed cancer shortly after his return to private practice in 1986. His colleagues expressed great remorse at the nation's loss upon his death later that year. Judge Wilkins said, "I think Emory was admired, not just for his legal ability, but by all of those with whom he dealt in Washington and Columbia, S.C. — opponents, clients — all respected him for his integrity and honesty."²⁹⁵ Several United States senators also remarked upon the impact which Judge Sneed had on their lives. Senator Dennis DeConcini remembered Judge Sneed as "a tribute to his profession and someone who crossed party lines and assisted this Senator a great deal."²⁹⁶ Senator Hollings called Judge Sneed "a man of great character and personal

288. *Id.*

289. *Id.*

290. Interview with J. Harvie Wilkinson, III, Chief Judge, United States Court of Appeals for the Fourth Circuit, in Lexington, Va. (Oct. 31, 1996).

291. James H. Rubin, *Record Number of Federal Judges Quit! "Low" Salaries Major Reason*, J. REC., Jan. 31, 1987, available in 1987 WL 4129320.

292. *Id.*

293. Interview with Samuel J. Ervin, III, *supra* note 45.

294. *Longtime Thurmond Associate Judge Emory M. Sneed Dies*, THE STATE (Columbia, S.C.), Sept. 25, 1987, at 1-C.

295. *Id.*

296. 133 CONG. REC. 25,212 (1987) (statement of Sen. DeConcini).

integrity" who had performed his job as chief counsel with "fairness and evenhandedness."²⁹⁷

XII. Honorable Simon E. Sobeloff (1956-1970)

Judge Simon E. Sobeloff used his position on the United States Court of Appeals for the Fourth Circuit to set the pace for school desegregation and to establish standards the United States Supreme Court would later adopt in the time following the Court's 1955 decision in *Brown v. Board of Education*.²⁹⁸ Although Judge Sobeloff made his most visible impacts in the area of school desegregation, his influence extended to protecting those most vulnerable in the legal system. Throughout his career, Judge Sobeloff acted with the utmost integrity and wisdom.

Born on December 3, 1894 to poor, immigrant Jewish parents in Baltimore, Maryland, Judge Sobeloff began his legal career as an office boy for a local attorney. He entered private practice in 1914, a year before he graduated from the University of Maryland School of Law.²⁹⁹ His years of legal practice, however, are more notable by their interruptions. Public service consumed the majority of Judge Sobeloff's career. In some of his most memorable roles, Judge Sobeloff served as the United States Attorney for the District of Maryland from February 1931 to March 1943 and as chief judge of the Maryland Court of Appeals from December 1952 to February 1954. He fulfilled a lifetime goal by serving on the Maryland Court of Appeals, and he reluctantly resigned from that position in 1954³⁰⁰ to become the Solicitor General of the United States under President Dwight D. Eisenhower.³⁰¹ In July 1955, President Eisenhower nominated Judge Sobeloff to the United States Court of Appeals for the Fourth Circuit.

After the nomination, Southern senators, concerned about Judge Sobeloff's apparent position on the issue of school segregation, delayed Judge Sobeloff's confirmation for a year.³⁰² Subsequently, he became chief judge by seniority on March 17, 1958³⁰³ and served as chief judge until reaching the mandatory retirement age of seventy in December 1964.³⁰⁴ He remained in

297. *Id.* at 25,171 (statement of Sen. Hollings).

298. *Brown v. Board of Educ.*, 349 U.S. 294 (1955).

299. Abel J. Merrill, *Biographical Sketch*, 34 MD. L. REV. 491, 491 (1974).

300. *Id.* at 492.

301. *In Memoriam: Honorable Simon E. Sobeloff*, in 523 F.2d 5, 7 (1975) [hereinafter *Sobeloff Memoriam*] (statement of David L. Bazelon, Chief Judge, United States Court of Appeals for the District of Columbia Circuit).

302. Merrill, *supra* note 299, at 492.

303. *Id.*

304. *Id.*

service as a senior circuit judge until his death on July 11, 1973.³⁰⁵

Judge Sobeloff marked his career as an appellate judge with reasoned but strong support for the disadvantaged. One of his most famous acts as Solicitor General signaled this trend. During his tenure in that office, McCarthyism was in its full swing, and although Judge Sobeloff argued a number of these cases,³⁰⁶ one went beyond Judge Sobeloff's moral bounds.³⁰⁷ The "Loyalty Review Board" decided to investigate John Peters, a medical professor at Yale.³⁰⁸ Anonymous informants disclosed information challenging Peters's loyalty to the United States, and the Board sought to bar his participation in federal service for three years.³⁰⁹ When the officials administering the complaint refused to compromise, Judge Sobeloff took a radical step by refusing to sign the Government's brief and declining to argue the case before the Supreme Court.³¹⁰ His friends worried that such an action would ruin his chances for an appointment to the Supreme Court,³¹¹ but when asked about his action he stated, "I do it because I have to be able to live with myself."³¹² In the end, Warren Burger argued the case for the Government and received the next nomination to the Supreme Court, even though many believed that Judge Sobeloff deserved it.³¹³

As a judge on the Fourth Circuit, Judge Sobeloff continued to act with the same integrity and fortitude that he evidenced as solicitor general. Referred to as a "champion of the underdog,"³¹⁴ Judge Sobeloff "believed in due process for everyone."³¹⁵ As Judge Sobeloff aptly stated, "The Constitutional protections asserted by a criminal today may become the necessary defense tomorrow of an honest and responsible man."³¹⁶ By following this principle, Judge Sobeloff set a standard which the Supreme Court would later follow. In his dissent in *Davis v. North Carolina*,³¹⁷ Sobeloff refused to uphold a defendant's conviction after concluding that the confession was

305. *Id.*

306. David L. Bazelon, *A Tribute to Judge Simon E. Sobeloff*, 34 MD. L. REV. 486, 486 (1974).

307. *Id.* at 487.

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.*

312. *Id.* at 488.

313. Interview with Donald S. Russell, *supra* note 62.

314. Merrill, *supra* note 299, at 493.

315. William O. Douglas, *A Tribute to Judge Simon E. Sobeloff*, 34 MD. L. REV. 484, 484 (1974).

316. Merrill, *supra* note 299, at 494.

317. 339 F.2d 770 (4th Cir. 1964).

involuntary and coerced.³¹⁸ The Supreme Court adopted his dissent upon its review of the case and reversed the conviction.³¹⁹ Judge Sobeloff always sought to protect the rights of individuals accused by the government and sent his law clerks on searches for theories to support his views.³²⁰ If none could be found, he would resort to his theory of "t'aint fair."³²¹

As part of his efforts to provide further protections in the judicial system, Judge Sobeloff participated in and advocated reform in the procedures of criminal law.³²² He disliked the fact that the law provided protections for the defendant through all stages of trial, but left him without protection during sentencing.³²³ He often revised district court sentencing decisions he believed were "particularly shocking."³²⁴ District courts often followed his suggestions on remand even though this type of review was not considered appropriate for appellate courts.³²⁵

Judge Sobeloff's role in school desegregation following *Brown v. Board of Education* became his most well-known legacy.³²⁶ One commentator divided Judge Sobeloff's approach to these questions into three stages.³²⁷ In the first stage, immediately following the decision in *Brown*, Sobeloff deferred to the school systems' attempts to rectify prior segregation.³²⁸ At this time, the Supreme Court's mandate under *Brown* was not clear, and Fourth Circuit opinions tended to be "characterized by caution and calls for voluntarism."³²⁹

However, as it became obvious that efforts by schools were failing to comply with *Brown*, Judge Sobeloff realized that more active participation from the courts would be necessary to achieve *Brown*'s goals.³³⁰ Thus, he

318. *Davis v. North Carolina*, 339 F.2d 770, 785 (4th Cir. 1964) (Sobeloff, J., dissenting), *rev'd*, 384 U.S. 737 (1966); Merrill, *supra* note 299, at 495.

319. *Davis v. North Carolina*, 384 U.S. 737, 739 (1966); Merrill, *supra* note 299, at 495.

320. Merrill, *supra* note 299, at 495.

321. *Id.*

322. Arnold M. Weiner, *Judge Sobeloff's Influence Upon Criminal Reform*, 34 MD. L. REV. 532, 532 (1974).

323. *Id.*

324. *See id.* at 533-34 (discussing case holding with which Judge Sobeloff disagreed).

325. *See id.* at 534 (discussing district judge's alteration of sentence in response to Judge Sobeloff's criticisms).

326. *See generally* Sanford Jay Rosen, *Judge Sobeloff's Public School Race Decisions*, 34 MD. L. REV. 498 (1974) (discussing Judge Sobeloff's impact on school desegregation).

327. *See id.* at 500-02 (outlining three stage analysis of Judge Sobeloff's school desegregation cases).

328. *See id.* at 502-06 (discussing Judge Sobeloff's initial approach to school desegregation cases).

329. *Id.* at 502-03.

330. *Id.* at 506.

entered the second stage in these decisions.³³¹ In this second stage, when schools demonstrated no present or future plans to desegregate, Sobeloff ended "interminable delays"³³² and required schools to take swift action to end discrimination under the threat of court injunctions in the event of further delays.³³³

In future desegregation cases, Sobeloff accelerated the time table for desegregation with increasing court involvement.³³⁴ Along with these actions, he paved the way for a future Supreme Court decision by awarding attorneys' fees for the first time by an appellate court in a school desegregation case.³³⁵ His decisions also began to address the issue of the meaning of full compliance under *Brown*.³³⁶ He overturned district court decisions that he felt discouraged schools' attempts to rectify prior discrimination by redistricting and stated that district courts could not decide debates over which redistricting plan was preferable.³³⁷ Most notably, he stated, that "[t]here is no legally protected vested interest in segregation."³³⁸ The Supreme Court essentially adopted this view in a similar case in 1971.³³⁹

In his third stage of school desegregation decisions, during which time he reached the status of senior judge, Sobeloff's participation diminished.³⁴⁰ No longer writing for a majority of the court, Sobeloff often authored separate opinions.³⁴¹ In some cases, his dissents effectively became petitions for writs of certiorari and spurred Supreme Court action.³⁴² In one case, Sobeloff argued that schools had an affirmative duty to integrate dual systems, rather than simply to desegregate them.³⁴³ The Supreme Court supported his position by requiring faculty desegregation and rejecting freedom of choice as a solution to desegregation.³⁴⁴

331. *Id.*

332. *Id.* at 510.

333. *Id.* at 511.

334. *Id.* at 512-13.

335. *Id.* at 515 (citing *Bell v. School Bd.*, 321 F.2d 494, 499-500 (4th Cir. 1963)).

336. *Id.* at 517.

337. *See id.* at 519 (quoting *Wanner v. County Sch. Bd.*, 357 F.2d 452, 454 (4th Cir. 1963)).

338. *Id.* (quoting *Wanner*, 357 F.2d at 454).

339. *See id.* (citing *McDaniel v. Barresi*, 402 U.S. 39 (1971)).

340. *Id.* at 522.

341. *Id.*

342. *Id.* at 523.

343. *See id.* at 524 (citing *Bradley v. School Bd.*, 345 F.2d 310, 323 (4th Cir. 1965) (Sobeloff and Bell, JJ., concurring in part and dissenting in part)).

344. *Id.* at 525-26 (citing *Bradley v. School Bd.*, 382 U.S. 103 (1965) (per curiam); *Green v. County Sch. Bd.*, 391 U.S. 430 (1968)).

Finally, in his last years Judge Sobeloff made great contributions toward race relations.³⁴⁵ His opinions advocated removing the basis of racism and addressed its immorality.³⁴⁶ From his perspective, racism was "morally and constitutionally untenable," and court decisions allowing racism to persist would perpetuate community resistance to desegregation.³⁴⁷ Sobeloff again preceded the Supreme Court in distinguishing between de jure and de facto segregation.³⁴⁸

Judge Sobeloff spent his career providing adequate judicial protection for those who needed it most. From his aversion to following the paranoia of McCarthyism, to his advocacy of procedural protections for all criminals, and finally to his powerful influence on school desegregation, Judge Sobeloff made a decisive impact during his tenure as a judge on the Fourth Circuit. He left as his legacy educated and well-reasoned opinions that formed the basis of many of the Supreme Court's decisions and provided a profound and permanent influence on American law.

XIII. Honorable Morris Ames Soper (1931-1955)

Born in Baltimore, Maryland, on January 23, 1873, Morris Ames Soper rose from humble beginnings to serve as a judge for forty-seven years. He spent thirty-two years on the United States Court of Appeals for the Fourth Circuit.³⁴⁹ After attending Baltimore public schools, Baltimore City College, and Johns Hopkins University, Judge Soper earned his law degree from the University of Maryland School of Law.³⁵⁰ When admitted to the Maryland bar in 1895, Judge Soper entered private practice with John C. Rose, a future federal circuit judge, and gained recognition for his expertise in handling election cases.³⁵¹ Two years later, in 1897, he began his public service as an assistant State's attorney for Baltimore City.³⁵² Meanwhile, Mr. Rose became

345. *Id.* at 527.

346. *Id.*

347. *See id.* at 527-28 (quoting *Brunson v. Board of Trustees*, 429 F.2d 820, 827 (4th Cir. 1970) (en banc) (Sobeloff, J., concurring)).

348. *See id.* at 530 (quoting *Wright v. Council of Emporia*, 442 F.2d 588, 595 (4th Cir. 1971) (Sobeloff, J., concurring in part and dissenting in part), and citing *Keyes v. School Dist.*, 413 U.S. 189 (1973)).

349. *In Memoriam: Honorable Morris Ames Soper*, in 326 F.2d 5, 6 (1963) [hereinafter *Soper Memoriam*] (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

350. *Id.* (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

351. *Id.* at 7 (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

352. *Id.* (statement of Roszel C. Thomsen, Chief Judge, United States District Court for

United States Attorney for the District of Maryland and in 1900 appointed Judge Soper as his assistant.³⁵³ After serving ten years in the United States Attorney's office, Judge Soper re-entered private practice and eventually served as president of the Board of Police Commissioners of Baltimore City.³⁵⁴

Judge Soper entered the judiciary in 1914 with an appointment as chief judge of the Supreme Bench of Baltimore City.³⁵⁵ While occupying this position, Judge Soper taught night classes in corporation law at the University of Maryland School of Law.³⁵⁶ In 1921, however, Judge Soper returned to private practice and formed the law firm Soper, Bowie & Clark in Baltimore.³⁵⁷ In 1923, Judge Soper accepted an appointment as a judge for the United States District Court for the District of Maryland.³⁵⁸ Eight years later, in 1931, President Herbert Hoover appointed Judge Soper to a seat on the Fourth Circuit, where he continued to serve until his death on March 11, 1963.³⁵⁹

Judge Soper held an unyielding interest in education. He not only taught at the University of Maryland School of Law, but also served for more than forty years as a trustee for Goucher College and for thirty-five years as chairman of the Board of Trustees of Morgan College.³⁶⁰ In addition, Judge Soper lobbied the Maryland legislature to provide better education for blacks.³⁶¹ In fact, Judge Soper was instrumental in converting Morgan College, a private black college founded by the Methodist Church, into the publicly funded Morgan State College.³⁶² Morgan College later recognized his service by

the District of Maryland).

353. *Id.* (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

354. *Id.* (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

355. *Id.* (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

356. *Id.* (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

357. *Id.* at 7-8 (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

358. *Id.* at 8 (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

359. *Id.* (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

360. *Id.* (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

361. *Id.* (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

362. *Id.* at 8-9 (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

naming a library after Judge Soper.³⁶³ On the day of the dedication, Judge Soper delivered an inspirational and thoughtful speech at the conclusion of which his law clerk asked him, "How long did it take you to prepare it?"³⁶⁴ Judge Soper responded simply, "All my life."³⁶⁵

Judge Soper's actions reflected his belief that the practice of law included an obligation to serve society; he exemplified high standards of public, professional, and judicial conduct. Although he was always conscious of his judicial role, "Judge Soper nevertheless did not allow the work of the judge to swallow the citizen and the man."³⁶⁶ He was deeply committed to public service and the responsibilities that accompanied his position.³⁶⁷ Once, shortly after Judge W. Calvin Chesnut assumed Judge Soper's seat on the district court in Maryland, Judge Soper asked a well known Baltimore attorney how his good friend, Judge Chesnut, was faring.³⁶⁸ The attorney responded that "Judge Chesnut is as much a gentleman on the bench as you are off of it."³⁶⁹ Judge Soper set a high standard for his colleagues to follow both in and out of the courtroom.

Judge Soper was mindful of the importance and influence of the judicial branch. Because of his commitment to upholding the integrity of the judiciary, Judge Soper often expressed contempt for the political processes that awarded judgeships to individuals whom he believed were unqualified. On Law Day at the University of Virginia in 1961, Judge Soper condemned political judicial appointments when he said, "You can take a man who has little or no experience in a certain field and in less than two minutes make an expert of him by giving him the oath of office."³⁷⁰ He continued:

Our professors, however, had one unshakeable belief: a faith that is as essential today as it was when the first judgment was pronounced and our sinful forbears were ejected from Eden. It survives the case system, the pretrial procedure, the American Law Institute, the Administrative Tribunal, and all modern legal philosophies. It is the simple and solemn thought that

363. *Id.* at 12 (statement of Frederick J. Singley, Jr.).

364. *Id.* (statement of Frederick J. Singley, Jr.).

365. *Id.* (statement of Frederick J. Singley, Jr.).

366. *Id.* at 26 (statement of Simon E. Sobeloff, Chief Judge, United States Court of Appeals for the Fourth Circuit).

367. *See id.* at 6-9 (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland) (describing Judge Soper's civic and official services).

368. Telephone Interview with Robert R. Bair, Senior of Counsel, Venable, Baetjer & Howard, L.L.P. (Jan. 29, 1998).

369. *Id.*

370. *Soper Memoriam, supra* note 349, at 17 (statement of Aubrey Russell Bowles, Jr., Partner, Bowles, Anderson, Boyd, Clarke & Herod) (quoting Judge Morris A. Soper, Speech at Law Day at the University of Virginia (Apr. 22, 1961)).

the administration of justice should be undefiled and that the dispenser of justice should be chosen for his character and his wisdom and not for the extent of his political influence. The corollary of this faith is that any executive who shirks this ideal shall be condemned.³⁷¹

Aside from his strong sense of duty, Judge Soper possessed a searing intellect. His keen ability to probe the weaknesses in any case invariably led him to ask the questions that attorneys hoped to avoid.³⁷² Recalling Judge Soper's demeanor during oral argument, Professor Henry P. Monaghan, a former clerk, said that he always knew the exact moment at which Judge Soper decided a case – Judge Soper would stack the briefs, put a rubber band around them, and slightly turn his chair away from counsel.³⁷³ Clearly, tolerance was not among his greatest virtues, especially when he thought a lawyer was unprepared.³⁷⁴ To Judge Soper, a lawyer's every appearance in court, no matter the notoriety or complexity of the case, was a reflection on his competence and skill.³⁷⁵ Thus, lack of preparation was inexcusable.

Despite the occasional sting in Judge Soper's questions, there was never bitterness. According to the Chief Judge Sobeloff, Judge Soper "cured any hurt by the geniality and the warmth of his greeting to the lawyers at the end of the hearing when, in accordance with the tradition of the Fourth Circuit, the Judges descend from the bench into the well of the courtroom."³⁷⁶ Nonetheless, Judge Soper earned a reputation as a ferocious inquisitor.³⁷⁷ Once, while questioning counsel regarding the facts of a case, Judge Soper's interrogation caused the lawyer to faint during argument.³⁷⁸ After adjourning and recon-

371. *Id.* (statement of Aubrey Russell Bowles, Jr., Partner, Bowles, Anderson, Boyd, Clarke & Herod) (quoting Judge Morris A. Soper, Speech at Law Day at the University of Virginia (Apr. 22, 1961)).

372. *Id.* at 18 (statement of Aubrey Russell Bowles, Jr., Partner, Bowles, Anderson, Boyd, Clarke & Herod).

373. Telephone Interview with Henry P. Monaghan, Harlan Fiske Stone Professor of Constitutional Law, Columbia University School of Law (Jan. 28, 1998). Professor Monaghan noted that Judge Soper was a relatively serious man who deserved his reputation as an excellent judge. *Id.*

374. *Soper Memoriam*, *supra* note 349, at 18 (statement of Aubrey Russell Bowles, Jr., Partner, Bowles, Anderson, Boyd, Clarke & Herod).

375. *Id.* at 9 (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

376. *Id.* at 28 (statement of Simon E. Sobeloff, Chief Judge, United States Court of Appeals for the Fourth Circuit).

377. *Id.* at 18 (statement of Aubrey Russell Bowles, Jr., Partner, Bowles, Anderson, Boyd, Clarke & Herod); *see also id.* at 21 (statement of Charles S. Valentine, Partner, Mays & Valentine) ("There was never a longer day than ten minutes of direct questioning from [Judge Soper] on the points involved in the case.").

378. James F. Schneider et al., *In Memoriam: Harrison L. Winter*, 50 MD. L. REV. 1, 2 (1991).

vening the following day, Judge Soper asked whether the attorney could continue. Upon receiving an affirmative answer, Judge Soper repeated his question, and the lawyer fainted yet again.³⁷⁹

Although his courtroom conduct appeared a bit harsh at times, Judge Soper possessed a "keen sense of fairness."³⁸⁰ Robert R. Bair, a former clerk for Judge Soper, recalls a negligence case in which a sawmill worker lost one of his legs in a terrible accident.³⁸¹ In the first draft opinion, Mr. Bair concluded that the worker's contributory negligence barred recovery.³⁸² Upon reading the draft, Judge Soper kindly responded: "Bob, this may be the law, but it will never be the opinion of this court."³⁸³

In his personal life, Judge Soper was a religious man who was deeply devoted to his wife, Grace. He and Mrs. Soper often vacationed at a mountain resort in Blue Ridge Summit, Pennsylvania.³⁸⁴ Concerned about the spiritual well-being of the guests there, Judge Soper organized a Sunday evening church service at which he would take up a collection in a wooden cigar box.³⁸⁵ In addition to religion, Judge Soper was also very interested in sports. He and Mrs. Soper were known as a skilled mixed doubles team in tennis, and later in life, Judge Soper became an accomplished golfer.³⁸⁶

The last of the Great Triumvirate of Parker, Soper, and Dobie, Judge Soper lived his life as a distinguished lawyer, honored judge, and loyal husband. Considered the "First Citizen of Maryland,"³⁸⁷ Judge Soper was a mentor to an entire generation of the state's attorneys and judges.³⁸⁸ In the words of his colleague, Chief Judge Sobeloff:

Judge Soper's life was full and complete. Almost to the very end, he was blessed with excellent health. He drank deep of life, and he relished it. So, content with life's work and serene in his religious faith, death came to him after a mercifully short illness.

379. *Id.*

380. Telephone Interview with Melvin J. Sykes, sole practitioner in Baltimore, Maryland (Jan. 29, 1998). Mr. Sykes, a former clerk for Judge Soper, considered him not only an excellent judge but also a superb advocate. *Id.*

381. Telephone Interview with Robert R. Bair, *supra* note 368.

382. *Id.*

383. *Id.*

384. *Soper Memoriam*, *supra* note 349, at 11 (statement of Frederick J. Singley, Jr.).

385. *Id.* (statement of Frederick J. Singley, Jr.).

386. *Id.* at 22 (statement of Charles S. Valentine, Partner, Mays & Valentine).

387. *Id.* at 15 (statement of Aubrey Russell Bowles, Jr., Partner, Bowles, Anderson, Boyd, Clarke & Herod).

388. *Id.* at 9 (statement of Roszel C. Thomsen, Chief Judge, United States District Court for the District of Maryland).

He has furnished us an example in living – one to inspire lawyers and judges, and indeed all men. It was a good life!³⁸⁹

XIV. Honorable James M. Sprouse (1979-1992)

Judge James M. Sprouse was born on December 3, 1923, in Williamson, West Virginia. Judge Sprouse served in the Army in World War II. He received his bachelor of arts degree from St. Bonaventure University in 1947, where he served as editor of the school newspaper, and earned his bachelor of laws degree from Columbia University in 1949. Judge Sprouse was awarded a Fulbright Scholarship and studied international law at the University of Bordeaux, France, in 1950. Judge Sprouse married his wife, June, in 1952, and they have five children.

Judge Sprouse's path to the United States Court of Appeals for the Fourth Circuit provided him with a "wealth of legal experience."³⁹⁰ Prior to his appointment to the court, Judge Sprouse held several government positions. He served as assistant attorney general for West Virginia in 1949, as assistant counsel for the Displaced Persons Commission from 1950 to 1951, and as an agent for the Central Intelligence Agency from 1952 to 1957. Further, from 1972 to 1975, Sprouse served as a justice on the West Virginia Supreme Court of Appeals. In addition to his government positions, Sprouse was in private practice with the law firm of Spilman, Thomas & Battle from 1951 to 1952 and was a sole practitioner from 1957 to 1972 and 1975 to 1979. Judge Sprouse described his private practice as that of a generalist.³⁹¹ Additionally, Judge Sprouse also distinguished himself as a farmer and an amateur boxer.³⁹²

Judge Sprouse's appointment to the Fourth Circuit was the product of President Jimmy Carter's effort to move away from the patronage system of judicial nominations.³⁹³ President Carter established a ten-member, bipartisan commission and authorized it to receive applications and to interview candidates for judicial appointments.³⁹⁴ The commission would recommend five candidates for the position to the President. Because of his love of the law and desire to be a member of the court, Judge Sprouse applied for a position on the Fourth Circuit.³⁹⁵ The commission conducted interviews and

389. *Id.* at 28 (statement of Simon E. Sobeloff, Chief Judge, United States Court of Appeals for the Fourth Circuit).

390. J. Dickson Phillips, Jr., *Gentleman Jim*, 98 W. VA. L. REV. 9, 9 (1995).

391. Interview with James M. Sprouse, Retired Circuit Judge, United States Court of Appeals for the Fourth Circuit, in Union, W. Va. (Oct. 7, 1997).

392. See Sam J. Ervin, III, *Tribute for the Honorable James M. Sprouse*, 98 W. VA. L. REV. 1, 1 (1995) (discussing Judge Sprouse's achievements and reputation).

393. Interview with James M. Sprouse, *supra* note 391 (describing appointment process).

394. *Id.* (describing appointment process).

395. *Id.* (discussing reason for applying for position to court).

recommended Judge Sprouse, along with four other candidates, to fill the second of three positions that Congress had recently created.³⁹⁶ On September 13, 1979, President Carter appointed Judge Sprouse to the Fourth Circuit.

Attorneys who appeared before Judge Sprouse in the Fourth Circuit praised his legal abilities.³⁹⁷ Lawyers described him as having good legal ability and noted that his opinions were well thought out and covered the issues.³⁹⁸

Judges on the court echoed the lawyers' sentiment. Judge J. Dickson Phillips, Jr. stated that Judge Sprouse's "opinions have been well-crafted, intellectually sound, free of pretentious literary allusions and other flamboyances, and – from the standpoint of this admiring friend – almost invariably 'right' on the merits."³⁹⁹ Similarly, Judge Samuel J. Ervin, III stated:

His written opinions were characterized by clarity, conciseness, and sound reasoning. In short, he was a lawyer's lawyer and a judge's judge. The appellate bar held him in high esteem. While he took his responsibilities seriously, he always maintained his sense of humor and did on more than one occasion break the tension during an oral argument, a judge's post-argument conference, or a business meeting.⁴⁰⁰

The statements from Judge Sprouse's colleagues reflect the admiration that those who shared the bench held for his legal abilities. In tribute, Judge Ervin related the following story:

At my first Judicial Conference as a judge, it was still the practice of the Court for the circuit and district judges to march in to the first session, proceeding in order of seniority. I was immediately behind Jim Sprouse, of course, and being uncertain about what to do, I am sure that I watched his every move. I must have been pretty obvious about it, for my wife remarked afterward that she was confident that I would have followed Judge Sprouse anywhere – even to the men's room.

Even without Betty's suggestion, I soon discovered that I would not often go astray if I followed Jim Sprouse on legal matters as well.⁴⁰¹

Judge Sprouse also served as a positive role model for his judicial clerks. One former clerk, Geraldine Szott Moohr, wrote that the experience of clerking for Judge Sprouse enriched both the personal and professional lives

396. See Ervin, *supra* note 392, at 1 (describing Judge Sprouse's appointment).

397. See 2 CHRISTINE HOUSENET AL., ALMANAC OF THE FEDERAL JUDICIARY 11, 12 (1996) (describing lawyers' opinions of Judge Sprouse).

398. *Id.*

399. Phillips, *supra* note 390, at 10.

400. Ervin, *supra* note 392, at 2.

401. *Id.* at 1-2.

of his clerks.⁴⁰² Moohr also noted that Judge Sprouse instilled in his clerks "a rich humanity marked by a joy in living in a less than perfect world and an appreciation of the problems people face in that all too real world."⁴⁰³

Perhaps the key reasons for Judge Sprouse's reputation as an excellent judge were his abilities both to keep an open mind about the issues argued before him and to judge the merits of the case based on a broad knowledge of the law rather than on preconceived notions.⁴⁰⁴ Judge Sprouse's abilities did not go unnoticed by his colleagues on the bench. For example, Judge Ervin noted:

At oral arguments, he was a frequent but courteous questioner, whose knowledge of the case was readily apparent. His broad knowledge of the law, his willingness to listen to the views of his co-panelists, and his skill at articulating and defending his own positions made him invaluable to the court.⁴⁰⁵

Judge Sprouse thought of the Fourth Circuit as a collegial body.⁴⁰⁶ Although Judge Sprouse credited this collegiality to the leadership of then Chief Judge Clement Haynsworth,⁴⁰⁷ Judge Sprouse's colleagues also attributed this feature of the court to Judge Sprouse.⁴⁰⁸ Judge Francis D. Murnaghan, Jr. was one who found Judge Sprouse's ability to practice "quiet collegiality" especially remarkable:

When Judge Sprouse and I came on the Court, Judge Clement Haynsworth was the Chief Judge. In addition to his frequently demonstrated ability to craft first rate opinions, Judge Haynsworth, by quiet but persistent example, practiced and urged all of us to practice collegiality toward other members of the Court. It may have taken a greater while for me to catch on but for the fact that Judge Sprouse, from the moment I first laid eyes on him, practiced quiet collegiality with everyone on the Court. He thereby speeded my recognition of how important it is to be able to disagree without being disagreeable.⁴⁰⁹

402. Geraldine Szott Moohr, *One Kind of Legacy: Judge Sprouse's Law Clerks*, 98 W. VA. L. REV. 17, 17-18 (1995).

403. *Id.* at 21.

404. Interview with James M. Sprouse, *supra* note 391 (discussing his effort to keep open mind about cases).

405. Ervin, *supra* note 392, at 2.

406. Interview with James M. Sprouse, *supra* note 391 (noting collegiality of Fourth Circuit).

407. *Id.* (indicating that leadership of then Chief Judge Clement Haynsworth led to collegiality of court).

408. Francis D. Murnaghan, Jr., *Tribute to Judge Sprouse*, 98 W. VA. L. REV. 5, 6 (1995) (discussing views of Judge Sprouse).

409. *Id.*

Judge Sprouse assumed senior status in October 1992 and later retired from the court on July 31, 1995.⁴¹⁰ In announcing his retirement, Judge Sprouse said, "I'm healthy and have some things that I still want to do and can't do them as a member of the judiciary."⁴¹¹ Since retirement, Judge Sprouse has been practicing law and raising beef cattle in Union, West Virginia. His law practice primarily focuses on appellate work.⁴¹²

Judge Sprouse's legal talents, ability to keep an open mind, and efforts to foster collegiality were among the many factors that made him an asset to the Fourth Circuit.⁴¹³ Judge J. Harvie Wilkinson, III summarized Judge Sprouse's contributions to the court as follows:

He kept a sense of his roots. He understood how law affected the ordinary citizen it was intended to serve. He maintained his humor and perspective. He had no ego hangups, and he bore no personal grudges. On the Fourth Circuit, he became a force of quiet strength, intelligent consistency, and boundless good will. To say he will be missed is quite an understatement. He retires with the gratitude of colleagues whose own lives are the better for his service.⁴¹⁴

XV. Honorable Harrison L. Winter (1966-1990)

Judge Harrison L. Winter was respected and admired for his service on the bench and for his dedication to the Baltimore community and the State of Maryland. After Judge Winter's death on April 10, 1990, *The Baltimore Sun* praised him as an "eminent federal jurist"⁴¹⁵ and applauded his "lifelong dedication to civil rights and fairness and his contribution to his community."⁴¹⁶

Judge Winter was born on April 18, 1921 in Baltimore, Maryland. He graduated from Johns Hopkins University in 1942 and earned his law degree from the University of Maryland in 1944. Although he had a successful legal career, Judge Winter confided that he went to law school to avoid working for his father's business, W.H. Bryan & Co. He admitted that at one time he had

410. See *Federal Court Judge Retiring*, CHARLESTON DAILY MAIL, May 26, 1995, at 5D (discussing Judge Sprouse's retirement).

411. *Judge Sprouse Leaving Federal Service*, CHARLESTON GAZETTE & DAILY MAIL, May 27, 1995, at 8A.

412. Interview with James M. Sprouse, *supra* note 391 (discussing his law practice since retirement).

413. *Id.*

414. J. Harvie Wilkinson, III, *James M. Sprouse*, 98 W. VA. L. REV. 11, 12 (1995).

415. Schneider et al., *supra* note 378, at 1 (quoting Albert Schelstedt Jr. & Dennis O'Brien, *Eminent Federal Jurist Harrison L. Winter Dies*, THE SUN (Baltimore), Apr. 11, 1990, at 1C).

416. *Id.* (quoting Editorial, *Harrison L. Winter*, THE SUN (Baltimore), Apr. 11, 1990, at 14A).

entertained the thought of becoming a doctor.⁴¹⁷ After law school, Judge Winter clerked for Judge Morris A. Soper of the United States Court of Appeals for the Fourth Circuit. That clerkship "proved to be the spark that set [Judge Winter] on the path to a judicial career."⁴¹⁸

Judge Winter held several positions in both the private and public sectors of the Maryland legal community. After his clerkship with Judge Soper, Judge Winter spent several years with the Baltimore law firm of Miles, Walsh, O'Brien & Morris.⁴¹⁹ He then became an assistant attorney general of Maryland, where he served under Attorney General Hall Hammond. During his tenure as an assistant attorney general, Judge Winter, at the age of twenty-nine, argued his first case before the Supreme Court.⁴²⁰ Judge Winter worked in a private law firm from 1950 to 1959, except in 1954, when he served as the Maryland deputy attorney general.⁴²¹ In 1959, Judge Winter became the city solicitor of Baltimore.⁴²²

In February 1962, President John F. Kennedy appointed Judge Winter to the United States District Court for the District of Maryland.⁴²³ Judge Soper, Winter's mentor, administered the oath of office.⁴²⁴ Judge Winter's time on the district court was short. In 1966, President Lyndon B. Johnson appointed him to a newly created seat on the Fourth Circuit.⁴²⁵ Judge Winter served as Chief Judge of the Fourth Circuit from April 1981 to February 1989, when he stepped down due to his battle with cancer.⁴²⁶ Judge Winter assumed senior status on December 31, 1989, and he continued to hear cases until a short time before his death.⁴²⁷ From 1966 until his death in 1990, Judge Winter remained dedicated and loyal to his duties both as judge and as chief judge of the Fourth Circuit.

Professor J. Woolford Howard described Winter as "one of the leading voices of liberal jurisprudence in the nation."⁴²⁸ During his time on the Fourth Circuit, Judge Winter's significant decisions concerned the issues of freedom

417. *Id.* at 2.

418. *Id.*

419. *Id.*

420. *Id.* at 3.

421. *Id.*

422. *Id.*

423. JUDGES OF THE UNITED STATES, *supra* note 53, at 541.

424. Schneider et al., *supra* note 378, at 5.

425. *Id.*

426. *Id.*

427. *Id.*

428. Sehlstedt & O'Brien, *supra* note 415 (quoting J. Woolford Howard, Jr., professor of political science at Johns Hopkins University).

of speech; school desegregation; age, race, and sex discrimination; and the rights of criminal defendants.⁴²⁹ Judge Winter paid particular attention to civil rights. Judge John D. Butzner, Jr. commented:

Born and raised in a state that had bordered the Confederacy, Judge Winter was well aware of the terrible price that had been paid scarcely a century before to secure the ratification of the thirteenth, fourteenth, and fifteenth amendments and the passage of the Civil Rights Acts that implemented them. He took his place in the ranks of those indomitable federal judges in the South who, following *Brown v. Board of Education*, wrought a peaceful revolution by giving full effect to these amendments and the Civil Rights Acts. With firmness, but without malice, in cogent opinions precisely reasoned and without rhetorical flourish or ideological cant, Judge Winter gave no quarter to those who would preserve the status quo of racial and gender-based discrimination.⁴³⁰

Although identified as liberal, Judge Winter understood his responsibility to decide justly the cases before him and never permitted himself to determine the outcome of a case based upon his own beliefs.⁴³¹ Two themes recur throughout Judge Winter's work: procedural fairness and the responsible exercise of executive power.⁴³² Judge Winter took his responsibilities as a federal judge seriously, and he expected the same from lawyers appearing before him. Judge Winter was occasionally hard on counsel.⁴³³ "If a lawyer made the slightest misstep, he was all over them. He was very aggressive with the litigants."⁴³⁴ He said that he learned from the master, Judge Soper.⁴³⁵ Judge Winter was often offended by poor lawyering⁴³⁶ and had "occasional outbursts of exasperation and outrage at lawyers" with unprofessional behavior.⁴³⁷

429. Schneider et al., *supra* note 378, at 5.

430. *Id.* at 31 (tribute by John D. Butzner, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit) (footnote omitted).

431. *Id.* at 26 (tribute by J. Frederick Motz, Judge, United States District Court for the District of Maryland, former law clerk for Judge Winter).

432. *Id.* at 21-22 (tribute by J. Frederick Motz, Judge, United States District Court for the District of Maryland, former law clerk for Judge Winter).

433. *Id.* at 20 (tribute by J. Frederick Motz, Judge, United States District Court for the District of Maryland, former law clerk for Judge Winter).

434. Interview with Donald S. Russell, *supra* note 62.

435. Schneider et al., *supra* note 378, at 2.

436. *Id.* at 8 (tribute by Francis D. Murnaghan, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit, fellow student at Johns Hopkins University).

437. *Id.* at 37 (tribute by J. Dickson Phillips, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

Judge Winter expected professionalism from the lawyers in his courtroom because he never lost sight of the individuals whose lives his decisions would touch. He could always show the humanity behind his judgments.⁴³⁸ As a district court judge, Judge Winter was most troubled by criminal cases because of the inherent human tragedy. As a result, he offered every defendant the opportunity to present defenses.⁴³⁹ Judge Winter's concern for others was also evident in the kindness and generosity that he expressed to his law clerks. According to Thomas Waxter, Jr., Winter's first law clerk, Judge Winter "was a special mentor who played a major part in each of [his law clerks'] lives and careers."⁴⁴⁰

As chief judge of the Fourth Circuit, Judge Winter handled the circuit efficiently. To accommodate the congressionally mandated addition of district court judges to the circuit councils, Judge Winter created small councils with equal, rotating representation from the district court and the courts of appeals.⁴⁴¹ According to Judge J. Frederick Motz, "Judge Winter presided over the court's affairs with unfailing dignity, courtesy and tact, and whatever philosophical disagreements they might have had, he and his colleagues were bound together by ties of mutual affection, admiration, and respect."⁴⁴² When Judge Winter stepped down from his position as chief judge, he turned over to Judge Samuel J. Erwin, III "one of the best administered courts of appeals in the federal system."⁴⁴³

In addition to his respected work as judge and chief judge of the Fourth Circuit, Judge Winter was also well-known for his contributions to the Baltimore community. Commenting upon the death of Judge Winter, the editor of *The Baltimore Sun* wrote: "Had he never served on the federal bench, the passing of Harrison L. Winter at age 68 would be mourned by the community."⁴⁴⁴ Aside from his service to the City of Baltimore and the State of Maryland through his public sector legal positions, Judge Winter was involved in many volunteer positions. He was vice chairman of the Johns Hopkins University Board and a trustee of the Walters Art Gallery and the

438. *Id.* at 12-13 (tribute by John Carroll Byrnes, Judge, Circuit Court for Baltimore City).

439. *Id.* at 15 (tribute by E. Stephen Derby, Judge, United States Bankruptcy Court for the District of Maryland, former law clerk for Judge Winter).

440. *Id.* at 11 (tribute by Thomas Waxter, Jr., Partner, Semmes, Bowen & Semmes, Baltimore, Md., former law clerk for Judge Winter).

441. *Id.* at 34 (tribute by John D. Butzner, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

442. *Id.* at 28 (tribute by J. Frederick Motz, Judge, United States District Court for the District of Maryland, former law clerk for Judge Winter).

443. *Id.* at 38 (tribute by J. Dickson Phillips, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

444. Editorial, *supra* note 416.

Evergreen House Foundation.⁴⁴⁵ Judge Winter took a very active role in these institutions. He and his wife traveled to China at their own expense to foster a bond between Johns Hopkins University and a Chinese university.⁴⁴⁶

Judge Winter was a pianist who enjoyed opera and classical music.⁴⁴⁷ He noted to one of his law clerks that he much preferred the opera and the symphony to the Baltimore Orioles or Colts.⁴⁴⁸ Judge Winter's love of music prompted his appointment as Chairman of the Board of Trustees of the Peabody Institute, an internationally known conservatory of music.⁴⁴⁹

Judge Winter's contributions to the legal field and to the Baltimore community and the State of Maryland will remain for years to come. He was a fair and efficient judge, a caring mentor, and a treasured colleague. As Judge J. Frederick Motz once expressed: "May those who follow [Judge Winter] have characters equally steadfast, minds equally alive, spirits equally compassionate, and a sense of justice equally keen."⁴⁵⁰

445. Schneider et al., *supra* note 378, at 35 (tribute by John D. Butzner, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

446. *Id.* (tribute by John D. Butzner, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

447. *Id.* (tribute by John D. Butzner, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

448. *Id.* at 29 (tribute by Paul A. Tiburzi, Partner, Piper & Marbury, former law clerk for Judge Winter).

449. *Id.* at 34-35 (tribute by John J. Butzner, Jr., Circuit Judge, United States Court of Appeals for the Fourth Circuit).

450. *Id.* at 28 (tribute by J. Frederick Motz, Judge, United States District Court for the District of Maryland, former law clerk to Judge Winter).

NOTES
