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CLEMENT F. HAYNSWORTH, JR.

DONALD RUSSELL*

Clement Furman Haynsworth, Jr. became a member of the Fourth Circuit Court of Appeals on April 5, 1957. By education, talent, experience, and, above all, by the highest and most exemplary standards of personal integrity and of public duty, he was superbly qualified for this new responsibility. Born in Greenville, South Carolina, he attended the public schools of that city. Furman University, an institution long appropriately recognized for its academic excellence and one which had been founded in effect by and bore the name of one of his forebears (Richard Furman, whose name incidentally is in turn included in Judge Haynsworth's name), conferred upon him its baccalaureate degree, with high honors. Judge Haynsworth received his law degree from Harvard Law School. Returning to Greenville upon graduation, he entered the law firm established many years before by his grandfather and continued by his father. This firm was for years the largest and most active in the state and both Judge Haynsworth's grandfather and father were recognized during their careers as the leaders of the South Carolina Bar. Judge Haynsworth, who quickly succeeded to senior partner in the firm, continued this record of outstanding leadership in his profession.

Judge Haynsworth's active law practice was interrupted by his service during World War II as a naval officer.¹ Upon the war's termination he resumed his law practice, taking at the same time an active part in the business, cultural, and public affairs of his community. All who knew him valued his wise counsel and esteemed his high and impeccable character and his outstanding legal talents.² With this background, he was well prepared to join those distinguished members of the Fourth Circuit, Judges Parker, Soper, Dobie, and Sobeloff, as their judicial peer. His subsequent career on the bench has confirmed his superb qualifications.

As a judge, Judge Haynsworth has a unique capacity for piercing through the irrelevancies in a case, whether of law or of fact, and for

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

¹ He served as an officer in the Naval Reserve assigned to intelligence duties, 1942-45.

² I have said nothing of "Miss Dorothy," as Mrs. Haynsworth is affectionately known. I have done so for the same reason stated by the renowned Oxford philosopher Isaiah Berlin in explaining why in a biographical essay on another distinguished American jurist he had not discussed the wife of the subject of one of his essays:

This is a deliberate omission: her distinction in every respect was too great to be treated in what would inevitably have been a marginal manner. That she deserves a full-length portrait to herself, none of those who were admitted to her friendship [or knew her] would, I think, deny. I have proceeded on the principle that a blank is better than an unworthy sketch.

I. BERLIN, PERSONAL IMPRESSIONS 88 n.1 (1980).

focusing directly on the core issues. On those core issues he brings to bear his profound and comprehensive mastery of the law and his uncommon gift for trenchant analysis. This talent for logical reasoning, founded on a firm grasp of legal principles, is combined with and tempered by a deep sense of inherent justice and right and by Judge Haynsworth's own high ideals. Though recognized as a legal intellectual, he is never pedantic and demonstrates always the gift for the practical. Equally outstanding is his ability as a judge for expressing concisely and felicitously in simple and understandable language his reasoning and conclusions. Judge Haynsworth follows admirably the counsel of his good friend, the distinguished educator Jacques Barzun, in *Simple and Direct*, and phrases the most abstruse legal ideas in words so simple as to be comprehensible to all.³ It is no doubt his talent for incisive analysis and clarity of expression which adds so much to his persuasiveness as a judge in conference. He exercises this talent routinely in connection with the decisions rendered by panels on which he sits but also in connection with the opinions generally of the Court, all of which he follows closely and to which he uniformly contributes with thoughtful comments and suggestions. Perhaps one reason his suggestions are so generally accepted by the authors of opinions in cases on which he has not sat is the gracious and courteous manner in which he phrases his suggestions. There is never anything captious in his dealings with his fellow judges or in his suggestions to them.

As we all know, the law has grown with society's complexities. Judge Haynsworth has shown in a remarkable degree the ability to adapt judiciously traditional legal rules to these new circumstances without sacrificing the underlying values in which such traditional rules are rooted. A recent example of this is his opinion in *United States v. West*,⁴ in which he established a plain and practical test under which the requirements of the oft-cited hearsay rule may be relaxed in appropriate circumstances. In that case, a purchaser of illegal drugs from a defendant drug dealer was slain under suspicious circumstances after testifying under oath before the grand jury but before the defendant's trial. Without this testimony the charges against the defendant would have been dismissed. Judge Haynsworth in an incisive opinion which carefully analyzed the testimony of the witness as well as the other evidence attesting to the trustworthiness of that testimony, found that the witness' grand jury testimony met the requirements for admissibility under the hearsay language of section 804(b)(5) of the Federal Rules of Evidence and could be admitted without violating the confrontation clause of the

³ Judge Haynsworth in his opinion in *United States v. Chandler*, 393 F.2d 920, 926 n. 17 (4th Cir. 1968), followed this rule in counseling courts and witnesses in dealing with medical expert testimony, to eschew "diagnostic labels and conclusionary medical terms" and to express themselves in simple language understandable by a lay jury.

⁴ 574 F.2d 1131 (4th Cir. 1978).

Constitution. The hearsay rule thus was not permitted to become a shield for the guilty; at the same time, though, the salutary purposes of the rule itself were carefully preserved under a trustworthiness standard that was both fair and reasonable.

In his opinions, Judge Haynsworth has shown a consistently zealous regard for the proper separation of judicial responsibility between state and federal courts. An early opinion of his made it clear, for instance, that states may not deprive federal courts of the exercise of jurisdiction granted them under the Constitution⁵ nor can litigants themselves, by any device, even one authorized by state statute, frustrate federal jurisdiction in a case properly within federal jurisdiction.⁶ In *Wratchford v. S.J. Groves & Sons Co.*,⁷ he wrote a forceful opinion⁸ resolving a difficult issue left unresolved by *Erie*,⁹ in connection with the trial of diversity cases in federal courts. Judge Haynsworth held that, in determining the sufficiency of evidence in such cases, federal and not state law prevails. On the other hand, in *Baines v. City of Danville*,¹⁰ he recognized a correlative right in the state court system to protection against inappropriate federal interference with proper state jurisdiction.

Judge Haynsworth's gifts have not been reserved to any particular branch of the law but have covered the broad spectrum of federal litigation, admiralty, patents, and criminal. This is particularly true in the criminal field. There is hardly an area of criminal law where his sound judgment has not provided guidance in the solution of issues of evidence and of fundamental rights. An excellent illustration of his gifted talent in this regard is his opinion on petition for rehearing in *Hayden v. Warden, Maryland Penitentiary*,¹¹ in which he, in effect, joined in the dissenting opinion of Judge Bryan on the admissibility of "items having evidential value only" seized in the course of a search and in which his view was subsequently vindicated by the Supreme Court.¹²

His becoming sensitivity to individual rights and concern that no convicted person should be imprisoned in violation of his fundamental rights are reflected in his many opinions, adopted in many instances by the Supreme Court, refusing to hobble the Great Writ of Habeas Corpus by a "doctrinaire approach" based on "old jurisdictional concepts" resulting in depriving a prisoner of a right to challenge an allegedly unconstitutional conviction. *Rowe v. Peyton*¹³ and *Wood v. North Carolina*¹⁴

⁵ *Markham v. City of Newport News*, 292 F.2d 711 (4th Cir. 1961).

⁶ *Miller v. Perry*, 456 F.2d 63 (4th Cir. 1972).

⁷ 405 F.2d 1061 (4th Cir. 1969).

⁸ See *Wright*, FEDERAL COURTS 450 n.21 (3d ed. 1976).

⁹ *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938).

¹⁰ 357 F.2d 756 (4th Cir. 1966).

¹¹ 363 F.2d 647, 657-58 (4th Cir. 1966).

¹² 387 U.S. 294 (1967).

¹³ 383 F.2d 709 (4th Cir. 1967), *aff'd*, 391 U.S. 54 (1968).

¹⁴ 406 F.2d 352 (4th Cir. 1969).

are fine examples of this aspect of his judicial career. In both of these cases, Judge Haynsworth moved with a sure foot through all the intricacies of habeas corpus as the doctrine has developed over the centuries of Anglo-Saxon law.

It is impossible to touch on every field of law covered in the more than five hundred opinions written by Judge Haynsworth while a member of the Court. But particular note should be taken especially of his contributions in the field of constitutional law where his talents show so clearly and in which he demonstrates such exceptional competency and understanding. His firm command of this area of the law is reflected in many notable decisions, some of which have become the bellwether authorities on critical constitutional issues. One which commanded national attention is *United States v. Marchetti*,¹⁵ as supplemented in *Alfred A. Knopf, Inc. v. Colby*.¹⁶ These two cases posed in very critical terms the problem of balancing the requirements for secrecy in national security matters and the commands of the free speech clause of the Constitution. In these two outstanding opinions, Judge Haynsworth felicitously accommodated legitimate requirements for national security interests with first amendment claims.¹⁷ Again, in *Heine v. Raus*,¹⁸ he dealt with the troubling doctrines of executive privilege and state secrets.¹⁹ Another decision largely authored by Judge Haynsworth dealt with the highly controversial issue of the right of free comment during pre-trial and trial proceedings. Here Judge Haynsworth laid down with precision the circumstances under which such comments could be restrained without violating first amendment rights.²⁰ As in *Marchetti*, the opinion is a model of careful reasoning based on sound constitutional principles evidencing the writer's perfect command of constitutional law.

Judge Haynsworth's constitutional opinions demonstrate the Supreme Court's great loss when he was not confirmed as an Associate Justice. The denial of confirmation was a shocking injustice, unfairly imposed upon a jurist of the highest ability and of unblemished character, on the basis of spurious charges. Anyone who has ever been associated with Judge Haynsworth would attest to his unswerving sense of propriety, his absolute impartiality, and his invariable adherence to the highest standards of honor and integrity. But in a way this unfortunate experience was Judge Haynsworth's finest hour. It was an experience that could have been expected to have embittered one less strong. As if to confound those who had opposed his confirmation, he demonstrated by

¹⁵ 466 F.2d 1309 (4th Cir.), *cert. denied*, 409 U.S. 1063 (1972).

¹⁶ 509 F.2d 1362 (4th Cir.), *cert. denied*, 421 U.S. 992 (1975).

¹⁷ For a comment on *Marchetti*, see Note, 51 N.C.L. Rev. 865 (1973).

¹⁸ 399 F.2d 785 (4th Cir. 1968), *cert. denied*, 402 U.S. 914 (1971); see Annot., 33 A.L.R. 3d 1318.

¹⁹ See also *Farnsworth Cannon, Inc. v. Grimes*, 635 F.2d 268, 281 (4th Cir. 1980) (en banc).

²⁰ *Hirschkop v. Snead*, 594 F.2d 356 (4th Cir. 1979) (en banc).

his demeanor in these trying circumstances and by his continued deportment as a judge and as a man his true qualities of character and integrity. In so doing, he justified anew the high regard and affection his friends have for him and earned the respect and esteem of all who honor character and love justice.

No tribute to Judge Haynsworth would be complete without some reference to that unflinching courtesy and consideration he exhibits both to the other members of the Court and to the members of the Bar. This was particularly true of his service from December 3, 1964, to April 6, 1981, as Chief Judge of the Circuit. In this capacity, he thought of and dealt with the members of the Court as a family and attempted in every possible way to cement the friendships and to maintain that cordiality among the members of the Court that should be the hallmark of a collegiate court. In so doing, he recognized the right of the individual members to differ in their opinions in particular cases—in fact, he encouraged the expression of such differences—but he was vigilant that such differences should not result in personal differences.

While his primary associations have been with the other members of the Court, his warm personality and genuine amiability extend to the members of the Bar. It is a matter of particular delight to him to greet counsel after every argument. He takes tremendous interest in our annual Judicial Conferences, particularly because they give him an opportunity to visit with and exchange views with members of the Bar. He has given countless hours to planning and implementing programs of great value and interest to the members both of the Court and of the Bar. The esteem enjoyed by these Conferences is a tribute to his unflagging determination.

Judge Haynsworth is truly a legal scholar, an outstanding judge, a man of the highest character and of impeccable probity, and a warm friend. He has served and is serving the bench and Bar with true distinction and it is the earnest hope of all who know him that he will long continue to grace the Court with his presence, his influence, his great knowledge, and his sound judgment.

