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Ronald Russell

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CLEMENT FURMAN HAYNSWORTH, JR. — IN MEMORIAM

DONALD RUSSELL*

I have had the good fortune to know three generations of Haynsworths, all outstanding leaders at the bar and models of personal integrity. My earliest contact was with the grandfather of Clement F. Haynsworth, Jr., H.J. Haynsworth. H.J. Haynsworth was without doubt the premier attorney on the civil side in this area and our state's pioneer in corporate law. He was also the senior partner in the largest South Carolina law firm at the time. My first federal court experience was with Mr. Haynsworth as my adversary. Alone and overawed by the great reputation of Mr. Haynsworth, I anticipated the hearing before Judge Hitt Watkins in Anderson, South Carolina, with much apprehension, if not downright fright. Imagine my amazement when Mr. Haynsworth called me to invite me to ride over from Greenville to Anderson for the hearing. I naturally accepted. From that point on Mr. Haynsworth displayed toward me that consideration, courtesy and thoughtfulness that I was later to experience in my association with his grandson. It was a great experience for a young fledgling lawyer to be treated without condescension and with the utmost courtesy and consideration by the leader of the bar. The original Clement Furman Haynsworth, the father of the late judge, carried on that same leadership. But it was with the grandson, Clement Furman Haynsworth, Jr., that the family blossomed into national prominence and it was with him that I had the most intimate personal and professional association.

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

Born in Greenville, South Carolina, Judge Haynsworth was educated in the local schools. He enrolled and graduated from Furman University, a relatively small but highly regarded academic institution that bore the name of his ancestor on his maternal side. After graduation from Furman University, Judge Haynsworth attended Harvard Law School. He joined the family firm in 1937 upon graduation from Harvard. His legal career was interrupted, however, by World War II, in which he served as an officer of the United States Navy. Upon his return from the war, two events combined to add a new zest to life for Clement. First, the significant growth in the Greenville area provided him the opportunity to demonstrate his superlative legal talents and to acquire a deserved reputation for wise counsel, outstanding legal judgment, and strict adherence to the highest standards of ethical conduct. Second, and of even greater significance, his marriage brought to him the serene personal happiness that enabled him to achieve the national distinction he later attained. The love of Clement and his wife Dorothy was an inspiration for all who knew them. For forty-three years their life together was one in which they shared hopes, aspirations, heartaches, and disappointments, always with unflinching courage and devotion. During those years, they accepted their many honors with humility; they met adversity fortified by justified confidence in their own high purpose and rectitude.

Clement achieved a signal success at the bar, but it was as a jurist that he is nationally esteemed and respected. He was beyond question a brilliant jurist of the highest integrity and capacity. For some thirty-odd years he sat as a member of the Federal Fourth Circuit Court of Appeals. During much of that time he was the Chief Judge of the Circuit. As a judge, Clement had a unique ability to pierce quickly and accurately to the heart of an appeal and to focus attention both for counsel and for the court on the genuine issues posed in a case. In oral argument he sought to aid counsel by directing them to the critical issues in the case and to divert them from futile arguments over unimportant matters. This habit of his contributed immeasurably to facilitating the effectiveness of arguments of counsel and the deliberations of the court itself. It was his custom, in conference after oral argument with his judicial colleagues, to listen patiently to the views of his copanelists and then, at the end, to summarize fairly in a few sentences the issues and to indicate with great clarity and with judicial detachment his suggested resolution of those issues in the case under review. He always treated with great respect and consideration, scrupulously avoiding any touch of condescension, the views expressed by his colleagues. As a general rule it was his view that prevailed in conference because of the power of the compelling logic of his position, as presented by him.

Judge Haynsworth demonstrated in every case his profound and

comprehensive mastery of the law and of legal principles. Unlike many intellectuals, he was a scholar who had the capacity to phrase his ideas in language of singular simplicity and clarity. It mattered not what the field of law under consideration, he demonstrated a firm grasp of the fundamental principles involved. He brought to bear on the issues his superb powers of analysis coupled with the singular ability to articulate his conclusions in understandable form and without any unnecessary flourishes of pedantry. As a consequence it was easy to read Judge Haynsworth's opinions, but more important, it was easy to grasp and understand his reasoning and his conclusions.

Judge Haynsworth, though entertaining a deep respect for traditional legal principles and precedents, recognized that those principles had to be given a flexibility consonant with the volatile changes in modern society. In many notable opinions he showed in a remarkable degree his ability to judiciously adapt traditional legal rules to such changing conditions without sacrificing the underlying values in which such rules were rooted. This ability was illustrated by his opinions in *United States v. West*¹ and *United States v. Garner*.² In these cases, the admissibility of sworn grand jury testimony of a witness who had since died under questionable circumstances and therefore was not available at trial (*West*), or who had become unwilling to testify contrary to the advice of his counsel (*Garner*), was in issue. The defendants argued that admissibility of the testimony was violative of both the long-established hearsay rule and the confrontation clause of the sixth amendment. Judge Haynsworth painstakingly examined the evidence and concluded that the record provided sufficient evidence of trustworthiness and reliability to justify an exception to the hearsay rule and to satisfy the confrontation clause. This ruling has now become the standard practice when dealing with this type of question.

Nowhere was this attempt to adapt ancient procedures to modern conditions more evident than in Judge Haynsworth's decisions on the rights of convicted persons to utilize habeas corpus as a vehicle to challenge on constitutional grounds their convictions. In a series of decisions, of which *Rowe v. Peyton*³ is the prototype, Judge Haynsworth first traced with considerable care the development of the "Great Writ" and the record "of judicial innovation and adaptation" by which the Writ had been fitted to meet "new situations and newly felt needs."⁴ He concluded that the remedy of habeas corpus was not then

1. 574 F.2d 1131 (4th Cir. 1978).

2. 574 F.2d 1141 (4th Cir. 1978), cert. denied, 439 U.S. 936 (1978).

3. 383 F.2d 709, 716-17 (4th Cir.), aff'd, 391 U.S. 54 (1968).

4. *Id.* at 715-16.

“and never ha[d] been a static, narrow, formalistic remedy”⁵ to “be restricted to the need of a much earlier time.”⁶ He added 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.”⁷ He took note of the constricting rule enunciated in *McNally v. Hill*,⁸ which denied any remedy against a sentence not yet fully served, and the gloss put on that case in the subsequent cases of *Jones v. Cunningham*⁹ and *Foy v. Noia*.¹⁰ Judge Haynsworth reasoned that *Jones* and *Noia* had adopted a view “thoroughly inconsistent with the narrowly technical one of *McNally*.”¹¹ He concluded that, while “[t]his Court, of course, must follow the Supreme Court, . . . there are occasional situations in which subsequent Supreme Court opinions have so eroded an older case, without explicitly overruling it, as to warrant a subordinate court in pursuing what it conceives to be a clearly defined new lead from the Supreme Court to a conclusion inconsistent with an older Supreme Court case.”¹² Accordingly, he extended the reach of the “Great Writ” beyond the earlier limits of the remedy as heretofore envisioned by *McNally*, by providing relief from the future impact of unconstitutionally defective sentences in proper cases. The Supreme Court denied certiorari and let stand Judge Haynsworth’s opinion, in effect overruling *McNally*. This opinion is the basis on which the current state of *habeas corpus* decisions rests.

One of the most troublesome constitutional questions in current times arises out of the conflict between the first amendment and the prior restraint on publication of classified public information, the disclosure of which is contrary to the public interest and to regulations adopted pursuant to legislative authorization. Judge Haynsworth confronted this issue in *United States v. Marchetti*¹³ and the related cases of *Alfred A. Knopf, Inc. v. Colby*¹⁴ and *Colby v. Halperin*.¹⁵ In these opinions, Judge Haynsworth reviewed the prior rulings on first amendment restraints and took note of the power and interest of the govern-

5. *Id.* at 716 (quoting *Jones v. Cunningham*, 371 U.S. 236, 243 (1963)).

6. *Id.* at 717.

7. *Id.*

8. 293 U.S. 131 (1934).

9. 371 U.S. 236 (1963).

10. 372 U.S. 391 (1963).

11. *Rowe*, 383 F.2d at 714.

12. *Id.*

13. 466 F.2d 1309 (4th Cir. 1972), *cert. denied*, 409 U.S. 1063 (1972).

14. 509 F.2d 1362 (4th Cir.), *cert. denied*, 421 U.S. 908, *cert. denied*, 421 U.S. 992 (1975).

15. 656 F.2d 70 (4th Cir. 1981).

ment itself to protect sensitive governmental information involving national security and interests. Responding to the question of whether the government is entitled to an injunction establishing prior restraints upon the publication of "secret information touching upon the national defense and the conduct of foreign affairs [when that information was acquired by a person] while in a position of trust and confidence and contractually bound to respect it"¹⁶ Judge Haynsworth answered affirmatively in an opinion of great force, supported as it was by consideration of the greatest public interest.¹⁷ *Marchetti* stands as the controlling case on this important issue of constitutional law. Judge Haynsworth, in *Heine v. Raus*,¹⁸ again was called on to address an important constitutional question that has gained prominence currently: executive privilege and state secrets. He articulated standards for the establishment of such privileges which have been generally affirmed.

The decisions reflect Judge Haynsworth's ability to deal thoughtfully and correctly with constitutional issues. As I wrote in an earlier article some years before Clement's death:

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 [as I have] 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 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.¹⁹

It is of interest that many of the senators who opposed his confirmation have publicly expressed their regret and have expressed their admiration for Judge Haynsworth's legal talents and their confidence in the purity of his motives.

I have specially noted only a few constitutional decisions of Judge Haynsworth. But during his judicial career he wrote hundreds of deci-

16. *Marchetti*, 466 F.2d at 1313.

17. See generally *id.* at 1313-1318.

18. 399 F.2d 785 (4th Cir.), cert. denied, 402 U.S. 914 (1971).

19. Russell, *Clement F. Haynsworth, Jr.*, 39 WASH. & LEE L. REV. 307, 310-11 (1982).

sions in every field of the law. All attested to his broad scholarship, his discerning command of the precedents, his signal capacity for careful logical analysis and his abiding interest in fairness and justice. No one has better described these qualities than his friend, the accepted constitutional and federal procedure authority, Professor Charles Alan Wright, who wrote, commenting on Judge Haynsworth's record in the cases in which he wrote the Fourth Circuit's opinions:

To read these cases is to see a great judge at work, and to gain a better understanding of the qualities that make for judicial greatness. Here is a judge who understands that judges of inferior courts must apply the law as the Supreme Court has given it to them, though they need not be mechanically bound to old Supreme Court doctrines if there is good reason to believe that those do not represent what the Supreme Court would do today. Here is a judge who understands that the courts must apply the choices Congress has made as Congress intended. Here is a caring judge, one who is concerned about the litigants who appear before him and whether what is done to them is fair. Here is a judge with a powerful analytical mind and the ability to explain his reasoning in clear and powerful words. Here is a judge who fairly describes and overcomes the obstacles in his path, rather than winning the game the easy way by sweeping the opposing pieces off the table.²⁰

Clement Haynsworth, Jr. was a representative of the best as a man and jurist. Every person who knew him well was enriched by his graciousness, his thoughtfulness of others, his freedom from bitterness (though he had just cause to be bitter), and the purity of his motives and character. There will always be an empty spot reserved in the hearts of those who were favored to live and labor with him on the Fourth Circuit Court of Appeals. That is particularly true of me.

20. Wright, *Foreword to CLEMENT FURMAN HAYNSWORTH, JR.—SELECTED OPINIONS: 1957-1987* at viii-ix (1987).