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United States District Court for the Eastern District of Virginia

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THE HONORABLE ROBERT R. MERHIGE, JR.: A COLLEAGUE REMEMBERED

*The Honorable Robert E. Payne **

With the death of Judge Robert R. Merhige, Jr., the University of Richmond School of Law lost a treasured alumnus, Virginians lost one of its leading citizens, the legal community lost one of its best, and the judges of the United States District Court for the Eastern District of Virginia lost a respected colleague and dear friend.¹ Judge Merhige was remembered by the Judicial Conference of the United States Court of Appeals for the Fourth Circuit with a resolution that read as follows:

The judges of the Eastern District of Virginia present this resolution in memory of our colleague and dear friend, Robert R. Merhige, Jr., who died on February 18, 2005.

Judge Merhige was born on February 5, 1919 in Brooklyn, New York, the oldest of five children born to Robert R. Merhige, Sr. and Eleanor Donovan Merhige. He grew up in Merrick, Long Island, but in an exercise of the independence that was to be a dominant trait throughout his life, Bob rejected familial entreaties to pursue his education nearby, choosing instead to attend High Point College in North Carolina on an athletic scholarship. He excelled in basketball, found the lifestyle in the south to be suitably relaxed and, in his words, the social life to be quite acceptable, and he never left.

As Bob put it, with the familiar twinkle in his eye, he was not a strong student in undergraduate school. For that reason, and because he had little money after graduating from college, he began to fear that he would never achieve his long-held goal of becoming a lawyer. He secured a job as an assistant basketball coach in Richmond so that he could attend law school. Having accepted that job with no knowledge of Richmond, Bob believed that he would be soon

* For the Judges of the United States District Court for the Eastern District of Virginia.

1. I acknowledge the work of my classmate and friend, Professor Ronald Bacigal, with whose permission I have borrowed liberally from his fine biography of Judge Merhige. See RONALD J. BACIGAL, *MAY IT PLEASE THE COURT: A BIOGRAPHY OF JUDGE ROBERT R. MERHIGE, JR.* (1992).

attending law school at William & Mary, which would not have been possible because that fine school is some sixty miles from Richmond and Bob had no car. Bob was quick to note that his research skills improved considerably in later years.

Fortunately, there was a law school at the University of Richmond and Bob enrolled there. Soon, he fell under tutelage of Judge Malcolm Ray Doubles, an extremely able judge who also was the dean of the law school, and who subsequently became Bob's lifelong friend and mentor. The academic fires that were banked in undergraduate school kindled in law school because of Bob's love for the law, and he turned in a strong performance in law school.

In 1942, Bob enlisted in the United States Army Air Corps where he served with distinction as a member of a B-17 bomber crew participating in several dozen bombing raids over Germany. Returning to Richmond after completing military service, Bob—in short order—established a significant legal practice and a strong reputation as a trial lawyer, and built a law firm which, to this day, survives and prospers, an accomplishment which gave Bob much satisfaction.

In 1967, Bob left private practice to become a United States District Judge, a position which he called "the best job in the world," and to which he gave devoted and distinguished service for the next 31 years. Within months after taking the bench, he began to preside over several extremely difficult civil rights cases involving the integration of elementary and secondary public education in Virginia. Then, there were cases involving the opening of Virginia's public higher education to women, followed by a parade of landmark environmental, criminal and commercial cases, all of which taken together comprise a monument to judicial achievement.

In a very real sense, Judge Merhige's judicial decisions touched the key issues which arose during his time. The performance of his duties led many to revere him, and some to revile him, but left most respecting him, whether they agreed with the particular decision or not. He was noted, as well, for the courtesy he extended to lawyers and litigants, for the diligence he brought to the job, and for the fact that he was ever mindful, that, to paraphrase Chief Justice Marshall, his decisions came home, in almost every respect, to affect the lives of his fellow citizens.

In 1998, Bob left the bench to join Hunton & Williams where he pursued a mediation practice. He also was appreciated greatly for, and received great satisfaction from, his role as a mentor to the firm's younger lawyers.

Bob's other passion was his family. He is survived by his beloved wife, Shirley Galleher Merhige, two sons, Robert R. Merhige, III and Mark Reynold Merhige, six grandchildren and two great grandchildren. In life, they gave him great pleasure and comfort. He was extremely grateful that his beloved Shirl always stood with him and always made it possible for him to make the commitment to the judiciary that he felt was necessary. His children and grandchildren brought joy to his heart, and he took great pride in their many accomplishments and successes.

Judge Merhige's extended family included 56 law clerks whom he regarded as his children. He nurtured them, helped them in their careers where he could, and kept them close to his heart always. He also was devoted to his trusted secretaries Twiggy Munford and Jane Wilkinson, and to the Court staff with whom he worked so closely.

When all is said, Bob Merhige, a legal giant, was a gentle man, a man who loved the law, a man who loved people, a man who believed deeply in justice, a man of quiet, abiding faith: a man, given many accolades, but who treasured most the accolade that, in the words of his son, Mark, "he was the best grandfather on the planet," a man who, as our colleague and dear friend, will be deeply missed.

No tribute can capture completely all that Judge Merhige meant to the law school, to the Commonwealth, the legal profession, and to his colleagues and friends. Hence, I will not here endeavor to do that which cannot be done.

It is beyond cavil that Judge Merhige's decisions truly made a lasting impact upon society and the law because many of his decisions addressed the key legal issues of his time on the bench. Early in his judicial career, the Judge issued several decisions implementing *Brown v. Board of Education*. Even though he was publicly reviled and personally scorned, and notwithstanding threats of violence to his person, the Judge steadfastly and unflinchingly enforced the directive of the Supreme Court. Over time, the hostility subsided and the scorn turned to respect. Indeed, with the passage of time, the Judge came to be widely revered for the courage and strength of character that were manifest in his school desegregation decisions. But, there should be no mistake, the courage that was born in the skies above Germany was as necessary to the making of those decisions as it was to making those bombing raids, because the issues reflected the extant societal turmoil of the times, and the criticism and the condemnation of the Judge was intense.

Just as the results of the desegregation decisions made Virginia's elementary and secondary public schools open to all races, Judge Merhige opened the University of Virginia to women and later expanded public education teaching jobs for women when he held that pregnancy was not a reason to require a woman to stop teaching at the mid-point of pregnancy. Not long thereafter, his decision finding gender discrimination in a corporate refusal to provide maternity benefits significantly solidified the civil rights of women.

The Judge's landmark decisions were not confined to the arena of civil rights. The judgment levied against a major chemical company for environmental damage caused by a pesticide deposited in the James River not only helped to remediate the damage, but also made provision for an environmental trust fund that, to this day, supports important environmental projects in Virginia.

From 1975 to 1978, Judge Merhige presided over what, at the time, was one of the largest and most complex commercial cases in judicial history. In the Westinghouse Uranium Contracts Litigation, the Judge, after a five month bench trial, decided that the contractual defense of commercial impracticability under UCC section 2-615 was unavailable to excuse the defendant corporation from its uranium supply contract obligations. But, having done that, he then facilitated a settlement of all but one of the thirteen consolidated, multidistrict cases. In those cases, he earned the respect of scores of the finest lawyers in the country who, in May 2004, held a reunion to mark the twenty-fifth anniversary of the case and to honor the Judge, whose innovative approaches and even-handed treatment made that adversarial process such a memorable one.

Later, Judge Merhige, along with his good friend, United States Bankruptcy Judge Blackwell N. Shelley, said grace over the A.H. Robins product liability and bankruptcy cases. The adroit and able handling of this complex litigation yielded settlements for thousands of claimants and, at the same time, allowed the corporate defendant to remain in business. The case has served as a model for the management of complex product liability cases in the bankruptcy context.

Those were only a handful of the almost 12,000 cases over which Judge Merhige presided in the Eastern District of Virginia and in districts from California to New York and Massachusetts to Florida. To all those cases, the Judge brought the traits which marked the successful disposition of the many complex, landmark cases over which he presided. And that included cases, large and small, that involved the claims of pro se plaintiffs and prisoners. In the Judge's view, all were cases to be taken seriously, and all were to be disposed of fairly.

The Judge was a prodigious worker, and he expected the lawyers who appeared before him to work just as hard. He was always prepared on the case at hand, and he expected those who

argued them to be likewise prepared. Although professionally demanding, the Judge was unfailingly courteous to the litigants and the lawyers, and he insisted that they follow suit in their dealings with each other. He took great care to assure that those who appeared before him felt that they had been treated fairly and had received justice.

By virtue of these attributes, and many others which are described fully and eloquently in other articles in this journal, Judge Merhige often was called a legal icon and “a giant in our community.”

But there was another side of the Judge. He was a gentle and thoughtful man who was interested in others. He brought pastries to the deputy clerks whom he treasured as among his dearest friends, and he gave them counsel in times of trouble. He gave the custodial staff money at holiday time, or just when they needed it. He gave comfort and solace to his courtroom deputy as he lay dying. He knew, and inquired about, children and family of the court staff. These and countless other unremarked small acts of thoughtfulness and kindness were as much a part of the Judge as were the well-known traits that made him a famous and respected jurist.

The same kind of caring and generosity befell the Judge's friends. And often the kindness and generosity was bestowed upon strangers whose difficulties were somehow learned by the Judge and touched his heart.

As a colleague and friend, Judge Merhige was quick to help, slow to anger, a wise advisor, and a delightful and engaging social companion. He always made time to talk about problem cases and issues, and his advice and counsel were sound and sensible. In times of difficulty, he dropped by to offer a word of encouragement. He knew the best places for breakfast, lunch and dinner; and the people there knew him. Any meal with the Judge was an interesting pleasure for he was quick to share his wit, charm, and experiences, and he was ever willing to discuss the events of the times, whether that was the impeachment of a president or the state of Redskin football.

And so, when the Judge retired to return to private practice, there was a void in the Court, but even then, the Judge often visited the colleagues he had left behind. On those occasions, or when sharing a brief lunch or a leisurely dinner, the Judge en-

joyed reminiscing with his colleagues and friends and checking on their lives and families.

Now we are deprived of that companionship and counsel. Now, the void is a greater one. But always we will have the memories of the good years and the good times. And we will ever benefit from the legal legacy created over the Judge's thirty-year career on the Court. We will continue the tradition of diligently pursuing the public's business in efficiently managing the docket. We will continue to strive to apply the law fairly and justly. We will continue to counsel each other, to enjoy the collegiality and the good humor of our colleagues, and to learn from each other.

Of course, the Judge would be the first to say that he did not create the ambience and the reputation of this Court. But he would agree with us that he was instrumental in making the Eastern District of Virginia an efficient, fair, and just judicial citadel in which the judges care very much about discharging their duties as efficiently as possible, respect and enjoy their colleagues, and remain ever mindful that judicial decisions affect the daily lives of their fellow citizens. The example set by Judge Robert R. Merhige, Jr. will help those who remain, and those who will follow, to continue to aspire to those goals, just as did our good colleague and friend whom we miss very much.