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HARRISON L. WINTER
1921-1990

The editors of Maryland Law Review dedicate this issue to the memory of Judge Harrison L. Winter.
IN MEMORIAM: HARRISON L. WINTER

JAMES F. SCHNEIDER*

The first segment of this tribute is adapted from H.H. Walker Lewis's and James F. Schneider's bicentennial history of the United States District Court for the District of Maryland,1 published in June 1990. It is based on a personal interview with Judge Winter conducted by Judge Schneider on September 26, 1989.

The news of Judge Winter's death on April 10, 1990 shocked and saddened the legal community in the entire Fourth Circuit. The day after his death, the Baltimore Sun paid tribute to him as an "eminent federal jurist" and praised his "lifelong dedication to civil rights and fairness and his contribution to his community."2

Harrison L. Winter was President Kennedy's second appointee to the United States District Court for the District of Maryland. In November 1961, he received a telephone call from Washington with word that the President had selected him. The call came from Byron "Whizzer" White, "the All-American running back turned Rhodes Scholar, pro-football star and deputy attorney general,"3 who himself would be nominated to the Supreme Court the following March. It was a take-it-or-leave-it proposition, a recess appointment tinged with the risk that the new judge might not be confirmed by the Senate when it reconvened. This would mean burning bridges; the appointee would be giving up his position as Baltimore City Solicitor with no guarantee that he could come back if the nom-

* Judge, United States Bankruptcy Court for the District of Maryland.
2. The Sun (Baltimore), Apr. 11, 1990, at 1C, headline; 14A, col. 1.
ination failed. Could he have time to consider his options? "I have another commission with a different name all ready to be issued if you don't accept," Mr. White asserted. Without further deliberation, Harrison Winter accepted the appointment.

He was named "Harrison" after Harrison Rider, the Baltimore County political leader for whom Riderwood is also named, and "Lee" after his maternal grandfather. His clerkship with Judge Morris A. Soper while he served on the Fourth Circuit Court of Appeals proved to be the spark that set him on the path to a judicial career. Oddly enough, he never aspired to become a law clerk, but was persuaded to apply by Dean Roger Howell of the University of Maryland School of Law. He had gone to law school to avoid going into business with his father's firm, W.H. Bryan & Co. Actually, he confided recently that at one time he had wanted to become a doctor. He tried to enlist in the military, but was turned down because of "a long and troubled history with allergies." He learned equity and constitutional law at Maryland from Dean Howell and torts from Judge Eli Frank, who gave him what Judge Winter called "a miserable grade," which almost resulted in his leaving law school. (His disdain for the subject of torts continued for the rest of his life. He once said he would not mourn the repeal of the Federal Tort Claims Act or federal diversity jurisdiction.)

"If I'm ever criticized for my impatience on the bench," Judge Winter said recently, "my defense is that I learned from the master." Judge Soper was a relentless questioner who could pierce to the heart of a controversy. Once during his interrogation of counsel regarding the facts in a certain case, the lawyer fainted dead away. After a recess during which the lawyer was revived, and after asking how he was, Judge Soper resumed his questioning where he had left off, and the lawyer fainted a second time!

After a year with Judge Soper, Judge Winter became associated with the Baltimore law firm of Miles, Walsh, O'Brien & Morris, left for three months to work for Horace Flack drafting bills in the legislature and then returned to the firm. His first day back on the job was memorable. "It was V-J Day, and he was excused from work." After three years with the firm, he became an assistant serving under then-Attorney General of Maryland Hall Hammond. Judge

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4. Interview with Judge Winter (Sept. 26, 1989).
6. Interview, supra note 4.
Winter recalled that on days when they were to argue cases before the Court of Appeals of Maryland, Judge Hammond used to drive him to Annapolis—and to distraction. They were often scheduled to appear for a nine o’clock argument, and Judge Hammond would invariably pick him up late, then drive too fast. Abandoning his car on the driveway to the Governor’s Mansion, then racing up to the second floor of the Court of Appeals, the Attorney General would turn to his young protegé and say, “I’m all out of breath, Harrison. You’d better make the first argument.” Once, they encountered a four-mile back-up on the Severn River bridge, but were saved from contempt of court because Judge Henderson was stuck, too. The Attorney General decided to take a shortcut through the Naval Academy grounds disregarding the protestations of a guard. “After all, I’m the Attorney General of Maryland.” So he drove past the guard and sped across the compound, only to be stopped at the exit gate by an armed sentry who, with gun drawn, placed this call to his commanding officer: “I’ve got a guy who says he’s the Attorney General of Maryland. What do I do with him?” He ordered the Attorney General to drive his car in reverse all the way back to where he entered.8

While serving as an assistant attorney general, Judge Winter argued his first case before the Supreme Court at the age of twenty-nine. When the Republicans won the statehouse in 1950, he again returned to private practice with the firm, becoming a partner. He would remain there until C. Ferdinand Sybert, a Democrat, was elected attorney general in 1954, at which time Judge Winter returned to the attorney general’s office as deputy.9 The following year, he again returned to the firm, which by that time had become known as Miles & Stockbridge. Then in 1959, at age thirty-eight, he was appointed City Solicitor of Baltimore by Mayor J. Harold Grady,10 the position he held until his appointment as a district judge two years later.

After he was nominated but before his investiture, he paid a courtesy call on Judge Chesnut, then senior United States district judge. “How old are you?” Judge Chesnut asked him. “Forty years old, sir.” “Magnificent!” exclaimed the eighty-eight-year-old jurist. “You’ll have forty years on the court!” Earlier that year, when the names of various Democrats were mentioned as possible appointees to the court, Harry Baetjer happened to visit Judge Chesnut to have

8. Interview, supra note 4.
him sign an order, which was then the custom. "Have you heard that 'So and So' is being considered? What a tragedy! It will lower the prestige of the bench!" Judge Chesnut's riposte: "Not lower—dilute!""

December 15, 1961 was the date of the swearing-in of the yet-unconfirmed judge. Joseph D. Tydings, later United States Senator, then-United States Attorney (who was instrumental in obtaining Judge Winter's appointment), hosted a luncheon at the old Emerson Hotel and invited all the district judges, Circuit Judges Soper and Sobeloff, and the Attorney General of the United States, Robert F. Kennedy. According to Judge Winter, the guests were seated at a long table, he and Judge Soper sitting directly across from Messrs. Kennedy and Tydings. After Judge Soper politely introduced himself to the Attorney General, he began to ask some pointed questions.

"Well, now Mr. Kennedy, I understand that you and Mrs. Kennedy have eight children, is that right?"

"Why yes, Judge Soper, that's right."

"Well, Mr. Kennedy, my first question is, 'How long is this going to continue?'"

While Judge Winter did not recall the exact answer, he said that Mr. Kennedy came back with a graceful parry. But the questions continued, and the judge-designate and the United States Attorney began to feel very uncomfortable. Finally, Judge Soper inquired, "Tell me something, Mr. Kennedy, before you became Attorney General of the United States, what did you do?" And Judge Winter reported that Mr. Kennedy replied something like this: "Judge Soper, you may be surprised to learn that upon graduation from law school, I started out as an assistant in the Department of Justice at a salary of $4800 per year. My work was so superbly done and I was so well-liked, that after my brother was elected President of the United States, he made me Attorney General." This delighted Judge Soper.12 Later that afternoon at the ceremony, Mr. Kennedy referred to their "confrontation":

"I had lunch today with Judge Chesnut and Judge Soper. Judge Soper became a federal judge two years before I was born. We had a very quick exchange of legal opinions, and I enjoyed listening."13

When he returned to Washington that evening, Mr. Kennedy

11. Interview, supra note 4.
12. Id.
13. Judge Winter had an audio tape of his investiture containing the voices of Judges Thomsen and Soper, Emory Niles, William Walsh, Norman P. Ramsey and Attorney
sent Judge Soper a very generous letter and an autographed picture, and the Judge reciprocated. The ceremony was very well-attended, which Judge Winter modestly attributed to the presence of Robert Kennedy. The oath was administered to Harrison Winter by Judge Soper, his mentor for whom he had served as law clerk only seventeen years before.

In February 1962, Maryland’s Senator, John Marshall Butler introduced him to the Senate Judiciary Committee as “a man who thinks like us!” (much to Judge Winter’s discomfort). The Committee reported favorably on the nomination. During lunch with the nominee, the Senator excused himself, and returned a few minutes later saying, “I moved the acceptance of the report by the full Senate and you have been confirmed.”

Judge Chesnut’s prediction of a forty-year career for Harrison Winter as district judge proved to be both an overestimate and an underestimate. For after having served only four-and-one-half years, he was elevated to a newly-created seat on the Fourth Circuit Court of Appeals by President Johnson in June 1966. At the time, Judge Winter was only forty-five years old. His oath of judicial office was administered by Chief Judge Simon E. Sobeloff, who had preceded him as Judge Soper’s first law clerk by some thirty years and who he would follow as chief judge some fifteen years later. A photograph of the oath-taking reveals the presence of a picture of the late Judge Morris A. Soper as silent witness to the event.

During Harrison Winter’s many years as a circuit judge, his most significant decisions dealt with issues of freedom of speech, school desegregation, age, race, and sex discrimination, and the rights of criminal defendants. He served as chief judge from April 6, 1981, until February 1989, when he stepped down because of illness. On December 31, 1989, he applied for senior status.

Judge Norman Ramsey, who knew him during law school and later when Judge Winter was his chief in the offices of the Attorney General of Maryland and City Solicitor of Baltimore, called him “a judge of enormous integrity and vision and decency, whose dissents have become law.”

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General Robert Kennedy. A copy of the tape has been deposited in the Arthur Friedheim Library of the Peabody Institute in Baltimore, Md.

15. The Sun (Baltimore), June 14, 1966, at C26, col. 8.
17. Speech by Norman Ramsey accepting the Distinguished Marylander of the Year award from the Advertising and Professional Club of Baltimore (Jan. 25, 1989).
Judge Harrison L. Winter is widely known and respected for his contribution to the efficient operation of the American legal machinery. Sharing that admiration as well as regarding him as one of the judicial stylists of my time, I shall nevertheless begin on another tack.

My acquaintance with Judge Winter, fortunately for me, began long before we were even members of the bar. Judge Winter and I were undergraduate contemporaries at the Johns Hopkins University and graduated from that institution. The friendship which began there continued uninterrupted until Judge Winter’s greatly lamented death.

As a lowly associate, I observed some of Judge Winter’s not negligible performances, or, more accurately, outstanding successes. I can recall especially the feeling of outright jealousy which the group of Judge Winter’s and my contemporaries at the bar felt when we heard that in the trial of an important federal case, on a moment’s notice he had to rush off by air to London, England, in order to ascertain the desirability of, and to make arrangements for, the calling of someone as a witness. Although he flew back a day or two after his departure for London, this was at a time when trans-Atlantic flight was still something of extreme rarity. It appeared to us to be reserved for those standing at the very pinnacle of the profession.

I will not discuss in great detail Judge Winter’s success as a City Solicitor for the City of Baltimore because his achievements are well known and no doubt will be alluded to by my colleagues joining in this publication in honor of Judge Winter’s memory. However, one of Judge Winter’s actions as City Solicitor has always remained etched on my mind. He wrote what seemed to me at the time an unfortunate opinion—unfortunate in the sense that it reversed an earlier City Solicitor’s opinion that benefitted my client and it slated my client to lose municipal employment under Judge Winter’s new interpretation. The case wended its way through the courts, and by the time it reached the Maryland Court of Appeals, Judge Winter graced the federal bench.

Now, among the many distinguished aspects of his career,
Judge Winter had earlier served as a Deputy Attorney General under Chief Judge Hall Hammond of the Maryland Court of Appeals. None of us who have had that privilege (and I had the privilege of serving in the lower position of Assistant Attorney General) can fail to acknowledge the correctness of my assertion that Judge Hammond was, from a lawyer’s and a personal point of view, the chief judge of our time. Of course, Judge Winter himself served in a most elegant and distinguished way as the chief judge of the Fourth Circuit Court of Appeals and could with reason compete for such a designation. However, I knew him well enough to know that his respect and admiration for Judge Hammond were too great ever to permit such a contest to take place.

Eventually, the case that depended for decision on whether Judge Winter’s opinion or the earlier opinion would control, came on for hearing in the Court of Appeals. As counsel for appellant, I spoke first. But before I could say anything, Chief Judge Hammond leaned down from the bench and said: “How do you expect me to decide this question? Judge Winter says one thing, and you say the opposite. Two of my boys are here, and I don’t feel particularly comfortable about cutting the Gordian knot.”

Inevitably, the Court of Appeals confirmed the correctness of Judge Winter’s opinion. So, over the years I have had to confess that he was right and I was wrong. But the fact that he was right should occasion no great surprise. (Perhaps the fact that I was wrong should similarly occasion no great surprise.)

Judge Winter was a guiding light when I took office as a brand new member of the United States Court of Appeals for the Fourth Circuit. He literally took me under his wing and explained to me the many mysteries of our special field. As a consequence, I was at least fully apprised of what I had to do, the difficulties I would encounter, and how to avoid them. How well I have succeeded is a subject that I do not intend to discuss, but one thing is positively certain. Judge Winter did all he could to keep me in line and out of trouble.

This was true not merely during my introductory period. For almost eleven years on the Fourth Circuit, Judge Winter and I served together. It would not be appropriate in this limited space for me to set out all that I remember which has contributed to my impression of Judge Winter as a distinguished legal scholar with a meticulous and imaginative concern for the right result. Being separated physically just by the length of the hall, Judge Winter and I conducted many a conversation as to how, in our judgment, a case
should be decided. Almost invariably, however intricate the ques-
tion might have been, the result we came to coincided with Judge
Winter's opinion and not necessarily with mine.

Oh, of course, I do not mean to suggest complete infallibility.
There was one case where I had taken a very definite view and Judge
Winter was the last to vote when the matter had gone to en banc
rehearing. The members of the court were equally divided with
only Judge Winter's vote not yet cast. Finally the opinion appeared
and Judge Winter ruled my way, but in doing so, he expressed con-
siderable reluctance at joining the opinion. The decision seemed to
him, while legally correct, to foreshadow a less efficient rather than a
more efficient judicial system.

There was the time when I, still a practicing lawyer, appeared in
Richmond, Virginia, the Fourth Circuit's headquarters, to argue
before a panel of which Judge Winter was a member. The first two
cases of the day saw inadequately prepared counsel suffer the im-
pace of some very cogent and caustic remarks from Judge Winter.
(If offended Harrison Winter, the lawyer, concealed behind his judi-
cial robe yet accustomed to be prepared to the last detail, to have to
witness somewhat less stellar performances.) A recess was taken
before the third case, in which I was to appear. Two issues were
presented and counsel from outside the Fourth Circuit was appear-
ing with me. By previous agreement, he was to argue first. How-
ever, during the recess, he nervously approached me and insisted
that, as I was on my home grounds, I should go first. My reply that
the home team in a baseball game bats second got me nowhere, so I
faced what my colleague viewed as a snarling lion first.

Before I could open my mouth Judge Winter asked the rather
obvious question under the circumstances: "Isn't your second argu-
ment enough for you to win the case, and, if so, why waste our time
listening to you?" My dander must have been up, and I had no rea-
son to fear that Judge Winter would take my unwanted volubility out
on my client. So to show my timid colleague from the Midwest that
Fourth Circuit lawyers were not timid, I heard myself replying:
"Having belt and suspenders, it is well not to rely on just one of
them, and besides, a benevolent government pays you to listen to
me and you will have to do so."

Judge Winter, with an "Oh very well" settled himself in a with-
drawn position, for which Judge Morris Soper, when exasperated or
bored, was famous. Judge Winter "listened" to, though I am by no
means sure that he heard, what I had to say. However, I still won
the case and my friendship with Harrison Winter suffered not one whit, jot, or tittle.

There were even occasions when Judge Winter and I saw things differently. I am glad they were infrequent, since the likelihood that he was right and I was wrong is all too strong. In one case, the district judge had decided a case one way, I voted to affirm, and the third member of the panel agreed. Judge Winter wrote a dissent which I think many will consider convincing, though in my egocentric view of things I still think I was right. However, in a sense Judge Winter won even that case. Within days after our decision, counsel for the losing party had proceeded to obtain relief in another case in another state which rendered illusory the significance of the case in which Judge Winter and I had participated. Furthermore, Judge Winter had occasion to encounter Judge Hall Hammond at a time when "statutory senility" had cost the Maryland Court of Appeals the services of the man whom I think Judge Winter and I would, until Judge Winter's death and in my case until the present, declare was the chief judge so far as we were concerned. Judge Winter reported that, on having the facts outlined to him, Judge Hammond had not hesitated to conclude that Judge Winter was right and I was wrong.

Undoubtedly I would bridle at the thought that I might be wrong. But having Judge Winter call the shots on whether I was correct or not did not trouble me. Indeed, I would accept a statement from him that I was in error which I would not probably take from any other judge.

In short he was the quintessential judge's judge. I have left to others joining me in celebrating Judge Winter's memory the spelling out of the judicial landmarks which illuminated his long and distinguished career. I trust that readers will appreciate that I am aware of them and greatly assisted by them. I also leave to others the recounting of Judge Winter's important contributions in the way of extra-judicial public service. Gifted with a most cultured ear for music, he combined his efforts on behalf of the Peabody Institute with valued service as a trustee of the Walters Art Gallery. By no means least, he performed yeomanly as vice chairman of the Johns Hopkins University Board of Trustees.

All in all, I have no expectation of seeing his like again.
Most of Judge Winter's admirers knew him for his written opinions, his courtroom demeanor, and for his special blend of strength and leadership. His law clerks knew him differently—we knew him as a mentor, as judge to his clerks.

I was not Judge Harrison Winter's brightest or best scholar-clerk, but I have always had the special pride of being his "First Clerk." In December 1961, when the Judge was appointed to the United States district court, the old Post Office building on Calvert Street (now housing a portion of the Baltimore circuit court) had no courtroom or chambers for him. Judge Winter and his secretary, Miss Leach; his bailiff, Abel Merrill; and I were stuffed into what had literally been two rooms annexed to the federal bar library which previously were used as rooms for attorneys to hang their coats. Judge Winter had to "borrow" a courtroom from another judge. It was an inauspicious beginning for a great federal judge.

In these chambers we got to know each other. His mind was sharp, practical, and logical. His thought process was clear, direct, and unambiguous. He was easy to understand and, like other very gifted people, he didn't have to impress you with big words or complex sentence structure. I always thought he was born to be a judge.

Even in our cramped and uncomfortable quarters, he strove mightily to make all who dealt with him feel comfortable in his presence. He was unfailingly polite, considerate, and taught by example to always treat others with respect.

For me, it was a special time, and I know their clerkships were equally special for all his law clerks. He talked to us about our careers and gave us his time and best judgment. He treated us with respect and with a feeling that we were important. He was an example for each of us. He then made certain at the end of my tenure that I came to the attention of Norman Ramsey, now United States District Judge Ramsey. Judge Winter was responsible for starting me at Semmes, Bowen & Semmes, where I have practiced law for thirty years. When I later expressed my gratitude to him, the Judge said simply that he participated willingly in the hiring of all his law clerks who wanted his help.

The law clerk parties that we spontaneously gave for Judge and

* Partner, Semmes, Bowen & Semmes, Baltimore, Md.
Mrs. Winter every few years were literally exploding with clerks and spouses, all of whom were as grateful as I was. He was a great judge and was responsible for hundreds of major legal decisions, but for his clerks, he was a special mentor who played a major part in each of our lives and careers. Judge Winter's contributions can be measured in many ways, not the least of which were his generous and kind gifts to each of his law clerks.
In his recent excellent biography of Oliver Wendell Holmes, Sheldon M. Novick entitled Part V "The Master of His Art,"1 reminding us that the science of the law is also artistic expression. There are few human endeavors that are so much both science and art. Law is certainly a scientific pursuit, based in classical logic, in its most persuasive and attractive form, and informed by research and the application of proven principles. It is also art in the sense captured by the inscription above my high school stage: "To Hold The Mirror Up To Nature."2 What science better reflects and studies nature? In our political society, laws promulgated by elected governments are intended to reflect the needs and desires of the people, and to that extent mirror humanity. The art lies in the interpretation of those laws by a judge. There is another relation: a great judge, like a great artist, is meticulous. This was a goal of Harrison L. Winter, although I doubt that Judge Winter would echo these reported excited utterances by Oliver Wendell Holmes:

My way of writing a case is to get into a spasm over it . . .

At the end of each week, a case is assigned to me and by Monday morning I am in a delirium, if as is often true the case is important and interesting, and work until I go to Court and then walk back and work again until dinner time. It is dyspeptic but thrilling.3

From the first day of my service in Judge Harrison L. Winter’s office in 1965, I saw him as a legal artist, scholarly and precise in his answers to legal questions and sensitive in his appreciation of the human condition affected by those answers. He was a master of the science but never lost sight of those whose personal lives would bear the burden of the result. He expected lawyers in his courtroom to agree upon that same definition of their responsibilities as members of the bar and to exercise dutifully those responsibilities. He would abhor the practice of law as a pure business enterprise and, as a judge, was always prepared to "certify the humanity behind his

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2. See W. Shakespeare, HAMLET, act III, scene ii, l. 38.
3. S. Novick, supra note 1, at 249.
judgments.”

Although he would never have acknowledged it, had the results of national elections been different, Harrison L. Winter could very well have been a Justice of the Supreme Court of the United States. It could have been so not only because it was the desire of some well-placed admirers but because he was, in the view of all who knew him, of that judicial cloth.

As a “junior” clerk in his office for two years, together with the Honorable E. Stephen Derby, now a respected judge of the United States Bankruptcy Court for the District of Maryland, and L. Vernon Miller, a distinguished member of the Anne Arundel County and Maryland bars, I observed the importance Judge Winter attached to his daily work in the district court. I remember “obscenity” cases, at a time when serious thought was given to whether the United States Post Office could restrain the distribution of what were essentially nudist magazines (Judge Winter would see more extreme cases in his time), and the notoriously boring “baiting cases,” where I learned with the judge (neither of us being avid or even semi-avid hunters), the presumption of guilt which attached to some kernels of corn in front of a duck blind. The boredom was overcome and every kernel scrutinized. Judge Winter was on the front line when, following the 1963 Supreme Court decisions that opened a new and beguiling vista for “jailhouse lawyers,” an onslaught of federal habeas corpus petitions by state prisoners threatened to overwhelm the district courts. A judge would have to be more than human not to experience some exasperation as an endless stream of often illegible and inarticulate complaints of constitutional abuse by the State of Maryland inundated him and drastically expanded the federal caseload of that era. The frustration was suppressed and every petitioner was given the same thoughtful consideration.

Even though his forte was cases with more interesting intellectual interplay, it did not surprise me that the Judge, when asked to recollect cases over which he presided as a trial judge, particularly remembered “those with interesting human interplay.”

Judge Winter has been described as “one of the leading voices

of liberal jurisprudence in the nation.”

Political polemic aside, what is it to be “liberal” in the judicial context? Perhaps it means that after the science of the law has been considered, if the law permits two conclusions, one favoring Goliath and the other David, David prevails. Harrison Winter would reject this emotional simplification, but I wonder if it was not in subconscious operation in Judge Winter’s last judicial opinion, issued on March 20, 1990. In Reuber v. Food Chemical News, Inc., a Fourth Circuit panel, with Judge Winter writing, affirmed a jury verdict that a researcher—a very “limited public figure” at best—was libeled when critical comments in his confidential personnel file were published in a national industry trade paper. An unusual en banc rehearing was later ordered, and an equally well-reasoned and scholarly opinion supported Goliath.

A last memory for all who esteem this eminent jurist is of his presence and remarks on June 24, 1989, in the course of his personal health struggle, when his clerks and family gathered to celebrate his twenty-third year on the appellate bench. Never was it more evident that Harrison L. Winter was a civilized man and a gracious human being in the finest sense. His was not an artificial hospitality. He had a true interest in seeing to the comfort and ease of others. That evening, my last with him, I remembered an evening long before when he entertained several of us by playing Claire de Lune. It was a beautiful few moments that forever defined him for me. He was a great judge because his life included such moments.

7. The Sun (Baltimore), Apr. 11, 1990, at N1, col. 1 (quoting J. Woolford Howard, Jr., a professor of political science at the Johns Hopkins University).

8. 899 F.2d 271 (4th Cir. 1990).

E. Stephen Derby*

The law has a logic that must be consistently applied, but its application should be tempered by a sensitivity to the plights of litigants and the needs of society. The law is both a stimulating and demanding discipline. An individual’s commitment to the law, however, must be placed in a perspective that recognizes there are values in this life that are of at least equal, if not greater importance. These include, first and foremost, family, and second, contribution of our time and effort to better our community in ways of our own choosing.

These are my interpretations of lessons that I learned as a young lawyer from Harrison L. Winter, for whom I served as law clerk in 1965-66, the year of his elevation to the United States Court of Appeals for the Fourth Circuit. My earliest recollection of Judge Winter was not as the great jurist, but rather as a sensitive person. Late in the afternoon of one of my first days as his law clerk, he appeared and turned out the light in my office, telling me it was time to go home to my family. At the time, Gretel and I were coping with a two-year-old daughter, and our son was to be born within days. Later, when we were faced with locating babysitters, Judge Winter involved us in his family, and first his daughter Muff (Mrs. Robert R. Glauber) and later his daughter Ann (Mrs. Christopher R. West) sat with our children.

Criminal cases were the most troublesome for Judge Winter as a district court judge because of the human tragedy inherent in them. My sense was that he was able to handle stressful criminal cases by compartmentalizing his findings and rulings. First, the court or jury found the facts; second, Judge Winter rigidly and impartially applied the applicable law to those facts—whether directly or through instructions—without hedging to compensate for a close decision on the facts; and third, when guilt was found, sentencing was premised on the defendant’s guilt, and not tempered by any lingering doubts. The predicate for this approach was that Judge Winter was sensitive to a fault that a defendant receive every right and opportunity in court to present his or her factual and legal defenses.

A particularly tragic case during my term involved a military of-

* Judge, United States Bankruptcy Court for the District of Maryland.
ficer accused of manslaughter. Late at night the defendant, while driving on the wrong side of the Baltimore-Washington parkway in Ft. Meade, hit an on-coming car head on and killed the driver. The impact on the defendant of a guilty verdict under federal law for involuntary manslaughter, a felony, was severe beyond the penalty because it would deprive him of his military career, and incarceration would take him from a family member who was reported to be terminally ill. The defendant argued the applicable law was manslaughter by automobile under Maryland law, a misdemeanor, by virtue of the Assimilated Crimes Act.¹

After our search of the law, Judge Winter concluded he was compelled to instruct the jury based on federal law. The defendant was convicted by the jury and sentenced by Judge Winter to imprisonment for 183 days. However, Judge Winter had failed to instruct the jury that the unlawful act that was the predicate for the felony, namely, wrong-way driving on the Baltimore-Washington parkway, had to be dangerous to life or grossly negligent. The court of appeals, while upholding the applicability of federal law and acknowledging that Judge Winter “was of the opinion, and not illogically,” that wrong-way driving was in itself dangerous to life, reversed in part and remanded because resolution whether the wrong-way driving was dangerous to life or grossly negligent was for the jury.² The court of appeals thus remanded Judge Winter’s instruction without really finding his logic erroneous; and I believe Judge Winter was pleased.

Until it became inevitable, Judge Winter avoided efforts by his law clerks to thank him collectively for his tutelage through an annual gathering. The first occasion was by trick. With the collaboration of his wife Gladys, Gretel and I persuaded Judge Winter to visit our home on the pretext of an evening of bridge, but all his law clerks were waiting in surprise. While Harrison was as always gracious, we did not convene another event for several years, and then only delicately. Harrison, I think, felt more comfortable if he were himself hosting a gathering of his law clerks, almost as if he did not realize the career successes he had primed each of us to achieve.

Because he was sensitive to the pressure an early appearance before him would place on his former clerks, and to avoid all possible appearance of impropriety, Judge Winter would not hear a case in which a law clerk was counsel for an inordinate number of years.

². United States v. Pardee, 368 F.2d 368, 375 (4th Cir. 1966).
Ultimately, I had the opportunity to appear in a major case before him by virtue of an en banc hearing in *Mayor of Baltimore v. Mathews*. I thought I could capitalize on what I perceived was his impatience with government bureaucracy, his liberal sympathies, and the undeniable legal logic of my argument. Judge Winter frustrated me on each point.

Baltimore City, in response to a directive from the Department of Health, Education and Welfare (HEW), had taken extensive steps in 1974 and 1975 to improve racial balance in its schools. The Office for Civil Rights (OCR) of HEW was unsatisfied and sought to have federal educational funds withheld from the city's schools. The city (and the State in a companion case in which another of Judge Winter's former clerks, Duke Lohr, was lead attorney) obtained a preliminary injunction from the district court against administrative enforcement proceedings to cut off federal education funds. The preliminary injunction by its terms continued until OCR had fulfilled what we advocated was its statutory duty to make specific recommendations for further remedial steps on a program-by-program basis, and until the City had been given an opportunity for voluntary compliance. HEW appealed.

Despite what we thought were carefully structured and tightly reasoned legal arguments, Judge Winter wrote in *Mathews* a scholarly opinion that took a broader view of the administrative process. He concluded, among other things, that the federal bureaucrats were acting within the boundaries of their enabling statute in their treatment of Baltimore City, and applied the general rule against prior restraint of reviewable administrative action. Further, he concluded a program-by-program negotiation by HEW for voluntary compliance was not required by statute or regulation, and reversed the city's injunction.

The decision, however, was only four to three; and, tragically, one of the four judge majority, the Honorable J. Braxton Craven, Jr., had died before the opinion in *Mathews* was filed and the decision entered. As a result, upon the City's petition for rehearing, the court concluded Judge Craven's vote could not be counted, withdrew its prior majority and dissenting opinions, affirmed the district court's preliminary injunctions by an equally divided court, and re-

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3. 562 F.2d 914 (4th Cir.) (en banc), opinions withdrawn and different result reached, 571 F.2d 1273 (4th Cir. 1977), cert. denied, 439 U.S. 862 (1978).
manded for trial.\textsuperscript{5} Even then, however, demonstrating his ever-present concern for judicial economy and delays to a final disposition, Judge Winter dissented from the remand and urged the court of appeals to hold the appeals for rehearing when a new judge was appointed.\textsuperscript{6} Clearly, Judge Winter's incisive reasoning and sense of fairness in the application of the law easily overcame any predisposition to favor his former law clerks.

The legal profession has a constant need for individuals who set high standards. Harrison Winter was such a person.

\textsuperscript{5} 571 F.2d 1273 (4th Cir. 1978) (en banc). For prior and subsequent history, see \textit{supra} note 3.

\textsuperscript{6} \textit{id.} at 1276-77 (Winter, J., dissenting).
Elegance, style, simplicity, grace. These brush strokes keep vivid my memory of Harrison L. Winter.

I clerked for the Judge during the 1967-1968 court year, soon after he had joined the Fourth Circuit. His offices were then located on the sixth floor of the old Post Office building—alone in splendid isolation—approachable by a single set of stairs in the back of the building. They were the same chambers in which Judge Winter had himself served as a clerk to Judge Morris Soper approximately twenty years before. Circuit judges were still allocated only one clerk during the year of my tenure, and Judge Winter, his secretary, Miss Leach, and I were a merry band of three.

I recall as though it were only yesterday the spirit of calm and order which prevailed. The Judge was superbly efficient. He would sit at a table in his office with a yellow pad and Cross pen, writing first drafts which, as final products, would have been the envy of most of us. His powers of concentration were enormous and enabled him to do two days' work by 5:00 p.m.

The Judge rebuked me only once during my clerkship when he learned that I was coming back to the office at night to finish my own work. He firmly believed that lawyers should have private and intellectual lives outside of the law, and he instilled in his clerks the desire to extend themselves beyond the narrowing confines of mere technical learning. He loved the law but he understood that its richness derives from sources outside of itself.

The Judge's own life embodied all of those things for which he taught others to aspire. His professional accomplishments and contributions to the community have been noted elsewhere in this journal. His family was of much greater importance. On June 28, 1947, he was married to Gladys Woolford, whose grace, charm, and instinct for perfection mirrored his own. His two daughters, Barbara and Anne, and later his three grandchildren, were a constant source of pride and joy for him. He read voraciously, and his love of music, particularly opera, brought him not only pleasure but also the understanding that comes indirectly from the cultivation of taste.

* Judge, United States District Court for the District of Maryland.
I. Judge Winter abhorred the slipshod and disdained the pedestrian. He himself acknowledged that he could occasionally be rather hard on counsel. He often said that he had learned at the knee of a master. Judge Soper was known for swiveling his chair around and turning his back toward the podium to evidence his displeasure at what he believed to be a foolish contention or an overly lengthy elocution.

I have not heard that Judge Winter ever followed that particular practice. Nevertheless, he was capable of getting his point across. One case that came before him involved the question of whether a man who had choked to death on a piece of steak while at a testimonial dinner was on company business within the meaning of an insurance policy. The plaintiff's lawyer did not appear at oral argument because he had been stuck in a snowstorm. Despite learning that the lawyer was on his way on a later train, the judges nevertheless had the oral argument proceed because they believed that if he had been more diligent, he would have arrived in Richmond the night before.

Already less than placid, the mood of the judges did not improve when in the middle of his argument defense counsel, apparently forgetting that he was addressing the Fourth Circuit instead of standing before a jury, pulled out a stack of silver dollars to demonstrate the alleged size of the piece of steak which the decedent had tried to swallow. The court was not amused. After a moment of embarrassed silence, Judge Winter leaned over to one of his colleagues and said in sotto voce, "Maybe we should suggest to him that he also take the later train next time."

On another occasion, counsel for the Secretary of Labor was attempting to defend the denial of disability benefits to a worker who had lost several of his fingers. Prolonged exposure to innumerable appeals in disability cases had led the members of the court to believe that budgetary constraints, rather than an impartial appraisal of the evidence, was the cause of the denial of benefits in many instances. The Secretary's lawyer had been questioned rather closely and was attempting to describe the tasks that the claimant could still perform. "He can still hold a broom, he can still pick up trash, he can still empty waste cans," she was saying. "Oh yes," suddenly thundered Judge Winter from the other side of the bench, "but he can't grow his fingers back, can he?"

It was incidents such as these that made some lawyers fearful to argue before a panel which included Judge Winter as a member.
However, if counsel were well prepared, ready to make cogent points, and receptive to intelligent questioning, listening to an oral argument over which Judge Winter presided was an electric experience for a young clerk sitting by the side. Many have commented that Judge Winter did not suffer fools gladly, and that is true. However, his impatience with bombast arose from his belief that the work of the law is too important to permit cant and pretense. While he thoroughly enjoyed an appropriate lightness of touch leavening an unnecessarily solemn proceeding, oral argument was for him a serious matter, constituting the final, critical opportunity for the joinder and resolution of issues.

II.

However high the standards which he set for others, Judge Winter made even greater demands upon himself. He did not permit himself a moment of laziness. Understanding that endless agonizing is usually procrastination in disguise, he never postponed the day of decision. He got down to the job of opinion writing immediately, working with an intensity evidenced in the purity and terseness of his product. He always wrote his opinions in the order in which they were assigned, never leaving the more difficult ones to accumulate dust in his office or to weigh upon his conscience.

The judge's simple prose style provides a model for all lawyers and judges to follow.¹ One searches in vain through his opinions for legalese, lofty allusion, or banal pun. Like his friend Richard Franko Goldman, who served as the director of the Peabody, he did not like "big words for small ideas."² Indeed, he did not like big words for big ideas. He had a remarkable felicity of expression. His opinions in tax, antitrust, and other cases involving specialized areas of the law demonstrate the wisdom of having technical decisions subject to review by judges of broad understanding. His lucidity frequently shed light over matters which the specialists' jargon made opaque and enabled reason to prevail over mere rationality.

Two closely related themes recur throughout Judge Winter's

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¹. One of the devices that he often used might be adopted by all judges in complicated cases: he stated only general background facts at the beginning of an opinion, and left any necessary details to the discussion of the legal issue to which they relate. And, wherever it is that judges state the facts, they should be succinct, striving, as did he, to "summariz[e] them yet preserving their essential fullness." Bolding v. Holshouser, 575 F.2d 461, 463 (4th Cir.), cert. denied, 439 U.S. 837 (1978).
work: the responsible exercise of executive power and procedural fairness in administrative and judicial proceedings. About these, the judge was constant in his views. Let me mention just a few of his opinions that touch upon them.

A.

Judge Winter strongly believed that the United States stands in a different position than do private litigants and that it has a responsibility to assure that any proceeding to which it is a party is conducted with the utmost fairness and impartiality. To him the word of an assistant United States Attorney was the government's bond.

Thus, he held that a promise made during the course of plea negotiations by an assistant in the District of Columbia to the effect that the defendant would not be prosecuted elsewhere for certain crimes which he had committed, was binding upon the United States Attorney's office in the Eastern District of Virginia. Similarly, he ruled that the government breached its plea agreement when at the time of sentencing the assistant (who had been newly assigned to the case) only halfheartedly endorsed the government's recommendation in response to questioning by the court.

He also held government counsel to the highest standards in opening and closing arguments. For example, dissenting in United States v. Jenkins, he stated that he would grant a new trial where the assistant United States Attorney referred to the fact that certain evidence was “uncontradicted.” Since that evidence could have been contradicted only by the defendant's own testimony, he viewed the argument as an improper comment upon the defendant's decision not to take the stand. He equally expected government investigative agents to conduct themselves with propriety. Again dissenting, in United States v. Green, he opined that the double jeopardy clause should bar a retrial where during the first trial a Drug Enforcement Administration agent had volunteered, completely without provocation and apparently as a result of his annoyance about questions being asked of him on cross examination, that the defendant was currently incarcerated for armed robbery.

6. Id. at 181 (Winter, J., dissenting).
7. See id.
9. See id. at 930 (Winter, J., dissenting).
B.

Just as the judge was quick to check what he perceived as abuses of executive power, so too was he insistent that litigants be afforded procedural fairness at every stage of the litigation process. The cases are legion in which he directed remands to administrative agencies for more detailed findings supporting the conclusions that hearing officers had rendered. As he succinctly stated in a dissenting opinion in Adams v. Harris, a claimant has the right to “be told something more than the mere fact that [his claim] was denied.”

The same instinct for procedural fairness led him to express in dissent his view that a prisoner has the right to call witnesses at a disciplinary hearing concerning the possible loss of his recreational privileges. Similarly, but speaking for the court, he ruled that a public housing tenant has a due process right to a fair hearing before being evicted.

Judge Winter vigilantly sought to assure that the procedural rights of criminal defendants were fully protected. Strongly believing in the importance of appellate review, he dissented from the Court’s en banc decision in Shiflett v. Virginia, declining to apply retroactively a newly enunciated rule invalidating all convictions in which the defendant had not been notified of his right to appeal. Again dissenting, in O’Kelley v. North Carolina, he expressed his view that the petitioner had been denied effective assistance of counsel where his attorney had been appointed to represent defendants with multiple interests.

The judge’s close attention to procedural propriety was reflected in cases on direct appeal as well as in habeas corpus proceedings. In United States v. Buie, he held that defense counsel must be given the opportunity to object to the court’s instructions outside of the presence of the jury. In United States v. Foutz, he ruled that a
defendant could not be tried at the same time for two separate bank robberies that were not evidently linked as part of a single scheme or plan.\textsuperscript{21} And dissenting in \textit{United States v. Kibler},\textsuperscript{22} he indicated that he would grant a new trial because the use of a general verdict form had created the possibility that the jury convicted the defendant as a principal, rather than as an aider and abetter, in which event venue arguably had been lacking in the district where the prosecution was brought.\textsuperscript{23}

A series of cases demonstrates the high importance that the judge attached to all matters pertaining to the selection of jurors and the integrity of their deliberations. Dissenting from the denial of a habeas corpus petition in \textit{Miller v. Harvey},\textsuperscript{24} he stated that he would have granted a new trial if an evidentiary hearing were to show that the jury allegedly conducted an improper experiment during the course of its deliberations.\textsuperscript{25} In \textit{Aston v. Warden},\textsuperscript{26} although reversing the district judge's summary grant of a habeas corpus petition, he ruled that the petitioner was entitled to an evidentiary hearing on the question of whether one of the jurors had overheard a bail proceeding during which the prosecutor may have opined that the jury would find the defendant guilty.\textsuperscript{27}

In \textit{Ashe v. North Carolina},\textsuperscript{28} he likewise spoke for the court in ordering a remand for an evidentiary hearing on the petitioners' claim that one of the jurors was related by marriage to one of the state's witnesses and by ties of friendship to another.\textsuperscript{29} In yet another case, \textit{Donovan v. Davis},\textsuperscript{30} he granted a habeas corpus petition where seven members of the jury that convicted the defendant of attempted rape had sat on a prior trial in which he had been acquitted but during which testimony concerning his sexual proclivities had been elicited.\textsuperscript{31} And in \textit{United States v. Chatman},\textsuperscript{32} he reversed a

\begin{itemize}
\item 20. 540 F.2d 733 (4th Cir. 1976).
\item 21. \textit{Id.} at 739.
\item 23. See \textit{id.} at 455 (Winter, C.J., dissenting).
\item 25. See \textit{id.} at 881-82 (Winter, J., dissenting). After a rape victim testified that she bit her assailant's arm during the course of the rape, one of the jurors allegedly bit the foreman's arm to determine if the same type of bruise developed. \textit{Id.}
\item 26. 574 F.2d 1169 (4th Cir. 1978).
\item 27. See \textit{id.} at 1172.
\item 29. See \textit{id.} at 337.
\item 30. 558 F.2d 201 (4th Cir. 1977).
\item 31. See \textit{id.} at 204.
\item 32. 584 F.2d 1358 (4th Cir. 1978).
\end{itemize}
conviction where government counsel ("with commendable candor," as he noted) brought to the Fourth Circuit’s attention that the Government had learned that an alternate juror had been present for the first forty-five minutes of the jury’s deliberations. 35

I will note only one more of the judge’s opinions. It too involved a jury selection question. In United States v. Ricks, 34 a multi-defendant drug prosecution, the district judge had followed his usual practice of choosing a jury by first selecting a foreperson and then taking the next remaining eleven persons on the jury list. 35 Five weeks of a hard-fought trial followed. 36 On appeal, defense counsel argued that they had been denied effective use of their preemptory challenges because they did not know where on the jury list the district judge would begin the selection process. 37 Notwithstanding the fact that defense counsel had used their challenges to strike everyone whom the district judge would have selected as a foreperson, Judge Winter accepted the defendants’ contention and ordered a retrial. 38

As may be evident from the brief synopsis that I have given, I think that this is an instance in which Homer nodded. There was, in my judgment, substantial wisdom in the dissenters’ view that while in the future the district courts should be careful to advise counsel of their selection procedures, no prejudicial error had been demonstrated by the defendants in this case. I must add, however, that I cannot pretend to be unbiased on the point. I had been one of the prosecutors in the case, and with his opinion Judge Winter not only nullified months of my life’s work but also converted what I thought had been the eloquence of my last appellate argument into the resonance of a farewell defeat.

III.

Judge Winter was popularly viewed as being “a leading liberal jurist.” 39 Perhaps there is some degree of truth in this perception. Undoubtedly, there were instances in which the judge’s bent of mind led him to conclusions different from ones that would be

33. See id. at 1361.
35. See id. at 459.
36. See id. at 458.
37. See id. at 460.
38. See id. at 461.
reached by those of us who are more conservative in our outlook. However, aside from the obvious point that the discarding of easy labels is a necessary prerequisite to the exercise of sound judgment (including the judging of judges), it is essential for a true understanding of Judge Winter's work that his liberalism be placed in context.

First, to the extent that "liberalism" has come to connote a loose approach to judicial decision making, Judge Winter was decidedly illiberal. He never permitted himself, as ideologues of any stripe might do, to mold the facts of a case in order to establish a legal principle of his own choosing. He properly understood that his responsibility was justly to decide the cases that came before him, not to make a broader impact upon the law, and he disciplined himself by detailed attention to the record and thorough consideration of all relevant constitutional provisions, judicial precedents, statutory language, and legislative history.

Second, with the exceptions that I noted earlier, it was impossible to predict with any degree of accuracy the side which Judge Winter would take in any particular case merely by virtue of its nature. While he would not uphold a search that he found to be without probable cause or permit the admission of a statement that he found to have been taken in violation of *Miranda*, he did not routinely rule against the government on criminal appeals. In National Labor Relations Board enforcement proceedings he would uphold the Board's finding of an unfair labor practice if his independent review of the record disclosed that there was sufficient evidence to support the finding, but he did not hesitate to deny enforcement if the record disclosed that the Board's conclusions were not properly substantiated.

Likewise, although a firm supporter of first amendment rights, he recognized legitimate restrictions upon their exercise. For example, he upheld limited censorship of prison inmate magazines and found that a newspaper reporter could be compelled to testify about nonprivileged communications made to him.

Third, those of us who are prone to criticize the federal judici-

40. I might note that the judge resolutely extended first amendment protection to persons with whose views he vehemently disagreed. Thus, in *National Socialist White People's Party v. Ringers*, 473 F.2d 1010, 1019 (4th Cir. 1973), he ruled that a local school board was required to grant to a white supremacist party access to a high school auditorium during nonschool hours for the same nominal fee that it charged to other groups.


ary for intrusions that it has made into domains properly reserved to others, must recognize that we have come of age in an era during which state and local officials, law enforcement authorities, and private employers have become far more responsible than they once were in respecting individual rights. A perusal of Judge Winter’s opinions discloses that there existed not long ago widespread discriminatory employment practices, coercive investigative techniques, and abuses of prosecutorial power that today would be condemned universally.

This is perhaps most clearly reflected in habeas corpus petitions that came before the Fourth Circuit. For example, as late as 1978, a state resisted the petition of a black defendant who had been convicted of raping a white woman as the result of blatantly racist remarks by the prosecutor during trial. In granting the prisoner’s petition, Judge Winter wrote an opinion in which Judges Boreman and Hall, two of the more conservative members of the court on criminal matters, fully joined. On similar occasions he articulated a consensus shared by all of his colleagues, regardless of their backgrounds and perspectives, and he helped to usher in a world where the conservation of shared values has become the responsibility of all those who possess public or private power.

IV.

The Fourth Circuit is a remarkable institution. It is steeped in a tradition of excellence, stemming from the days in which Judges Parker, Soper, and Dobie, all giants of their era, were its members. The next generation, as do we, will surely consider Judge Winter and Judge Haynsworth (whom the court also tragically lost last year) as their worthy successors.

The tradition of excellence undoubtedly will continue. Any lawyer who has had the opportunity to argue before the court knows that its judges are invariably well prepared and ready to make incisive inquiries, cutting to the heart of the matters in issue. The sharpness of their questioning is, however, softened by the warmth of their hospitality. The Fourth Circuit’s annual conferences are known for their congeniality, and in the course of their regular business the judges continue to follow the court’s long established practice of stepping down from the bench to greet counsel at the conclusion of oral argument.

44. See id.
This same warmth extends to the relationships among the judges themselves. Although their differences in opinion can be strong, by dint of continuous effort they maintain a collegiality which enables them to work effectively as a single body. 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. He will be sorely missed. May those who follow him have characters equally steadfast, minds equally alive, spirits equally compassionate, and a sense of justice equally keen.
Others will write more eloquently than I about Judge Winter’s abilities as a judge. He was obviously one of the leading jurists of his generation. What I recall most vividly (and would like to record) is Judge Winter, the person. He was a man of grace and civility. Despite his position of power and authority, he was always kind and courteous to those who worked with him—whether it was his fellow judges, his law clerks, or his secretaries.

I recall my first meeting with Judge Winter when he interviewed me for the law clerk position. Despite our great differences in age, background, and social upbringing, he immediately made me feel at ease and identified matters of common interest. My only faux pas was that I proudly stated that I was an avid Oriole and Colt fan, thinking that as a Baltimorean he would be a kindred spirit. Judge Winter politely noted that he much preferred the opera and the symphony.

Judge Winter was a man of great humility and modesty. During my clerkship, he became chief judge when Judge Clement Haynsworth stepped down. When my fellow clerks and I congratulated him on this great achievement, he quickly pointed out that becoming chief judge was a tribute to longevity rather than ability and accomplishment. In describing his career in public service (Assistant Attorney General, Deputy Attorney General, City Solicitor of Baltimore, district judge, circuit judge), he once said that he “couldn’t hold a steady job.”

He was a demanding judge who held lawyers appearing before him to a high standard. He could become quite cross with lawyers who had not adequately prepared their cases. He worked very hard to prepare for oral argument and he demanded that the lawyers before him do the same. He always insisted upon careful and correct uses of words, both in writing and in oral presentations. I recall that he once berated a lawyer who had suggested in his brief that the trial judge had “arrogated” himself into a matter. Judge Winter said that “arrogate” was not an appropriate word with which to describe the actions of a United States district judge!

He was a hard worker, and he achieved efficient work habits to which we can all aspire. He believed in taking a decent annual vaca-
tion, explaining to me once that “you get more accomplished by working eleven months a year than by working twelve months a year.” More of us should follow that advice in ordering our own professional and personal lives.

Judge Winter had the great facility to make up his mind quickly and then to stick to his decisions. He would read all of the briefs, plus “bench memoranda” on each case, and then often do his own research into the issues raised. After hearing the oral argument, he quickly determined his position and, if he was to write the opinion, he promptly drafted it (or had us prepare a draft). He did not like to leave cases undecided. He was a proficient opinion writer—the fastest pen on the Fourth Circuit. As chief judge, he gently (but firmly) encouraged his fellow judges promptly to get out their opinions.

He had a great sense of humor and enjoyed telling (and hearing) jokes on those long drives from Baltimore to Richmond, which would invariably end up at one of Richmond’s best restaurants.

Judge Winter commanded both respect and affection. His secretaries and law clerks were his “legal family” and he treated us as such. We shall sorely miss him.

Judge Winter was a great man who left a tradition that will always inspire those who follow him. I cannot imagine a better model for a judge, or a person.
From its beginning until its untimely end, the professional career of Judge Harrison L. Winter was interwoven with the Court of Appeals for the Fourth Circuit. After graduating from Johns Hopkins University and the University of Maryland School of Law, where he was honored by the Order of the Coif, Judge Winter clerked for Judge Morris A. Soper, one of the triumvirate that brought renown to the circuit. Judge Winter's interest in the court never abated. Shortly after his clerkship, he started attending the circuit judicial conference, a practice he continued for nearly forty years. In 1961, President Kennedy appointed him to the district court in Maryland. In 1966 he took his place on the court of appeals.

The decade that followed was a time of change and a time of tension. The court sat en banc to hear school desegregation cases and frequently sat en banc to hear employment discrimination cases. Often the courtroom was filled to overflowing with people who had traveled many miles to hear the arguments.

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,1 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.

In United States v. Dillon Supply Co.2 he wrote:

Practices, policies or patterns, even though neutral on their face, may operate to segregate and classify on the basis of race at least as effectively as overt racial discrimination. Particularly is this so if a history of past discrimination is developed . . . .

Present policies and practices which are discriminatory

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* Judge, United States Court of Appeals for the Fourth Circuit.
2. 429 F.2d 800 (4th Cir. 1970).
or which, no matter how neutral in appearance, perpetuate the effects of past discrimination are unlawful and should be immediately enjoined. Dillon has been cited by courts in eight circuits and by two state courts.

During the difficult days of the Vietnam War, Judge Winter, along with every other federal judge, was called upon to decide the claims of conscientious objectors to military service. Troublesome as these cases were, he examined each carefully to determine whether the objector had been given the full measure of protection that Congress intended. He participated in decisions that granted some claims and denied others, but he always wrote with compassion and meticulous attention to the statutes and regulations that defined the rights of those young men whose conscience led them to choose an unpopular course.

The Vietnam War also placed a great strain on the first amendment. In a case arising out of a campus antiwar demonstration, Judge Winter wrote:

A student's freedom to express peaceful dissent on campus is more than a privilege; [the Supreme Court in] Tinker tells us that it is a basic right guaranteed by the first amendment. A state university is powerless to restrict or deny it as long as it is not obstructive or disruptive.

In 1981, J.W. Howard, Jr., a professor of political science at the Johns Hopkins University, described Judge Winter as "one of the leading voices of liberal jurisprudence in the nation" whose "opinions carried a lot of weight throughout the country." There can be no doubt that this is an apt appraisal of the judge and his work. Judge Winter never forgot that the Bill of Rights, which was indispensable to the ratification of the Constitution, is the charter of our liberties. He saw it as a charter that ought not be grudgingly construed, and that invites modern remedies for old problems. In Bowring v. Godwin, for example, carefully building on the Supreme Court's ruling that deliberate indifference to serious medical needs of prisoners is proscribed by the eighth amendment's prohibition of cruel and unusual punishment, he addressed the complaint of a

3. Id. at 804.
5. The Sun (Baltimore), Apr. 11, 1990, at IC, col. 5.
6. 551 F.2d 44 (4th Cir. 1979).
prisoner, with the following synthesis of sound law and common sense:

In the instant case, petitioner seeks psychological diagnosis and treatment. We see no underlying distinction between the right to medical care for physical ills and its psychological or psychiatric counterpart. Modern science has rejected the notion that mental or emotional disturbances are the products of afflicted souls, hence beyond the purview of counseling, medication and therapy . . . .

Judge Winter's treatment of an issue did not end with a statement of principles. Characteristically he translated the principle he was expounding into a means of practical application. This ability to move from the abstract to the concrete marked his work. In *Bowring*, he concluded:

We therefore hold that [petitioner] (or any other prison inmate) is entitled to psychological or psychiatric treatment if a physician or other health care provider, exercising ordinary skill and care at the time of observation, concludes with reasonable medical certainty (1) that the prisoner's symptoms evidence a serious disease or injury; (2) that such disease or injury is curable or may be substantially alleviated; and (3) that the potential for harm to the prisoner by reason of delay or the denial of care would be substantial. The right to treatment is, of course, limited to that which may be provided upon a reasonable cost and time basis and the essential test is one of medical necessity and not simply that which may be considered merely desirable.

This passage is quite typical of Judge Winter's writing: he explained both to bench and bar the proof necessary to flesh out the generalized requirements of a constitutional clause or a statutory provision.

Judge Winter's opinions, of course, were not confined to civil rights. According to computer tabulations, during his long career he wrote 641 majority opinions and participated in the decision of thousands of others on virtually every subject that could engage the attention of a federal appellate court. He has been rightly described as a "superb writer" of "clear opinions" with a "thoughtful balanced approach." His broad knowledge encompassed such di-

8. *Bowring*, 551 F.2d at 47.
9. *Id.* at 47-48.
verse subjects as the law of the sea and securities regulations. Last fall and early this year, while he valiantly sought to regain his health, he continued to decide complex appeals and to write opinions marked by scrupulous scholarship.

In 1981, Judge Winter became chief judge of the court of appeals, a position that carried with it the responsibility of chief judge of the circuit and membership on the Judicial Conference of the United States. It was a time of transition for the administration of the circuit. Congress required the addition of district judges to the circuit councils and expanded their responsibilities, but it did not stipulate the precise composition of the councils. Judge Winter was an experienced administrator. Realizing that the present council, which was composed of all the members of the court of appeals, would become unwieldy with the addition of district judges, he persuaded the members of the court to form a small council with equal, rotating representation from the district courts and the court of appeals. The reconstituted council has proved to be a success. To cope with the ever increasing workload of the court, Judge Winter actively recruited visiting judges to increase the number of panels hearing appeals each month, and he encouraged the automation of many aspects of the clerk’s functions. He presided over the circuit with fairness, style, and efficiency.

Judge Winter’s activities were not limited to judicial service. In an editorial lamenting his death, 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.”11 Judge Winter contributed much to Baltimore and the State of Maryland. He interspersed private practice with public service. He took a leave of absence from his firm to serve as an assistant attorney general for the State of Maryland for three years. Several years later he left the firm to serve the state again as its deputy attorney general. After returning to private practice he left once more in a role that the Baltimore Sun described as the “problem-solving city solicitor.”12 Harold J. Grady, who was at that time mayor, described Judge Winter as a “meticulous lawyer and a true gentlemen in every sense of the word.”13

Judge Winter’s community service also included important voluntary positions. He was chairman of the Board of Trustees of the

11. The Sun (Baltimore), Apr. 11, 1990, at 14A.
12. Id.
13. Id. at 5C, col. 1.
Peabody Institute, a century-old and internationally known conservatory of music. He was also vice chairman of the Johns Hopkins University Board. He served as a trustee of the Walters Art Gallery and the Evergreen House Foundation. Judge Winter was a philanthropist who took an active interest in the institutions on whose boards he served. He was no mere figurehead. An editorial in the Baltimore Sun recounts his role in leading the Peabody Institute into affiliation with Johns Hopkins University. And a few years ago, Judge and Mrs. Winter traveled to China at their own expense to help foster a bond between a Chinese university and Johns Hopkins.

Judge Winter was an accomplished pianist who enjoyed opera and classical music. He was a congenial conversationalist with a broad knowledge of literature and the arts. His family was always his chief delight. He is survived by his wife of forty-two years, the former Gladys Woolford, who always hospitably entertained members of the court when assignments took them to Baltimore. His two daughters are Barbara Winter Glauber of Washington, D.C., and Anne Winter West of Baltimore. In recent years, his grandchildren, Alexander and Amelia Glauber and Christopher Harrison West added to his joy and pride in his family.

His colleagues on the Fourth Circuit will miss Judge Winter. But his opinions will serve to remind us and all who follow of the compassionate, resolute gentleman who served his fellow citizens in the best tradition of the law.
One of the distinctive features of American judicial systems is that, unlike some continental and other systems, their judges are drawn from the general ranks of the legal profession and not from a cadre of persons specifically trained to be "professional judges." Though there are obvious quality risks in having a "non-professional" judiciary, on balance there is strength. It provides in the judiciary a representative mix of the wide range of experiences traditionally had by American lawyers: as litigators in civil and criminal practice, as "office" lawyers of various kinds, as academic scholars, as judges from other levels, and as sometime businesspersons, legislators, administrators, governmental administrators, and executives. This ensures a breadth of perspectives and aptitudes that is particularly valuable on generalist, multi-judge appellate benches, such as the United States courts of appeals, that deal with the full range of economic, political, and social issues that confront society. But while value on balance lies in such a variety of experiences and special aptitudes, the ultimate strength of every such court depends upon its having a core of judges who, though not "professional judges" are true "pros" at the difficult craft and the art of judging.

Harrison Winter was such a judge, and it is this about him that comes to my mind most powerfully as I have pondered what he meant to our court and what we as an institution have now lost in his untimely death.

The marks of such a judge are the obvious ones: total commitment and devotion to duty, high intelligence, disciplined work habits, unremitting labor, craftsmanship and pride in it, and a fascination with the legal process. They were all his marks.

Total commitment and devotion to duty were his prime attributes, underlying all else save the high intelligence with which he was naturally endowed. It helped in this that he simply and unabashedly liked judging and being a judge. This was brought home to me soon after I joined the court in 1978. He had asked me then, sincerely interested, how I was getting along, what I thought of the work and of the court, and so on. I had answered that I found it demanding and rewarding and was most thankful for the opportunity, but that I would not have wanted to start at it much sooner in
life at the expense of not being able to engage in the earlier, much less cloistered and confining professional endeavors of my earlier career. He mused on that with some obvious puzzlement and said, "Oh, is that so? Why I never wanted anything but to be a judge." When the call to being a judge in due course had come to him, he was therefore ready and perfectly equipped to go about the work to which he had aspired with steady enthusiasm and sure conviction of its worth. It showed in all that he did.

Of the many good examples of professionalism he provided us, none were more impressive than his disciplined work habits and the expedition with which he worked. Even after assuming the heavy administrative burdens of his chief judgeship, he was always at or near the top of the court in keeping his workload current, and this without any sacrifice of the consistently high quality of his work. One of his secrets was the device by which he tamed the terrible temptation to lay aside "for further study and reflection" the truly difficult opinion assignments. This principal procrastination device of the beleaguered judge he overcame by sticking to the general rule of taking things in the order of their ripening for action without regard to their degree of difficulty.

Another quality that I am sure impressed others as it did me was the consistent seriousness with which he approached every problem, without regard to the problem's own degree of seriousness. In the work of contemporary federal courts of appeals there is an incredible volume of mundane matters, much of it patently meritless, that must be attended to along with the truly difficult principal cases. His approach to deciding a motion for attorneys fees, or for permission to supplement a record, or for additional time for oral argument was uniformly as professional as was his approach to resolving a major issue in a principal case. It was instinctive with him that no matter brought before the court was deserving of less than a best effort at accurate and expeditious resolution by the judges to whom it was assigned.

No fair appraisal of his high professionalism could fail to take into account his occasional outbursts of exasperation and outrage at lawyers for what he thought was shoddy—or worse—unprofessional performance. These outbursts were legendary in the court, as was well illustrated by an occurrence soon after he had returned to the bench in a brief, heroic effort to resume full duty during his ultimately fatal illness. After he had delivered a particularly pithy dressing-down of a lawyer during oral argument, one of his law clerks passed a note to a colleague that said simply, "He's back."
I must admit that my first exposure to this side of my dear friend's make-up was a bit discomfiting. It seemed wholly at odds with the impeccable civility and elegant, wholly unaffected manners that were so attractive in him. Of course, in time it became clear to me: with the demands he put upon himself and the standards to which he held himself and his work, came inevitably a high level of intensity and a low level of tolerance for legal work that did not conform to those standards. He was human.

The qualities that made him a true pro as a judge carried over into his eight-year tenure as chief judge. When he became chief judge in 1981, he succeeded in that position one of the true princes of the legal profession, Clement F. Haynsworth, Jr. It is hard to imagine that any chief judge could have commanded more respect and personal affection among his peers than did Judge Haynsworth, and hence, that any judge could have had a harder act to follow than did Judge Winter. I think it safe to say that while his colleagues without fail wished him well, most of them probably thought he would surely suffer somewhat in the inevitable comparisons with his great predecessor. Any such thoughts soon died aborning. Without diminishing the true devotion still felt for Judge Haynsworth and his special personal gifts, Judge Winter's administration of the office quickly earned the respect of all. He performed as all should have realized he would: indefatigably, meticulously, even-handedly, insistently, and expeditiously. He turned over to his successor, Judge Sam J. Erwin, III, one of the best administered courts of appeals in the federal system.

Nothing better demonstrated the qualities of heart and mind of this good judge than his handling, both personally and professionally, of the tragic illness which finally took his life. When it first was diagnosed, he wrote to his fellow judges to advise us of his condition. The report was essentially a clinical one, completely dispassionate, with no tinges of pathos or unwritten pleas for sympathy, simply an estimate of how the condition was likely to affect his capacity for work, and hence the work of the court. He maintained this stance throughout the frustrating ups and downs that followed, down to the bitter time that he felt compelled to give up the chief judgeship and his active judge status, and beyond that to the point of his final, complete incapacity and death. Shortly before he became unable to work even at home where he was trying heroically to complete the small amount of assigned work that remained for him, he wrote a matter-of-fact summary of the status of his work, expres-
sing the hope that he could finish it. He almost did, with a final display of raw courage and devotion to duty.

I last saw him at his home during those last days when he was simply holding on. Characteristically, he had invited the judges sitting in Baltimore to have late afternoon refreshments at his home. Though it was obvious that he was terribly tired and uncomfortable, he had summoned the strength to be his usual urbane, courteous self, looking to the needs of his guests, meticulously groomed, and affecting more pleasure in our lingering than he possibly could have felt. He was fond of us, but essentially he was doing his duty to the court as he always had.

I am glad that it is so that I can remember this grand judge and splendid gentleman, this great friend.