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Tribute to Judge Sprouse

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United States Court of Appeals for the Fourth Circuit

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TRIBUTE TO JUDGE SPROUSE

FRANCIS D. MURNAGHAN, JR.

United States Court of Appeals

for the Fourth Circuit

Judge

Stating reasons why Judge James M. Sprouse has made a deep, a lasting, and a most favorable impression on me is not difficult. Judge Sprouse came on the Fourth Circuit at nearly the same time that I did. Almost immediately an animated controversy arose in the Court over whether an *en banc* rehearing should be held. The theretofore members of the Court had been equally divided, so interest was directed as to how Judge Sprouse and I would vote. Actually, he and I both voted to rehear *en banc*, a decision which most, if not all, concerned about the matter would ordinarily take to mean that an *en banc* hearing should take place. However, not everything involving mathematics is as simple as it seems. Another tie vote was announced. The way each judge had voted was not publicly disclosed. Only the total vote was announced. The general assumption was that where the vote was originally equally divided it would remain so, hence when two votes were added the two votes must have been split. My vote — which was in favor of rehearing *en banc* — became known, while Judge Sprouse's vote was not publicly announced. It was therefore assumed that he must have voted against rehearing *en banc*. That sounds logical, doesn't it? Adding one to each side of an equally divided court should leave it equally divided. But that approach overlooked something. One of the theretofore existing court changed his vote so that Judge Sprouse and I, by our votes, only managed to restore equal division. The result was that a highly placed political figure, a governor of a state, lost his chance to secure reversal of his conviction. That decision was subsequently reversed by the United States Supreme Court, suggesting that Judge Sprouse may have had the right of it, no very surprising thing. However, there are numerous other examples of that, and I mention the matter for a different reason. The news media hounded Judge Sprouse,

suggesting that he had voted negatively and insisting on an explanation. Instead of becoming annoyed, he gave a simple, straightforward reply, explaining what had happened, and not disclosing whose change of vote caused the situation to arise. He thus brought newspaper curiosity to a close.

Thus, it was that my relationship with Judge Sprouse essentially got under way with succinct and abundant proof that he knew how to handle things effectively. Since then, there have been many other examples of his effectiveness as a judge.

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

First rate opinions were not exclusively to be credited to Judge Haynsworth, however, because Judge Sprouse imitated him in writing first rate opinions also. His first published opinion as a member of the Fourth Circuit, *United States v. Workman*, 617 F.2d 48 (4th Cir. 1980), convincingly demonstrated that Judge Sprouse was up to the job. In that decision, he held that it was error to allow a prisoner to be held liable for the time during which revocation of his parole was being appealed, where the appeal eventually led to the overturning of the revocation.

It is obviously impossible to list all of Judge Sprouse's adroit opinions issued in the 16 years he has served on the Fourth Circuit Court of Appeals. I shall confine myself to that one early case and one late one to demonstrate that Judge Sprouse began expertly and carried on in exactly the same way.

Recently, Judge Sprouse wrote *Ristow v. South Carolina Ports Authority and the SS UNKNOWN*, 27 F.3d 84 (4th Cir 1994), vacated

and remanded by the Supreme Court in a 5-4 decision, 115 S. Ct. 567 (1994), for further consideration in light of *Hess v. Port Authority Trans-Hudson Corp.*, 115 S. Ct. 394 (1994). *Hess* involved a bistate railway. In *Ristow*, involving a one state authority and a phantom ocean-going ship, Judge Sprouse succinctly disposed of claims against an unserved and unidentified defendant, and then went on to tackle a tangled question of Eleventh Amendment immunity for an agency, determining that the agency involved was an arm of the state and thus immune. On remand, the *Ristow* case will clearly be a closely divided one, requiring the intricately close attention which it received from Judge Sprouse.

Judge Sprouse will be greatly missed. Following 16 years of unrelenting effort, Judge Sprouse, on stepping down, makes us aware how sorely we will miss the unique qualities brought to our Court by such an accomplished jurist. It may be grammatically incorrect to refer to someone as “more perfect” but here greater — and indeed greatest — are in fact quite correct.

