Frank Cruise Haymond—In Memoriam

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FRANK CRUISE HAYMOND
IN MEMORIAM*
1887 - 1972

As Frank Haymond's near contemporary at Harvard Law School, Justice Felix Frankfurter once said, "Let us now praise famous men is not a mere adjuration to lay verbal flowers on the graves of the departed. It is for our sake that we are to praise them, for, as Ecclesiasticus added, 'They have given us an inheritance.'" Justice Frankfurter also said, in speaking of some remarks he made at a ceremony honoring Learned Hand, "I wanted to say something without dumping him into a hogshead of molasses. How tricky such efforts are." And such efforts are tricky indeed, even when one speaks, as I do of Frank Haymond, for whom I had deep respect and warm friendship and who surely had given to me, as to all lawyers, an inheritance arising from his dedication and devotion to the law.

To begin any discussion of the man, a bald recital of the facts about Frank's life seems appropriate. He was born in Fairmont, Marion County, West Virginia on April 13, 1887, and died, in office, in Charleston, West Virginia on June 10, 1972, in his eighty-sixth year. After early education in Fairmont's public schools, Frank attended Fairmont State Normal School, from which he graduated in 1906. He then attended Harvard College, receiving a Bachelor's Degree in the class of 1910, with distinction, and entered Harvard Law School as a member of the class of 1913. When his father, William Stanley Haymond, was elevated to the Circuit Court of Marion County in 1912, Frank, being eligible for admission to the Bar in West Virginia under conditions then prevailing, left Harvard to take over his father's practice.

For the twenty-seven years thereafter until 1939 (except for the period of his military service in World War I) Frank Haymond

*This memorial was prepared by Robert W. Meserve, President of the American Bar Association and close personal friend of Frank C. Hammond.
practiced in Marion County, with his office in Fairmont. In addition to "preparing papers, trying cases and writing briefs" (as he described this period in his Harvard Class's 25th Anniversary Report in 1935), Frank also made excursions into politics, serving a term in the West Virginia House of Delegates and twice losing, by narrow margins, attempts to secure nomination to Congress. During the early part of this period, Frank enlisted as a private in the United States Army, served with the artillery arm in France, took part in the major offensives of Chateau Thierry, and Saint Mihiel, and received a captain's commission in the field while participating in the Meuse Argonne campaign.

Also, during the period prior to 1939, Frank began his long career of Bar Association activity, serving as President of the West Virginia Bar Association. During this period, there also began his long tenure (the longest of all in Association history, at his death) as West Virginia's state delegate to the American Bar Association. Frank was one of those responsible for the formation of the American Bar Association's Section of Insurance Law; he served as its Chairman in 1935.

In May, 1939, Frank began his judicial career when he was appointed to the Marion County Circuit Court, to which he was then elected in 1940 and re-elected in 1944. Frank was, technically, the third in his family to so serve, his father and his grandfather both having preceded him. Since his great-grandfather had also served on the Marion County Court in 1842, when that county was part of the Commonwealth of Virginia, it was true, in the broad sense, that he was a fourth generation incumbent of this particular judicial office.

In 1945, Frank C. Haymond was appointed to be a justice of the West Virginia Supreme Court. He served as a justice of that court until his death in 1972, being elected to a six-year term in 1946 and to two full twelve year terms in 1952 and in 1964, becoming the first justice of the West Virginia Supreme Court ever elected for three successive terms. At his last election, Frank was seventy-seven years old and is believed to have been older than any other person ever elected to that court. His tenure of almost twenty-eight consecutive years on West Virginia's highest judicial body was clearly a record in the state, as was his service as President of that court on six occasions. He was the forty-third person ever to be a justice of the West Virginia Supreme Court. He had been preceded there by his grandfather, Justice Alpheus F. Haymond, the eighth justice of
that court, who had served from 1873 to 1882 and had been a member of the Second West Virginia Constitutional Convention in 1872. Frank Haymond was justifiably proud of his family's contribution to the judicial system and history of West Virginia and of its parent state, Virginia. He served as President of the West Virginia Association of Sons of the American Revolution.

Beyond this mere chronicle of dates and events, those of us who knew Frank found in him not only an able judge and a loyal friend, but a devoted family man. He was married to Susan Watson Arnett of Fairmont in 1922 and was always quietly proud of Mrs. Haymond, of their two sons, one a philosopher and teacher, the other a distinguished physician, and of their six grandchildren.

The process by which Frank made the transition from partisan advocate and warm competitor — he was a tennis player of champion rank in his youth and an extremely successful courtroom lawyer — to the fully impartial performance of the judicial function no one will ever fully understand. Two elements that made him strive to make this transition successfully, as he did, were undoubtedly his pride in his family's judicial tradition and his recognition that the post offered, as he put it, "an unusual opportunity for public service." That opportunity never eluded Frank Haymond.

A West Virginia lawyer would be better able to determine the true depth of Frank Haymond's contribution to West Virginia law in the more than four hundred opinions he wrote during his term of service. Frank did not hesitate to dissent (almost a seventh of his opinions were those of a minority of the court) and recognized the need for, and the inevitability of, change. He often stated, however, that it was the primary duty of a judge to respect the importance of stability in the law, leaving change so far as possible to the legislative process. Nevertheless, while thus eschewing the role of judicial activist for himself, Frank Haymond felt strongly that he should not publicly criticize judges whose intellectual and social convictions led them to advocate change by more liberal use of the process of judicial interpretation. A revealing note in the 50th Anniversary Report of Harvard's Class of 1910, written in 1960, deals with this subject:

At the 1957 annual meeting of the Conference [National Conference of Chief Justices] it adopted the controversial and widely publicized resolution disapprov-
ing numerous decisions of the Supreme Court of the United States involving the questions of the relations between the Federal government and the several states in that important field of law. Though I believe in and welcome criticism of the decisions of any court by any person, whether layman, lawyer or judge, I emphatically disapprove action by any person or group of persons which constitutes an attack upon any court as an institution of one of the three separate branches of our constitutional form of government. An attack of that character, as distinguished from proper criticism, necessarily tends to discredit the courts, impairs the effective enforcement of their judgments, weakens their independence which must be preserved and safeguarded in the orderly administration of justice, and results in disrespect for law. For these reasons I was one of the minority members of the Conference who opposed the adoption of the resolution.

It was as a friend, and particularly in his American Bar Association activity, that I knew and admired Frank Haymond. He was an extremely influential voice in the councils of the Association because of his wisdom, his sound judgment of character, and his obvious intention to advance the best interest of the lawyers of the United States by advocating sound policies and the selection of the ablest lawyers as representatives of the Association. His service as state delegate for the longest period of anyone in the history of the Association resulted for Frank in a wider circle of acquaintances than most; but it was his personality, character, and obvious dedication to the organization that gave him the great influence he had with those who knew him in the organized Bar.

As the only person, to my knowledge, to serve two terms on the American Bar Association's Board of Governors, Frank was, additionally, in 1970, the first West Virginian to receive from the Association its treasured gold medal — an award he shared with such distinguished Americans as Elihu Root, Oliver Wendell Holmes, Jr., Roscoe Pound, Charles Evans Hughes, Arthur T. Vanderbilt, Harrison Tweed, Tom C. Clark and Felix Frankfurter, among others. The citation then read, stated in part:

Judge Haymond's career mirrors the diverse interests of a dedicated lawyer—jurist devoting the full measure of his effort and talent to his civic, professional and judicial
responsibilities. He has served as a member of the West Virginia Commission on Constitutional Revision and of the state legislature, and has lectured at the College of Law of West Virginia University. He is a life member of the American Law Institute and of the Fellows of the American Bar Foundation and a founding member of the Conference of Chief Justices, of which he has also been a member of the executive council. He was a vice president and a director of the American Judicature Society.

Judge Haymond holds doctorates of law from Morris Harvey College and West Virginia University [later also from Marshall University].

During his long and distinguished career on the bench, Judge Haymond zealously pursued his duties toward the Bar. He has been extraordinarily devoted to this Association and has made major contributions to its work and progress. He richly shares credit for the leadership the Association has attained in professional and public affairs.

On the day Judge Haymond established the record for length of service on the Supreme Court of Appeals, he was asked to recall his feelings when he first donned judicial robes. He responded, "I wanted to be sure it did not change me. I wanted to remain myself with respect to litigants and members of the Bar. At the same time, I had full realization of the awesome responsibilities of the office."

That response reveals the man. Modest, friendly, self-effacing, intensely human and with an unlimited capacity for enduring loyalty and lasting friendship, he has won the high esteem and warm affection of his associates on the bench, of the members of the Bar who practice before him, and of his countless friends and associates in the work of the organized Bar.

Frank Haymond remained active until the day of his death. On that day, he carried on his usual correspondence with friends, including the writer. After virtually a complete day of activity, Frank died, suddenly, on a Saturday afternoon. He was buried in his native Fairmont. Courageous, patient, and gracious until the last, this man, dedicated to the public service, was like him of whom Bunyan wrote:
My sword I give to him that shall succeed me in my pilgrimage, and my courage and skill to him that can get it. My marks and scars I carry with me, to be a witness for me, that I have fought His battles who now will be my rewarder. When the day that he must go hence had come, many accompanied him to the river side, into which as he went he said, Death, where is thy sting? And as he went down deeper, he said, Grave, where is thy victory? So he passed over, and all the trumpets sounded for him on the other side.