

**UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF KENTUCKY**

**JOHN G. HEYBURN II
SENIOR U.S. DISTRICT COURT JUDGE
(1948 – 2015)**

John Gilpin Heyburn II, a federal district judge whose passion for the rule of law made him a leading figure in the governance of the Third Branch, died on April 29, 2015, at his home in Louisville, Kentucky. He was 66.

In 1992, on the advice of U.S. Senator Mitch McConnell, President George H. W. Bush appointed Judge Heyburn to the United States District Court for the Western District of Kentucky. Twenty-three years later, those who were fortunate to know Judge Heyburn remember him as a master of the courtroom, a delightful colleague, an artful chief judge, a leader in the judiciary's budget process, and a force of nature in the development of procedures to manage the nation's most complex and intractable lawsuits. Legal observers recall a gracious and gentle man who consistently brought wisdom, discretion, and intellect to difficult problems.

Judge Heyburn served his district as Chief Judge from 2001 to 2008, where he established a reputation for court governance by consensus and an ability to engender camaraderie among fellow judges and enthusiastic participation from staff. As a presiding judge, he had such a unique blend of grace, authority, and humor that a court observer once compared him to "the ideal courtier" – one who possessed a certain *sprezzatura*, or "nonchalance while excelling in everything from arms and athletic events to music and dancing." No matter how daunting the task, she wrote, "he appeared in control, infallible, and accomplished with no apparent effort."

Despite the rigors of serving as a federal court judge with a full case load, Judge Heyburn was never one to turn down additional, challenging assignments and it was on the national level that he found a perfect opportunity to serve the interests of

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justice in a broader fashion than is available to most trial judges. In 1994, Chief Justice William H. Rehnquist appointed Judge Heyburn to serve on the Budget Committee of the Judicial Conference of the United States – a committee which he went on to chair for eight years beginning in 1997. As Chair, Judge Heyburn led the annual appropriations process for the federal judiciary, testified many times before various House and Senate subcommittees, and consulted with foreign governments about judicial reform. While ever a stalwart of judicial independence, Judge Heyburn had a strong and practical appreciation for the need to collaborate with the legislative and executive branches of government and deftly represented the judiciary’s interests throughout his tenure on the Budget Committee.

Judge Heyburn’s leadership on the Budget Committee did not go unnoticed and in 2007, Chief Justice John G. Roberts appointed him to a seven-year term as chair of the Judicial Panel on Multidistrict Litigation (Panel), a specialized statutory court headquartered in Washington, D.C. The Panel identifies complex cases in federal courts across the country that involve common questions of fact and then centralizes those cases before a single judge. The Panel’s work is little known outside the legal field, but as of 2014, 38% of all civil cases filed in the federal system were aggregated under the Panel’s jurisdiction.

Judge Heyburn pushed the Panel to re-examine every aspect of its jurisprudence, its methods of doing business, the consequences of its decisions, and its relationship with transferee judges. He streamlined the Panel’s rules and procedures in response to an ever-expanding docket. Under his leadership, the Panel implemented electronic case management and case filing, increased the transparency of the adjudicatory process, aggressively ramped up training for new presiding judges, and more. He co-authored two publications on best practices for case management in multidistrict litigation and frequently spoke to members of the Panel’s bar.

Though some might see Judge Heyburn’s work as simply tending the gears of

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judicial bureaucracy, his passion was not for bureaucracy. In addressing issues like electronic filing, budget and finance, procurement, electronic case filing, and case management, Judge Heyburn understood that he was tackling issues that went to the very heart of an independent judiciary. His agenda and his ethic of service had several unifying themes: to make the judicial process more transparent, accountable, accessible, and efficient; to help the judiciary meet the ever changing needs of the public, parties, attorneys and judges; to reduce the costs and delays associated with complex litigation; and to secure the resources necessary to meet the needs of an independent judiciary in the 21st century. His vision of judicial service was not merely to decide cases, but to help hold together – and wherever possible to improve – a legal system that is the envy of the world.

Judge Heyburn took a special interest in mentoring young lawyers, and when law clerks fresh from law school and bar examinations arrived to his chambers, they encountered a Judge who loved his vocation and shared his enthusiasm for the law. Whether reviewing the Supreme Court’s landmark cases or ordinary civil matters Judge Heyburn shared with them his vision of a judge’s important role in the adjudicatory process: “Treat arguments of each lawyer and each party with respect,” he wrote in a memorandum to his law clerks. Judge Heyburn was ever mindful of the role of a federal judge and was equally respectful of and believed in our Nation’s democratic process. He noted that “while judicial opinions are mandates, they are also part of a continuing conversation between [the parties] and the judiciary.” *Eubanks v. Stengel*, 28 F.Supp.2d 1024, 1043 (W.D. Ky. 1998).

“Judges give reasons for their decisions ... By giving reasons, we help guide further conversation. Were this decision only a mandate, the conversation would be over. That other courts may choose to agree or disagree, that the legislature may respond, shows that the decision enhances and informs the on-going democratic process.”

For years following their clerkships, former law clerks made pilgrimages back to Louisville – most recently at the presentation of his judicial portrait last October – to

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seek career guidance, share family photos, and pay respect to a man whose scholarship, dedication, and decency exemplified the highest ideals of the federal judiciary. Judge Heyburn was, always would be – and still is – “their judge.”

Judge Heyburn’s commitment to mentoring young people was not limited to young lawyers. His sons, some of their friends, sons and daughters of friends, and people he met along the way recounted numerous instances where his support made a difference in their lives. He attended their high school track events or swim meets, wrote personal notes, or made phone calls on their behalf. He celebrated their successes and offered encouragement in times of disappointment.

During his 23 years on the bench, Judge Heyburn presided over thousands of cases which covered a gamut of issues. They included some of the most controversial issues facing the courts: recognition of same sex marriages, restrictions on access to abortion, and infringements on the First Amendment’s guarantees. No matter the topic, however, his opinions reflected his unshakeable sense of fairness, respect for litigants, and commitment to clear, logical, and thoughtful rulings.

In *Bourke v. Beshear*, 996 F.Supp.2d 542 (W.D. Ky 2014), *rev’d*, *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2015), *cert. granted*, 135 S. Ct. 1041 (2015), Judge Heyburn addressed constitutional challenges to Kentucky laws which prohibited recognition of same sex marriages that had been validly performed in other jurisdictions. In holding that Kentucky had intentionally discriminated against same-sex couples without a rational basis, thereby denying them equal protection of the laws, Judge Heyburn took the unusual step of acknowledging that those with deeply held religious beliefs might have difficulty with his opinion. So, he wrote:

“Many Kentuckians believe in ‘traditional marriage.’ Many believe what their ministers and scriptures tell them: that a marriage is a sacrament instituted between God and a man and a woman for society’s benefit. They may be confused—even angry—when a decision such as

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this one seems to call into question that view. These concerns are understandable and deserve an answer.

“Our religious beliefs and societal traditions are vital to the fabric of society. Though each faith, minister, and individual can define marriage for themselves, at issue here are laws that act outside that protected sphere. Once the government defines marriage and attaches benefits to that definition, it must do so constitutionally. It cannot impose a traditional or faith-based limitation upon a public right without a sufficient justification for it. Assigning a religious or traditional rationale for a law, does not make it constitutional when that law discriminates against a class of people without other reasons.

“The beauty of our Constitution is that it accommodates our individual faith’s definition of marriage while preventing the government from unlawfully treating us differently. This is hardly surprising since it was written by people who came to America to find both freedom of religion and freedom from it.”

Id. at 554.

In *United States v. Pierce*, Criminal Action No. 1:92CR-15 (1994), Judge Heyburn presided over a highly publicized two-week trial in which members of the Ku Klux Klan were charged with arson in connection with the burning of the Barren River Baptist Church. The case involved an extraordinary number of complex issues. On appeal, the Sixth Circuit stated that the “district court had provided Defendants with every possible protection in what became a very complex and difficult trial.” *Aff’d*, 62 F.3d 818 (6th Cir. 1995).

And in *Maker's Mark v. Diageo North America, et al.*, 703 F. Supp. 2d 671 (W.D. Ky. 2010), a trademark infringement suit, Judge Heyburn enjoined Jose Cuervo from distributing bottles of tequila capped with red dripping wax seals that were similar to ones which Maker’s Mark had used on bourbon bottles for more than 50

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years. Judge Heyburn's ruling, and the affirmance on appeal by the Sixth Circuit of Appeals, while recognized as one of the most thoughtful judicial histories of bourbon ever printed, reflected his sober yet spirited approach to distilling the applicable standards of review from legal precedent and applying such to the particular facts of the case before him.

John Gilpin Heyburn II was born on November 12, 1948, in Boston, Massachusetts to Henry R. and Frances Heyburn. He attended Harvard College, and was a member of the decorated Harvard track team led by the legendary Coach Bill McCurdy – from whom he drew many life lessons. He also earned varsity letters in cross-country and participated in four Boston Marathons, once though as part of the very unofficial but happy “bandit marathoner” crowd of thousands.

College and law school graduations by no means meant the end of Judge Heyburn's love affair with sports. That infectious laugh, inherited from his mother Frances, just transitioned to new settings. Like many UK graduates before and since, the Judge could not shake his UK basketball fever. And his fervor for running transferred into a passion for golf. He worked his way down to a 2 handicap and earned his memberships in the prestigious US Seniors Golf Association and the Royal Dornoch Golf Club in Scotland.

The late 1960s were tumultuous years on the Harvard campus, and like many of his classmates, the future judge grappled with the War in Vietnam, race relations, and other controversial issues which challenged America at that time. In that unique campus political milieu, he opposed extremist responses and began a lifelong interest in history and government. Harvard was where Judge Heyburn began his fascination with the work of Theodore White, the famous presidential historian. Teddy White and other historical figures would later be characters that the Judge would assume to enliven his talks before students and members of the Louisville Salmagundi Society. Judge Heyburn earned his degree in History and graduated from Harvard with a cohort of college friends whose ties are deep and lifelong.

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From 1970 to 1976, Judge Heyburn was a Second Lieutenant in the United States Army Reserves. He received an Honorable Discharge in 1976 – the same year that he graduated from the University of Kentucky College of Law. In law school, he was a member of the National Moot Court Team, a runner-up in the Sixth Circuit Moot Court Competition, and a member of the Order of Barristers (Appellate Advocacy Honorary Society). Judge Heyburn later served his alma mater as President of the Law Alumni Association, and established the Henry R. Heyburn Alumni and Public Service Award Grant through the law school. This summer, Judge Heyburn will be inducted into the College of Law’s Hall of Fame, the highest award presented by the law school. This distinction is awarded to alumni who have distinguished themselves by contributions in their own field of work or in the betterment of humanity.

After graduating from law school, Judge Heyburn joined the law firm founded by his father Brown, Todd & Heyburn (now Frost Brown Todd) as an associate, where he maintained a general commercial litigation practice. In 1982, he was elected partner.

Like his father and grandfather before him, Judge Heyburn was a leading figure in civic life. From 1983 to 1986, he was Chair of the Louisville-Jefferson County Crime Commission. He also served as Director of the Louisville Bar Foundation (1986-1988, 1994-1999) and Director of Kentucky Citizens for Judicial Improvement (1975-1976). He served on a variety of boards, most notably the Cave Hill Cemetery, Inc., the Episcopal Church Home, Louisville Committee on Foreign Relations, Cedar Lake Lodge, Inc., and the Louisville Free Public Library. He also ventured into electoral politics, running for the office of Jefferson County Attorney in 1981 and the office of Jefferson County Judge/Executive in 1989.

Judge Heyburn enjoyed a long friendship with Kentucky’s senior U.S. Senator and Senate Majority Leader Mitch McConnell, which dates back to 1971 when they

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worked together on their first political campaign. Judge Heyburn later worked on the Senator's first political campaign and served as his special counsel from 1977-1983. Last October, at the presentation of the Judge's portrait, Senator McConnell recalled his first impressions of his good friend. "I liked him. I liked him a lot. And the accuracy of that first impression has been validated again and again." Senator McConnell noted that Judge Heyburn did more than merely inspire confidence and respect. Rather, Judge Heyburn impressed "with his intellect and erudition." He made "you feel lucky to know him. His impact [as a jurist] has been enormous."

Judge Heyburn is preceded in death by his father Henry R. Heyburn, a prominent attorney and civic leader in Louisville and a World War II veteran who earned both a Silver Star and Bronze Star.

Judge Heyburn is survived by his adored wife of 39 years, Dr. Martha Keeney Heyburn, whom he married after a whirlwind romance; two sons, William Arthur Heyburn (New York) and John Hail Heyburn (Washington, D.C.), of whom he was unspeakably proud; his brothers Franklin Heyburn (Vermont) and Henry R. Heyburn, Jr., (Maine), and his sister Frannie Pistell (New York). His mother, Frances Heyburn of Louisville, also survives.

Judge Heyburn received a cancer diagnosis in late 2011. From that time until the hour of his death, he approached his illness with the qualities that had so consistently governed his life: intelligence, courage, realism, gratitude and, sometimes against all odds, his trademark sense of humor. During his lifetime, Judge Heyburn had a profound impact on those fortunate to have known him and the institutions he served. The legacy he leaves behind will be as lasting as it is inspirational.