

IN MEMORIAM: REMEMBRANCES FROM THE LEGACY OF CHIEF JUSTICE LEROY ROUNTREE HASSELL, SR.

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INTRODUCTION

On February 9, 2011, Chief Justice Leroy Rountree Hassell, Sr. went home to be with the Lord.¹ The Norfolk, Virginia native, a child of educators, attended the University of Virginia, graduating in 1977.² In 1980, he graduated from Harvard Law School,³ going on to become a partner at the Richmond, Virginia office of McGuire, Woods, Battle & Booth.⁴ He was subsequently appointed to the Supreme Court of Virginia in 1989 by Governor Gerald L. Baliles,⁵ eventually appointed chief justice, and served in that capacity until January 31, 2011.⁶ This Essay is offered in his memory and to the glory of God.⁷

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¹ “Leroy R. Hassell Sr., 55, a lawyer and civic leader who became the first black chief justice of the Virginia Supreme Court and who launched a commission that helped modernize the state’s mental health care system, died Feb. 9 in Richmond.” Adam Bernstein, *Moderate Jurist Served as First Black Chief Justice in Va.*, WASH. POST, Feb. 10, 2011, at B7.

² *Id.*

³ *Id.*

⁴ *Id.* (“A Virginia native, Justice Hassell (pronounced ha-SELL) was a Harvard Law School graduate who began his legal career in Richmond. He advanced rapidly to a partnership at McGuire, Woods, Battle & Boothe, one of the nation’s largest law firms. While working at the firm in the 1980s, he chaired the Richmond School Board and became involved in other civic activities.”).

⁵ *Id.*

⁶ *Id.*

⁷ The final weekend of October 2012 marked the occasion of the Twelfth Annual National Constitutional Law Moot Court Competition being held here at Regent University School of Law. The Competition has been re-named the “Leroy R. Hassell, Sr. National Constitutional Law Moot Court Competition,” in honor of our late friend and brother in Christ. When I received the request from the Regent Law Moot Court Board to serve as a competition judge, I felt compelled by the Holy Spirit to answer that call to service. I was moved to do so by the profound recognition that this request was not mere happenstance or serendipity; when the Lord called me to write this piece, and given the enthusiasm with which this project was met by the members of Regent University Law Review, I felt as if I had been given the opportunity both to serve, as well as to immerse myself in an environment in which I would be able to reflect upon Chief Justice Hassell’s legacy and the profound effect that he had on the students of this school. It is somehow sweet and fitting

Chief Justice Hassell will be remembered in the many capacities in which he served others as a man of God, a jurist, an educator, a mentor, and a humanitarian. First and foremost, Chief Justice Hassell was a God-fearing man whose deeply-rooted love of Our Lord informed the many facets of his complex and abundant life.⁸ To be sure, because his faith defined his existence, it is predominantly through this lens that this Essay explores his life.

As a jurist, Chief Justice Hassell architected many improvements to the judiciary of the Commonwealth of Virginia. In his capacity as a jurist, he authored numerous opinions in which he sought to do justice and to instruct. These opinions are remarkable in their elegance of form and relative simplicity of language. Part I of this Essay includes, among other things, a review of his articles and speeches, in which he discussed the role of the dissenting opinion and its significance in the rule of law. Part II explores Chief Justice Hassell as an educator. It examines his intellectual legacy and includes reflections from students, professors, and others who interacted with him at this level. Part III describes how he served as a mentor to many, including his former law clerks, several of whom offer their remembrances of the many ways in which he influenced their lives and careers. Finally, Part IV observes the ways in which he revealed a supreme humanitarianism. In so doing, this Essay

that the graduating class of 2013 is the last class to be touched by the “Chief,” a loving sobriquet bestowed upon him by at least one of his former law clerks. E-mail from Noelle James, Former Law Clerk to Chief Justice Hassell, to author (Oct. 24, 2012, 11:55 AM) (on file with the Regent University Law Review). This work is a tribute to him from those of us who were privileged to interact with him. As I took my seat on the bench in the courtroom in Robertson Hall room 221 at Regent University School of Law and prepared to consider the oral arguments that had been prepared by the students in the competition, I could not help thinking that this was just the kind of event for which the Chief would have so enjoyed serving as a judge. Although the then-passed Chief did not judge, he nonetheless was present and presided in spirit over each of the courtrooms in which the various rounds of the competition were held.

⁸ A managing partner at McGuireWoods LLP, Richmond, Virginia, and close friend of the late Chief Justice wrote,

Every public address Leroy Hassell gave as chief justice began or ended by giving honor to God. The chief justice loved his God with all his heart. He felt that God was the source of all his extraordinary abilities, and he humbly gave God credit for his accomplishments. Like George Washington Carver, he believed that with the blessing of great abilities came the obligation to use them to their fullest. He also felt a responsibility to assist others, particularly the less fortunate, and he did so in ways great and small. He gave leadership to the boards of several local charities. His position as an usher at his church allowed him to quietly minister to many in need of help, both spiritual and temporal.

George Keith Martin, *Tribute to Chief Justice Leroy R. Hassell, Sr.*, 46 U. RICH. L. REV. 5, 6 (2011).

explores the persistence and courage he exhibited in connection with his efforts to reform the mental health commitment laws in the Commonwealth of Virginia, as well as his efforts to increase the level and improve the quality of pro bono legal services available to the people of the Commonwealth. This Essay concludes with a number of proclamations that provide an eloquent summary of his legacy, especially as that legacy relates to his strong commitment to the people of the Commonwealth of Virginia.

Admittedly, this is not a typical academic article. In an effort to honestly reflect the impact of Chief Justice Hassell's stirring legal career and devoted personal life, this Essay includes a substantial amount of personal recollections from the individuals who knew him best. Nothing can better depict the life and principles of this great man than the words of his closest acquaintances. It has been my intention to provide the venue for their words to shine and, in so doing, to better memorialize Chief Justice Hassell's powerful legacy.

I. THE "DUTY" TO DISSENT: A JURISPRUDENCE OF "YIELDING TO HIGHER PRINCIPLES"

From the time that Chief Justice Hassell took the bench of the Virginia Supreme Court in 1989 until the time of his death in 2011, he authored 297 opinions, 12 concurrences, and 23 dissents.⁹ In six cases, he dissented in part and concurred in part.¹⁰ The subject-matter of his judicial writings encompass a wide variety of legal topics. His opinions are written with an elegance and simplicity that reveal his mastery of the complex legal matters that came before the court. Despite the elegance of his writing, however, the decisions he handed down bear the hallmark of a jurist who intentionally wrote for his audiences. During an October 9, 2003 speech he delivered at Howard University School of Law, he described each of the three distinct "audiences" for which an appellate judge writes:

Keep in mind that an appellate judge must write first to persuade his or her colleagues. Therefore, the appellate judge's immediate audience consists of the members of the court who will participate in the decision-making process.

⁹ These numbers were determined by running a search on LexisNexis. Note that there is some overlap between the concurrences and dissents representing the instances when Chief Justice Hassell would concur in part and dissent in part.

¹⁰ See *Atkins v. Commonwealth*, 534 S.E.2d 312 (Va. 2000), *rev'd*, 536 U.S. 304 (2002); *Arlington Cnty. v. White*, 528 S.E.2d 706 (Va. 2000); *Williams v. Williams*, 501 S.E.2d 417 (Va. 1998); *Jackson v. Commonwealth*, 499 S.E.2d 538 (Va. 1998); *Greater Richmond Transit Co. v. Wilkerson*, 406 S.E.2d 28 (Va. 1991); *Gay v. Va. State Bar*, 389 S.E.2d 470 (Va. 1990).

The second audience a judge must address when writing any type of opinion consists of the litigants who are before the court. Appellate judges must be mindful that we are required to adjudicate the legal principles of the case that [are] pending before the court. Therefore, the scope of the appellate opinion should not exceed the boundaries of the issues as framed by the litigants. Appellate courts are not legislative bodies; rather, appellate courts should confine their decisions to a resolution of the issues before the court. Appellate judges should not, ought not, and must not, act as a “super” legislative body.

The appellate judge must also consider, as his or her audience, the Bar and the public. Lawyers will advise their clients to undertake certain acts or to refrain from certain acts because of judicial precedent. The public will govern its behavior and rely upon the advice of counsel based upon decisional law.¹¹

After making these observations about the process by which appellate court judges author opinions, Chief Justice Hassell then turned to the true purpose of his speech—what he referred to as “the propriety of dissent”¹² in the appellate courts.

After describing the doctrine of stare decisis¹³ and its “significant role in the orderly administration of justice,”¹⁴ Chief Justice Hassell discussed the functions of appellate court dissenting opinions:

¹¹ Leroy Rountree Hassell, Sr., *Appellate Dissent: A Worthwhile Endeavor or an Exercise in Futility?*, 47 HOW. L.J. 383, 386–87 (2004). The Chief Justice delivered this lecture on the occasion of the Fourteenth Annual Clarence Clyde Ferguson, Jr., Lecture Series. The Chief Justice described Professor Ferguson as “the first black tenured professor at the Harvard Law School.” *Id.* at 383. Of Professor Ferguson, Justice Hassell wrote:

When I attended Harvard Law School, I had a few, but not many, conversations with Professor Ferguson. He was friendly and kind. He had a gentle spirit of encouragement. Professor Ferguson, as well as Professor Derrick A. Bell, Jr., the other black tenured professor at Harvard Law School when I was a student, made special efforts to serve as mentors to black students. I, for one, will always be indebted to these men because I can say, without equivocation, that they had a significant impact upon my development as a lawyer and as a jurist.

As I prepared for this lecture, I spent a great deal of time in an effort to learn more about the life of Professor Ferguson. As a result of this endeavor, my esteem for Professor Ferguson continued to increase and, yet, I was somewhat saddened because I wish that I had spent more time with him.

Id. at 384. As I will discuss below, I did not get to know our beloved Chief Justice as well as his former law clerks, friends, fellow jurists, and other colleagues. I, too, have been saddened as I researched and wrote this Essay, wishing, as Chief Justice Hassell did of Professor Ferguson, that I had been able to spend more time with the Chief Justice himself.

¹² *Id.* at 385.

¹³ Much has been written on the question of the propriety and decorum of the dissenting opinion. Many scholars and jurists have offered their thoughts on the subject. For example, Justice William J. Brennan, Jr. stated,

Our strong adherence to the doctrine of *stare decisis* does not, however, compel us to perpetuate what we believe to be an incorrect application of the law; neither will we be compelled by the doctrine of *stare decisis* to ignore our *duty* to develop the orderly evolution of the common law of this Commonwealth. Indeed, this Court's obligation to reexamine critically its precedent will enhance confidence in the judiciary and strengthen the importance of *stare decisis* in our jurisprudence. Although we have only done so on rare occasions, we have not hesitated to reexamine our precedent in proper cases and overrule such precedent when warranted.¹⁵

Having thus situated the act of authoring a dissenting opinion within a normative context, the Chief Justice then elaborated on the notion of dissent as a duty.¹⁶ He offered the following illuminating declaration that further refined his initial observations:

I believe that in the appropriate case, a judge has the *duty* to dissent if, in the opinion of that judge, the majority has failed to properly apply the law or to correctly interpret the constitution. And, even though I have the utmost respect for the role of *stare decisis* and the

Dissent for its own sake has no value, and can threaten the collegiality of the bench. However, where significant and deeply held disagreement exists, members of the Court have a responsibility to articulate it. This is why, when I dissent, I always say why I am doing so. Simply to say, "I dissent," I will not do. William J. Brennan, Jr., *In Defense of Dissents*, 37 HASTINGS L.J. 427, 435 (1986). Another distinguished jurist has examined the reasons judges offer separate opinions.

Why and when do judges write separately? The question is easiest to answer in the case of a dissenting judge. She is driven publicly to distance herself from her colleagues out of profound disagreement, frustration, even outrage. A dissenter is admitting she has not been able to convince her colleagues, and because she herself cannot be convinced by their logic, she can be seen as implicitly criticizing them for being obtuse, lazy, bullheaded or some variation on those qualities—before she ever writes a word. Most judges dissent reluctantly. A dissent makes no new law; it highlights one's difference from a majority of colleagues, and it means extra, self-assigned work.

Patricia M. Wald, *The Rhetoric of Results and the Results of Rhetoric: Judicial Writings*, 62 U. CHI. L. REV. 1371, 1412 (1995). Justice Ginsburg has observed,

What is right for one system and society may not be right for another. In civil-law systems, the nameless, stylized judgment, and the disallowance of dissent are thought to foster the public's perception of the law as dependably stable and secure. The common-law tradition, on the other hand, prizes the independence of the individual judge to speak in his or her own voice, and the transparency of the judicial process.

Ruth Bader Ginsburg, *The Role of Dissenting Opinions*, 95 MINN. L. REV. 1, 3 (2010).

¹⁴ Hassell, *supra* note 11, at 392 (quoting *Selected Risks Ins. Co. v. Dean*, 355 S.E.2d 579, 581 (Va. 1987)).

¹⁵ *Id.* (third emphasis added) (quoting *Nunnally v. Artis*, 492 S.E.2d 126, 129 (Va. 1997)).

¹⁶ *Id.*

application of that doctrine, I remain convinced that on rare occasions, that doctrine must yield to *higher principles*.¹⁷

These “higher principles” are addressed more fully below. The next Section of this Essay discusses a number of Chief Justice Hassell’s dissenting opinions as selected from a full survey of all the opinions from which he felt compelled to dissent. The discussion involves an analysis of some of his more significant dissents, with an eye toward revealing the “higher principles” that provided him with guidance as he discharged his “duty” to dissent.

A. *The Chief Justice and the Dissenting Opinion as Imperative*

Chief Justice Hassell believed that, under certain circumstances, a duty arises to author a dissenting opinion.¹⁸ He further refined this notion by arguing that this “duty”¹⁹ is confined to the “appropriate case.”²⁰ This Section articulates, based upon a close reading of his dissents, the circumstances that, from Chief Justice Hassell’s perspective, command an appeal to the “higher principles”²¹ that justify abrogation of the doctrine of stare decisis.²²

¹⁷ *Id.* (first and third emphases added).

¹⁸ *Id.*

¹⁹ Normative principles in the context of dissenting opinions in the appellate courts are outlined in the American Bar Association’s *Canons of Judicial Ethics*. In 1959, Karl ZoBell wrote,

[W]hen the American Bar Association adopted its Canons of Judicial Ethics, in 1924, it did not ignore the subject of separate opinions. Canon 19 reads, in part:

It is of high importance that judges constituting a court of last resort should use effort and self-restraint to promote solidarity of conclusion and the consequent influence of judicial decision. A judge should not yield to pride of opinion or value more highly his individual reputation than that of the court to which he should be loyal. Except in case of conscientious difference of opinion on fundamental principle, dissenting opinions should be discouraged in courts of last resort.

Karl M. ZoBell, *Division of Opinion in the Supreme Court: A History of Judicial Disintegration*, 44 CORNELL L.Q. 186, 210 (1959). This formulation of the jurist’s duty in this context has certainly passed the test of time. Eighty-nine years since its adoption, this section of Canon 19 still holds sway in identical language. See CANONS OF JUDICIAL ETHICS Canon 19 (1924).

²⁰ Hassell, *supra* note 11, at 392.

²¹ *Id.*

²² As will be discussed at length below, there is arguably a special set of circumstances that may compel a jurist beyond a mere application of the governing principles of precedent toward the development of a “categorical imperative” of judicial dissent. This imperative might provide the basis for the postulation of a transformational notion of the duty to dissent within the common law tradition. In a more general context, Immanuel Kant observes,

Providing a brief review of the history of appellate courts in early America in his speech at Howard University School of Law, Chief Justice Hassell remarked:

As you are undoubtedly aware, the Supreme Court of Virginia was created before the Supreme Court of the United States, and the Supreme Court of Virginia served as a model for the United States Supreme Court. However, during the formative years of both courts, the two courts had a significant difference of opinion regarding the propriety of dissent.²³

He then described the differences among the philosophies of dissent with an emphasis on the origins of the differing approaches—the philosophy that involved paying fealty to the notion of unanimous opinions or the approach that favored an encouragement of disagreement among the jurists who heard a particular case.²⁴ In doing so, he made the following observations:

Before John Marshall served as Chief Justice of the Supreme Court of the United States, the Justices announced the Court’s decisions “through the seriatim opinions of its members.” This practice was consistent with the custom of the King’s Bench. Chief Justice John Marshall changed this tradition and implemented the procedure of the announcement of the Court’s judgments in one opinion. Dissent was discouraged, and the opinions were virtually unanimous. . . .

Duty is the necessity of acting from respect for the law. I may have inclination for an object as the effect of my proposed action, but I cannot have respect for it, just for this reason, that it is an effect and not an energy of will. Similarly, I cannot have respect for inclination, whether my own or another’s; I can at most, if my own, approve it; if another’s, sometimes even love it; i.e. look on it as favourable to my own interest. It is only what is connected with my will as a principle, by no means as an effect—what does not subserve my inclination, but overpowers it, or at least in case of choice excludes it from its calculation—in other words, simply the law of itself, which can be an object of respect, and hence a command. Now an action done from duty must wholly exclude the influence of inclination, and with it every object of the will, so that nothing remains which can determine the will except objectively the law, and subjectively pure respect for this practical law, and consequently the maxim that I should follow this law even to the thwarting of all my inclinations.

IMMANUEL KANT, *Fundamental Principles of the Metaphysics of Morals*, in BASIC WRITINGS OF KANT (1785) 143, 158–59 (Allen W. Wood ed., Thomas K. Abbott trans., Modern Libr. 2001) (footnote omitted). Kant defines a “maxim” as “the subjective principle of volition. The objective principle (*i.e.* that which would also serve subjectively as a practical principle to all rational beings if reason had full power over the faculty of desire) is the practical law.” *Id.* at 159 n.1. Based upon the foregoing, the question of whether a jurist should dissent can be resolved by an appeal to Kantian principles. In other words, the desire to dissent can be converted into a “categorical imperative” under which the requirement of offering a dissent comes within the purview of the practical law. For the intuitional basis of the “categorical imperative,” see *id.* at 210–11.

²³ Hassell, *supra* note 11, at 385.

²⁴ *Id.*

The practice of the Supreme Court of Virginia, at that time known as the Supreme Court of Appeals, was remarkably different.²⁵ Chief Justice Hassell continued by articulating the role of dissent and his own philosophy regarding the importance of dissenting opinions.²⁶ In doing so, he provided a conceptual jumping-off point for moving into a discussion regarding a selection of his dissenting opinions:

The intellectual historical debate about the propriety of the use of a dissenting opinion is interesting, but I do not believe that any jurist would seriously disagree that a judge has both the duty and responsibility to dissent in the appropriate case. The dissenting opinion can be a powerful and persuasive device that can shape and influence the development of the law in the judicial, executive, and legislative branches of government.²⁷

B. Toward the Identification of the "Appropriate Case" that Gives Rise to the "Duty" to Dissent: An Analysis of Selected Virginia Supreme Court Dissenting Opinions by Chief Justice Hassell

Karl ZoBell writes, "The argument most frequently advanced by proponents of Dissent is that by forcefully registering disapproval of what the Court declares to be the law today, a Justice may have a positive effect upon the law as it develops tomorrow."²⁸ An example of the operation of this principle is Chief Justice Hassell's reflections on cases in his speech at Howard Law School demonstrate this principle.²⁹ He observed, "Sometimes, a dissent may form the basis of a later decision to overrule the opinion that was the subject of the dissent. I have written dissents that in later opinions formed the basis of the rationales used to overrule prior cases."³⁰ One of these cases in particular provides an interesting insight into Chief Justice Hassell's articulation

²⁵ *Id.* (footnotes omitted).

²⁶ *Id.* at 386.

²⁷ *Id.* (emphasis added). As ZoBell's article confirms, the questions of the unanimity in judicial opinions are most assuredly not merely a matter of modern controversy. Zobell, *supra* note 19, at 187–95. Many decades ago, the topic served as the subject matter of law review articles. See, e.g., Evan A. Evans, *The Dissenting Opinion—Its Use and Abuse*, 3 MO. L. REV. 120 (1938); Alex. Simpson, Jr., *Dissenting Opinions*, 71 U. PA. L. REV. 205 (1923). The question remains the concern of modern legal scholarship. See generally Robert Post, *The Supreme Court Opinion as Institutional Practice: Dissent, Legal Scholarship, and Decisionmaking in the Taft Court*, 85 MINN. L. REV. 1267, 1274–75 (2001); Richard A. Primus, *Canon, Anti-Canon, and Judicial Dissent*, 48 DUKE L.J. 243, 247 (1998); Adam S. Hochschild, Note, *The Modern Problem of Supreme Court Plurality Decision: Interpretation in Historical Perspective*, 4 WASH. U. J.L. & POL'Y 261, 261–62 (2000).

²⁸ ZoBell, *supra* note 19, at 211.

²⁹ Hassell, *supra* note 11, at 388–91 (citing *Atkins v. Commonwealth*, 534 S.E.2d 312 (Va. 2000), *rev'd*, 536 U.S. 304 (2002)).

³⁰ *Id.* at 391.

of the “higher principles” upon which he founded his imperative of dissent.

As I prepared this Essay, I read each of Chief Justice Hassell’s dissenting opinions. Each was well-written, and in each he carefully articulated the reasons for his dissent. He propounded his arguments persuasively, and he adduced in support of each proposition the logic undergirding his position. The corpus of his dissenting opinions is voluminous.³¹ As I read his work, I was struck by a number of key cases in which singular, prominent themes arose.

In *Hagan v. Antonio*, the Virginia Supreme Court considered the question of

whether alleged improper sexual conduct by a physician during his [pre-employment physical] examination of a patient was “based on health care or professional services rendered,” within the meaning of the Virginia Medical Malpractice Act (the Act), thus obligating the patient to give a notice of claim under the Act prior to instituting a common-law action for damages against the physician.³²

The trial court sustained the defendant’s demurrer and motion.³³ In ruling that the trial court did not err, the Virginia Supreme Court held,

When the statutory definitions are applied to the facts alleged, the conclusion must be that defendant’s conduct, legitimate or improper, was “based on” an “act” by a health care provider to “a patient during the patient’s medical . . . care.” In other words, the defendant’s conduct, according to the allegations, stemmed from, arose from, and was “based on” the performance of a physical examination.³⁴

Chief Justice Hassell dissented. “I dissent because I do not believe that the Medical Malpractice Act applies to acts of sexual molestation committed by a health care provider when such acts would constitute the crime of sexual assault.”³⁵ His analysis of the court’s opinion turned on the evaluation of the logical extension of the application of the court’s holding to a number of related instances.³⁶

The majority’s literal construction of the Act will create illogical results which the General Assembly did not intend. For example, under the majority’s holding, a physician who commits an act of sexual molestation on a young boy during the course of a urological

³¹ See *supra* note 9 and accompanying text.

³² 397 S.E.2d 810, 810 (Va. 1990). In the action at trial, the defendant/physician “filed a demurrer and motion to dismiss, asserting that the plaintiff’s motion for judgment was insufficient in law because [she] had failed to allege that she had given the defendant notice ‘of the alleged malpractice in writing’ prior to commencement of the action.” *Id.*

³³ *Id.*

³⁴ *Id.* at 812.

³⁵ *Id.* (Hassell, J., dissenting) (citation omitted).

³⁶ *Id.* at 813.

examination would be entitled to the protection of the Act. Similarly, an obstetrician who sexually assaulted a female patient during a pelvic examination would also be entitled to the protection of the Act. Certainly, the General Assembly did not intend such a broad interpretation of the Act.³⁷

In examining the logical implications of the court's decision, Chief Justice Hassell observed,

The tort alleged by [the plaintiff] was not a tort based upon the provision of health care but rather a tort arising out of [the physician's] prurient interests and actions. This alleged tort falls outside of the scope of the Act. Accordingly, I would reverse the judgment of the trial court and remand the case for a trial on the merits.³⁸

If this had been the majority opinion of the court, there is no way to know whether the plaintiff might have prevailed on remand. Had Chief Justice Hassell's logic, available because he yielded to the command of the "duty to dissent, ruled the day, the plaintiff would at least have had the opportunity to be heard.

In *Taylor v. Worrell Enterprises, Inc.*, the Virginia Supreme Court considered the question of "whether an itemized list of long distance telephone calls placed by the Governor's office must be disclosed when requested pursuant to the Freedom of Information Act."³⁹ In its opinion, the court stated,

Viewing the Act as a whole, and presuming that the General Assembly acted within constitutional parameters, we conclude that the General Assembly intended to exclude from mandatory disclosure information which, if required to be released, would unconstitutionally interfere with the ability of the Governor to execute the duties of his office. Therefore, the information at issue here must fall within [the statutory] exemption and is not subject to compelled disclosure under the Act.⁴⁰

Chief Justice Hassell dissented. The language he chose to introduce his argument again revealed a fundamental concern for those citizens of the Commonwealth who seek access to the court in search of "justice."

This Court has an obligation to apply its procedural rules impartially and uniformly to all litigants. Uniform application of procedural rules, *regardless of the status of the litigant who appears before the bar of this Court*, is an *indispensable component of justice*. I dissent because the plurality ignores this Court's procedural rules and

³⁷ *Id.*

³⁸ *Id.*

³⁹ 409 S.E.2d 136, 137 (Va. 1991).

⁴⁰ *Id.* at 139-40.

precedent and decides a constitutional issue that a majority of the Justices of this Court believe is not properly before this Court.⁴¹ Here, Chief Justice Hassell yielded to his perception of higher principles—in this case, the principle of justice⁴²—for all citizens of the Commonwealth.

In *Kelly v. First Virginia Bank-Southwest*, the Virginia Supreme Court considered a case of alleged sexual harassment from a plaintiff who claimed she suffered at the hands of her immediate supervisor.⁴³ She alleged that she reported to his supervisors that he had “engaged in repeated acts and statements of a sexual nature that were offensive, humiliating, embarrassing, distressing, and harassing.”⁴⁴ She also alleged that his supervisors, instead of issuing a reprimand, “further intimidated and embarrassed” her.⁴⁵ Essentially, the court affirmed that the operation of the exclusivity provision of the Virginia Worker’s Compensation Act barred the plaintiff’s claim, in that the actions of which she complained “arose out of her employment.”⁴⁶ Then-Justice Hassell dissented: “I dissent because I do not believe that [the plaintiff’s] claims are barred by the Workers’ Compensation Act”⁴⁷ He elaborated as follows:

I believe that under the facts of the present case, sexual harassment cannot and should not be considered “a natural incident of work” contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment. Additionally, a supervisor’s intentional acts of sexual harassment against an employee are not acts “in furtherance of the employer’s business.”⁴⁸

Chief Justice Hassell further articulated his fealty to “higher principles” as he expressed a profound concern for the women of the Commonwealth who are employed in the workplaces of Virginia: “As I understand the majority’s order in this case . . . female employees in Virginia are deemed to have accepted the risk of being victimized by sexual assaults committed by their supervisors if those assaults happen to occur in the work place. I do not agree with this premise.”⁴⁹

⁴¹ *Id.* at 140 (Hassell, J., dissenting) (emphasis added).

⁴² “But let justice roll on like a river, righteousness like a never-failing stream!” *Amos* 5:24 (New International Version).

⁴³ 404 S.E.2d 723, 723 (Va. 1991).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *See id.* at 724.

⁴⁷ *Id.* at 726 (Hassell, J., dissenting).

⁴⁸ *Id.* at 727–28 (citation omitted).

⁴⁹ *Id.* at 728.

In *Bethea v. Commonwealth*, the Virginia Supreme Court “consider[ed] whether a police officer violated the Fourth Amendment rights of a passenger in a motor vehicle when the officer requested the passenger to get out of the vehicle during a lawful traffic stop.”⁵⁰ In his dissent, then-Justice Hassell wrote concerning the court’s opinion that the police officer’s request did not violate the passenger’s rights:

The majority, applying the totality of circumstances test . . . , states:

The totality of the circumstances we consider here . . . included a traffic stop in a high-crime area; similar traffic stops two days earlier in the same neighborhood in which weapons were discovered in a car; [the passenger’s] actions immediately prior to the stop; [the police officer’s] 22 years of experience and his statements that [the passenger’s] actions “startled” and “scared” him; and [the police officer’s] concern that [the passenger] might have weapons in the car. These circumstances constitute “specific and articulable facts” which show that [the police officer] was reasonably concerned for his safety and believed that [the passenger] might have had access to weapons with which to assault him. These facts justified the intrusion on [the passenger’s] Fourth Amendment rights that occurred when [the police officer] asked him to get out of the car.⁵¹

In accordance with an appeal to “higher principles” of justice, then-Justice Hassell wrote,

I disagree with the majority’s holding and logic for several reasons. I do not believe that it is the law in this Commonwealth, or in this nation, that one’s Fourth Amendment rights are lessened simply because one happens to live or travel in a high-crime area. Certainly, the Fourth Amendment does not accord a greater degree of protection to people who do not live in impoverished communities or neighborhoods that experience high crime rates.⁵²

In *Stern v. Cincinnati Insurance Co.*, the Virginia Supreme Court heard a case that arose out of the following facts:

On March 21, 1995, Elena [Seroka Stern], age 10, was waiting at her usual school bus stop on the east side of Sandusky Drive, a two-lane road, in the City of Lynchburg. Elena’s bus approached from the north and stopped to allow her to board. The driver activated the bus’ flashing red lights and safety stop sign and extended its safety gate, and Elena began to cross the road in front of the gate. When she was

⁵⁰ 429 S.E.2d 211, 212 (Va. 1993).

⁵¹ *Id.* at 214 (Hassell, J., dissenting) (internal citation omitted).

⁵² *Id.*

two or three feet east of the center line of the road and several feet from the front of the bus, a car struck and injured her.⁵³

The court addressed two issues in the case.⁵⁴ In affirming the trial court's conclusion, the court held "that Elena was neither 'occupying' nor 'using' the bus at the time of the accident and, therefore, was not entitled to underinsured motorist coverage" under the automobile driver's uninsured motorist provision of his insurance policy.⁵⁵ The court, in holding that there was no coverage under the insurance policy, stated that it did "not think that Elena, who was near the center line of the road when she was struck, was in . . . close proximity to the school bus."⁵⁶ Based upon this analysis, the court denied Elena coverage under the automobile driver's automobile insurance policy.

The court then turned to the second issue, which involved the interpretation of the Virginia uninsured motorist statute.⁵⁷ In holding that the child was not "using" the school bus at the time the automobile struck her, the court explained that "[s]he had not been a passenger in the bus, and, although the school bus was utilized by its driver to create a safety zone for Elena to cross the street, the safety measures did not constitute a use of the bus *by Elena*."⁵⁸

Later reflecting on the foundation for his dissenting opinion, Chief Justice Hassell said,

The majority [in *Stern*] held that [Elena] was not using the bus within the intentment of Code § 38.2-2206 and, therefore, she was not entitled to underinsured motorist coverage under a liability policy.

The implications of the majority's holding were significant because that holding affected all children who rode buses to school daily in Virginia.⁵⁹

In dissent, Chief Justice Hassell drew not solely upon his knowledge of insurance law, the rules of contract interpretation, and the

⁵³ 477 S.E.2d 517, 518 (Va. 1996).

⁵⁴ Two issues were certified to the court by the Fourth Circuit Court of Appeals. *Id.* at 519. The first issue involved inquiry into whether Elena was, as a matter of law, considered to be "occupying" the school bus as defined under the terms and conditions of the motor vehicle liability insurance policy of the driver who struck Elena. *Id.* The second issue, involving statutory construction of the governing provision of the applicable Virginia code, *id.*, is discussed below, *infra* note 56.

⁵⁵ *Id.* at 518–19.

⁵⁶ *Id.* at 519. The court construed the "clear and unambiguous" provisions of the insurance policy, based upon the "plain and ordinary meaning" of the relevant terms, to conclude that the circumstances under which Elena was struck did not satisfy the "close proximity" standard. "She was merely approaching the bus, and we cannot say that she was getting in or on the bus, as contemplated in the [insurance] policy." *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 520.

⁵⁹ Hassell, *supra* note 11, at 391 (footnotes omitted).

canons of statutory interpretation, but also upon his experiences as a parent. In a dissenting opinion joined by Justices Lacy and Keegan, he wrote,

I write separately because I believe that Elena Stern was “getting on” the school bus as that term is set forth in the . . . policy of insurance.

The . . . policy of insurance defines “occupying” as “in, upon, getting in, on, out or off.” As the majority points out, Elena was waiting for the public school bus at her designated bus stop when the bus approached from the north and stopped, allowing her to board. The bus driver activated the bus’ flashing red lights and safety stop sign and extended the bus’ safety gate. Elena began to cross the road in front of the gate. She was several feet from the front of the bus when a car struck her. *My experiences, as well as those of thousands of parents throughout this Commonwealth who accompany children to bus stops daily*, lead me to the inescapable conclusion that, based upon the aforementioned facts, Elena clearly was getting on the bus when she was injured.⁶⁰

In his speech at Howard Law School, Chief Justice Hassell reminded his audience that “*stare decisis* . . . plays a significant role in the orderly administration of justice by assuring consistent, predictable, and balanced application of legal principles.”⁶¹ Despite his obvious recognition of the importance of *stare decisis*, Chief Justice Hassell, likely in recognition of his duty to incorporate a human element in the application of legal strictures, dissented.⁶² Having taken into account the competing arguments of whether the laws of the Commonwealth of Virginia entitled Elena and her parents to relief, Chief Justice Hassell appealed to his life experiences, to those of other parents, and to his knowledge of human nature, to conclude that Elena and her parents should have prevailed on their claim. As a father, Chief Justice Hassell saw, through the lens of a parent, the factual circumstances of the case of a little girl attempting to cross a road to catch her school bus. His

⁶⁰ *Stern*, 477 S.E.2d at 520–21 (Hassell, J., dissenting) (emphasis added).

⁶¹ Hassell, *supra* note 11, at 392 (quoting *Selected Risks Ins. Co. v. Dean*, 355 S.E.2d 579, 581 (Va. 1987)).

⁶² In the context of the process by which judges are selected, Professor Joseph Raz has commented,

When discussing appointments to the Bench, we distinguish different kinds of desirable characteristics judges should possess. We value their knowledge of the law and their skills in interpreting laws and in arguing in ways showing their legal experience and expertise. We also value their wisdom and understanding of human nature, their moral sensibility, their enlightened approach, etc.

JOSEPH RAZ, *THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY* 48 (2d ed. 2009). In offering this dissent, Hassell exhibited the kind of understanding of human nature that, it may be argued, trumps the mechanical application of legal principles.

vision of the legal questions presented empowered him to speak in terms that compelled looking beyond the strictures of insurance, contract, and statutory canons of interpretation. In his dissent, Chief Justice Hassell commented,

[C]ontrary to the majority's holding, I believe that Elena was using the bus within the intendment of Code § 38.2-2206. The school bus driver had stopped the bus for the sole purpose of allowing the children to get onto the bus, and, as the majority admits, the driver activated the bus' flashing red lights and safety stop sign, and extended its safety gate. The majority also admits that after the driver had activated the bus' safety features, Elena began to cross the road "in front of the gate." The majority's own factual summary indicates to me that Elena was, at the very least, using the bus' safety devices. The sole purpose of such devices is to protect school children. Therefore, I am at a loss to understand the majority's conclusion that "the safety measures did not constitute a use of the bus by Elena."⁶³

Although Elena and her parents did not prevail, nearly identical facts returned to the docket of the Virginia Supreme Court in 1998.⁶⁴ Chief Justice Hassell later reflected,

Two years later, in *Newman v. Erie Insurance Exchange*, the Supreme Court of Virginia, in a strikingly similar case, overruled its decision in *Stern*. The court held that a child struck by a motor vehicle while walking across a street to get on a bus whose driver had stopped the bus and activated the warning lights and stop arm was in the process of using the bus within the intendment of Code § 38.2-2206.⁶⁵

⁶³ *Stern*, 477 S.E.2d at 521 (Hassell, J., dissenting). Of particular interest here is the language Hassell employed as he reflected later on his occasions of disagreement with the majority of the court. He appears to have been mindful of his own admonition that

Collegiality is an important characteristic necessary for an effective appellate court. Mutual respect and admiration, camaraderie, and good feelings toward fellow judges can only enhance and strengthen the deliberation process. On the other hand, harsh words uttered in a dissent may be disruptive and counterproductive to the harmony and goodwill within the small group setting of an appellate court.

Hassell, *supra* note 11, at 387. Although it is obvious that Chief Justice Hassell had a fundamental disagreement with the court's opinion, he did not employ any of the verboten phraseology that Judge Patricia M. Wald has described. Wald, *supra* note 13, at 1382–83 (urging judges not to use such words as "facile," "simplistic," "contrary to common sense," and "blind" to describe one another's opinions). Although Judge Wald's observations relate to studies of the United States Supreme Court, it may be argued that her counsel is applicable by logical extension to, and should inform the decorum of, any court of last resort.

⁶⁴ See *Newman v. Erie Ins. Exch.*, 507 S.E.2d 348, 349 (Va. 1998).

⁶⁵ Hassell, *supra* note 11, at 391–92.

In *Newman*, after a thorough review of precedent interpreting the applicable statute,⁶⁶ the court opined,

In light of [precedent], we are compelled to overrule the holding in *Stern* that a child injured under the facts presented was not “using” the school bus, within the meaning of Code § 38.2-2206. Thus, under the facts now before us, we conclude that [the child] was using the school bus as a vehicle at the time he was injured, based on his use of the bus’ specialized safety equipment and his immediate intent to become a passenger in the bus. Those facts establish the required causal relationship between the accident and [the child’s] use of the bus as a vehicle.

In reaching this decision, we have given deliberate consideration to the critical role that the doctrine of *stare decisis* serves in insuring the stability of the law. However, we have a duty of equal dignity to reexamine critically our precedent and to acknowledge when our later decisions have presented an irreconcilable conflict with such precedent.

Under *Stern*, only children who have exited a school bus under the protection of the bus’ safety equipment could be entitled to [uninsured and underinsured motorist] coverage when injured in a lane opposite the lane in which the bus was stopped. Yet, children injured in the *same* location while walking across the street to board the *same* bus under the protection of the *same* specialized safety equipment would be denied such coverage. Our action today also is taken to eliminate this paradox resulting from the application of *Stern*.⁶⁷

This decision vindicated the logic and wisdom of human experience embodied in Chief Justice Hassell’s dissent in *Stern*. By virtue of the “higher principles” articulated in his dissent, he was able to appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed.

Nor is the appeal always in vain. In a number of cases dissenting opinions have in time become the law.⁶⁸

In his speech at Howard Law School, Chief Justice Hassell described the most critical objective of dissenting opinions:

The most important function of a dissent, in my view, is to expose the perceived error or weaknesses in the logic that the majority has chosen to employ in its decision. Sometimes, particularly when federal

⁶⁶ *Newman*, 507 S.E.2d at 351. The court noted that “[t]he coverage mandated by the statute is limited to injuries that the permissive user sustained while actually using the insured vehicle.” *Id.* (citing *Edwards v. GEICO*, 500 S.E.2d 819, 821 (Va. 1998); *Randall v. Liberty Mut. Ins. Co.*, 496 S.E.2d 54, 55 (Va. 1998); *Ins. Co. of N. Am. v. Perry*, 134 S.E.2d 418, 421 (Va. 1964)).

⁶⁷ *Id.* at 352–53 (internal citations omitted).

⁶⁸ *ZoBell*, *supra* note 19, at 211 (quoting CHARLES EVANS HUGHES, *THE SUPREME COURT OF THE UNITED STATES* 68 (1936)).

constitutional rights are implicated, a well-written dissent will attract the attention of the United States Supreme Court and influence that Court's decision to grant certiorari. For example, consider the case of *Atkins v. Commonwealth*.⁶⁹

Regarding that case, and in the same speech at Howard, the Chief Justice remembered,

I dissented for the following reason: Virginia Code § 17.1-313 requires that the Supreme Court of Virginia review a sentence of death and that the court consider, among other things, "whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." I believed that the evidence presented to the jury indicated that defendant Atkins had an I.Q. of 59, the mental age of a child between the ages of nine and twelve, and that he was mentally retarded. Therefore, in my opinion, the imposition of the death penalty was excessive and disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. I concluded in my dissenting opinion that, "the imposition of the sentence of death upon a mentally retarded defendant with an I.Q. of 59 is excessive . . . considering both the crime and the defendant."⁷⁰

Chief Justice Hassell also joined Justice Koontz's dissenting opinion in the case. Justice Koontz, reflecting Chief Justice Hassell's own opinion, wrote,

[I]t is indefensible to conclude that individuals who are mentally retarded are not to some degree less culpable for their criminal acts. By definition, such individuals have substantial limitations not shared by the general population. A moral and civilized society diminishes itself if its system of justice does not afford recognition and consideration of those limitations in a meaningful way.⁷¹

In *Atkins v. Virginia*, the United States Supreme Court considered Atkins's appeal from the Virginia Supreme Court decision upholding his capital conviction.⁷² Justice Stevens, writing for the Court, determined the following:

Those mentally retarded persons who meet the law's requirements for criminal responsibility should be tried and punished when they commit crimes. Because of their disabilities in areas of reasoning, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct. Moreover, their impairments can jeopardize the reliability and fairness of capital proceedings against mentally

⁶⁹ Hassell, *supra* note 11, at 388 (citing *Atkins v. Commonwealth*, 534 S.E.2d 312 (Va. 2000), *rev'd*, 536 U.S. 304 (2002)).

⁷⁰ *Id.* at 389 (footnote omitted) (quoting *Atkins*, 534 S.E.2d at 321).

⁷¹ *Atkins*, 534 S.E.2d at 325 (Koontz, J., dissenting).

⁷² 536 U.S. 304, 321 (2002).

retarded defendants. Presumably for these reasons, in the 13 years since we decided *Penry v. Lynaugh*, the American public, legislators, scholars, and judges have deliberated over the question whether the death penalty should ever be imposed on a mentally retarded criminal. The consensus reflected in those deliberations informs our answer to the question presented by this case: whether such executions are “cruel and unusual punishments” prohibited by the Eighth Amendment to the Federal Constitution.⁷³

Chief Justice Hassell observed that the United States Supreme Court, in that opinion, “overruled its prior decision in *Penry v. Lynaugh*. The Court held that the execution of a mentally retarded defendant violated the Eighth Amendment’s prohibition against cruel and unusual punishment.”⁷⁴ As the Court did so, it pointed to the dissenting opinions of Chief Justice Hassell and Justice Koontz, and stated that “[b]ecause of the gravity of the concerns expressed by the dissenters, and in light of the dramatic shift in the state legislative landscape that has occurred in the past 13 years, we granted certiorari to revisit the issue that we first addressed in the *Penry* case.”⁷⁵ *Atkins* is an excellent example of the profound effect a judge can have upon the rule of law by answering the call to dissent in appropriate circumstances.

Next, in *Black v. Commonwealth*, the Virginia Supreme Court heard a case involving Virginia’s cross-burning statute:

In these appeals, we consider whether Code § 18.2-423, which prohibits the burning of a cross with the intent of intimidating any person or group of persons, impermissibly infringes upon constitutionally protected speech. The case of *Black v. Commonwealth* involves a Ku Klux Klan rally on private property with the permission of the owner, where a cross was burned as a part of the ceremony. The companion cases of *O’Mara v. Commonwealth* and *Elliott v. Commonwealth* involve the attempted burning of a cross in the backyard of the home of . . . an African-American, without permission. We conclude that, despite the laudable intentions of the General Assembly to combat bigotry and racism, the selectivity of its statutory proscription is facially unconstitutional because it prohibits otherwise permitted speech solely on the basis of its content, and the statute is overbroad.⁷⁶

Once again, Chief Justice Hassell dissented. His tone was strident as he voiced his opposition to the position advanced in the majority opinion:

I dissent. The majority opinion invalidates a statute that for almost 50 years has protected our citizens from being placed in fear of

⁷³ *Id.* at 306–07 (internal citation omitted).

⁷⁴ Hassell, *supra* note 11, at 390 (footnote omitted).

⁷⁵ *Atkins*, 536 U.S. at 310.

⁷⁶ 553 S.E.2d 738, 740 (Va. 2001), *aff’d in part, rev’d in part*, 538 U.S. 343 (2003).

bodily harm by the burning of a cross. The majority concludes that the Constitution of the United States prohibits the General Assembly from enacting this statute. I find no such prohibition in either the Constitution of Virginia or the Constitution of the United States. Without question, the framers of the First Amendment never contemplated that a court would construe that Amendment so that it would permit a person to burn a cross in a manner that intentionally places citizens in fear of bodily harm.

I am concerned about the fair application of our jurisprudence to every citizen and the proper interpretation of our Federal and State Constitutions. These same concerns for fairness and the safety of our citizens were the very basis for the General Assembly's decision to enact Code § 18.2-423 almost 50 years ago.

I stand second to none in my devotion to the First Amendment's mandate that most forms of speech are protected, irrespective of how repugnant and offensive the message uttered or conveyed may be to others. However, contrary to the view adopted by the majority in these appeals, the First Amendment does not permit a person to burn a cross in a manner that intentionally places another person in fear of bodily harm.⁷⁷

The United States Supreme Court subsequently affirmed the unconstitutionality of this statute.⁷⁸ However, it may be argued that had Chief Justice Hassell's approach prevailed, the powerful public policy argument inherent in his dissent would have fostered increased justice in the Commonwealth of Virginia. Such a result was arguably the goal of the Virginia General Assembly a half-century ago. In any event, the case represents yet another instance where the Chief Justice yielded to "higher principles" and voiced a powerful dissent. When Chief Justice Hassell raised his voice in dissent, he did so frequently in favor of the less powerful, and always on behalf of the citizens of the Commonwealth he loved and served so well.⁷⁹

II. THE CHIEF JUSTICE AS EDUCATOR

As I researched and prepared to write this Essay, I corresponded with many individuals who knew Chief Justice Hassell intimately and who interacted with him in many facets. The remainder of this Essay

⁷⁷ *Id.* at 748 (Hassell, J., dissenting).

⁷⁸ *Virginia v. Black*, 538 U.S. 343, 347–48 (2003).

⁷⁹ The Chief Justice was a true son of the Commonwealth of Virginia. He commented: "I do not wish to serve, however, because I happen to be black . . ." 'Rather, I desire to serve because I am a Virginian by birth who has a strong affection and love for the [C]ommonwealth and its people.'" Anita Kumar, *UPDATED: Former Supreme Court Chief Justice Hassell Dies*, WASH. POST (Feb. 9, 2011, 10:31 AM), http://voices.washingtonpost.com/virginiapolitics/2011/02/former_supreme_court_justice_h.html.

shares the words of those individuals who knew Chief Justice Hassell much better than I.

It is important to note that the Chief Justice was indeed a true polymath and advocate for education.⁸⁰ Jeffrey A. Brauch, Dean of Regent University School of Law offered this observation:

Chief Justice Hassell was a natural teacher. He loved students and fervently sought their success. He spent a week with us at Regent every spring, and in that week he guest-lectured in 10-12 classes. He was prepared for every one of those classes. He had spent the months leading up to his visit collecting cases and making notes on the different subjects he taught. He loved to teach. Justice Hassell was concerned that students pursue excellence in everything they did, particularly in their legal writing. He regularly offered to work one-on-one with students on their writing skills.

Chief Justice Hassell may not have realized it, but he taught all of us—students and faculty—just through his character. He pursued and personally displayed excellence, professionalism, and faith. We learned from his words; we learned even more from his life.⁸¹

Indeed, Regent University School of Law was privileged to enjoy a special relationship with Chief Justice Hassell. As Dean Brauch further explains,

[f]or over fifteen years, Justice Hassell served as Jurist-in-Residence at Regent University School of Law. He spent a week on campus each spring with students and faculty teaching in many settings. He taught classes, met with students individually and in groups over meals, provided counsel and advice, mooted competition teams, among a host of other things. In the last three years he visited the school one day per month in addition to his week-long visit. During those visits he met with student leaders, faculty, and staff, and gave a series of presentations on career preparation—from clerkship opportunities to displaying professionalism and civility in the practice of law.⁸²

By virtue of his sincere interest in the students and faculty of the law school, illustrated by Dean Brauch's comments, it is readily evident

⁸⁰ See Martin, *supra* note 8, at 6 (“The child of teachers, Chief Justice Hassell had a lifelong passion for education. While he was at McGuireWoods he served as chairman of the Richmond School Board, the youngest person to do so. He enjoyed teaching and took a personal interest in his students at the University of Richmond School of Law and Regent University School of Law, always challenging them to strive for greatness. He kept in touch with them after graduation, following their personal and professional development and taking great delight in their achievements.”).

⁸¹ E-mail from Jeffrey A. Brauch, Dean, Regent Univ. Sch. of Law, to author (Nov. 28, 2012, 12:27 PM) (on file with the Regent University Law Review).

⁸² Jeffrey A. Brauch, *Leroy Hassell the Teacher*, EDUC. & PRAC., Spring 2011, at 1, 3.

that Chief Justice Hassell was a consummate educator.⁸³ I learned personally of his dedication to student scholarship when he served as a guest lecturer in my spring 2009 Race and the Law seminar. Ahead of his visit to our class (45 minutes had been allotted for his session),⁸⁴ he sent a list of thirteen cases, requesting that the students read them in preparation for his lectures.⁸⁵ The cases he selected for his lecture dealt with diverse areas of the law, and several were authored by the Chief Justice himself. For example, part of the assigned material were Virginia Supreme Court cases of special historical importance to the cause of civil rights. In *Lockhart v. Commonwealth Education Systems Corp.*, a civil rights case involving a claim of unjust dismissal, Chief Justice Hassell underscored the importance of equality by writing,

We do not retreat from our strong adherence to the employment-at-will doctrine. We merely hold that the narrow exception to that doctrine . . . includes instances where, as here, employees are terminated because of discrimination based upon gender or race. The discharges [of the plaintiffs] are allegedly tortious not because they have a vested right to continued employment, but because their employers misused the freedom to terminate the services of at-will employees by purportedly discriminating against their employees on the basis of race and gender.⁸⁶

Chief Justice Hassell assigned two of these cases, in my opinion, in order to permit the students to develop a better appreciation of the rule of law, especially the role of stare decisis. The first of these, *Loving v. Commonwealth*,⁸⁷ was a case in which the Virginia Supreme Court held that the sections of the Virginia Code⁸⁸ proscribing miscegenation violated neither the Constitution of the Commonwealth of Virginia nor of the United States.⁸⁹ He also had the students read *Loving v. Virginia*, a case in which the United States Supreme Court held that the Virginia statutes violated the Fourteenth Amendment rights of Mr. and Mrs.

⁸³ “Justice Hassell was above all a teacher. That was evident from the amount of time he spent with students.” *Id.* at 3. “Each year, Justice Hassell would ask for a (seemingly) crazy number of hours of student time—in class and out. . . . He arrived [on campus] with a gigantic binder of cases and notes he had prepared in the weeks leading up to the visit and got to work.” *Id.*

⁸⁴ E-mail from author to Race and the Law Students (March 4, 2009, 9:51 AM) (on file with the Regent University Law Review).

⁸⁵ E-mail from Peggy Lacks, Admin. Assistant to Chief Justice Leroy Rountree Hassell, Sr., to Natt Gantt, Assoc. Dean, Regent Univ. Sch. of Law (Mar. 3, 2009, 3:40 PM) (on file with author).

⁸⁶ 439 S.E.2d 328, 322 (Va. 1994).

⁸⁷ 147 S.E.2d 78 (Va. 1966).

⁸⁸ VA. CODE ANN. §§ 20-58, -59 (1950).

⁸⁹ *Loving*, 147 S.E.2d at 82.

Loving.⁹⁰ These cases offer powerful object lessons in the way in which the rule of law can be seen as an instrument for true justice.

Chief Justice Hassell had a profound influence on his students. As one student unabashedly remarked, “Chief Justice Hassell impacted not only my performance as a law school student but essentially my entire legal career, for which I am forever grateful.”⁹¹

III. THE CHIEF JUSTICE AS MENTOR

Although Chief Justice Hassell tirelessly contributed so much to so many as a jurist⁹² and educator, he nonetheless found the time to serve

⁹⁰ 388 U.S. 1, 12 (1967).

⁹¹ E-mail from Rebekah Kaylor, Exec. Editor, Regent Univ. Law Review, Class of 2013, to author (Sept. 24, 2012, 10:19 PM) (on file with the Regent University Law Review). In her email, Ms. Kaylor recounts an experience with Chief Justice Hassell that had a profound influence on her as a student.

In my first semester of law school, I was desperately trying to figure out ways to study and retain what appeared to be an impossible amount of information. The final exams seemed daunting as most of them were comprehensive finals that were 100% of my grade for each of the classes. In my desperation to figure out how to succeed in law school, I went to the meeting . . . via Skype with Chief Justice Hassell on the topic of how to do well in law school. . . . The thought of asking the Chief Justice questions was intimidating, but I understood what an honor it was to have the Chief Justice talk with us, so I tried to think of some questions. I finally found the nerve to ask the only question that came to mind. I asked the Chief Justice, “Do you have any tips on how to memorize the large amount of information we need to know?” His response forever changed my perspective on studying. He had been leaning back in his chair, and after I asked the question, he sat up in his chair, leaned forward, and then using his index finger to punctuate his statement, said, “You NEVER memorize, you MASTER the information.” After he made this statement, I realized that I had been focused on the wrong thing. My focus on trying to remember information actually hamstrung my study efforts because it prevented me from internalizing the information. I took his challenge to heart and focused in on working with the material to master it rather than just trying to memorize a bunch of information. This was one of the key moments that shaped my approach to studying and I believe has had a great impact on my work product during law school. I plan on taking this same attitude into the work field after law school.

Id.

⁹² It is important to remember that before Chief Justice Hassell became a distinguished jurist, he was first a distinguished lawyer. A colleague here at Regent Law School offers the following recollection.

I joined Hunton & Williams in 1986. Hunton & Williams and Justice Hassell’s firm, then known as “McGuire, Woods, Battle & Booth” (later shortened to “McGuire Woods”) were the two largest law firms in Virginia, likely in this region. From the outside, one may not realize that lawyers in firms seemingly in competition with each other often end up working together with lawyers from the other large firm. The reason often is that plaintiffs will sue more than one defendant and, in large cases such as these[,] two firms

as an inspiring mentor to many. He served as a role model and source of encouragement, and did so with excellence and professionalism.⁹³ In the words of one who knew him,

tended to handle, we would be co-defendants. At times our firms would go head to head, but more often we worked together.

Justice Hassell was already a well-respected senior associate at McGuire Woods when I joined the firm as an associate. Within a couple of years . . . he was elected partner in a shorter time period than usual for a lawyer to become a partner in a large firm. Of course, associates at both firms talked with each other. When we learned that Leroy Hassell had been elected a partner earlier than the time most associates take, that accomplishment created something of a legend within the associate community. Firms like Hunton & Williams and McGuire Woods apply the most rigorous criteria to those who they elect to the partnership. Thus, a lawyer who became a partner “earlier than usual” certainly drew the attention of my peers and me.

I began to ask friends at McGuire Woods and those who had cases with Leroy Hassell what it was about him that would lead [to] his being elected to partnership on a fast track. Here are the kinds of responses I received: “Leroy is a natural trial lawyer because he is intellectually gifted but also has common sense”; “Leroy is one of the most decent lawyers I know—a lawyer who is tough but fair and whose word you can count on”; and “Leroy was functioning as a partner several years into law practice because he was a natural leader, clients respected him, opposing counsel respected him, judges respected him, and juries respected him.”

I wish I had more experiences with Leroy Hassell before he became Justice Hassell and, later, Chief Justice Hassell. Working with other counsel who displayed excellence and respect for everyone helped me to improve my own approach to law practice. If I had to identify one characteristic I most admired, it would be Leroy Hassell’s integrity. I saw that same integrity when Justice Hassell came to talk to my classes at Regent Law School after I had become a professor. He told students, in a down-to-earth way, about the right way to practice law. I think the students enjoyed our joking with each other about the friendly rivalry between our two firms. However, I always told the students after Justice Hassell had gone back to Richmond that, though we were in rival firms, both my fellow Hunton & Williams partners and I held Leroy Hassell in the highest regard. His was a life well lived—not only as a lawyer, but later as one of the most influential Chief Justices on the Virginia Supreme Court. Our system of justice in Virginia will benefit for many years from reforms he instituted. I only hope that his successors are as strong in leading the cause for justice as was “the Chief.”

E-mail from Benjamin Madison, Professor, Regent Univ. Sch. of Law, to author (Nov. 21, 2012, 7:05 PM) (on file with the Regent University Law Review).

⁹³ The Norfolk, Virginia native had a profound effect on others as well. As one contemporary remembers,

[t]he Chief was always and still remains a source of motivation for me. As a young student filling out law school applications or as a young attorney trying to compete and establish myself in the local legal market, I was always encouraged by the man I knew better as Mrs. Hassell’s son, Leroy. The Chief shared the same church, Shiloh Baptist Church in Norfolk, Virginia. Even though he had been residing in Richmond for several years, several members of his family still attended Shiloh. I sang in the church choir and his mother also

sang in the choir, one row ahead of me. When the news got out that I was considering and heading to law school, I was constantly reminded about Mrs. Hassell's boy, Leroy, a lawyer who had done well for himself up in Richmond. Unlike so many other young black men, I knew that someone that looked like me and that sat on the same pews that I had had become a partner in a big firm and now was a judge. I didn't appreciate the significance of the Chief's accomplishments as a 20 year-old senior in college in 1999, but I do now as a 35 year-old attorney in Hampton Roads.

What I remember the most about the Chief was an uncompromising work ethic and intellect. He would begin his day in the gym, as he called himself a "gym rat", and then jump in the car with a book bag full of files headed for Virginia Beach. He spent the ride down reading, on the phone, and emailing from his Blackberry. I would frequently meet him in the parking lot as he packed away his files or phone and he would say, "Where are we off to today?" Another administrator or I would whisk him into the building through a series of tightly scheduled appointments. A walk between classrooms or offices would be frequently infused with additional emails and phone calls. I could remember thinking to myself that this guy never stops. If he had a break in his schedule he would schedule outside appointments in the local courts or just drop in on local judges. He said that he always had to take care of his judges so he made it a point to go see them in action.

He was a highly intelligent man. In between the scheduled appointments throughout the law school, I never saw him prepare for whatever speaking engagement or task that was next, but he was always ready. He could randomly walk into a Criminal Law class, Evidence class, or a Uniform Commercial Code class and always have brilliant, on-point insight to add to any discussion. It was clear that he was not talking around a subject, but that he knew the law inside and out. The depth of his legal knowledge was amazing.

Even when he was very sick he still made an effort to honor his commitments. There was one program where he called and said that he may not be able to make it down. We talked for a moment and he decided that he would Skype instead. He didn't have to, but he wanted to. The day of that program I saw what only a few had seen as his staff prepped him for his appearance. He was physically weak but mentally ready. He was unable to fully position himself in his chair and his staff propped him up, situated his head and arms and, adjusted the cameras. When he was ready, I turned on the projector for a class of law students waiting to hear him talk about the importance of written communication. He gave one of the best programs he ever had. I had introduced him numerous times before, so many times that I had memorized his brief but impressive resume. I didn't know that that was the last time. I still have his resume taped to my desk where I used to quickly refer to it prior to introducing him.

I'm not a judge, legislator, senior partner, or law school dean, but the Chief seemed to always make a little time for me. He never said that he was making time, but he was there a lot. The Chief participated in a career services professional development program for me once every month during the school year. Every time I taught a class during his Jurist-in-Residence week, he always was a guest lecturer in my Administrative Law or Secured Transactions class. Additionally, he would pop into my office for 10-15 minutes and encourage me to get some litigation experience if I could or just talk about church, life, the job market or legal practice. Most of the time I felt as if I didn't deserve the attention of someone of his stature or I didn't know quite what to

Chief Justice Hassell was always thinking of ways to help those around him better themselves professionally. He truly modeled servant leadership in his role with the Supreme Court; he was constantly looking for opportunities he could share with others so that they could grow and develop in their professional capacities. He thought of others before he thought of himself.

This other-centeredness was evident in his relationship with the Regent community. He blessed so many in our community, including me, by mentoring us and encouraging us to be all that we were called to be.⁹⁴

Fellow jurist, Justice Bernard S. Goodwyn, also remembers Chief Justice Hassell's efforts in furtherance of the professional education and empowerment of others:

I met the Chief Justice during the summer of 1985. I was working as a summer associate at the Richmond, Virginia office of what is now McGuireWoods, LLP. He was a 5th year associate at the firm. We became friends, and he let me tag along with him to several court hearings during that summer.

When he became Chief Justice of the Supreme Court of Virginia, I was a circuit court judge. The Chief appointed me to the Judicial Council. Thereafter, he appointed me to numerous committees, commissions and task forces dealing with a wide array of matters that the Chief thought would improve the administration of justice in Virginia.

say when he was there, but he always made the time to stop by and talk without the rest of the world peering in. This attention was not just limited to his time at Regent. Early on I can recall attending a function one night where he was speaking. Many other important people in the room wanted his attention and I timidly approached to say hello at the conclusion of his remarks. As I approached, his body guard turned in my direction and the Chief quickly motioned for him to stand down and waived me over. That night he gave me his phone number, told me to call him, and to always stop by whenever I was in Richmond. I knew all of the clerks in his chambers, so I stopped by a few times; however, now I wish I had stopped by more. I figured there would always be more time. While he was there, I always felt welcome and that I had a place to stop when I was in Richmond.

The Chief was also a man of deep faith. He showed me that an individual could be a public figure and a person of unapologetic faith while not alienating or offending individuals in the process. His faith was deep but respectful. It was personal and not political. The last time he spoke to us, he spoke about the importance of obedience and how Adam caused the fall of man through an act of disobedience, but Jesus saved us through an act of obedience. Since Jesus gave his life for us, we must now give our lives back to him.

E-mail from Darius K. Davenport, Dir. of Career & Alumni Servs., Regent Univ. Sch. of Law, to author (Nov. 26, 2012, 8:24 PM) (on file with the Regent University Law Review).

⁹⁴ E-mail from L.O. Natt Gantt, Assoc. Dean, Regent Univ. Sch. of Law, to author (Nov. 27, 2012, 12:26 AM) (on file with the Regent University Law Review). I am indebted to Dean Gantt for his constant encouragement and sage advice during the writing of this Essay.

In 2007, when there was a vacancy on the Supreme Court of Virginia, the Chief pulled me aside and told me that with my background he thought I would be a strong candidate to fill that position. As I reflect on my work on the various committees to which the Chief appointed me, I realize that the Chief purposefully involved me in efforts that would benefit my professional growth and development. Although I did not realize it at the time, those appointments were part of his mentorship.

Once I was on the Court, the Chief continued to be a mentor to me, doing anything he possibly could to smooth my transition onto the Court. Even when we disagreed about the law or about issues of judicial administration, he always took every opportunity to be of assistance and to help me to become a better Justice. He always emphasized the importance of the institution of the Supreme Court and our collective obligation to serve as stewards and protectors of the rule of law and justice in the Commonwealth. He also shared his tremendous and unshakable faith in God. He became much more than a person who had helped me in my career. He was a spiritual mentor, an excellent role model, and a dear friend. For that, and much more, I will always be grateful.⁹⁵

*Reflections of Law Clerks: The Chief Justice as Mentor and Much More*⁹⁶

Chief Justice Hassell had a remarkable impact on the lives of his law clerks. This impact was of a professional, spiritual, and personal nature. It is apparent that he cared very deeply for each of them, and the influence he exerted is profound to relate.

Consider, for example, the words of Judge Stephen R. McCullough, Chief Justice Hassell's law clerk from 1997–1999:

He set a very high standard early on for me to emulate. He was extremely hard working. He treated colleagues, staff and litigants with dignity. He maintained good humor under at times stressful conditions. He emphasized the importance of rigorous research and analysis, attention to detail and the lasting value of a reputation for thoroughness and integrity. He was a devoted father and husband, and his spiritual walk animated his thoughts and conduct. He spoke of his faith often. For him, individual persons and relationships were important, not just abstract legal principles.⁹⁷

⁹⁵ E-mail from Justice S. Bernard Goodwyn to author (Apr. 1, 2013) (on file with the Regent University Law Review).

⁹⁶ This Section of the Essay contains the reflections of four of Chief Justice Hassell's law clerks.

⁹⁷ E-mail from Judge Stephen R. McCullough, law clerk to Chief Justice Hassell from 1997 to 1999, to author (Oct. 31, 2012, 12:30 PM) (on file with the Regent University Law Review).

Likewise, Crystal Twitty, another former law clerk to Chief Justice Hassell, remembered her time with him to be incredibly rewarding. In her words,

[t]he “Chief” (as folks commonly referred to him) influenced my life professionally, spiritually and personally. As a professional, he improved my legal writing skills. Early on during my clerkship I was so timid about redlining or editing the Chief’s draft opinions or memoranda. I will never forget the first time I was asked to edit an opinion and upon returning my comments to the Chief, he jokingly remarked, “It’s okay to actually edit it. I value your opinion.” In that moment, I realized he sincerely wanted my input, but also desired to mentor me. Also, while serving as the Chief Justice he frequently traveled throughout the Commonwealth for speaking engagements. In preparation, he would always ask me to visit the Library of Virginia to check-out books on each county or city he was scheduled to visit, in an effort to understand the historical context. I was so impressed with his tireless work ethic and zeal for knowledge. Both of those attributes have influenced my career and dedication to the law.

As for my spiritual and personal life, the Chief was an amazing source of strength and encouragement. During my clerkship, my father was diagnosed with Lou [Gehrig]’s disease and ultimately passed away in a relatively short period of time. It was an extremely difficult time for me and my family. But, through every step of the way the Chief was there to share a kind word or prayer and allowed me to spend time with my family during very critical moments. The Chief was essentially a “God” father, and a blessing in so many ways during that season of my life. After my clerkship ended, the Chief and I remained in touch and he was always intently concerned about my family’s well-being. Despite his hectic schedule, he still made time to check-in with me and others.⁹⁸

Similarly, Noelle James fondly recalled Chief Justice Hassell’s encouraging nature:

[P]robably most impactful to all aspects of my life was how he chose me to be his summer intern and then his law clerk (there are a lot of details to this but I’ll try to keep it succinct). I first met Chief Justice Hassell in the Spring of my 2L year at Regent. As the Chief did every year, he visited the law school for several days to teach classes, speak to the students, and visit faculty. A law student was assigned each day to accompany the Chief Justice to each of his events/classes, and I was lucky enough to be one of those students. During that day, we would chat in 5 minute intervals as I walked him from place to place. However, each of these 5 minutes was never small talk; he asked pointed questions about me, my classes, my goals, etc. At that time, I [was] struggling with how I would use my legal education, and even

⁹⁸ E-mail from Crystal Y. Twitty, law clerk to Chief Justice Hassell from 2004 to 2006, to author (Oct. 22, 2012, 4:47 PM) (on file with the Regent University Law Review).

those brief conversations with the Chief Justice were helpful and encouraging. In that short time, I could tell the Chief Justice was genuinely interested and concerned for my professional development, which was astounding to me. I realized later that the Chief Justice was like that toward so many individuals—it is amazing how much he supported new (and longtime) attorneys in their careers through his wisdom and connections. After that visit, he made a place for me as an additional summer intern, and then that led to my clerkship with him. I am grateful to this day that Chief Justice Hassell saw something in me that I did not, and from that he ended up steering my career and really my life's direction.⁹⁹

From yet another perspective, Farnaz Farkish recalled,

Chief Justice Hassell helped increase my confidence in my professional and personal judgment. I struggled with perfectionism and had a tendency to doubt my legal recommendations and conclusions in the research memoranda that I submitted to him. I often sought to learn whether he agreed with my recommendations. One afternoon I asked Chief Justice Hassell whether he agreed with a particular recommendation, but he did not have time to answer me as he was running late for a meeting. As he was driving to the meeting, he called me on his cellular telephone to admonish me not to doubt my legal ability. He jokingly warned me that I was allowing the demon of doubt to steal my confidence. While he and I sometimes disagreed, he always respected my legal recommendations. He gave me confidence in my legal ability.

Chief Justice Hassell also taught me to respect formalities. He despised colloquialisms in legal briefs and research memoranda. For example, he would prefer the word telephone as opposed to phone. He never used telephone as a verb. He also disliked when attorneys referred to a Justice solely by his or her last name instead of by his or her full title.

Spiritually, he taught me to never separate the spiritual and the secular. He was the same man in the Courtroom, in his chambers, and in his home with his family. He practiced his faith in all aspects of his personal and professional life. He would always expressly honor God in his public speeches or in his visits with students in a respectful manner.¹⁰⁰

The law clerks also offered their assessments of Chief Justice Hassell's impact on the legal profession and how he accomplished his mission. In Judge McCullough's words,

One of the recurring threads in his thoughts and actions was his concern for the less fortunate, the poor who could not afford an

⁹⁹ E-mail from Noelle James, law clerk to Chief Justice Hassell from 2006 to 2008, to author (Oct. 24, 2012, 11:55 AM) (on file with the Regent University Law Review).

¹⁰⁰ E-mail from Farnaz Farkish, law clerk to Chief Justice Hassell from 2008 to 2011, to author (Nov. 27, 2012, 12:59 PM) (on file with the Regent University Law Review).

attorney, the mentally ill, inner city school children, and hospice patients. This concern carried over into his work on the Court with regard to his admonitions to lawyers to conduct pro bono work, and his priority for the courts. He also spent considerable time as a volunteer with various organizations and in working with the community.¹⁰¹

As former clerk Crystal Twitty phrased it,

In sum, the Chief was brilliant. He was a zealous advocate and compelling writer. Despite all of his own professional undertakings, he was mostly concerned about those less fortunate and unable to afford legal services. He was passionate about pro bono services and frequently encouraged new lawyers to serve those in need. The Chief's efforts inspired a number of local and state Bar groups to increase the number of pro bono efforts throughout the Commonwealth.¹⁰²

In much the same vein, Noelle James recalled Chief Justice Hassell's concern for those around him:

While the Chief could give a speech, in many ways, Chief Justice Hassell was a doer, not a talker. The Chief was always running a little late, but that was because he had set out to accomplish so many things in his day. One of the important objectives the Chief had was to see that those without a voice were heard. He had a deep care for individuals who were underrepresented within the legal system. He accomplished this mission through both how he lived his life and how he directed the state judiciary. No one was too unimportant for the Chief to talk to—we couldn't walk 2 blocks to lunch without the Chief stopping to talk to several people on the street. When the Chief swore in new members of the Virginia State Bar, he always reminded these new attorneys of the importance of representing those who were less fortunate than them. At the General Assembly, he worked tirelessly (early mornings and late at night) to encourage the legislature to create laws that were just and fair.¹⁰³

Farnaz Farkish writes,

Chief Justice Hassell was a champion of the rule of law. In his public speeches, he often commented that society would still function if all the doctors, accountants, social workers, and other professionals died. He emphasized that all order in society would crumble if judges and attorneys died. He believed in the role of attorneys and judges in upholding the rule of law and setting a standard of professionalism.¹⁰⁴

Finally, the law clerks offered some of their favorite remembrances of Chief Justice Hassell. Their comments reveal that, behind the hardened exterior of a man committed to the rule of law, Chief Justice

¹⁰¹ E-mail from Judge Stephen R. McCullough, *supra* note 97.

¹⁰² E-mail from Crystal Y. Twitty, *supra* note 98.

¹⁰³ E-mail from Noelle James, *supra* note 99.

¹⁰⁴ E-mail from Farnaz Farkish, *supra* note 100.

Hassell was a real man—compassionate, prone to humor, and constantly mindful of the importance of family.

For example, “As a fitness fanatic,” Judge McCullough recalled, he would occasionally take his clerks to the gym where he would often put much younger clerks to shame. He also did a fair amount of public speaking and often took his clerks to inner city schools and other public appearances to stress to the students the importance of education.¹⁰⁵

It was Chief Justice Hassell’s personality that Crystal Twitty recalled.

I remember the Chief’s great laugh and smile. He was humorous and quick-witted. There were countless occasions where the Chief would crack a joke or lighten the mood if things were getting too intense. The Chief also loved the joy of birthdays, and would often call his clerks into chambers surprising us with a humorous card and birthday cake. Those moments were disarming and unforgettable. The Chief also loved “Mr. Goodbar” chocolate bar[s], and presenting him with one could always turn a bad day into a good one. I also enjoyed traveling with the Chief when he had occasions to speak. During those times we would catch up on life and enjoy some laughs.¹⁰⁶

In turn, Noelle James remembered Chief Justice Hassell’s amazing work ethic and love for family. She wrote,

I loved working on the Chief’s opinions with him. For a first draft, the Chief usually liked to hammer it out in one day, which generally meant it would be a late night. I fondly remember knowing it was an opinion day when the Chief brought in a full bag of Oreos. I enjoyed and was always challenged by his opinion drafting process—he was tough, always striving for excellence, but also a kind teacher. During my first week as a law clerk, I recall Chief Justice Hassell taking me aside and explaining that he would always second guess my research and analysis and that he expected me to do the same to him. He viewed his position as a writer and preserver of the law with great respect and humility, and that was reflected in his opinion writing. That premise always made our interactions over and development of an opinion fun and challenging, especially for a brand new attorney like myself. When I disagreed with the Chief Justice on something, even if it was just the grammatical structure of a sentence, I knew I had better have evidentiary support or a well-reasoned explanation for my position. I recall one time debating over the placement of an adverb, which ended in me dragging Strunk and White’s *Elements of Style* and Webster’s Third New International Dictionary into his office for him to reach a decision.

¹⁰⁵ E-mail from Judge Stephen R. McCullough, *supra* note 97.

¹⁰⁶ E-mail from Crystal Y. Twitty, *supra* note 98.

A bittersweet memory comes to mind from May 2007. My mom in one week was diagnosed with breast cancer and scheduled for immediate surgery in Ohio. Law clerks don't get formal vacation time and the Chief Justice was out of town so I did not have the opportunity to share the information with him. I recall the day of surgery arriving and I was sitting in my office in Richmond, aching to be with my mom. All of a sudden, the Chief Justice, still in his coat and hat from arrival, came and sat down in my office. He told me his secretary had relayed my mom's health to him and that I needed to leave right that minute. He simply said "you need to be with your mom." There were no conditions, no limitations, no questions about my work assignments, he just said go. I cannot recall how many times the Chief emphasized the importance of family, and this was just one example of how he made sure I could be there for mine.¹⁰⁷

Lastly, Farnaz Farkish understood Chief Justice Hassell as a forgiving man of honor.

Chief Justice Hassell modeled meekness which I define as strength under control. He knew how to choose his battles and would not tolerate any disrespect for the judiciary. During my clerkship, the Supreme Court of Virginia, including Chief Justice Hassell, required an attorney to explain a critical, disrespectful comment that this attorney made about the Supreme Court during an argument to a circuit court. The attorney approached the Justices trembling and fearful of the ramifications of his actions. I remember that the male attorney was near tears as he apologized to the Justices for his poor judgment and disrespectful comment. Chief Justice Hassell accepted the attorney's apology and did not publicly reprimand him. While Chief Justice Hassell would not tolerate any form of disrespect towards himself or towards any member of the Court, he was always merciful.¹⁰⁸

In closing, the law clerks offered moving reflections on Chief Justice Hassell as a man of God, a jurist, an educator, a mentor, and a humanitarian. Judge McCullough writes,

With regard to his faith, Justice Hassell shone by his example. He lived his life in a way that would lead any impartial observer to say ["there goes a disciple of Jesus Christ,"] not only because of his good deeds but through his inner life. He was not reluctant to share his faith, but never in an obnoxious way. It was not unusual for him to pause during the day and read from the Bible.

As a jurist, he was very conscientious, hardworking, and devoted to a vision of the law as an instrument that served the needs of all.

As a teacher, he brought his tremendous energy and experience into the classroom. He spoke with an authority few professors can convey.

¹⁰⁷ E-mail from Noelle James, *supra* note 99.

¹⁰⁸ E-mail from Farnaz Farkish, *supra* note 100.

As a mentor, he was all a law clerk could hope for. He provided an outstanding example of the characteristics that lead to success as a lawyer, and he took time to work with his clerks to help them improve their skills.¹⁰⁹

Crystal Twitty noted the important role that family played in Chief Justice Hassell's life:

The Chief's family was very important to him. I observed personally how he would prioritize his schedule to make time for family. He was also loyal to serving his Church, and I remember several occasions where he would bring his Bible with him and read while on road trips. It was always so refreshing to watch him deliberately prioritize time for family, church, and community service.

The Chief also enjoyed speaking to young students and freshly minted lawyers. I recall visiting his former elementary school in Norfolk, Virginia, where he was invited to speak, and the students lit up when the Chief shared stories of growing up and the importance of education in achieving their goals. The Chief had such a passion for justice that carried over in all that he did. I miss him dearly and fond memories will remain with me forever.¹¹⁰

Perhaps capturing Chief Justice Hassell's devotion to his faith most clearly is Noelle James' recollection of Chief Justice Hassell's morning ritual.

Something I always respected about Chief Justice Hassell was his morning routine when he arrived at chambers. No matter how many important tasks were waiting for him or messages I had to relay, he would always go straight to his office, black bible in hand, and shut the door to take some time alone with God. I think this simple act reflects how the Chief lived out his life. Jesus and His word were the foundation for each day the Chief lived.¹¹¹

Farnaz Farkish's recollections reflect much of what the other clerks remembered.

Chief Justice Hassell would always say, "God is my source." He meant that Jesus Christ was his source of strength, wisdom, ability, and success.

I remember working longer hours with Chief Justice Hassell during the beginning of my clerkship. Towards the end of my clerkship, Chief Justice Hassell would stop by my office and force me to leave the office with him at 5:30 p.m. While he was efficient with his time and achieved more in 55 years than most people achieve in a lifetime, he said that he did not rest enough. The legacy that he left me was not to undermine the need for and power of rest.

¹⁰⁹ E-mail from Judge Stephen R. McCullough, *supra* note 97.

¹¹⁰ E-mail from Crystal Y. Twitty, *supra* note 98.

¹¹¹ E-mail from Noelle James, *supra* note 99.

Chief Justice Hassell stressed the importance of preparation. He would write his speeches weeks in advance of an event and would also memorize his speeches. As a trial attorney, he would create note cards, memorize whatever he wrote on the note cards, and practice his arguments in front of a mirror.¹¹²

Based upon the very words of those who knew and loved him, Chief Justice Hassell had a profound and positive impact on so many of the individuals with whom he worked. Many of those so influenced are young attorneys and jurists. May Chief Justice Hassell's legacy live on through the lives and practices of these young professionals, and may they in turn influence the next generation of lawyers and judges.¹¹³

IV. THE CHIEF JUSTICE AS HUMANITARIAN

The enormous number and sheer variety of the contributions and innovations that Chief Justice Hassell made are too voluminous to document here. The Appendix to this Essay provides three of the proclamations offered in his honor. These proclamations testify to the proposition that Chief Justice Hassell was a humanitarian without parallel.

Of the enumerable efforts of Chief Justice Hassell, two stand out as illustrations of his strong commitment to serving the people of the Commonwealth of Virginia. Chief Justice Hassell himself wrote concerning the first of these efforts:

There are numerous issues that affect the provision of mental health services in Virginia and the administration of justice. When I began my tenure as Chief Justice, one of my most important priorities was to contribute to the discussion of reform of Virginia's mental health statutes and processes. The judicial branch of government is committed to improving the quality of mental health services provided to Virginians and the judicial processes attendant to civil commitments. All persons and institutions that are involved in Virginia's mental health system and processes—mental health practitioners; law enforcement personnel, including sheriffs; judges and court personnel; attorneys; magistrates; special justices; patients; patients' families and friends—have a stake in improving this area of law.¹¹⁴

This humanitarian act of reforming this system was to be gargantuan. Chief Justice Hassell turned to a law professor Richard J.

¹¹² E-mail from Farnaz Farkish, *supra* note 100.

¹¹³ "For the LORD gives wisdom, and from his mouth come knowledge and understanding." *Proverbs* 2:6 (New International Version).

¹¹⁴ Leroy R. Hassell, Sr., *Reforming Virginia's Mental Health Statutes & Processes*, VA. LAW., Apr. 2006, at 35, 37.

Bonnie at the University of Virginia who he knew was critical to the success of this effort.

In July 2005, Chief Justice Hassell called me to discuss his plans to initiate reform in the mental health laws of the Commonwealth of Virginia. Based upon a previous unsuccessful effort to overhaul civil commitment laws in the 1980s, I informed him that accomplishing such reforms would take a significant amount of time and resources, and that it would require a consensus-building involving the branches of government as well as the various stakeholders who were often critical of each other and lacked strong habits of collaboration. I stressed that none of this could be accomplished overnight. The Chief Justice seemed undaunted and asked if I would be willing to serve as chair of a Commission charged with reforming Virginia's mental health laws. I told him that I was reluctant to do so because of the time commitment and the considerable risk of failure. The Chief Justice did not take "no" for an answer. After our telephone conversation, he travelled to my office in Charlottesville, and asked me what he could do to convince me to work with him on this project. He assured me that he was willing to do whatever was necessary to bring the effort to a successful conclusion. Although I do not know the precise source of his passion and commitment to this cause, he did mention the many complaints that he had heard about the civil commitment process. I know he was particularly horrified by the experiences of families with elderly parents who initiated the commitment process only to discover that law enforcement officers soon arrived in marked vehicles to transport the elderly person—in handcuffs—to a mental health facility for evaluation. He was also appalled by the increasing numbers of people with mental illness in the Commonwealth's jails. He was passionate and persistent. How could I say no?

For the next 5 years, I worked closely with the Chief Justice on this important and complex project. I admired his persistence and courage, as he helped to build coalitions, overcame opposition, and inspired all of the participants. As I remarked on the occasion of his death in 2011:

Chief Justice Hassell cared so deeply about addressing these problems that he made reforming Virginia's mental health laws a signature initiative of his leadership of the Supreme Court and persevered in those efforts in the face of occasional resistance and criticism. Every constituency and stakeholder group affected by mental health services (including consumers, families, police officers and mental health providers alike) was grateful for his commitment to justice, his courage and his independence of mind—the attributes we seek in all who don the judicial robe. I am

personally grateful to have had the opportunity to know Chief Justice Hassell and to assist him in his noble quest.¹¹⁵

Another area of humanitarian reform that was close to Chief Justice Hassell was ensuring that affordable legal services were available to all, including those involved with child custody matters.¹¹⁶

CONCLUSION

This Essay provides a road map for anyone who seeks to appreciate the legacy of our great Chief Justice Hassell, and it documents some of the many sources of information about his life for anyone who desires to learn more about him. It has been a labor of love. I only wish I had been able to spend more time with Chief Justice Hassell. He was a mighty warrior for justice. May he rest in peace.

¹¹⁵ E-mail from Richard J. Bonnie to author (Nov. 30, 2012 5:53 PM) (on file with the Regent University Law Review) (quoting *Bonnie Recalls Former Va. Chief Justice Leroy Rountree Hassell*, UNIV. VA. SCH. L. (Feb. 10, 2011), http://www.law.virginia.edu/html/news/2011_spr/hassell.htm). Richard J. Bonnie of the University of Virginia School of Law is the Harrison Foundation Professor of Medicine and Law, Professor of Psychiatry and Neurobehavioral Sciences Director, Institute of Law, Psychiatry and Public Policy, and Professor of Public Policy, Frank Batten School of Leadership and Public Policy. I am grateful to Professor Bonnie for his contributions to this Essay, and for his recollections of the Chief Justice as a “persistent and courageous” humanitarian.

¹¹⁶ The Local Bar Connection reported,

On numerous occasions . . . Chief Justice Leroy R. Hassell, Sr., has underscored the need for attorneys to help make affordable legal counsel available to parties in child custody cases. He delivered the message during his swearing-in ceremony in February, in his inaugural speech in May before the Judicial Conference of Virginia and, more recently, in less formal settings across the Commonwealth where he has been sharing his thoughts on the subject in meetings with representatives of law firms, bar associations and legal services providers.

Chief Justice Seeks Bar Leaders Input for Volunteer Program, LOC. B. CONNECTION, Summer 2003, at 1, 1, available at http://www.vsb.org/docs/conferences/clba/lbc_su03.pdf. I wish to thank Justice John Charles Thomas for reading this Essay’s introduction and for suggesting that this topic should be included in this portion of the Essay.

APPENDIX A

The following is a collection of statements and resolutions made in honor of Chief Justice Leroy Rountree Hassell, Sr.

A. Statement in the United States House of Representatives

Mr. Speaker, I rise today to honor the distinguished life and achievements of the Honorable Leroy R. Hassell Sr., former Chief Justice of the Supreme Court of Virginia, who passed away this week at the very young age of 55. While he left us in the prime of his life, his compassion and commitment to justice will leave a lasting impression on the judicial system and the world beyond the bench.

A Norfolk native, he grew up in Broad Creek and attended Norview High School. He graduated from the University of Virginia and earned his law degree from Harvard Law School. He then returned to Richmond where he quickly rose through the ranks to become partner at McGuire Woods, one of Virginia's largest law firms.

After graduating from William & Mary Law School and passing the Virginia bar, I remember when Governor Gerald Baliles nominated him to the Virginia Supreme Court in 1989. At the age of 34, Justice Hassell became the second African American justice on the court after John Charles Thomas. In 2002, his colleagues elected him to serve as Chief Justice, making him Virginia's first African American Chief Justice. Remarkably, he was the first leader of the high court chosen by his peers rather than through seniority. At the time, he was also the youngest serving member of the court.

Chief Justice Hassell always had a great love of law. He was a man of faith and deep personal convictions. He cared deeply about the people of the Commonwealth and was passionate about helping others. He was a tireless advocate for the poor and the mentally ill and fought hard to make the courts more accessible and more equitable.

Mr. Speaker, please join me in remembering Justice Hassell, a life-long public servant and powerful voice for all Virginians.¹¹⁷

¹¹⁷ 157 CONG. REC. E196 (daily ed. Feb. 10, 2011) (statement of Rep. Eric Cantor).

B. Virginia Senate Joint Resolution No. 421

WHEREAS, Chief Justice Leroy Rountree Hassell, Sr., a Justice on the Supreme Court since 1989 and Chief Justice since February 1, 2003, concluded his second term as Chief Justice on January 31, 2010; and

WHEREAS, Chief Justice Leroy Rountree Hassell, Sr., the 24th Chief Justice of the Supreme Court of Virginia, was the first African American to serve as Chief Justice; and

WHEREAS, as Chief Justice, Leroy Rountree Hassell, Sr. served as the administrative head of the judicial system ensuring its efficient and effective operation, while striving to administer a judicial system in which “all Virginians are treated fairly with dignity, equality and respect”; and

WHEREAS, during his tenure, Chief Justice Leroy Rountree Hassell, Sr., served with distinction as chair of the Judicial Council and the Committee on District Courts and as president of the Judicial Conference of Virginia and the Judicial Conference of Virginia for District Courts, making certain that committees and commissions under his direction reflected the geographical, racial, and gender diversity of the Commonwealth; and

WHEREAS as Chief Justice, Leroy Rountree Hassell, Sr., established the “Commission on Virginia Courts in the 21st Century: To Benefit All, To Exclude None,” to make recommendations to ensure that Virginia’s court system continues to effectively and impartially deliver justice to all Virginians; and

WHEREAS, as Chief Justice, Leroy Rountree Hassell, Sr., established an annual Indigent Defense Training seminar to provide free continuing legal education to practitioners of indigent defense, and with his support the General Assembly increased compensation paid to court-appointed criminal defense attorneys and public defenders; and

WHEREAS, Chief Justice Leroy Rountree Hassell, Sr., worked to increase the availability of pro bono legal services, challenging the Virginia Bar Association and other statewide bar associations, local bar associations and the Virginia State Bar to work together to expand services for indigent persons and ensure that all Virginians have access to high-quality legal representation; and

WHEREAS, under the leadership of Chief Justice Leroy Rountree Hassell, Sr., the Office of the Executive Secretary established an annual course on the management of capital murder cases for circuit court judges, providing additional tools for the efficient administration of justice in these cases; and

WHEREAS, as Chief Justice, Leroy Rountree Hassell, Sr., secured funding from the General Assembly to create a foreign language interpreter program and hire full-time foreign language interpreters to serve the courts of the Commonwealth thereby improving the services provided and reducing the cost of interpreter services; and

WHEREAS, as Chief Justice, Leroy Rountree Hassell, Sr., appointed the Commission on Mental Health Law Reform to conduct a comprehensive examination of Virginia's mental health laws and services and to recommend reforms to Virginia's mental health laws, many of which were enacted by the General Assembly, including improvements to the involuntary commitment process; and

WHEREAS, Chief Justice Leroy Rountree Hassell, Sr., successfully worked with the General Assembly to reform and restructure the magistrate system, improving oversight of and standards for magistrates; and

WHEREAS, Chief Justice Leroy Rountree Hassell, Sr., successfully obtained increased compensation for all judges and judicial branch staff from the General Assembly allowing Virginia's courts to benefit from the retention of experienced employees and the attraction of highly qualified applicants; and

WHEREAS, with the guidance of Chief Justice Leroy Rountree Hassell, Sr., the General Assembly created the Courts Technology Fund, which supports improvement of the courts' information technology systems and the use of technology to improve case processing for litigants and the courts, including online services such as electronic filing and online payments; and

WHEREAS, Chief Justice Leroy Rountree Hassell, Sr., established the Electronic Filing Committee, composed of judges, attorneys, clerks of court, and staff members of the Office of the Executive Secretary, to guide the judicial system's electronic filing initiative; and

WHEREAS, under the leadership of Chief Justice Leroy Rountree Hassell, Sr., online legal research through the Fastcase system was made available, without charge, to all members of the Virginia State Bar; and

WHEREAS, as Chief Justice, Leroy Rountree Hassell, Sr., established the Supreme Court of Virginia Historical Commission to preserve the oral histories of members of the bench, the bar and court administration, and archive historical records and artifacts of Virginia's Judicial System; and

WHEREAS, under the direction of Chief Justice Leroy Rountree Hassell, Sr., the Journey Through Justice website was created, which provides an interactive website with supplemental educational materials on the judiciary, allowing students and teachers to virtually experience the courtroom; and

WHEREAS, a native of Norfolk, Chief Justice Leroy Rountree Hassell, Sr., has served and continues to serve Virginia proudly in many professional and civic roles with an enduring commitment to the people of the Commonwealth, and with an emphasis on the importance of faith and humility in such service; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the General Assembly hereby commend Chief Justice Leroy Rountree Hassell, Sr., for his dedicated service and inspired leadership as Chief Justice of the Supreme Court of Virginia; and, be it

RESOLVED FURTHER, That the Clerk of the Senate prepare a copy of this resolution for presentation in honor of Chief Justice Leroy Rountree Hassell, Sr., as an expression of the General Assembly's gratitude and appreciation.¹¹⁸

¹¹⁸ S.J. Res 421, 2011 Gen. Assemb., Reg. Sess. (Va. 2011).

C. A Resolution Drafted by a Former Law Clerk

A Resolution

In Honor of the Chief Justice Leroy Rountree Hassell, Sr.

WHEREAS, Chief Justice Leroy Rountree Hassell, Sr., is a son of the Most High God, a loving husband and father, and a skilled jurist; and

WHEREAS, Chief Justice Hassell loves Jesus Christ with all of his heart, soul, body, and mind; and

WHEREAS, Chief Justice Hassell administers justice with mercy in the Commonwealth of Virginia; and

WHEREAS, Chief Justice Hassell shares the Word of God boldly and fearlessly with persons entrusted to uphold the rule of law in the Commonwealth of Virginia; and

WHEREAS, Chief Justice Hassell encourages newly admitted attorneys to serve the poor; and

WHEREAS, Chief Justice Hassell shares the Gospel with and without words with the students at the University of Richmond School of Law, with the students at Regent University School of Law, with the Justices of the Supreme Court of Virginia, and with his staff; and

WHEREAS, Chief Justice Hassell always cares for his family members and answers telephone calls from his wife and children at work; and

WHEREAS, Chief Justice Hassell always keeps his wife's vehicle in good condition; and

WHEREAS, Chief Justice Hassell gave Farnaz Farkish confidence in her legal skills and ability; and

WHEREAS, Chief Justice Hassell has a great sense of humor and is kind; and

NOW, THEREFORE, BE IT RESOLVED, on behalf of Chief Justice Hassell's many friends and admirers and the Host of Heaven, we express our gratitude to Chief Justice Hassell for his continued service, counsel, and leadership.

ADOPTED on this 4th day of February, 2011.

Drafters: Farnaz Farkish and Jesus Christ

Exodus 33:14 (NIV) The Lord replied, "My Presence will go with you, and I will give you rest."¹¹⁹

¹¹⁹ Farnaz Farkish, A Resolution: In Honor of the Chief Justice Leroy Rountree Hassell, Sr. (2011), www.regent.edu/acad/schlaw/blogs/docs/hassell.pdf.