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—J. Harvie Wilkinson, 4th Circuit (Page 17)

# Northern

## The 4th Circuit's Last Liberal

*Frank Murnaghan spent decades at Venable and on the 4th Circuit*

By JAKE RICHARDSON

Circuit Judge Francis Murnaghan Jr. loved a good stroll. When his children were little, he would trek with them to downtown Baltimore. On one occasion, Murnaghan's son George remembers car passing by and a six-pack of beer bottles flying out the window. Murnaghan wrote down the license plate number, picked up the refuse, and took his kids home.

Several days later, Murnaghan—with the bottles in hand—stopped at a house in his neighborhood. The car he had seen earlier was parked in the driveway. His son remembers waiting while his father walked up the steps and knocked on the door. When a man opened the door, Murnaghan handed him the empty six-pack and said, “I believe you dropped this.”

“He was a principled man,” George Murnaghan says. “He wasn't going to call him names or get into his face. He just made his point.”

That was 30 years ago. Murnaghan, who died Aug. 31 at age 80 after a long battle with health problems, came to be many things to many people—a World War II intelligence officer, a civil rights activist, a force in Maryland Democratic politics, and a dedicated Baltimore Orioles fan among them.

To his law clerks, he was a quixotic crusader. To the U.S. Court of Appeals for the 4th Circuit, where he sat for 21 years, he was the last liberal.

Appointed to the bench by President Jimmy Carter in 1979, Murnaghan was often a dissenter on the largely conservative court.

local school officials' refusal to provide translation services for a deaf child attending a parochial school did not violate the First Amendment or the Religious Freedom Restoration Act.

Murnaghan's death leaves five vacancies on the 4th Circuit, with two nominees—North Carolina Court of Appeals Judge James Wynn Jr. and Richmond attorney Roger Gregory—awaiting Senate action. In the past, Chief Judge J. Harvie Wilkinson has said the court doesn't need any more judges, and the nominations of Gregory and Wynn appear to be stalled.

When contacted for this story, Wilkinson declined comment on judicial vacancies.

### READING BETWEEN THE LINES

Murnaghan was born in Baltimore on June 20, 1920. As a child he was enamored of his uncle, a Supreme Court justice in Ireland to whom he attributed his love of the law and Irish art. In 1941, he graduated from Johns Hopkins University. Then he was commissioned by the U.S. Navy as a lieutenant in intelligence.

He served throughout the war as a cryptographer, helping the United States decipher Japanese code. After the war, he went to Harvard Law School, where he served as an editor of the law review. He graduated in 1948.

According to Sheila Murnaghan, one of her father's professors suggested that the class find outside interests: Take a night off and visit the Boston Pops.

“My father went for the first time to hear the Boston Pops and bumped into the professor,” she says. “He was always sure that was the only reason he made the law review.”

Maryland. Two years later, he returned to private practice and became a partner. One of his clients was *The Baltimore Sun*, which he represented for over two decades.

His daughter says that he saw himself as a public servant. In the early 1960s, Murnaghan defended civil rights activists who tried to



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integrate the Gwynn Oak amusement park in Baltimore.

Over the years, Murnaghan served as a member of Baltimore's Citizens' Planning and Housing Association, as chairman of the Charter Revision Commission in 1963 and 1964, and as chairman of the School Board between 1967 and 1970. He was also a trustee of the Johns Hopkins University and its Peabody Conservatory of Music. Murnaghan unsuccessfully ran for mayor of Baltimore in 1967, on a slate including African American and Jewish candidates.

Murnaghan was also involved in the campaigns of other Maryland Democrats, most notably the successful 1976 campaign of former Venable attorney Sen. Paul

ophy into his professional life as well. Dickinson Phillips, a senior judge on the 4th Circuit and a close friend, tells a story relayed to him by Melvin Sykes, a Baltimore attorney and lifelong friend of Murnaghan's.

Sykes and Murnaghan went to Harvard together, tried cases at their first law firm together, and later slugged it out more than once in court. The friends would take long walks together to downtown Baltimore. However, when Sykes had a case in front of Murnaghan, the judge would cut off all contact.

“Murnaghan was walking up the street toward the courthouse and in his path was Sykes,” Phillips says. “When Frank spotted him, Frank quickly crossed the street and just kept on walking. He was the straightest person that I ever knew.”

In 1984, Murnaghan remarried, this time to Diana Lee Edwards. Two years later, he had his second stroke, on the other side of his body.

For the most part, Murnaghan used a wheelchair after that. But after each stroke, Murnaghan went immediately back to the bench.

“He showed enormous courage in fighting back from those two strokes,” says Chief Judge Wilkinson. “He was an inspiration to all of us.”

Mark Niles, a former clerk for Murnaghan who is now an assistant professor of law at American University, says Murnaghan “would scribble notes on the cases as after he'd review them before assigning them to his clerks to research. Ninety-nine percent of the time, he was exactly right about what law was relevant.”

Niles says that the 20 or so clerks who flew in from around the country for the funeral thought