

REMARKS OF HONORABLE SAM J. ERVIN, JR., IN PRESENTING THE
PORTRAIT OF CHIEF JUSTICE MAURICE VICTOR BARNHILL TO THE
SUPREME COURT OF NORTH CAROLINA, MARCH 25, 1966.

It is fitting that our tribute to Chief Justice Maurice Victor Barnhill should be simple, and direct, as befits the man, for in his lifetime he shunned rhetoric and hyperbole as he abhorred publicity and sham. Gifted with a precise, highly developed intellect, he used it in his life as in the law, to pare away the irrelevant, the non-essential and the valueless to reveal swiftly and meaningfully the hard core of truth. I was deeply honored to be asked to present this portrait to the Court, for as a friend and colleague, Judge Barnhill will remain forever in my memory as one of the most remarkable human beings I have ever known.

Graced with sophistication in knowledge of many subjects, he yet retained that simplicity of manner and firmness of conviction that comes with self knowledge, belief in God, and an awareness of man's place in the universe. It was this self knowledge that lent to his work in the law a humanity which is the mark of a great human being. And it was his profound knowledge of the law and its meaning that tempered his work with the depth and objectivity which is the mark of a truly great judge.

From 1887 to 1963, his life spanned almost eight decades. Those years, most significant of our country's history, saw America undergo the Spanish-American War, two World Wars and the Korean conflict. They witnessed our growth as a world power, and our development into a great industrial nation. They saw us sink into the depths of depression and rise again into the greatest economic prosperity known to a people in the history of the world. They have seen the rise of great cities and the increasing urbanization of our society, ideological clashes and intergroup strife and the resolution of our differences. Our governmental structure in this period has been altered by political, social, and economic changes, and the resulting bureaucracies have spread throughout the states. Yet we have prospered as a people and as a state. North Carolina has kept pace with these changes as Judge Barnhill kept pace with them. His life, I believe, epitomizes the challenges and the rewards which North Carolina offered in those years to an individual of conviction, dedication and perseverance.

And these were indeed traits of character with which Maurice Victor Barnhill was endowed by nature, his family and his surroundings. Born on December 5, 1887, to Martin Van Buren and Mary (Dawes) Barnhill, he was raised on a farm near Enfield, in

PRESENTATION OF BARNHILL PORTRAIT.

Halifax County, North Carolina. This country life enabled him to bring to his life's work the discipline and those rich qualities of spirit early instilled by the rural life and constant exposure to the beauties and forces of nature.

After attending private and public schools in Enfield and Elm City, North Carolina, he entered the University of North Carolina, where he affiliated with the Sigma Chi fraternity. Upon the completion of his academic studies there, he accepted the post of assistant cashier of the Toisnot Banking Company in Elm City, which he retained until he could save enough from his earnings to undertake the study of law. Having accomplished this purpose, he attended the Law School of the University of North Carolina, where he graduated with distinction in 1909. Thirty seven years later his alma mater bestowed upon him its honorary degree of Doctor of Laws.

Judge Barnhill brought to the bench extensive experience as a practicing attorney, and as a judge could draw on his own experience with the intricacies of preparing for litigation. Licensed to practice by the Supreme Court in February, 1909, he entered into partnership with Walter H. Grimes of Raleigh. In March, 1910, he moved to Rocky Mount where he soon developed a large practice and dealt with much of the important litigation before the courts of that area.

His business experience as president and director of banks, his local government experience as Chairman of the Nash County Highway Commission, and Chairman of the Board of Trustees of the Rocky Mount Graded Schools, enabled him to better comprehend and judge people, issues and institutions in the fields of business, commerce, and education. His service in the State Legislature in 1921 afforded him broad and direct contact with the politics of government, the mechanics of legislating, and with the legislative personalities and attitudes which were shaping the statutory law of North Carolina. He had an opportunity to observe the influence of various groups and organizations and their style of operation. Because the cases before the Courts often reflected these same influences and involved the activities of the same groups, this was invaluable background for a judge.

So also was his involvement in law enforcement as prosecuting attorney of Nash County and his service as judge of the county court at Nashville.

In addition to his activities in these areas, Judge Barnhill participated in the affairs of the Democratic Party, served as a steward in the Rocky Mount Methodist Church, and held memberships in the Nash County Bar Association, the North Carolina Bar Associa-

PRESENTATION OF BARNHILL PORTRAIT.

tion, the Masonic Lodge, the York Rite, the Mystic Shrine, and other organizations and fraternities. As Chairman of the North Carolina Judicial Council, he made significant contributions to legal reform.

Judge Barnhill was most fortunate in his choice of a helpmate. On June 5, 1912, he married Miss Nannie Rebecca Cooper, the daughter of George B. and Alice (Arrington) Cooper, who was born at Rocky Mount on June 17, 1887, and died at Raleigh on February 21, 1962.

This happy marriage was blessed by a son, Maurice Victor Barnhill, Jr., and a daughter, Rebecca Arrington Barnhill, donors of the portrait being presented to the Court. They honor us today by their presence. Maurice Victor Barnhill, Jr., who is one of the State's ablest lawyers, is accompanied by his wife, the former Ruth Margaret Zerbach, and his sons, Maurice Victor Barnhill III, a student at Stanford University Graduate School, and James Herbert Barnhill, a student at Harvard Law School.

Guided by a strong sense of duty, Judge Barnhill always viewed the law as an instrument of service to society. "Law," he wrote in 1931, "is nothing more than a rule of human conduct. The standard of government in a community is nothing more than the composite will and opinion of its citizens. It follows as a matter of course that each citizen by his individual conduct and his participation in his government either elevates or lowers that standard."

I remember how he applied those principles of duty to me on the eve of my appointment to the Senate and my resignation from the Court in 1954. Senator Hoey had passed away, and Governor William B. Umstead had the appointment of his successor under consideration. It was the end of the Court's session. Judge Barnhill said he wanted to speak with me, and I went to his chambers. He shut all the doors in a somewhat conspiratorial manner, and then said "The Governor wants you to call him. I suspect he is going to offer you the appointment to the Senate. If he does, I think you should accept. I would hate to lose you on the court, but I think it would be your duty to accept the appointment." It was typical of the man, that while others were viewing the position as an honor, he saw it as a call to public duty. And, loving the law as he did, he knew what it would mean to me to leave the Court, even for such a high federal post.

Throughout his life he tried to instill in others the devotion to the law and the sense of satisfaction in it which he felt so deeply. Speaking to a group of young lawyers in Forsyth, after he joined the Supreme Court, he expressed his belief in the written law as a chronicle of our civilization. "You can get our civilization as it has

PRESENTATION OF BARNHILL PORTRAIT.

progressed through the years in our North Carolina reports, and the history and progress of North Carolina may be seen more clearly in these reports than in any other place," he said. He admonished them to turn to the records of the law for help in dealing with the future.

The law is a worthy profession, he reminded them saying: "To a person who doesn't love the law, it is a dry and uninteresting thing, but to the lawyer who has a love for his profession, it is live, vital and interesting."

Although his education and experience were primarily legal, he was one of the most widely read persons it has been my pleasure to know. Steeped in the humanities and knowledgeable about current events, he probably, through his reading, had traveled more widely and lived more deeply than most men. He allowed no experience to escape him, for like Tennyson's Ulysses, he was a part of all that he met.

For thirteen years from June, 1924, to July, 1937, he served as Judge on the Superior Court of North Carolina. An outstanding trial judge, he was specially assigned to try many of the most important cases in the State during his tenure. Two of these in particular stand out in the legal history of the state. One of them was the sensational trial of Fred Beal and others for the murder of Gastonia Police Chief O. F. Aderholt during the 1929 textile mill strike. (199 N.C. 278). The other was the trial of Luke Lea, Luke Lea, Jr. and Wallace Davis in 1931 for misuse of the assets and credit of the Central Bank and Trust Company, the largest bank in Western North Carolina.

I wish to discuss these cases, for they illustrate well the judicial temperament and breadth of legal experience which Judge Barnhill brought to this Court.

By the time he was 42 years of age, the Judge had practiced law in two or three counties and been on the bench for five years presiding over the courts in Eastern North Carolina. Although well known in his State as a painstaking and capable judge, he was little known outside North Carolina, and, as it was written of his at the time, "had been so quiet and free from even the suggestion of desiring publicity that he has not figured large in the public eye."

Then, suddenly, his picture was in almost every newspaper in the United States and abroad. He was faced with the greatest challenge of his judicial career as he received assignment from Governor Gardner to preside over one of the century's most controversial murder trials—a case born of all the burning religious, social, political, and economic issues of those depression years.

This trial of sixteen strikers and organizers, several of whom

PRESENTATION OF BARNHILL PORTRAIT.

were admitted Communists, grew out of a strike by the local branch of the National Textile Workers' Union at the Loray Mill in Gastonia. On June 7, 1929, during an encounter between city police officers and those in charge of union premises, Police Chief Aderholt was killed and several others were wounded.

Coming soon after the Sacco-Venzetti trial in Massachusetts, the Gastonia trial of alleged Communists seemed destined to challenge and at the same time symbolize the American system of justice. Many feared the defendants would be tried not for murder but for their religious, political and economic theories. But their fears were groundless.

With the eyes of the whole world upon him, Judge Barnhill charged the jury in a classic statement of what constitutes a fair criminal trial.

"There is only one issue. Are the defendants guilty as charged? This must be determined in a quiet and orderly manner. It must not be clouded by any other issue."

He warned that the political, economic and religious views and beliefs of the defendants had nothing to do with the case and their injection into the trial would not be permitted.

"When a person comes into court he comes on exact equality with every other citizen. He has no right to expect to be either exalted or condemned, to receive either more or less than is just on account of his race, color, or condition in life, or by his convictions upon social, economic, industrial, political, or religious matters."

One editorial stated the next day "those who have been most insistent that North Carolina's good name be unscarred and that the cause of justice prevail must necessarily have been strengthened after reading Judge Barnhill's charge to the grand jury and noting the fairness, directness and firmness with which he spoke."

His first test came as the attorney for the defendants requested a change of venue. Judge Barnhill realized that with passions inflamed in Gaston County, it might be difficult for a jury from that county to hear the case objectively at that time and in that atmosphere. He therefore granted a continuance and the case was assigned to Mecklenburg County Superior Court at Charlotte with Judge Barnhill appointed to preside. This decision was received as firm indication throughout the State and the land that justice was to prevail as far as he was able to assure it, and that the trial of the case would be as free as possible from prejudicial publicity.

PRESENTATION OF BARNHILL PORTRAIT.

During the progress of the original trial, one of the jurors was incapacitated as the result of an emotional breakdown, and a mistrial was ordered. Although indictments were returned against 16 defendants, only seven of them went to final trial, which resulted in convictions and sentences for second degree murder and related crimes.

There were many difficult rulings during the course of the trial, as the judge sought an impartial trial, without artificial drama. Some of these rulings made judicial history and are today studied by students in North Carolina law schools. When the State introduced a life-size plaster figure of Police Chief Aderholt as evidence against the alleged murderers, Judge Barnhill ordered the effigy removed from the courtroom.

Time and time again throughout the trial, he was cautious not to admit into testimony any evidence which might show the Communist connections of the defendants.

For purposes of impeachment Judge Barnhill overruled objections to questioning a witness about her belief in God, basing his ruling on the North Carolina Statute of Oaths of 1777, which stipulated that a witness must believe in divine punishment after death to qualify as a witness. He commented later "If I believed that life ends with death and that there is no punishment after death, I would be less apt to tell the truth."

This ruling received much strong comment throughout the country; both from those who favored it and those critical of it.

When it considered this ruling as a possible error, the Supreme Court held this no interference with the right of conscience. Chief Justice Stacy said:

"The answers of the witness, taken in connection with her previous testimony, do not show that she intended to express disbelief in a Supreme Being, or to deny all religious sense of accountability, such as would have disqualified her as a witness" . . . But, even if error were committed in not sustaining objections to the questions propounded, which is not conceded, it would seem that, in the light of the answers elicited, no appreciable harm has come to the defendants, if harm at all, and that the verdicts and judgments ought not to be disturbed on account of these exceptions."

To those who knew Judge Barnhill's fairness, it was no surprise that after examining the record, Chief Justice Stacy, speaking for the Supreme Court, was able to say:

"We are convinced, from a searching scrutiny of all that tran-

PRESENTATION OF BARNHILL PORTRAIT.

spired on the hearing, to which exceptions have been taken, that substantial justice has been done, and that no reversible error has been made to appear." (199 N.C. 278).

The case of Luke Lea, Luke Lea, Jr., and Wallace Davis was even more complicated and controversial than the Gastonia case because of the many people involved and because of its effect on the politics and economics of the State. The trial was to test to the fullest Judge Barnhill's patience, knowledge of the law and good humor. In the latter part of the 1920's land speculation, then prevalent in Florida, overflowed to the mountains of Western North Carolina. The slogan was "Florida in the Winter: the North Carolina mountains in the summer." Centering around Asheville, the speculation was so extensive that many farms were subdivided into "city lots." The City of Asheville and Buncombe County extended water and sewer lines into sparsely populated areas. The debt of the city and county rose rapidly with the fever of speculation. Prices became inflated beyond real values. Sometimes the same piece of land would change ownership many times on the same day. In the fall of 1930, the Central Bank and Trust Company failed. Wallace Davis, the President, ex-Senator Luke Lea and his son, Luke Lea, Jr. of Nashville, Tennessee, were indicted on multiple charges of criminal conspiracy to use the assets and credit of the bank for unlawful purposes. Because of the involvement of city and county officials in some of the irregular, if not criminal, transactions of the bank, the fact that an ex-United States Senator was a defendant, and the multitude of transactions between the Leas and their associates in Tennessee and the bank in North Carolina, the trial attracted not only great local and state-wide interest, but also national attention.

In 1931, Judge Barnhill was assigned to hold special terms of the Superior Court of Buncombe County for the purpose of trying the resulting criminal cases.

As all trial lawyers know, the most difficult criminal case to try without committing reversible error is one involving books of account and records such as are normally maintained by banks. In the trial of the case against the Leas and Davis, literally scores of questions arose involving the admissibility of evidence and its application to the issues raised by the criminal indictments. The record on appeal to the Supreme Court consisted of 1,221 pages, and the attorneys for the defendant managed to state 300 exceptions. The Supreme Court of North Carolina was unable to find any reversible error in this voluminous record and the proceedings of a trial which continued for several weeks (203 N.C. 13). The Court subsequently denied petitions for rehearing (203 N.C. 35) and for a new trial based on newly discovered evidence (203 N.C. 316). Petitions to

PRESENTATION OF BARNHILL PORTRAIT.

the Supreme Court of the United States for writs of *certiorari* were denied (287 U.S. 649, 77 L. Ed. 561, and 287 U.S. 668, 77 L. Ed. 576).

Major Lennox Polk McLendon, now of the Greensboro Bar, was retained by the State Banking Commission with the approval of Governor Gardner to assist in the prosecution of the criminal cases growing out of the Central Bank failure. Speaking of the masterful way Judge Barnhill conducted the trial, Major McLendon said:

“The difficulties inherent in the case against Luke Lea, Sr., Luke Lea, Jr., and Wallace Davis were numerous. Not only did the case involve the usual problems growing out of the use of bank books and records; but, in addition, it involved serious difficulties with respect to the identity of securities and their ownership by the bank, the issuance of certificates of deposit without a contemporaneous recording of them on the bank’s books, the disparity between entries in books of deposit issued to depositors, and the entries upon the bank’s records and the authenticity of typewritten letters without written signatures or other usual internal evidence of authorship. Through a maze of documentary evidence and the testimony of the employees of the bank and of expert accountants, Judge Barnhill directed the trail of the case with extraordinary patience, good judgment and absolute fairness . . . Through it all, he maintained the poise and dignity of a great judge. His charge to the jury was a masterpiece of clarity and fairness to both the State and the defendants. I really do not see how any judge could have done a better job under the extraordinary circumstances of this case.”

When Governor Clyde R. Hoey appointed Judge Barnhill an Associate Justice of the North Carolina Supreme Court on July 1, 1937, the appointment was acclaimed throughout the State as most fitting. He was elected to the Associate Justiceship for full eight year terms in the general elections of 1938 and 1946, and served in that capacity until February 1, 1954, when Governor Umstead named him Chief Justice to fill the vacancy occasioned by the retirement of Judge William A. Devin. He was elected to the post of Chief Justice in the general election of 1954 and filled that office with great acceptability until August 21, 1956, when he retired and qualified as an Emergency Justice.

When Judge Barnhill joined the Court as an Associate Justice, Walter P. Stacy, one of America’s greatest jurists of all time, was Chief Justice. Other Associate Justices were Heriot Clarkson, George Whitfield Connor, Michael Schenck, William A. Devin, and John

PRESENTATION OF BARNHILL PORTRAIT.

Wallace Winborne. Judge Barnhill also served with these later additions to the Court during subsequent years: Aaron Ashley Flowers Seawell, Emery B. Denny, the speaker, Murray G. James, Jeff D. Johnson, Jr., Itimous T. Valentine, R. Hunt Parker, William H. Bobbitt, Carlisle W. Higgins, and William B. Rodman, Jr. All who had the privilege of working with him on this Court knew Maurice Victor Barnhill to be an intellectual and legal giant as well as a warm-hearted friend.

All in all, Judge Barnhill served the law and the people of North Carolina for nineteen fruitful years as a Justice of this Court. It would require a book to appraise the enduring values his opinions added to the law. Time does not permit me to undertake this task. I must content myself with brief comments on a few of his opinions.

Judge Barnhill preferred agreement among the members of the court but left room for dissent when a member felt his convictions required dissent. All of the Justices on his seven-man court worked hard. It is not generally known, I find, that the Supreme Court of North Carolina hands down written opinions sooner after argument of cases than any other appellate court in the United States. It is seldom longer than four weeks after a case is heard that a decision is rendered. Because of the pressure of work, our discussions were usually serious. However, among the members there was a camaraderie born of a common isolation from the world outside, a common bond forged by that sense of seclusion and neutrality which society demands of its judges, and by the unity of our minds and hearts in a task often poorly comprehended by outsiders.

Although Judge Barnhill's opinions appear in 33 volumes of the Supreme Court Reports, from volume 212 through 244, his service on the Court is not reflected solely in the opinions he wrote. In conferences as we discussed cases and tried to reach decisions he lent the energies of his inquiring mind to the solution in every case, regardless of who was writing the opinion. So interested was he that frequently after a tentative decision was reached in conference, he went to the chambers of the judge who was assigned to write the opinion and made extremely valuable suggestions.

He possessed a remarkable ability to express himself clearly and understandingly in an opinion, and as a result of his distinguished career as a practicing lawyer and a trial judge, he believed firmly in the necessity for doing so. Appellate opinions, he believed, are helpful only insofar as they are clear and unambiguous and can be used as a basis for instructions to a jury or guidance to a client.

His reaction to the law, because of his training and knowledge, was often almost intuitive. He possessed an almost uncanny ability to respond immediately and accurately to a legal proposition, or to

PRESENTATION OF BARNHILL PORTRAIT.

catch instinctively the significance of the mere mention of a decision in the course of an argument or discussion.

His attitude toward the role of regulatory agencies and legislative control of them is apparent in many of his opinions. Deeply aware of the extent of bureaucratic control which government in his lifetime had imposed on the individual and on the private institutions of society, he was quick to check its excesses. In a 1952 concurring opinion, for instance, he agreed that the State Board of Nurse Examiners had exceeded its authority in dropping the Hamlet Hospital School for Nursing from the accredited lists without notice or a hearing. Revealing not only a sense of the importance of the regulatory agencies in society, but a knowledge of the special needs of educational and small professional institutions, he wrote:

"The legislature is the policy-making agency of the State government. The law-making function is assigned exclusively to it and it alone can prescribe standards of conduct which have the force and effect of law. This function, except where expressly authorized by the Constitution, cannot be delegated to any other authority or body." However, he noted, the legislature may create an administrative agency and authorize it to make rules and regulations to effect the operation and enforcement of a law within the general scope and expressed general purpose of the statute. This authority he stated "cannot lawfully include the power to make the law, for neither urgency of necessity nor gravity of a situation arising from economic or social conditions allows the Legislature to abdicate, transfer, or delegate its constitutional authority to an administrative agency. Hence, an administrative agency has no power to create a duty where the law creates none." (234 N.C. 673).

His words, I believe, bear a special significance today for both state and federal regulatory agencies. This opinion is typical of his sense of the social purpose of legislation. In seeking to accomplish the objective of assuring adequate training for nurses, admonished the Justice, the Board "should keep in mind the fact that the statute was not enacted for the benefit of nurses or to create a guild having the legal right to limit or proscribe competition, either of nurses or of hospital schools of nursing. It was enacted to promote the good health and general welfare of the people at large."

His opinions frequently revealed a dry humor and a sympathy for the parties which his strict adherence to the law could not always conceal. In *Singletary v. Nixon*, 239 N.C. 635 a civil action for compensation for personal injuries resulting from an automobile-tractor-trailer collision, the judgment of nonsuit was upheld because of the contributory negligence of the plaintiff by excessive speed or not keeping a proper lookout. At the end of his opinion,

PRESENTATION OF BARNHILL PORTRAIT.

the Chief Justice sent a public message to the plaintiff, in these words:

“The plaintiff may, perhaps, draw consolation from the fact this record tends to show that he is the type of man who ‘swearth to his own hurt and changeth not.’ Psalms 15:4. In his examination and cross-examination he was afforded opportunities to modify his testimony to his own advantage. Yet he adhered strictly to his first statements in respect to the manner in which the collision occurred, his nearness to the truck when he first saw it, the time when he applied his brakes, and other circumstances which tended to prove his own want of due care. For this at least he is to be commended.”

He felt very strongly about the role of the jury in our system of justice, and about the duty of a judge to uphold the jury, even when he did not agree. His frustration with the loopholes of the law sometimes broke through in such cases. One opinion in particular illustrates his attitude in this regard. This is *Jyachosky v. Wensil*, 240 N.C. 217, in which he wrote a concurring opinion deploring the fact that the jury misinterpreted the facts but, conscious of his oath, affirming the judgment, and calling on the General Assembly to take action to help the court. He said there:

“Yet the jury adopted the bare, artificial inference of fact permitted by the statute and found that it was sufficient to override and outweigh all the positive evidence to the contrary. While we may grant new trials for errors of law committed by the trial judge, we are without authority to correct this error in the verdict. The jury was the final arbiter of the facts. Therefore we must affirm a judgment which compels the defendant to pay plaintiff \$18,000 which he should not be required to pay. This offends my every sense of justice and fair play. I can only say that it is most unfortunate that judicial officers should be placed in a position where they must deny relief against injustice in the name of the law. While we need some statute such as G.S. 20-71.1, this Act should be so amended as to afford the Court an opportunity to grant relief in a case of this kind.

“Since the trial judge committed no error in the trial of the cause, I must, in compliance with my oath to administer the law as it is written, concede that the judgment entered must be affirmed. In so doing, I make my assent as negative as language will permit.”

In *Kennedy v. Parrott*, 243 N.C. 355, Justice Barnhill wrote the

PRESENTATION OF BARNHILL PORTRAIT.

Court's opinion in a landmark decision holding, among other things, that the consent of a patient to a major internal operation will be construed as general in nature so that the surgeon may lawfully perform such operation as good surgery demands, even though this requires an extension of the operation further than was originally contemplated. Before this decision, an extension of such an operation, however necessary, might have resulted in an assault charge against the physician. Although it is almost a general rule today, it was among the first such decisions in the country. His attitude in dealing with an area of the law in flux is typical of his recognition of the need to modify some strict common law rules to meet modern conditions. He cited conditions during the period which shaped the common law rule, "prior to the advent of the modern hospital and before anesthesia had appeared on the horizon of the medical world." In those days, he noted, even a major operation was performed in the home of the patient, and the patient ordinarily was conscious so that he could give his consent. If he was not, members of his family were immediately available.

"However," wrote the Justice, "now that hospitals are available to most people in need of major surgery; anesthesia is in common use; operations are performed in the operating rooms of such hospitals while the patient is under the influence of an anesthetic; the surgeon is bedecked with operating gown, mask, and gloves; and the attending relatives, if any, are in some other part of the hospital, sometimes many floors away, the law is in a state of flux. More and more courts are beginning to realize that ordinarily a surgeon is employed to remedy conditions without any express limitation on his authority in respect thereto, and that in view of these conditions which make consent impractical, it is unreasonable to hold the physician to the exact operation—particularly when it is internal—that his preliminary examination indicated was necessary. We know that now complete diagnosis of an internal ailment is not effectuated until after the patient is under the influence of the anesthetic and the incision has been made.

"These courts act upon the concept that the philosophy of the law is embodied in the ancient Latin Maxim: *Ratio est legis anima; mutata legis ratione matatur et lex*. Reason is the soul of the law; the reason of the law being changed, the law is also changed."

It was ill health which finally compelled Judge Barnhill to retire from the Court he loved. Not many people realized the severe physical handicap under which he lived and worked throughout his adult years. From the time he was eighteen years old, he was subject to severe attacks of asthma and it advanced through the years to emphysema. In 1950, he had a serious operation for a malignancy

 PRESENTATION OF BARNHILL PORTRAIT.

from which he never fully recovered. Toward the end of his career he had to see a doctor several times a day because of the emphysema. His daughter tells me that he often said to her that his poor health might have been a blessing in disguise and that he might have lived a different life if he had been well. As it was, he had to concentrate on his career and a quiet life of studying and reading.

"It isn't life that matters, but the courage you bring to it." Frosted Moses' advice in Walpole's *Fortitude* might well have been Judge Barnhill's daily reminder to himself throughout his life. A person of less indomitable will would have given up. Yet he never mentioned his affliction and struggled not to show it. The only personal reference to it is found in his opinion in *Lippard v. Johnson* involving plaintiff's reaction to a Novocain shot. Judge Barnhill wrote:

"Practical application of the medical science is necessarily to a large degree experimental. Due to the varying conditions of human systems, the result of the use of any medicine cannot be predicted with certainty. What is beneficial to many sometimes proves to be highly injurious to others. A food or drink that one allergic person may use with immunity is highly injurious to another. The goldenrod is a thing of beauty to one asthmatic; to another, it is a thing to be shunned. Even the expert cannot completely fathom or understand the reactions of the human system. Therefore, to say that an unexpected, unanticipated, and unfavorable result of a treatment by a physician invokes the application of the doctrine of *res ipsa loquitur* would be to stretch that doctrine far beyond its real purpose and to destroy its recognized usefulness in proper cases."

When I learned that Judge Barnhill had journeyed to the bourne from which no traveler returns, I thought of his great service as a judge and of the physical handicap under which it was rendered, and I called to mind the King's Son in Edward Rowland Sill's inspiring poem "Opportunity."

"This I beheld, or dreamed it in a dream:—
 There spread a cloud of dust along a plain;
 And underneath the cloud, or in it, raged
 A furious battle, and men yelled, and swords
 Shocked upon swords and shields. A prince's banner
 Wavered, then staggered backward, hemmed by foes.

"A craven hung along the battle's edge,
 And thought, 'Had I a sword of keener steel —

PRESENTATION OF BARNHILL PORTRAIT.

That blue blade that the king's son bears, —
but this
Blunt thing!' he snapped and flung it from his hand,
And lowering crept away and left the field.

Then came the king's son, wounded, sore bestead,
And weaponless, and saw the broken sword,
Hilt-buried in the dry and trodden sand,
And ran and snatched it, and with battle shout
Lifted afresh he hewed his enemy down,
And saved a great cause that heroic day."

Instead of seeking "a sword of keener steel", Maurice Victor Barnhill made the most of what God had given him in body, in mind, and in spirit. When he died at Raleigh on October 12, 1963, he left to his family and his state the example of a life of service, a life well-lived.

And surely, he left the law, as a profession, as a science, and as art, not as he had found it, but enriched a thousandfold. Of his great legacy, this portrait of Judge Barnhill will remind the members of this Court and all those who attend here in future years.

REMARKS OF CHIEF JUSTICE R. HUNT PARKER IN ACCEPTING THE
PORTRAIT OF CHIEF JUSTICE M. V. BARNHILL.

This Court has heard with pleasure the eloquent, scholarly, and faithful tribute to our former Chief Justice M. V. Barnhill delivered by the senior United States Senator from North Carolina, himself an eminent lawyer and jurist, who served on this Court with Judge Barnhill for more than six years.

Those of us who knew Chief Justice Barnhill as a boy and youth realized that he had a brilliant, analytical mind, and that even then he was capable of close and logical reasoning and of terse and lucid statement. With such talents he was destined for the law, and he became a lawyer of the first rank. We agree with the speaker that he will take his place among the ablest Justices who have served on this Court. He was proud of the great record this Court has, and was ever ready to spend himself to the uttermost in promoting the work and the usefulness of this Court, of the lower courts, and of the legal profession. In conference, his familiarity with our decisions, and their significance, was most helpful, and he was ever ready to drop his work and to be of assistance to his associates. Victor Barnhill is dead, but his life's work endures in thirty-three volumes of our Reports to aid his successors in accurately writing the decisions of the Court.

The Marshal will see that the portrait is hung in its appropriate place in the courtroom, and these proceedings will be printed in the forthcoming volume of our Reports, and spread upon the minutes of the Court.