

Ceremonies
For The Presentation Of A Portrait
Of
The Late Justice Carlisle Wallace
Higgins
To
The Supreme Court Of North Carolina
7 May 1981
Courtroom Of The Supreme Court
Justice Building
Raleigh

INTRODUCTORY REMARKS
BY
CHIEF JUSTICE JOSEPH BRANCH

For the members of the Higgins' family and for the members of this Court, I wish to express appreciation for your presence at this meaningful ceremony.

At the request of the Higgins' family, the address of presentation will be delivered by Judge Frank M. Parker. Because of his close friendship and close association particularly during the latter days of Justice Higgins' life, it is most appropriate that Judge Parker be the person to deliver this address. The Court recognizes Judge Frank M. Parker.

PRESENTATION ADDRESS
BY
THE HONORABLE FRANK M. PARKER

May it please the Court:

On October 17th, 1887 there was born in the little community of Ennice in Alleghany County, North Carolina, to the marriage of Martin Alexander Higgins and Jennie Bledsoe Higgins their first child, a boy. They named their son for his paternal grandfather who had been killed while serving in the Confederate Army, Isaac Carlisle Higgins.¹ Early exhibiting that independence of spirit which was to become a prominent feature of his personality, the boy himself soon changed his name to Carlisle Wallace Higgins, and it is by that name that he was thereafter known throughout the long and eventful life which we honor here today.

The characteristics of independence, courage, self-reliance, and freedom of spirit developed quite naturally in Carlisle Wallace Higgins. His forebears were among those first pioneers who came down the Valley of Virginia, eventually to settle in the mountains of Northwestern North Carolina, first conquering and then planting the wilderness as they came. The life into which he was born and in which he spent his boyhood was still very much the life of the American frontier. No railroad came into Alleghany County and no industrial smoke stack or automobile exhaust polluted its pure air. Small game still abounded and its sparkling streams still teemed with trout. People still lived much as their ancestors had always lived, close to the land, wresting a living from its soil by farming, raising cattle and sheep, and cutting its virgin timber. For a boy who loved the out-of-doors as did Carlisle Higgins, it was an idyllic existence. He early learned the uses of firearms, starting with an old muzzle-loading rifle, and he learned the ways of the trout from master fishermen among his mountain neighbors.

He started his education in a one-room schoolhouse near his home. If he did not immediately exhibit a love for learning, he did early establish that he possessed both an active imagination and a capacity for leadership which at times made life difficult for the succession of young schoolmasters who came to

1. Information as to name and date of birth (see footnote 2 *infra*) obtained from original entries in Higgins family bible verified by Justice Higgins's younger sister, Mrs. Clyde Carico, of Bel Air, Md., who survived him.

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teach at the school. He and four of his school-mates could form a conspiracy simply by looking at one another, without a word being spoken. His initiative in carrying out these conspiracies finally prompted one frustrated young teacher to write to his parents:

“The limited facilities of this school are inadequate to deal with your son, Carlisle.”

Whether it was this frustration on the part of his schoolmaster or simply that he had exhausted the resources of the local school, I do not know, but the fact remains that during his fourteenth and fifteenth years, Carlisle Higgins dropped out of school altogether.² These were, for him, happy and satisfying years. Aside from hunting and fishing, he spent his time profitably in raising and trading cattle and sheep, an activity for which he exhibited a considerable talent. This highly satisfying life style ended abruptly when his father, a successful farmer and business man who knew the value of an education, packed him off to Bridle Creek Academy in Grayson County, Virginia. There he received a thorough grounding in English, Latin, and Mathematics, and under the stimulus of excellent teachers for the first time experienced the joys of learning.

In 1908 he entered the University at Chapel Hill, in that institution finding one of the great and enduring loves of his life. There, he continued to apply himself seriously to his studies, taking time from them primarily only to engage in intercollegiate debating, for which he exhibited a marked aptitude. Although an excellent athlete, he did not participate in varsity sports, finding to his chagrin that a summer spent in playing semi-professional baseball in Virginia had rendered him ineligible. He graduated from the University in 1912 and immediately entered its law school, completing his studies there in 1914. While at the University he made many lasting friendships. One of these, in particular, was to play a significant role in his later life. William B. Umstead and Carlisle W. Higgins were classmates in law school.

2. Because of this two year hiatus, Carlisle W. Higgins, not wishing to appear older than his classmates, incorrectly reported his year of birth as 1889 instead of 1887 when he resumed his education, and he maintained this fiction for many years thereafter, reporting his age correctly only in his later years. The history of the Supreme Court which appears in 274 N.C. 611, 621, reports his year of birth incorrectly as 1889 instead of 1887.

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After receiving his license to practice law, which was granted by the Supreme Court at its Fall term in 1914, Carlisle Higgins returned to Alleghany County, where he entered into practice at Sparta with the Honorable Rufus A. Doughton. Never did a young lawyer have a greater teacher for his partner or a quicker opportunity to put into practice all that he could learn. Mr. Doughton, or Governor Doughton³ as he was generally called, was one of the ablest and most respected trial lawyers in all of Western North Carolina. However, the same qualities of character and leadership which attracted clients also made his services much in demand in the governmental affairs of this State.⁴ During those frequent and extended periods when Governor Doughton's public service required his absence from Sparta, it was his young partner, Carlisle Higgins, who alone faced the older and more experienced trial lawyers of his area. He soon established that he was more than their match.

In 1916 Carlisle Higgins took the single most constructive step of his long and distinguished career. On November 26 of that year he married Myrtle Bryant, of Independence, Virginia, and for more than sixty years thereafter, until her death on September 17, 1977, he was blessed in having the love and companionship of that truly great lady.

Upon our entry into the first World War, Carlisle Higgins promptly enlisted in the United States Army, choosing the infantry as the only proper service for a mountain man. While undergoing training he nearly lost his life in the terrible flu epidemic in the winter of 1917-18, only his strong constitution pulling him through. Upon the close of the war he returned to his law practice in Sparta, at first again in partnership with Governor Doughton, and later alone when Mr. Doughton became Commissioner of Revenue. Although no longer partners, the close relationship between them continued so long as Mr. Doughton lived. On one occasion they found themselves in court on opposite sides of a civil case. Carlisle Higgins, encountering

3. Rufus A. Doughton served as Lieutenant Governor of North Carolina from 1893 to 1896.

4. In addition to serving as Lieutenant Governor, Rufus A. Doughton represented Alleghany County in the House of Representatives in the Sessions of 1887, 1889, 1891, 1903, 1907, 1909, 1911, 1913, 1915, 1917, 1919, 1921, 1923 and 1933. He was Speaker of the House in the Session of 1891, and served as North Carolina Commissioner of Revenue from 1923 to 1927. He also served as chairman of the State Highway Commission.

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unexpected difficulty when one of his witnesses refused to testify freely, sought to repair the damage by asking leading questions. This went on for some time without protest from Mr. Doughton, but finally he arose and addressed the Court:

“Your Honor, I am forced to object to this manner of questioning. I know that my young friend knows better than to lead his witness in this fashion.”

To this, Higgins responded:

“Oh no, Governor, I am not leading this witness. I *was* leading him a little while ago but I’m *pushing* him now!”

Governor Doughton threw up his hands, laughed, and sat down. Years later Carlisle Higgins said that Rufus Doughton was the kindest man he had ever known.

During the period of their residence in Sparta, Carlisle and Myrtle Higgins had two children, a son, Carlisle W. Higgins, Jr., and a daughter, Mary Cecile Higgins (now Mrs. Robert Bridges), both of whom are with us here today. Also during this period Carlisle Higgins was twice elected to the State legislature. In 1925 he represented Alleghany County in the State House of Representatives, and in 1929 he was the only Democrat elected from any of the northwestern mountain counties to serve in the State Senate.

In 1930 he was elected Solicitor of the old 11th Judicial District, then composed of Ashe, Alleghany, Surry, Forsyth, Rockingham, and Caswell Counties. His predecessor, the Honorable S. Porter Graves, had been an able attorney, but because of ill health had not been able to keep up with his dockets, which had become badly behind. When, four years later, Carlisle Higgins completed his service as Solicitor, he had lost over 30 pounds and suffered from ulcers, but his dockets were current. He achieved this result not alone by intensive and sustained effort, but by developing, to a remarkable degree, the ability to discard all irrelevant material in his quest for central and fundamental points in the prosecution of criminal cases. This ability to concentrate on essentials was to serve him well throughout all of his later career.

In 1934, on recommendation of Senator Bailey, President Roosevelt appointed Carlisle Higgins United States District Attorney for the Middle District of North Carolina, a post which

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he continued to hold until 1945. During his tenure as District Attorney, Carlisle and Myrtle Higgins moved their home from Sparta to Greensboro, which was more conveniently located for the work of the United States Attorney. While serving as United States Attorney, Carlisle Higgins participated in prosecuting one of the largest series of anti-trust cases ever undertaken up until that time when 104 corporations and individuals engaged in the fertilizer business were charged with violating the anti-trust laws. The cases took over three years to try, but in the end the government was successful. Indeed, Carlisle Higgins's success as a trial advocate in representing the United States Government, both as prosecutor of those charged with violating its laws and as defender of claims against it, won him such recognition in the United States Department of Justice that he was soon chosen by the Department to represent the Federal Government on special assignments in courts all over the United States.

This same recognition of his abilities as a trial advocate also led to his being chosen in November, 1945, to go to Japan as Assistant Chief, and later as Acting Chief, of Counsel of the International Prosecution Section in the prosecution of General Tojo and other Japanese war lords before the International Military Tribunal for the Far East. For this purpose he was again inducted into the Army, this time as a Colonel serving on the Staff of General Douglas MacArthur. On this assignment he remained in Japan for more than a year, returning to the United States only after the prosecution's case had been successfully completed. As a result of this prosecution, General Tojo and a number of the other defendants were convicted and ultimately executed for their crimes. Carlisle Higgins's experiences in Japan led him to have a profound admiration for the Japanese people, though not for the leaders who had led them into the war.

On returning to the United States in the spring of 1947, Carlisle and Myrtle Higgins moved their home from Greensboro to Winston-Salem, where he entered the private practice of law in partnership with J. Erle McMichael. His services as a trial advocate were in immediate demand, and he spent the next seven years constantly in court representing clients in cases all up and down the eastern seaboard, from New York to Florida. This practice, together with his extensive trial practice while representing the United States Government, eventually

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took him to court room appearances in State or Federal courts located in 37 of our 50 states. As a result of his nation-wide trial experience, he arrived at the opinion that the North Carolina lawyers, as a whole, were the most competent trial lawyers he appeared against.

In addition to his law practice, Carlisle Higgins continued his interest in public affairs. When, in 1952, his old friend and school-mate, William B. Umstead, called on him for help, he readily responded and successfully managed Umstead's campaign for Governor. Again, in 1954, he responded to the call of the State Democratic Party Executive Committee and served for a time as National Committeeman for North Carolina. On June 8, 1954, Governor Umstead announced his appointment as an Associate Justice of the North Carolina Supreme Court to succeed Justice Sam Ervin, who resigned from the Court to accept appointment to the United States Senate.

Justice Higgins took the oath of office as an Associate Justice of the Supreme Court on August 30, 1954. He was then almost 67 years old, an age at which most men think of retiring. At the time there was considerable speculation among members of the Forsyth County Bar that he would not remain long on the Court, not because he would want to retire but because he would find life on the Court not sufficiently active to suit his tastes. These speculations proved false. Justice Higgins was elected in November, 1954, to the balance of the unexpired term of Justice Ervin, and was re-elected in November, 1958, and again in 1966 to full eight-year terms, retiring only when his term expired on December 31, 1974. He thus served for a total of twenty years and four months. Although several Justices had combined service as Associate Justice and as Chief Justice for longer periods, Justice Higgins served as Associate Justice longer than any person in the history of the Court save one, and Justice Platt Walker's service as an Associate Justice exceeded that of Justice Higgins by only 23 days.

During his long service, Justice Higgins wrote 1140 full opinions, 51 dissenting opinions, and an unknown number of per curiam opinions for the Court. It is not, however, the length of his service or the number of his opinions which we honor here today. Rather, it is the quality of his service. As an appellate Judge he knew no constituency but the law itself, being ever mindful that the Supreme Court, unlike the trial courts, in

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deciding a particular case also determines the rights and liabilities of parties not then before it. He scorned judicial activism, believing firmly that the courts should confine themselves to their proper sphere and should not invade that of the legislature. At the same time he never hesitated to advocate changes in court-made law when he thought prior court decisions had been wrong. This willingness to correct past errors caused him to be considered somewhat of a maverick when he first came upon the Court, leading one of his elders on the Court to ask him somewhat petulantly:

“Higgins, how many of these time-honored precedents are you going to try to change?”

to which he bluntly replied:

“Every one that I think is wrong.”

As he himself once remarked, he “had but little respect for status and none at all for quo.”

In writing his opinions he had a remarkable ability to encapsulate a legal concept in a concise and vivid phrase, as a few examples will illustrate. In one case he pointed out that the legislative grant of power to the Utilities Commission to consider “all other facts” which would enable it to determine just and reasonable rates was not “a grant to roam at large in an unfenced field.” *Utilities Commission v. Public Service Co.*, 257 NC 233, 237 (1962). In another, he observed that the legislative directive that the Workmen’s Compensation Act be liberally construed did not “permit either the Commission or the courts to hurry evidence beyond the speed which its own force generates.” *Lawrence v. Mill*, 265 NC 329, 331 (1965). In still a third, he observed that our former rule of evidence excluding hospital records was as “out-of-date as the bustle, asafoetida, and the tomahawk.” *Sims v. Insurance Co.*, 257 NC 32, 42 (1962). Speaking of the fifth amendment, he noted that while “(t)he high court in Washington calls the shots with respect to Fifth Amendment rights, (w)e mark the targets according to the calls.” *State v. Thorpe*, 274 NC 457, 462 (1968). When confronted with an excessively verbose record and brief, he observed that “(i)f there is a grain of merit in this appeal, it is covered up in the chaff.” *Morgan v. Bell Bakeries, Inc.*, 246 NC 429, 434 (1957). As he viewed it, the dominant function of the criminal law was “to protect society from criminals rather than to protect criminals

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from punishment.” *State v. McPherson*, 276 NC 482, 486 (1970). How better could any of these ideas have been expressed?

Above all, he had the ability not only to think clearly and logically but to express himself in clear and precise language. In an era when appellate opinions have tended to become over-long, his were models of conciseness, omitting all but essential facts and saying only what needed to be said. He paid the trial bench and the bar the implied compliment of assuming that they already knew a great deal of law and that it was neither necessary nor desirable for him to say more than was essential for decision of the case at hand. The result was that his opinions became, and still remain, of real service to the busy trial judges and practicing bar, who find it possible to read them quickly and to understand at once what the Court was holding.

When Justice Higgins first came on the court, the Justices were not furnished legal Research Assistants. Later, when these were supplied, he exhibited an uncanny ability to select young men of superior talents after only a brief interview. A close and lasting relationship developed between him and his “boys,” as he called them. All of them have been successful in their chosen profession, and the list of the fraternity who served him reads as an honor roll of the Bar.⁵ Many of them are with us here today.

Although this morning we are primarily concerned with Justice Higgins’s career as a member of this Court, a complete picture requires that mention also be made of other aspects of his life. I have already mentioned his love for the University at Chapel Hill. This love found expression in the life-long support which he gave its athletic teams. Seldom was there a football or basketball game at Chapel Hill without his being in attendance. He had been a fine athlete himself. In addition to playing semi-professional baseball, as a young man he was a successful amateur boxer. Despite the loss of his left eye in an accident in 1929, he continued into his middle life to play golf of championship calibre, and he continued throughout his long life to be

5. Those who served as legal Research Assistants for Justice Higgins were: Joseph Frederick Schweidler, Raleigh (now deceased); Daniel Watson Fouts, Greensboro; Leslie Gray Frye, Winston-Salem; Robert Alden Jones, Forest City; Clifton Leonard Moore, Burgaw; Reginald Stanley Hamel, Charlotte; Wade Marvin Smith, Raleigh; Don Gilbert Miller, High Point; Vernon Haskins Rochelle, Kinston; Joseph William Moss, Greensboro; Roger William Smith, Raleigh; John Breckenridge Regan III, Lumberton; John Lewis Shaw, Raleigh; Hunter Spencer Barrow, Raleigh; Richard Rankin Reamer, Salisbury; Will Hardy Lassiter, III, Rocky Mount; William Hunter Gammon, Raleigh; and Gary Lambeth Murphy, Charlotte.

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one of the finest marksmen with a rifle that this country has produced.

The love of the out-of-doors instilled in him as a boy remained with him all of his life. He became an avid and successful big-game hunter, making many trips into the wilds of the West and far into the Canadian Yukon Territory, returning with trophies of Grizzly Bear, Black Bear, Moose, Caribou, and Mountain Sheep. As a hunter in the far north he won such respect from his Indian guides that after one of his trips into the Yukon when he shot a Dall Ram near the peak of a high mountain in the St. Elias range, they named the mountain "Mt. Higgins" in his honor. On another trip, in August, 1955, he almost lost his life when the violent jolts from a bucking horse he was riding broke open old adhesions, causing him to suffer a totally incapacitating perforated ulcer. The weather closed in, and for five days he lay on the ground, unable to travel. Finally his Indian friends made a stretcher on which they carried him for nine hours to a lake where a float plane could land. He was flown 185 miles to Whitehorse, and then on the following day flown an additional 1,000 miles to Seattle. The surgeon who operated on him in Seattle reported it was doubtful if he could have survived another day, yet so strong was his constitution that within a month he was back attending to his duties on the Court. Even after this experience he returned in later years on hunting trips to the far northern wilderness which he loved.

He was tough, that is certain, tough intellectually as well as physically. Intellectually, he would not tolerate illogical thought processes or imprecise expression. His physical toughness was demonstrated even during his last year on the Court, when he stumbled and fell on the stone steps at the entrance to this building, breaking his wrist. He went to the hospital, where his injury was tended, but then insisted on returning immediately to his office to complete his day's work. He was 87 years old at the time.

Yet for all his toughness, he had a softer, gentler side. This showed particularly in his relationship with children. He loved children, and they in turn loved him. He had an almost miraculous ability to establish an immediate empathy with children, even very small children, who would come readily and trustingly into his arms.

In other ways, too, he was something of a paradox. He

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hunted animals all of his life, yet despite this, and perhaps in part because of it, he spent much of his time during the last years of his life feeding and caring for the birds and squirrels of our capital city.

Above all, he had a talent for friendship. His sparkling wit and unexcelled skill as a story teller made him an altogether delightful companion, and the list is legion of those who eagerly sought and treasured his friendship.

Following his retirement from the Supreme Court, Justice Higgins continued to live in Raleigh, where he entered into an association as counsel with the law firm of Tharrington, Smith and Hargrove, in which two of his former research assistants, Wade and Roger Smith, are partners. Although he declined to appear in court, on most mornings he was the first person to appear at the office, and he was delighted when he could help other members of the firm, which, because of this tremendous background of legal expertise made readily available by his phenomenal memory, he was frequently able to do. This association continued until his death.

He died in Raleigh on October 9, 1980. Had he lived another eight days, he would have been 93 years of age. He had suffered a fall on July 16, 1980, from which he never fully recovered. Until that accident he retained the physical vigor and vitality which characterized his life, and almost to the moment of his death he sparkled with the wit and wisdom which had so long delighted his friends and family.

We honor today a great man whose long life was well and fully lived. In a sense he wrote his own memorial, not alone in the opinions which he wrote for this Court, but more especially in the hearts of the myriad of those who knew and loved him.

In addition to his son and daughter, Justice Higgins was survived by three grand-daughters, Margaret Bridges Ogden, Rebecca Higgins Stalfort, and Mary Margaret Higgins, and by one great grand-daughter, Lindsay Elizabeth Ogden, who was the delight of her great grandfather's last years.

On behalf of his family, it is my privilege to present to this Court the portrait of Justice Carlisle Wallace Higgins, which was painted by Mr. Ken Fox, an artist of New York City. The portrait will be unveiled by Justice Higgins's great grand-daughter, Miss Lindsay Elizabeth Ogden.

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REMARKS OF CHIEF JUSTICE JOSEPH BRANCH IN ACCEPTING THE PORTRAIT OF THE LATE JUSTICE CARLISLE WALLACE HIGGINS

Miss Lindsay Elizabeth Odgen, the great granddaughter of Associate Justice Higgins, will unveil the portrait. She will be escorted by her mother, Mrs. Patty Bridges Odgen, and be assisted by Becky Higgins Stalford and Peggy Higgins, the granddaughters of Associate Justice Higgins. After the unveiling those taking part in this portion of the ceremony will please return to their respective seats.

We are grateful to Judge Frank M. Parker for this impressive and moving memorial address. He has brought to us many significant events in the life of former Associate Justice Carlisle W. Higgins and has correctly portrayed him as a patriot who gave his services to his country in two world wars, an outstanding attorney, a fearless but fair prosecutor and a jurist whose clear and concise opinions have added to the quality and understanding of the law. He was indeed a loyal friend, a worthy adversary and a man whose life was dedicated to his family and to his profession.

We who knew him find it difficult to refrain from recalling incidents in his life which impressed us and made him a very special person. However, Judge Parker has expressed our sentiments well, and we will be satisfied to only say that we fully concur.

The Court wishes to express appreciation to the Higgins' family for the gift of this portrait. It will be hung in an appropriate place in this building and will be a source of strength to us and our successors throughout the years. These proceedings will be spread upon the minutes of this Court and will be printed in a volume of the North Carolina Reports.

In conclusion the Court requests that you remain seated or standing in your present position until otherwise directed by the Clerk. The Clerk will escort the members of the Higgins' family to their places in a receiving line and the members of the Court will be the first to pass along the receiving line. Others who wish to greet the Higgins' family will come as directed by the Clerk.