PRESENTATION OF THE PORTRAIT

OF

MICHAEL SCHENCK

Associate Justice

SUPREME COURT OF NORTH CAROLINA

1934-1948

November 19, 1993

RECOGNITION OF MICHAEL SCHENCK III

BY

CHIEF JUSTICE JAMES G. EXUM, JR.

Chief Justice James G. Exum, Jr., welcomed official and personal guests of the Court and recognized the members of the Schenck family, present for the occasion. They were: Michael Schenck III, Emily Floried Ripley, Tom Ripley, Anne Satterfield, Bill Satterfield, Mary Schenck, Martha Schenck, Kris Purdy, Flo Purdy, Michelle Purdy, Ginny Schenck, Nancy Schenck, Phillip Schenck, Phillip Schenck, Jr., and Emily Ripley. The invocation was pronounced by Reverend Perry Scruggs, Rector, Church of the Good Shepherd, Raleigh, N.C.

The Chief Justice then recognized Michael Schenck III, the grandson of the late Associate Justice Michael Schenck, as follows:

Michael Schenck III was born in Raleigh and attended the public schools here—Underwood, Daniels and Broughton. He received his undergraduate degree at the University of North Carolina at Chapel Hill. He worked with the Episcopal Diocese of North Carolina here in Raleigh for 10 years until he moved to Boston in January 1984 to work with the Church Pension Fund for the Episcopal Church. He moved to New York in 1989 where he continues to work with the Church Pension Fund. Michael is the fourth child of Michael Schenck, Jr., who moved to Raleigh with his father Justice Schenck when Justice Schenck became a member of the Court.

PRESENTATION ADDRESS

by

MICHAEL SCHENCK III

November 19, 1993

In preparation for this presentation, I relied heavily on the press and other publications that reported on the life and times of Michael Schenck and for that I would like to extend my thanks and acknowledgements. I am most grateful for these records for I was only a mere child when my Grandfather died, as were many of you here present today. My own personal recollections are few, but for many years he lived on through his lovely wife, my Grandmother, whom I knew quite well and dearly loved; and through his children. My father quoted him often. Fond memories have been rekindled.

I would also like to thank Danny Moody and the Historical Society of the Supreme Court. Because of his interest and contact with my sisters, this project was initiated to display a portrait of our Grandfather along with the more than 80 persons who have served on the Supreme Court since 1819 when it was created as we know it today.

Of course, all this would not have been possible without the talent and ability of Ned Bittinger, the artist of the portrait. He captured on canvas a remarkably fine likeness of Justice Schenck based on very old photographs and very weak memories. Ned has rendered the essence of this "gentle man" that we called "DeeDee."

Michael Schenck was born December 12, 1876, in Lincolnton, N.C. He was the eighth child of David and Sallie Ramseur Schenck. On that day, David, a Superior Court Judge, was holding court in Catawba County. According to his diary, David was quite concerned because this was the first time that he had been away from home at the birth of one of their children. Further reference in his diary reveals that David and Sallie were having quite a debate over naming this child. If it was a boy, David was holding out for a longtime family name. One that had been skipped for the last two generations and a name that Sallie disliked very much. Nevertheless, a few days after the birth, Sallie relented and this sixth son was named Michael.

In 1881, when Michael was 5 years old, the family moved to Greensboro. Citing low salary that was inadequate to meet the needs of his family, David resigned his position as Superior Court

Judge for the 18th district and accepted a position as General Counsel for the Richmond and Danville Railway (which later became the Southern Railway). Michael's early education was in the Greensboro public schools and his secondary education was at Oak Ridge Institute. Upon graduation from Oak Ridge, he went to The University of North Carolina where he graduated with the class of 1897.

After graduation, he taught for one year at Oak Ridge Institute, then moved to Wilmington where he worked for the Atlantic Coast Line Railroad. Michael served with the Insular Civil Service for 3 years in Havana, Cuba, during the Spanish-American War. While in Cuba he was able to save enough money to return to North Carolina and to the University of North Carolina where he aspired to the study of law. In 1903 he graduated from law school.

In August of that year, he along with other notable classmates J.C.B. Ehringhaus, Elmer Long, Ernest Green, Murray Allen and Joe Ramsey set up headquarters at the old Yarborough Hotel for last minute cramming for the "Supreme Court Examination." The night prior to taking the exam, he and his friend, Blucher, had had enough. They were tired and apprehensive from studying so they snuck out to a show. Presumably it worked, for they both passed the examination, with honors, and were admitted to the bar that Fall.

Michael returned to Greensboro and practiced law for a year and a half before moving to Hendersonville, N.C. in 1905, where he established a law practice. In the Spring of 1907 he ran for Mayor of that city, his first political endeavor. He won the election by 17 votes and was sworn into office on May 31st. He was the first democrat ever to be elected to office in this overwhelmingly Republican area of the State; but he only served for two years. As he told the *State Magazine* in an interview later:

> "I must have been too active in public improvements. We paved a great many streets and sidewalks during my term of office."

Even though he was no longer Mayor of Hendersonville he continued his practice of law and a native daughter of that City still agreed to marry him. On November 15, 1909, Rose Emily Few, daughter of Dr. Columbus and Floried Justus Few became Mrs. Michael Schenck. A year later, their first child was born. It was a boy. This time there was no lengthy, heated discussions on the name of this child. He was named Michael Jr. Their first

daughter came along eight years later and was named Rosemary Ramseur, after her mother and paternal grandmother. Their second daughter, and last child, came along years later and was named Emily Floried, after her mother and maternal grandmother.

In 1913 Governor Locke Craig appointed Michael to be Solicitor of the 18th District. In 1914, Michael was elected to a full 4 year term.

In September 1918 at the age of 42, Michael resigned his position as Solicitor to enter the US Army. He received an appointment as a Major and was assigned to the Judge Advocate General Department. His initial assignment was in Washington, D.C. During the summer of 1919 he received orders to sail for France; but fortunately the armistice was signed before he reached his ship and he never went.

Upon his return to Hendersonville and his family in 1919, he resumed his private practice of law.

In November 1924, Governor Cameron Morrison appointed Michael Superior Court Judge for the 18th District; he won election to this office without opposition in 1926 for a full 8 year term.

Now as a Superior Court Judge, he was recognized as an outspoken jurist and legal scholar. Since Superior Court Judges now held court throughout the state rather than the district from which they were elected, Michael traveled state wide. During a session in Catawba County, the local newspaper praised Judge Schenck saying that:

> ". . . He was the best informed judge that had served in that area. He attends strictly to business when on the bench, retaining the human element which is often considered lacking in many judges."

At a speech to the Rotarians in Greensboro, Michael introduced the idea of probation for youth, suggesting that first time offenders post bond and report weekly to some "man of exemplary precept." On the other hand, to a Concord Grand Jury, he said that any person convicted of driving while drunk should never be allowed to drive again. Ideas and statements such as these led *The Charlotte Observer* to write:

> "Michael demonstrates that the law is the last result of human wisdom acting upon human experience for the benefit of the public."

In 1931 Governor O. Max Gardner appointed Michael to the 9-member commission to amend or rewrite the State Constitution. The voters subsequently approved a new constitution in the Fall of 1934.

On May 22, 1934, Michael got a long distance telephone call from his friend and former classmate, J.C.B. Ehringhaus, who was now Governor of the State. "Blucher" said to him: "Michael, I want you to come to Raleigh and the Supreme Court again!", making gentle reference to the time 31 years before when they had both come to Raleigh and sat before the court taking the bar exam. This time Blucher wanted Michael to be on that Court. For the several days prior to this phone call there had been much speculation in the press as to who would fill the vacancy on the Court created by the recent death of Associate Justice W. J. Adams. Following tradition, it was expected that Governor Ehringhaus would appoint his gubernatorial campaign manager Major Lennox Polk McLendon; however, McLendon had declined the nomination.

Upon accepting the appointment, Michael said to his colleagues:

> "I feel some twisted heartstrings in giving up my work here. I shall go to Raleigh and do all in my power to attend to my duties there in a way that will justify the honor given me; but I shall never call any place except Western North Carolina my home."

His appointment was lavishly praised in the press. The local newspaper, *The Hendersonville Times*, ran 1″ banner headlines the next day:

"SCHENCK ELEVATED TO SUPREME COURT"

They went on to congratulate their hometown Judge saying:

> "he will grace the bench of that august tribunal. He has the qualifications and the temperament which should make him an outstanding member of the Court."

The State Magazine said "the legal community applauds this appointment of the Governor."

The News and Observer in an editorial called him a jurist of the highest ability. It went on to say:

> "the Supreme Court should not be used as a field of high political patronage of Governors, . . . the judiciary ought to be free from politics . . . and governors should be moved by their wish for the highest justice and not the greatest

political advantage. The appointment of Judge Schenck, with a record of long and distinguished service on the bench, places the emphasis where it should be—on the justice of the people and not on the political debt of the Governor."

The Charlotte Observer used words like: "a fine man with strong character, a cultured scholar, broad-visioned and progressive. Schenck would tend to liberalize and humanize the Court."

The Greensboro Daily News also wrote a favorable editorial. It claimed him as a "fellow-townsman", one step away from a native son. They did acknowledge that he was not born in Greensboro, nor did he live there then; but by upbringing he was a "Greensburgher"—their word, not mine.

The Asheville Citizen followed suit saying that Judge Schenck has the judicial temperament and is respected by lawyers who have practiced in his court.

So on May 28, 1934, at the age of 57, Judge Michael Schenck of the Superior Court was sworn in as Associate Justice of the Supreme Court of North Carolina. The Bible used was the same that he had used for his swearing in as Mayor of Hendersonville in 1907, for Solicitor in 1913 and 1915, and for Superior Court Judge in 1924 and 1926. It was the Bible handed down to him from his father David who had received it at age ten from his father in 1844.

For the next fourteen years, Justice Schenck sat on this bench rising to Senior Associate in the early 1940's. During those years, he wrote many decisions which have affected many people and have been recorded in the *North Carolina Supreme Court Reports*. You, the Members of this Court, probably know this better than we, as these opinions surround you in your everyday work and life. He was noted for his soundness of rulings on intricate problems and had a reputation among his profession for his knowledge of constitutional law.

Citing his "poor physical condition", Associate Justice Michael Schenck submitted his resignation to Governor Gregg Cherry to be effective January 31, 1948. He had been sick for the last several months and did not feel that he could continue serving the Court on a full-time basis. The Governor reluctantly accepted his resignation; but also appointed him as an emergency judge. His health continued to decline during the summer and fall of that year, and on November 5, 1948, 10 months after retiring, Michael Schenck, former Associate Justice of the Supreme Court, died at the age of 71.

We are here today to honor this man, this Associate Justice of the Supreme Court of the State of North Carolina, this devoted husband and father, and yes our Grandfather. While his legacy will live forever in the *Court Reports* and opinions, and while his memory remains with us in our hearts and minds, we—Anne, Mary Lou, Martha, and I—are honored to be able to make this presentation on behalf of our parents—Michael Jr. and Annie Laurie Schenck. When Michael was sworn in as Associate Justice, my father—Michael Jr.—was quoted as saying:

"it looks mighty good to see Daddy sitting up there."

In like sentiment today, it will look mighty good seeing a portrait of "DeeDee" hanging here among his colleagues and the many distinguished Justices of the Supreme Court of North Carolina.

UNVEILING OF PORTRAIT

The Chief Justice, after thanking Michael Schenck III for his splendid presentation, recognized Phillip and Ginny Satterfield, the children of Anne Satterfield, and Phillip's son, Phillip, Jr., who unveiled the portrait.

The Chief Justice then recognized the artist Ned Bittinger and his wife, Mary, who stood to much applause.

ACCEPTANCE OF JUSTICE SCHENCK'S PORTRAIT BY CHIEF JUSTICE EXUM

The Court truly appreciates this gift. Michael Schenck has already alluded to the fact that appellate court opinions hang around for a very long time—decades, even centuries. When we today try to resolve some of the legal issues that come before us, we use the opinions as precedents. In a case argued earlier this week, one of the opinions written by Justice Schenck figured prominently in the arguments before the Court and in the briefs and in the Court's deliberation on the case. The opinion was in State v. Perry, 210 N.C. 796, 188 S.E. 639 (1936). It was a well constructed and well written opinion.

Justice Schenck's portrait is accepted with the Court's gratitude to Michael Schenck III, and other members of the Schenck family who made the gift possible. The ceremonies which you have heard today, including the remarks of Michael Schenck III, in presenting

the portrait, will be spread upon the minutes of the Court; and Justice Schenck's portrait will be hung in the halls outside the courtroom where it will serve to remind us of this occasion and of the contributions Associate Justice Michael Schenck made to the development of the law while he served on this Court.