Presentation of the Portrait

of

HARRY C. MARTIN

Associate Justice
Supreme Court of North Carolina
1982 - 1992

December 6, 2000

OPENING REMARKS
and
RECOGNITION OF JAMES G. EXUM, JR.
BY
CHIEF JUSTICE HENRY E. FRYE

Chief Justice Henry E. Frye made the following opening remarks:

> On behalf of the members of the Court, I would like to welcome each of you to the ceremony today. We honor a man who has served our great state for over thirty-eight years, as a superior court judge, a North Carolina Court of Appeals judge, and an associate justice of this Court. I knew him as an excellent trial judge and as a respected appellate judge on the Court of Appeals prior to his appointment to the Supreme Court, and I had the personal pleasure of working with him for nine years as a member of this Court. He continues to serve his state and country as the current Chief Justice of the Eastern Band of the Cherokee Nation.

Chief Justice Frye welcomed official and personal guests of the Court. The Chief Justice then recognized the Martin family and James G. Exum, Jr., former Chief Justice of the Supreme Court, who would make the presentation address to the Court:

> At this time, I would like to recognize former Chief Justice James G. Exum, Jr., who will present the portrait to this Court. Chief Justice Exum joined this Court in 1975 and retired from the bench in 1995. He had the pleasure of serving with Justice Martin for half of those twenty years. We are looking forward to his remarks and his unique perspective on our honoree today.

PRESENTATION ADDRESS
BY
JAMES G. EXUM, JR.

Mr. Chief Justice and Associate Justices: May it please the Court.

It is indeed a privilege for me to participate in the presentation to this Honorable Court of the portrait of my friend and colleague of long-standing, the Honorable Harry C. Martin, who served with distinction as an Associate Justice of the Court from 1982 through 1992.

Justice Martin's remarkably productive life began in the horse and buggy days of the early part of the 20th century and, as I speak, continues with considerable vigor into the space and cyberspace age

of the early 21st century. He was born on 13 January 1920 in Lenoir, Caldwell County, North Carolina, in the home of his paternal grandparents, the third child of Hal C. and Johnsie Harshaw Martin. He grew up in Lenoir, attended the Lenoir public schools, graduating from Lenoir High School where he was an accomplished trombonist in the Lenoir High School band. Justice Martin, like three of his siblings, Virginia, Jacob, and Charles, was influenced and inspired by their band instructor, Captain James C. Harper.

Justice Martin earned a music scholarship at both Davidson College and the University of North Carolina. With only $48 in his pocket and still undecided which school to attend, trombonist Martin began hitchhiking east from Lenoir. At Statesville, he came to a propitious fork in the road. One way went south through Mooresville, Troutman and on to Davidson. The other continued east through Mocksville, Winston-Salem, Greensboro and on to Chapel Hill. As the young musician paused at the intersection to read the road signs, a car stopped and the driver asked him if he was going to Chapel Hill. He said yes, got in the car and traveled to Chapel Hill where he enrolled at the University of North Carolina, causing the Davidson music department to wonder for three weeks what had happened to him. After graduating from the University of North Carolina in 1942, Justice Martin volunteered for the U. S. Army. He soldiered for our country in Guadalcanal, the Solomon Islands, Saipan, and the Mariana Islands before he was honorably discharged in September 1945 in time for him to enroll at Harvard Law School.

After receiving his law degree from Harvard in 1948, he returned to Asheville to practice law. From 1951 until 1962, he was a partner with Lamar Gudger and Bruce Elmore in the Asheville firm of Gudger Elmore & Martin, a "GEM" of a law firm, as he describes it.

In 1962, lawyer Martin began life as a North Carolina judge, a position he would hold for the next 30 years. No less than three different governors recognized his judicial abilities. Governor Terry Sanford appointed him a Special Superior Court Judge in 1962. Governor Dan K. Moore appointed him the Resident Superior Court Judge for Buncombe County, then the 28th Judicial District, in 1967; and Governor James B. Hunt, Jr. appointed him to the North Carolina Court of Appeals in 1978 and to the North Carolina Supreme Court in 1982.

Following my own appointment to the Superior Court bench in 1967, also by Governor Dan K. Moore, Judge Martin and I became both friends and colleagues and members of the North Carolina Conference of Superior Court Judges. The Conference met several times

a year to discuss and act on matters of mutual interest and concern to the Superior Court bench. Not infrequently, discussions at the business sessions of the conference would grow tense, if not heated, as the judges were not bashful about speaking their minds and disagreeing on issues important to them. Judge Martin frequently came to the rescue on these occasions with his own brand of mountain humor and sagacity. He spoke with the calm voice of reason; and his colleagues usually listened and were guided accordingly.

While he was a member of the Court of Appeals, his wit, at least, did not desert him. In *State v. Wallace*, 49 N.C. App. 475, 271 S.E.2d 760 (1980), defendant was accused of violating a statute which prohibited hunting deer with dogs. Defendant challenged the constitutionality of the law. The Court of Appeals' panel, composed of Judges Harry Martin, Robert Martin, and Fred Hedrick, did not reach the constitutional issue, concluding instead that the case should be dismissed because the charge, set out on a uniform traffic citation form, failed adequately to allege a crime. Judge Harry Martin, author of the panel's opinion, before reaching the merits of the case, wrote eloquently for eight pages on the social and legal history of the dog. He began his opinion with: "This is a case about dogs. As dogs do not often appear in the courts, it is perhaps not inappropriate to write a few words about them." 49 N.C. App. at 475. Judges Robert Martin and Hedrick concurred only in the result. Judge Hedrick noted his "opposition to using the North Carolina Court of Appeals Reports to publish my colleague's totally irrelevant, however learned, dissertation on dogs." 49 N.C. App. at 488.

As you might imagine, this case got some attention in the press, which, as I recall, speculated about the cost of printing Judge Harry Martin's dissertation on dogs in the official North Carolina Court of Appeals Reports. My brothers, Joe and Ashe Exum, were then principals in Happy Jack, Inc., a manufacturer of various medicinal remedies for dogs. They privately advised me that if there was a problem in getting this opinion printed because of cost concerns, Happy Jack would be glad to foot the bill!

Actually, the "dog case," as it came to be known, illustrated Justice Martin's deep interest in and scholarly knowledge of history generally, and particularly political and legal history. In his ten years on this Court as an associate justice, his opinions in the significant, more difficult cases, demonstrate his clear preference for the historical approach to resolution of the issues rather than strict syllogistic logic or a public policy, consequentialist analysis. For example, in *Coman v. Thomas Mfg. Co.*, 325 N.C. 172, 381 S.E.2d 445 (1989), the issue was whether an employee at will had a claim for wrongful ter-

mination when he was fired for his refusal to engage in certain conduct violative of the state's public policy. Justice Martin, writing for the Court, began his examination of the issue with "a brief look at the history of the employee at will doctrine," which he then traced from Blackstone's Commentaries through the law as it developed during the Industrial Revolution, and on to the more modern cases.

Writing for the Court in *Corum v. University of North Carolina*, 330 N.C. 761, 413 S.E.2d 276 (1992), Justice Martin again relied on legal history to support the Court's conclusion that the violation of one's state constitutional rights gave rise to a direct cause of action against state agents, which was not barred by the doctrine of sovereign immunity. Justice Martin relied on the historical development in our state constitution of the Freedom of Speech Clause. He noted cases dating from the late 18th and early 19th centuries. He also discussed the historical origins of the doctrine of sovereign immunity as an early feudal concept which achieved judicial recognition in the 1788 English case of *Russell v. Men of Devon.*

The historian in him prompted him to write, after he left this Court in 1992, a short piece which he called, "A Historical Review of the Supreme Court of North Carolina, 1919-1994." It is published in Volume 335 of the Court's Official Reports at page 785.

The North Carolina Constitution occupied a special place in Justice Martin's legal universe. He well understood its primary role in protecting those individual rights and liberties which make our democracy so successful and this Court's duty to breathe life into those provisions. In *State v. Carter*, 322 N.C. 709, 370 S.E.2d 553 (1988), Justice Martin led a majority of a closely divided Court to conclude that there was no "good faith exception" to the exclusion of evidence obtained illegally under the North Carolina Constitution's prohibition against unreasonable searches notwithstanding that such an exception had been recognized in the United States Supreme Court's Fourth Amendment jurisprudence.

In 1992, as part of the North Carolina Law Review's Symposium on the North Carolina Constitution, Justice Martin published a scholarly piece titled, "The State as a 'Font of Individual Liberties': North Carolina Accepts the Challenge." In it he wrote, and proceeded to demonstrate, that "During the past decade, North Carolina has been at the head of the movement to energize state constitutional law." 70 N.C. Law Rev. 1749, 1751 (1992).

Justice Martin was not prone to dissent, but two of his dissenting opinions are memorable, one for its passion and the other for its per-

suasive force which ultimately gained the support of a majority of the Court. He dissented with great vigor in *State v. Norman*, 324 N.C. 253, 378 S.E.2d 8 (1989), where the issue was whether a woman who had long been physically and mentally abused by her husband and who suffered from "the battered wife syndrome" was entitled to an instruction on self-defense when she shot her husband in the head while he was sleeping. The Court thought not and reversed a contrary decision of the North Carolina Court of Appeals. Justice Martin, standing alone but with his blood up, noted his disagreement with eloquent conviction. He wrote, "Where torture appears interminable and escape impossible, the belief that only the death of the oppressor can provide relief is reasonable in the mind of a person of ordinary firmness, let alone in the mind of the defendant, who, like a prisoner of war of some years, has been deprived of her humanity and is held hostage by fear." 324 N.C. at 270. Later in the opinion he drove home his point again, writing, "By his barbaric conduct over the course of 20 years, J. T. Norman reduced the quality of the defendant's life to such an abysmal state that, given the opportunity to do so, the jury might well have found that she was justified in acting in self-defense for the preservation of her tragic life." 324 N.C. at 275.

Alford v. Shaw was one of the Court's more significant cases in the area of corporate law. The question was the limitation on judicial review of a special litigation committee's decision regarding the pursuit of minority shareholder derivative claims against members of the corporate board for alleged fraud and self-dealing. The Court's first decision, 318 N.C. 289, 349 S.E.2d 41 (1986) concluded that judicial review was significantly limited by the so-called "business judgment rule" to inquiring only whether the committee was in fact disinterested, independent and acted in good faith and whether its investigative procedures were sufficient. Justices Martin and Frye filed separate dissents, arguing that North Carolina's Business Corporation Act required more extensive court review of a litigation committee's determinations. Justice Martin accused the majority of having placed "the corporate fox in charge of the shareholders' henhouse." 318 N.C. at 318.

On rehearing, 320 N.C. 465, 358 S.E.2d 323 (1987), the Court withdrew its prior decision and decided that courts should not be so limited as it had first held in their review of decisions of special litigation committees. This time Justice Martin found himself writing for the majority that "the Court must make a fair assessment of the report of the special committee, along with all the other facts and circumstances in the case, in order to determine whether the defend-

ants will be able to show that the transaction complained of was just and reasonable to the corporation." 320 N.C. at 473.

The Court's second *Alford* decision caused Duke University corporate law professor James D. Cox to add Justice Martin and the Court itself to his short list of heroes in the law. "Observation: Heroes in the Law: *Alford v. Shaw*," 66 N.C.L. Rev. 565. Professor Cox wrote, "*Alford II* is a significant decision. It has already generated national interest because it shows so clearly the way for others to follow." *Id.* at 574.

The late Justice Louis Meyer was fond of inquiring of members of the Court, "Are you happy in your work?" From my perspective, no member of the Court seemed happier in his or her work than Justices Meyer and Martin. They even enjoyed their occasional disagreements over the cases. Justice Martin enjoyed himself so much that, as he approached the mandatory retirement age of 72, he filed a lawsuit seeking to have the statute mandating retirement at that age declared unconstitutional. *Martin v. State of North Carolina*, 330 N.C. 412, 410 S.E.2d 474 (1991). It gave the Court no pleasure to do it, but, Martin himself recusing, the other six justices unanimously disagreed with his position. I am sure Justice Martin will recall that I happened to write that opinion.

Life after the Court, however, for retired Justice Martin continued and continues to be active, interesting and productive. He immediately joined the law firm of his two sons, Matthew and John Martin, in Hillsborough and practiced with them from 1982 until 1994. In that year, then Chief Judge Sam Ervin III of the United States Court of Appeals for the Fourth Circuit appointed Justice Martin to be the Court's Chief Circuit Mediator. He ran that Court's mediation program for five years, retiring in 1999. He also occupied the position of Dan K. Moore Distinguished Visiting Professor of Law and Ethics at the University of North Carolina Law School from 1992 through 1995, having already had extensive teaching experience as an adjunct professor at the University of North Carolina Law School from 1982 through 1992 and as adjunct professor at the Sanford Institute of Public Policy at Duke University in 1990 and 1991.

Just a few months after turning 80, the ever young Harry Martin accepted a new challenge, a challenge for which he is truly born and bred and for which his years at the bench and bar make him uniquely qualified. His new job is a natural progression from all the judicial positions he has previously held, and I believe may be his best job yet, possibly his own personal favorite. On May 10, 2000, he began a

six year term as Chief Justice of the Eastern Band of the Cherokee Nation. In this capacity, he has worked with his usual diligence for most of this year designing and organizing the Cherokee Nation's judicial system. So, congratulations again, Chief Justice Harry Martin. He is, of course, here with us on this occasion, with his wife Nancy Dallam Martin, whom he married in 1955, and two of their children, John and Matthew; Matthew's wife, Catherine; and Matthew and Catherine's daughter, Clarke, who will unveil the portrait.

Harry Martin is living proof that liking what you do in life and those with whom you do it can keep us active and vigorous for a very long time. He loved this Court and the people here with whom he worked. He closed his 1994 Historical Review of the Court by writing this:

> This grand old Court has stood the test of time for 175 years bringing blessings upon the people of our great state. So shall it continue in the future. I look forward to being with you in spirit, if not in person, in the year 2019 when this Court shall celebrate its 200th anniversary.

Let me close by saying to you, Chief Justice Martin, thank you for your service to your State as one of its truly distinguished judges. I won't be at all surprised if you are, indeed, here in person when the Court celebrates its 200th anniversary. It's only 19 years hence.

ACCEPTANCE OF JUSTICE MARTIN'S PORTRAIT

BY

CHIEF JUSTICE HENRY E. FRYE

Thank you Chief Justice Exum for sharing your special memories of Justice Martin and reminding us of the significant contributions he has made and continues to make to the judiciary in North Carolina.

At this point, I would like to call upon Miss Clarke Martin, the only granddaughter of Justice Martin, to come forward and unveil her grandfather's portrait.

It is with pleasure that I, on behalf of the Court, accept this wonderful portrait of Justice Harry C. Martin. I instruct the Clerk to have the portrait hung, as quickly as possible, upon the hallways of the Supreme Court. I would also instruct Ralph White, our Reporter, to have the entire contents of this proceeding, including the full presentation of Chief Justice Exum, reprinted in the next published volume of the North Carolina Reports.