

Supreme Court Justice Investiture Ceremony

REMARKS FROM JUSTICE ROBERT NEAL HUNTER, JR.

26 September 2014

I want to thank all of you for coming today. It is very moving to me that all of you have taken time out of your day to be here with me. I want to thank Governor McCrory for his generosity in appointing me and in signing and sealing my commission as Justice. His kind words mean more to me and my family than I can say. I appreciate Attorney General Roy Cooper for delivering the title to my office to the Court; now it's been signed, sealed, and delivered. Susan and I appreciate that my friends and former colleagues from the Court of Appeals are here. They have made me a better judge through working with them and getting to know them in the process of adjudication at the Court of Appeals. Finally, I want to give a word of thanks to all my new colleagues at the Supreme Court who have been so gracious in welcoming me in this new post.

I am blessed. The people of North Carolina have been very generous to me and my family. I have been educated by them; they have provided me with interesting work all of my life; and I am very blessed that, in late life, I am able to give back in some small measure for the wonderful opportunities that they provided for me and my family. We live in the goodliest land.

In 2008, I began a second career in a new and exploding city, Raleigh, North Carolina. I love my job.

Earlier this week I asked some friends and colleagues what I should talk about today. Some suggested I speak about our present troubles. But Chief Justice Mark Martin proposed an aggressive program for dealing with those problems when he was sworn in earlier this month. I do not have any additional wisdom to add to what he had to say because he has my unqualified support in this endeavor. Some have suggested I talk about judicial independence. But over the last six years I have gotten to know all of the appellate judges and they are pretty independent people. I do not think that I have anything to add to that subject either. Finally, some have suggested I talk about judicial elections. But I am writing an article about that for the North Carolina Law Review, so I do not think that such heavy fare would be appropriate for this occasion.

Today I want to talk about something that I have noticed over the years. It is an intangible force that gives buoyancy to the legal system. This force is like the unseen hand that moves juries to do the right thing and reach the right result. It is elusive and changes over time. Judges have pondered over this force since before Solomon. Children are born with an innate sense of what it is. I briefly want to discuss the sense of justice.

Like other senses, a sense of justice has to be educated.

I was the first lawyer in my family. My family was given to Presbyterian ministers and building contractors. I was fortunate in my education because I was given Bible stories to read as a child. Stories of Adam and Eve, Cain and Able, Esau and Jacob, Joseph and his brothers. The trial and crucifixion of an innocent man.

After I graduated from Bible stories and went to school, I studied history. There I learned about the great martyrs and heroes in the cause of justice: Sir Thomas Moore, John Adams, John Marshall, the great trial lawyer Abraham Lincoln and the fictional lawyer Atticus Finch.

My father, like his father before him, was a builder. For several hot summers he employed me as a common laborer. This job entailed bringing wheelbarrows of cement up rickety planks on a construction site and then

catching bricks thrown up two stories on rickety scaffolding. My job was to deliver the bricks to the masons so they could do their work. From this experience, I deduced there was a better way to make a living. But it was an important lesson.

I went to the University at Chapel Hill. As a student, I encountered many of the dilemmas presented by the professors there for the study of the human condition. Among the aphorisms I remember clearly from that time in my life – and I don't remember everything very clearly from that time in my life – is a phrase that stands on a statue in Polk Place: "Duty is the sublimest word in the English Language." What is duty; what does it require? How do you know what is required for duty?

Later, I went to the Law School in Chapel Hill. The legal masters there provided more conundrums to bedevil me. I remember Professor Frank Strong, a person who seemed to be an old man at the time he taught me. He was from Ohio and he had been very active with the Tafts. No one could understand what he said in class. I had to go to the law review citations that he would give us to figure out what he was talking about. His theme was separation of powers and constitutional judicial review.

The Chinese have an expression that confusion comes before great wisdom. All the young people who have been taking the bar exam can understand that experience. Even though I have been practicing for 35 years, I am still waiting for great wisdom. I am still a little confused about some of the concepts and ideas that I learned in law school.

After graduating from law school in 1974, and after a brief stint in state government work, I hung out my shingle on Martin Street in Raleigh a couple of blocks away from where we sit. My last government job was on the second floor of this building as deputy attorney general. My current office is a couple of doors down from that, so I will begin and end my legal career – I hope – in the same building.

When I was practicing law, one day my father was dying, and he came to me and he said, "Son, I put you through law school and I put you through college, but I have never seen you try a case. I would like to see you try a case." I said, "Well, OK Dad." I had a little fender bender to try for my father to see what it was like to be a lawyer. Joe John was a district court judge then and he was the trial judge. The case involved an automobile controversy between an Asian lady – who was my client – whose mother would not pay a deductible and a young man who had collided with my client while driving a convertible with the radio blasting and his girlfriend beside him.

My father came down and sat with me while we were picking the jury. He leaned over to me after the jury had been picked and said, "You know, son, I wouldn't have picked those people." Then, later on, after I finished examining the witnesses, he said, "You know, son, I don't think I would've asked those questions." And then the matter was closing argument, and he had a similar criticism. When the jury finally came back, they announced that it was 11 to 1; one lady wouldn't agree with the other folks. Judge John asked us if we would accept the verdict – an 11 to 1 verdict. My father looked at me and said, "Son, you better retry this case."

When the jury then came back and gave me everything I wanted, my father was stunned. I think the real reason he wanted to come and see me try that case was because he was worried that I would not be able to support myself after he was gone and he could no longer send me money. He did not understand what had just gone on. (But he never mentioned it again either.)

I think a lot of the public is like my father. They do not understand what goes on in court. They do not understand the value of lawyers and the solidity which we bring to a society as a way of giving people a right to be heard and a process they understand that is fair. It never ceases to amaze me that two people come to court, tell a judge their problems, and that judge says a few words and the people walk away doing what he said.

Were it not for the sense of justice that I spoke about earlier, I am not sure that would happen.

Some philosopher once said, “When the student is ready, the teacher will appear.” Over the 35 years I have been practicing law, I came to learn that my clients were my teachers. Across my law office desk, I heard more stories. O’ Henry in his wildest imagination could not have come up with the stories that these people have told me. Practicing law is really the study of the human condition. Some would say it is the human comedy. I loved my clients and I was passionate for them when I was a lawyer and an advocate because I knew that my clients wanted a specific kind of justice. Gradually I learned how to practice law through the help of patient clerks and judges. I learned what justice looks like. Yet another kind of education was given to me, as it is given to all lawyers, who practice for any length of time.

The great skills of the trial lawyer are not the great skills of the judge. The greatest skill that a trial lawyer can have is to characterize a problem. He can format a problem. He forms the question that needs to be answered by the judge and the jury. Now his opponent, of course, tries to un-form the problem he has created.

In the vast majority of cases, legal questions are resolved by the routine application of settled law. We all know this at the Court of Appeals and on the bench because human problems have a repetition to them and it seems it is endless. But sometimes, in a rare case, when the stars are aligned just so and you have facts that are clear and do not require debate, a question has presented itself to a judge and an appellate court which can do great justice.

The judges in *Bayard vs. Singleton*, for example, a foundational case for the jurisprudence of this state, did great justice when they recognized constitutional judicial review. I know this because Frank Strong told me that at Chapel Hill law school. *Bayard* is a foundational decision supporting two notions: the separation of powers and that courts are independent and have a constitutional duty to do justice under a written constitution. Prior to *Bayard*, judges were the King’s men, placing their thumb on the scales of justice to secure royal prerogative. Justices Ashe, Spenser, and William voided a statute passed by the legislature which prohibited former British loyalists from obtaining a jury trial to recover their property seized during the American Revolution.

From this seed, constitutional judicial review – as a way to secure justice – became firmly planted in American jurisprudence. Other great justices and judges have employed *Bayard* to secure a just society. John Marshall, for example, used the concept in *Marbury vs. Madison*. Earl Warren employed the concept in the great Warren era decisions: *Brown*, *Gideon*, *Reynolds v. Simms*. Our own justices at this bench and those sitting before us – Parker, Frye, Mitchell, Richard, Orr, Wainwright – have employed the same principles as *Bayard*, as have Judges Howdy Manning and Knox Jenkins. The judges on the Court of Appeals who are with us today know this law as well.

The job of being an appellate judge is very different from being a lawyer. We read stories – so many stories – that are painted with dark hues of aggrievement and human weakness and failure in which the consequences are dire. Alexander Solzhenitsyn in *The Gulag Archipelago* (which I recommend to anyone who has insomnia) takes the Russian justice system and describes it case by case. And it is a Hell of a justice system, because there is no justice in the system. It is a system to do away with problematic people.

But the artist makes each case a point of paint on the canvas to tell his narrative. Gradually you read the 4000 page treatise and you come to understand that no artist could have made up all of those names and all of those cases. The story was not fiction, but nonfiction.

So an appellate judge gets a view of society that is a little different from that which appears on the television every night. Eventually you have enough points of paint to see that a picture has emerged. From the point of view of an appellate judge, or at least this appellate judge, the picture is not always pretty.

Our attempts at justice are so often imperfect. Human beings, like the institutions they inhabit, are imperfect. Courts are imperfect. However, these imperfections really just show that justice is a human endeavor.

When I go to church, we pray for the success of our Governor and our Legislature. I pray that they succeed beyond their wildest dreams. I want the schools to educate. I want there to be mental health workers for those

in need and for everyone to have a job and be secure in that job and be successful financially beyond their wildest dreams. I pray for North Carolina to succeed, so that judges like me will not have to look at this picture much longer. In short, I pray for a just society.

Lawyers and judges are in the job of building a just society. Now I am no longer hauling cement or bricks for the masons, but we are doing a different kind of building here.

Take a moment, while you are in this temple to justice, and look around the space we are in today. On the walls of this courtroom are portraits, the portraits of past builders of our just society. They no longer say anything – and yet they have said so much. What they have said stands before us on these bookshelves. It is a narrative; it is a painting in words of the tapestry of North Carolina’s experiment in ordered liberty and democracy. They are cases that are so familiar to us as practitioners and judges. These justices’ opinions speak long after they cannot speak. The chief justices on this wall and the justices in the halls here knew something that we also know. One cannot build a just society by wishing it were so. Likewise, we cannot, like the Israelites in Egypt under Pharaoh, build a just society with bricks made without straw.

The judicial branch is co-equal. We respect the constitution and separation of powers and the powers and decisions the constitution gives to other branches of government. I hope these other branches will give equal respect to our judgments as well and are equally committed to building a just society. As Dr. King once said, without justice there is no peace.

I want to close with a quotation from Isaiah 1:18: “Come now, and let us reason together.”