

**OPENING REMARKS
and
RECOGNITION OF
JAMES R. SILKENAT
by
CHIEF JUSTICE SARAH PARKER**

The Chief Justice welcomed the guests with the following remarks:

Good morning, Ladies and Gentlemen. I am pleased to welcome each of you to your Supreme Court on this very special occasion in which we honor the service on this Court of Associate Justice Willis P. Whichard.

The presentation of portraits has a long tradition at the Court, beginning 126 years ago. The first portrait to be presented was that of Chief Justice Thomas Ruffin on March 5, 1888. Today the Court takes great pride in continuing this tradition into the 21st century. For those of you who are not familiar with the Court, the portraits in the courtroom are those of former Chief Justices, and those in the hall here on the third floor are of former Associate Justices.

The presentation of Justice Whichard's portrait today will make a significant contribution to our portrait collection. This addition allows us not only to appropriately remember an important part of our history but also to honor the service of a valued member of our Court family.

We are pleased to welcome Justice Whichard and his wife Leona, daughter Jennifer and her husband Steve Ritz, and daughter Ida and her husband David Silkenat. We also are pleased to welcome grandchildren Georgia, Evelyn, and Cordia Ritz; Chamberlain, Dawson, and Thessaly Silkenat; and Ida's in-laws Elizabeth and James Silkenat.

Today we honor a man who has distinguished himself not only as a jurist on this Court and the Court of Appeals, but also as a lawyer legislator serving in both Chambers of the General Assembly, as Dean of the Campbell Law School, and as a scholar. Through his outstanding record of public service, Justice Whichard has enhanced the jurisprudence and the legal profession.

In addition to being Justice Whichard's daughter Ida's father-in-law, Mr. James R. Silkenat is also the current President of the American Bar Association, who introduced himself to me at an ABA meeting by saying that he and Justice Whichard share grandchildren. Mr. Silkenat is a partner in the New York office of Sullivan and Worcester. He is a graduate of the University of Chicago School of Law, is the author of numerous books and articles, and is the recipient of multiple high honors and awards in recognition of his distinguished legal career. At this time, it is my distinct pleasure to recognize Mr. Silkenat and invite him to the podium for remarks.

REMARKS
by
JAMES R. SILKENAT
PRESIDENT, AMERICAN BAR ASSOCIATION

May it please the Court:

I am Jim Silkenat, President of the American Bar Association, and I am pleased to be here to honor Justice Whichard. Many of you know him as “Willis”; some learned to call him “Bill,” which is how I know him.

I first heard of Justice Whichard when my son started dating Bill and Leona’s daughter, Ida, in prep school. A former ABA President from North Carolina, AP Carlton, somehow heard about that and told me “Justice Whichard ought to be Governor of North Carolina.” At that point it was obvious that my son was dating way above his station.

Well, dating above his station or not, David and Ida got married and now Bill and Leona and I share 3 grandchildren. You will get to meet them later. The respective roles that Bill and I play in this extended family are quite clear: Bill is known as “Grandpa” and I am officially known as the “Other Grandpa.”

Over the past 20 years of so, I have gotten to know Bill quite well: scholar, legislator, judge, Dean, practicing lawyer, and Grandpa. I cannot think of anyone, lawyer or not, whom I admire more.

When we travel together around the Raleigh/Durham area, Bill is recognized and revered by people in every place we visit. It is quite remarkable to see. And, in the ABA, I finally persuaded Bill to serve on our most prestigious committee, the ABA Standing Committee on the Federal Judiciary, which reviews potential Presidential appointments to the Federal bench, including to the U.S. Supreme Court.

So, on behalf of all 400,000 ABA members, I would like to thank my son David for marrying above himself. As a result, I got to meet Bill and we got to have him as an active ABA leader. I am very pleased to be here to honor him today.

**RECOGNITION OF
MARTIN BRINKLEY
by
CHIEF JUSTICE SARAH PARKER**

I am now pleased to call to the podium Mr. Martin Brinkley, a distinguished member of the Raleigh bar, to present the portrait. Mr. Brinkley received his undergraduate degree from Harvard and his law degree from the University of North Carolina School of Law. He is a former President of the North Carolina Bar Association and a former President of the North Carolina Supreme Court Historical Society.

REMARKS
by
MARTIN H. BRINKLEY

MADAM CHIEF JUSTICE, AND MAY IT PLEASE THE COURT:

For twelve years Willis Padgett Whichard served this Court as an Associate Justice with diligence, distinction, a keen sense of duty, a thoroughgoing love for the sacred office of appellate judge, a measured devotion to the principled application of the rule of law, a deep knowledge of and reverence for history, an unfailing collegiality, and a robust sense of humor. On behalf of Justice Whichard's family and my own dear friend and mentor, I have the honor to present to the Court his portrait, to be unveiled momentarily, together with the following account of his exemplary life and career.

The portrait was painted from life by Dean Paules of York, Pennsylvania, a recipient of the National Portrait Seminar's grand prize who also painted the portrait of Chief Justice Burley B. Mitchell, Jr. and that of Justice and former Governor Dan K. Moore. Justice Whichard sat for the portrait in 1998, shortly before leaving the Court to become Dean of the Norman Adrian Wiggins School of Law at Campbell University. Mr. Paules's other North Carolina subjects include the late Nobel laureate Dr. George Herbert Hitchings of Research Triangle Park, the late State Treasurer Harlan Boyles, and University of North Carolina at Chapel Hill Chancellor emeritus Paul Hardin. The roster of his commissions is national in scope and ranges across present and former ranking members of the United States House of Representatives and United States Senate, judges of federal and state appellate courts, distinguished chief executives of America's most prominent business corporations, and several former Major League Baseball Commissioners.

Anyone seeking to traverse, in the span this morning's proceedings will allow, the life of a man who, uniquely among North Carolinians, has seen service in both houses of the North Carolina General Assembly and on both of North Carolina's appellate courts; has served as dean of an important law school and enjoyed a successful career in the private practice of law; has chaired or served on literally scores of committees and commissions in service to his hometown, his university, his state and his country; has received two dozen awards recognizing the consistent excellence of that service; has presided over several statewide cultural institutions and organizations; has authored the definitive biography of one of the only two

North Carolinians ever to sit on the Supreme Court of the United States, along with nearly forty other literary works; and who is still rendering service to the commonwealth in his eighth decade, is certain to fail – or at a minimum, to sport unduly with his listeners' patience and dull their sensibilities. For notwithstanding the presence on the roll of former justices of this Court of the names of former governors, congressmen and legislators, distinguished legal scholars, trial judges and eminent practitioners of the law, I believe it can be said with some accuracy that in the nearly two centuries the Supreme Court of North Carolina has existed in its present form – done more, in more capacities or with greater distinction, for the Old North State than the man whose portrait we dedicate today.

I have reason to know that Willis Whichard was once, in far off halcyon days in Chapel Hill, a student of the Latin language and literature. In the classrooms of Murphey Hall he surely encountered, from time to time, the rhetorical techniques employed by Marcus Tullius Cicero in his public orations. Among those techniques is a figure of speech known as *praeteritio* – the strategy of drawing attention to a subject by seeming to disregard it. I confess at the outset my intention to ally myself liberally with Cicero this morning by eschewing bland recitation of the scores of organizations and causes Justice Whichard has served and led throughout more than half a century of dedication to hometown, alma mater, state and country. These are none the less important for the omission. Yet we are here to dedicate his portrait to the institution in whose service he gave the very best he had to give, and which drew from him the noblest qualities of mind and spirit his character could offer. His service to this Court and the years of childhood, education, professional experience and public service that prepared him for that service are, therefore, the gravamen of these remarks.

Willis Padgett Whichard's taproot is sunk deep in the soil of Durham, where he was born the son of teachers on May 24, 1940 and where he spent a happy childhood. The Durham of that day was a very different place than the hub of education, medicine, and high technology we now know. As North Carolina's leading journalist put it just one year after Willis's birth, Durham was a blend of Coastal Plain and rolling Piedmont; a place of "squat tobacco warehouses and tobacco factories combine[d] with the erect reaching of new Gothic in a university."¹ Like his hometown, Willis Whichard is, from the standpoint of ancestry, a thoroughly blended North Carolinian.

1. Jonathan Daniels, *Tar Heels* 106 (1941).

The blood of Pitt County runs through his veins on his father's side; on his mother's, that of far western Clay.

His father, Willis Guilford Whichard, a 1930 graduate of the University of North Carolina, taught high school American history in Red Springs and Pinehurst before being called in the mid-1930s to Durham, first as a teacher at Carr Junior High and Durham High School, and later as principal of North Durham and E. K. Powe Elementary Schools, dedicating a total of 36 years to public education. His mother, Beulah Padgett Whichard, taught elementary grades at Southside and Watts St. Schools in Durham for more than twenty years. Conversations around the family dinner table ran to religion and current events. The radio in the dining room was always tuned to the 6 o'clock news on WPTF, followed at 6:15 by Carl Goerch's "Doings of the Legislature" program and, every Sunday evening, Goerch's "Carolina Chats" – a midcentury precursor to WUNC's *North Carolina People with William Friday*. Beulah taught her son to read before he started first grade; the family frequented the Durham Public Library from the time he could walk. From an early age his reading tastes ran to biographies of statesmen, foreshadowing lifelong interest in a genre to which Whichard would himself make important contributions. He never forgot the importance of that library to a book-hungry little boy when, decades after he had become one of Durham's most distinguished citizens, he agreed to become the Founding President of the Durham Library Foundation.

The Whichards were a family in which hard work was an expected pathway to greater opportunities. At age 10 Willis began an eight-year career as a newspaper carrier for the local afternoon daily, *The Durham Sun*, delivering papers on foot and by bicycle to more than 130 homes, earning a dime a week from each customer. He sold soft drinks and peanuts at Duke home football games on Saturday afternoons. During summer breaks from high school and college, he worked for the book and supply department of the Durham City Schools, repairing books and preparing school buildings for the return of students in the fall.

That Willis Whichard would go to college was never in doubt, but it was the offer of a \$150 per semester scholarship to the University of North Carolina, coupled with the money he had saved from his newspaper route, that determined a great deal of the direction of his life. He traveled the eight miles from Durham to Chapel Hill in the fall of 1958, finding there a university of some 8,000 undergraduate and graduate students. It was a shame, his father said as they unpacked,

that the place had gotten so big his son wouldn't be able to get to know anybody. One of Whichard's lasting memories was of a Sunday afternoon walk during his first week on that magical campus, when he passed William and Ida Friday moving at a "fairly rapid clip" towards Franklin Street from Cameron Avenue and the South Building. At that time Friday had just celebrated his 38th birthday and been President of the University for two years. Later that same week, Whichard encountered the chancellor of one year's standing, William Brantley Aycock, who told the awed freshman class that they were there "to draw interest on the intellectual, moral, and spiritual capital provided by the work, effort and sacrifice of many generations" of North Carolinians.² Friday and Aycock pushed out the horizons of young Whichard's hopes, planting seeds that bore fruit in his life for decades.

As could be said of so many Tar Heels both before him and since, it is probably impossible to gauge or fathom the influence of the University of North Carolina on Willis Whichard's life. He arrived in Chapel Hill in the latter part of a golden age that began under Presidents Edward Kidder Graham and Harry Woodburn Chase in the early years of the century, flowered through years of economic depression and war under the legendary Frank Porter Graham, and reached final maturity under Gordon Gray and his successor, the late William Friday. The University at Chapel Hill was, during this period, the most prestigious and progressive academic institution in the New South, a beacon of light exercising a kind of lifting power over state, region and country. By the late 1950s, the "Greatest Generation," educated on the GI bill and finished with doctoral dissertations, medical and law degrees, had taken over the leadership of North Carolina's chief public treasure. Under the influence of these civic-minded men who had made the world safe for democracy, Whichard plunged into the life of the campus, becoming active in student government and being elected to half a dozen leadership organizations, among them the Order of the Grail, the Order of the Old Well, and preeminently, the Order of the Golden Fleece, the University's oldest and highest honorary society, whose members include juniors, seniors and graduate and professional students who have made significant, lasting contributions to the University.

Although President Friday headed a university system then consisting of three institutions, he was very much a presence on the

2. Willis P. Whichard, *How Chancellor Aycock and President Friday Shaped the Course for Today's University*, Remarks for Reunion Weekend, May 9, 2014, Chapel Hill, N.C.

campus at Chapel Hill in young Whichard's years there. Undergraduate student leaders were known to Friday, and he sought out opportunities to interact with them. Whichard later recounted how, on a Sunday night every spring, the Fridays would host the members of the Order of the Golden Fleece at the President's house on Franklin Street to consider, with other future leaders of the state, the problems and possibilities of the University and the state as a whole. As Whichard later recalled:

These occasions had a steady refrain. A small but influential corps of people really ran the state, [Friday] would say. They were a mix from the business, professional and academic communities. They might not always determine who would be the Governor, but they did determine who could be the Governor. They solicited responsible candidates for lesser positions as well, and saw to it that they had the funding to make their candidacies viable.

It was implicit, if not explicit, that your turn might come to serve the state in some way, and if it did, the ancient concept of civic virtue demanded that you do it. You were getting a world-class education in Chapel Hill, at considerable expense to the taxpayers, and for that you owed something back.³

With the privilege of hindsight, we can conjure the kind of inspiration the future Supreme Court justice must have drawn from contact of this immediacy and power with the great men of his youth. Those who know him well cannot imagine any subject other than history for his principal course of study at UNC. Justice Whichard did indeed major in history, earning an A.B. degree in that subject with Phi Beta Kappa honors in 1962. Among his faculty mentors were Raymond H. Dawson, who had joined the political science faculty in the fall of Willis's freshman year immediately after completing the University's doctoral program and went on to be dean of the College of Arts and Sciences and Vice President for Academic Affairs of the UNC system under President Friday; the historian of American religion Robert Moats Miller; Samuel S. Hill, Jr., who would become a leading historian and sociologist of religion in America; and J. Carlyle Sitterson, who taught 20th century American history and served as Chancellor of the Chapel Hill campus from 1966 to 1972.

3. *Id.*

Having married his sweetheart, Leona Paschal of Chatham County, at the end of his junior year, Justice Whichard resolved to go to law school immediately after receiving his bachelor's degree. He thus remained in Chapel Hill, moving the focus of his academic endeavors to Manning Hall in the fall of 1962. He excelled in the study of law, achieving election to the Board of Editors of the *North Carolina Law Review* in his second year and to the Order of the Coif, the highest scholastic honorary society for law students, in his third. The expectation that he and his fellow law school classmates would serve North Carolina was as clear in the Law School's Socratic dialogues as it had been in undergraduate history lectures. Legendary law professors announced which North Carolina cases needed overruling, and which statutes needed amending, if ever a student could find his way to the bench of the Supreme Court or the chambers of the legislature. While Whichard says he never imagined at the time that Albert Coates, Henry Brandis and others were talking to him, he also never forgot what they said.

In addition to his commitments to student organizations and his dedication to academic labors, Justice Whichard's years in Chapel Hill sowed the seeds of his career in electoral politics. Having joined the Democratic Party in 1959, during his sophomore year he worked actively for Terry Sanford in the gubernatorial campaign of 1960, drawn into that effort in part by the importunings of a 1959 N.C. State University graduate from Wilson County who had introduced himself as Jimmy Hunt. Whichard served as President of the University of North Carolina Young Democratic Clubs. He took a leave of absence from the Law School during the second semester of his second year in order to devote his full time to Judge L. Richardson Preyer's gubernatorial campaign. These experiences taught him the basics of electoral politics, a knowledge he put to good use in nine campaigns for local and statewide office over a quarter century.

My remarks have deliberately dwelt on the future Supreme Court justice's time at Chapel Hill. For one who knows him well, it is clear that no institution ever has exercised a more formative influence over the life of this gifted man from Durham. Indeed, with the possible exception of this Court, none has been more the beneficiary of his consistent and devoted service. During his years in the legislature he served on the Board of Directors and ultimately as President of the UNC Law Alumni Association. While an Associate Justice of this Court, he served on the Board of Directors and as President of the UNC General Alumni Association. He has been, at various times, a member of the Board of Visitors of the University as a whole, as well

as the Boards of Advisors of the UNC School of Public Health, the UNC School of Social Work, and UNC's Center for the Study of the American South. He served on three search committees for deans of the Law School and on a Law School selfstudy committee in the mid-1980s. His labors on behalf of the University and its constituent parts have, quite literally, spanned the whole of his professional life. In view of the sheer volume of this service, Justice Whichard's receipt of the Distinguished Alumnus Award from the Law School in 1993, the Distinguished Alumnus Award from the University in 2000, and the Distinguished Service Medal from the General Alumni Association in 2004 seem almost afterthoughts. It is enough to say that he has been "Tar Heel born and Tar Heel bred," and that when he shuffles off this mortal coil and joins the choir invisible, he will surely have earned that plainest, proudest sobriquet that a son of Carolina can deserve: He will be a "Tar Heel dead."

Following his graduation from law school in 1965, Justice Whichard passed the North Carolina bar examination and walked through the doors of this building. His mission: a coveted clerkship with Associate Justice William H. Bobbitt, then a twenty-six year veteran of the Superior and Supreme Court benches and one of the state's most respected and beloved lawyers. Of those present here today, Justice Whichard's own former law clerks will perhaps have the keenest understanding of what his relationship to Justice Bobbitt meant to him, as it was mirrored in their own clerkships. Justice Bobbitt possessed, according to the headline of the *News & Observer* editorial that followed his death, "a great mind and a merry twinkle," as well as the habit of "treat[ing] all who crossed his path with fairness, whether they lived modestly or in mansions." He had, according to one of his former law clerks, all the leading qualities of a great judge: "intelligence, perceptiveness of legal issues, common sense, even temperament, hard working, impeccable character, honesty (as a person and intellectually), a love of the law, a desire to excel as a judge and a desire to see a just and sensible result reached in every case."⁴

Justice Whichard relished every moment of his year clerking for Justice Bobbitt, remaining close to the elder judge until his death in 1992. From the thrill Chief Justice Susie Sharp reported that Justice Bobbitt felt on Whichard's appointment to the Court of Appeals fourteen years later ("Judge nearly burst his buttons," she said), there seems little doubt that Bobbitt considered him his most outstanding

4. Willis P. Whichard, *Presentation Address Upon Presentation of the Portrait of Chief Justice William H. Bobbitt to the Supreme Court of North Carolina*, 333 N.C. 799, 806 (1993) (quoting Pender H. McElroy, former law clerk to Justice Bobbitt).

law clerk. When he left the clerkship in August 1966 to begin law practice in his hometown of Durham, the fleeting thought may just have crossed Justice Whichard's mind that perhaps, someday, he himself might sit on the Supreme Court. He could not have known that while serving as an associate justice, he would have the privilege of standing at this lectern to deliver the presentation address for the portrait of his mentor late in the winter of 1993.

The law firm of Powe, Porter, Alphin & Whichard, P.A., was perhaps the leading firm in Durham when Justice Whichard joined it after his clerkship. Edward Knox Powe, III, better known as "E.K.," who had founded the firm in 1950 after his graduation from Chapel Hill and the UNC School of Law, was the grandson of the first general manager of the Erwin Cotton Mills, an educational philanthropist after whom the elementary school Justice Whichard's father served as principal had been named. Powe's undergraduate career had been interrupted by service in the U.S. Army in World War II, when he was wounded in France and received the Purple Heart and Bronze Star for bravery. He had been involved in the organization and development of the Research Triangle Park and was renowned for his surety and insurance practice. Active in Durham civic affairs and later President of the North Carolina State Bar, kindly and endowed with a keen sense of humor, E.K. Powe ably modeled the role of Durham's leading lawyer for Justice Whichard in his early years of practice. Another name partner, W. Travis Porter, III, a Korean War veteran who had graduated from UNC and its Law School in 1960, provided a further dedicated example of public service, leading a variety of Durham organizations and later serving as a member and Chairman of the Board of Trustees of the University at Chapel Hill and as Chairman of the Board of Governors of the UNC System in the 1990s.

The culture of civic service that characterized the Powe, Porter firm, combined with the decision to return to the hometown he knew well, made for a happy transition to private practice for Justice Whichard. Commitments that resonated throughout his life – in particular, unswerving dedication to the welfare of the City of Durham and fierce loyalty to the University at Chapel Hill – were shared by the firm's established partners and encouraged in their new colleague. In his fourteen years of law practice, Justice Whichard dealt with a variety of matters, acquiring the bedrock skills of clear communication and persuasion that are the successful lawyer's stock in trade. He handled minor criminal cases and appeared in a number of civil trials, either with one of his partners or alone. Shortly after starting private practice, he threw himself head-

long into the community life of Durham, joining the Durham Jaycees, leading March of Dimes campaigns, and serving on the Red Cross board. Two years after joining the law firm, Willis and Leona Whichard welcomed their first child, Jennifer. Life in Durham was very full.

Yet somewhere deep in his soul, like the distant horn calls in a Richard Strauss tone poem, the clarion voices of President Friday and Chancellor Aycock sounded the leitmotiv of service in a wider sphere. An appointment to the North Carolina General Statutes Commission in 1969 led the young Durham lawyer, just three years into his private practice and with every prospect of financial success and a comfortable career, to offer himself as a candidate for the North Carolina House of Representatives. With the support of his law firm (for E.K. Powe had himself served two terms in the legislature in the 1950s), in 1970, at the age of 30, Whichard ran successfully for the House. Four years later, a seat in the State Senate for a larger Durham-based district became available, and Whichard was elected to three successive terms in the upper house.

That Willis Whichard was a superb legislator does not seem to be in any doubt. A later colleague on the Supreme Court, then an Assistant Attorney General, recalled how draft bills were sent from the legislature to the Department of Justice for vetting in days before the General Assembly had its own bill drafting staff. Representative and Senator Whichard's bills never required any change whatsoever; they were perfect from the moment they arrived from Jones Street. He chaired or served on numerous legislative committees and commissions, including the Senate Committee on Courts of Judicial Districts and the Judicial Planning Committee of the Governor's Crime Commission. Among his proudest legislative accomplishments was the passage of the Coastal Area Management Act of 1974, which provided for the protection, preservation, orderly development and management of North Carolina's coastal resources, covering the 20 coastal counties, adjacent ocean waters, the Outer Banks and other barrier islands, and all the state's inlets, sounds and estuarine waters. The act gave policymaking authority to a fifteen-member Coastal Resources Commission, made up primarily of coastal residents nominated by local governments and appointed by the governor.

Senator Whichard's legislative service was graced by the addition to his family of a second daughter, Ida, in 1976.

Towards the end of his third term in the upper house, in September 1980, Senator Whichard was appointed to the North Carolina

Court of Appeals by Governor James B. Hunt, Jr. – the same young man who, twenty years before, had been his companion in arms in Terry Sanford's 1960 gubernatorial campaign. The reaction of bench, bar and the public to the appointment was swift and approving. Justice J. Frank Huskins of the Supreme Court wrote this in a letter to Governor Hunt on the day the appointment was announced:

I was delighted with your appointment of Willis Whichard to succeed Frank Parker on the Court of Appeals. It is most fitting that quality be succeeded by quality. This really is a quality appointment. [Senator Whichard's] foundation in the law is excellent. He has an unassuming disposition which is most becoming to those who occupy the bench. I am confident he will acquit himself with distinction

Chief Judge Naomi Morris of the Court of Appeals, never one to be easily impressed, told members of the bar in a *State Bar Quarterly* column: "We have welcomed Judge Willis Whichard who, I do not hesitate to predict, will very quickly earn your respect and admiration, both for the quality of the man and the quality of his work."⁵

Because his appointment had been to the seat of retiring Judge Frank M. Parker, Judge Whichard was immediately confronted with the necessity of running in the November 1980 election to remain on the Court of Appeals for the balance of Judge Parker's unexpired term. He was successfully elected that fall, receiving the endorsements of all of the state's major newspapers. The following, from the *Asheville Citizen* of October 23, 1980, is typical: "There is probably no abler candidate on the state ballot this year than Judge Willis Whichard [He] possesses intellectual depth, sensitivity and a keen sense of fairness, qualities he demonstrated again and again during five terms in the North Carolina [General Assembly]." Two years later, Judge Whichard won a full eight-year term from the voters. His opinions on the Court of Appeals may be found in volumes 49 through 82 of the *North Carolina Court of Appeals Reports*, and were able contributions to the jurisprudence of that court.

During his tenure on the Court of Appeals, Judge Whichard enrolled in the Master of Laws program at the University of Virginia,

5. Column of Chief Judge Naomi Morris, North Carolina Court of Appeals, 27 N.C. State Bar Q. vol. 4, p. 28 (1980).

writing his thesis under the distinguished scholar G. Edward White. White's *The American Judicial Tradition*,⁶ a series of essays analyzing profiles of various leading American judges from John Marshall to the middle of the 20th century, is a masterpiece of its kind, and Judge Whichard employed White's approach when writing his master's thesis, *A Place for Walter Clark in the American Judicial Tradition*. The thesis was published in the *North Carolina Law Review* in 1985⁷ near the end of Judge Whichard's tenure on the Court of Appeals, and remains the leading modern portrait of one of this Court's most important chief justices. It was the prelude to a more extensive scholarly contribution to the field of judicial biography that Judge Whichard would make fifteen years in the future.

After six years on the Court of Appeals, Judge Whichard was prevailed upon in 1986 to run for the seat on the Supreme Court to which Governor Martin had determined to appoint Justice Robert R. Browning of Greenville. Associate Justice James G. Exum, Jr., first elected to the Court in 1974, had retired from his seat earlier in 1986 in order to run for the chief justiceship. Judge Whichard's colleague on the Court of Appeals, Judge John Webb of Wilson, likewise filed to run for the associate justiceship to which Governor Martin had recently appointed Justice Francis I. Parker of Charlotte. Exum, Whichard and Webb were all elected to the Supreme Court on the same day and sworn in together on November 26, 1986. Justice Whichard was re-elected to a full eight-year term in 1990, and served until his retirement on December 31, 1998.

The day Willis Padgett Whichard joined the Supreme Court of North Carolina was the beginning of nearly eight years of relative stability in the court's membership, following on more than a half dozen years of frequent changes in personnel that began with the retirement of Chief Justice Susie Sharp in the late 1970s. The court Justices Whichard and Webb joined consisted of Chief Justice Exum and Associate Justices Louis B. Meyer, Burley B. Mitchell, Jr., Harry C. Martin and Henry E. Frye. With the exception of Chief Justice Exum, none of the justices had served on the Supreme Court for more than six years, although four of the seven had previously sat on the Court of Appeals and three on the Superior Court.

The Exum Court quickly proved itself a worthy heir to the Supreme Court's greatest traditions. As Chief Justice Exum himself

6. See G. Edward White, *The American Judicial Tradition: Profiles of Leading American Judges* (Oxford 1988).

7. 65 N.C. L. Rev. 287 (1985).

has told me, "All of us enjoyed what we were doing. We got along as people and professionals, and we cared deeply about reaching a principled resolution to every case." There was a palpable sense that here, in this courtroom and on these halls, the sacred duty of appellate judging was being honored to the fullest, with pleasure and joy. Justice Louis Meyer personified this joy when he went down the halls humming and singing, often stopping by other chambers to ask justices, secretaries and law clerks alike: "Are you happy in your work?"

It would be unwise for us to attempt to say which of the opinions Justice Whichard authored while he was a member of the Supreme Court were pathbreaking or important. It will suffice to say that he authored a number of opinions which, at the time, were of great importance to the public and to the jurisprudence of the state, and that some of them are likely to be influential for years to come. He filed the first of these opinions just forty-four days after taking the oath of office;⁸ the balance may be found in Volumes 318 through 349 of the *North Carolina Reports*. They reflect the author's knowledge of law, his ability to write lucidly and straightforwardly, and his soundness of judgment. The opinions of the other justices with whom he served also bear the stamp of his influence, for he concerned himself with the products of the whole Court, not just his own.

The importance of Justice Whichard's life as a member of the Supreme Court, and his place in its history, rest largely on his approach to the task of judging and on his perception of the judicial role in American government. It may not be inappropriate to attempt to characterize, in a general way, the contours of his jurisprudence, with the support of a few examples. If Justice Whichard can be identified with a particular "school" of judicial philosophy, it is with what may loosely be called the "restrained" model of judging rather than the "activist" one, which values judicial decisions largely in terms of the substantive results they achieve. Justice Whichard's more modest approach, associated with figures such as Learned Hand, Felix Frankfurter and Lewis F. Powell, Jr., looks to the quality of the process by which decisions are made. It values impartiality, thorough analysis, and sound reasoning, and is slow to embrace politically controversial judicial initiatives. An example of Justice Whichard's reluctance to interfere with the decisions of elected legislators is his opinion for a five-justice majority of the Court in *Maready v. City of Winston-Salem*, 342 N.C. 708 (1996), in which he held that a statute authorizing local governments to expend public money for

8. *State v. Hooper*, 318 N.C. 680 (6 January 1987).

economic development incentive grants to private corporations does not violate the public purpose clause of the North Carolina Constitution.⁹ Reasoning closely from Supreme Court precedents and explicit legislative declarations indicating that the statute in question was “part of a comprehensive scheme of legislation dealing with economic development whereby the General Assembly is attempting to authorize exercise of the power of taxation for the perceived public purpose of promoting the general economic welfare of the citizens of North Carolina,” Justice Whichard’s opinion cites twenty-two facilities and activities accomplished with public expenditure that this Court had previously deemed to be public purposes, and concludes that the statute in question clearly served a public purpose while providing only incidental private benefit.

In the long run, Justice Whichard’s opinions will be noted for superior craftsmanship and creativity within the confines set by the other branches of government, rather than for dramatic overturning of majoritarian preferences. In *Bhatti v. Buckland*, 328 N.C. 240 (1991), for example, he wrote for a unanimous Court that the sale at auction of two lots in a tract of land containing a home was a commercial land transaction affecting commerce in the broadest sense, not merely a residential real estate sale, and was therefore within the scope of the cause of action created by North Carolina’s Unfair Trade Practices Act.¹⁰ While deferential to the legislature in matters of statutory interpretation, where the common law was concerned he was innovative in areas he thought legitimately open to judicial determination. For example, in *Roper v. Edwards*, 323 N.C. 461 (1988), he extended the doctrine of constructive trust to reach an equitable result where defendants refused to convey real estate in accordance with the terms of a settlement agreement, despite having promised to do so, on the ground that the settlement agreement contained a prohibited restraint on alienation. The trial court and Court of Appeals had both held that the plaintiff had no remedy at law, and that the constructive trust doctrine was not applicable because the plaintiff had not proved that the defendants committed fraud or breached a duty owed to the plaintiff. Justice Whichard’s opinion held that “[i]nequitable conduct short of actual fraud will give rise to a constructive trust where retention of the property by the holder of the legal title would result in his unjust enrichment. . . . To permit defendants to retain the extensive benefits they received in the

9. See N.C. Const. art. V, § 2(1) (providing that “[t]he power of taxation shall be exercised in a just and equitable manner, for public purposes only”).

10. N.C. Gen. Stat. § 75-1.1.

bargained-for settlement, while refusing to perform the apparently meager concession they made in the process, would unjustly enrich defendants.”

Justice Whichard placed a high value on openness to all points of view, including those with which he was inclined to disagree, and a correspondingly low value on his own infallibility. Professor Gerald Gunther, in the preface to his brilliant biography of Judge Learned Hand, described traits of his subject that could equally be applied to Justice Whichard:

Reflectiveness, intolerance of absolutes, and relentless searching for answers, despite an abiding conviction that there were no permanent ones, were well ingrained traits by the time [Hand] became a judge. Intellectually engaged and always ready to examine his own assumptions, he was a philosopher and a humanist. . . . The doubting judge – always convinced that he had not found Truth and, indeed, that Truth was not findable – nevertheless pressed on in the search with all the talents and energies he could muster.¹¹

Whichard’s personal traits shaped his style of modest judging. To his Supreme Court colleagues, he was a gregarious, joyful companion, one whose calm demeanor and lack of ideology brought together divergent opinions. His superb sense of the Court’s history and encyclopaedic knowledge of its precedents added a dimension of institutional memory and perspective that helped the other justices function better. Former Chief Justice Mitchell has commented that Justice Whichard was “as legally brilliant as anybody we’ve ever had, and probably the closest thing to a true Renaissance man as we’ve ever had on the Court.” Mitchell’s law clerks were never allowed to circulate an opinion until Justice Whichard, the acknowledged scholar of the Court, had given it his customary thorough proofreading. His strong desire, moderately and deliberately expressed, was to achieve a principled, articulable resolution for every case. His theme – “Reason is God’s crowning gift to man,” as Sophocles put it – was always uttered in a calm voice, layered over the unspoken chords of mutual respect, never taking oneself too seriously, and the belief that disagreements were never personal.

His relationship with his law clerks was a special part of Justice Whichard’s life. More than twenty served him during his Court of Appeals and Supreme Court tenure. While I did not have the privilege

11. Gerald Gunther, *Learned Hand: The Man and the Judge* xvi-xvii (1994).

of clerking for Justice Whichard, I know a few of his law clerks well, and believe I am not far from the mark in guessing that each would say he or she gained far more from the experience than he or she provided in the way of assistance to the Justice. The clerks found that the benefits of clerking for him continued long after the formal relationship ended, as he kept up with them and inspired their legal careers. As one clerk remarked to me: "The impact of clerking for Justice Whichard has reverberated through my whole career. I learned respect for the law, but even more, I learned humanity from him. After my clerkship, the law really had a face. He humanized everything I have dedicated my life to in the years since."

During his Supreme Court service, Justice Whichard continued his graduate studies at the University of Virginia, enrolling in a course of study that led to the conferral on him in 1994 of the degree of Doctor of Juridical Science – the highest academic distinction available to an American lawyer. Justice Whichard had become aware that neither of the two North Carolinians to serve on the Supreme Court of the United States had been the subject of any extensive biographical treatment, and asked Professor G. Edward White to supervise a dissertation on the first, James Iredell, a Federalist largely responsible for North Carolina's ratification of the United States Constitution and one of President Washington's first appointees to the new nation's highest court. The result, a 381-page biography published by Carolina Academic Press in 2000, will likely remain the definitive treatment of its subject for decades to come.

One day in 1997, I was having lunch with Justice Whichard when he asked me to be prepared to manage his campaign for re-election to the Supreme Court that fall. Within a few weeks, however, he informed me that he had decided not to run, that the labors of the Court no longer held his interest in the way they once had, and that other avenues of service beckoned.

His subsequent career has revealed again his unswerving commitment to our profession and the welfare of the public. For the seven years after his retirement from the Supreme Court, he was the highly successful Dean of the Norman Adrian Wiggins School of Law at Campbell University. In 2006 he re-entered private practice in Research Triangle Park with his former colleagues at Powe, Porter, Alphin & Whichard, by then part of the Charlotte-based law firm of Moore & Van Allen, PLLC. The following year, he accepted his hometown's call for leadership once again, chairing the City of Durham's

committee to investigate the Durham Police Department's handling of the Duke lacrosse case. In 2009- 11, he chaired the Governor's Scientific Advisory Panel on Offshore Energy. He chaired the North Carolina Humanities Council and continued his twenty-year presidency of the North Caroliniana Society, an organization of 200 North Carolinians dedicated to the preservation of the state's literary, historical and cultural heritage. He served on the Board of Trustees of the North Carolina Center for the Advancement of Teaching and remains active on its Foundation Board. He is presently serving as the Fourth Circuit member of the American Bar Association's Standing Committee on the Federal Judiciary, from which post he evaluates presidential nominees to Article III judgeships throughout the United States.

Justice Whichard practiced law with Moore & Van Allen until less than a year ago, when he joined his former law clerk Beth Tillman and her partner Christina Hinkle in their private practice in Chapel Hill. The law firm's offices are located not far from the Southern Historical Collection in Wilson Library on the University campus, where Justice Whichard is hard at work on a biography of another unique North Carolinian: David Lowry Swain, governor in the early 1830s and the greatest President of the University before Reconstruction. The book will be published as part of the Coates University History Leadership Series, sponsored by the University of North Carolina at Chapel Hill Library.

I have reflected long and thoroughly on what character from literature or history Justice Whichard most resembles. My choice, an obscure one by most lights, would surprise many of you, if you have even heard of him. Plantagenet Palliser, the hero of a series of six mid-nineteenth century novels by the grossly underrated Anthony Trollope, is a highly principled, utterly scrupulous Liberal prime minister who manages to hold together a successful coalition government in the middle of Victoria's reign. Modeled loosely on the character of William Gladstone, Palliser expresses his philosophy to a cabinet colleague in the following passage from Trollope's 1876 novel, *The Prime Minister*, fifth in the Palliser series:

Equality would be a heaven, if we could attain it. How can we to whom so much has been given dare to think otherwise? How can you look at the bowed back and bent legs and abject face of that poor ploughman, who winter and

summer has to drag his rheumatic limbs to his work, while you go a-hunting or sit in pride of place among the foremost few of your country, and say that it all is as it ought to be? You are a Liberal because you know that it is not all as it ought to be, and because you would still march on to some nearer approach to equality¹²

That passage expresses, I believe, the unblemished, unextinguishable, inexhaustible virtue and love of state and country that distinguish the statesman from the merely political character. And it describes the attitude towards his fellow toil-bound human beings exhibited by Justice Whichard. To appreciate this good man, ask yourself how much better off our country would be if more of us were like him. When the framers of our Constitution finished their work in Philadelphia in September 1787, someone asked Ben Franklin just what the Constitutional Convention had produced. He answered: "A Republic – if you can keep it." Franklin meant that the whole American constitutional experiment depended on every generation producing people of fortitude, kindness and temperance. In our time, Willis Whichard has been a member of that cloud of witnesses in whom our Forefathers' hopes for recurrence of those virtues have been fulfilled.

I close, asking your indulgence for a brief personal observation. My friendship with Willis Whichard began in the spring of 1991, when I was a student in his seminar on the Judicial Process at the Law School in Chapel Hill. That course was far and away one of the most intellectually enriching academic experiences of my time in law school. Years later, my wife told Justice Whichard that if he had announced that the seminar would meet at 7:00 a.m. on Sunday mornings, I would have shown up fifteen minutes early. He has remained, for more than twenty years, a kind of polar star in the firmament of my life. I confess, unfeignedly and with thankful heart, to Your Honors and to all here in this courtroom, that I have been blessed – truly blessed – to know Willis Whichard. And I pray that for decades to come, as the shadows lengthen and the evening comes, as the fevers of life burn and subside, until the work of my earthly pilgrimage is done, I may have the privilege of his wisdom and counsel, and of enjoying in them the kind and patient twinkle of an everlasting friend.

12. Anthony Trollope, *The Prime Minister* vol. II, at 265 (Oxford 1982).

ACCEPTANCE OF JUSTICE WHICHARD'S PORTRAIT
by
CHIEF JUSTICE SARAH PARKER

Thank you, Mr. Brinkley for that eloquent and fitting tribute to our former colleague. At this time, I am delighted to ask Justice Whichard's grandchildren to unveil the portrait of their grandfather.

On behalf of the Supreme Court, I thank Mr. Brinkley for his insightful remarks on the remarkable contributions of Justice Whichard to the State of North Carolina, and on behalf of the Court, I accept this portrait of Justice Whichard as a part of our collection. We are pleased to have this fine work of art, and we sincerely appreciate the efforts of all who helped to make this presentation possible.

Justice Whichard's portrait will be hung in an appropriate place in this building and will be a continuous reminder to us and our successors of his friendship and of the tradition of excellence and public service which Justice Whichard's life and work have exemplified. Additionally, these proceedings will be printed in the North Carolina reports.