



Thinking about my appearance before you today, I thought back to my first year at The Citadel and the every Saturday Morning Inspections (S.M.I.) and their importance to my future and particularly how my squad corporal, Jack Hongston, the person directly in charge of me, viewed my activities. By the way, my first squad corporal was from Thailand. He was one of three cadets from Thailand in "I" Company, and he ended his military career as the top ranked General in the Thai Army—the equivalent of our Chair of the Joint Chiefs of Staff. He was easily the most outstanding Cadet that I knew. I tried to emulate him as best I could. Back to the S.M.I.—I prepared for this today in somewhat the way I did for an S.M.I. I made sure that my appearance was proper. My suit clean and pressed. My shoes shined. And, I am wearing my recently dry-cleaned Citadel tie. I got a haircut and studied my activities since I last appeared before the JMSC—similar to studying the Cadet Guidon Book. And, for that matter I thought about every appearance before this body since 1985. Now, 40 years ago. There was no Gressette Building, and we met in a small room somewhere on the Senate side of the Capital. I was the only candidate for the vacant judgeship from the Eighth Circuit since Judge Francis B. Nicholson's death. Judge Nicholson was my mentor and influenced me greatly. I do things in court that I learned from Judge Nicholson, how to say and do certain things. He and many others have been excellent mentors. And, I hope that I have mentored some lawyers and judges. Recently, I had the honor of administering the oath to a new Circuit Judge, Martha Rivers Davisson, from Aiken. Martha was my Law Clerk for a year and says that I was her mentor in certain ways—hopefully good ways.

Some people, including some lawyers, ask me "Why are you still doing this?" Best answer that I can give is that "I still enjoy this work." I like the people, places, facts and the law, and hopefully bring a fair resolution to their problem that brought them to me.

I have several quotes posted in my office which I often view and think help me stay focused. One is "The arch of history bends toward justice" from Theodore Parker and Martin Luther King, Jr. Another is "Justice is love in public." And, "We serve no client, our commission is to do what is right—what the law requires and what is just." And always to do justice, love mercy and be humble. And of course the Judge's Oath:

I do solemnly swear (or affirm) that:

I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge those duties and will preserve, protect and defend the Constitution of this State and of the United States;

I pledge to uphold the integrity and independence of the judiciary;
I pledge, in the discharge of my duties, to treat all persons who enter the courtroom with civility, fairness, and respect;
I pledge to listen courteously, sit impartial, act promptly, and rule after careful and considerate deliberation;

I pledge to seek justice, and justice alone;

[So help me God.]

My history as a lawyer and as a judge is in the materials furnished you so I will not repeat that here—a history of now 57 years. But, if I can answer any questions that you might have about my history, I will be glad to try to answer as best that I can.

But, going back to the question, “Why are you still doing this work?” I do enjoy the work. Some recent cases may illustrate what I mean. I think of three recent long civil jury trials. One was in Oconee County and involved the sale and purchase of a commercial building with several rent paying tenants. The seller and purchaser were each licensed real estate agents. The property fronted on a well-traveled road near a large lake. The property had been developed by filling a large valley with tons of dirt covering what was a creek that then flowed through two large metal pipes into the lake on the other side of the road. The seller had developed this property in this way, but the creek and pipes were now hidden, or at least not easily seen by trees and other vegetation covering them. What happened to cause this suit? A flood, a severe rainstorm of the once in a 100 year variety flooded the old ditch with its hidden pipes eroding the rear portion of this property, damaging the pipes and other items and causing the new owner to have to pay about \$200,000 to partly “fix” it, and an estimated additional \$200,000 to fully properly drain it now. The case was well tried by attorneys on both sides with competing experts and witnesses as to how visible and known this problem was. I charged the jury as to the law involved with some objections by the attorneys. The jury returned a verdict for the full amount of Plaintiff’s requested damages, and the Defendant filed a notice of and grounds for an appeal. Throughout the weeklong trial I had many conferences trying to get this case settled. I told them that I viewed the case about 50 – 50 and suggested that as a settlement. Some months went by and I called the attorney for the Defendant and asked, “What has happened?” I learned it had settled about on my suggested 50 – 50 basis.

Another several days civil jury trial happened in Charleston but was tried in Lancaster because of venue issues. The facts make for a very unusual and interesting trial. It happened in Mt. Pleasant on Coleman Blvd. A truck driver had just made a delivery to a grocery store and was on his way to his next delivery traveling West on Coleman toward the Cooper River Bridge in the right lane of this four lane street with a no-travel turning lane also. He was approaching an intersection with over the street traffic control lights. We saw the driver's presumed view of the intersection, etc., because there was a video recording showing him, what he was doing and the road in front of him. As he was about to pass under the traffic control device, a loud thump could be heard and he immediately drove left and parked in the middle no-travel lane, got out to investigate the loud thump and he was met by a lady who had been behind him and she immediately said "he is on top of the truck" and pointed up. What had happened? Well, one of the two lights at this intersection had a burned out bulb and the SCDMV had a contract with a company to replace such bulbs. Two men with a truck that has a bucket to raise the worker to the light to replace the bulb were parked on the shoulder doing this work and the bucket was up and extended out over the street. Unfortunately, the bucket with the man in it was not quite high enough by about a foot, so the truck struck it causing the man to be thrown out and to the top of the truck where he lay unconscious. EMS was called and it was quite an operation to move him by a back board, etc., to the ground and on to MUSC where he had x-rays, etc., all negative for injuries, but he was observed until that evening and then released home. He had a Workmen's Comp. claim for "injuries"—mainly mental—that had been settled, but presumably the proceeds helped finance the trial of his case including an expert witness regarding how the driver was negligent by not seeing, this man in the bucket over the road and knowing how high his truck was, etc. Good lawyers on both sides. Well prepared. Verdict for the Defendant after three days. No appeal.

The last was a weeklong civil jury trial in Jasper County involving application of the Motor Vehicle "Lemon Law." Again, interesting facts, law and good lawyers. Plaintiff was a young black female pharmacist who partnered with a young white female pharmacist to buy two new Ford vans to use in their business and for personal use. They had jointly purchased and now operated the sole pharmacy in Estill, South Carolina, when it was about to close a few years previously. Plaintiff's vehicle developed engine problems and would on occasions just "not go" and "die" in the road. The dealer made repeated attempts to fix it, but not successful. Then, Plaintiff with the help of a Charleston lawyer who specializes in "Lemon Car" cases went through the long mediation process required by the "Lemon Law" and attempts to fix it but again no satisfaction. Suit brought, discovery and attempts to settle, but weeklong trial. Good lawyers. Good witnesses. A \$69,000 actual damages verdict

for Plaintiff—what she paid for it. Then, “Lemon Law” provides for Plaintiff’s attorney to request trial judge to award his attorney’s fee—requested \$120,000 and had his time sheets, costs, etc., to back it up. I agonized over this because it just does not seem “right” for attorney to receive about twice the amount of the verdict as his fee. But, he is truly an expert in handling such cases and the “Lemon Law” has this in mind when allowing such for otherwise the Plaintiff could not hire an attorney to represent her. Ford paid the full amount. No appeal. Case ended.

I enjoyed presiding over these three unusual and long civil jury trials and helping bring them to a conclusion with no appeals.

What about General Sessions/criminal cases? After all, criminal cases and sentencings are the most important cases that we do. I had handled many criminal pleas as a private attorney and then as a part-time Public Defender. Also, I sentenced many people as a part-time City Court Judge. I observed many Judges, Prosecutors, and attorneys “in action,” and brought that with me. I think I have worked well with all the people involved. I am independent though I am sure that I am thought of as a “good plea Judge” by some. I can “move the cases” and at my last term of court in Berkeley County, I accepted guilty pleas from 56 Defendants and sentenced them. I also deferred 8 cases from two Defendants and Ordered pre-sentence investigations in each case conducted by a probation agent in accordance with South Carolina law and procedure. These 56 cases, some with multiple charges, were handled in four days of court. I started each day at 9:30 a.m. and finished around 5:00 p.m. with an hour for lunch. On Thursday, the last day the State had cases to present, we worked until 6:00 p.m. I did what is called “Second Appearances” (Role Call) on Friday.

I want to comment on my use/order for a pre-sentence investigation in criminal plea cases. I may be one of only a few Circuit Judges—I know two others, Judge Griffith from Newberry, and Judge Addy from Greenwood, that Order pre-sentence investigations in some cases. I do so because I feel a real need in very unusual cases to know more about the people and the facts that brought them to me. At one time, but only very briefly, pre-sentence investigations were required to be done in certain cases much like the Federal system does now in South Carolina criminal cases. When I Order such, a probation agent basically follows how the Federals do it and send me a copy, the Prosecutor a copy and Defendant a copy. Then, using that and all other information, I conclude with my sentence. Throughout this entire process, I am often reminded that it is amazing what can be learned if one asks the right questions. In one of the Berkeley cases where I Ordered a pre-sentence investigation, the Defendant had been in jail for several months on two shoplifting charges with a substantial prior record of shopliftings and thefts, but with the help

of two girl friends had paid off the victims, and he thought he would walk out of jail that day. I saw and thought otherwise and Ordered the pre-sentence investigation and that he remain in jail (until the pre-sentence investigation is done and he can be then brought from jail for sentencing.) His prior record and the facts of these two cases dictated such to me as a way to forcefully get his attention and hopefully deter him from anymore shopliftings. He had a bad attitude about this entire proceeding. He lacked any remorse—had a “not my fault attitude.”

I try to keep in my mind the purposes of a sentence:

1. Deterrence—specific and general.
2. Incapacitation.
3. Rehabilitation.
4. Retribution.

I have a large poster board in my office beside my desk with these purposes in large letters thereon. I try to keep these in mind as I sentence every Defendant. I hope—I try to do justice in every case.