

CIVICS EDUCATION OUTLINE
Justice Paul M. Newby

“A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.” ~ N.C. Const. of 1776, Declaration of Rights, sec. 21

I. Your Purpose

This is your opportunity to educate and inspire.

Who is your audience and what is your goal? Your Theme?

Questions to consider in developing your theme:

What is meant by the statement in the pledge of allegiance: “with liberty and justice for all”?

What is the Rule of Law?

What is distinctive about us as a State, a nation? What are our aspirations?

Successes? Failures?

What are our rights? What is the source of our rights?

What are barriers of access to the justice system?

What sustains trust in the justice system? What engenders distrust?

What is the role of government?

What is meant by separation of powers? What are the three branches of government and the function of each? Why three?

Why was North Carolina the 12th state to ratify the U.S. Constitution? Why did we decline initially to ratify the U.S. Constitution?

What is the difference between the state and federal constitutions?

II. Your story

Your parents?

Where did you group up?

Schools?

When did you decide to become a lawyer? Why?

Legal practice?

When did you become a judge? Why?

III. Your work

What do you like about your job?

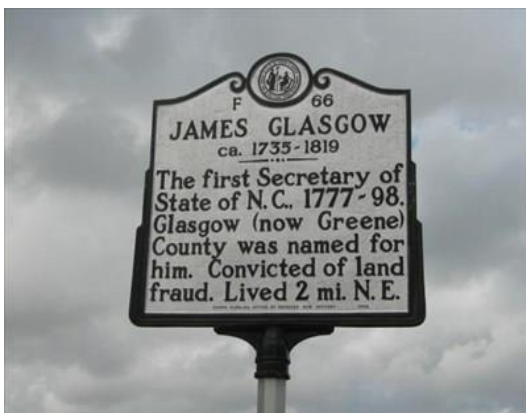
What are your challenges?

Tell about some of your cases that illustrate what you wish to accomplish—your Theme.

North Carolina and American Significant Historical Events

June 15, 1215	Magna Carta
April 19, 1775	Battles of Lexington and Concord “the shot heard round the world”
May 20, 1775	Mecklenburg Declaration of Independence (on flag)
May 31, 1775	Mecklenburg Resolves
February 27, 1776	Battle of Moore’s Creek Bridge
April 12, 1776	Halifax Resolves (calling for N.C. delegate at 2nd Continental Congress to support independence) (on flag)
December 18, 1776	Adoption of the first N.C. Constitution
1776 and Before 1787	Superior Courts <i>Bayard v. Singleton</i> (first reported case of judicial review)
September 17, 1787	U.S. Constitution signed by delegates in secret
July-August 1788	Hillsborough Convention rejected federal Constitution without Bill of Rights
November 1789	N.C. receives proposed Bill of Rights
November 21, 1789	N.C. adoption of U.S. Constitution and becomes the 12th state
January 1, 1819	Supreme Court of N.C. sits for the first time
1835	State Constitutional Convention
December 1865	N.C. ratifies the 13th Amendment (abolishing slavery)
1868	Second North Carolina Constitution adopted
1966	Unified Court System—District Courts
1967	Court of Appeals

Local Historical Markers (e.g., James Glasgow, First Secretary of State)



Famous North Carolinians:

Three Presidents:

- Andrew Jackson (Union County), born on March 15, 1767
 - Born in the Waxhaws region before the N.C./S.C. border was established
- James K. Polk (Mecklenburg County), born on November 2, 1795
- Andrew Johnson (Raleigh), born on December 29, 1808

Two Supreme Court Justices:

- James Iredell (England/Edenton), born on October 5, 1751
- Alfred Moore (New Hanover County), born on May 21, 1755

Quotes

“The reward of esteem, respect and gratitude [is] due to those who devote their time and efforts to render the youths of every successive age fit governors for the next.”

~Thomas Jefferson

“A popular government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance. And a people who mean to be their own Governors must arm themselves with the Power which knowledge gives.”

~James Madison

“Nor must we omit to mention among the benefits of education the incalculable advantage of training up able counselors to administer the affairs of our country in all its departments, legislative, executive and judiciary, and to bear their proper share in the councils of our national government: nothing more than education advancing the prosperity, the power, and the happiness of a nation.”

~Thomas Jefferson (Report for University of Virginia, 1818)

“If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be.”

~Thomas Jefferson

“Wherever the people are well informed they can be trusted with their own government; that whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights.”

~Thomas Jefferson (to Richard Price, 1789)

“The worst illiterate is the political illiterate, he doesn’t hear, doesn’t speak, nor participates in the political events. He doesn’t know the cost of life, the price of the bean, of the fish, of the flour, of the rent, of the shoes and of the medicine, all depends on political decisions. The political illiterate is so stupid that he is proud and swells his chest saying that he hates politics. The imbecile doesn’t know that, from his political ignorance is born the prostitute, the abandoned child, and the worst thieves of all, the bad politician, corrupted and flunky of the national and multinational companies.”

~Bertolt Brecht, playwright (*Mack the Knife* from *The Threepenny Opera*)

Studies

- RICK SHENKMAN, JUST HOW STUPID ARE WE?: FACING THE TRUTH ABOUT THE AMERICAN VOTER 13-14 (2008).
 - Study by the McCormick Tribune Freedom Museum found that, while 22 percent of Americans could name all five Simpsons from the fictional cartoon family, only 1 in 1,000 people could name all five First Amendment freedoms (freedom of speech, religion, press, assembly and petition for redress of grievances).
- Michael Ford, *Civic Illiteracy: A Threat to the American Dream*, THE HUFFINGTON POST, Apr. 4, 2012, Updated June 30, 2012, http://www.huffingtonpost.com/michaelford/civicliteracy_b_1457635.html.
 - 97.5 percent of immigrants pass the naturalization test but only half of natural-born citizens tested passed using a pass/fail standard of 70 percent. One particular area of difficulty for natural-born citizens is the U.S. Constitution and the nation’s legal and political structure. For example, 71 percent did not know that the Constitution is the “supreme law of the land,” 93% percent were unable to select the correct number of amendments to the U.S. Constitution, and only 68 percent knew how many justices are on the Supreme Court.
- Jeff McCall, *What Millennials Consume on Facebook*, INDIANA UNIVERSITY CENTER FOR CIVIC LITERACY, April 17, 2015, <http://civicliteracy.iupui.edu/what-millennials-consume-on-facebook/>.
 - “A national survey by the First Amendment Center shows that only 14 percent of Americans can name freedom of the press as a freedom articulated in the First Amendment.”
- *High School Civic Education Linked to Voting Participation and Political Knowledge, No Effect on Partisanship or Candidate Selection*, CIRCLE, January 17, 2013, <http://www.civicyouth.org/high-school-civic-education->

linked-to-voting-participation-and-political-knowledge-no-effect-on-partisanship-or-candidate-selection/.

- Study done by The Center for Information and Research on Civic Learning and Engagement (CIRCLE) found a direct correlation between civic education and voter participation.

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Mecklenburg Resolves. Available at <http://www.learnnc.org/lp/editions/nchist-revolution/4263>

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N.C. Const. of 1776, pmb1. ¶ XXI. Available at <http://www.nhinet.org/ccs/docs/nc-1776.htm>

Federalist Papers. Available at <http://thomas.loc.gov/home/histdox/fedpapers.html>

U.S. Const. of 1787. Available at <http://www.ourdocuments.gov/doc.php?doc=9&page=transcript>

Bayard v. Singleton, 1 N.C. 5 (1787). Available at <http://files.usgarchives.net/nc/craven/court/bayard01.txt>

George Washington, Farewell Address (1796). Available at http://avalon.law.yale.edu/18th_century/washing.asp

N.C. Const. of 1868. Available at http://www.ncleg.net/library/Documents/Constitution_1868.pdf

JOHN V. ORTH & PAUL MARTIN NEWBY, THE NORTH CAROLINA STATE CONSTITUTION (2d ed. 2013).

ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA (5th ed. 1972).

JUSTICE ERVIN'S CIVIC CLUB PRESENTATION

The following are the notes that I used during a talk to a civic club that I made a number of years ago, which have been lightly edited to eliminate certain comments that related solely to the organization to which this presentation was made and to update the information contained in this presentation in light of certain changes in the jurisdiction of the appellate courts that were made since the date on which I spoke. On the occasion which caused me to prepare these notes, I was asked to explain the role of the appellate courts in the North Carolina judicial system. Since I was serving on the Court of Appeals at the time that I made this presentation, I spoke from the perspective of an intermediate appellate judge rather than the perspective of a member of the Supreme Court.

Sam J. Ervin, IV

Want to talk with you about the role of appellate courts in our judicial system

Much misunderstood subject, unfortunately

Have had the privilege of serving as an appellate judge for the last several years

Appeared before appellate courts regularly when was in private practice

Hope have at least some understanding of what appellate courts do at this point

Judicial system assumes that the principal place in which civil and criminal cases are resolved is in the trial courts

Handle the vast majority of the civil and criminal cases that are filed in this and every other jurisdiction of which I am aware

Only a relatively small percentage of the cases that are heard in the trial courts ever find their way to an appellate court

However, for the most part, the issues decided by appellate courts are more difficult than those that arise in the average case heard in the trial court

Require more time and study than is typically true of issues resolved in the trial courts

Decisions made at the appellate level are binding on all trial courts, so important that they be carefully made and described in the form of a written opinion

Work so different that it's hard to compare the two with any degree of accuracy

Are two levels of federal courts in both the state and the federal systems

Both systems have an intermediate appellate court and a supreme court

In North Carolina,

----the Court of Appeals, which consists of 15 members elected statewide, sits in panels of three

----the Supreme Court, which consists of seven members elected statewide, decides all cases sitting as a seven-member group

All litigants have a right to appeal from the trial courts to the intermediate appellate court

Only cases that go directly to the Supreme Court in the North Carolina system are cases in which the death penalty is imposed, general rate cases emanating from the Utilities Commission, appeals from the Business Court, and appeals from orders of three judge panels of the Superior Court upholding facial challenges to the constitutionality of statutes passed by the General Assembly

Case load of Supreme Court consists of those few cases which can be appealed to directly to the Supreme Court and cases which are initially heard in the intermediate appellate court

In North Carolina, a case about which the judges of the intermediate court of appeals disagree automatically goes to the Supreme Court

In addition, the Supreme Court can decide, in the exercise of its discretion, that it wishes to hear a particular case because the case raises important legal issues, has substantial public importance, or is inconsistent with Supreme Court precedent

Since almost every case comes to an intermediate appellate court in the first instances, the case load of an intermediate appellate court is usually quite heavy

Believe experience of the North Carolina Court of Appeals is typical of the experience of intermediate appellate judges across the country

Authored more than 100 opinions last year

Has been true ever since I took office at the Court of Appeals

Case load also quite varied

About 50% of our case load involves criminal cases, ranging from cases in which the defendant was convicted of first degree murder and sentenced to life imprisonment without parole to cases in which the defendant was convicted of a minor misdemeanor

Other 50% of our case load involves civil and administrative matters, including

-----land use disputes, such as zoning controversies

-----contract disputes

-----business disputes

-----real estate disputes, such as the priority to be given to liens and whether instruments should be reformed to correct alleged errors

-----tax cases

-----controversies arising from the administration of decedent's estates

-----personal injury cases, including automobile wrecks, medical negligence claims, and claims arising from injuries allegedly resulting from defective products

-----worker's compensation cases

-----professional licensing issues

Huge variety in the nature of the cases which we are required to resolve

Ultimately touches in some way almost every citizen of the state

Nature of work done by appellate courts in order to resolve these cases is, on occasion, not intuitively obvious

In order to resolve any legal dispute, a court must generally do two things

First, the court must figure out what the facts are

Obviously, can't make a decision unless know what actually happens

Secondly, decide how to apply applicable legal rules to the facts

Two major misconceptions about what an appeal actually is

First is that an appeal is not a chance to retry the case

All fact finding is done in the trial courts

Hear witnesses and make decisions, either by jury verdict or judicial decision, as to what the facts are

Once that decision is made, it's final unless there is simply no evidence to support it

I don't know how many clients I had who thought that, on appeal, we would be entitled to reargue the facts and attempt to persuade the appellate court that the jury had simply believed the wrong person

Appellate courts simply don't do things like that

Don't have a witness chair

Don't have witness examinations

Instead, take the factual decisions reached in the trial courts as a given and attempt to determine the legal significance of those decisions

Focus solely on whether the presiding judge made an error of law

What sort of thing is an error of law

-----did the trial court allow the admission of evidence that should have been excluded

-----did the trial court exclude evidence that should have been admitted

-----was the evidence, if believed, sufficient to support the factual determination that the jury or the judge made

-----did the trial court include or omit something from his or her jury instructions that should have been included

-----did the trial court make a misstatement of the law in his or her instructions to the jury

-----did the trial court grant a motion that should have been denied or deny a motion that should have been granted

-----did the trial court make some other sort of procedural mistake

Not enough, however, for there to simply be an error of law

Instead, an error of law must also be prejudicial in order for the appellate court to grant relief

Keeps us from having to reverse trial court judgments based on minor legal errors

Are different standards for determining when an error is or is not harmless

-----for errors of constitutional dimension, error is prejudicial unless the State shows that the error was harmless beyond a reasonable doubt

-----for errors in criminal cases in which no objection was lodged at trial, the appealing party must show that it is reasonably probable that the outcome at trial would have been different had the error not been committed

-----for other errors, appealing party must show that there is a reasonable possibility that the outcome at trial would have been different if the error had not been committed

Second common misconception is that appellate judges are not given what my father, who served as both a trial and an appellate court judge for many years, used to describe as a “roving commission to do justice”

Aren't there to ensure that what we subjectively think is a just outcome occurs

Instead, are there to determine whether the trial court properly applied the law to the facts

Content of the law comes from several sources

-----proper understanding of basic common law principles which have been developed by English and American courts over the centuries

-----statutory provisions enacted by Congress and the General Assembly, with the operative question being what the legislative bodies that drafted those statutory provisions intended

-----proper understanding of any applicable constitutional provisions in light of the intent of the framers and the rules for constitutional interpretation laid down by the United States or North Carolina Supreme Courts

All courts in the common law universe, which North Carolina inhabits, place strong reliance on a legal doctrine known as stare decisis

Stare decisis means that, in the absence of an extraordinary reason to do differently, the appellate court should follow prior judicial decisions even if it disagrees with them

Practice helps ensure certainty in the application of the law

Impossible for individuals and businesses to comply with the law if judges constantly change their minds as to what the law actually is

Legal inquiry not intended to be subjective

Content of the law does not come from the subjective beliefs of the individual judge as to the fairness of a particular outcome or whether the legal principles involved do or do not, in the judge's opinion, reflect considerations of sound public policy

Judging should not be treated as a political or ideological undertaking

Only way that members of the public can have any confidence in the outcome of a particular judicial decision is if they believe that the decision in question does not hinge on a particular judge's personal, political, or ideological beliefs

Taking political and ideological considerations into account is perfectly appropriate in making a legislative or executive decision

Such considerations have no place in the judicial arena

At conclusion of the decision making process, one judge writes an opinion and sends it to the other judges responsible for deciding that case

Opinion consists of

-----a description of the case

-----a statement of the outcome reached by the appellate court

-----a discussion of the reasons that the court believes that outcome to be appropriate

After receiving it, the other judges decide whether to join in the opinion or not

If the recipient decides to join it, he or she sends it on to the remaining judge on the panel

If the recipient disagrees with the draft opinion, he or she writes a dissent, which is sent along to the other judges, who then get to choose which position they agree with

Once a particular opinion has received majority support, it then becomes the decision of the Court and is issued as such

Hope this helps you gain some better understanding of how our appellate courts operate

Have been privileged to serve as an appellate court judge and appreciate the confidence that the people of North Carolina have shown in me by allowing me to work in that capacity

JUSTICE ERVIN'S NOTES FOR ELEMENTARY SCHOOL SESSION

The following notes were utilized, in a slightly modified form, for a session that I had with a group of fourth graders. Prior to meeting with the group, I was asked by the teacher to focus on explaining what the different branches of government did and to finish up with a few facts about being an appellate judge that might be of interest to the students. As should be obvious from the conclusion of the presentation, I brought my robe and a gavel to serve as props. I decided to utilize a Socratic approach in order to keep the students engaged, which is the reason that most of my notes are couched in question form. In order to avoid a complete breakdown during the session, I only called on a limited number of students for responses to each question before giving the answer myself if none of the students that I called on were able to answer correctly.

Sam J. Ervin, IV

What are laws?

What are examples of some laws?

Where do laws come from?

Why do we need them?

What would happen if we didn't have them?

Should everyone be able to decide what the laws ought to be for themselves?

Who gets to make the laws?

Purpose of legislative branch is to make laws

Laws cover lots of subjects

-----people hurting other people

-----who can drive

-----who has to go to school

-----what happens if parents don't take care of their kids

-----who can be a teacher

-----what teachers are paid

-----when is a new school building needed

-----who is responsible for building it

-----where does the money to build it with come from

We elect people to Congress to make laws for the whole country, to the state legislature to make laws for North Carolina, to the county commission to make laws for the county, and to the city council to make laws for the town

Do people always obey the law?

How can people break the law?

-----do what aren't supposed to do

-----don't do what are supposed to do

What happens if someone breaks the law?

Who makes sure that what the law says is supposed to happen actually happens?

How are these people chosen?

Purpose of executive branch is to enforce the law

President in charge of the executive branch in the federal government

Governor is the chief executive in North Carolina

County Manager plays the chief executive role in county government

City Manager usually plays that role in municipal government

Do people always agree about whether people have broken the law?

How can people disagree over whether people have broken law?

-----have they got the right person?

-----did the person's actions actually violate the law?

-----did the person do something that they were allowed to do (self-defense)?

Are laws always clear?

Who gets to decide whether the law has been broken and what the laws mean?

Judicial branch makes those decisions

Juries decide what happened

Judges decide what the law is

Doesn't mean we decide what we personally think is fair

Means that we try to figure out what the legislative branch meant when it made the law that we're arguing about

Judges in North Carolina have to be lawyers

Was a lawyer before I was a judge

Had to go to a special school to learn how to be a lawyer and pass a special test called the bar examination

Are two different kinds of courts

What are they?

-----trial courts are where most cases are decided

-----juries decide what happened

-----trial judges decide legal issues during trials

-----what happens if the trial judge is wrong

-----appellate judges decide whether the trial judges were right about what the law is

-----no one can argue about whether the jury decided what happened incorrectly

I am an appellate judge

Serve on the Supreme Court of North Carolina

Highest court in the state

Appellate judges mostly read papers and write decisions

Don't sit in court much

Trial judges sit in court most of the day

Ever watched Judge Judy or Judge Joe Brown on television

Real court doesn't look anything like that

Usually very quiet and polite place

Know what this is?

Judges worn robes for almost 800 years in our legal system, which comes from England

Know why wear it?

Wear robes to get people's attention

Make us look dignified

Haven't always been black

Some judges in United States wear red robes

In England, have worn green robes too

I only wear my robe when I'm actually in court

Most of time, I just wear regular clothes

Anyone know what this is called?

Called a gavel

Know what used for?

Sends people a message to be quiet

Not used very much, unlike on television

Questions?