

ON TEACHERS AND JUDGES: INVESTITURE REMARKS

Justice W. Scott Bales*

President Solley, I am especially pleased that Phoenix College is hosting my investiture. Michele and I have taken classes here; she and my judicial assistant Marcie each received their legal assistant certificates here; and I have several friends who have taught here, including Judge Patrick Irvine from the Court of Appeals and Eddie Genna, a brilliant young professor of philosophy.

I'm also pleased to be here at Phoenix College because I want to say a few words today about teachers. All of us are students over the course of our lives. But too rarely do we have the opportunity to acknowledge those who have been our teachers or mentors.

Teachers, of course, help us develop our own skills. Good teachers help us realize that our opportunities are greater or our horizons broader than we might imagine ourselves. Still others inspire us by their own example.

The best teachers can change a student's life dramatically. I know this is true from my own experience.

From among many teachers who deeply affected me, I will talk about two.

The first was a Michigan State professor named Walter Adams. A Brooklyn native, he was feisty and brash, one of those teachers whom students regard with both fondness and a bit of fear. He would be seen walking briskly across campus, sporting a bow tie and unlit cigar, trailed by one or two students seeking his advice.

When I met Adams in 1975, he told me, "Bales, you should pick a real major, like economics." Economics was his field. This was in fact good advice, because by studying economics, I discovered that I really wanted to study law.

* On September 16, 2005, at an investiture ceremony at Phoenix College, Scott Bales was sworn into office as the 40th Justice to serve on the Arizona Supreme Court. Justice Sandra Day O'Connor administered the oath to Justice Bales, who had served as one of her law clerks in 1984-85. Governor Janet Napolitano, Phoenix College President Anna Solley, Arizona State Bar President Helen Grimwood, Federal Public Defender Jon Sands, and José Cárdenas of Lewis and Roca each spoke at the ceremony. Excerpts from the remarks by Justice Bales are reprinted below.

Adams taught a course on antitrust policy. He assigned judicial opinions and he lectured using the Socratic method. Education, for him, was not a spectator sport. Instead it was a contact sport among ideas. He was as good a teacher as any I would later have at Harvard Law School, and I had many excellent teachers there.

Adams taught two other subjects more important than law or economics. First, he taught his students to think critically and independently.

By critical thinking, I mean he taught us to analyze objectively the basis for our beliefs, he taught us to distinguish what we know from what we assume or wish to be so, and he taught us to evaluate arguments based on their merit rather than the identity of the speaker.

Critical thinking, for Adams, was related to his second subject. He believed that the success of our democracy depends on citizens being actively engaged in public affairs. Adams would end his class each year by quoting Pericles. He reminded his students that, in classical Athens, each citizen was expected to take an interest not only in his private business, but also in the business of the community.

Active citizenship in turn depends on critical thinking and debate. Again quoting Pericles (or, more precisely, quoting Thucydides quoting Pericles) Adams stated, “We do not look upon discussion as a stumbling block on the way to political action, but as a necessary step in acting wisely.”

Adams concluded by noting that happiness ultimately depends on freedom, and freedom requires courageous engagement rather than passivity. These were not platitudes. Although Adams never talked about it in class, in 1944 he had waded ashore at Normandy on D-Day and then, as an infantryman, fought his way across northern France. He was decorated for heroism at the Battle of the Bulge in the winter of 1944–45. Barely three years later, he arrived at Michigan State, where he taught for the next 50 years. It was an incredible privilege to have been his student.

Who Adams was and what he taught was best captured in words used to describe President John F. Kennedy, for whom Adams served as an advisor: He believed that one’s aim should not just be the most comfortable life possible—but that we all should do something to right the wrongs we see. He thought that one person can make a difference—and that every person should try.

In this respect, Adams had something in common with the other teacher or mentor I want to acknowledge—Sandra Day O’Connor.

Justice O’Connor has certainly made a difference in so many important ways. She is someone for whom I have the greatest affection and admiration.

Justice O’Connor has exemplified and helped teach others much about the appropriate role of a judge. In her judicial service, in her popular writings, and in her public speaking from Bahrain to Spokane, she has shown how an independent judiciary is essential to upholding the rule of law and our civil liberties.

Characteristically, Justice O’Connor has described the judge’s task in words that are simple and direct: “Be independent, be fair, venture to be wise.”

These eight words are inscribed on the statue of Justice O'Connor that is in the Phoenix federal courthouse. I think their order is as important as their content.

The first statement, "be independent" is primary because it underlies all that we ask judges to do. Judges must be independent to fairly apply the law without regard to the identity the parties. Judges must be independent to make decisions that may be unpopular but appropriately protect the rights of minorities. And judges must be independent if we truly believe that our written constitutions define and limit the powers of government.

Over her long career in public service, Justice O'Connor has recognized that judicial independence depends on how judges are selected. As an Arizona Senator, she supported legislation to adopt merit selection. When the legislature failed to act, she helped lead the citizen effort to obtain voter approval of a ballot measure adopting merit selection in 1974.

Merit selection has since allowed Arizona to enjoy three decades of independent—and outstanding—judges. These include Justice O'Connor herself and Ninth Circuit Chief Judge Mary Schroeder, who each were appointed to the Arizona Court of Appeals through merit selection. They also include Arizona Justice Bud Jones, another eloquent spokesperson for the role of an independent judiciary, and a judge who, but for mandatory retirement, would still be ably serving on the Arizona Supreme Court. Coincidentally, thirty years ago today, Justice Frank Gordon took office as the first Arizona justice selected under merit selection, a noteworthy anniversary.

"Be independent, be fair, venture to be wise."

"Be fair" is of course at the center of what we expect of judges. But in a time when our courts, and indeed, even the physical safety of judges, are under attack by some, we should remember that in order for judges to be fair, they must be independent. Judges cannot be fair if they decide cases based on fear of reprisal—whether reprisal from the public or from the other branches of government.

The final statement, "venture to be wise," reflects what I think is a proper degree of humility on the part of judges.

Judges must make difficult decisions every day, but they should do so recognizing that they do not have a monopoly on wisdom and they will not get it right every time. This counsels for deciding only those issues necessary to resolve each case and for giving due respect to the elected branches of government. As Judge Learned Hand said long ago, "the spirit of liberty is the spirit that is not too sure that it is right."

Stated differently, I think the phrase "venture to be wise" reflects that judges, too, should be students over their careers. They should approach each case with an open mind; they should expect to learn from exchanging views with their colleagues and legal counsel for the parties; and they should recognize that understanding often comes only with experience and reflection.

This is how I plan to approach my new job. I'm joining a court with four experienced and very talented justices. I will learn much from them, and I hope to venture towards wisdom as we work to decide cases fairly and independently.