

Chronicle of the First Joint Revel of the Expanded
(by Spouses) High Courts of Maine and the
First Circuit

At the Whistling Oyster, Oqunquit, Maine
March 7, 1986

Ad hoc "Facilitator" or
Master of the Revels, by
appointment of Chief Justice
McKusick: Judge Coffin.

Historical Note: The unprecedented occasion of the High Courts of different sovereigns meeting at a point between their respective seats warrants reflective attention. Research reveals that the closest analogue and role model transpired 466 years ago. In May, 1520, those two overweening sovereigns, Henry VIII and Francois I decided to meet near Calais on a field between Guisnes and Ardres.

Their arrangements were a bit more complicated than tonight's. Henry alone brought 27 ships, 4000 men and 2000 horses for himself and 1200 men and 800 horses for his Queen, Catherine. The kingly meeting was far from a simple handshake. Henry rode out from Guisnes and Francois from Ardres; when each saw the other, he stopped; then each galloped ahead, alone; when they met, they embraced several times on horseback (no mean feat), dismounted, embraced again.

Henry had built a huge temporary palace, with rooms larger than any in England, the walls hung with cloth-of-gold. The site came to be known as the Field of Cloth-of-Gold. Sustained by 3000 butts of wine (at 126 gallons a butt) on Henry's side alone, they endured 17 days of jousting, wrestling, eating, drinking, promenading, and posturing.

This conclave is not quite so ambitious. Our Chiefs are not horsed. The egos are much more restrained. The display is less but the sincerity greater. And though our meeting place cannot claim a sobriquet as grandiloquent as the Field of the Cloth-of-Gold, who knows? Perchance History will trace great doings to the Bed of the Whistling Oyster.

For we may have contributed more than we thought to the administration of justice. We may have started to reverse a trend. Up to now, when professionals from different operating entities got together, this was the progression: first the splendid idea of getting together; then an agenda and advance notice of what it is; then someone makes the sensible observation that rules and procedures are needed; of course minutes are taken and, because of that, a report is prepared; and no self-respecting report would resist the urge to recommend that something should be done. All this means permanent space, equipment, and a secretariat . . . and -- voila! -- a new institution has been born!

With one brilliant stroke, the organizers of this conclave have accomplished two laudable objectives: the elimination of an agenda and the inclusion, in its place, of spouses . . . who, of course, may have their own agenda.

(At this point in the proceedings the assemblage was addressed pertinently, succinctly, and gracefully by Chief Justice McKusick and Chief Judge Campbell. As the Master of the Revels observed, the rest of the evening was anti-climactic, but deliberately so. Since anticlimaxes are seldom recorded, it was thought in harmony with the general tenor of this

Chronicle to include the following.)

As all of you know, this is the Season of Awards. We have Oscars, Emmies, Grammys, and even Hats for country music. Tonight we toast the Appies. You may ask what is an Appy. It is, as you see, an excessively muscle-bound creature, with limited brain pan. But he wears the time-honored accoutrements of a judge - - not only a robe but a wig. He is, as you can tell by the aggressive if slightly unstable stance, an appellate judge. And so we call it an Appy.

Each year a distinguished committee of losing litigants searches the country over for suitable recipients. This year there were none who qualified for the superstar awards: Best Contribution to Hazy Doctrine; Most Impassioned Defense of Stare Decisis; Most Footnotes; Most Stinging Dissent. So the Committee had to look to supporting performances. This is akin to Best Make-up, Best Sound Effects, Best Stunt Performance.

Our First Recipient -- Justice David Roberts. . . A Colossus of the North. The Committee was at first attracted to his passionate prose. Then it felt this was eclipsed by his dry, interminable, Aroostookian anecdotalism. Finally, however, it realized that here was the Quintessential Keeper of the Docket.

If you are impressed, as I am, by the record of this Supreme Judicial Court for being current, it is in no small measure due to the Docket Keeper. I'm not sure what this entails. I think it means that for any case to get on the Court's docket, the lawyers must satisfy the Docket Keeper that it is a real case, or, if not, that it is at least entertaining. Then, once the case is on the docket, Justice Roberts doesn't sleep nights, or let his colleagues sleep, until it is off.

So, just as our coastal towns all have harbor Blasters and our inland villages fence viewers, the Supreme Judicial Court of Maine has its revered

KEEPER OF THE DOCKET

Whereupon Justice Roberts responded in manner and content so rich as to be incapable of being captured by the written word.

Our Second Appy Award Winner -- Judge Breyer. . . Our man for all seasonings -- sage, of course, but with a dash of nutmeg, and a high thyme withal. This week is an example. On Monday he sat as a member of a panel, hearing seven cases; then he conducted his two hour class in Administrative Law at Harvard. On Tuesday and Wednesday he worked in chambers, arranged a conference among lawyers to settle a hotly contested issue relating to a huge bond pending appeal, sat with another panel, and attended our monthly staff meeting. On Thursday he was off to New York to join a panel discussing the latest proposals to amend the antitrust laws. And in between he tended to business of the new Commission on Sentencing, of which he is a Commissioner.

But what we honor him for today is a transcendental proclivity to state counsel's case better than counsel. Of course, after he has done this, counsel should immediately sit down. But none do. Instead, they drone on until the lambent illumination has been all but forgotten. Sometimes, Judge Breyer's penetrating mind will even cause him to state an overpowering case that isn't before us. But his success has its price; too many habeas petitioners and criminal appellants knock on our door for his services. So, to cut off the flow, he is now hard at work as a Sentencing Commissioner to see to it that all convicted defendants receive indeterminate sentences with no possibility of parole.

So, this Appy to Judge Breyer for his sustained performance as

BEST COUNSEL ON THE BENCH

Whereupon Judge Breyer responded with a characteristic succession of aperçus so blindingly incisive that it would be lèse majesté to reproduce them here.

Our final award winner -- Justice Dan Wathen. As the Chief Justice exited from Pierce Atwood, Justice Wathen entered. But Pierce Atwood would never let him come to Portland. They kept him in Augusta, more or less the farm team. But just how earthy that farm team was even Pierce Atwood didn't know.

Through some misadventure -- or inattention by the Governor -- Attorney Wathen became a Justice. Now, no one denies the scintillating brilliance of this justice. It's just that when drafts of opinions were circulated, Dan's were an astounding collage of one liners. The Chief Justice had to take him aside and say, "Dan, let me tell you what a judicial opinion is." Well, this took all the fun out of the business -- just to put down real facts, accepted principles, and logic leading to a result that would attract six other votes. No big deal, that.

As a result of this ennuie, over the years Justice Wathen began to get his kicks out of celerity, expedition, not to mention speed. First, he would write his opinions, moving his pencil so fast it would smoke. Then he burned out three word processors. Now he is working on his own fiendish device. Ordinarily I would respect his confidence, but the award requires revealing it.

What Dan is up to is this. He is having attached under the bench in front of his seat a little keyboard attached to a word processor and printer. He plans to use argument time during cases he is not particularly interested in to write drafts of opinions in the cases he fancies. As the justices convene for their daily conference, Justice Wathen will stand at the door, hand out his drafts. . . and a signature sheet.

To Justice Wathen, an Appy for being

THE FASTEST GUN BETWEEN KITTERY AND FORT KENT

Whereupon Justice Wathen responded with observations too delicate to bear repetition.

Finally, in the absence of a motion, the meeting adjourned

Sine die.