

Remarks of United States Senior Circuit Judge Frank M. Coffin  
at the induction of  
United States District Judge D. Brock Hornby  
Federal Courthouse, Bangor,  
Maine June 11, 1990

Chief Judge Carter, fellow judges and friends: There is no better way to begin in this courtroom than to tell a fish story. What I have to say augers well at this district court but bodes ill at my own court of appeals. Back in the distant past -- six years ago -- when Judge Hornby was a magistrate, he had a case involving four actors: a Maine businessman operating a fishing bait business, the omnipresent Feds -- investigators, grand jury, and prosecutor -- an assistant attorney general of Maine, and 158,000 golden shiners. These are minuscule minnows, 70 to the pound, used as live bait in sport fishing. Unfortunately, the Maine statute banned the importation of bait fish. Our lawmakers feared that golden shiners "from away" carry no fewer than three kinds of parasites, while Maine fish, understandably, like all of us, are pure and above that kind of thing. Moreover, our legislature feared that letting in these bait fish would raise hob with the ecology. We could widen the turnpike -- but when it comes to golden shiners . . . .

Now, how did the Feds get into the act? Simply. There is always a federal law somewhere and this one said that it is a federal crime to import any fish in violation of a state law. So the poor bait businessman who imported the 158,000 golden shiners was indicted and convicted.

Then Magistrate Hornby held an evidentiary hearing and concluded both that the Maine law served a legitimate local purpose and that inspection of these minute minnows was out of the question and that even random sampling for parasites, while feasible for salmon and trout, was not in the case of baitfish. Judge Cyr agreed with Magistrate Hornby and the case went to our court, which of course reversed. Not only that, but in ruling on a rigorous petition for rehearing it found the result it reached "inevitable" and "saw no purpose in asking another group of appellate judges to [read the record yet again]." I hasten to say that I was not on that panel. For another group of appellate judges did get into the act, nine of them -- the United States Supreme Court. In Maine v. Taylor, 106 S.Ct. 2440 (1986), Justice Blackmun, having in mind the notorious snail darter which once frustrated the building of a giant dam, began his opinion: "Once again, a little fish has caused a commotion." He said that the Magistrate had been right all along, on all counts, and even quoted the Magistrate verbatim. The only solace for our court was the lone dissent of Justice Stevens which began, "There is something fishy about this case."

Well, if that is the way the Supreme Court feels about Judge Hornby, Chief Judge Carter has much cause for satisfaction, but we on the court of appeals face the dour prospect of being hooked on his lure.

I have been given the honor of presenting a brief review of the record to date of our new judge. As I review it, I find that it reveals a unique combination of the European and American approaches to judicial qualifications. In Europe, in those countries imbued with the traditions of the civil law, the judiciary is a career path which young people follow from their university days onward, serving in courts of increasing level and complexity as their career progresses. In the United States and indeed in the common law countries generally, the judiciary is selected from the practicing bar and academia. Our tradition is based on values we associate with a generalists' background while Europe's tradition pays homage to the calculated development of expertise. Both traditions can be discerned in Judge Hornby's case.

First, the European -- Judge Hornby's judicial career path can be said to have begun when he excelled as a student at Harvard Law School, joining the elite ranks of officers of the Harvard Law Review. He then gilded the lily by serving as a law clerk to one of the great federal judges of this century, United States Circuit Judge John Minor Wisdom of the Fifth Circuit, in New Orleans. He then labored in the vineyards of academia for four years as a law teacher at the highly regarded University of Virginia Law School, being granted tenure status.

I now skip eight years, about which I shall tell you later, and come to 1982 when a friend of all of us, the late Judge Edward T. Gignoux once again demonstrated his insight and wisdom by appointing Brock Hornby magistrate. Then followed Governor McKernan's appointment of Justice Hornby to the Supreme Court of Maine in 1988; and two years later, after a serious and sophisticated effort by a search committee, Senator Cohen's successful recommendation that President Bush appoint him to this district court.

During these past twenty years, Brock Hornby served in many organizations having to do with the law and particularly the judiciary and authored many articles in the field of the law as well as presenting papers to professional groups and seminars.

It might well be that many would feel that this background alone would leave no room for significant elaboration. After all, our judge is only 46 years old now. But I have only considered what we might call his European credentials. At least as important, and I think many in this room would deem them even more important, are our American credentials. We can begin with his college work at the University of Western Ontario where, as a harbinger of the breadth of his future interests, he received the Merit Award for Extracurricular Activities. Then I add his period of study at the Harvard Graduate School of Arts and Sciences, a venture in liberal arts.

I now come to Brock's decision to head north during 1974 when he was finishing four productive years as a law teacher. Why Maine? Why Portland? To tell you why requires me to reveal all kinds of intelligence normally protected as attorney's work product. But it seems that Brock, back in his Harvard days, not merely a gifted law student but someone with a deep interest in art, combined that interest with a well thought out marital strategy by arranging a rendezvous with a young lady, a student at Simmons, Helaine, under the famed romanesque arches of Henry Richardson at Trinity Church on Copley Square in Boston to propose matrimony of course this artful architectural advocacy succeeded -- spectacularly. Years later, stirred by such romantic associations, they revisited Boston for a lark. At this point, something prompted them to drive downeast. Portland appeared on the horizon. They came, they saw, they concurred. At this point, Brock began a fruitful eight years in the general practice of law in the firm of Perkins, Thompson, Hinckley and Keddy. That he lent distinction to his firm and the practice generally is known to many in this room.

Somehow during this time, he found ways and energy to be a supportive and creative leader in many civic undertakings. I name only a few: trustee, member of the executive committee, chairman of the nominating committee, and chairman of the long range planning committee of Westbrook College, director of the Bruce Roberts Santa Claus Fund, director of the Chamber of Commerce and chairman of its governmental affairs committee, incorporator of Maine Medical Center, and member of the board of managers at Park-Danforth Home for the Aged. Perhaps most important of all he was a mover, shaker and sustainer of the Portland Society of Art during its transition years leading to the separate existences of the Portland Museum of Art and the Portland School of Art. He not only presided over this separation, which served each institution well, but also was one of the key forces in bringing about the Payson gift of the celebrated Homers to the Portland Museum and the plan leading to the construction of its

wonderful new building.

I therefore submit that Judge Hornby would have been a proud addition to any bench, European or American. I rejoice that it can be on this side of the water. In closing, I can do no better than quoting a letter from Judge Hornby's mentor and someone who I know will always -- along with Judge Gignoux -- be considered by Brock as "his" judge, the Honorable John Minor Wisdom.

UNITED STATES COURT OF APPEALS  
FIFTH JUDICIAL CIRCUIT

JOHN MINOR WISDOM  
CIRCUIT JUDGE  
NEW ORLEANS, LOUISIANA

May 10, 1990

Judge Frank M. Coffin  
First Circuit Court of Appeals  
P.O. Box 311  
Portland, Maine 04112

Dear Frank and other good friends in the First Circuit:

I am very happy and very proud that Brock Hornby is a federal judge. He will be a great judge, a worthy successor to Ed Gignoux. Brock is destined for an outstanding career on the federal bench.

At a certain high level many superior law clerks are fungible. But Brock stands alone. His exceptionally brilliant legal mind, his balanced judgment, and his attributes as a fine human being put him in a class by himself. I have always known that Brock Hornby would make an outstanding teacher, lawyer, civic leader, and judge. Indeed, Bonnie, my wife, and I have frequently said, "Brock would have all the qualifications for the Presidency of the United States, were he not by birth a Canadian". I should also point out that he has been blessed by a lovely, intelligent, supportive wife who has shared his interests in civic affairs.

When he was a law clerk, Brock Hornby carried home heavy briefcases every night — his and mine. Now, I congratulate him on his reaching the happy stage where he will receive assistance from his own law clerks in the endless carrying of briefcases.

I congratulate the First Circuit and Brock and Helaine on this judicial ascension.

With warm regards to all.

Sincerely,

*John Wisdom*