

February 3, 1989

I have seized on a thought to help cushion the impact of being so honored by so many of you. The thought is that, while I am really no different from what I have been, what is different is that we are welcoming into our midst a new artifact, the portrait, which will happily grace our halls of justice here and in Boston for more time than I care to contemplate. So, I begin, as did Judge Gignoux on that happy first day of October, 1982, when his Claude Montgomery portrait was unveiled. Said he, speaking also for his wife Hildegarde, "Although modesty should forbid me to praise, I must confess that we both like it, and we hope that you will."

Ruth and I have watched, bewitched, the development of this portrait from the first brushed sketches to the final framing. Now we accept it as "The Other Me."

Of course, as a judge I am well used to sitting. But sitting for a portrait is something else. I quote myself from a little essay I have written:

Sometimes I dimly sense the unique partnership of portraitist and sitter. She is bringing to bear her lifetime of training to create something that will satisfy those who want a likeness and yet something that as a work of art will merit enduring. And she has not much over 18 hours of being face to face with me to put my essence on canvas for as much of the ages as will be vouchsafed to my image. For my part, I try to help by keeping a posture and face. When I sense that she is working in a sensitive area, where every nuanced stroke may be the last, I hold my breath as if to give away my being to the canvas. It is strange. I am trying to give away my quintessence, yet I do not feel diminished.

Later on, I added:

And she is at work not only when she is in contact with the canvas. Coming home from Tuscany via Paris, she had dropped in at the Louvre and made it her business to study hands. Although she reveres Rembrandt, she does not go to him for details on hands. It is the salon painters who help. Ingres, who inspired Degas, Delacroix, Gericault, Rubens. She said of a problem she had solved that she looked around for confirmation and was pleased to see that Franz Hals had done the same thing.

This recalls something the French art critic Edmond Duranty wrote about the genius of Edgar Degas in conveying a general impression through well chosen detail: "By means of a back we want a temperament, an age, a social condition to be revealed; through a pair of hands, we should be able to express a magistrate or a tradesman . . ." In this case, hopefully, a magistrate.

As Ruth and I have lived with this "Other Me" these past weeks, we have gotten along famously, although Ruth is occasionally being taken aback as she runs into me unexpectedly in the study, having just left the real me in the kitchen. As for myself, I have felt only one drawback; "The Other Me" gives me a slight inferiority complex. I feel something like Justice Holmes who remarked to one of his former "secretaries," Harvard Law Professor Leach, concerning his splendid full length portrait by Charles Hopkinson: "Rather an imposing old bugger, isn't he!" Pause. Then, "That isn't me, but it's a damn good thing for people to think it is."¹

¹ John S. Monagan, The Grand Panjandrum: Mellow Years of Justice Holmes. Lanham, Md.: University Press of America, 1988, p. 22.

It ought now to be obvious that I feel blessed in having been "done" by such a gifted artist as Marion Miller. I am proud that I shall hang, even though briefly, with the eighth judge of this court, who gave me my start as his law clerk, John D. Clifford, Jr., and with the ninth judge, my onetime law partner and lifelong friend, Edward T. Gignoux.

For all this I am indebted to my extended chambers family, my two secretaries and fifty-five law clerks, who made this occasion possible. And particularly the ringleader of this affair, our new Magistrate, David Cohen. For it was he who finally persuaded me to join this enterprise before, as he put it, I became too ancient. My secretaries are not really well described by that title. They are a cross between Chief Executive Officer and shop foreman. First, for three decades in Washington, Paris and Portland there was Mignonne Bouvier. Then, when she left, she helped me recruit her excellent successor -- my present secretary, Gail Rice. As for my clerks, as I think most of you know, living and working with wave after wave of gifted young lawyers and following them in the growth of their careers and families through the years is the richest part of a judge's life. As Judge Gignoux did six years ago, I want to ask the law clerks able to be here on this occasion to stand, with their spouses, to be recognized.

One of the nearly impossible tasks for one in the position fate has placed me this afternoon is how to respond sensibly to the generous remarks of others. My friend, Reverend Peter Gomes, the Minister of Harvard's Memorial Church has given me a clue. In a recent address he called it the Tom Sawyer syndrome, recalling how Tom had been given up for dead and surreptitiously returned to eavesdrop on his funeral eulogies from the balcony of the church. Well used to being scolded for what Mark Twain called his "rascalities," he reveled in hearing his praises sung. As the grateful congregation belted out the venerable hymn Old Hundred as it had never been sung before, Tom "confessed in his heart that this was the proudest moment of his life." And so do I -- one of the very proudest.

So many of my communities and networks are represented here. Through Roger Putnam, my old firm and the bar, whose elder members guided and nourished my apprenticeship and whose younger members almost unfailingly fill me with pride today as I hear them argue in our court. Through Justice and Dean Godfrey, the University of Maine Law School, whose students and faculty contribute their eagerness and their learning. Through my old friend, Chief Justice McKusick, his court of the highest quality, whose Justices I count my friends as much as I do my own colleagues. And my comrade of some 22 years, Judge Bownes. What can I better say of him than that he has made judging not only a challenging intellectual adventure but has made the word "collegial" a synonym for "fellowship." And my Maine colleagues, Chief Judge Cyr and Judge Carter, who are carrying the District of Maine banner proudly in Judge Gignoux's footsteps. I add that Bill Brownell and all of the dedicated personnel of this district court could not have done more to make life here a happy one.

Finally, my family. It is a special thrill to have my daughters Susan and Meredith and my grandson Morey here to unveil the portrait. And to my wife Ruth I owe the serenity without which I could never have fulfilled the role of judge.

I am glad that my portrait will begin its life here. Here is where I came 42 years ago as a law clerk. Here in Portland is where I started teaching -- at old Portland University Law School in the Y.M.C.A. And here is where I engaged in practice in Verrill Dana with a group of fine lawyers and gentle men. And, of course, here is where I have shared a corridor for 23 years with Judge Gignoux.

Ralph Lancaster, who could not be with us today, wrote, felicitously, that the present occasion was not a terminus, but rather a milestone or waystation. In any case it is a time for

reflection -- not a great deal, but some. Quantitatively, what have my years on the bench seen? I'll tell you. Some 2,200-plus opinions, published and unpublished. The published ones start at 355 F.2d and continue through 857 F.2d. I blush to say that these 502 volumes occupy some 103 feet of lawyers' precious shelf space.

Qualitatively, I doubt that there has been a period of greater change in cases coming to the courts than the 60's, 70's, and 80's. In the middle 1960's, when I came on the bench, our hearing list was short -- some 200 appeals a year; our whole court consisted of only three judges (there was no such event as an en banc hearing, for every hearing was en banc); and the issues were largely solid questions of contract, tort, federal statutory law. Now, two and a half decades later, we handle some 1,200 appeals, a sixfold increase; our court has doubled, to six judges, and we need visiting help; and our cases are complex, involving intricate environmental, pension, health, tax and other statutes and a wide variety of constitutional issues in criminal appeals, habeas corpus petitions, and the new generation of civil rights cases. Moreover, the administrative and committee responsibilities of a judge have vastly increased.

What do I make of it all? This battleground is not one for conquest by brilliant cavalry charges; it is trench warfare all the way. To change the metaphor, what we judges can look back upon with pride is painstaking masonry, strengthening the structure of the law by placing good mortar between the bricks. I say this deliberately, for few of us have the occasion or the genius to contribute the bricks themselves. Even the heroes -- Holmes, Brandeis, Cardozo, Hand -- are, after several decades, remembered more for epigrams and other quotable quotes than for substance. But good mortar, well applied, is not a bad achievement over time; it is the total structure that counts.

So I take pride and pleasure in having put some useful mortar into strengthening the bricks of our justice system. It has been a joyous enterprise. I say this for young people who may occasionally wonder whether joy and achievement are compatible.

What now? I am in transition to what? to the rest of my life. This is not a static state. A Canadian judge-friend of mine just wrote me that he was following my example, only, in Canada, he will be called a "supernumerary." I don't like that at all. Nor do I like "retire," unless you let me define it in my own terms. My definition, as in "re-tiring the car," is putting new tires on the old chassis so that it can make many more interesting journeys. For me this period starts out with continuing to judge appeals, although at a reduced rate; continuing to chair our federal judges' Committee on the Judicial Branch; participating in the work of a newly formed Governance Institute to ferret out areas where the functioning and relationships of governmental units can be measurably improved by modest means. But I hope also to make time to be useless, to descend to my sculpture shop, and as my Mother would express it, to "smell the roses."

I close with words of a poet, a Bates College contemporary of mine, Reverend Arnold Kenseth, who is retiring after giving his church some four decades of service. His poem is called, "The Next Season" and he closed it with these words:

O celebrate how man,
Taking his next season boldly,
Feels huge assurance, expects
The distant mountains to be true.