

Reflections on the Presentation of My Portrait

F.M.C. -- Federal Courthouse

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One of our wisest contemporaries, the late Carl McGowan, of the D. C. Circuit, responded to a similar occasion in these words: I worked for a man once who used to say that there is nothing wrong to listening to speeches like this about yourself, if you don't inhale." While trying desperately not to inhale, I nevertheless confess to a turbulence in my head.

First, although I know I shall look back on this as one of my proudest and happiest days, I have looked ahead to it with an acrid mixture of embarrassment and humility (whether fake or not I cannot tell). The thought of imposing a substantial part of my persona on generations of First Circuit litigants, lawyers, and judges is unnerving.

This kind of thinking led me to resist for a long time Chief Judge Campbell's interest in keeping up our gallery of colleagues' portraits. What finally got through to me was the not very subtle observation of one of my early clerks, now United States Magistrate David Cohen. He urged that I should sit for my portrait before a hapless artist confronted only the merest desiccated crust of a subject. I now embrace Judge Campbell's idea that anything we can do to bequeath something of ourselves to those who follow helps to strengthen the human side of a valuable institution.

One other thought insinuated itself after I surveyed all of the ceremonial occasions memorialized in Fed. Second during my time on this bench -- from Volume 351 through 872, over half a thousand. Most of the little black labels on the spines of the volumes are "In Memoriam." I, therefore, am acutely aware that, whatever may be my reservations, I am enjoying this occasion far more than an In Memoriam. And while it would be nice to think that one could look forward, like Judge Medina in Volume 859, to a celebration of one's 100th birthday, I am content.

Unlike In Memoriam or 100th birthday ceremonies, this occasion celebrates not only the subject but also the artist and, most significantly, the symbiotic relationship between them. I recall how in 1979, Gardner Cox told us on the occasion of the presentation of Judge Aldrich's portrait how they told jokes, laughed, and sang the songs of their youth.

Well, Marion "Bonnie" Miller and I couldn't sing the songs of our youth together, for her youth and mine were in different eras. But let me tell you a bit of our joint enterprise. Bonnie generously decided to do the portrait in our home in Maine. We turned my daughter, Susan's, old bedroom into a studio and Bonnie made seven or more 400-mile round trips from her base at Mt. Holyoke in South Hadley, Massachusetts. At first, during early brush sketches, we would talk. Then, as she started on the real thing, she became more absorbed and I realized that I had a job to do also. And as she painted me, I began to paint her in words. This is how I recorded us in my journal.

Thursday, May 19. Bonnie Miller came at 1:30. Sat till 5. She is now working on the big (3 by 4 feet) final canvas. She has a tall easel. She wants me a bit above her, so I placed the chair on two four by four's. She has to paint, straddling her chair and half standing. She is always moving -- squinting at me, thrusting at the canvas, cocking her head, grimacing, smiling, arching her eyebrows, dipping her brush in turp, wiping it off, slurring it around on the reddish brown palette. She instructs me on the tip and tilt of my head. I try to

concentrate lest I look vacant. But I don't want to freeze, to be calcified. I try to look pleasant without leering. When she isn't looking, I move my facial muscles to make sure they still work. I try to think happy thoughts.

Occasionally Bonnie's Australian collie, Marker, would approach, place his paws on my lap, stand on his hind legs, look down at me and lap my nose. I could envisage the portrait being identified to later generations as "Dog and Man in Robe." Well, I have elsewhere recorded how Bonnie worked, wrestling with obdurate problems, letting time and distance reveal their own insights, communing with her favorite portraitists in the Louvre, and how at the end everything seemed to fall in place.

I am in complete sympathy with Justice Holmes who, on looking at his splendid full length Hopkinson portrait with his former secretary, Harvard Law Professor Bart Leach, said, "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."

I am not at all objective about what I call "The Other Me." If this other me looks more in control of things than I usually feel, well, so be it. After decades of grappling desperately with hard cases and feeling one's inadequacy, it's nice to appear in command.

So to my gifted portraitist, my gratitude, respect, and affection.

And now a very special "thank you" to those who are the "but for" cause of occasion and this portrait possible -- my clerk family, now 56 in number. I suppose I should at this juncture pay tribute to their profound learning, exquisite writing, dedication, and matchless contributions to my body of judicial work. But that would take more time than we have. What is worthy of note here is that for the first time in our relationship, outside of the basic business of crafting judicial opinions, they have been constructive and even kind. For in general they have been implacable and diabolical in their Machiavellian plots, tricks, and pranks -- which have as their objective demonstrating once again the predictable gullibility of their judge.

Well, as I look at the portrait and the affection and generosity that made it possible, I say, "All is forgiven." For the time being. I am deeply moved to see members of my clerk family here today from Florida, California, Chicago, Washington and, of course, Boston and Maine. At this juncture I would like to emulate my late good friend and great judge, Edward Gignoux, and ask my clerks present today and spouses to stand.

I turn now to my colleagues, who can make the vocation of an appellate judge a bane or a blessing. In my case it is the latter. Of course for many years we were a court of three judges: at first Judges Aldrich, McEntee, and I; then Judges Campbell, McEntee and I; finally, Judges Campbell, Bownes, and I. Collegiality in these days was just the natural way of life. We all sat on every case. There was only one panel. Intracourt consistency was not a problem. There was no such thing as the trauma of an en banc. And we were always together. Now, in a court of six active judges, two seniors, and always some visitors, collegiality is a discipline, something that must constantly be worked at. At the same time, the court is enriched by diversity. Each judge brings his own strengths; the others take care of his weaknesses. And, in this court, there is a tradition of concern for each other and for the process of appellate judging that make it still a very special institution. I could tell you more about my colleagues' wit, anecdotal ability, scholarly attainments, dramatic talent, and yachting prowess -- but that, too, would take far more time than we have. I do want, however, to note the appropriateness of our bench today including Senior Circuit Judge Floyd Gibson, my long time friend and former chief Judge of the Eighth Circuit. For he represents the large collegiality which exists among all federal appellate judges -- the bench at large.

I have mentioned my family of clerks. In addition to my colleagues, our court family also includes, as critical members, our resourceful circuit executive, Vincent Flanagan, and his capable deputy, Grace Carey; our faithful and effective clerk, Peter Scigliano, his deputy, Dan Loughry, and Janice O'Neil and other reliable members of his staff; our excellent staff attorney office, headed by Kathy Lanza, assisted by Jeff Barr; and our service-oriented library under Karen Moss' leadership. All of these conscientious members of our family make it possible for quality and quantity of work to coexist.

There is a wider community that is part of our ecosystem. One part lies within -- the district judges, bankruptcy judges, and magistrates who have to cope with the raw materials of litigation and forge them into an ordered jury trial or decision. Their fairness, diligence and efficiency carries the day in most cases; if that were not so, we would be awash. The other part of our wider community lies without -- judges and the justices of the state courts. As they have dealt with more and more issues arising not only from the federal constitution but also from those of their states, we have been increasingly aware of our common bonds and accord them our deep respect and affection.

I have spoke of our court family. There is also my own family who have always given me their uncritical support. Although my son, Douglas, and daughter, Susan, could not be here today, my daughter, Nancy, and husband, Dan Kurtz, and daughter, Meredith, are here. And I extend a special welcome to my twin cousins, Shirley Hurd and Helen Prentice, and Shirley's son, Douglas.

Just as, ten years ago, the hanging of his portrait did not end Judge Aldrich's judging, so I hope that I, too, shall continue service long enough to become used to seeing myself out of the corners of my eyes. I have had the privilege of seeing the substance of federal appellate judging evolve dramatically from a dominantly private law to a public interest statutory and constitutionally oriented law. I have also shared in the remorselessly increasing pace and quantitative burden. The critical task facing us is somehow to preserve the collegially reflective essence of appellate adjudication against the cumulative pressures of bureaucracy, the volume and complexity of litigation, and threats to judicial independence, continuity, and excellence from a generation of erosion in compensation and a widening Congressional oversight of the judicial status and office.

How should we face this formidable galaxy of pressures? With the faith of the poet. Richard Wilbur's poem, "A Black Birch in Winter," voices that faith:

Old trees are doomed to annual rebirth,
New wood, new life, new compass, greater girth,
And this is their wisdom and their art --
To grow, stretch, crack, and not yet come apart.

The same could be said to be the credo of senior judges.

I want also to grow and stretch. I expect some cracks. And I hope not to come apart. If taking senior status is "retiring," it is what we mean when we say we are "re-tiring the car," that is, putting new tires on the old chassis so it can still make interesting journeys. For me, these journeys include continued service with my colleagues at a somewhat slower pace, continued efforts on behalf of the entire federal judiciary as chair of the Judicial Conference Committee on the Judicial Branch, and ventures in improving the functioning of governmental bodies through a newly created private research organization, The Governance Institute. I hope also to find time to pursue my avocations and, as my Mother used to say, "Smell the roses" . . . among which will be the memory of this day.

I thank you all.