

## TRANSITIONING

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Life “after the bench” probably has as many patterns as there are judges lucky enough to have become eligible for retiring. As for me, at age eighty-seven and after forty-one rewarding years on the Court of Appeals for the First Circuit, I retired from active judicial service. I do, however, proudly retain the status of Senior Circuit Judge. Since all this happened just a few months ago, I can only report what went into my planning for this move and why I chose to make it.

First of all, I want to make it clear that there is no one-serves-all model for the elderly. In my Pantheon of Admirables, those at the very top include my own Chief Judge, Bailey Aldrich, who served well into his nineties, the Eleventh Circuit’s Elbert Tuttle, who served till age 97, the Fifth Circuit’s John Minor Wisdom, who served until just two days short of his 94th birthday, and the Third Circuit’s recently deceased Max Rosenn, who was still working on opinions in his hospital room as he turned 96. These judges and others who have similarly stayed on the job have indeed lived lives of distinguished service. I took a different path.

As I passed the mid-eighties mark, I realized that, while I might yet have a number of years of reasonably good health ahead of me, time was not unlimited. Would I feel “lost” if I stopped judging? Were there other activities than appellate judging that I wanted to pursue? Did I prefer them, and, if so, why? Was I being rational? I began to take stock of myself and my interests.

I realized at the outset that, despite my length of service as a judge, role changing had been an important part of my life. Although my working life has been centered on the law, I have

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been privileged to view it from a number of vantage points. I began as a small city solo practitioner, serving for a time as lawyer for my city, then as the litigation partner in what was in those days deemed a large firm—eleven partners and one associate. After a few years, I found myself deep in politics, chairing a renascent Maine Democratic Party, and two years later, in the law-making business as a Member of Congress. After two terms and an unsuccessful run for governor, I joined the executive branch in the Kennedy administration and served as Deputy Administrator of the newly created Agency for International Development and in the Johnson administration as the United States representative on aid issues to the Organization for Economic Cooperation and Development in Paris. Then, in 1965, I was appointed to the bench. Now after these forty-one years, I had to resolve for myself whether I could embrace yet another change in role identity.

As I surveyed what I call “my private agenda,” reading and writing quickly surfaced. Not just any reading or writing. When I began life as a judge, one of the benefits was more time for personal pursuits. I began to keep a journal and over the years have turned out a formidable number of them. They now clamor for me to read them, to reflect on past events, people, impressions . . . and to write about what seems worth saying. I have taken to heart these words from that old Roman wordsmith Martial: “Our lives are two/ If we can relish our past life anew.”<sup>1</sup> I look forward to this kind of activity. Indeed, I have always relished writing. Quite apart from the drafting of opinions, I have written several books (mostly about judging),<sup>2</sup> a large number of speeches and articles, and two volumes of unpublished memoirs about my life and work “before the bench.”

Another activity which judicial life allowed me has turned into a serious avocation—creating sculptures from wood and, occasionally, stone. Before retiring, I was limited to Saturdays,

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1. See *The Art of the Personal Essay: An Anthology from the Classical Era to the Present* 58, 60 (Phillip Lopate compiler, Anchor Doubleday 1994) (reprinting Michel de Montaigne, *On Some Verses of Virgil*).

2. See e.g. Frank M. Coffin, *On Appeal: Courts, Lawyering, and Judging* (W.W. Norton 1994); Frank M. Coffin, *The Ways of a Judge: Reflections from the Federal Appellate Bench* (Houghton Mifflin 1980).

but even so, I have produced one or more sculptures a year, from basswood, bubinga, black walnut, mahogany, and soapstone or alabaster. I consider myself fortunate to have such an activity inviting me to work at a bench rather than sit on one. I like to think that it stimulates me to use an artistically creative part of the brain not exercised in judging.

The contrast between devoting myself to such activities and continuing on with judicial work came into focus one day while I was reading briefs in preparation for oral argument. The appeal was from a Tax Court decision and posed the question whether a statute requiring the tax collector to give notice to the taxpayer before seizing property when making a “levy” also applied to its action in “offsetting” a tax obligation against funds which the government already owed to the taxpayer. Important? Probably, to the IRS. To the taxpayer, certainly. Would I enjoy getting into it? Yes. All cases held their own challenges to decision or craftsmanship. But could I live without it? Yes. A short time after this, I received a memo on another upcoming case saying that the court had given permission to the parties to submit briefs of 100 pages. The case involved multiple defendants allegedly engaged in organized criminal activity and sprouted a forest of issues. I silently hoped that I would not be assigned this case for opinion writing. I now had only one law clerk and such an enterprise would demand all of our time for a lengthy period. I came to the realization that although cases readily manageable for my reduced chambers might not be terribly challenging, the “blockbusters” were really out of bounds for me.

I also had to ask the question whether a decision to retire from active judicial duties would be letting my colleagues down. I did not feel that this factor weighed very heavily. I think I was being realistic in concluding that, considering the range of cases I would be working on, I would not be shortchanging the court by withdrawing. Moreover, looking ahead, I had to consider the possible inroads of the aging process. I like to think that the wisdom and judgment gained over the years do not decline with advancing age. And I suspect this is quite true. But it also seemed to me that other qualities might well diminish. Attorneys might seem to speak in lower voices. Reading, thinking, and writing might take longer times. Retention of facts and arguments might decrease. And multi-tasking might be difficult.

Added to these considerations was a much overdue increase in helping maintain our home and taking some of the load of household chores off the shoulders of Ruth, my wife of sixty-four years. She had for some time coped with age-related macular degeneration and had not been driving. I knew that I should be more helpful and frankly looked forward to a companionship that now would expand to benefit each of us as we shared one another's strengths. Such thoughts, although not compelling, counseled foresight and timely decision.

What prompted me to make a decision in the spring and summer of 2005 was my awakening realization that some advance planning was necessary if the closing of my chambers was to proceed with grace and fairness. I had been blessed in recent years with a staff of a quality in inverse proportion to its size. My solitary career law clerk, Barbara, had been with me for twenty-three years, over half of my total service. And my secretary, Gail, now my judicial assistant, had served with me for twenty years. Each was still young, with years of accomplishment ahead of her. It was time for them to move on, although each would have willingly stayed as long as I wished. But "moving on" required time. Knowing that a colleague would want to inherit my clerk, I still needed to advise him of her availability a year ahead of the event, in keeping with the clerk hiring cycle. And my judicial assistant needed time to find employment that fitted into her own plans. So it was that at the end of summer in 2005, I notified Chief Judge Boudin that, as of the end of September 2006, I would be yielding up my chambers.

This notice received some publicity and ushered in what became a memorable "winding down" year. It surprised me that announcing such a future action was considered news. But it helped sharpen my awareness of the passing year. The clerk at the check-out counter of our supermarket, my dentist, my barber and my mailman—all took note of my impending status. I savored going to chambers, reading briefs, hearing argument, conferring with colleagues, researching and writing opinions, and working with my law clerk and judicial assistant. Each "last time" held its own poignancy and significance. There were also a number of celebratory rites of passage. My court colleagues held an intimate dinner for me, my family, my chambers staff,

and key court personnel. Justice Souter came up from Washington. Next day, May 3, was my last sitting to hear arguments. Justice Breyer joined us on the bench and the audience was sprinkled with a goodly number of former clerks.

A high point was reached in July with a memorable clerk reunion and lobster feast. Over a hundred of us gathered, including forty-six of my sixty-six living former clerks, their spouses and children, and our own family. My clerks had over the years developed into a real community, even adopting for themselves a most appropriate collective title—they were a “clever of clerks.” The clever had conspired to give us an album, complete with updated news and photos of all. We were left feeling that we had experienced a wonderful and rare celebration of our good fortune in creating such a community of bright, valuable, and loving spirits.

Following this were other, smaller occasions—a lunch hosted by my Maine federal court colleagues and a reception at our District Courthouse, where I have had my chambers. This was attended by all in the building—judges, security guards, marshals, secretaries, clerk’s office personnel. I reflected that now I was clearly the most venerable inhabitant of the building, for I had first had an office, next to my present chambers, in 1947, as law clerk to District Judge John D. Clifford, Jr., a Truman appointee. When he hired me, I became the first of the law clerk species, state or federal, to serve in Maine.

Finally, Friday, September 29, 2006, arrived. My last day. I visited our security people at the courthouse front door and sported a tiny United States Marshal badge that the Marshal had bestowed on me, warning them that I would keep an eye on them. At noon about a dozen of my local clerk-secretary family came bringing lunch, and we talked about many old times. A bit later I handed over my key to chambers to Chief Judge Singal. Ruth and I descended to the courtyard, got in our car, and left the courtyard for the last time.

So, you ask, how is your new life working out? Oh, there’s a lot to tell . . . but right now I don’t have time. I have to get back to those journals. And there’s a carving in my shop that needs work. And, oh yes, I have to finish my piece for “After the Bench.”

