



WILLIAM F. BATCHELDER

ASSOCIATE JUSTICE, SUPREME COURT 1981-1995
ASSOCIATE JUSTICE, SUPERIOR COURT 1970-1981

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With publication of this volume of the New Hampshire Reports, we honor our retired colleague and friend, William F. Batchelder.

Superior Court Justice Walter Murphy, who began his law practice with Justice Batchelder more than thirty years ago, has kindly provided some reminiscences. We thank Justice Murphy.

Chief Justice Brock's remarks at the dinner of the New Hampshire Bar Association honoring Justice Batchelder are a most fitting inclusion in this dedication. They use the writings of Justice Batchelder that have appeared in these volumes to give a sense of his compassion and concern for the individual.

On behalf of the people of the State of New Hampshire, we thank Justice Batchelder for his more than a quarter century on the bench in this State — eleven years on the superior court and fourteen years on this court. We need not, however, say good-bye, for in his first year of "retirement," Justice Batchelder has already taken on many projects for the court. We trust and hope that Justice Batchelder, in good health, has many more years of service to this State yet to come.

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WILLIAM F. BATCHELDER: REMINISCENCES

*Walter L. Murphy**

On November 1, 1995, Associate Justice William Foster Batchelder of the New Hampshire Supreme Court announced his retirement after over twenty-five years of dedicated service on the bench. Justice Batchelder was born in Plymouth on October 15, 1926, the only child of Lyman and Ella (Foster) Batchelder, both of whom were employed by the Plymouth public school system, he as a custodian, and she as a second grade teacher. He attended public schools in Plymouth, graduating from Plymouth High School in June 1944. Prior to his graduation, he was enrolled at the University of New Hampshire in December 1943 and completed two semesters before he enlisted in the U.S. Navy in October 1944. He ended his naval career as an electrician's mate in Biloxi, Mississippi, decommissioning retired warships, a process he always describes as dumping expensive brand-new small tools and equipment into the ocean in expensive brand-new galvanized buckets.

On his discharge from the Navy, he re-enrolled at the University of New Hampshire from which he graduated in 1949 and went on to Boston University Law School, obtaining his LL.B. degree in 1952. In that same year, he joined the Plymouth law firm of William Maynard and remained in the private practice of law continuously until his appointment by Governor Walter Peterson as a superior court justice on August 28, 1970, filling the vacancy on that court created by the retirement of Chief Justice John Leahy. On July 6, 1981, after almost eleven years on the trial bench, he was appointed by Governor Hugh Gallen to the supreme court to fill the vacancy on that court occasioned by the retirement of Chief Justice William A. Grimes and the nomination of the late John H. King as Chief Justice.

During the time he was practicing law in Plymouth, he met, fell in love with, and pursued his wife Elizabeth (Hayward), a student at what was then called Plymouth Teachers College, all the way to England where she was working with a church youth group. They married in 1955 and had six children, Stephen, Anne, Mary, Rob, Susan, and David, the last recently graduated from law school. As Bill once appropriately noted, "Not bad for a north country yankee!!!" They are blessed with seven grandchildren, of whom they are extraordinarily proud.

* Associate Justice, New Hampshire Superior Court

When I first made Bill's acquaintance (I, as a native Bostonian have never obtained the knack to refer to him as "Billy Batch" as most of the native community in Plymouth refer to him), he was conducting a solo practice and had been elected Grafton County Attorney, Bill Maynard having left when he was named U.S. Attorney and later State Attorney General. The firm subsequently became Batchelder & Murphy in 1963, a year following my employment as his associate, a case of my being in the right place at the right time.

In 1952, when Bill first started in practice, fewer than twenty lawyers were practicing in Grafton County, including four in Plymouth. (I am told currently twenty-three practice in Plymouth alone, with a total of over one hundred eighty-five in the county.) It was customary that more experienced members of the county bar advised and counselled less experienced members, helping them over the endless "rocks and shoals" of law practice. Among Bill's respected and valuable advisors were Unwar J. ("Sam") Samaha, Clerk of the Superior Court, later in Rockingham County; Bob Jones, Probate Court Judge; Bob Wakefield, who practiced in Plymouth; and Francis C. Moulton, who practiced in Littleton. It was the latter's wisdom relative to the trial of cases that Bill took to heart and passed on to those who took heed, "If you have a good case, try it fast; if you have a bad case, try it faster." As younger members later joined the bar, Bill, carrying on the tradition, in turn became advisor and counsellor, and we were all, along with our clients, beneficiaries.

Bill earned a distinguished and deserved reputation for being an outstanding trial lawyer, both as a prosecuting attorney and as civil counsel. It was quite a treat to see him in action against other great trial lawyers of the time, the likes of Walter Hinkley, John Gormley, Charley Tesreau, the Normandin brothers, Ray Denault, and many others, too numerous to mention. There was many a time when a hot-shot lawyer from "down country" would come to Grafton County to show "the country folk" how trials are conducted, who returned south richer for the experience, but their client poorer. I recall a story told me by a Manchester lawyer of some prominence in which one of his partners announced he was going to court with a case against a country lawyer by the name of Batchelder; he was told nothing about Bill's trial advocacy prowess, but only, "Be sure to bring your wallet."

Such was his well-deserved reputation as a lawyer. Judges, lawyers, jurors, witnesses, and spectators were always impressed

with his thorough preparation and his easy, quiet, almost self-deprecating manner of addressing issues, particularly to juries. I can also recall numerous instances in which opposing counsel mistreated one of his clients or witnesses, and while the temptation would be to fight fire with fire, his cooler head prevailed, steadfast in his commitment to keep the high ground, invariably with positive results. There are at least two tales which now can be told: on cross-examination, if his question began with the word, "Incidentally," you could be certain that the *coup de grace* was being delivered. If he became upset with anyone because of some behavior which he perceived as discourteous or abusive, he would invariably start his response by saying, "Look, my friend," an expression I'm told he continued to put to good use during his years on both the superior and supreme court bench.

The stories about Bill and the positive influence he continues to have on young lawyers are legion; just talk with anyone who had the good fortune to have served as one of his law clerks over the past twenty-five years, and you cannot help but be impressed with the universal respect, admiration, and genuine affection they all feel for him. They all looked forward to conferences with him, where they were exposed to his endless stories of his legendary (and mostly imaginary) prowess on the golf course or his weekend chores on his farm in Plymouth (Betty does the farming; Bill talks about it), and, most of all to his personal judicial philosophy of keeping the playing field level, so that government does not get the upper hand against the governed, and everyone, no matter how unpopular or powerless, is treated fairly and with dignity. It has been this principal that represents the cornerstone of his service to the citizens of the State, to which he has remained undeviating and steadfast. His judicial hero? Probably William Brennan, retired Justice of the United States Supreme Court, who expressed his judicial philosophy in this way: "(T)he law is not an end in itself, nor does it provide ends. It is preeminently a means to serve what we think is right." Brennan, *Remarks: What's Ahead for the New Lawyer*, 47 U. PITT. L. REV. 705, 708 (1986).

Another constant in his life is his unyielding devotion to his wife and family, his deeply-held religious beliefs, and his dedication to his community. He served for many years as school district counsel and as a member of the Board of Trustees of the Speare Memorial Public Library. He has been recognized for his service to the community and his profession by receiving numerous awards, including the

Granite State Award granted by Plymouth State College and awards from the New Hampshire Bar Association, the Grafton County Bar Association, and the New Hampshire Trial Lawyers Association.

His abiding faith in God is reflected in the manner in which he has dealt with those who have had the opportunity to cross his path in both his professional and personal life. And no one who knew him when he and Betty lost their oldest son, Stephen, a Naval Lieutenant, in an aviation incident while serving aboard the U.S.S. Nimitz, came away from the experience without an overwhelming admiration for the grace, religious conviction, and dignity both he and Betty displayed in their most grievous loss.

Tales abound about Bill's wry and abiding sense of humor. His yearly ritual of telephoning his friends and neighbors on Christmas Eve and playing on his trumpet what might by some of the musically challenged be vaguely recognized as the first fourteen notes of "Joy to the World"; his constant attempts (mostly successful) to distract someone in his foursome while in the process of hitting a shot; his penchant for subtle pranks perpetrated on his friends and fellow workers; and the impish way he has of enticing others to get into sometimes heated arguments about everything from sports to politics, while seemingly being above the fray. Who else could obtain a majority of the supreme court to join him in referring to a newly recognized cause of action as "tort reform"? See *Aranson v. Schroeder*, 140 NH 359, 362, 671 A.2d 1023, 1025 (1995).

Typical of his abiding sense of humor is an incident which occurred fairly soon after he started sitting on the superior court: there was an editorial in a State-wide newspaper suggesting that he was responsible for significant injustice perpetrated on someone who turned out to be a personal friend of the editor. In the article, it was reported that all was well with the world until the issue was submitted for determination by Justice Batchelder, "lurking in his black robes." He called my office in Plymouth from Manchester and without introduction or preface assured me, "I want you to know, Murphy, that I've never 'lurked' in my life."

In years past he has summed up his advice to the newly-sworn members of the bar by simply recommending, "Don't lie, don't cheat, don't steal." As Daniel Webster once put it, "Tell me a man is dishonest, and I will answer he is no lawyer. He cannot be because he is careless and reckless of justice; the law is not in his heart, is not the standard and rule of his conduct." Mr. Webster would have admired Bill.

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He has set a standard of scholarship, integrity, and decency to which all lawyers and judges should aspire. He has been described, and aptly so, as a "Trial Lawyer's Trial Judge." A highly respected trial lawyer who will remain nameless for his own protection recently wrote in a letter to me, which sums it all up quite nicely, ". . . If we only had more Judges like him, we could all smile." The court will miss his wise and gentle counsel, and he will in turn miss the court, but his many contributions to the jurisprudence of this State will continue to be recognized, and he will continue to serve the people of the State as spokesperson designated by Chief Justice Brock for the family division project to maintain his commitment to access to the courts for the prompt, efficient, and honorable resolution of disputes.

The title "Justice", retired or not, suits him to a "T."

ON THE RETIREMENT OF JUSTICE WILLIAM F. BATCHELDER

David A. Brock*

The person to whom we dedicate this volume, without question, qualifies as the quintessential judge. By strength of his personal character, his scholarship, and his fervor and enthusiasm in the pursuit of professionalism and excellence within the bench and bar, he serves as a model for us to emulate.

Indeed, the words of Chief Justice Kenison, upon the retirement of Justice Duncan, are most appropriate as we memorialize the occasion of Justice Batchelder's retirement:

The single trait that I most admire about my friend and former colleague, aside from his ability, is his deep devotion to the principle that the Supreme Court of New Hampshire is something more than its five members.

F. Kenison, *In Tribute: Lawrence I. Duncan*, 118 N.H. vii, ix (1979).

In this era of increased administrative responsibilities and heavy case assignments, I do not often have the time to reread and reflect upon the written words of my colleagues. These excerpts from just a few of Justice Batchelder's opinions, I think, capture the essence of his jurisprudential values and scholarship.

From *State v. Tufts*, 136 N.H. 517, 520, 618 A.2d 818, 820 (1992):

The sentencing of those convicted of crime is neither an exact nor formula-driven endeavor; it is calculated to achieve some measure of balance encompassing rehabilitation, deterrence and punishment. It is a critical area in the business of judging, and like all other aspects of the professional and common sense skills required of trial judges, it is finally a matter of judgment which must be based on information. Judgment without a factual or informational predicate is speculation. What is at issue here is the quality and veracity of the information used in the process of judging and the ability of the defendant to have a meaningful opportunity to point to its deficiencies. Every person with the passage of time leaves behind an ever-

* Chief Justice, New Hampshire Supreme Court.

Adapted from remarks offered by Chief Justice Brock on January 19, 1996, at a New Hampshire Bar Association dinner honoring Justice Batchelder.

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deepening reservoir of things done and things left undone, of associations cultivated and associations abandoned, of good works performed and actions taken that reflect the darker side of humanity. In preparing a presentence evaluation and report, a probation officer is entitled, and should be encouraged, to dredge up from this reservoir those areas of significance that will supply critical information upon which the trial judge may base his or her judgment in passing sentence.

From *Daigle v. City of Portsmouth*, 137 N.H. 572, 576, 630 A.2d 776, 778 (1993):

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One of the legacies of Anglo-Saxon jurisprudence and the common law is the adversarial process. Properly used, including cross-examination and discovery, it is an effective tool in the search for truth. The integrity of the process and its continuing viability depend, however, on the members of the bar, who are in a position of privilege to use it. Consequently, there is a concomitant duty not to abuse the process.

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The practice of law is not simply an occupation; it is a profession. All members of the profession bear the responsibility of ensuring that our justice system works properly and efficiently. That responsibility encompasses not simply the appropriate application of technical skills, but also the obligation to respect the dignity of those involved in the legal process. When advocacy is used to undermine the professional reputations of opposing counsel, or simply for the sake of burdening the opponent with unnecessary expenditures of time and effort, the system has been poorly served. The tactical abuses visited upon the lawyers and litigants in this case present matters of grave concern to the trial bar and the legal profession. They rise from unenlightened attitudes concerning the adversarial process.

From his dissent, in which I was proud to join, in *State v. Cavanaugh*, 138 N.H. 193, 201, 635 A.2d 1382, 1387 (1993):

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Our constitutional heritage is our legacy of ordered liberty. It is such cases as this that result in an incremental diminution of the protections given us by the framers. The interests of society in ferreting out and prosecuting crimi-

nal behavior should never rise to such a level that the force of constitutional protections be rendered lifeless by the death of a thousand cuts. This is such a case.

From *Britton v. Town of Chester*, 134 N.H. 434, 441, 595 A.2d 492, 496 (1991):

Municipalities are not isolated enclaves, far removed from the concerns of the area in which they are situated. As subdivisions of the State, they do not exist solely to serve their own residents, and their regulations should promote the general welfare, both within and without their boundaries.

From *State v. Gravel*, 135 N.H. 172, 183, 601 A.2d 678, 685 (1991):

When society crafts a rule for the conduct of its own affairs, such as *Miranda*, and seeks to gain an advantage from the violation of its own rule, the rule becomes murky and diluted and society itself is diminished in some manner. The precedential effect of the exception to the rule is the first step to the rule's being swallowed by its exceptions.

And last, in writing specially in *Opinion of the Justices*, 129 N.H. 290, 300, 525 A.2d 1095, 1101 (1987):

The State is never more humanitarian than when it acts to protect the health of its children. The State is never less humanitarian than when it denies public benefits to a group of its citizens because of ancient prejudices against that group.

On occasion, I have teased Bill, good-naturedly of course, that the defining moment in his judicial career was when the *Concord Monitor* editorialized that the Supreme Court of New Hampshire consists of five *conservative* judges.

As reflected by his own words quoted above and other of his opinions, Justice Batchelder has had many important defining moments in his illustrious judicial career. My colleagues and I wish to thank Bill not only for sharing in the day-to-day travails of the court, but also for his contributions to our accomplishments and our ongoing goal of preserving our court's high standards.

To Bill, Betty, and the Batchelder clan, God bless.