

## As Time Goes By – Closer Than They Appear in the Mirror

With the honoring of Judge Barbara Jones at the 2013 Judges Dinner fresh in our minds, it may be useful to reflect on another judicial honoree of an earlier era in order to reinforce our awareness of our Association's long-standing tradition of honoring judges.

The honoree at the 1933 Judges Dinner was Hon. Arthur Carter Denison. Judge Denison sat on the U.S. Court of Appeals for the Sixth Circuit for two decades running from 1911 until 1931.

In 1933, the Waldorf hotel complex was essentially brand new. It was widely considered to be the leading hotel in the world. It must have been quite a sight to behold at the time, particularly as a counter-point to the gloom and doom of the Great Depression that had settled in across the nation then. The "old" Waldorf, which had been located on Fifth Avenue, was torn down to make way for the construction of the Empire State Building.

We may wonder why our Association, which then was exclusively focused on patent law issues, would have been honoring a former judge from a federal appellate court of general jurisdiction located in a region outside of our Association's traditional geographic footprint. The reasons appear to be two-fold: (1) since the Federal Circuit had not yet been created, the existing federal appellate courts, including the Sixth Circuit, heard patent as well as other appeals and (2) Judge Denison was a well-regarded judicial figure in the field of patent law.

In spite of reason (1), the idea of creating a single court of patent appeals was being actively considered at the time. In fact, a proposal for such a court was prepared and circulated in 1931 by Edwin J. Prindle (NYPLA\* President 1927-28). The proposal was carefully considered by our Association's Patent Law and Practice Committee chaired by Richard Eyre (NYPLA President 1930-31), and was rejected by the Committee and by the Association's Board of Governors. Nonetheless, bills in favor of a single patent appeals court were



introduced in Congress during 1936. Those bills were not adopted, and it took another half century until the Federal Circuit finally materialized.

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As to reason (2), the job of singing Judge Denison's praises at the Waldorf podium was assigned to Hon. John Clark Knox of the Southern District of New York. Judge Knox spoke with flair and wit coupled with a tone of self-deprecation.

By way of introduction, Judge Denison observed that he had once been the youngest judge sitting on the federal bench. He then noted: "Now, I am within the shadow of my middle years. My hair is gray, and what is worse, it has become exceedingly thin. As I approach the ranks of the patriarchs, I am entitled to recall the past."

In recalling the past, Judge Knox contrasted his own contributions to patent law with those of Judge Denison using the Mississippi River as a basis for a simile. He put it thusly: "To me, the law of patents is a muddy, whirling and unlovely stream, quite reminiscent of the Mississippi when it is in flood . . . Now and again it struck a soft headland with irresistible force and a chunk of earth, unable longer to withstand the mighty stream, would break away from its fastenings. For an instant, as the earth dissolved, the tawny stream would be deepened, and then, oblivious of what had transpired, the river would sweep on towards the sea."

He gave short-shrift to his own contributions to patent law in observing: "My [patent] decrees serve only to muddy the water for a moment, and then the stream of patent jurisprudence keeps on 'rollin' along' as though I hadn't done a thing to impede or change it."

Judge Knox then extended the simile in words of high praise for Judge Denison, noting that he "had made the law of patents understandable to minds less brilliant than his own. As the possessor of one of those lesser minds, I pay him homage tonight. You should do so, too, because he has contributed largely to the clarification and purity of the juridical stream upon which you men sail your boats of marque and reprisal."

Today we continue to sail our boats upon the juridical stream of patent law thanks to modern-day successors to the likes of Judges Knox and Denison. Thankfully our Association maintains a tradition of taking the opportunity provided by the Judges Dinner to honor judges, and to specially recognize those for making significant contributions to the development of patent law, as well as other areas of intellectual property law. May this fine tradition long continue!

With kind regards,

Dale Carlson

\*The NYIPLA used to be known as the New York Patent Law Association.