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FRANK COFFIN AND ENLIGHTENED GOVERNANCE

*The Honorable Robert A. Katzmann**

I have often thought that Judge Frank M. Coffin is one of a handful of statesmen of recent times I could easily imagine in Philadelphia in the summer of 1787 (indeed, as a central figure in a David McCollough biography). If he had been, as competing factions struggled to find solutions to thorny issues, Madison's Notes would inevitably and often have recorded: "With negotiations on the verge of collapse, all eyes turned to Frank Coffin, who found not only the key to compromise, but also the better way."

And what for Frank Coffin was "the better way?" It was the way of a practical visionary, a contemplative in action—a person with an extraordinary capacity to think broadly about current and future problems, steeled with a sensitive appreciation for the intricate workings of our institutions. That appreciation came from a lifetime of public service, including high positions in all three branches of the national government—as a congressman, Managing Director of the Development Loan Fund, deputy administrator at AID, United States permanent Representative to the Development Assistance Committee of the OECD, and as a federal judge (eleven years as Chief Judge). Few Americans in our history have had such experience in all three branches, leading one admirer to describe him—fittingly as he introduced the judge before he delivered the prestigious Madison Lecture at NYU—as "a walking violation of the separation of powers."

In an essay published in 1955 in the *Harvard Law School Bulletin*, Frank Coffin wrote:

To leave the familiar banks and swim for a while in the stream of affairs of one's generation is in itself a rewarding part of life. To do this effectively, one must not wait too long. It is something like marriage. He who waits til he's secure may never find his bride demure.¹

Only thirty-six at the time, and soon to be elected to his first term in Congress, Frank Coffin had already served in the military during World War II, practiced law in two cities in Maine, spearheaded the rebirth of the Maine Democratic Party, been counsel to the Governor of the opposing party in a sensitive political corruption case, been president of the community chest, member of the school board, and corporation counsel of Lewiston, Maine. His talents, even as a young man, seemed already to have been recognized—for example, by the Speaker of the United States House of Representatives, and, as Arthur Schlesinger chronicled in *A Thousand Days*, by President-Elect Kennedy who identified Frank Coffin as one of four persons he most wanted in his Administration.²

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1. Frank M. Coffin, *Lawyer and Political Meddler or A Jealous Mistress Betrayed*, HARV. L. SCH. BULL., Apr. 1955, at 16.

2. ARTHUR M. SCHLESINGER, JR., *A THOUSAND DAYS: JOHN F. KENNEDY IN THE WHITE HOUSE* 119 (2002).

I cannot help but think that this extraordinary range of life experiences, combined with his natural temperament and character, contributed to what made Judge Coffin so distinguished a jurist. For him, law was not an abstraction, the grist for the spinning of seemingly endless hypotheticals, or the parsing of words. Rather, it was in very human, principled, and workable ways the means by which we seek to resolve disputes so that justice is served. As a community leader, a lawyer who represented all manner of people, a party builder and a political candidate who had to make the case to his constituents, a legislator who had to work with diverse interests, and an executive who had to manage, Frank Coffin brought to the bench, in both his adjudicative and administrative capacities in a judicial career spanning five decades, special sensibilities.

I knew Judge Coffin for nearly three decades, but began working closely with him in 1984 when he chaired a key committee of the United States Judicial Conference, the Committee on the Judicial Branch. In that role, he was deeply involved in the very practical efforts to secure advances in judicial compensation, creating a coalition of business, media, and legal associations to enhance public understanding of the courts. Judge Coffin understood, as a former legislator and as a jurist, that there were problems of communication and understanding between the branches. He asked that I, then a researcher at the Brookings Institution, help the Committee on the Judicial Branch design a research and action agenda, exploring the full range of relations between the branches—past, present, and future. I witnessed the special talents of Frank Coffin as he moved the Committee on the Judicial Branch to launch the first sustained examination of the relationships between the federal judiciary and the Congress. His concern with the institution of the judiciary propelled him to champion the cause of judicial oral history projects, of which there are now many across the country (including one at the Federal Judicial Center). He also served as Chair of the Advisory Committee on the Bill of Rights and Amendments of the Commission on the Bicentennial of the United States Constitution.

As an outgrowth of our work together in connection with the Judicial Conference Committee on the Judicial Branch, in 1986, Judge Coffin and I co-founded the Governance Institute, a small not-for-profit organization in Washington, D.C. dedicated to working with governmental institutions to improve the effective functioning of and among institutions.³ Through symposia, pilot projects, books, and articles, it has explored, explained, and tried to ease problems associated with both the separation and division of powers in the American federal system. The Institute's focus links law, institutions, and policy. Integrating research and practical solutions, the Institute endeavors to work with decision-makers who play a role in making changes in process and policy. The Institute identifies procedural barriers to effective governance and develops recommended responses. The Governance Institute's main arenas of interest are the judiciary, the

3. At the creation, we had the great fortune of working with an extraordinary group of colleagues—Roger Davidson, Jeffrey Kampelman, William C. Kelly, Jr., Gilbert Steiner, and, within time, Robert Kastenmeier, Janet Steiger, Maureen Casamayou, Paul Light, Barrington Parker Jr., Katharine Dunn Tenpas, Mary Graham, Stephen Shannon, and Russell Wheeler. The Institute, an independent non-profit organization, housed at the Brookings Institution, is currently headed by Dr.

federal administrative state, and Congress.⁴

Judge Coffin was vitally involved in discussions as to all aspects of the Governance Institute's agenda in my years as president of the Institute and thereafter. He also contributed to three volumes of the Governance Institute as an author. In the book launching the inquiry into judicial-congressional relations, he wrote his seminal *The Federalist No. 86: On Relations Between the Judiciary and Congress*.⁵ From the perspective of a judge, he wrote an afterword to our volume on the law firm and the public good, encouraging firms to deepen their commitment.⁶ And, concerned about the viability of the judicial office, he and I co-authored *Towards Optimal Judicial Workways*, a writing about ways of keeping a watchful eye so as to ensure the health of the judiciary.⁷

In Maine, Judge Coffin devised in conjunction with the Governance Institute what I think was a unique partnership between the federal courts and the state

4. As to the courts, it is engaged in work having to do with federal judicial selection, and has instituted projects to assess how federal courts interact with their environments, relations with Congress, and with the media in particular. With regard to courts and Congress, the Institute has been concerned with how the judiciary can better understand the legislative process and legislative history; how Congress can better signal its intent in statutes; how the judiciary can make the legislature more aware of its decisions interpreting statutes; and with institutional mechanism that might improve relations between the branches. As to the administrative state, the Governance Institute has, for example, analyzed agency accountability in respect to inspectors general, and the impact of the expansion of agency hierarchies on government performance. It has undertaken a project to assess and to measure periodically the institutional health of major government agencies and institutions. In the area of immigration, it has undertaken exploratory studies of administrative adjudication of alien removal efforts. As to Congress, the Institute has launched the Government by Investigation Project that examines how different types of congressional investigations affect the operation of government agencies. Other Governance Institute projects include an examination of how actors in the juvenile justice system across disciplines can coordinate and implement anti-violence strategies. Governance Institute volumes, co-published with the Brookings Institution, include: THE BROOKINGS INST., JUDGES AND LEGISLATORS: TOWARDS INSTITUTIONAL COMITY (Robert A. Katzmann ed. 1988) [hereinafter JUDGES AND LEGISLATORS]; ROBERT A. KATZMANN, COURTS AND CONGRESS (1997); PAUL C. LIGHT, MONITORING GOVERNMENT: INSPECTORS GENERAL AND THE SEARCH FOR ACCOUNTABILITY (1993); PAUL C. LIGHT, THICKENING GOVERNMENT: FEDERAL HIERARCHY AND THE DIFFUSION OF ACCOUNTABILITY (1995); THE BROOKINGS INST., WORKWAYS OF GOVERNANCE: MONITORING OUR GOVERNMENT'S HEALTH (Roger H. Davidson ed. 2003) [hereinafter WORKWAYS OF GOVERNANCE]; THE BROOKINGS INST., THE LAW FIRM AND THE PUBLIC GOOD (Robert A. Katzmann ed. 1995) [hereinafter THE LAW FIRM AND THE PUBLIC GOOD]; THE BROOKINGS INST., SECURING OUR CHILDREN'S FUTURE: NEW APPROACHES TO JUVENILE JUSTICE AND YOUTH VIOLENCE (Gary S. Katzmann ed. 2002); MARY GRAHAM, THE MORNING AFTER EARTH DAY: PRACTICAL ENVIRONMENTAL POLITICS (1999); MARY GRAHAM, DEMOCRACY BY DISCLOSURE: THE RISE OF TECHNOPOPULISM (2002); Russell R. Wheeler, *Practical Impediments to Structural Reform and the Promise of Third Branch and Analytical Methods: A Reply to Professors Baum and Legomsky*, 59 DUKE L.J. 1847 (2010); Russell R. Wheeler, *Changing Backgrounds of U.S. District Judges: Likely Causes and Possible Implications*, 93 JUDICATURE 140 (2010); RUSSELL WHEELER & REBECCA LOVE KOURLIS, OPTIONS FOR FEDERAL JUDICIAL SCREENING COMMITTEES (2010), available at http://www.brookings.edu/~media/Files/rc/papers/2010/0702_federal_judicial_wheeler/0702_federal_judicial_wheeler.pdf (last visited on Apr. 2, 2011).

5. Frank M. Coffin, *The Federalist Number 86: On Relations Between the Judiciary and Congress*, in JUDGES AND LEGISLATORS, *supra* note 4, at 21.

6. Frank M. Coffin, *Afterword*, in THE LAW FIRM AND THE PUBLIC GOOD, *supra* note 4, at 172.

7. Frank M. Coffin & Robert A. Katzmann, *Toward Optimal Judicial Workways*, in WORKWAYS OF GOVERNANCE, *supra* note 4, at 121.

courts—the Dirigo Project—an attempt to secure support for the state judiciary. On that project, he collaborated with Maine Supreme Judicial Court Chief Justice Daniel Wathen. As chair of the Justice Action Group in Maine, Judge Coffin devoted himself to improving the delivery of services to the poor. Acknowledging such activities, twelve law firms in Portland, Maine, have created the “Frank M. Coffin Fellowship for Family Law.” Chief Justice Wathen put it this way:

He has, by a sort of moral example, motivated judges, lawyers, and non-lawyers to work for the cause of increasing access to justice for the Maine poor. When he picks up the phone and asks for something, no better person could make the request—not only because of his stature, but also because the person knows the judge is doing more work than anyone.

Ever concerned about encouraging young lawyers to serve the public interest, Judge Coffin co-chaired the American Bar Association Commission examining effective ways for law schools and the federal government to lessen the financial burdens on law students so that young lawyers do not have to make career choices based on starting salaries.

A concern for governance was very much present in Judge Coffin’s many articles, lectures, and several books, including two tomes on appellate judging, *The Ways of a Judge: Reflections from the Federal Appellate Bench*⁸ and *On Appeal: Courts, Lawyering, and Judging*.⁹ A passage from *The Ways of a Judge* gives you a sense of his approach of thoughtful deliberation, evident not just in his judging but in the workways that defined his measured, yet creative, perspective on how to improve the functioning of governmental institutions:

Perhaps there are . . . judges who, on hearing the essential facts of a case, can confidently announce a sound decision without pause. I have seen professors in the classroom so respond; also panelists, lecturers, and cocktail-party pundits. But I am thankful that nothing said under such circumstances affects the rights of parties. Judges do have their share of excellent talkers. The best of them are called brilliant. Brilliance, however, seems to me more associated with the pyrotechnics of speech and writing; as the word suggests, it has to do with how thoughts can be made to shine and sparkle. Sound decision, on the other hand, is more than result; it is an edifice made up of rationale, tone and direction. It is faithful to the past, settles the present, and foreshadows the future. Such decision is rarely made quickly.¹⁰

As these words suggest, behind every proposal Judge Coffin set forth was careful consideration supported by research, the marshaling of evidence, a graceful, creative impulse, and a felicitous pen.

What made Judge Coffin so effective was not simply the power of his ideas or his wonderful capacity to express himself in writing or orally. It was also his understanding of people, all manner of humanity. He inspired all of us, regardless of our philosophical leanings or differences in background, by appealing to the better part of our natures. With an artist’s eye—he himself was a talent in a variety

8. FRANK M. COFFIN, *THE WAYS OF A JUDGE: REFLECTIONS FROM THE FEDERAL APPELLATE BENCH* (1980).

9. FRANK M. COFFIN, *ON APPEAL: COURTS, LAWYERING, AND JUDGING* (1994).

10. *Id.* at 62-63.

of media—he was able to imagine possibilities in each of us. Anyone who knew Judge Coffin and his life partner, Ruth, felt uplifted. I, and my brother Gary,¹¹ had the privilege of having his guidance and wise counsel in all manner of concerns. I was always struck by his modesty, patience, kindness, gentleness, and puckish humor. Judge Coffin gave everyone the sense that each of us can achieve great things, and that together we can achieve even greater things for the public good. I cherished my conversations with him; for me any day that we talked was by definition a good one.

Those meeting in Philadelphia in 1787 would no doubt have felt blessed by the company of Frank M. Coffin. How fortunate we were to have him in our time.

11. Gary Katzmann is a judge on the Massachusetts Appeals Court and was the director of the Governance Institute's Securing Our Children's Future Project. *See supra* note 4.

