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## A Tribute to Judge Coffin

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# A TRIBUTE TO JUDGE FRANK M. COFFIN

*Honorable Stephen Breyer\**

Frank Coffin's colleagues are lucky. They can hear, or read, not only his published judicial work, but also certain unpublished writings—writings that help explain why it is such a pleasure to serve on a court with this man. There is, for example, his "Private Conversation Between Two Supreme Court Justices about a Recent Patent Case and its Relation to Hercules and the Augean Stables," delivered at an informal dinner of our circuit in Washington, D.C., with one of the Supreme Court justices present (and wondering whether such a conversation really took place); there is his "Secret Thoughts of a Chief Judge of the First Circuit (about the Others)," presented at a recent retirement dinner; there is his "Thoughts from the Ashes of Mount Vesuvius, being a Private Letter of Pliny the Younger to his Uncle Pliny the Elder, Written with the Hope of Future Discovery by Those Concerned about Legal Ethics," read to a law school class on legal ethics. These writings would help you understand Frank Coffin's wit, style, insight, good humor, and sober underlying thought, all of which translate—on a circuit court—into collegiality, respect, and fellowship.

Though only some of us have the chance to appreciate all of Frank Coffin's writings, all of us can appreciate some of them—and, far and away, the most important of them, namely, his judicial work. If you read Frank's opinions you will notice a number of remarkable things. You will notice that his work embodies the judicial values that he himself has so clearly described in *The Ways of a Judge*,<sup>1</sup> values to which all judges aspire. You will notice, as well, that his work has often foreshadowed that of the Supreme Court. Indeed, judicially speaking, he often prophesies, and, unlike many of us, he prophesies before, and not after, the fact.

Consider, for example, two of his important first amendment decisions. In *Goguen v. Smith*,<sup>2</sup> Judge Coffin considered the constitutionality of a state statute which criminalized the "contemptuous" treatment of the American flag. Finding that the statute unconstitutionally infringed first amendment rights, Judge Coffin said that "[w]hile it may be that disrespect for the flag can constitute grounds for non-criminal sanctions, we think that promotion of loyalty and patriotism may not constitutionally furnish a justification for imposition of criminal penalties."<sup>3</sup>

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\* Chief Judge, United States Court of Appeals for the First Circuit.

1. F. COFFIN, *THE WAYS OF A JUDGE: REFLECTIONS FROM THE FEDERAL APPELLATE BENCH* (1980).

2. 471 F.2d 88, 95 (1st Cir. 1972), *aff'd*, 415 U.S. 566 (1974).

3. *Id.* at 101.

Nearly two decades later, the Supreme Court followed Judge Coffin's lead in two recent "flag-burning" cases, *Texas v. Johnson*<sup>4</sup> and *United States v. Eichmann*,<sup>5</sup> which held state and federal flag anti-desecration statutes, respectively, to be contrary to the first amendment principles so eloquently discussed in Judge Coffin's opinion.

More recently, Frank and I were on the same panel in a case considering to what extent the first amendment should prohibit adverse government personnel actions, short of outright dismissal, which were motivated by the employee's political affiliation.<sup>6</sup> In yet another forceful opinion, Judge Frank Coffin extended the rights of government employees beyond the right not to be dismissed, to protect them from demotion as well. In doing so, however, he was careful to formulate a "workable standard . . . in a way that will neither unduly strain governments with harassing lawsuits nor unduly discourage employees with formidable complaints from asserting their rights."<sup>7</sup> Once again, Frank foreshadowed subsequent developments, for the Supreme Court only a few months later followed his lead, extending the anti-patronage protections of government employees beyond outright discharge.<sup>8</sup>

More important than predicting the direction our Supreme Court will ultimately take, Frank Coffin has a particular talent for creating, in "unknown judicial territory," where the need for guidance is imperative, standards that both flow from prior precedent and explain in a highly practical way how those subject to the standards must act in the future. Read his opinions. You will see him marshal the facts and show where and how those facts place the particular case within the great web of statutes, regulations, rules, standards, and precedents that are the "law." You will see how that web itself changes, bending, shifting, breaking, or reestablishing connections, as it responds to the pressure placed upon it by the force of the particular factual circumstance. You will understand how the individual circumstances of the case help to maintain, to modify, or to create, a broader rule of law. You will understand because his opinions clearly and convincingly explain just why and how the court reaches its result. They describe, and treat, openly and honestly, the record-established facts and all relevant legal background, regardless of how difficult an abstruse legal argument may be to understand, or how awkward a particular fact may be for the theory of an opinion.<sup>9</sup>

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4. 109 S. Ct. 2533 (1989).

5. 110 S. Ct. 2404 (1990).

6. *See Agosto-De-Feliciano v. Aponte-Roque*, 889 F.2d 1209, 1214-18 (1st Cir. 1989).

7. *Id.* at 1217.

8. *See Rutan v. Republican Party of Illinois*, 110 S. Ct. 2729 (1990).

9. *See, e.g., Schneider v. Colegio de Abogados de Puerto Rico*, 917 F.2d 620 (1st Cir. 1990) (bar association could use compulsory dues for purposes directly related to legal profession but not for controversial political purposes).

And, most important of all, Frank Coffin's work reflects an understanding of, and sympathy for, the human problems that underlie the cases that make their way to courts of appeals. His opinions make sense in human terms. He sees the need to balance and to compromise the various desirable objectives that human beings in society need to achieve.<sup>10</sup>

This talent—imaginatively to understand the scope of the human problem, to develop rules, standards, and examples that will create a practical and human legal environment surrounding and sustaining social activity, and to do this within the context of strict standards of craftsmanship—is, I believe, a unique achievement. That is why his colleagues consider him—in the words of his own book—more than a “mere jobbist,” but instead a “master craftsman.”<sup>11</sup> That is why we all have learned so much from him. And that is one reason—but only one of the very many reasons—why we all look forward to many more years of work and personal association with the man to whom this issue has been dedicated, Frank Coffin.

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10. See, e.g., *Nolan v. Scafati*, 430 F.2d 548 (1st Cir. 1970) (prisoners have due process right to communicate with lawyers by mail); *In re San Juan Star Co.*, 662 F.2d 108 (1st Cir. 1981) (right of defendants to fair trial outweighed press's right to dissemination of information obtained through trial discovery).

11. F. COFFIN, *supra* note 1, at 196.

