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Margaret D. McGaughey

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AN ADVOCATE'S PERCEPTION

*Margaret D. McGaughey**

I must begin with a disclaimer. During 1977 and 1978, I was law clerk to the Honorable Frank M. Coffin. Since then, my job as the appellate specialist at the United States Attorney's Office in Maine has taken me to the United States Court of Appeals for the First Circuit regularly and frequently. I may have argued before Judge Coffin more often than any other lawyer in Maine. The result of these interwoven experiences is that nothing I could write about Judge Coffin could disguise either my profound respect for the judge or my affection for the man.

Under present First Circuit rules, lawyers do not learn until the morning of oral argument who will be on the panel of judges assigned to hear their case. For me, the discovery that I am about to argue before Judge Coffin always produces a mixture of excitement and anxiety. However well prepared an advocate may be, Judge Coffin inevitably offers some uncanny insight into the case. As a result, oral argument before him is always intense and enlightening. That is part of the challenge and the pleasure of it.

Having clerked for Judge Coffin, I have seen at closer range than many what extraordinary and varied talents he brings to the process of judging. Let there be no concern, however, that former law clerks who appear before Judge Coffin enjoy a home court advantage. If anything, the reverse is more likely true. During the twenty-five years Judge Coffin has been on the bench, several scores of us have had the good fortune to clerk for him. A frequent topic of discussion at clerk reunions is the self-imposed pressure we feel when appearing before Judge Coffin. Some former clerks undoubtedly aspire to argue as if they deserved having clerked for Judge Coffin. Others of us are motivated by the more basic fear of disappointing him. For all of us, however, the urge to perform well before Judge Coffin is greater than it is in any other courtroom context.

My visual image of Judge Coffin on the bench is of him peering over his half-rim glasses, lips pursed, listening attentively and taking notes in his now legendary microscopic handwriting. It is immediately apparent that Judge Coffin has thoroughly prepared the cases. He is an active participant in oral argument. His sole motive, however, is to learn more about the case in order to reach a just result. I have never seen Judge Coffin commandeer an oral argument or seek to outshine the lawyers. He injects himself into the fray only for a legitimate reason: to focus a critical issue, to correct a misperception, to urge a stymied lawyer off a sticking point, to pin down an

* Assistant United States Attorney.

evasive advocate.

No mere Socratic exercises, Judge Coffin's questions are aimed at the heart of the case. His interrogation style is direct and fair. If he is unpersuaded by a particular premise, he will say so, and why. Thus alerted, the advocate can either attempt to address the expressed concerns or retreat to alternative grounds. If Judge Coffin detects an internal inconsistency in counsel's arguments, he will expose it. If he thinks a lawyer is wasting argument time on a point that has already been won, he will ask about the issues that remain in greater dispute. His purpose is always to give the advocates one last chance to present the case in the best light.

Judge Coffin feels no need to demonstrate to the lawyers who appear before him the power of either his judicial position or his intellect. That authority is implicit. Instead, he displays to the advocates an unflagging courtesy. The famous big-city lawyer with years of experience and the first time small-town sole practitioner are treated with equal respect.

Judge Coffin's gracious civility toward counsel inspires the attorneys to rise to a similar level. The antics and attacks that are the stock and trade of trials are conspicuously out of place in Judge Coffin's appellate courtroom. There is an elevated sense that his courtroom is a place where the law is weighed and crafted with scholarly respect. I have watched Judge Coffin become angry only once, and that was when an advocate was flagrantly rude to opposing counsel.

Oral argument is serious business and Judge Coffin maintains that atmosphere in the courtroom. He has, however, a disarming sense of humor and a quick wit that cannot be matched. Even his humor manages to advance the argument. Judge Coffin has a gift for reducing complex technical questions to comprehensible terms by drawing on commonsense analogies. Once, for example, he likened a complicated school desegregation order to going on an enforced diet: after the necessary proportions were achieved, concern with intake need no longer weigh so heavy. Such metaphors may be amusing, but they always help to focus the issues.

Judge Coffin has a richly deserved national reputation for written opinions that are masterpieces of literature as well as of logic. A prolific writer, he has an ability to turn a phrase that knows no equal. Hand-in-glove with the elegant language, however, is an impeccable analysis of the facts, the law, and their ramifications for the future.

When the co-conspirator exception to the hearsay rule took effect under the Federal Rules of Evidence, for example, Judge Coffin wrote the first significant opinion interpreting it. *United States v. Petrozziello*, 548 F.2d 20 (1st Cir. 1977) is classic Coffin. It explains a complex rule in straightforward terms that give counsel and trial judges alike clear, concise, and comprehensible instructions about their respective duties. That opinion became a model for co-conspirator hearsay decisions across the country. At last count, the *Petroz-*

ziello opinion had been cited 161 times.

For the lawyers who handle an appeal, the opinion that results from their labors has a significance that other readers may not detect. Although a Coffin opinion does not decide unnecessary issues, it always responds to the lawyers' contentions. On the other hand, Judge Coffin assumes, that just as he has fully explored the relevant issues, so have the advocates. Consequently, he avoids deciding a case on a basis that was not briefed or argued. Counsel need not fear from this judge a loss by judicial ambush.

Perhaps what I personally respect most about Judge Coffin, however, is the radiant life values that shine through his work. The high degree of artistry his opinions display can only come from a joy in their creation. That is as true today as it was with Judge Coffin's first case. His opinions demonstrate a concern for both individual litigants and the legal process as a whole. They reflect his broader interests in the continued development of the law within society and the dignity of his fellow human beings. Some members of the legal profession may complain about being trapped by their jobs, but Judge Coffin seems to be liberated by his. Judging permits his many talents to be used to their full advantage. His is a life making the most of itself.

Judge Coffin takes his role as a judge and the attendant responsibilities extremely seriously. He views himself, however, in a very different light. No one can poke fun at Judge Coffin better than he can. A simple example proves the point. One year, when he hosted the final black-tie dinner for the First Circuit Judicial Conference, he announced that he would introduce the head table. He did exactly that. Instead of identifying the Supreme Court justice, judges, and well-known lawyers who were seated at the table, Judge Coffin lifted the cloth skirt to introduce the table itself, complete with legs and linoleum top. It may be, in part, this modesty and sense of perspective that have brought Judge Coffin such universal admiration and respect.

