

Remarks of Chief Judge Frank M. Coffin
of the United States Court of Appeals for the First Circuit

Brookline District Court Centennial Celebration
Brookline, Mass., May 23, 1982

Address to the Judges
Justice -- A House of Many Mansions

One hundred years ago John D. Rockefeller created the Standard Oil Trust; Jesse James was killed; Thomas Edison switched on the first commercial electric lights in New York Central station; and Oscar Wilde, at the end of his American lecture tour, passed judgment on the average American, saying, "For him Art has no marvel, Beauty no meaning, and the Past no message." By these ceremonies today our hosts confound the pundit in at least his last observation.

The institution we honor today traces its lineal ancestor back some 500 years to the Manor Courts of England. The lord's steward of each such community, consisting of manor house, village, and nearby open fields, held court once a year. A jury of townsmen was selected and considered such matters as theft of brush wood, disturbing the neighbors, or pasturing more cows on the common than one's holdings allowed. Our colonial ancestors brought with them this tradition of participation by freemen in court-keeping functions. They developed their own local courts, individual Justices of the Peace and Courts of General Sessions of the Peace.

Since those early morning hours of our country's existence, we have built on history and crafted the most sophisticated, democratic, and disciplined justice system that the planet has seen: two parallel hierarchies, state and federal, each with four levels -- magistrate or court of first instance, trial court of general jurisdiction, an intermediate appellate tribunal as of right, and a discretionary supreme tribunal. So impressive is the pyramidal structure that we tend to look only at the apex, forgetting that it is the strength and breadth of the base that makes it all possible.

For a change I should like to draw the profile of the system in this Commonwealth, not in terms of authority but in terms of impact. We begin with the Supreme Judicial Court, one of the very best among all the fifty states. According to statistics of the 1975-1976 court year, it issued one full court decision for approximately every 19,000 people. The Appeals Court issued one opinion for every 12,000 people. The fourteen superior courts decided one case for every 90 people. But the 72 district courts made decisions that touched 1 of every 4 people, or, excluding minor traffic cases, 1 of every 11 people. The court we honor today, therefore, is not only the oldest of our courts, but the one that affects over the years virtually every citizen.

One need not go so far as to say that the judge of the court of first resort, the people's court, is the most important character in the unrolling drama of justice. In one sense this is true: we could more easily dispense with appellate courts, if we were forced to the point, than with the trial courts. That point being conceded, it is enough to say that the house of justice has many mansions; that the stewards of each mansion are all needed, and that they are not fungible. The profession of appellate judge or even of superior court judge is quite different from that of judge of fact and law at the threshold. The judge of our municipal and district courts must have not only a competence in the law but qualities responding to what the citizenry legitimately expects

from its own courts:

- the stamina, dedication, and management skills to insure easy and prompt access;
- the intuition, compassion, and common sense to produce a fair result;
- the ability to preside with dignity and to speak understandably;
- a sense of the needs and resources of the community.

These are exacting expectations under the best of conditions. In truth, however, the conditions seem to have been worsening for years. On the demand side, the population has been steadily increasing, while the numbers and complexity of cases have been multiplying. On the supply side, buildings and facilities have been allowed to deteriorate, one judge is expected to do what three might formerly have done, and supporting staff is pitifully inadequate. The scarcest commodity of all is time, time to tailor justice to the individuals who, often in anguish and despair, file past the bench hour after hour. I have found little formal literature dealing with the work of these courts, either in books or published articles. I suspect that this is because, apart from the field of case management techniques, the scope of a trial judge's interests is as wide as the horizon. Nevertheless, the lack of an impressive corpus of professional literature may only reinforce a sense of being a lonely and beleaguered outpost.

To the extent that lack of money is the problem, the solution lies with the legislature; in saying this, however, we are also saying that the solution lies ultimately with the people. Just as the theme of this celebration is "What does the community want of its court?" so the future of the court depends on "What does the community want for its court?" I would go farther and say that when a community has become informed and involved enough to develop deeply felt aspirations for its court, a great step has been taken toward creating a more understanding acceptance of the role of all courts, state and national.

In saying this, I am not suggesting that community involvement is public relations as we have come to use the term -- a synonym for salesmanship. If we use the term at all, it should be used in a more basic sense of new kinds of participating relationships with the public. I think a better focus is accountability, for it is the perceived absence of public accountability that creates the distance, the skepticism, and the hostility felt and expressed by citizens and their legislators. I am led, therefore, to say that a climate of enhanced understanding and respect for courts depends in significant part on achieving kinds of accountability that are consistent with our basic mission to serve law and justice independently, without fear or favor.

One kind of accountability is suggested by this community's remarkable centennial celebration of its local court. I would term it responsive accountability. For the philosophy and planning of this centennial have proceeded on the assumption that people may have good ideas about what their court's relationships with their community should be. I have never seen more perceptive sets of questions than those that are being addressed by the nine citizens' committees of the Brookline Court Centennial Commission.

The issues include the role and scope of the court's psychiatric clinic, follow-up with abused persons, work with absent fathers, assessing returns on a questionnaire about experience with small claims, probing all the choices available in sentencing, inquiring whether volunteer probation officer programs should be encouraged, exploring what the court may do in prevention of juvenile anti-social conduct, studying how to stimulate law-related education for both the school population and adults, and exploring the possibilities of new kinds of conflict resolution between landlords and tenants.

This whole exercise has been a paradigm of court-community interaction and

participation. It should cast a long shadow. Although what is right and feasible for one community is not necessarily right and feasible for another, I suspect that lay people, lawyers, and judges in many other communities would find something stimulating or worthy of emulation were the materials developed by this Commission to be made more generally available. For example, I cannot imagine a more effective approach for the state bar association in its citizen outreach function than systematically to encourage local bar groups and courts to undertake in community after community a local court self-assessment program. This, to me, would have far more substance, depth, and effect than the generally hortatory, ceremonial, and evanescent annual Law Day programs.

Another kind of accountability that we might well think about is what I call affirmative accountability. To understand this, we need to know what I call negative accountability. This is the kind of monitoring that takes place to try to identify, criticize and thus check incompetent or overbearing judicial behavior, through court-watching, news reporting, columnizing, editorializing, expressions of legislative indignation, appellate review, and judicial discipline. These are all necessary instruments but make no point, in the words of the old song, of accentuating the positive. After all, popular elections -- the traditional democratic engine of accountability -- not only pinpoint areas of dissatisfaction but also reward performance deemed praiseworthy.

What I am suggesting is that careful thought be given to the possibility of developing a program of awards for judicial excellence. In advancing this suggestion I hesitate, because the honors award business is something we often mishandle. We are all too likely to give our accolades to the tawdry, the merely popular or notorious, or at best to honor the already much honored. Witness the parades of established notables at this time of the year on all the college campuses. Witness Oscars, Emmys, even Pulitzers.

Yet meaningful award programs are held for outstanding teachers, conservationists, news reporters, and civil servants. And the American Bar Association's National Conference of Special Court Judges makes its annual award in honor of Massachusetts' late beloved and respected Justice Flaschner. Last year it went to an outstanding traffic court judge in Louisiana.

The questions that leap to mind are these:

Why such a program? I think it is crucial to keep in mind that this is not primarily for the judge who is honored. If he or she is that good, he did not don his robe expecting his ego to be massaged. The purpose, rather, is to incite people to think about what makes an excellent judge, to appreciate it when one is singled out, and to learn to look for it in others.

Who should run it? Well, certainly not the Judiciary. But mightn't this be a good project for the Bar or perhaps the Massachusetts Bar Foundation? It would of course draw not only on lawyers and judges but lay people, the media, and academia . . . perhaps even former jurors, witnesses, and litigants,

What would be looked for? I would not dare to prescribe priorities, but certainly the list would include competence, fairness, diligence, compassion, creativeness, administrative skill, effectiveness in working with the community. Part of the merit of the process would lie in the discussion and debate preceding and following awards.

Who would be recipients? Not only individual judges but perhaps a multi-judge court. And not necessarily judges only, for others also make their contribution to the administration of justice.

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Our celebration of the hundredth anniversary of this district court prompts me to propose

that we judges make this solemn pledge to Justice -- a House of Many Mansions:

We pledge allegiance to the House of Justice,

Not just the Justices of the Supreme Court, on whose every opinion we
dwell for explanation of the past or foreshadowing of the future;

Not just the judges of the other appellate courts of the country, our
Supreme Judicial Court of this Commonwealth and its Appeals
Court, or my own First Circuit Court of Appeals;

Not just our trial courts of general jurisdiction, the justices of the Superior
Courts and the judges of the federal district court of this
Commonwealth;

But the judges of the people's court:

Which has the oldest claim to our loyalties and is the court of first
and, usually, last resort;

The court whose judgments are the only taste of justice for most of the
people;

The court of law where wisdom, intuition, compassion, common sense and
a thoroughgoing knowledge of human nature are in demand;

The court, in short, where we expect a larger than life size judge . . . and
get him or her more often than we deserve.