The Anatomy of Judicial Collegiality

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I have identified in "Ways of a Judge" the essence of an appellate court that we have called collegiality. There I likened such a court to a small college. But the more I learn of the issues of departmental turf, prestige, money, and tenure that enliven and occasionally incinerate faculty meetings, the less enamored I am of importing such "collegial" folkways into the process of deciding appeals. So I have unearthed an antique word, "judiciality". My Oxford cites a 1727 use of the word as a synonym for "judiciousness". But today, obviously, judiciousness perfectly describes what it means. This leaves "judiciality" free to define that rarefied form of collegiality that perhaps is now found only in groups of well disposed appellate judges.

The Quality of Judiciality

What, precisely is it? Here is my effort at a hornbook definition:
The deliberately cultivated attitude among judges of equal status

working in intimate, continuing, open, and non-competitive relationship with each other,

which manifests respect for the worth and strength of the others,

restrains one's pride of self and authorship,

makes a virtue of patience in understanding and of compromise on non-essentials,

and seeks the objective of as much excellence in a group's decision as its combined talents, experience, and energy permit.

The result of this kind of creative interaction is a gestalt -- a unified configuration having properties that cannot be derived from its parts. In short, judicial collegiality, or judiciality as I call it, adds an increment of excellence to the work of a court beyond the sum of the competences of all its individual judges.

Judiciality is not instinctive or natural; if it were, there would be little point in talking about it. But neither is it capable of being reduced to a formula and taught as a discrete discipline. Nor can it be delegated. Perhaps this explains why so little is written about it. Yet our experience tells us it can be learned. It is partly cognitive, having to do with the mind, partly conative, having to do with desire and will. It suggests not so much the spontaneity of a love affair as it does the knowledge of self, the sensitivity to others, the restraint, and the discipline of a durable marriage. It takes time.

The Threats to Judiciality

Time. There's the rub. As a circuit judge, one of only 154 in this nation of over 230 million people, you will find your day filled in the following ways.

You will be drafting and editing at the yearly rate of something like 96 of your own opinions, signed and unsigned.

You will be participating in deciding, after hearing or submission, 230 other cases; this figure includes reviewing 192 opinions, signed and unsigned, of your fellow panelists.

You will be reading all signed opinions of all other panels on your court. This means from 300 to 1050 opinions depending on whether you are in the Third or Fourth Circuit or in the Ninth Circuit. These are decisions in the making of which you will have had no part. You will see many points that would have piqued your interest, many issues that you feel strongly about, more than a few cases that you feel have been wrongly decided. On many of these you will be asked whether or not you want an en banc reconsideration.

This is merely your formal case load. You will also be deciding some 300 appeals that do not involve formal briefing or argument.

In handling all these cases you will be working with three law clerks. Your chambers will resemble a small law firm. A threat to collegiality arises when the chambers of the judges on a court begin to act like a cluster of independent, competitive law firms, each wishing to protect its own turf, to obtain credit for its contribution, to score points at the expense of the other. To ride herd on your clerks, who cannot be expected to have the sensitivity to colleagues that you have, takes time.

Beyond cases you will have to cope with the increasing pressures of hierarchy, bureaucracy, and administration. When you have been a judge for five years or so, you will wind up on a committee of the Judicial Conference. Long before that you will have served your own court and circuit not only as a member of a committee, and as a member of the judicial council of the circuit, but as a participant in, if not an organizer of, the circuit conference.

You will of course also be reading Law Weeks, law review articles, an occasional book, and may even be writing down a lecture, say, for new appellate judges. Or you will be attending a seminar for veteran appellate judges or judging a moot court at a law school.

Finally, you will be in charge of a vast arsenal of technology -- word processors, computer assisted legal research, and electronic mail. The name of this game is to keep things moving at an ever faster pace. The temptation in the face of electronic mail, which spews out a colleague's opinion immediately upon its final approval by the author, is to respond pronto lest the pace of progress slacken. To the extent that a judge yields to this temptation of instant reaction the slower processes of collegial reflection and measured response will suffer.

At this point I estimate that I have outlined a 30 hour day. So where does the time invested in judiciality fit in? The answer is that there is no time for this fragile flower if it is placed at the end of the list of demands on judges' time. This is why I make an antiquarian humanistic plea in the face of all the managerial and technological pressures of the times to preserve a quiet reservoir of time, energy, and imagination within which to nourish judicial collegiality. I speak to you who are on the threshold of the final career of your professional lives.

The techniques of management and the instruments of technology bid to make you the most productive appellate judges in our history. But quantity without quality would be a hollow achievement. So save time for knowing, cherishing, and dealing creatively with your colleagues.

What Not to Do

If you are so minded, the first set of precepts takes no time at all, other than the time to think, to agree, to resolve . . . about what not to do. Although the most fruitful reaches of judiciality are approached through what I would call positive collegiality, perhaps the minimally necessary achievements are those of negative collegiality, the catalogue of "What not to do's".

The basic "what not" is not to try to prove oneself. Often the attempt to do this is really a desperate effort to cancel one's lack of confidence or even one's feeling of inferiority. New judges particularly may feel that they must show "the right stuff", that any sign of uncertainty or vacillation will be taken as a sign of weakness. They therefore may not only be quick to pronounce their views but to plant their feet in cement. These are not only understandable but probably necessary habits of mind for the district judge on the firing line; but they are hindrances, even vices, for the appellate judge.

It often takes time for the new appeals judge to realize that the wisest and most valuable of his or her colleagues are not ashamed to come into conference saying, "I don't know, I'm not sure, it depends." These sages realize, without embarrassment, that the key ingredient of a judicially collegial court is humility. Probably those who face the highest barriers in achieving this condition are the brightest, most articulate, and most academically gifted. So, our first precepts are: not too quick and not too firm. Leave a door open to further dialogue and possible accommodation on both sides.

Other "no-no's" are less fundamental.

-- Don't delay too long in responding to another's draft opinion. If you do, your comments will be so stale that the writer will have to spend needless time refreshing his memory on long forgotten details.

-- Don't use language heedlessly. There are code words and expressions which can be an unwelcome supercargo burdening any communication. Cutting a colleague off in mid- flight with a testy "Please let me finish" chills debate. When a colleague tries to diminish your argument with an ad hominem reference to your former politics, associates, or activities, you chafe. So do you when your colleague professes a superior expertise because of his or her experience as a lawyer, as a trial judge, or professor. These are all put-downs, sand in the gears of collegiality. Labelling a colleague with words like "liberal", "knee jerk", "idealist", "reactionary", "conservative", "result-oriented", "academic", "narrow", "establishment", does not advance any effort to reach common ground. To describe your colleague's opinion as "boorish" transcends the line between meaningful criticism and unhelpful pique.

Moreover, after a decent interval, don't be ashamed to recognize that little is accomplished by prolonging an oral discussion when it becomes obvious that all views have been ventilated and that, for the present, none are likely to change. Instead put your faith in the wonders sometimes worked by the passage of a little time, helped perhaps by a thoughtful written memo.

-- Don't overadvocate or try to manipulate. Sometimes a judge writing an opinion will be so sold on his view of the case that he will walk over the thin line separating the

judge from the advocate. He may, for example, write a high pressure letter accompanying a draft opinion, saying, "I feel very strongly about this." This places undue, unjudicial pressure on the colleague.

-- Don't plot. Plotting, in the watered down sense in which I use the term, means agreeing with another judge to take a position on a case for reasons independent of the articulated rationale of a draft. Uncommunicated to the third judge, such a process is the antithesis of collegiality. This is to be distinguished from two judges, with the knowledge of the third judge, conferring together to see if they can agree on a response to the third judge's draft opinion.

-- Don't name call. Name calling, even only mildly perjorative name calling, is a subtle poison. It is most rife when one judge, seeking support for his position on a case, refers to another judge taking a hostile position as "he's a little weird on this issue" or "he's soft on this kind of thing" or "well, you know his background in this area". Even though mild by most standards, these references have no place in a court that seeks real collegiality, for the listener knows that his time will come.

-- Don't pick too many nits. We go farther than most courts in adding to our substantive comments on a colleague's draft a series of minor corrections or suggestions on form. Since no one person, without exhausting himself, can catch every minute error, this is, we feel, helpful. But the judge should review whatever list the alert law clerk compiles and should edit it down. There are many occasions where there is no one right way; in such cases allow the writer fielder's choice. Most judges have their idiosyncrasies; even if these violate some form book or what you deem sensible, don't try to force uniformity.

Now I am not sure that my colleagues would feel that I should make these statements with a straight face. Under date of March 29 my colleague Judge Bownes received an exhaustive 4 page memorandum from me containing no fewer than 37 microscopic suggestions such as "two hyphens form a dash" and "I think you mean "prologue" rather than "prelude". The memo closed with this rather acerbic P.S.:

> "Although on first reading the opinion seemed sound, I now must question whether you (or your law clerks) did this draft hurriedly, whether you just weren't feeling well, or whether you merely attached the wrong cover sheet to this opinion. I hope you'll feel better soon."

It took some persuasion by Judge Bownes' clerks to convince him that this was their April Fool's joke on him. The remarkable fact was that he was not at all disturbed as he read through all the dreary trivia. But I am left with the haunting thought that I have conditioned him to tolerate such drivel.

Positive Judiciality

So far we have dealt with the "no-no's", with what I've called negative collegiality. The more difficult but more fruitful terrain is that of positive judicial collegiality, or, as I term it, positive judiciality. Its cultivation takes thought, time, and energy. To be sure, cultivation of a tiny garden plot requires not very much of each. For most of my two decades on the bench we were a court of three judges as we had been for the previous 75 years; we sat with our colleagues ten times a year. Because of this judicial Garden of Eden, one judge in reviewing my earlier

preachments on collegiality characterized me as being seized with "optimism bordering on innocence". This was fair comment. Most of you sit on courts with more than ten other colleagues. Using the simplest means of assuring maximum association with all other judges on the court, we can ascertain that you will sit with each colleague at least once a year and usually twice . . . but no more.

Think of the difference between sitting with all your colleagues each month and sitting with them only once or twice a year. How much knowledge, conscious and unconscious, of each other's strengths, weaknesses, biases, and foibles is present in the first situation and how little in the second. Think of how much motivation is required to establish the most harmonious relationships, to cater to particular habits and tastes, to minimize differences in the first situation and how little in the second. If we have to deal with someone all the time, pure self interest leads us to try to make the experience enjoyable. But if we sit with another judge only twice a year, and perhaps only once a year, we are tempted to say, "Why bother trying to establish an open, relaxed, and trustful relationship?" Yet if this is the attitude, each sitting of the court is merely that of a panel of polite strangers. It is almost as if someone had drawn the names of three of the country's 154 circuit judges from a hat to decide who should constitute a panel. In this posture, there is no sense talking about collegiality. Judges would be wholly fungible and courts homogenized. This dour prospect leads me to suggest the Golden Rule of Judiciality: treat each colleague as if he or she would be sitting with you on every panel. Wouldn't you like to feel that each colleague on every panel looked on you as a close and permanent member of the judicial family, showing interest in your personal life, listening to your spoutings, laughing at your anecdotes, remembering what you have said on other occasions?

Although you may not be a former A.B.A. President or author of a hundred law journal articles, you want to be valued for your strengths. So -- make an effort to recognize and value the strengths of your peers. One judge may shine in scintillating analysis and articulate questioning at oral argument. Another may prepare cases prodigiously and spotlight weaknesses not apparent from the briefs. One may have a reliable reservoir of common sense. One may show his strength best in his painstaking commentaries on opinion drafts. One may have a graceful facility in suggesting ways to compose differences. Sometimes a judge, just by his character as reflected in his personality, may change the whole atmosphere of a collaborative effort. The point is that each of these qualities is important and each should be valued and the possessor of each should know it is valued.

With this basic commitment to colleagues as a foundation, the superstructure is easily erected. It consists of a host of things to do, of which the following is only an illustrative list:

-- The first step is to break down the barrier of stereotype by simply exposing it. Here's an example. An appellate judge of "liberal" orientation with long experience on the trial court sits for the first time with a "conservative" judge with no trial experience on an appeal by a rather infamous defendant. The latter expresses concern that such a defendant might be given the opportunity of a retrial. The former points out that their job is to see what the Constitution requires. Obviously the second judge discounts this preaching; he clearly thinks of his "liberal" colleague as being chronically "soft on criminals". The first judge senses this and says, "O.K. Have you ever sentenced anyone to 20 years or more in prison?" His colleague says, "No." The first judge continues, "Well, I have. As a district judge and before that as a long time state judge I have sentenced several thousand to very long terms." It was then that the panel got down to business. The two judges, still with quite different values and judicial philosophies, are friends, eat

together, and judge well together.

-- The second step is listening. Listening to what a colleague asks or says at oral argument and to what is said at conference. Perceptive listening involves not merely listening to the words that are said but trying to understand the concern that the words may only imperfectly reveal.

-- It is equally important to give your colleagues their opportunity to listen to you well in advance of taking a nay vote on a case. I call this anticipatory collegiality, letting colleagues know of your concerns by your questions at oral argument. Anticipatory collegiality comes into play also as you talk with your clerks about an opinion assigned to you or about your response to a colleague's draft. You can avoid many a problem by alerting your clerks to what you have long absorbed about the biases, predilections, emotional or intellectual red flags that are likely to move your colleagues.

-- If you have a problem with a colleague's opinion, and especially if the problem is one identified by your clerk, put yourself this question: "Does it really matter? If my problem is not with the result, is my criticism of the approach, the length, the dictum worth the trouble to raise?" Mind you, I suggest only that you put this question. I don't suggest that you brush aside anything that doesn't affect the result. More often than not you will say, "Yes. If I were the writer, I'd certainly like to have such suggestions as these."

Not infrequently, the writer may have so enmeshed himself in his opinion that the argument is opaque, the order of presentation is convoluted, unforeseen ambiguities, implications, and negative pregnants abound, sentences are ungainly. The more remote but caring eye of a colleague can work wonders in putting matters aright. Although criticism can be overdone, such problems as these are larger and more annoying than nits; they are more like moles whose tunnels, furrows, and unsightly humps and hollows can destroy the harmony and integrity of any lawn.

-- Once you have decided to surface a problem, consider whether you can raise the issue just as well by framing your difficulty as a question or as a tentative problem. This seems to leave open the sluice gates of honest thought and the chance of accommodation far more than the door-closing sound of a declaration of opposition or of the firing off of a dissent.

-- If you don't feel that framing a question will advance matters, take the next step and try framing an answer. That is, take the time to figure out where and what to say to solve your problem. Sometimes the discipline of trying to put your thought in writing reveals that it isn't much of a thought after all.

-- Always be alert for a viable middle ground. A sharp disagreement on the merits can be muted, postponed, or possibly entirely avoided by a remand for further fact finding or clarification or reconsideration. Obviously this should not be resorted to if principle is at stake.

-- One of the reliable fertilizers of judiciality is the graceful concession. Here is a real example:

> "I received your devastating critique on Saturday morning and assuming (as it turned out correctly) that [colleague B] would come to the same conclusion, I spent a portion of the weekend rewriting the opinion. I expect to have it in the mail within a day or so."

Another is this response by a dissenter to a petition for rehearing en banc: "Although I obviously agree with the petitioner that the dissent brilliantly pointed out the fatal flaws in the majority's opinion, I do not see this as worthy of en banc treatment."

-- When a colleague has expressed himself in conference as favoring a certain approach and the writer has tried it but found it wanting, sometimes it is helpful to circulate both the original and the revised versions to show the limitations of even a good college try. The colleague at least knows that his idea received a fair trial.

-- When one finally circulates a draft opinion, it is often desirable for him to compose a cover letter saying what issues are not treated and why. This alerts the other chambers that the issues were considered.

-- You are human enough to like to be told when you have done a particularly good job, as when you have found a precedent not contained in the briefs, when your reading of the record sheds new light on a case, when you have come up with a clinching argument. Therefore, while avoiding cheapening the currency, be generous in discriminating praise of a job well done.

-- Finally, take time to be human. One veteran appellate judge sums up our predicament in these words, "If you're a loner, you can't function on a court of appeals." Judges should dine together. Spouses should know each other. Judges and spouses should have times to be together. As one judge said to me, "When I know that a judge has the same kind of family problems I have, I look to him in a more human light."

The Role of Separate Views

So far you might infer that the truly collegial court is that which seldom sees a dissent or a separate concurrence. This inference would miss the point. Although it is a fact that in a court where judiciality is second nature to all or most of the judges unnecessary dissents and concurrences are avoided, this is a byproduct, not an objective. Judiciality insures that opinions for the court, whether unanimous or not, are the soundest, most balanced, and sensitive that the several minds could create. It also, however, insures that separate opinions are written only because, after prayerful consideration, there exist significant differences of views that deserve to be recorded.

The values of consensus and independence are in constant tension. Chief Justice Hughes made the classic statement:

> "When unanimity can be obtained without sacrifice of conviction, it strongly commends the decision to public confidence. But unanimity which is merely formal, which is recorded at the expense of strong, conflicting views, is not desirable in a court of last resort, whatever may be the effect upon public opinion at the time. This is so because what must ultimately sustain the court in public confidence is the character and independence of the judges. . . . " Quoted in Leflar, Appellate Judicial Opinions, p. 210. (St. Paul, Minn., West Pub. Co., 1974.)

The general propositions that can be safely advanced about separate opinions -- concurring, dissenting, concurring and dissenting, concurring in part, dissenting in part, dubitante -- are few. The first is: do it only after considerable thought. The second is: make it as brief as possible. And the third is: after you write, let it simmer, then eliminate all the snide innuendoes

and pejorative adjectives and adverbs.

A subordinate set of propositions for concurring and dissenting opinions might be generally agreed on as follows:

Concurring opinions are justified

1. When a judge strongly prefers a different theory or ground to support the result, e.g., the judge would not reach the merits because of a procedural bar.

2. When a judge wishes to attempt to limit the holding, e.g., the judge concurs in this case involving the interstate transfer of prisoners but an intrastate transfer might not be so resolved.

3. When a judge wishes to attempt to expand a holding, e.g., the judge points out that the instant case by its reasoning and holding effectively overrules a precedent.

4. When a judge wishes to expand the majority's reasoning on a particular point -- to drive home a point to the bar, the trial courts, or to address a dissenter's argument in a more thorough manner than would fit the court's opinion.

I add that a judge should never merely declare that he concurs. This is little more illuminating than two examples collated for an appellate judges' seminar 10 years ago by Judge Walter Gewin (63 F.R.D. 453):

> "I concur in the result and so much of the opinion as supports the result." Wirtz v. Fowler, 372 F.2d 315, 335 (5th Cir. 1966, Jones, dissenting). Id. at 595.

The Irish Chief Justice who, after hearing his two colleagues give their views, delivered this gem:

> "I agree with the decision of my brother on the right for the reasons stated by my brother on the left." Quoted from Fuld, The Voices of Dissent, 62 Columbia L. Rev. 923 (1962). Id. at 599.

Nor should a judge restate the facts and the essential reasoning in the majority opinion. In such a case any valid additions should be incorporated into the court's opinion. If there are none, there is no sufficient excuse ab initio for a separate opinion.

A concurrence is like a fencing foil; it elegantly makes its usually bloodless points. A dissent, on the other hand, is more like a broadsword. It takes more resolution and commitment to wield it and there is the expectation of drawing at least a little blood. In any event there is a feeling of unjudicial glee as one shucks off the normal restraints of writing for a panel and proceeds to thrust and parry with gay abandon. For this very reason, we are well advised to resist the temptation unless we find, as the standard formula puts it, a compelling interest and no less dramatic alternative. Sometimes, however, a dissent is the precise instrument that should be used.

Dissenting opinions are justified

1. When the dissenter feels that a serious mistake of law has been made on a significant issue that is likely to recur. Note the three prerequisites: a mistake that is serious, not minor; an issue that is significant, not trivial; and an issue that is likely to recur, not one relating to a law that has been repealed. The dissent in such a case alerts the non-panel members of the court of a likely petition for rehearing en banc and serves also as a flag to the Supreme Court if certiorari is requested.

2. When all the judges on the panel feel that the issue is extremely close and that a

dissent will serve to sharpen the focus and reflect the closeness of the issue.

3. When the dissenter feels that his panel colleagues have erred as to the facts, e.g., in finding a sufficiency or insufficiency of evidence to support a verdict, or as to procedure, e.g., in wrongly taking jurisdiction or in considering materials not of record. In such cases the dissenter's motive may be solely to keep his colleagues honest or at least deter their transgressions.

4. When the dissenter feels strongly enough about the injustice of a rule or precedent that he wishes to send a signal to bench and bar, the state court, the legislature, the law schools and commentators -- underscoring the inequity, the anomaly, or the inconsistency and calling for change.

5. When the dissenter feels strongly enough about the conduct of the judicial or lawyer personnel involved in the appeal to issue his own warning to the prosecutor, to plaintff's or defense counsel, to the district court or administrative law judge. Even though the majority may not have found reversible error in the proceedings, the unvarnished indignation of a dissenter may serve a useful purpose.

6. When the dissenter, who may at the same time be the author of the opinion for the court, has a discrete but not unimportant disagreement or reservation that can be recorded in a simple footnote.

* * *

After all is said about collegiality or judiciality in these pressured times, and the investment of time and energy to cultivate it, you may ask if the game is worth the candle. I think I have said enough to indicate that the opinions of a truly collegial court are bound to be better in substance, style, and tone than opinions of, basically, one judge whose colleagues have merely joined in the result. I include in the Appendix several concrete illustrations of the benevolent workings of collegiality.

What I have not said is that life on a collegial court where judiciality is widely shared takes on a joyous quality. Even though judges may disagree on basic issues, they still relish the company of their colleagues and look forward to sitting on another case with them. In short, positive collegiality is a source of much of the joy and fun in being an appellate judge. It needs cultivation. May all of you have green thumbs.

Appendix

Examples of Collegiality at Work

1. In an appeal from dismissal of a complaint having all the earmarks of vexatious frivolity, a colleague pointed out to me one cause of action among many that, when one focused on it, was indisputably stated. If my colleague had treated my opinion as wholly my business, we would have been wrong. If he had treated his point as wholly his, we would have had a vulnerable majority opinion and a strong dissent.

2. In a major case, I wrote an opinion just as colleague A and I tentatively agreed. When colleague B's dissent came in, he made much of some hitherto ignored summary dismissals by the Supreme Court. This sent me back to the books. I found I could not distinguish those cases. If there had not been what I call a fructifying mutation, we would have had an unsound majority opinion and a correct though underdeveloped dissent; as it happened, we wound up with a powerful unanimous opinion, coming out the opposite way from our tentative decision.

3. In one Fourth Amendment case, my file contains no fewer than 40 pages of memos among the panel members. In the course of our marathon deliberations by correspondence, I, the writer, changed my mind about the right of the government to raise a new point on appeal and accepted the reasoning of a colleague. We wound up with my opinion, a dissent gently put, and a concurrence specifically addressing the dissent. On a motion for en banc review, a judge who had not been on the panel deferred to us because of the obviously thorough consideration we had given all arguments. Without the give-and-take which was reflected in the opinions, we would have had a perfunctory, procedurally erroneous majority opinion, a strident dissent, and possibly an en banc proceeding.

4. In another appeal, an uncomplicated criminal case, the oral argument succeeded in changing our minds from a tentative affirmance to reversal. My colleague, the writing judge, wrote a fine opinion showing why the law compelled us to reverse. However, so persuaded had he become that he castigated the trial judge rather forcefully. One of his brethren tactfully pointed out that, after all, we would have probably acted the same way and that only the luxury of hindsight and a strong post hoc oral argument made us see the implications that led us to say this was error. The author reacted with the following memo:

> "You are absolutely correct about the excessive tone of this opinion. When I swung myself over, I thoughtlessly swung too far.
>
> "Reminds me of the judge who was asked how he was getting along on a case, and who said he'd not been able to make up his mind, but when he did he was going to feel very strongly."

5. We have several cases a year where the product of the writing judge runs into such flak that the contributions of another colleague finally point to the wisdom of his writing the opinion. The transfer of writing credit has always been most gracefully made. If this had not been so, we would have had a maladroit and reluctant opinion for the court, recalling the nostrum that a camel is a horse made by a committee. To let someone else do a final draft after you have spent long hours on your own is a rigorous test of collegiality.

6. A colleague circulated a long draft of a complex case involving the extent of waiver of sovereign immunity, reaching a conclusion adverse to our tentative agreement at

conference. After many hours of research and deliberation, I challenged my colleague in a lengthy memo. He soon called me, said he understood my problem, would be reviewing the whole matter and, if he still felt he was right, would be writing me. A few days later a long letter arrived, pointing out a misconception on my part and making a key clarification of his argument. I found myself completely persuaded. What had helped was my knowledge that my colleague had really rethought his position and had not merely dismissed my concern at the outset.

7. All of these are instances of collegiality being brought to bear after circulation of a draft opinion. Let me share one recent experience of collegiality at conference. At the end of a day's arguments, the panel gathered to discuss some six cases. The first two appeals were far from earth shaking. One was a commercial contract dispute; the other involved the internal affairs of some labor unions. But we spent perhaps an hour or more in discussion, in both cases gradually working toward approaches that were not only absent from the briefs and arguments of counsel but had not been in our minds until after the give-and-take of our discussion gradually identified the basic problems and approaches which might best reflect precedent, yet permit an equitable result. One of our panel was a visiting judge. It had been he who had come up with a brilliant resolution in our second case after some 40 minutes of orally shared pondering and frustration on the part of all of us. He expressed appreciation for this kind of leisurely probing, contrasting it with the conferences he had known wherein judges would simply announce seriatim their vote with perhaps a sentence of explanation. Of course many appeals can be so disposed of, but I can remember no day's cluster of cases where there was not at least one case meriting relaxed discussion and testing of possible avenues, dead ends though they might prove to be.