

Remarks of
Senior Circuit Judge Frank M. Coffin

In Memory of
The Honorable Bailey Aldrich

First Circuit Judicial Conference
Chatham, Massachusetts
October 4, 2002

Chief Judge Boudin and colleagues. This is not a eulogy of our brother, Bailey Aldrich. This is rather a more intimate talk about one of our family, a member whose character and standards should be part of the values of every one of us, whether we were privileged to know him or not.

Bailey held the record of forty-five years of service as an Article III judge, the longest in the entire country. He began with five years as a district judge, from 1954 to 1959, then served forty years on the court of appeal, thirteen as an active judge. During his twenty-seven years as a senior judge, he often returned to his first love, the district court, which, he said, was "in my blood." For years he would give four months to the district court and three to us. So he belongs to all of us.

You will be surprised to know that he had a slow beginning. At Harvard College he was by no means a star. His tutor did not recommend law school. After graduating, his parents gave him a tour abroad. On his return, he picked up a copy of Blackstone, read it, and was immediately "turned on." At the end of his first year in law school, he was second in his class, served under third year student Paul Freund on the Harvard Law Review, and later became Case Editor, riding herd on his editors to confine their case summaries to one page gems.

When Bailey graduated and applied for a position with Choate, Hall, he found he was too late to be considered, but soon he was told he could fill a vacancy left by a lawyer bound for New York, named Alger Hiss. Bailey soon broke into actual trial work when a senior partner on a case died and he took on the trial, winning a case thought unwinnable. Somehow, this tall, thin aristocratic looking fellow built an enviable record of persuading judges and juries.

When Bailey became a district judge, he ran a fair but tight ship. In one of his more notable cases, United States v. Kamin, involving Senator McCarthy's pursuit of a suspected Communist on Harvard's faculty, Bailey had sternly set a ground rule that the Senator should not call undue attention to himself by a flamboyant entrance. When this order was denied, Bailey declared a mistrial, and, on retrial before him, threw the case out on a ground not argued by counsel, namely, that the writ of the Senate Committee on Government Operations ran only to government, not private, operations.

Coming to the court of appeal, he rose to chief judge in five years with the 1964 retirement of Peter Woodbury. Judge Hartigan was ill and in 1965, pending the fall appointments of Judge McEntee and myself, Bailey heroically manned the court with visiting judges, friends of his, from other circuits, writing most of the opinions himself. He also handled all of the motion practice, working closely with our longtime clerk, Dana Gallup. He would lodge the files awaiting decision on his windowsills. This he referred to as his "windowsill" work; it was the prelude to the work now done by our eleven or more staff attorneys.

When a competent lawyer was before the bench and the case was interesting, Bailey's

inquiries were something to behold. They were a scalpel, not a meat axe. He might begin with a general question about the principle involved, then narrow it through a carefully structured series which might end with an unsupportable result. This might in turn produce a concession of the issue by counsel or, sometimes, the graceful acknowledgement of the judge that his problem had been solved. In any event, oral argument had been effectively used to advance our understanding.

When Bailey decided to step down from judging, we senior circuit judges - Judges Campbell, Bownes, Cyr, and I - held a seniors' en banc on Bailey's merits and demerits. We concluded, on summary judgment, that in his forty-five years he had set the standard for all of us in diligence, competence, and fairness, and had enriched all of us with his wit, wisdom, and caring collegiality. We issued an injunction, saying, "As we say in Puerto Rico, this is su casa. Be neighborly, Bailey. Come back early and often!"

Well, he didn't physically return. But over the last three year he remained interested in all our doings and appreciated every call or visit any of us made to him. We were very much a part of him as he remains very much a part of us.