

Remarks of Frank M. Coffin  
Senior U.S. Circuit Judge

At a Memorial Service for  
The Honorable Bailey Aldrich

Harvard Memorial Church  
October 5, 2002

I can think of no more daunting task than to try to compress into a very few minutes my thoughts and feelings from almost four decades of close professional and personal association with Bailey Aldrich. He was a dear friend and, from beginning to end, a wise mentor. In the three years since his complete retirement, I have treasured my weekly telephone chats with him. So often, despite his problems, there would be an outrageous limerick, an anecdote with a point, or a vivid retelling of a memorable event.

But when I try to describe him as a judge and what he meant to us, I know - and his presence is not hard to imagine - that he would not want me to say anything excessive or flowery. Without expecting me to equal his verbal parsimony, he would want me to be succinct. But, try as I will, I have to deal with the irreducible minimum, a very great and very rare contribution.

Bailey's early years contained no hint of what he was to become. Before entering Harvard, he flunked his anticipatory English exam and had to take Freshman English. . . something that may have proved to be a blessing in disguise. At Harvard College he tried to follow the study suggestions of his tutor but, as he said, did not "shine." The tutor did not recommend law school for him. But once in Law School, something happened. In Warren Seavey's course on torts, for example, he finished a four hour exam in two hours and walked out, to the consternation of other students and the concern of Professor Seavey, who recalled thinking, "Oh dear. What a thin exam. Aldrich took sick." When he read the exam, however, he was amazed, never having seen one so on target and so condensed. He gave Bailey five extra points. At the end of his first year, when he placed second in his class, he wanted to make sure the news got back to his tutor.

As a lawyer, Bailey built a reputation of high competence in trial work specializing in insurance and libel cases, for Choate, Hall, and Stewart for twenty-two years. In 1954, Senator Saltonstall, acting at the behest of bar leaders, offered his name to President Eisenhower for appointment as a federal district judge. He took to judging like a duck to water and ran firmly a fair and efficient court. On one occasion, when Senator McCarthy defied his order prohibiting a flamboyant entrance, he didn't blink at ordering a mistrial.

He became a circuit judge in 1959 and served until 1999. His total of 45 years was the longest period of service of any Article III judge in the nation. In 1965, just before Judge McEntee and I joined the court, Judge Aldrich was the only active judge, Judges Hartigan and Woodbury having retired. He and his valiant wife Betty hosted a long train of visiting judges helping out in that critical year. But Bailey assumed the burden; he wrote well over two thirds of the court's opinions that year.

In that period, life was quite simple. We were only three judges. There was no such thing as an en banc hearing; we were the en banc. After argument we would confer around Bailey's desk. On his window sill were neat piles of motions that he would act upon - the modest

precursor of our eleven person staff attorney office of today. What lay ahead and had already started were seismic changes in the law, a virtual explosion of law relating to civil rights and liberties, the expansion of administrative law, and a rising tide of federal statutory law.

What Judge Aldrich did for us, not by design, but by virtue of the kind of person and judge he was, was to provide us with a set of core values to carry us into a new century. I have already mentioned an incident involving his courage. To that I would add an inherent sense of fairness and a rigorous rationality. If a case met both tests, he was open to solutions and remedies that might involve new applications or even overruling earlier precedents. Another quality was candor. Justice Brennan, on the occasion of the hanging of Bailey's portrait by Gardner Cox, wrote of his "massive common sense, downright forcefulness [and a] certain want of subtlety" in addition to his "instinct for fair play."

In addition to these guides, Bailey set a tone of collegiality that is still with us. As we exchange opinion drafts, unlike some courts, we freely offer suggestions both substantive and stylistic. We do not take umbrage but know our colleagues are trying to help us produce the best opinion we possibly can. This is a collegiality that both welcomes and gives constructive criticism - the highest form of mutual respect.

Of course, in this catalogue of professional contributions, I cannot convey the warmth and genuine concern that marked Bailey Aldrich as a man. I can do no better than quote Gardner Cox, Bailey's portraitist, who summed up his happy experience, saying "I can truly say that I never had a sitter who was, all in all, more rewarding or as much plain fun."

Finally, I know I have Bailey's approval when I acknowledge the powerful sustaining influence of his wife Betty. She made sure that Bailey's mental horizons reached beyond the world of law. She also contributed to the "massive common sense" of which Justice Brennan wrote.

During these last years, Bailey endured with difficulty his separation from Betty. He maintained a lively interest in what our court was doing, cherished his children and grandchildren, and, though his physical apparatus was gradually wearing out, retained an amazing memory of events, people, and anecdotes.

He drank life to the full. He gave much to many. There was nothing more he wanted to do. We are ever in his debt.