Remarks of U.S. Senior Circuit Judge Frank M. Coffin
at the Presentation of the Portrait of
U.S. Senior District Judge Frank M. Murray
Federal Courthouse
Boston, Massachusetts
October 23, 1990

In a portrait ceremony -- one should try to complement (as well as compliment) the artist. I'll undertake the latter first. That Marion "Bonnie" Miller has excelled is obvious. I am somewhat responsible, having put her to the test of doing my likeness and somehow making it agreeable, so that when she tackled Judge Murray, both the raw material and her prior experience with judicial physiognomies made the job a piece of cake. I know I speak for Frank Murray in saying that we feel exceedingly well done.

Following my premise that my remarks should be considered like additional colors and brush strokes to supplement Bonnie Miller's palette, I do not attempt a catalogue or chronology of a distinguished life, but seek only to sketch something of the judicial persona behind the robe.

I find three strains that give individuality to the verbal portrait. The first is a robust, down-to-earth common sense and ability to work with people to accomplish concrete objectives. This is not ordinarily what one would associate with a judge -- for it may be thought far removed from ruling on evidence, finding facts, or making conclusions of law. But such a thought misses the mark. A trial judge, perhaps more than an appellate judge, is no better than his accumulated reservoir of common sense. This is especially so when, after all the evidence is in and the findings and conclusions are made, the judge faces the task of fashioning an appropriate remedy. Wholly apart from judging, however, there is the wide realm of administration and committee work in which policies, practices and projects must be soundly conceived and effectively implemented.

Judge Murray is one of those rare judges who, in the best sense of the word, has known how to "operate." His wide-ranging experience before going on the bench, in working for the Reconstruction Finance Corporation, the Boston Housing Authority, and in serving as Boston's Corporation Counsel gave him a wealth of practical experience. This was put to work years ago when Judge Murray spearheaded an effort to enlarge the judicial facilities of our present building. He had activated a committee of lawyers, had marshaled the data, and was on the point of victory when, as so often happens, higher authority changed its mind. With poetic justice, however, the mantle of leadership in the Boston Federal Judiciary's quest for adequate and dignified facilities has fallen on Judge Murray's gifted former law clerk, Judge Woodlock.

The second distinguishing facet of Judge Murray's persona is a deep commitment to education, to the improvement of the professions of judge and of lawyer. The foundation for all his efforts in education was laid in 1946 when, at 42 years of age, he was appointed an Associate Justice of the Superior Court of Massachusetts. The ensuing 21 years saw him gradually, informally and without guile, but incontrovertibly annex the title of dean of the Massachusetts trial bench. From this powerful pulpit he co-authored The State Trial Judge's Book in 1965 and then became chair of the American Bar Association's Advisory Committee on the Judge's Function. In 1972, after he had joined the federal judiciary, his committee published the seminal standards entitled "The Function of the Trial Judge." This snippet from the introduction is redolent with Murray flavoring:

> A trial held in the familiar tradition requires not only observance of rules

> of practice and procedure and the demands of due process, but also acceptance of standards of elementary courtesy in deportment and utterances of all the participants. The report reaffirms the principle that there can be but one governor of the proceedings to encourage and compel adherence to the rules and standards, and that he must wisely use the powers he possesses to perform that function. The words and conduct of the judge frequently set the tone of the trial, and the force of his example as the guiding hand cannot be over exhausted. He must constantly guard against conduct and words which may be tolerated when engaged in by others, even when he is confronted with burdens and circumstances that challenge his patience and endurance. Standards cannot be written with nicety and precision to supply understanding or skill in handling people. Mechanical application and indiscriminate use of formalized standards during a trial will not assure a satisfactory result at any of its stages. What is called for during the trial, and what the standards stress, is the art of prudential judgment on the part of the judge, and realization, as Addison reminds us, that to be just "to the utmost of our abilities, is the glory of a man."

In addition to these publications, Judge Murray combined his dedication to judicial education and his practical operator skills in his seminal role as a founder along with Justice Tom Clark and a few others, of the National Judicial College in 1963. He, though a very active Superior Court justice, served as dean in its 1965 session, was chair of the Committee on Site Selection, resulting in the move from Colorado to Reno, was a long-time faculty member and occupied the chair of the College's Board of Trustees from 1971 to 1980. He now is Chairman Emeritus. Former Dean Larkin, now a Massachusetts judge, has written in The Judge's Journal of Judge Murray and the College:

> . . . Frank Murray, were he disposed to give thought to himself, would be entitled to say if any man is: "Look, there is the College, the product of my mind and heart." In the days of its creation -- as today -- his sense of what the College should be about was so rich and his love for the College so deep that it could sustain and inspire those he served, those he worked with and those who worked for him.

Add to these educational credentials Judge Murray's membership on the Federal Judicial Center's Advisory Committee on Continuing Education and his decades long membership on the Board of Regents of Georgetown University. But that is not all. Even now, in his mid-eighties, Judge Murray has been striving to find ways to bring young and older lawyers together with judges in an effort to keep alive the highest traditions of the profession.

The skeptic might reply to all I have said that practical skills and education initiatives, unique and valuable as they are, are merely icing on the cake. The cake itself is judging. What can we say about Judge Murray that will convey, however briefly, the gist and flavor of his purely judicial persona? I begin with the broadest concept -- fairness. Since this is overly general, I move on to a sense of balance -- between the legitimate interests of the parties, logic and precedent, the state and federal judicial systems. Going beneath balance, which again is too general a term to be distinctive, I seize upon a meticulous, step-by-step analysis and an instinct for fine brushwork as Judge Murray's trademarks.

Four cases are illustrative. In Haley v. Troy, 388 F. Supp. 794 (D. Mass. 1972), in a bench trial involving many complaints by welfare recipients against high-handed and coercive extra-judicial actions by a municipal judge, Judge Murray painstakingly measured each charge

against the evidence. Putting aside what was widely rumored and his own distaste for the conduct alleged, he rejected several as unproven but found one charge against the judge, that of merging in himself the functions of both accuser and judge sufficiently supported to warrant an injunction. A year and a half later, the Supreme Judicial Court disbarred the judge. The meticulous analysis and evident restraint of Judge Murray was perhaps the critical catalyzer of consensus in the evolution of this agonizing event.

Another case was United States v. Petrozziello, 548 F.2d 20 (1st Cir. 1977), in which we on the court of appeals wrestled with the problem of dealing with co-conspirator statements under new rules of evidence. Even before we gave our opinion after months of hindsight reflection, Judge Murray had designed an order of proof, postponing admission of the incriminating statements of an alleged co-conspirator until all independent non-hearsay evidence was in. This, wrote the judge, was to ensure the limited role of hearsay and avoid what he called "trial of a conspiracy case by hindsight." In our opinion, we commended his "meticulous approach."

Still another example of craftsmanship and independent analysis was Fulman v. United States 407 F. Supp. 1039 (D. Mass.), aff'd 545 F.2d 268 (1st Cir. 1976), aff'd 439 U.S. 528 (1978). This involved a challenge to a Treasury regulation relating to the personal holding company tax. Sufficient to say that Judge Murray bit the bullet, disagreed with a recent Sixth Circuit case, and, in three and one-half pages upheld the regulation. It took me, writing four and one-half pages for our court, and Justice Brennan, writing ten and one half pages for his Court, to say that Frank had been right all along.

A final example of Judge Murray's balance and fine tuning was Layne v. Gunter, 559 F.2d 850 (1st Cir. 1977), in which a state prisoner had sought habeas and had faced an unconscionable delay in state court, which finally was moving the cause along. Judge Murray refused to issue the writ but denied the petition without prejudice. We said (at p. 852):

> The court's action in dismissing the petition, and in doing so without prejudice, reflected a sensitive application of both the demonstrated availability of the state forum and the guarantee of access to federal court if, for any reason, the state forum again proved unresponsive to petitioner's desire for a prompt disposition of the appeal.

Here, then, is what we call an example of the understated judge at work. No pyrotechnics. No precipitate judgments. Just careful consideration and striking the right balance as dictated by the facts, the law and, as often as possible, justice.

And so, Judge Murray, may this excellent portrait, which hints at your own unique judicial flavor long shed its benign influence on generation after generation of lawyers appearing in this court.