

One of a Kind

Remarks of U.S. Circuit Judge Frank M. Coffin
at a dinner honoring U.S. Circuit Judge Hugh H. Bownes
57 Park Plaza Hotel, Boston, Massachusetts
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I have seldom faced a more intimidating task than to say a few words, pertinent or impertinent, about our guest of honor. We come neither to bury him nor, since he wouldn't stand for it, to praise him, but, rather, to savor him. What lends appeal to the task is that he is one of a kind. There is no other. The "kind," of course, is judges, but the "one" is singular, not a copy, not copiable, rather, an unrepeatable gallimaufry of qualities. Some stem from heredity, some from environment, some from education, some from experience, some from his indomitable spouse . . . and some he just made up himself. All this complexity and uniqueness notwithstanding, our prodigal hosts have given me ten minutes to try to put in seemly words where Judge Bownes came from, what he has done, and what he is.

Where he came from. You say Concord. But that's a misnomer. He comes from the state of strife, the county of combat, and the city of struggle. For a starter, both mother and father were Irish Protestants, if not a contradiction in terms, at least a context for controversy. Then contemplate his father, a union printer and activist in the days when collective bargaining was seen as a threat to civilization itself. From this, the son's lifelong empathy with the underdog. Add to this his K-12 seasoning in New York City's public schools, a proven seedbed for street smarts.

Then Columbia and World War II, the Marines, coordinating and leading assault landings on far-off Pacific islands, finally stopping a Japanese mortar shell with his leg while standing in shallow water in the harbor at Guam directing a troop landing, and winding up as a major with a Purple Heart and a Silver Star. Two silver linings from this. First, a valuable and indisputable hallmark of patriotism which served him well when opponents equated a spiritual affinity with the Bill of Rights to something approaching treason. When Manchester Union Leader publisher William Loeb sent a sizzling telegram to the Senate Judiciary Committee opposing Hugh's appointment to the district court, it was probably the Marines who once again came to the rescue and allayed Senator Thurmond's fears. But, even more important, the injury and the convalescence led Judge Bownes straight into the arms of a beautiful and highly competent nurse from Harrison, Maine, Irja Martikainen. She cured him and he secured her.

Irja perfectly complemented Hugh. To his Celtic romanticism she contributed Finnish realism; to his incurable optimism, a healthy dose of skepticism. She shared his courage, keen intelligence, articulateness, and commitment to working for the public good. After Hugh graduated from Columbia Law School in 1948, they travelled northward to make a post-war life, landing in Laconia, New Hampshire. Barbara had already come into the world. Then, with typical Bownesian boldness and desire to get the job done, their twin sons, David and Ernest, arrived. Meanwhile Hugh built an excellent trial practice with his revered senior, Arthur Nighswander. True to his commitment to both underdogs and the First Amendment, his most significant legal battle was the Uphaus case in the McCarthy era. He accepted, when others would not, appointment to defend a pacifist, Dr. Willard Uphaus, who refused to turn over the guest registers of his World Federation Center camp to a one-man subversive activities snooper. Although Judge Bownes eventually lost, he managed to get 2 out of 5 votes of the New

Hampshire Supreme Court and 4 out of 9 on the Supreme Court. His sole defect lay in being ahead of his time.

Meanwhile Hugh and Irja took on the task of trying to make a difference politically in a state traditionally loath to reward Democrats. In 1952 Judge Bownes became a member of the state Democratic Committee and then in 1963 New Hampshire's Democratic National Committeeman, having just helped his fellow Laconian Tom McIntyre to be elected to the United States Senate. Then followed in rapid succession his own election as Mayor of Laconia in 1963, his appointment to the New Hampshire Superior Court in 1966, and his appointment as United States District Judge in 1968.

Almost immediately he set the tone of his tempestuous tenure as district judge by holding, contrary to the Third, Fifth, Eighth and Tenth Circuits, that reimbursement for meals purchased by state troopers on highway duty was includable in gross income. (Wilson v. United States, 292 F. Supp. 195 (D.N.H. 1968).) Ever since then he has taken to riding his bicycle to and from his chambers. Then followed decisions not calculated to placate the then reigning establishment. First, Cline v. Rockingham County Superior Court, 367 F. Supp. 1146 (D.N.H. 1973), when he, prophetically, struck down a New Hampshire flag desecration statute and barred prosecution of a student who had scrawled a peace symbol across a flag with a ball point pen. Then, in Gay Students Organization v. Bonner, 367 F. Supp. 1088 (D.N.H. 1974), he upheld the right of homosexual student groups to use university facilities for their meetings. Later, in Laaman v. Helgemoe, 437 F. Supp. 269 (D.N.H. 1977), he found New Hampshire's prison system in violation of the Eighth Amendment.

At about the same time, shortly before he was appointed to the court of appeals, he reached the pinnacle (or the nadir) by agreeing with Judge Gignoux and me, sitting as a three-judge court, in Wooley v. Maynard, 406 F. Supp. 1881 (D.N.H. 1976), in which we barred the criminal prosecution of a Jehovah's Witness for taping over the state motto, "Live Free or Die," on his license plate. This decision did not meet with universal approval. Two other men, who, with Judge Bownes, were labeled "the three most powerful men in New Hampshire" by Yankee Magazine (September, 1976, "The Only Federal Judge in New Hampshire," 67, 69), registered their unhappiness in the strongest terms. Governor Meldrim Thompson referred to it as one of "the un-American decisions of misguided federal judges" which threatened the destruction of America. Publisher William Loeb, in an editorial entitled, "How About PINK License Plates?" wrote, "The ruling consists of lousy law, lousy logic, and lousy theology -- and constitutes the best example conceivable of why judges should not be appointed for life." (Id. at 67.) Notwithstanding these unambiguous views, the Supreme Court affirmed.

In 1977, District Judge Bownes became Circuit Judge Bownes. In the ensuing dozen years he has authored over 600 published opinions. In these few minutes it is impossible to do more than convey the flavor and variety of his contribution to the law. There are three ways in which I shall try to do this. The first is a glimpse at some of his most memorable opinions for our court. Three of them have since become law of the land, having been affirmed by the Supreme Court: Bose Corp. v. Consumers Union, 692 F.2d 189 (1st Cir. 1982), in which we embraced independent rather than deferential review of factual issues in First Amendment cases; Supreme Court of New Hampshire v. Piper, 723 F.2d 110 (1st Cir. 1984), in which our evenly divided court let stand Marty Loughlin's decision striking down a New Hampshire statute barring non-residents from practicing law; and, most recently, Timothy W. v. Rochester, New Hampshire, School District, 875 F.2d 954 (1st Cir. 1989), holding that the Education for All Handicapped Children Act requires that school districts provide education for all handicapped children,

regardless of the severity of their handicap. In addition to these and dozens of other leading opinions for our court, there are Judge Bownes' dissents. They are not frequent, but when they come, watch out! They pack a punch. Finally, there is the type of opinion that may not be at the cutting edge of the law, in the headlines, or in the law reviews, but wins the everlasting gratitude of his colleagues -- the case that involves multiple parties, many volumes of transcript, a forest of issues, and weeks and weeks of painstaking work. Over the years, Judge Bownes has willingly undertaken far more than his share of this workhorse labor. One of the recent examples is In re The Bible Speaks, 869 F.2d 628 (1st Cir. 1989), in which his analysis filled 37 columns of West's finely printed pages.

What do we make of all this? How would we distill all the flavors of our guest of honor? We would describe him physically as a stocky, muscular fellow who, despite his game leg, barrels along with a no nonsense determined gait, and changes from Churchillian glower to Falstaffian laughter in an instant. For analogies we have to range far and wide, from Puck and Johnny Appleseed to Lincoln Steffens, Will Rogers, and Senator Paul Douglas. His carapace of character is molded in equal parts of compassion, idealism and courage. We as colleagues may be forgiven if we list specially those qualities that make working with him a constant joy: his keenness of mind which always improves the quality of our deliberations; his pithy, clear writing, earning the accolades of such professionals as Boston author-lawyer George Higgins; the promptness of his responses to his brethren's drafts; his absolute candor and honesty conjoined with an ever ready willingness to listen; his selfless interest in others and in the court which he serves; and the sense of the ridiculous that has livened many a somber session.

Our friend is, in short, a multi-faceted, irredeemable, unreconstructed source of joie de vivre to all who know him, however slightly. But we, his clerks and colleagues, we who know him so well, we are the lucky ones.