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TRIBUTE PROFESSOR RONALD J. COFFEY

RON COFFEY—A STUDENT'S APPRECIATION

Kenneth B. Davis, Jr.[†]

I am doubly delighted to participate in this tribute. First, because it is published in an institution still close to my heart, the *Case Western Reserve Law Review*. And second because its subject is my mentor and role model, Ron Coffey.

Words like mentor and role model are invoked with such regularity in testimonials that they risk devaluation in the reader's eye. In my case, though, they are if anything understatements. Even before encountering Ron, I had long been interested in the workings of financial markets, and even dabbled at a career in the field. But I saw law school as the decision to leave that interest behind and fight nobler battles. My classmates and I had, after all, come of age in the 60s.¹ Ron nonetheless showed us that corporate and securities law was as intellectually rich and alive, its policy issues as important and its causes as just as any found in the trendier parts of the curriculum. A few years later a study employed the term "cooling out" to characterize how law schools socialize idealistic students into the realities of a job market that rewards representing the rich and powerful.² Had these sociologists happened upon CWRU in the

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¹ I remember one of my first-year classmates describing his moral struggle over whether to petition to be exempted from taking the Property course because he did not believe in the underlying concept. (He went on to become a banking partner in Seattle's largest firm.)

² James C. Foster, *The "Cooling Out" of Law Students—Facilitating Market Cooptation*

1970s, they would have discovered what would no doubt seem like the mother lode of supporting data, given the number of us who entered law school to become civil rights lawyers, only to emerge in pursuit of careers in corporate law. Such was Ron's influence. Yet if he cooled us out, it was through daily doses of inspiration, compassion and rock-hard principle.

For me personally, there was an even deeper Coffey lesson—his conspicuous devotion to the enterprise of scholarship and teaching. Ron personified the idea that a career in teaching, a profession I could never have imagined pursuing, was the highest calling for those who treasured the craft of law—the core of what gives law its legendary reputation as “jealous mistress.” A few years after graduation when I wrote to some law schools inquiring if they would consider adding me to their staff for a year or two so that I could give teaching a try, I listed Ron as a reference. He called one day to say that he had spoken to people from Wisconsin, adding something like “I know how to talk to my fellow academics in terms they understand.” I got the job.

I cannot remember when or where I first learned of Ron. He was away overseeing Ohio's Blue Sky law in 1971, my first year at the school. But I can narrow that first awareness down to two possible candidates: Discussions with upper-classmates about Ron as a terrifying yet brilliant force in the classroom. And a conversation with a partner in the firm where I was clerking over the summer. He had just returned from a lunch with Ron and asked whether as a Case student I knew of him. He explained that (although not a Case grad himself) he made a regular practice of getting together with Ron for he knew no one with keener insight into the direction the law was heading. Those two dimensions of the man—teacher and legal visionary—supply the combined theme for what follows.

Ron was among the vanguard in the legal academy who appreciated the growing importance of securities regulation and its worthiness as a standalone field of specialization. He joined the Case (then still Western Reserve) faculty in 1966, part of the new generation hired by Lou Toepfer to restore the school to its past glory. According to the *Directory of Law Teachers*, only 31 people in the country taught a course in securities regulation that year,³ and only ten of them are names I recognize as ever having written in the field. By the time of Coffey's tenth anniversary on the faculty in 1976, the

of *Future Lawyers*, 3 LAW & POL'Y Q. 243 (1981).

³ 1966 Directory of Law Teachers in ABA Approved Law Schools 396.

list of those (including adjuncts) teaching the subject for ten or more years had grown to merely 22.⁴

Within his first year on the faculty, Coffey made a monumental contribution to the young field—his classic article of the definition of a security.⁵ That article, though written at the very outset of his career, shows us much about what would characterize Ron's work in the years to come. He created an entirely fresh conceptual framework to resolve an issue courts had been struggling with for decades: When should an investment arrangement be dealt with under the state and federal securities laws? Ron's solution was quickly adopted by courts and regulatory agencies alike. As a consequence, Ron facilitated enhanced access to justice, by means of both private litigation and governmental enforcement, for many who had been fleeced by all sorts of novel investment schemes.

During Ron's first decade on the faculty, the field of securities regulation burst open at the seams, as the federal courts developed novel means to extend the reach of the various federal statutes, especially the Securities Exchange Act of 1934. Never one to either let go of the details or artificially constrain his scope of inquiry, how Ron must have struggled to keep up with this surging tide. In my recollections of walking into Ron's office as a student, he is invariably confronting the stacked pages of the most recent week's release of the *CCH Federal Securities Law Reporter*, pencil in hand, underlining text or making marginal notes.

This challenge notwithstanding, Ron would increasingly come to believe that he could not confine himself to keeping abreast of the legal doctrine alone. The field of law and economics was blossoming, with clear implications for the study of corporate and securities law. But unlike so many of his fellow law professors who were content to rely on intermediaries, Ron went straight to the raw source material. My sense of the man is that whenever he deems a particular body of knowledge to be within his necessary domain, he is no longer comfortable being any distance from the cutting edge. One illustration of what that entails will suffice. Many years ago I was meeting with faculty from Wisconsin's finance department who were beginning to do work in what they described to me as an emerging "hot" paradigm, and had some technical questions about legal implications. As what they were describing (agency costs) began to sound increasingly familiar, I remembered Ron excitedly laying it out to me at least two

⁴ 1976 Directory of Law Teachers—Revised List of Law Teachers by Subject 1188.

⁵ Ronald J. Coffey, *The Economic Realities of a "Security": Is There a More Meaningful Formula?*, 18 WES. RES. L. REV. 367 (1967).

years earlier. He had just come upon what would become one of the seminal articles in the financial economics literature,⁶ worked his way through the jargon and intricate math, and immediately appreciated its significance for the law of fiduciary obligation. A recent Westlaw check reveals that article has been cited 1250 times in the legal literature over the ensuing years. I cannot help but wonder how many dozens of other articles Ron must wade through on a regular basis to unearth each such gem.

For us as students in the early 1970s, Ron's devotion to his subject meant that we had two semesters of Securities Regulation at a time when most law schools had at best a single adjunct-taught class. Every top student regarded the two-semester sequence as a de facto graduation requirement. It was a heady time for securities law. The SEC's Division of Corporate Finance was undertaking an ambitious project to codify the law governing exemption from registration under the 1933 Act; an aggressive new Division of Enforcement was beginning to develop novel tools to address corporate wrongdoing; and as noted above, the federal courts were making new law so fast that "federalization of corporate law" was becoming an everyday phrase. One can readily imagine the challenge this presented to someone like Ron Coffey who would never relegate his students to stale teaching materials. The weekly flow of new judicial opinions, notes and revised problem sets made us feel something akin to line workers in the just-in-time delivery system of a Japanese auto plant.

To be sure, Coffey's teaching energies were never restricted to the classroom. I might be a product of the only *Law Review* board in the history of legal education on which what seemed like half the membership wrote their student notes on some aspect of 1934 Act rule 10b-5. The explanation is easy. Ron was generous with his ideas; a Coffey-suggested topic was assured to be original, interesting, challenging and immune from preemption; and Ron could be counted on to critically read and comment on each and every serious draft that was presented to him. Only with the benefit of several years as both a law professor and Dean can I truly appreciate how much time Ron devoted to matters that we would all agree are essential to the educational mission but are never credited on the conventional academic c.v., and therefore make it tempting to free ride on the efforts of our colleagues—things like reading drafts of student notes, taking time to address walk-in student questions in depth, judging moot court arguments, and reinforcing the school's ties to alumni and

⁶ Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

the practicing bar. As to the last of these, I have long suspected, though have no way of verifying, that Ron's stature in the downtown corporate-law community played a major role in opening the doors of Cleveland's most prestigious law firms that had been closed to Case grads just a few years before. I can attest that his name regularly came up in job interviews.

One closing thought. Like many, I spent the summer before entering law school reading everything I could lay my hands on about my newly chosen profession. That endeavor led me to the bowels of the Cleveland Public Library one lunch hour to page through recent issues of the *ABA Journal*. I stumbled on an ad for a law publishing house whose apparent tactic was to inspire weary lawyers by portraying legal research in heroic terms. It quoted the last line of Tennyson's *Ulysses*: "To strive, to seek, to find, and not to yield." That image stuck with me as I entered law school.

Those words still remind me of Ron. I don't know if I've ever met anyone as relentless in pursuit of the ideal answer to a hard question. In matters of intellectual inquiry, "close enough" and "good enough" were never within Ron's vocabulary—not when further analysis and reflection might yield an even more apt choice of phrase or purer formulation of an idea.

When Ron entered law teaching, the scholarly norm was to produce a comprehensive, meticulously researched piece every two or three years. Lawyer-like was the watchword, with every implication of the thesis considered and every likely objection anticipated and dealt with. It was an ideal genre for Ron. Scholarly fashion changes, however, and paging through the leading law reviews today reveals a different set of research priorities and styles. But for all of us whose first dealings with Ron came in the classroom of "Professor Coffey," it is unthinkable that he might ever consider entrusting definition of his own intellectual enterprise to the scholarly fads of the day.

Ron, through your four decades in teaching you have significantly influenced how countless numbers of us confront each new legal question and challenge. What a legacy! Best wishes for all that lies ahead.

