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“THE PRICE OF WISDOM IS ABOVE
RUBIES”*
A TRIBUTE TO RONALD J. COFFEY
CASE WESTERN RESERVE
SCHOOL OF LAW 1966–2007
(ON HIS RETIREMENT)

Juliet P. Kostritsky[†]

Ron Coffey retired in July, 2007. Though Ron would be resistant to the accolades in this volume, the law review is dedicating this issue to him. This dedication might provoke Ron to quote from Job: “Miserable comforters are ye all.”¹ When he retired this year, he asked that no party be given in his honor and resisted any formal announcement. As always, those who have the most to be proud of are often the least likely to self-promote.

Despite his wish that his retirement remain unnoticed, this occasion demands some attention. Ron Coffey has made tremendous contribution over 41 years of teaching² at Case Western School of Law. Before addressing Ron’s scholarship, his brilliance as a thinker and his role as a faculty mentor, this essay will make brief comments (that can hardly do him justice) on his teaching and moral leadership.

As a teacher educating law students, Coffey adhered to the highest, most rigorous standards. He gave students in the corporate and securities areas the major tools of financial economics to enable them

* *Job* 28: 18. This title from Job is a fitting tribute to Ron Coffey who sacrificed so much to acquire wisdom.

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¹ *Job* 18:2.

² Professor Ronald J. Coffey began teaching at Case Western Reserve University School of Law in 1966. He was hired by former dean Louis A. Toepfer who came to Case as dean in 1966 after 19 years as a vice dean and faculty member of the Harvard Law School.

to excel at the very highest levels of their profession. Others, including Professor Coffey's former student, Kenneth B. Davis, Jr., dean at the University of Wisconsin School of Law, will directly attest to his qualities as a teacher in other essays in this law review tribute. Our current dean, Gary Simson, reports that when he meets Case Western Law School alumni, the enthusiasm expressed by Ron's former students is unparalleled. Their loyalty is and remains fierce. The admiration and love of Ron Coffey's students for their former teacher is unique and without equal. It derives from their gratefulness for the rigor and intellectual stimulation he provided to them.

The loyalty of the students can be gleaned from the many stories of their extraordinary efforts to honor him. One group of students in the 1980's—who had heard many of Ron's lyrical references to big rigs and to a particular truck company that built some of the best, most innovative trucks on earth (including those that pulled the big trailers)—actually tried to rent a rig equipped with a 600 horsepower engine for Coffey to drive.³ The plan, unfortunately, faltered—either because they could not procure the rig unless Professor Coffey had the appropriate license or they could not get the truck into the congested confines of University Circle.⁴

Ron Coffey has also been the conscience of the law school, challenging us as a faculty to do the right thing, even though challenging the faculty is never the easy thing to do and always comes at a great personal cost. On his door, Ron displayed these words in Greek from Homer:

ἐχθρὸς γάρ μοι κείνος ὁμῶς Ἀΐδαο πύλῃσιν

ὅς χ' ἕτερον μὲν κεύθη ἐνὶ φρεσίν, ἄλλο δὲ εὔπη⁵

Roughly translated these words mean: "Him do I hate even as the gates of hell who says one thing while he hides another in his heart."⁶ Ron Coffey lived these words. We owe Ron a great debt for

³ Peterbilt Motors Company, http://www.peterbilt.com/index_gal_mod_desc_389.asp.

⁴ John Saganich, Steve Grassbaugh, Jim Aronoff, Tim Geisse, Tim Coughlin and Mickey Marvinney, former students of Professor Coffey, can provide additional details and confirmation. Another recent Advanced Securities class gave Coffey a model Peterbilt truck which he proudly displayed in his office in a prominent location.

⁵ HOMER, THE ILIAD bk 9, line 311 (Oxford University Press, 1920), available at <http://www.perseus.tufts.edu/hopper/text.jsp?doc=Perseus:text:1999.01.0133>.

⁶ *Id.*, translated in THE ILIAD WITH AN ENGLISH TRANSLATION BY A.T. MURRAY, PH.D. IN TWO VOLUMES. (Harvard University Press 1924), available at <http://www.perseus.tufts.edu/hopper/text.jsp?doc=Perseus:text:1999.01.0134:book=1:card=1>.

remaining our steady moral voice, reminding us of the honorable choices.

It is impossible to capture all of Ron's contributions as a thinker and a scholar and a mentor to other scholars on the law school faculty, but an attempt must be made.

As a scholar, Ron Coffey developed his own teaching materials on Securities Laws⁷, and has written articles on such topics as the performance obligation in agency law,⁸ the meaning of a security,⁹ and the economic concept of income.¹⁰ He has also given unpublished articles to the elite securities bar. He has been cited by the United States Supreme Court, an honor that each of us aspires to but rarely reaches.¹¹

What distinguishes Ron Coffey as a scholar and thinker is hard to fully do justice to. As he grapples with specific topics in the corporate and securities area, he draws on the models from financial economics to address the great question that permeates the law: when legal intervention (whether it takes the form of a property or liability rule) is justified. This is the great question for lawyers, judges and legislators deciding whether the law has a role to play to improve the general welfare.¹²

Ron Coffey brought rigor to this analysis of legal intervention. By isolating the central components of an analytical, methodological framework, he has given us tools for resolving monumental questions such as: when is antitrust regulation justified; when should the law find negligence; when should formal law defer to or supplement informal reputational sanctions; when should principals be liable for the acts of their agents; when should the law require the disclosure of information; when should doctors deciding between two medications

⁷ RONALD J. COFFEY, *INTERVENTIONS IN SECURITIES MAKING: METHODOLOGY AND ANALYTICS* (2007).

⁸ Ronald J. Coffey, *Firm Opportunities: Property Right Assignments, Firm Detriment, and the Agent's Performance Obligation*, 13 CAN.-U.S. L.J. 155 (1988).

⁹ Ronald J. Coffey, *The Economic Realities of a "Security": Is There a More Meaningful Formula?*, 18 WES. RES. L. REV. 367, 407 (1967), cited in *Davis v. Avco*, 371 F. Supp. 782, 787 and in *SEC v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 483 (1973), available at <http://www.mlmlaw.com/library/cases/mlm/feddistrict/ohdavis.htm>.

¹⁰ Leon Gabinet & Ronald J. Coffey, *The Implications of the Economic Concept of Income for Corporation-Shareholder Income Tax Systems*, 27 CASE WES. L. REV. 895 (1977).

¹¹ *U.S. v. Maze*, 414 U.S. 395 (1974) (citing Ronald J. Coffey & James d'A Welch, *Federal Regulation of Land Sales: Full Disclosure Comes Down to Earth*, 21 CASE W. RES. L. REV. 5 (1969)).

¹² At a basic level formal contract enforcement, one type of legal intervention, might be important in encouraging parties to transact and invest in transactions. Legal intervention might also be important when "neither the seller's effort nor the probability of high performance is observed at the time of sale." W. Bentley MacLeod, *Reputations, Relationships and Contract Enforcement*, 45 J. ECON. LIT. 595, 597 (2007).

be liable when they prescribe one of the medications for which they receive a kickback; when should internet providers be held liable for the individual postings of subscribers; and, when parties should be liable to their neighbors for excessive noise. Coffey would apply the same analytical structures to fairness and equity, topics often ignored by the law and economics faculty.¹³

The list of topics that can benefit from this approach is endless. The analysis that Ron Coffey models contains two cardinal elements: 1) a common set of behavioral characteristics¹⁴ and 2) the desired goals or objectives.¹⁵ Without those elements, one cannot begin to ascertain how parties will react to legal rules or to ascertain the incentive effects on behavior or gauge how the rule is likely to achieve or not achieve the goals of the parties and of the law.¹⁶

Although the cardinal elements seem simple and perhaps incontrovertible, Ron Coffey's insistence on an agreed set of characteristics of good legal methodology has helped provide the framework to solve legal puzzles.

In addition to developing these cardinal elements, Coffey gained a mastery over a series of specific analytical tools and models from financial economics that have enhanced the application of the basic framework in his own scholarship and in that of his colleagues. He has educated us about market failures and the Akerlof lemons problem that "shows that a market may function very badly if the informed party has no way to signal the quality of the good that it is selling."¹⁷ He has taught us about signaling, "that is sent by the informed party [and] has a cost that depends on its type"¹⁸ He opened up the world of bargaining difficulties and market failures due to the asymmetries of information. He identified particular types of uncertainty (uncertainty about the future state of the world and uncertainty about the "propensity to diverge,"¹⁹ the uncertainty about behavior) and helped us to understand how those uncertainties might

¹³ *But see* KEN BINMORE, *NATURAL JUSTICE* (2005). *See also* James Konow, *Which is the Fairest One of All, A Positive Analysis of Justice Theories*, XLI J. ECON. LIT. 1188 (2003).

¹⁴ These assumptions about humanity go back to the Scottish thinker, David Hume. More recent treatment includes OLIVER E. WILLIAMSON, *THE ECONOMIC INSTITUTIONS OF CAPITALISM* 44-50 (1985).

¹⁵ Ronald J. Coffey, *Intervention Implementation (Business Associations Methodology)* (unpublished manuscript on file with author).

¹⁶ As in all law and economics scholarship, the focus is on the prospective effects of legal rules.

¹⁷ BERNARD SALANIE, *THE ECONOMICS OF CONTRACTS, A PRIMER* 86 (2007). *See* George A. Akerlof, *The Market for "Lemons": Quality, Uncertainty and the Market Mechanism*, 84 Q. J. ECON. 488 (1970).

¹⁸ *Id.*

¹⁹ © Ronald J. Coffey.

impair efficient bargaining in different contexts.²⁰ He educated us on options and the “private strategies” parties employ to overcome the difficulties in bargaining. And always, he asked us to take account of all of the costs, both to the parties and to third parties.²¹

As a scholar, he was an intellectual giant who could analyze every issue using a powerful framework grounded in economics. Most scholars, even brilliant scholars, are brilliant in their own small, reflexive world of narrow expertise. Ron Coffey, however, used the central frameworks, what he called the “central engines,” to address an incredibly diverse range of subjects outside his own area of expertise as a corporate and securities lawyer. There was hardly anyone amongst a group of then junior faculty hired in the 1980’s and early 1990’s by Deans Ernest Gellhorn and Peter M. Gerhart who did not seek out Coffey’s insights.²² It is no surprise then that Ron Coffey visited at two of the most prestigious law schools in the country, Stanford and Michigan (though few here were aware of that).

He was the ultimate interdisciplinary scholar who not only understood and was conversant with the literature and models of economics, but used those models to analyze legal questions. He was insistent that the insights of economics be “meshed” into actual legal rules and doctrines. Without such meshing, the insights from another field might be interesting but would not be of use to the legal profession.

Ron Coffey was an incredibly generous scholar who shared his insights and his time without hesitation.²³ The greatest joy often awaited one in opening up an email. He would send a link to a Rand Journal of Economics article or query whether you were familiar with a new book by the great economist Oliver Williamson. From a prior conversation with you, he would remember just exactly what intellectual puzzle you were grappling with and instantly see how a new article or book might shed light on your own topic and allow you to go further in your own analysis with new intellectual tools. At other times, he would send a perfectly crafted email of several pages written with consummate care and thought, detailing every nuance of a prior discussion, highlighting each of the assumptions, and applying a set of relevant tools to an actual fact pattern.

²⁰ Email from Ronald J. Coffey, Professor of Law, Case Western Reserve University to Juliet P. Kostritsky, Professor of Law, Case Western Reserve University.

²¹ This is the externality problem.

²² These contributions are acknowledged in the myriad footnotes in such colleagues’ articles attesting to such contributions.

²³ I speak from personal experience having benefited from hours of conversation about bargaining over a 24 year period at the law school.

Ron Coffey's greatest gift as a mentor was the ability to give a voice to a structure for the pieces of an analytical puzzle, when that structure remained hidden or obscured to us as we labored with the cases and the literature. With his guidance we became better scholars than we had a right to be or thought ourselves capable of being.

Ron Coffey read and carefully analyzed every piece of important scholarship in financial economics because he wanted our students to have the best analytical tools to enable them to excel at the very highest level of their profession. He challenged students to think at the highest levels and rejected the simplified models that sometimes passed for economic analysis. He reminded those who doubted the power of the analytical tools of economics that economics had moved far beyond the unrealistic assumptions of behavior that the Chicago School of economics had initially embraced. He was conversant with all of the literature's models that incorporated the complexities of human behavior.²⁴

He shared his knowledge of Hobbes, Hume, Adam Smith, Plato and the Greeks, science, nano-technology and music with us. When our son expressed an interest in classical music, and we expressed our ignorance, Ron came up with a list of composers, their particular pieces, and the best recording for our son to begin to appreciate the greatest musicians.²⁵

The best thing about Ron Coffey's retirement is that he has assured us he will continue to work on joint and solo projects in the future. A small group of us started to meet at Starbucks last summer (we even had an acronym for our small group: "CJA" meaning Center for Justificational Analysis) and we hope to continue the intellectual journey far in the future.

²⁴ See, e.g., FRANCESCO PARISI AND VERNON L. SMITH, *THE LAW AND ECONOMICS OF IRRATIONAL BEHAVIOR* (2007).

²⁵ List on file with author.