

The Defender: William Coffey

Doug Moe

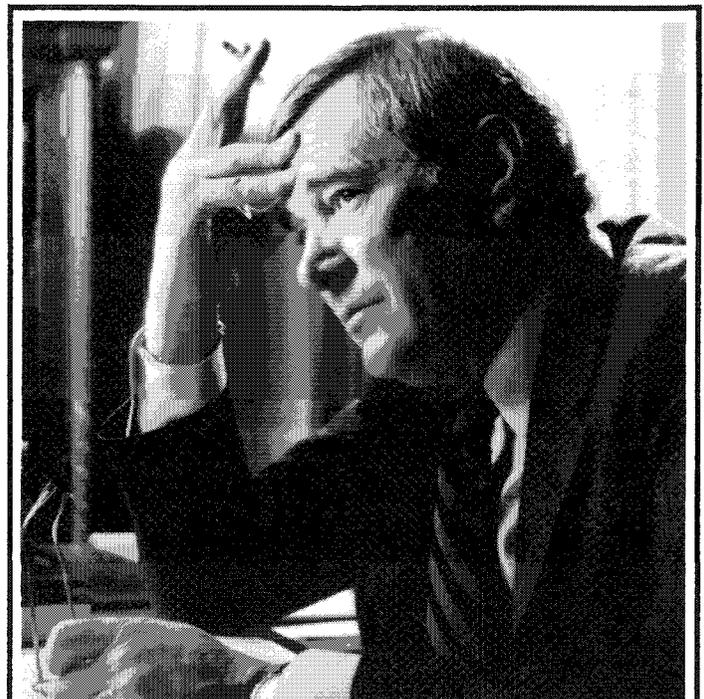
Bill Coffey graduated in 1961 from the University of Wisconsin Law School and has established himself as a pre-eminent figure among criminal defense lawyers.

The article which follows is the work of Doug Moe, a Madison-based freelance writer, and appeared first in Milwaukee Magazine (which has permitted reproduction of the piece here).

Doug Moe's article, standing alone, warranted reprinting here as an account of a notable and colorful alumnus of the Law School. But beyond the wish to relay a salute to Bill Coffey in his professional role as a criminal defense lawyer, the Law School has special reason to use this occasion for adding a few words of its own to this salute to him.

For more than a decade and a half now Bill Coffey has—as a practicing lawyer—helped the Law School in educating its students. The School from its beginning has counted on practicing lawyers to assist it in legal education and Bill is among some 120 Milwaukee area lawyers honored in an Appreciation Dinner on March 21, 1984, for their contributions to our education efforts. In Bill's particular case, the contributions have been frequent and most important: On several occasions, he has appeared for as long as a week in our General Practice Course. He has taught Advanced Criminal Procedure at least ten times, taught Trial Advocacy almost as frequently and at least once has taught Evidence. Beyond this, he has devoted a great deal of time to the Legal Assistance to Institutionalized Persons Program. (LAIP—as the Program is known—was reported on in Gargoyle for Winter 1984 as the Law School's notably successful program for learning by doing the real thing.)

And so, Bill Coffey, the Wisconsin Law School salutes you. And in doing so, we intend as well to salute those practicing lawyers—numbering now in the hundreds—who have made available their skills and experience to assist in the education of Wisconsin law students.



Among the desk-pounding, publicity seeking band of criminal defense lawyers in Wisconsin, William Coffey may not be the most famous or the most flamboyant. He's just the best.

Bill Coffey's client had this thing about supply-side economics. He liked it so much, in fact, that he supplied himself with \$700,000 in bills of various denominations, which in his entrepreneurial zeal, he printed himself.

When he was caught by government agents, the guy knew he was in very serious trouble. He was stone-cold guilty and he knew it; and, more importantly, the government knew it. They had \$700,000 in counterfeit currency as evidence and, as a result, the outcome was all but inevitable—convictions followed by two decades in federal prison.

"Coffey, the last thing I want is justice," he told the Milwaukee defense attorney at their first meeting, "because if I get justice I'll get 20 years."

The counterfeiter was, Coffey recalls, "the most honest defendant I've ever represented . . . he was a client I got along with well."

Which is to say: they understood one another. The case was hopeless; but it was the kind at which Bill Coffey excelled. As it turned out, the counterfeiter had not misplaced his faith. Coffey got the guy off.

Coffey successfully moved to suppress the counterfeit money as evidence, arguing that the federal agents had obtained it in an illegal search. Without the \$700,000 in damning currency, the government's case evaporated and the charges were dismissed.

Score: Counterfeiter-1; Justice-0.

"Had the federal government not searched the premises illegally, had the \$700,000 in counterfeit money been admissible in evidence," recalls Coffey, "there isn't any question but that man would have gotten 20 years. The federal agents in executing the search warrant violated the fourth amendment to the Constitution of the United States. As a consequence that man went home.

"That does not in my mind create a moral problem for me, because I accept the fundamental premise on which this system of justice is constructed, and any blame for that man not being convicted should be directed toward the authorities who made an illegal search. If people want to get upset and aggravated, they should get upset and aggravated with people who conduct illegal searches, not with the criminal defense attorney."

People do still get upset with criminal attorneys, however, who have increasingly found themselves at the center of a spreading public debate over the moral ambiguities of their role.

But Bill Coffey has no apologies to make.

"I represent a lot of people who did what they're charged with, or did something close to it," says Coffey, "and I understand that.

"But my function is not to be prosecutor, judge, jury, and God. Whatever they did, the state is required to prove their guilt beyond a reasonable doubt with competent evidence, evidence that is obtained within the limits of the Constitution of the United States. If the prosecution can't do that they're not entitled to a convictions."

Because William Coffey doesn't crave publicity, because he doesn't brawl with cops or otherwise engage in headline-hunting, the 51-year-old lawyer is not widely known outside the briefcase jungle of the state legal system.

Among his peers in the Bar, however, Coffey is routinely referred to as one of the best, or, as often as not, simply as "the best" attorney in Wisconsin.

Robert DeChambeau, a veteran assistant district attorney in Dane County, calls Coffey "the best defense attorney in the state. A gentleman in and out of the courtroom."

Dane County Circuit Court Judge Michael Torphy, who presided over one of Coffey's most publicized cases, the 1968 disorderly conduct trial of Father James Groppi, says of Coffey: "He's very well respected—an excellent lawyer. I really couldn't find enough good things to say about him. I think he's a master technician in his field, a considerate and courteous man who knows what he's doing. Bill's one of the best attorneys in Wisconsin and probably in the Midwest."

It's such a flattering refrain, one can't help wondering whether *anybody* has a bad thing to say about Coffey.

"Everybody is going to say the same thing," says Robert Donohoo, an assistant district attorney for Milwaukee County. "Everybody is going to say Bill is very honorable, and a very good attorney. He's one of those attorneys whose word is good. The number of attorneys you can say that about has dwindled as time goes on."

In what is probably the ultimate compliment one lawyer can pay to another, Madison's Donald Eisenberg, who gained statewide notoriety during his unsuccessful defenses of murder suspects Barbara Hoffman and Lawrencina Bembenek, retained Coffey to represent him when Eisenberg was investigated on conflict of interest allegations relating to the Hoffman case.

The verdict on Coffey's ability seems clear. Why then is he less than a household name in Wisconsin? Not that he's unknown—far from it. But compared to the flamboyant Don Eisenberg (or Milwaukee's Alan Eisenberg, for that matter), Coffey maintains a low profile.

The answer may be that while Coffey has a driving ego, seeing his name in 60-point type is not what fuels it. Ask him to list his favorite cases, and he'll say you never heard of most of them, because they never came to trial. Certainly not. Bill Coffey got the charges dismissed before the case made it to court.

I saw him recently in the Dane County Courthouse on a fairly minor "possession with intent to deliver" drug matter, and he seemed much the same man the *Capital Times* newspaper described as tall, suave, and articulate" more than a decade and a half ago. He said about 30 words to the judge and got what his client wanted—a signature bond.

Coffey's physical presence fits well into his overall style: sharp but understated. You wouldn't know his shirt was monogrammed unless he took off his jacket. A sharp contrast, to say the least, to the more colorful criminal attor-

neys who approach the courtroom with enough body jewelry to shame an Aztec princess (or who are known for giving television interviews while their sometime clients—somewhere off camera—are being carted off to Waupun for 30 years of state-sponsored hospitality.

"Some lawyers' view on how they can be most effective representing their clients is confrontational," explains Coffey. "I, as much as I'm able, avoid trying to be that confrontational. First of all, most of my clients are people who have already had more publicity than they need or care for. It is not in their interest to generate more attention and publicity. It is not in their interest to have me making statements in the press or to other people that may get my name in the newspaper but will not aid the case of my client.

"I think the day you're really worth your salt is the day that you convince the prosecutor not to bring charges in the first place, or where you get the charges reduced or affect the charging decision. As a trial lawyer I love trying lawsuits, and while I enjoy trying lawsuits, from the client's standpoint the best conceivable thing that can happen is to have that matter taken care of under terms acceptable to my client as quickly and efficiently as possible with as little publicity as possible. My clients do not need more publicity. It is my obligation to them to avoid generating more publicity for them."

Coffey admits that he did not always affect a low-key courtroom style.

"When Christ Seraphim used to be on the bench in misdemeanor court early in my practice, there were days when as soon as I stepped into that courtroom the confrontation would start—we'd be screaming, hollering and making comments—and they were still being made as I was walking out of the courtroom.

"On other days, in other courts, you'd get the case dismissed or you'd get the charges reduced and it's all very effective and very quiet and nobody knows you're out there. Unfortunately, a lot of people confuse screaming and hollering and aggressiveness with effectiveness. I think it's important that a lawyer be recognized as someone you can't steamroller or run over, and if you try he's smart enough to stand up and not let it happen, but I don't think you have to go around generating screaming matches to demonstrate that you have that quality."

Surprising as it may seem, Bill Coffey himself worked as a prosecutor for the U.S. government, for a little more than four years.

Born and raised in Racine, a graduate of St. Catherine's High School, Coffey spent three years in the Army and then returned to Wisconsin, graduating from UW-Madison with a degree in political science in 1959.

Growing up, he had devoured books about Earl Rogers and Clarence Darrow, so when he enrolled in the UW Law School it was with the idea of becoming a criminal defense attorney.

Few fledgling defense attorneys try lawsuits, however, and Bill Coffey very much wanted to try lawsuits. To that

end he took a job—after graduating law school in 1961—as an attorney with the United States Security and Exchange Commission in Chicago, in the stock fraud division. Two years later he signed on with the U.S. Attorney's office in Chicago as an assistant U.S. Attorney in the criminal division.

Little more than a year later, anticipating a move into private practice (and not wanting to settle in Chicago), Coffey switched to the U.S. Attorney's office in Milwaukee. On January 1, 1966, he joined the prestigious Milwaukee law firm of Shellow and Shellow; within a few months the firm's name changed to Shellow, Shellow and Coffey.

Early in his practice, it became apparent that Coffey was a liberal with a social conscience and a nose for ripe legal issues. He defended Father Groppi and *Kaleidoscope* magazine, and he sat on the first board of directors of the state public defender's office. In 1968, Coffey filed a motion challenging the constitutionality of Wisconsin's anti-marijuana law, which at the time carried a penalty of up to 10 years just for possession. Marijuana, Coffey asserted, "is not a narcotic drug and poses no danger to the public health, safety, welfare or morals of the community."

Of cases such as Groppi's, Coffey today reflects: "There wasn't a lot of compensation in any of those cases, but they were cases that appealed to me and they were cases I thought were important. I thought the people were doing things that mattered. Unfortunately, there's not a lot of that sort of legal work being done these days."

The Groppi trial is a favorite. In October 1968, Father James Groppi led a group of welfare mothers into the chambers of the Wisconsin State Legislature in Madison in protest of a plan to cut back on welfare benefits. It was a non-violent protest, but disruptive enough for Groppi to land in jail on a charge of disorderly conduct and legislative contempt. When word reached Coffey in Milwaukee, he raced (literally—he was ticketed doing 88 m.p.h. on I-94) to Groppi's aid.

The highly-publicized trial before Dane County Judge Michael Torphy lasted only a day and a half. The jury hung 11-1 for acquittal, and Torphy dismissed the charges.

"That was a well-trying case," Coffey says. "But I probably shouldn't say that's one of my greatest memories because it hung 11-1 and the woman who hung the jury was someone I was satisfied was going to be sympathetic and receptive to the defense.

"On the other hand, it turned out there was an older gentleman on the jury, a plant worker from Madison whose plant had closed, and three days after the trial he showed up in my office unannounced and asked me if I could arrange for him to meet Father Groppi because he wanted to get Father Groppi involved in helping the elderly and things like that."

When the Legislature ordered Groppi jailed on legislative contempt without due process, Coffey swung back.

"Everyone talks about the 'disgraceful conduct' allegedly engaged in by Father Groppi and his supporters," he said at the time, "But few people have expressed any indig-

nation about the illegal and disgraceful conduct of the Assembly in connection with the manner in which they secured his confinement."

Such blatant attacks on individual rights have colored Coffey's thinking—even on those cases where the principles at stake are more easily obscured, such as defending counterfeiters or accused child-molesters.

"I'm like anyone else," he says. "I have particular aversion and difficulty with certain kinds of crimes, and with certain kinds of people. Still, I have and do defend people charged with these crimes.

"I don't think there's a morality problem. I think people who have the morality problem, or raise the morality issue, don't understand the basic concept and the fundamental

principles of the administration of criminal justice. I think that's unfortunate. I'm always appalled at the general public's lack of comprehension and understanding of the theory and principle of the system. I say that, however, knowing full well that in my law school teaching of advanced criminal procedure and trial advocacy, I'm fairly often taken aback by the fact that law students don't understand the concepts and the principles.

"I think that to understand, it's important to remember that people are presumed innocent of criminal charges. That no matter how much evidence there is or isn't, no matter how heinous the crime is or isn't, a person is entitled to require the state or federal government to prove guilt beyond a reasonable doubt. If the state can prove guilt beyond a reasonable doubt with competent, probative evidence they're entitled to a convictions. If not, they're not entitled to a convictions."

Throughout the late sixties, Coffey was involved again and again in groundbreaking civil rights and liberties litigation.

When, for instance, the Shellow firm represented the editor of *Kaleidoscope* magazine, charged with obscenity in Milwaukee County for a poem that appeared in the magazine, it went all the way to the U.S. Supreme Court before Coffey's client was acquitted.

"In the book *The Brethren*," Coffey says, "that was said to be the case where the United States Supreme Court was going to say once and for all the printed word could never be obscene." The decision didn't ultimately read that way, but it nevertheless remains a Coffey favorite: an important defense on an issue that mattered.

Coffey at times appears nostalgic for those days, when the lines of battle were drawn so clearly.

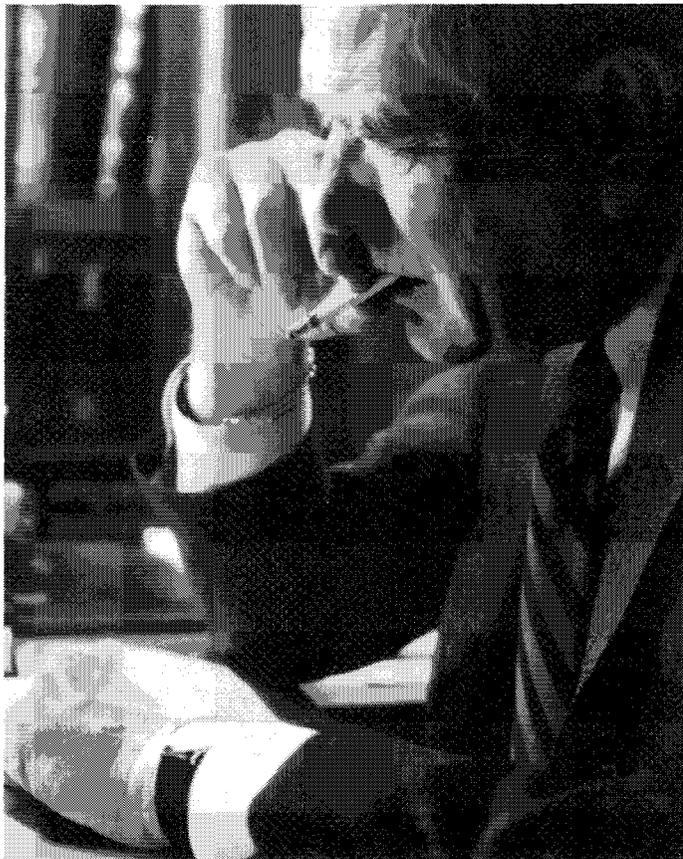
A framed picture of Father Groppi still hangs on the wall of Coffey's seventh floor offices at 1100 W. Wells St. Next to it are a *Kaleidoscope* magazine cover, a picture of a race horse (Coffey's very short career as a thoroughbred horse owner came about when a client bestowed a race horse on Coffey in lieu of a fee), and a decidedly unflattering caricature of Richard Nixon, a figure with obvious symbolic importance for Coffey.

But, as he concedes, "the practice changes over the years." Coffey left the Shellow firm late in 1969 and since that time he's been in private practice on his own with a variety of people. His firm currently is called Coffey, Coffey, and Geraghty—the other Coffey being his brother Denis, who's also highly regarded.

Coffey's practice has changed primarily because federal prosecutors (he tries mostly federal cases) today are interested in different types of crime: large-scale drug cases, white collar crime, Medicaid fraud.

"A good part of our practice is drug-related," he says.

But Coffey also continued to work closely with the state public defender's office and the UW-Madison Law School.



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He sat on the first board of directors of the public defender's office.

"The vast majority of the so-called street crime cases are handled by the public defender's office," Coffey says, "because people don't really have sufficient funds to be hiring private lawyers. People who find themselves in that kind of trouble, that is. They wouldn't be out stealing \$30 if they could afford to hire a lawyer."

For the past nine years, Coffey has worked closely with the UW Law School, teaching a class some semesters, and helping out with Professor Frank Remington's Legal Assistance to the Institutionalized program, in which law students give legal help to prisoners and mental patients.

Remington is also the UW's faculty representative to the Big 10 athletic conference, and when the Wisconsin athletic department had to hire an independent investigator as part of an NCAA probe, they chose Coffey.

But even though Coffey is less likely nowadays to mount the legal barricades as he did in the sixties, he is no less a hard-liner on the question of the rights of the accused. And he is worried that those rights have already been dangerously eroded.

"I don't think the general public is even aware of how serious the encroachment on the rights of people are," Coffey says.

"I suppose that even if they were aware they might not care."

As an example, Coffey points to recent legislation that deals with property and money belonging to a defendant. Via legislation defining a "continuing criminal enterprise," law enforcement officials may now seize all a defendant's property and money and proclaim it forfeited to the government, unless the defendant can prove it did not come to him as a result of a crime.

"It completely shifts the burden of proof," Coffey says, adding that it is only one of several encroachments.

"It's so easy for the general public to identify with the prosecutor," he continues. "It's very difficult to get people, to incite people to be concerned about high-handed tactics or questionable tactics engaged in by law enforcement officials or prosecutors because they always cloak themselves by saying they're protecting us or they're protecting people. You know, nice people don't think they do it to them and the people they do it to are considered bad and so most

people don't get very excited about it. There are a lot of questionable activities engaged in by law enforcement people."

Coffey cites the recent bugging and wiretapping operation orchestrated by the federal government in an effort to nail alleged Milwaukee mobster Frank Balistreri and several others on conspiracy and gambling charges. Coffey represented one of the defendants, Peter Picciurro, during the trial. (He was acquitted on all five counts.) Coffey says the authorities had the goods on one local bookie, but indicted several others because at least five conspirators are needed to make it a federal rap.

"That was a good example of the government overreaching to try to make a federal violation of what is clearly a violation of state law," Coffey says. "The state of Wisconsin has gambling laws. The state of Wisconsin is qualified, capable and able of enforcing these laws.

"They had one guy, and he was a bookie, clear and simple. But they take that offense, and they try to make it into a federal offense, not because the facts and circumstances of the case were so compelling, or that it was such a large scale operation, but because that was the vehicle by which they might be able to get Frank Balistreri. When you start directing offenses to get people rather than to get violations of law, you create all kinds of trouble.

"People blame the defense attorneys. They talk about 'technicalities.' They talk about 'loopholes.' Someone said a technicality is a law the speaker finds inconvenient at the moment. I believe that, and I believe the concepts and principles are valuable. I'm very distressed by what I consider to be an effort in the past 10 years to dilute those principles and not adhere to them.

"Politicians found it convenient to make law and order and crime in the streets campaign issues and everybody—by legislation and tampering with basic fundamental rights—tries to change and cure that and their cures were worse than the problems.

"I feel today for people in education, because politicians have now left crime, after screwing it up, and they're turning to education.

"If they do as bad a job as they did in the area of criminal law, we'll probably be turning out functional illiterates for the next 40 years."