

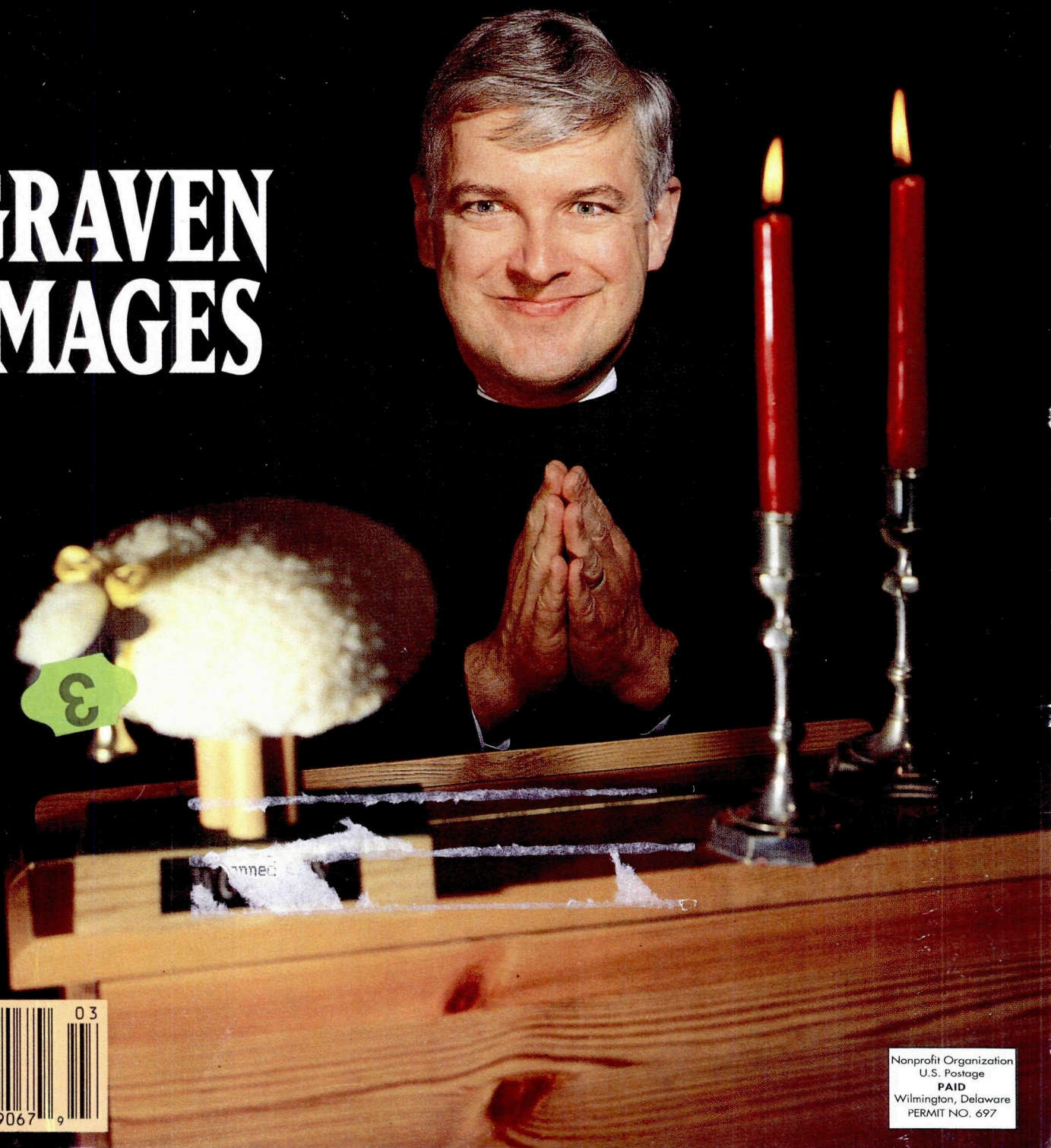
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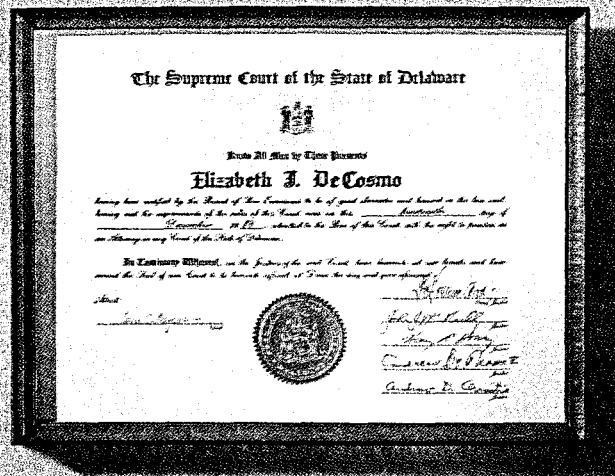
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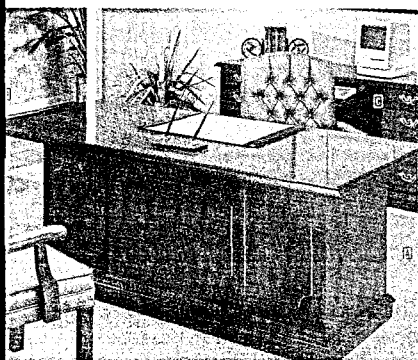
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EDITOR'S PAGE

In this issue we depart from our usual practice of printing a set of articles bearing on a single theme.

Frank Pileggi's discussion of the Rodney Inn of Court is a valued supplement to articles expressing concern over professional excellence, which appeared in the last (December 1993) issue. It also furnishes an occasion for saluting a fine Delaware judge, representative of a long tradition of excellence in Delaware jurisprudence and practice.

Karen Valihura's study of barriers to women well qualified for our profession continues a discussion begun in our September 1993 issue. It is a fascinating look at attitudes (not yet wholly extinct) so absurd and unfair as to be tragicomic. It is a welcome purgative of lingering gender stereotypes.

Carroll Poole's article about responsibility celebrates participatory democracy at a time of distressingly flabby commitment to the duties of a free people.



Roughly the second half of this issue is still another departure from our usual style and substance: we inaugurate a section devoted to the lighter side of our professional experience. And why not? Dr. Johnson once declared that "the size of a man's understanding may always be justly measured by his mirth." Since lawyers are a highly intelligent group, their wit is pungent and frequent. After all, comedy, viewed as an essentially serious business, is a healthy instrument of criticism and defiance — both good things in a free society. And was it not Voltaire who said that life is a tragedy to those who feel, and a comedy to those who *think*? We dedicate this new feature to our very thoughtful and frequently very amusing colleagues.

W.E.W.



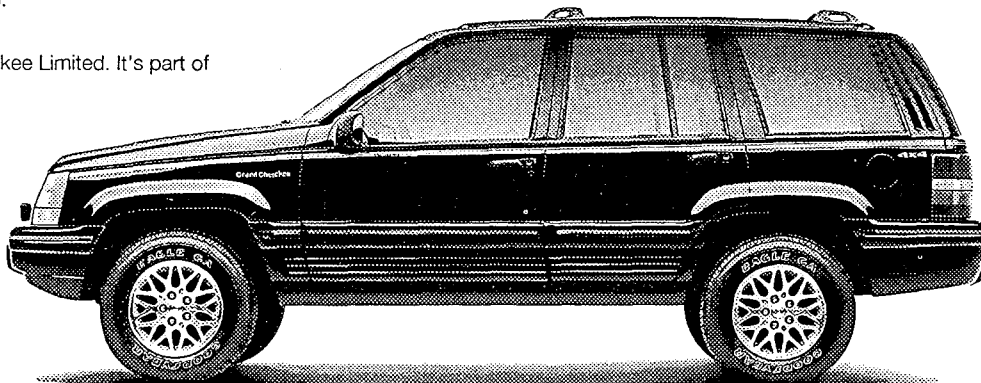
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Last September we devoted an entire issue to the status of women in the legal profession. The following article, one of the finest submitted, arrived late, indeed after the rest of the issue had already been set. We felt that it was of such merit as to call for separate inclusion in a later issue. It provides a striking illustration of how the law eventually responds to changed (and more enlightened) views, despite earlier dependence on biological nonsense and the seeming immutability of a tyrannical social structure. Ed.

There have been many pages of text and transcript devoted to answering the question of whether there are presently barriers to women's progress in the legal profession. Reasonable people often disagree as to whether illegal discrimination has occurred when considering the facts of individual cases. Reasonable judges, for example, have disagreed as to whether Nancy Ezold, who was denied a commercial litigation partnership position in a major Philadelphia law firm, was the victim of discrimination, as evidenced by the Third Circuit's recent reversal of the District Court's finding of discrimination in *Ezold v. Wolf, Block, Schor & Solis-Cohen, C.A. No. 91-1741* (3d Cir. Dec. 30, 1992), *cert. denied*, 62 U.S.L.W. 3245 (October 4, 1993).

However, one thing is certain: women in the United States were denied equal opportunity to practice law early in our nation's history. These denials were usually premised on the notion that women were not qualified to practice law since, to use the language of one judge, "[i]t would be revolting to all female sense of innocence and sanctity of sex, shocking to man's reverence for womanhood . . . that women should be permitted to mix professionally in all the nastiness of the world which finds its way into courts of justice."¹

One of the best illustrations of this antiquated attitude is Justice Bradley's concurring opinion in *Bradwell v. Illinois*, 83 U.S. (15 Wall.) 130, 139 (1872). Myra Bradwell of Chicago had applied for admission to the Illinois bar in 1869, but was refused.² The Illinois

Justice Bradley's opinion for the concurring justices reasoned that such result was mandated by "the law of the creator."⁵ As he explained:

[T]he civil law, as well as nature herself, has always recognized a wide difference in the

respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which

is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong or should belong to the family institution, is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. So firmly fixed was this sentiment in the founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband . . .⁶

Perhaps the one line in Justice Bradley's opinion which most succinctly states his views and those of the two other concurring justices is the following: "The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother."⁷

Bradwell was the first case in which the constitutionality of different treatment for men and women for access to the legal profession was challenged. *Bradwell* was followed by similar decisions. In *In re Lockwood*, 154 U.S. 116 (1894), the

Breaking Through the Barriers:

A Reflection on the Participation of Women in the American Legal Profession

by Karen L. Valihura

Supreme Court denied her application, noting that, as a married woman, she would not be bound by express or implied contracts.³ In addition, although the relevant statute did not specify whether women could practice, the Court concluded that the legislature had not contemplated their admission.

Relying on the privileges and immunities clause of the Fourteenth Amendment, Bradwell challenged the denial. On appeal to the United States Supreme Court, her lawyer, Matthew Hall Carpenter, argued that Bradwell was entitled to practice because the Fourteenth Amendment "opens to every citizen of the United States, male or female, black or white, married or single, the honorable professions as well as the servile employments of life . . ."⁴ The Court upheld the Illinois Supreme Court and rejected this argument, noting that earlier that term the Court had held that the privileges and immunities clause protected only those privileges and immunities pertaining to United States citizenship. In this case that clause was inapplicable, because Bradwell was an Illinois citizen and admission to practice in state courts was dependent upon state citizenship, not United States citizenship.

Court held that a woman admitted to the bars of the Supreme Court and the District of Columbia could be denied admission to the state bar of Virginia. In *MacKenzie v. Hare*, 239 U.S. 299, 312 (1915), the Supreme Court stated that upon marriage, man and woman "merge their identity, and give dominance to the husband." The Court there upheld a statute depriving women of United States citizenship upon their marriage to foreigners. By operation of that statute, Inez Milholland, another early pioneer in the legal profession, lost her citizenship and her license to practice law upon her marriage to a Dutch citizen.⁸

At a minimum, *Bradwell* and the cases following it reveal not only the existence of structural or legal barriers (e.g., statutory prohibitions and admission requirements), but also an underlying barrier which was impeding women's equal access to the legal profession — the public's perception of women and their "proper place" in society. Entry of women into what had been a purely male profession would have to be accompanied by a "social revolution" of sorts. Historical accounts of the early female legal pioneers reveal that women's first attempts to stand on equal footing with men in the courtroom were met with varied responses — some of which reflected an almost comical confusion as to how to deal with women lawyers. One commentator noted, for example, "The first female attorney in the United States was treated as an honorary male — she was frequently addressed in person and in seventeenth century court records as 'Gentleman

Margaret Brent.'"⁹

As women began to dismantle the structural legal barriers and gain entry to law schools, the bars of state and federal courts, and various other positions, the public's perceptions of women's "proper place" also began to change. Each "first" achieved by the early female legal pioneers contributed in some way to greater access for future generations of women.

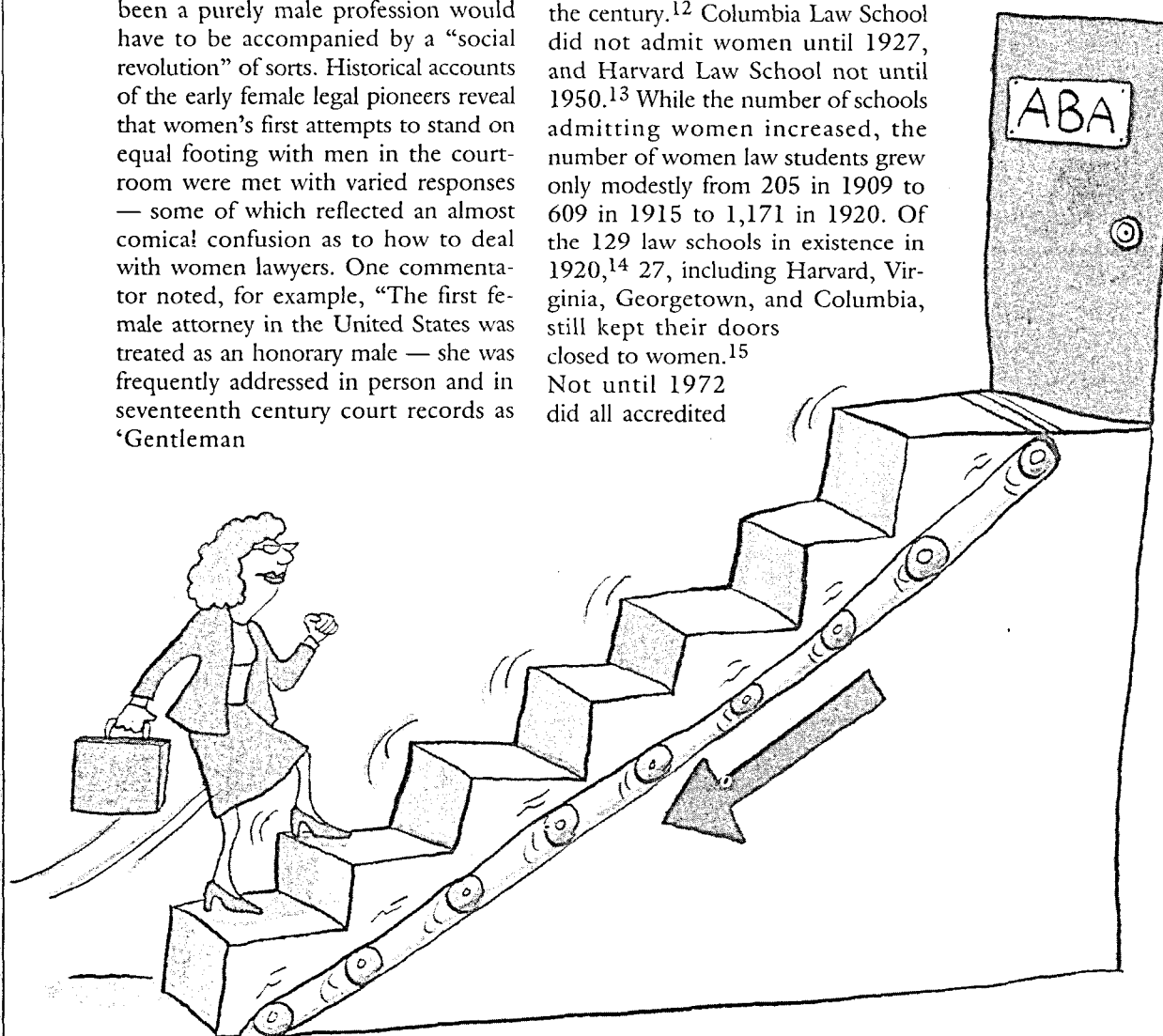
Women first began to gain admission to law schools before the turn of the century. In the 1870's, only a handful of law schools admitted women, including Union College of Law (now Northwestern), the University of Iowa, the University of Michigan, Washington University, and Boston University.¹⁰ Carrie Burnham Kilgore was the first woman to receive a law degree from the University of Pennsylvania Law School in 1883. Yale Law School admitted women in 1895.¹¹ New York University also admitted women before the turn of the century.¹² Columbia Law School did not admit women until 1927, and Harvard Law School not until 1950.¹³ While the number of schools admitting women increased, the number of women law students grew only modestly from 205 in 1909 to 609 in 1915 to 1,171 in 1920. Of the 129 law schools in existence in 1920,¹⁴ 27, including Harvard, Virginia, Georgetown, and Columbia, still kept their doors closed to women.¹⁵ Not until 1972 did all accredited

law schools admit women.¹⁶

Several pioneers also gained admission to state and federal bars before the turn of the century. In 1879, the first woman was admitted to practice before the United States Supreme Court. That woman, Belva Lockwood, "had to try three times to get a special bill passed in the Senate to change the admission requirements."¹⁷ In 1884, Ms. Lockwood ran for President, reasoning "that even though women could not vote, there was nothing to stop them from running for office."¹⁸ Remarkably, she garnered 4,149 votes. Following the Illinois Supreme Court's refusal to admit her in 1869, Myra Bradwell continued to devote her energies to publishing the *Chicago Legal News*, the first weekly law periodical in the West, which she had begun in 1868. While she never practiced law, the Illinois Supreme Court in 1890, four years before her death, undertook on its own motion to admit Bradwell to the bar.¹⁹

In 1880 there were only 200 women lawyers in the United States.²⁰ The number of women lawyers even lagged significantly behind the number of women doctors. For example, there were more women doctors practicing in Boston in 1880 than there were women in the legal profession in the entire country.²¹ In 1910 there were 558 female lawyers, representing less than 1% of the profession.²²

The 1920's, however, brought unprecedented opportunity for women as they obtained the right to vote, gained access to all state bars, and began to serve on juries.²³ The American Bar Association also opened its membership to wo-



men in the 1920's. Structural barriers everywhere began to crumble. Some authors have argued that the admission of women to all state bars rendered *Bradwell* "without contemporary effect."²⁴ While it is unquestionable that structural barriers were crumbling, the lack of progress over the next few decades indicates that the "social revolution" had far to go.

Despite the progress made in the 1920's, the low proportion of women members of the bar remained fairly constant until the 1970's. The Great Depression in the 1930's slowed the progress women had been making, although in 1934, President Roosevelt appointed Florence Ellinwood Allen to the United States Court of Appeals for the Sixth Circuit. She was the first woman to be appointed to the federal bench. The 1940's saw little progress. World War II provided little stimulus for women gaining access to the professions. While women in all occupations rose 48% between 1940 and 1944, the gain for women entering professions was only 1.2%.²⁵

With the civil rights movement in the 1960's and the accompanying national concern for equality, the "social revolution" caught fire. Title VII of the Civil Rights Act provided legal ammunition for dealing with sex discrimination. Women began to see doors opening for them. While women accounted for only 2.8% of the lawyers in 1970, the percentage rose to 10% by 1979.²⁶ In the 1970's, the Supreme Court rendered a number of decisions that significantly advanced the cause of equal treatment for women. For example, the Court struck down a federal statute that made it easier for men to claim their wives as dependents than it was for women to claim their husbands as dependents,²⁷ and a Social Security Act provision allowing widows, but not widowers, to collect survivors benefits,²⁸ to name just two of the many cases. The Supreme Court took note of the "social revolution" in one case stating that "[t]he presence of women in business, in the professions, in government and, indeed, in all walks of life where education is a desirable, if not always a necessary, antecedent is apparent and a proper subject of judicial notice."²⁹

Many state courts saw their first

women judges in the 1970's. Many of these women were extraordinary in their achievements. One example comes to mind — Judge Genevieve Blatt of Pennsylvania — a great friend and mentor who achieved recognition first in the political arena. In 1954, she won the first of her three consecutive terms as secretary of internal affairs.³⁰ She was the first woman elected to a statewide office in Pennsylvania — a big step

women lawyers.³³

The Commission reviewed numerous books, articles, state and local bar association surveys, gender bias task force reports, and statistical research concerning women in the legal profession. The Commission conducted two days of open hearings, heard oral testimony from 64 witnesses, and received written testimony from more than 70 others. A Summary Report of the hear-

"The divine ordinance. . . indicates the domestic sphere as that which properly belongs. . . to womanhood. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life."

from 1889 and 1915 when male voters in Pennsylvania rejected women's suffrage.³¹ In 1964, Judge Blatt won the Democratic primary to become Pennsylvania's first woman candidate for the United States Senate. In 1971, she was appointed to be the Commonwealth Court's first female judge.

By the 1980's, there were almost 48,000 women in law school, and women accounted for 13.8% of lawyers.³² Women continued to achieve a number of notable "firsts," including the nomination and confirmation of Sandra Day O'Connor as the first female justice to sit on the United States Supreme Court. This accomplishment is all the more remarkable in light of the fact that upon her graduation in 1952 as one of the top students at Stanford Law School, she was unable to get a job with a major law firm, other than as a legal secretary.

Since the Supreme Court rendered its opinion in *Bradwell*, women have made great strides in dismantling legal barriers and in effecting greater societal acceptance of women in the legal profession. However, in 1988, the American Bar Association's Commission on Women in the Profession concluded that women still have not fully succeeded in achieving equality in the legal profession. That Commission, chaired by Hillary Rodham Clinton, was established in 1987 to study the progress of

ings and an 800-page transcript were produced in 1988.³⁴

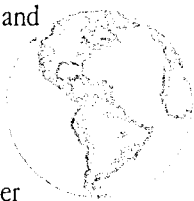
The 1988 Report, produced as a result of this effort, contains many interesting statistics and conclusions. According to the Report, in 1970 only 3% of lawyers were women; in 1988 20% of the members of the profession were women. In the 1960's only 4% of law students were women; in 1988 it was 40%. However, the Report concluded that "[e]ven though sufficient numbers of women have been practicing long enough to have made greater inroads, women remain overrepresented in the least lucrative segments of the profession: state and local government practice, public interest law and nontenure track positions in legal academia. In addition, women in private practice are not rising to partnership in appropriate numbers."³⁵ According to the Report, "time alone is unlikely to alter significantly the underrepresentation of women in law firm partnerships, judicial appointments and tenured faculty positions."³⁶

In the realm of private practice, 25% of all associates were women and 75% were men. Ninety-four percent of all partners were men while only 6% were women. Of the nation's 250 largest law firms, 33% of associates were women, but less than 8% of the partners were women. The Report states that "[w]omen have been increasing their representation among partnerships at a

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rate of only 1% a year.³⁷ While the Report acknowledges that women did not enter firms in significant numbers until the mid-1970's, it concluded that this fact does not account fully for the difference in status. For example, of all lawyers admitted to the bar between 1971 and 1979, 71% of the women and only 48% of the men were associates as of 1980.³⁸ According to the Report, "although women have comprised at least 25% of those entering law firms for the past ten years, they have not made partner at a rate proportionate to their

With the civil rights movement in the 1960's and the accompanying national concern for equality, the "social revolution" caught fire.

numbers out of law school or to their male colleagues."³⁹ The Report cited a Harvard Law School survey of the class of 1974 that revealed that ten years out of law school, of those students who entered private practice, only 23% of the women were partners, while 59% of the men were partners.⁴⁰

Similar results were encountered in examining law school faculties. The Report concluded that "[a]lthough 20% of full-time faculty positions are held by women, the majority of women law school professors are clustered in lower paying, nontenure track positions such as legal writing instructors and clinical advisors."⁴¹ In the 1986-87 school year, only 11% of tenured professors were women.

With respect to the judiciary, the Report noted that in the federal system, only 7.4% of district, circuit and U.S. Supreme Court judges were women. In fact, the Report found that "the percentage of women on the federal bench has actually declined."⁴² The numbers were even smaller in the state judiciary. As of 1986, 7.2% of state court judges were women.⁴³

In light of these and other findings, the Report concluded that "women are not rising to 'upper' levels of the profession in appropriate numbers" and that the sheer numbers of women entering the profession will not elimi-

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nate barriers to their advancement.⁴⁴ Many witnesses observe that women often reach a "glass ceiling" or a level above which they seem unable to rise. The Commission concluded that "a thorough reexamination of the attitudes and structures in the legal profession must occur."⁴⁵

Surveys conducted since the 1988 Report reveal that there is much room for improvement. A 1991 survey of the ABA itself, for example, showed that a number of sections and divisions of the ABA have had no women officers for the past three years.⁴⁶ It is notable that in its approximately 115-year history, the ABA has never had a woman president.⁴⁷ A 1990 survey showed that as of April 1, 1990, senior and active Article III judges numbered 978.⁴⁸ Of the 216 appellate judges, 198 (91.7%) were men and 18 (8.3%) were women. All 69 senior appellate judges were men. At the trial level, 702 of the 753 Article III judges were men (93.2%), whereas 61 (6.8%) were women.⁴⁹ Of the 13 appellate courts, 4 had no women. Of the 94 federal district courts, 60 had no women Article III trial judges. A 1991 survey of the 250 largest firms by the National Law Journal showed that women partners in the nation's top firms were a small minority — 11%.⁵⁰

Fewer women still have made it to the top in the corporate arena. This is especially noticeable in the area of corporate law. Although I have no statistics on point, a look at the corporate bar in Wilmington, Delaware reveals only a handful of senior female corporate attorneys. Similarly, there are few women heading the legal departments and sitting on the boards of directors of major corporations.

A March 1993 survey, as reported in *The Wall Street Journal*, reveals that "while the number of companies with female directors grew by 6.5 percent, nearly half of the Fortune 500 and Fortune 500 Service Companies still have no female directors, and the total number of women directors climbed a scant 1 percent."⁵¹ Further, *The Wall Street Journal* noted that "[m]ost companies with women on their boards have only one female director," and that only 140 companies had two women directors, 24 had three, and only two companies, Teachers Ins. & Annuity Association of America and Ogden Corporation, had more — respectively, five and four. Even these numbers may be inflat-

ed since many of the women on corporate boards serve on boards of more than one company.⁵² The overall pool of women who served on corporate boards increased by only 5 from 1992 to 1993 — from 495 to 500.

Despite these dismal statistics, women are continuing to make progress. We now have our first female United States Attorney General, Janet Reno. Also this year, Judge Judith Kaye was nominated by Governor Cuomo to be the first woman to serve as Chief Judge

Nearly half of the Fortune 500 and Fortune 500 Service Companies still have no female directors, and the total number of women directors climbed a scant 1 percent."

of the State of New York.⁵³ She was the first woman to serve on the New York Court of Appeals when Governor Cuomo named her an associate judge in 1983.⁵⁴ Barbara Mather was elected as managing partner of Pepper, Hamilton & Scheetz.⁵⁵ She is one of the only women to have the leading management role in the partnership among this country's top 100 law firms.⁵⁶

From an historical perspective, women have made great progress in attaining fuller participation in the legal profession. Where courts once legitimized barriers to the profession, they now serve as forums for challenging those barriers. United States Supreme Court opinions reflect an acceptance of the view that women are deserving of equal treatment in the legal profession. Justice Powell, for example, stated in 1984 that:

The qualities of mind, capacity to reason logically, ability to work under pressure, leadership, and the like are unrelated to race or sex. This is demonstrated by the success of women and minorities in law school, in the practice of

law, on the bench, and in positions of community, state and national leadership. Law firms — and, of course society — are the better for these changes.⁵⁷

In addition, the Supreme Court recently, in *Harris v. Forklift Systems, Inc.*, 62 U.S.L.W. 4004 (Nov. 9, 1993), has arguably made it easier for women to win sexual harassment cases by emphasizing the relevance of various factual inquiries and by holding that a showing of psychological harm, like any other relevant factor, may be taken into account, but is not required.

While the reasoning that underlay *Bradwell* has been widely denounced implicitly and explicitly by courts, many observers believe that not all vestiges of *Bradwell* have been eliminated and that women have far to go before equality at every level is achieved within the legal profession. Recognizing that articles such as this often please no one* (as one of my wise and trusted colleagues warned), I submit that it is intended to promote enhanced sensitivity to the issues raised herein. I leave it to the reader's own judgment, based on his or her knowledge and experience in the Delaware legal community, to assess the status of women in his or her own segment of the legal community.

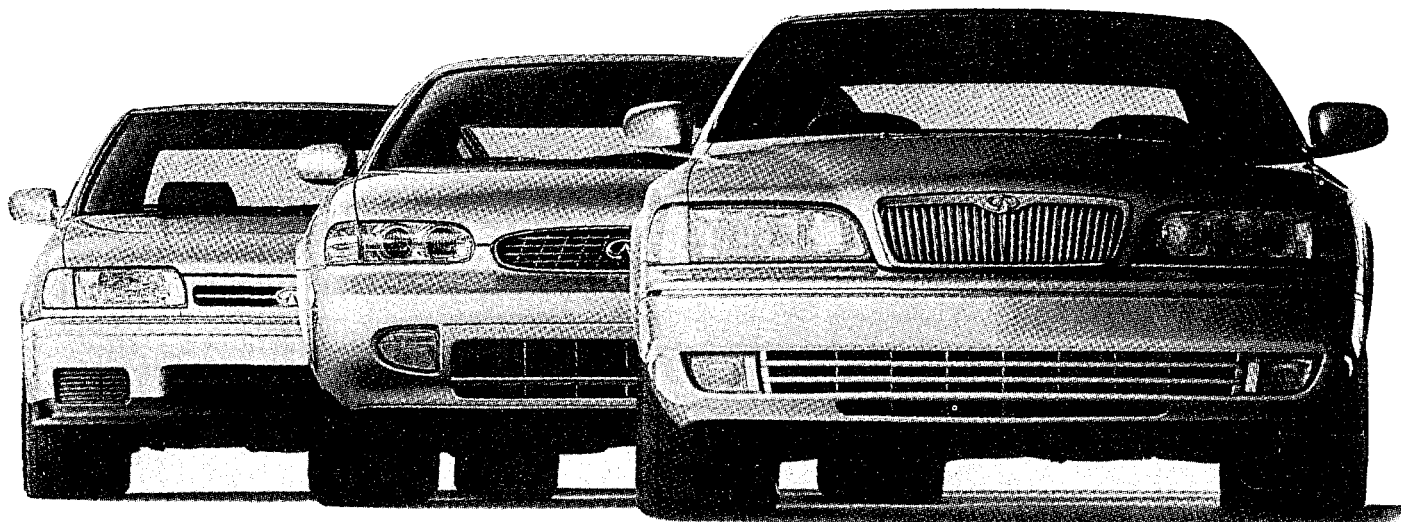
**Not so! It pleased us enormously. Ed.*

Constraints of space make it impossible to include the author's extensive footnotes, but the numbers to these footnotes appear. The full footnotes will be available upon request to the offices of this magazine.



Karen L. Valihura practices primarily in corporate and securities litigation with the law firm of Skadden, Arps, Slate, Meagher & Flom. ♦

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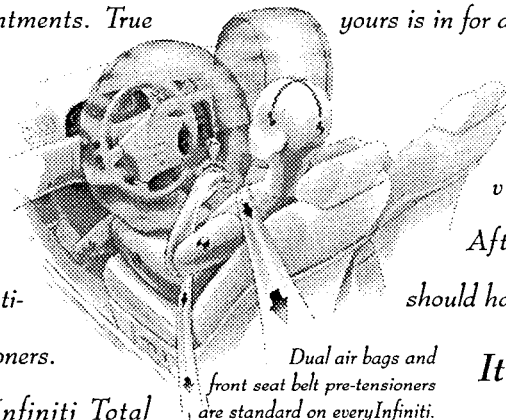
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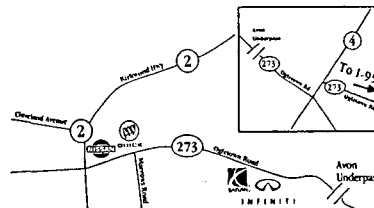
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Rodney Inn of Court: An Effort in Civility

The Delaware bar has a tradition of collegiality and good manners. This new institution aims to preserve that enviable state of affairs.

Editor's note: In our December 1993 number we explored a variety of problems confronting our fellow professionals, with considerable emphasis on their increasing exposure to public disfavor and consequent liability. Perhaps some of the articles painted an unduly bleak picture. The recent formation of Inns of Court, described below, is highly encouraging evidence of the continued pursuit of professional excellence.



The Untouchables. Left: Kent A. Jordon, right: Kevin F. Brady, two who prompted the organization of the Rodney Inn of Court.

Inns of Court are perfectly consistent with the traditional customs of collegiality and civility for which the Delaware Bar is known.

...
The idea of establishing the American Inns of Court arose about 20 years ago as an effort to adopt some of the features of the Inns of Court found in Great Britain. Former Chief Justice Warren E.

Burger was an early and ardent supporter of this effort, which he saw as a means to increase the civility and level of performance of American lawyers. In addition to his support, the American Inns of Court have enjoyed the recognition and support of the United States Judicial Conference as well as the American Bar Association Commission on Professionalism.

The first American Inn of Court was started in Provo, Utah in 1980.¹ By 1983, American Inns of Court had been formed in Hawaii, Mississippi,

New York, Salt Lake City, and Washington, D.C.² Local chapters were usually named after early leaders of the bench and bar.

In 1985, the American Inns of Court Foundation was established as a non-profit, tax-exempt corporation, at the recommendation of a committee, formed by Chief Justice Burger, of the United States Judicial Conference. That same year marked the founding of our local Rodney Inn of Court.

The statement of purpose for the American Inns of Court as set forth by the original ad hoc committee was:

1. To unite a cross-section of the bench and bar into an educational forum for the promotion of excellence, professionalism and ethics in legal advocacy;
2. To promote fellowship of the bar, the bench and students of the law;
3. To contribute to essential reforms and improvements in the training and performance of legal advocates;
4. To facilitate the transition of law students and young lawyers into the operation of our court system; and
5. To preserve, foster and adopt for contemporary use in the United States the genius and strengths of the English Inns of Court and their "joy and zest in legal advocacy as a service worthy of constant effort and learning"³

Today there are throughout the United States more than 125 Inns chartered by the American Inns of Court Foundation. In 1985, the Rodney Inn of Court in Wilmington was founded with The Honorable James L. Latchum-

of the United States District Court for the District of Delaware as its first President. The local Inn was named in honor of the late Judge Richard S. Rodney of the United States District Court for the District of Delaware, "whose example of courtesy and legal acumen remains a model for Delaware lawyers and judges".⁴ The current President of the Rodney Inn of Court is Vice Chancellor Carolyn Berger.

In 1991, the Terry-Carey Inn was formed in Dover, in honor of former Delaware Supreme Court Justice (and former Governor) Charles L. Terry, Jr. and Delaware Supreme Court Associate Justice James B. Carey. The President of the Terry-Carey Inn, Justice Randy Holland of the Delaware Supreme Court was also elected in June of 1992 to the Board of Trustees of the American Inns of Court Foundation.

At a recent joint dinner meeting of the Rodney and the Terry-Carey Inns, the Foundation's President, Professor Sherman L. Cohn of Georgetown University, presented a summary of the history and status of the American Inns of Court. Justice Henry

Horsely of the Delaware Supreme Court also used that occasion to announce publicly his impending retirement from the Court and to share his tales of earlier times at the bench and bar.

Each Inn of Court is composed of judges, lawyers, law professors, and law students, who meet periodically from September to June to help each other in the areas of advocacy skills, ethics, and professionalism. Each Inn consists of three categories of members: "Masters of the Bench — judges, experienced litigation lawyers, and law professors; Barristers — less experienced lawyers; and Pupils — third-year law

students or lawyers with two years or less of experience. The maximum numbers of members for each Inn of Court is 65".⁵

The three categories of members are then divided into groups called Pupillage Teams. Each of these teams is expected to conduct one educational demonstration for the Inn during the year.⁶ Members of the Inn also meet for dinners and other less structured gatherings designed to allow younger members of the bar to learn from older members on a more personal level. Each Inn is expected to meet approximately eight times a year, with instruc-

tional demonstrations on different aspects of trials, with critiques that follow to discuss ethical issues and other procedural problems that may arise in the course of litigation.

During the year each Pupillage Team also meets periodically to discuss some aspect of the work of the Masters of the Bench, such as meeting with a judge to observe an oral argument or other facet of a trial, and then meeting afterwards to discuss the morning's events.⁷

There are four British Inns of Court: the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn, all located in London. Although each is orga-

CONTINUITY OF EXCELLENCE

The Rodney Inn of Court is named for an outstanding Delaware jurist, Richard S. Rodney. Younger members of the bar are unacquainted with his achievements. The preceding article is a good occasion for memorializing them. At the request of the editors of DELAWARE LAWYER Judge Rodney's grandson, the Honorable Richard Rodney Cooch, a judge of the Superior Court, where his grandfather served for a quarter of a century, has given us the following account:

Richard Seymour Rodney was born October 10, 1882 in New Castle, Delaware where he resided until his death on December 22, 1963. He was descended from George Read, signer of the Declaration of Independence as well as of the United States Constitution, and from numerous early Delaware lawyers and judges. He had a lifelong love of people, history, and the law. He served for 24 years (1922-1946) as an Associate Judge of the State of Delaware and for 17 years (1946-1963) as a United States District Court Judge for the District of Delaware.

He was also involved in many aspects of town and State service. He served on the Vestry of Immanuel Church in New Castle for 57 years, was a founder of St. Andrew's School, was Mayor of New Castle for three terms, served as a Trustee of the New Castle Common for over half a century, and was President of both the New Castle Historical Society and the Historical Society of Delaware.

However, mere recitation of his judicial service and other accomplishments does not paint the complete picture of Judge Rodney. Speaking on behalf of the Delaware Bar Association, William S. Potter, Esquire said of Judge Rodney at proceedings in his memory in the Delaware Supreme Court on January 31, 1964 (269 A.2d 7):

"His quick and incisive mind, his deep human understanding, his superb sense of justice, left an enduring imprint on the product of his Court. Over and beyond these qualities were the integrity, gentleness and compassion with which he discharged his judicial duties."

Chief Judge John Biggs, Jr. of the Third Circuit Court of Appeals perhaps summed up the feelings of the Bench and Bar of Delaware when, at that same proceeding, he said:

"All departed judges belong to the past. Only a few - a very few of them - belong to posterity. Judge Rodney is one of that small group. His face, his figure, his graciousness, his generosity, his wisdom, will not be forgotten by those of us who knew him. But what of those members of our bench and bar who will follow us and who will never know him?"



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nized and operated separately, there is a coordinating council of the four. By virtue of a declaration of friendship signed on June 10, 1988 between the British and American Inns of Court, signed in the Great Hall of the Supreme Court of the United States, members of the various American Inns of Court now have formal dining privileges in any of the British Inns of Court.

The American Inns of Court have been referred to as a movement that is a "collegial renewal of a search for the attainment of the highest goals of the legal profession that began with each member's first day in law school".⁸

The local chapters of the American Inns of Court are perfectly consistent with the traditional customs of collegiality and civility for which the Delaware Bar is known. Other efforts, such as the Superior Court Trial Practice Forum spurred by Judge Vincent Bifferato, deserve special recognition for attempting to preserve and foster high standards for the practice of law, which often seem to be harder to maintain in light of the growing number of lawyers and the more frequent use of unnecessarily sharp tactics.

FOOTNOTES

1. B. Cotter, *American Inns of Court: A Renaissance in the Legal Profession*, *Federal Bar News and Journal*, June 1989 at 1 (hereinafter referred to as *Federal Bar News*).

2. *Id.*

3. *Id.* at 2

4. McKelvie, Brady and Jordan, *History of the Delaware Bar Association, Mentoring and Closely Related Organizations* at 9.

5. *Id.* See also *Federal Bar News* at 3.

6. *Id.* See also *Federal Bar News* at 3.

7. *Federal Bar News* at 3.

8. *Federal Bar News* at 3.

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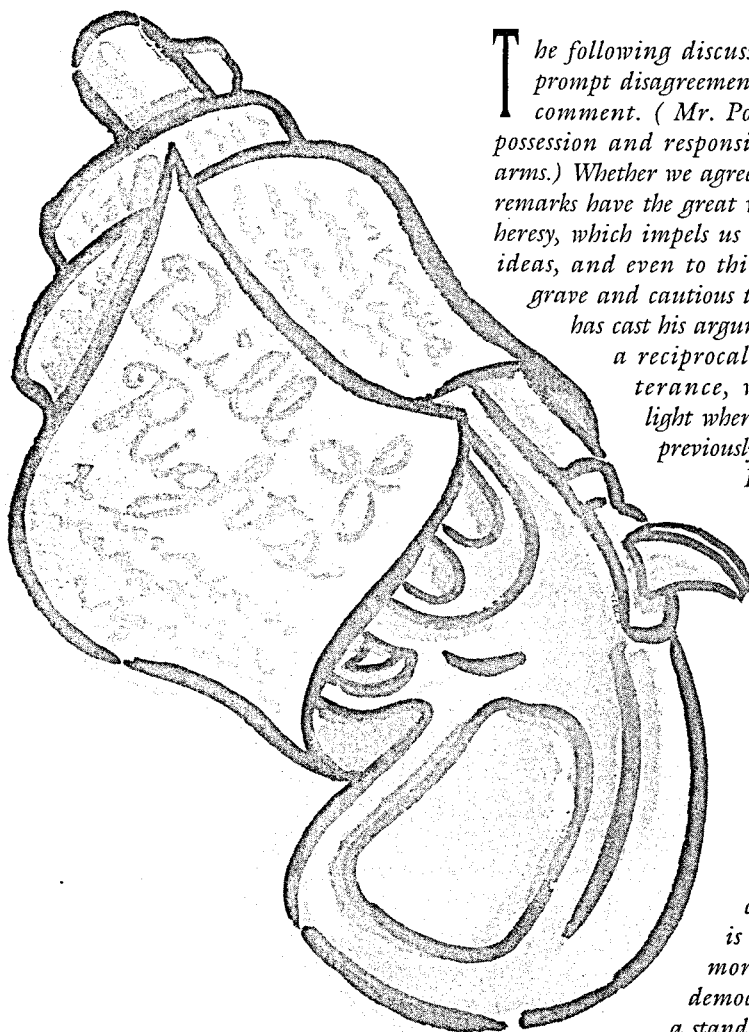
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The author, a frequent contributor to this magazine, practices law with the Wilmington firm of Pileggi, Pileggi & Pileggi.

The Bill of Rights: Reflections on Responsibility

The thought-provoking virtues of heresy — in the best American tradition.



The following discussion will surely prompt disagreement and, we hope, comment. (Mr. Poole defends the possession and responsible use of firearms.) Whether we agree or disagree, his remarks have the great virtue of secular heresy, which impels us to examine our ideas, and even to think! And if the grave and cautious tone in which he has cast his argument encourages a reciprocal sobriety of utterance, we may expect light where there has been previously mostly heat.

His argument about the burdens of responsibility is not a fashionable one — which we find stimulating! There is something faintly obscene in the craven tendency to embrace the "politically correct". Indeed, is there anything more subversive of democracy than such a standard for separating imaginary goats from all too real sheep? In a free society we all have the responsibility and the liberty to engage in the unhindered pursuit of complex truths. Accordingly, we hope this article will elicit replies, for which we shall make room in coming issues. Ed.

"A republic, if you can keep it." So answered Benjamin Franklin when, in the fall of 1787, he was asked what sort

of government the Constitutional Convention had devised for the thirteen newly independent states. From the beginning, before the Constitution was submitted to the states for ratification it was recognized that the freshly created arrangements would survive only if they received the thoughtful understanding support of the communities to which they were forwarded for approval.

In turn, the *Federalist Papers* were designed as much to inform as to persuade. These essays were published at the same time and in the same manner as were the arguments of the anti-federalists of the State of New York who were violently opposed to the ratification of the Constitution by the state convention called to consider the issue.

Upon being sworn in as president for the first time, Lincoln also sought to teach, inform, persuade. The greater part of that First Inaugural Address is a constitutional argument directed to no court, but to all the inhabitants of the United States. Close to the end of his address he said "While the people retain their virtue and vigilance, no administration, by any extreme of wickedness or folly, can very seriously injure the government in the short space of four years."

At the turn of this Century, Mr. Dooley (Finley Peter Dunne) argued that "... th' Supreme Coort follows th' illiction returns." In a similar vein, Judge Learned Hand, speaking in 1942, at the two hundred fiftieth anniversary observance of the founding of the Supreme Judicial Court of Massachusetts, said that a society from which the spirit of moderation has gone cannot be saved by any court and that a

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society in which that spirit flourished needs no court to save it. He added that in the society that evaded its responsibility by "... thrusting upon the courts the nurture of that spirit, that spirit in the end will perish." These observations, published by the Massachusetts Bar Association in 1944 illuminate the skepticism of a great judge regarding an over-reliance by any community upon the judiciary for the preservation of our Constitution, the Bill of Rights, or even our civil society in its present structure.

Consistently, from many sources for more than two hundred years the common understanding has been that courts and other civil institutions can be no more than approximate reflections of the climate of the opinions and emotions prevailing in any given era.

It follows that a heavy, continuing responsibility rests upon each succeeding generation. That responsibility takes many forms; it demands far more than the mere performance of civil duties - such as the payment of taxes - demanded by statute or other positive commandment. The moral obligations are both more complex and more important.

Candidates for public office diminish themselves, the institutions they purport to serve, and the Constitution (including the Bill of Rights) when they are intellectually dishonest in their dealings with the electorate they aspire to represent. This occurs because inevitably they are found out. We need look no further than to the dissimulation practiced by President Lyndon Johnson regarding the Vietnamese War. That deception contributed to the public distrust of all who, since that time, have offered to compete for office. In so doing it has increased the natural reluctance of many with high standards of integrity to participate in what they view as degrading conduct. To the extent that those of character and ability remove themselves from the pool of those willing to engage in public service we have weakened those mystic chords of memory to which Abraham Lincoln referred in his First Inaugural. It is not possible to transact the public business by "frantic boast and foolish word".

The spirit of moderation to which Judge Hand referred is essential to the preservation of the spirit of the Bill of Rights and is at the center of the survival of the ordered liberty we cherish. It is in moderation that we decline to run roughshod over minorities, knowing,

that, however sound our beliefs may be, they might just possibly be wrong.* This is not relativism but a recognition of human fallibility coupled with the expectation of the same forbearance when we, inevitably, are in the minority. Equally essential is the reverse, the readiness to abide by the decisions of the majority without surrendering our belief that those decisions are muddleheaded.

Another responsibility of the citizen is participation in the activities of the community. These need not be politi-

The enforcement of rights has never been easy. It has frequently involved official oppression, even death. In that cause risks intelligently undertaken are bravery, not foolhardiness.

cal. These many forms of activities are at the foundations of the support of the liberties dealt with in the Bill of Rights. The list includes membership in public interest organizations of all kinds. It also includes mounting challenges to arbitrary action of all kinds, whether committed by government, other organizations, or individuals.

The zoning protests by the Brandywine Hundred Council of Civic Associations helped to support and strengthen the Bill of Rights by forcing public authorities to focus their attention upon the wishes of a major portion of the community and to remind those authorities that their activities were being watched. It matters far less that in the most recent instances the challenges of the civic organizations were rejected. What is important is that the challenge was made and the community alerted. Moreover, it now appears that the challenge has transferred attention to a more powerful, more responsive body. Finally,

**"I beseech you, in the bowels of Christ, think it possible you may be mistaken." - Oliver Cromwell. (Good advice to those who fancy themselves "politically correct".)*

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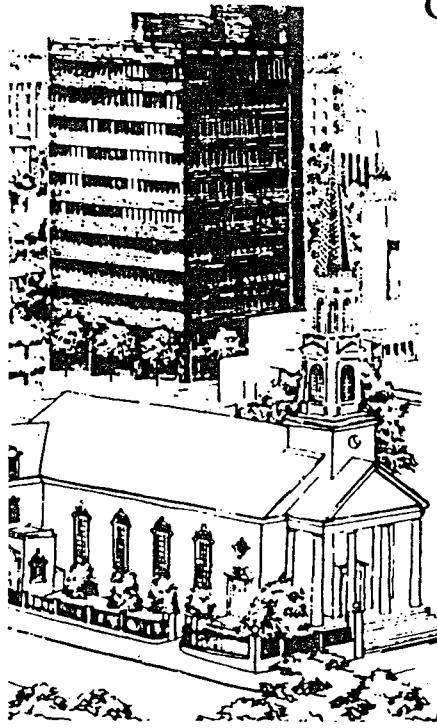
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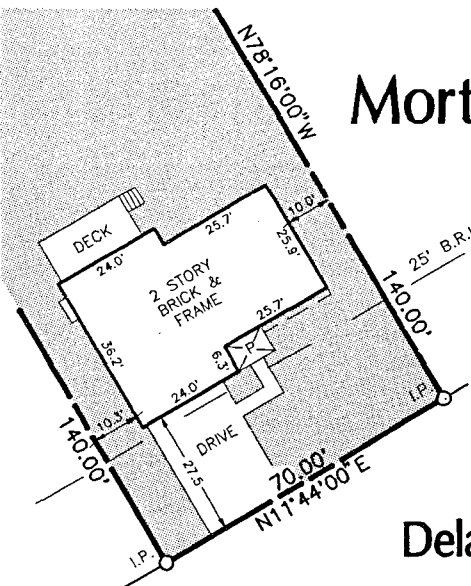
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it is a telling reminder that citizens are both able and willing to exercise their First Amendment rights to petition and protest to their representatives.

Not only by their interaction with officials do individuals enforce the rights enumerated in the first ten amendments. A few years ago a New Jersey bus driver protected the rights of his passengers by prompt and appropriate action. The Philadelphia *Inquirer* reported that an armed robber demanded that all the occupants surrender their wallets and purses to a fellow passenger who was required at gun point to collect them. Suddenly, the bus driver put on his brakes hard, throwing the robber against the dashboard at the front of the bus. Nearly simultaneously, the driver also took possession of the pistol which had been dislodged from the robber's hand. When the robber attempted to escape on foot along the highway, the bus driver shot and wounded him. The prosecutor having jurisdiction refused to charge the bus driver with an offense.

Some commentators criticized that decision on the ground that the robber had been disarmed and unable to do any more mischief, and that therefore his apprehension should have been left to the local police. The criticisms are in error. It is permissible to use whatever force is necessary to prevent the commission of a felony that threatens bodily injury to oneself or to others *and* to prevent the felon from escaping. All that is required is that the force be reasonably related to the necessity. In this instance there was no way of knowing whether the felon had another weapon; there were no police on the scene to apprehend and make an immediate arrest; there was no sure identification at hand so that a future arrest could be made with certainty.

Previous issues of this magazine presented exchanges of views regarding firearms control and the Second Amendment. Without arguing whether the Amendment permits an entirely uncontrolled ownership of firearms or whether it permits outright prohibition, there is great force in the purely policy argument that citizens ought to be allowed to own weapons for the protection of those near and dear, as well as their property. It often takes the police a substantial length of time - in some instances over an hour - to respond to felonies in actual progress. This is not normally the fault of the police; personnel are limited. Under such conditions it

is surely unlikely that one would be able to make a telephone call or otherwise alert the authorities. It does suggest the need for discretion by the potential victim. No one would argue for a wild shootout inside a residence or anywhere else. Nor is this the equivalent of vigilantism. This is not the gathering of a posse of private citizens for the purpose of searching for the perpetrators of completed criminal acts. What surer, better way of identifying a felon than holding him on the spot, by force if necessary?

Support of liberty need not be political. It includes mounting challenges to arbitrary action of all kinds, whether by government, other organizations, or individuals.

What better way of avoiding the effort, delay, and expense of search and arrest than to prevent the felon from leaving the scene of the crime, what better way of preserving evidence?

Finally, and this is crucial, action of this sort vindicates personal individual constitutional rights. It is no answer to say that such action may be dangerous. Of course it may be dangerous. The enforcement of rights has never been easy. It has frequently involved official oppression, even death. Surely there is no better cause than the protection of one's loved ones. In that cause risks intelligently undertaken are bravery, not foolhardiness.

It only remains to be said that "risks" are not necessarily physical. The moral courage required to face ostracism is often greater than mere physical bravery summoned almost without hesitation in response to moments of emergency. In either case the individual who takes a stand merits the approval of all reflective people.

Carroll Poole, a past chairman of the Board of Editors of this magazine, is a close observer of the historical process, a concern reflected in the foregoing article. He is a member of the Historical Society of Delaware, the Delmarva Ornithological Society, and Delaware Nature Society. ♦



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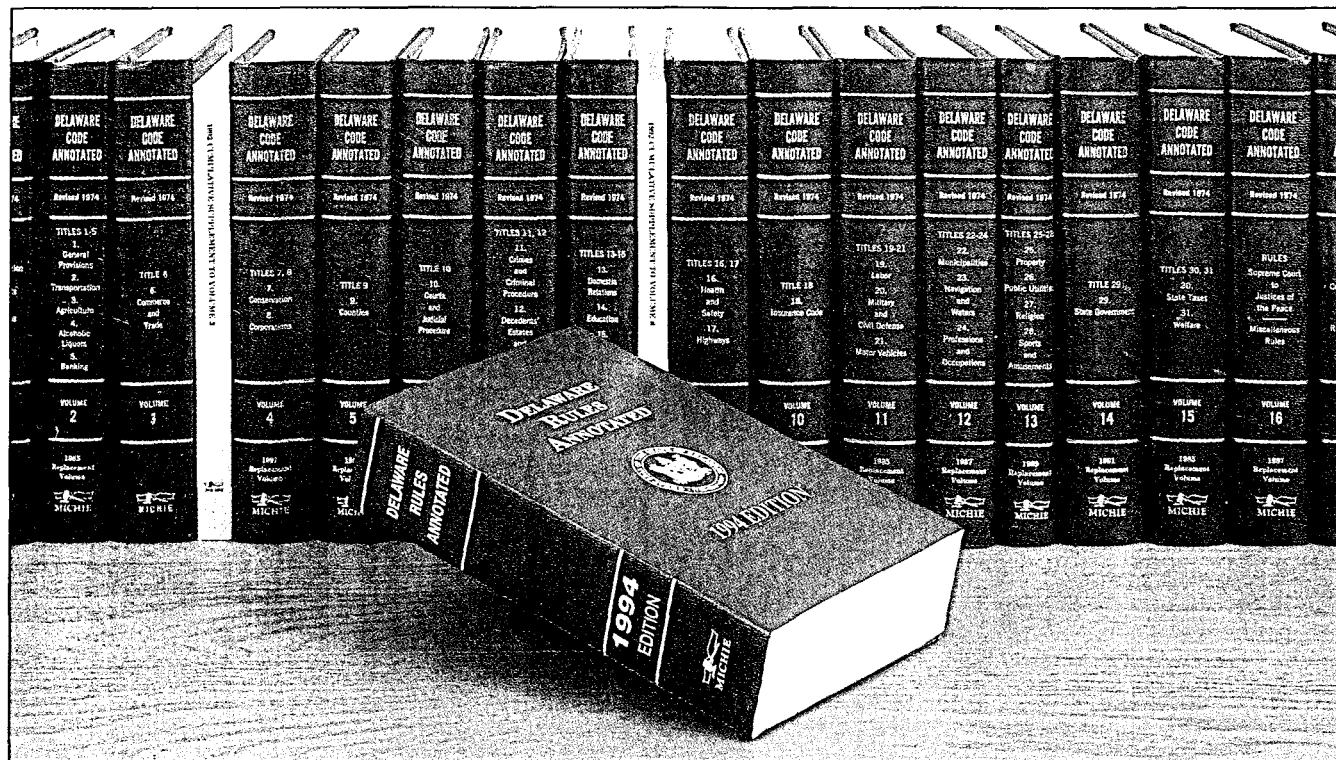
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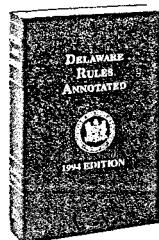
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EET/94

Governor For a Day

A lawyer's hallucinatory foray into politics. Where is that person from Porlock when we need him?



"Congratulations! I am pleased to inform you that you have just won the Governor for a Day contest sponsored by the Delaware State Bar Association."

I suppose that all of us, from time to time, have held political aspirations. After all, perhaps the highest compliment that one can be paid as a young child is to be told that, one day, you are destined to become President of the United States. But these are the nineties, an era of diminished expectations and meager rewards. In lieu of the Presidency, one is left to dream of becoming U. S. Senator, State Representative, or — God help us — a County Councilperson.*

I have had enough personal and familial experience with politics to understand what a truly grungy process it is. If you seek any elective office, you have no time to call your own. You attend countless civic association meetings, kaffeeklatsches and fundraisers. You spend an inordinate amount of time shaking the hands of people that you have never met before and will never meet again, all the while giving them your best Broadway smile and feigning a sincere interest in their lives and problems. You get up at the crack of dawn to meet the early shift at the GM plant, and you spend many forlorn hours greeting surly shoppers outside the local Pathmark. This has always daunted me, because I am not

particularly gregarious, and I am a snob to boot.

Perhaps the worst aspect of politics is the constant need to raise money. In order to run a halfway respectable campaign for dogcatcher, you need a full udder of the "mother's milk of politics." To become a Delaware State Representative these days, your "war chest" must be at least as large as the annual salary of an average Richards Layton partner. (Or so I am told.) One needs a seven-figure boodle to become U. S. Senator from even such a tiny state as Delaware, because you need to buy time on two or three major media markets. Chicken-and-peas suppers are the rule. You don't get to see your kids grow up. Such are the rotten realities of political life.

In my case, by happenstance, I devised the perfect solution: I dreamed that I was Governor of Delaware for 24 hours. This was a real, honest-to-God, wake-up-and-tell-your-wife-about-it dream that I had just the other night. In dreaming my dream, I experienced vicariously all the joys of high office and some of the attendant prestige without spending a dime. I did not have to kiss the hands of wealthy poltroons seeking assurances that their tax breaks would be preserved. I did not have to clutter one mailbox or doorstep with a "lit drop." Finally, and most satisfyingly, I did not have to ask one person for money. That being said, however, I can tell you that life as Governor is not a bowl of cherries.

I am generally a sound sleeper and do not dream often. My wife tells me that my sleeping style is a cross between a petrified log and a lawnmower (aurally as to the latter). However, when I do

* Coward! Ed.

dream, I do so in Technicolor and have a pretty fair memory of it.

Let me tell you something else about dreams: Freud is all wet. I rarely dream about sex, whether licit or not. In fact, on the few occasions that I have dreamed about speeding trains disappearing into tunnels, my sleeptime fantasies have been based on true-life misadventures involving missed Metroliners and botched closings. So, rest assured that what I am about to relate has absolutely no allegorical or psychosexual content.

In my dream, I awoke to find that I had won a contest for "Governor for a Day" sponsored by the Delaware State Bar Association. The only criteria for entry were one's status as a Delaware lawyer and a 1,000-word essay on what I would do if I got the job. I don't recall the text of my entry precisely — after all, it was a dream — but it had something to do with reimposing a usury ceiling and dredging the Mispillion River. Whatever I said, I snookered enough of the judges to squeak by. Kind of a microcosm of my whole professional career.

The process was supposed to be confidential but, as is the case with judicial candidacies, everybody has a way of finding out the names of all applicants. Even the incumbent Attorney General, perhaps seeking the right to tell constituents that he had run something more meaningful than a bunch of unruly prosecutors, tossed his hat into the ring. Twice.

As I recall, official notification came via telephone from Governor Carper himself. I had met the Governor on one previous occasion and had found him engaging, intelligent, and (rare for politicians) a good listener. For his part, the Governor seemed genuinely relieved to be relieved of his duties for twenty-four hours. The call went something like this.

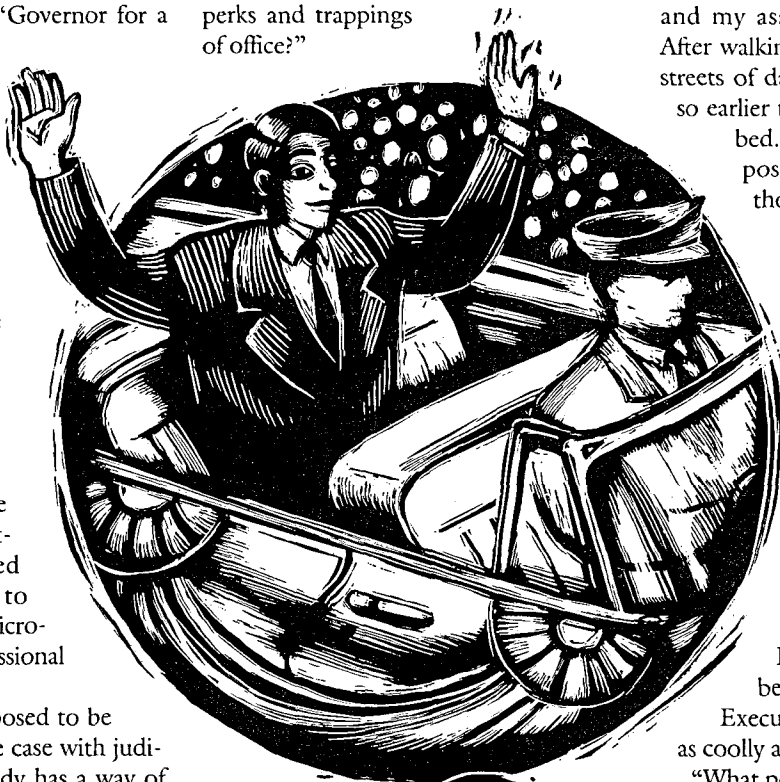
TC: "Congratulations! I am pleased to inform you that you have just won the Governor for a Day contest sponsored by the DSBA. Your day in office will be Friday, December 10, from 12:01 a.m. until 12:00 p.m. You need not report to

work at my Dover office until 8:30 a.m., but God knows what faces you in the wee hours."

VP: "Thank you, Governor. I am truly honored. Is there an orientation?"

TC: "No, experience is the best teacher. Besides that, you will have the full attention of my personal assistant, Ms. Ruth Lessley. She knows the state government inside and out, having been here in one capacity or another since Charlie Terry's day. Ruth treats all her Governors the same way: like dogs. She will greet you in Dover."

VP: "What about the perks and trappings of office?"



TC: "Don't forget, we are in the nineties now. Bonuses are out, and hardship is in. The experience should be its own reward." (Click.)

Full of excitement, I then wondered how I would possibly pass through the next four days of my humdrum existence as a mere corporate litigator before achieving absolute power.

As matters turned out, I didn't have enough time to think about it. A client called with an expedited TRO application that was duly scheduled for Thursday, the 9th, at 2:00 p.m. "Great — right after the QVC hearing," I muttered to myself. "The Chancellors

should be positively rabid." Anyway, I worked around the clock for three days, stopping only for short naps. Luckily, I still had my "first-year associate all-nighter kit": a jar of Folger's, three cartons of Winstons, two jugs of Coca Cola, and the collected works of Blue Oyster Cult.

Despite my best efforts and the strivings of my platoons of associates, we did not get the TRO, owing to the usual nit-pickings about irreparable harm. Needless to say, I returned home on the evening of December 9 in a foul mood indeed.

I managed to be civil to my family and my assorted pets during dinner. After walking our Labrador through the streets of darkest Centreville an hour or so earlier than usual, I went upstairs to bed. "The Governorship couldn't possibly be worse than this," I thought.

Oh, yes it was.

At 12:01 a.m. precisely, my telephone rang. It was State Senator Foghorn Leghorn from Maryland. "Ah say, Ah say, you *have* to call a special session about the podiatrists' bill!"

I had never heard of this guy and had half a mind to tell him to perform an impossible physical act. However, somehow remembering that my duties as Chief Executive had begun, I responded as coolly as possible.

"What podiatrists' bill?"

"The one that prohibits the private removal of corns and blisters."

"Senator, why the unseemly rush to get this legislation enacted?"

"Well, there has been a run on Doctor Scholl's products in my home district and, as you know, I am proud to represent the high-concentration of foot specialists in the State of Delaware."

"Take two Jack Daniel's and call me in the morning, Senator. I've got a big day tomorrow."

I then returned to a fitful spell of sleep, only to be interrupted at 1:15 a.m. by yet another telephone call. I picked up the receiver and said, "Is this the Ghost of Christmas Present?"

"No such luck," came a woman's voice from the other end. "Don't forget to pick up a gallon of milk and a loaf of bread on your way home from work this evening. I won't get back from New York in time to do it myself."

I wondered whether I was hallucinating. My own wife was sleeping soundly in bed next to me, and I had no idea who this caller was.

Then it dawned on me.

Martha Carper.

"Tom was lucky to find a surrogate so he could take the boys to the mall. It's just another day at the office for me, though."

"No problem," I responded groggily. "Where do you live?"

This was going to be tougher than I thought.

I managed to get through the rest of the evening without interruption and arose early enough to shower, shave, put on my best suit and drive to Dover. The day was clear and wintry, and Route 13 was as squalid and uninspiring as ever. I looked forward to the early dismissal that State employees are supposed to have on Fridays. I somehow sensed that I was supposed to park in the Governor's personal space at the State House. Indeed, I was waved right in.

As I emerged from my car, the young attendant accosted me: "Watch your car for a dollar, sir."

"This ain't North Philly, kid," I grumbled as I elbowed him into the path of an oncoming minivan. I strode into the State House as purposefully as possible in search of Ruth Lessley.

I guess I expected the royal treatment. Something like Dan Aykroyd gets in *Trading Places* when, at the beginning of the movie, he breezes into his brokerage house and brushes aside the best wishes of the sycophants, toadies, and underlings around him.

No such luck. I was immediately confronted by the formidable Ms. Lessley.

"It's going to be a busy day, Governor," she said as we blew through the door of my office. "At 8:45 a.m., you have a meeting with a representative of the podiatrists. At 9:00 a.m., you have a five-minute photo-op with a Dover Girl Scout troop. At 9:05 a.m., you meet with the leaders of the Democratic

Caucus [my pleas of Republicanism were in vain]. At 9:15 a.m., you have your first press conference."

Let me pause for a moment as to the redoubtable Ms. Lessley. Picture the Wicked Witch of the West in a business suit. Miss Gulch meets Brooks Brothers. Margaret Hamilton in pince-nez, with her hair pulled back in a bun so tight that every wrinkle on her face was re-

Now was the moment to act gubernatorial.

"What do you think this is, election day in Bear? The real governor would never accept this, and you know it." I was proud of myself.

I had obviously embarrassed Foote. He apologized profusely, explaining that he was about to hop on a plane for Houston to represent the plaintiffs' bar

**You spend an inordinate
amount of time shaking the hands
of people that you have never
met before and will never meet again,
all the while giving them your best
Broadway smile and feigning a sincere
interest in their lives and problems.**

moved. Her age was hard to fathom but, if she had served under Governor Terry, she had to be pushing 70 in low gear. She was in total command of the situation: a perfect lord-vassal relationship was about to begin. I expected that, at any minute, she would pick me up and shove me into a picnic basket. And my little dog, too.

With all the courage I could muster, I replied, "Well, let's prepare for Mr. Foote," the podiatry lobbyist. Ruth thrust Foote's CV into my hands and I scanned it briefly. Foote was the lobbyist *par excellence*. He had an impressive client list, including pipefitters, contortionists, meatcutters, and wild beavers.

At 8:45 a.m. precisely, Foote strode through the door and thrust his meaty paw into mine. I took a moment to size him up. "About a 54 portly," I thought to myself. An Elmsmere version of Sidney Greenstreet. Foote had a foot-long Havana cigar in his maw that looked like it dated from the Batista regime. "Corn pads are unconstitutional! You've got to call that special session right now, or my people will go right down the tubes." He ranted on and on for about ten more minutes until I ushered him out the door, mumbling some excuse about Girl Scouts. Foote attempted to thrust a roll of fifties into my hand as he left.

in upcoming judicial elections, and he had been one client ahead of himself. Somehow, I understood completely.

I managed to make it through the photo session with the cookie-sellers. Upon learning my true political stripes, as I anticipated, the Democratic Caucus canceled its meeting with me. That left me staring squarely into the face of my first press conference. I was terrified. However, I recalled that I had been trained as a litigator to think on my feet, to parry and thrust with the best of them. Thus, Errol Flynn-like, I entered the press room, trailed closely by Ruth. As I recall, the interview was short and sweet:

Q: "How do you find being Governor so far?"

A: "With some difficulty."

Q: "Do you see any conflict between the Coastal Zone Act and the recent Superfund amendments?"

A: "Did you say Superbowl? I like San Francisco minus the points over the Chiefs."

Q: "What do you plan to do about DelDot funding for fiscal 1994?"

A: "In my opinion, the DelDot makes the best chopped Italian antipasto in Wilmington."

Q: "How do you think the State of Delaware will be affected by the Clinton

continued on page 26

Perhaps the best way to begin this odd account is to reprint an anonymous press release issued in the late Spring of 1986.

"PRESS RELEASE

On July 18, 1985, history was made in Superior Court Judges' Chambers in the advent and presentation of a new award in the Delaware legal community. In a small, informal and slightly secretive ceremony the Honorable Vincent J. Poppiti became the first recipient of "The Woolley." The words of the award itself describe this accolade, so auspicious and so richly deserved by its inaugural recipient, Judge Poppiti:

Awarded to a member of the Delaware bar by a secret society whose members are dedicated to the proposition that the practice of law must embody scholarship, dedication, and, a fortiori, humor.

For his contribution to the profession in furtherance of the infusion of humor and whimsy into the legal profession in Delaware, the Order of the Woolleys hereby recognizes the Honorable Vincent J. Poppiti.

The Woolley itself is a rather rotund sheep mounted on a "meadow" of green felt. In the hands of the recipient it has even been known to speak. The Order of the Woolleys is an organization shrouded in secrecy, although it is suspected that it is only marginally solemn. The confidential source that furnished this account suggests that the award will be given annually; and it is expected that the Woolley, under the able guardianship of Judge Poppiti, will become a tradition of the Delaware bar which is emulated far and wide."

Well, the award *has* been given annually, always with strict preservation of the secrecy in which it was originally enshrouded. Here-with the roll of honor, or something or other.

RECIPIENTS OF THE WOOLLEY AWARD

- | | |
|------|----------------------------------|
| 1985 | The Honorable Vincent J. Poppiti |
| 1986 | William E. Wiggin, Esquire |
| 1987 | The Honorable Albert J. Stiffler |
| 1988 | The Honorable William Bush, III |

placed with exquisite delicacy directly underneath the sheep's tail, discloses that it consists of cotton - 75% and "synthetic foam" - 25%, which seems altogether fitting under the circumstances.

The secret, so well kept, is probably impenetrable. Members of this fanatic cult come in stealth, conduct their business unseen, and leave their messages-

and instructions undetected, like the Ku Klux Klansmen who eluded Sherlock Holmes in "The Five Orange Pips".

Some years ago (Oh, well, six years to be exact) Joe Emerson, writing in DELAWARE TODAY, had this to say about the Woolley!

"Little is known about the secret organization that chooses Woolleyites. But everyone in the Delaware bar seems to know who the namesake is — Victor Woolley, a member

of Delaware's brotherhood of the gavel who sat on the U.S. Court of Appeals. Woolley died in 1945, but he left behind a two-volume work. Woolley on Practice, published in 1906. For a number of years "it was probably the most important practical handbook" on how to practice law in Delaware, says Poppiti."

The tenure of a Woolley recipient is but a year. *Sic transit gloria mundi*. Most of those so distinguished have worn their honors with easy grace and dignity. Not

BAAA HUMBUG!

The Secret Society in Our Midst

Feeling sheepish? You may be in line for an award.

- | | |
|------|--------------------------------|
| 1989 | Jacob Kreshtool, Esquire |
| 1990 | The Honorable James L. Latchum |
| 1991 | Stephen E. Jenkins, Esquire |
| 1992 | Michael P. Kelly, Esquire |
| 1993 | Vernon R. Proctor, Esquire |

It borders on the miraculous that the original secrecy has been preserved by a group of men and women as garrulous as lawyers. All efforts to pierce the veil of the Woolley have come to naught.

Of a scant supply of clues perhaps the most intriguing is furnished by the icon itself. A close look reveals that it was manufactured in Taiwan. Could it be that this secret society has evolved from the Tong Wars? The consumer disclosure tag,



Heaven help us - airborne sheep!



New Castle County police, armed with search warrant, retrieve fuzzy icon.

so, unfortunately the second designee, who created a disgustingly neurotic ruckus when ordered by the New Castle County Police to surrender the sheep so that it might be presented to the 1987 winner. And that 1987 designee, the Honorable Albert Stiftel, summed up the importance and the gravity of the Woolley award with the insightful precision of an accomplished student of the law:

"It is with great pleasure that I accept *whatever this is.*"

Judge Stiftel graciously surrendered the lamb at the end of his tenure in response to this anonymous demand.

ORDER OF THE WOOLLEYS

President Judge Albert J. Stiftel
Superior Court
Public Building
Wilmington, Delaware 19801

Dear Judge Stiftel:

Alas, alack, and baaaaah humbug. Your tenure as custodian of the Woolley must end. Please arrange to be in your office at 1:30 p.m. on Wednesday, May 18, 1988 to hand over the Woolley to members of the United States Air Force, who will transport it to the 1988 recipient.

You have served the Order well.

THE WOOLLEYS

(The author of this ovine pastiche will remain appropriately anonymous.) ♦



Celebrated Delaware quadrupeds in close proximity.



Photograph by Luigi Cufetelli

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GOVERNOR

continued from page 23

health plan?"

A: "Is he finally cutting down on all that junk food?"

Q: "How do you plan to fulfill your promise to be known as the 'Environmental Governor'?"

A: "I expect to strip-mine the rolling hills of Hockessin and to resume logging in the Brandywine Conservancy."

For some reason, there were no further questions.

Ms. Lessley beamed at me, "You handled that one like a pro, Governor," she said, as the stunned reporters scurried out of the room to beat their deadlines, or perhaps to drink heavily. "That was truly a Reaganesque performance. Where did you learn to handle the press like that?"

"Oh, I blow off reporters like I blow off junior associates at my firm. Pat them on the head, give them scraps of information, make them feel good."

Ms. Lessley then resumed her previously fierce mien. "That frees up some time for you, sir. You now have ten minutes of enforced leisure."

"What the heck is that?"

She then escorted me to a courtyard behind a double door. It was as bleak a place as I had ever seen in a public edifice. Even worse than the restrooms in the Daniel L. Herrmann Courthouse.

"What am I supposed to do in here?"

"You have ten minutes to pace up and down and think great thoughts. Then you will have an hour to review and sign about 80 pieces of legislation with which you are totally unfamiliar. But beware, the fences are electrified."

Truly the Sixth Circle of Hell, I thought. Ms. Lessley locked me into the courtyard and I dutifully walked around in circles, trying to think of some great legislative initiative to propose that day. Suddenly, through the wrought-iron bars, I spied a familiar figure in corduroys and a flannel shirt. It was none other than Governor Carper! His Honor, looking like a model for L.L. Bean, cheerfully buckled his two sons into his Chevy and waved at me. "How's it going?" he asked.

"Well, I survived my first press conference!" I exclaimed, envying him his forthcoming trip to Christiana Mall and his kids' encounter with Santa Claus. Although the workday was barely two hours old, I gladly would have traded places with him in a New York minute.

Or a Georgetown second, which is the same thing.

My reveries were interrupted by the punctual return of Ms. Lessley. With a turn of her skeleton key, she released me from my gaol and escorted me back to the Governor's office for a review of legislation awaiting my signature, one way or the other.

The place was furnished as I remembered it from our earlier meeting: A sim-

**Let me pause
for a moment
as to the
redoubtable Ms.
Lessley. Picture
the Wicked Witch
of the West in a
business suit.
Miss Gulch meets
Brooks Brothers.**

ple oak desk, a sofa, an inlaid mahogany coffee table, and two comfy easy chairs. None of the more imperial accoutrements that his predecessors had owned. None of the Victorian-era prints or sculptures that suggested that you were a chump if you had not attended Oxford or could not locate Ascot on a map. (I always thought an Ascot was a tie for sissies.)

Ruth proudly pointed at the stack of legislation that I was to review. I plunged into my task, eager to sink my teeth into the heady gristle of budgets, tax reform, pollution control, and re-inventing government. Boy, was I in for a disappointment.

The first bill in the pile was a one-page item waiving the three-day waiting period for the marriage of Jim-Bob Smith and Ellie-Lou Jones of Harbeson. "When's the baby due?" I asked as I methodically signed the bill and thrust it at Ruth, who was hovering nearby. She glowered at me.

The next 79 bills were no better: technical corrections acts, the usual biennial slew of corporation law amendments, and incomprehensible measures designed to perpetuate useless regulatory commissions.

"Let's play 79 Pick-Up!" I yelled as I tossed the whole pile into the air. "I'll sign the first 40 that hit the floor and

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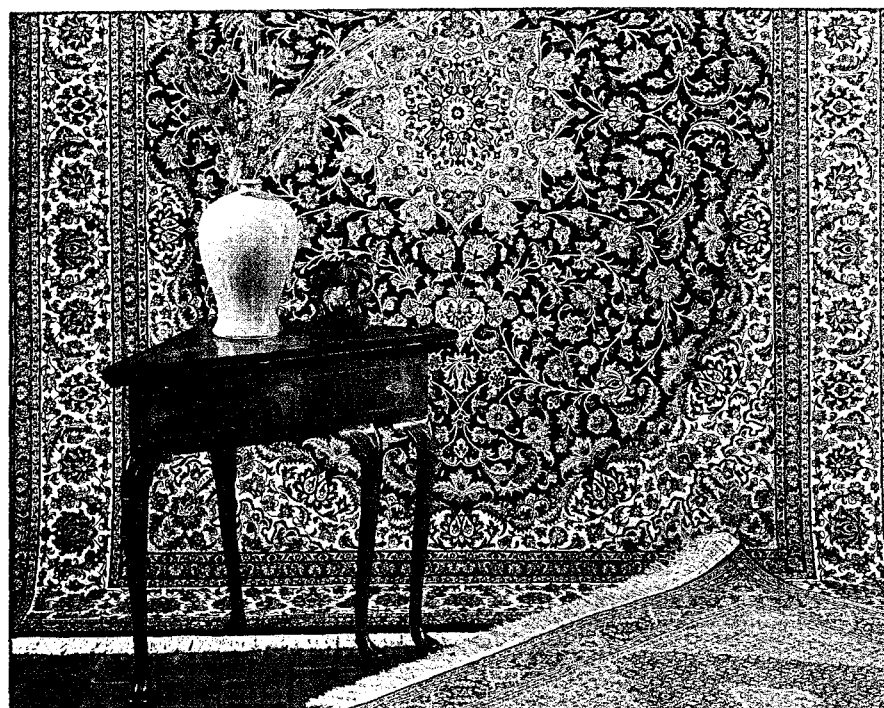
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veto the rest." And I promptly did just that, to Ruth's lasting horror. I reminded myself of the long-dead Louisiana governor who signed everything that crossed his desk, even a leaf that blew in on a cold fall day.

Now that I was through exercising my executive prerogatives for the day, I asked Ruth whether there were any judicial appointments to fill. A subject dear to my patronage-oriented heart and my devious legal mind.

"There sure are," she replied. "Three on the Superior Court and three on the Court of Chancery. But you've obviously forgotten the lawsuit."

"What lawsuit?" Ever the fully informed public servant.

"The one that the Libertarians filed in Superior Court alleging that the judicial selection process under the State Constitution violated their Federal Constitutional rights. The suit was filed three years ago, and it hasn't moved an inch because all sitting Delaware judges had to recuse themselves."

I was shattered. My one chance to wreak havoc upon the State judicial system had been thwarted by the Delaware version of *Jarndyce v. Jarndyce*.

Ruth nevertheless had other plans for my first afternoon in office.

"We'd better hurry, or you'll be late for your first State funeral," said my relentless mentor as she shoved me down the hall toward the elevator.

"Who died?" I asked innocently.

"Representative Beau Klanklavern of Slaughter Beach," she replied. "He was kind of a redneck, but he was revered in his District. His shenanigans are still legendary down there. Once, he was reported to have won his election by a vote of 20,000 to 15. However, there were only 75 people in his District. To make sure of the result, he counted all the dead horseshoe crabs."

My sojourn to Slaughter Beach ate up most of the afternoon. In the tiny funeral chapel, to keep up appearances, I thought all the somber thoughts that I could. The *Hindenburg*. The Great Depression. Bhopal. Morris. Nichols. I don't remember a jot about the service, although I learned that Beau had met his end joyfully in the exclusive Slaughter Beach red-light district after a day of gorging himself at Sambo's. I never met the downstate equivalent of Megan Marshack.

On the way back to Dover in my chauffeur-driven Chevette, I asked Ms. Lessley what else lay in store for me that day. For sheer excitement, this experi-

ence sure creamed Boys' State.

"Well, you are through for the day. However, you do have that official function this evening at the Hotel duPont for the Kalmar Nyckel group."

Oh, great. I'd have to race home, turn on my fuzzbuster, and squeeze into my tux. Then I'd have to persuade my wife — cranky after a lack of sleep from a night on call — to go to the dank Gold Ballroom to spend the evening with a bunch of Swedes. What could I talk

Technical corrections acts, the usual biennial slew of corporation law amendments, and incomprehensible measures designed to perpetuate useless regulatory commissions.

about? Bergman movies? Socialism? Inger Stevens? This Governor stuff was getting a bit tiresome after all.

All of a sudden, the car phone rang. (It must have been the only '78 Chevette in the world with a car phone.) "Guv, this is Martha. Just reminding you not to forget the moo juice."

I awoke with a start to find my wife preparing for another long day at the hospital. I gave her the *Reader's Digest Condensed* version of the preceding 3,000 words, to which she responded with an epithet to the effect that politics was a dirty business.

That morning, as I drove to work, I vowed to rededicate myself to the law, as Dick Kirk had urged. My subconscious nocturnal adventure was as close as I would ever come to the flat silver at Woodburn.

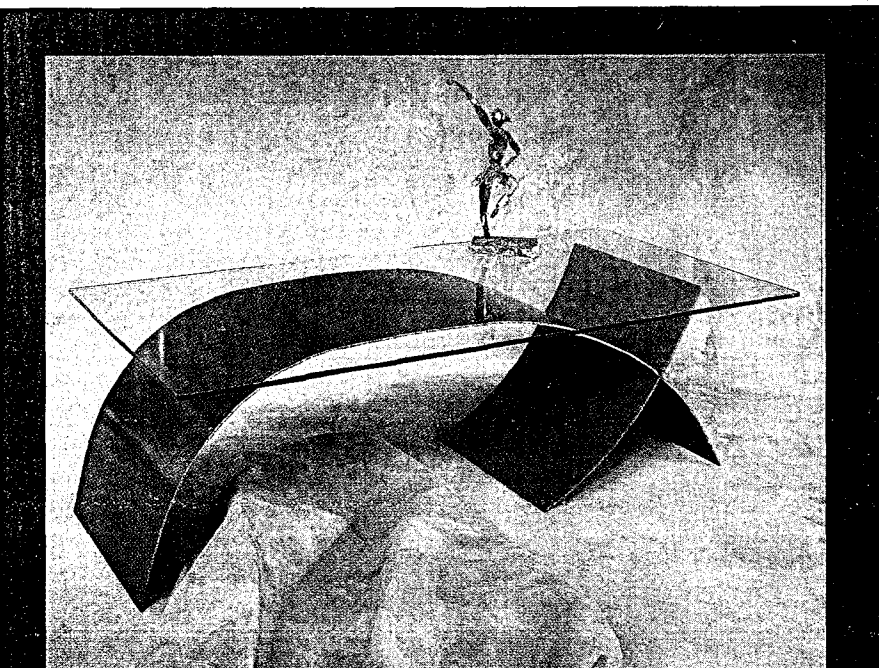
Vernon Proctor, an editor of this magazine, practices corporate law with the firm of Bayard, Handelman & Murdoch. He polished his editorial skills at the helm of our friendly rival, the Bar Association monthly, In Re, before ascending to the more rarified literary atmosphere of DELAWARE LAWYER. ♦



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CASHINBANKA

continued from page 32

that keeps picture of Chuck Colson in his locker at the fitness club. Would sell his grandmother up the Hudson for a piece of inside information.

Introduction (Voice-Over)

With the advent of the takeover battles of the 1990's, all sharp eyes turned to Wilmington, Delaware. To get there, with hopes of gaining admission to the private Supreme Court hearings that decide the fates of dozen of corporations and millions of hapless employees, speculators and lawyers took the tortuous roundabout trail that leads through the tiny town of Cashinbanka. People travel from Holland by boat, train, or on foot across the Sea of Veezie, through the Swamps of Drumor, over the Jowalsh Mountains, or across the Plains of Horsie. Once there, through money or influence or luck, they all hope to obtain the precious tickets that will admit them to the closed-door proceedings. The lucky few who obtain them can leave for Wilmington on the evening pack boat. Those who fail must sit in Cashinbanka and wait ... and wait ... and wait.

Cut to functionary at teletype

machine: Two couriers from a Wall Street firm carrying official Supreme Court tickets for QVC-Viacom were mugged just outside of Cashinbanka. There is an all-points bulletin out for recovery of the tickets. The heck with the two bozos.

At security checkpoints across the state, armed guards stop suspicious characters at every metal detector and demand to see their papers.

Scene switches to Dick's Cafe Arbitrage. Juste-Sayneau, the sniveling little police chief, escorts Major Stressout into Dick's from a waiting taxicab. "In this town, everybody comes to Dick's. There's nowhere else to go for a pop."

The decor at Dick's is, to say the least, eclectic, as is the architecture. Flying buttresses merge with open skylights. Doric and Ionic columns overlap haphazardly. Gargoyles glower. The tables are modern, with glass tops. A Chia Pet in full bloom sits at the center of each table. The place is mobbed like Air Transport Command on a Saturday night.

Cameras turn to Dick Gaine, who sits at a table playing chess against himself while drinking Cold Duck out of a fluted glass and puffing on a Tareyton. Gaine is dressed in a dinner jacket that looks like it has been whitewashed onto him (but starting to peel).

As Dick is about to move his bishop to queen four, his reverie is interrupted by the arrival of the sinister Ulotti.

Ulotti: I take it you've heard about the two couriers from Dewey Beatts Truman?

Dick: Sure. Yesterday, they were just a couple of messengers. Today, they're statistics.

Ulotti: Think of all the poor devils who can't get tickets to the QVC-Paramount argument next week. Hundreds of them are hanging around. They can't meet Juste-Sayneau's price, but maybe I can help them.

Dick: I bet you've got the ducats, don't you? Let's be frank, Ulotti: You'd run over your own dog to get the last copy of the TRO opinion out of the Register in Chancery.

Ulotti: I see you finally respect my talents. I have here two tickets signed personally by Steve Taylor himself. They can't be rescinded, or even questioned. Will you keep them for a few moments? I have to go outside and stow my portable phone.

At this point, Sham, the house musician, starts to play "Hey, Jude." Sham is a Sixties leftover who looks like Sonny Bono on a bad hair day.

Enter a shadowy, gaunt figure in a fez.

Dick: Ah, Monsieur Bowski!

Bowski: Dick, I'd like to buy the Cafe Arbitrage. Just name your price. There's so much information flying around here, it's like a confessional without walls!

Dick: No sale. The place isn't much, but it sure beats the practice of law. However, I will entertain an offer for a broken-down piano player.

Sham dives into "Brown Sugar."

Bowski: No can do. I was going to auction off Sham to pay the debt that I require to pick up your bar. Maybe next year.

Ulotti runs madly through Cafe, hotly pursued by several gendarmes.

Ulotti: Dick! You must help me. They want to haul me before the Board on Professional Responsibility. You've got to help me, Dick

Dick: I stick my neck out for nobody.

Juste-Sayneau enters cafe. He and Dick find a table encumbered by a massive Chia turtle and a six-pack of Molson's. Sham launches into "Dream Weaver."

A plaintiff's lawyer walks by in earnest conversation with another lawyer, who looks frustrated.

Juste-Sayneau: If he gets a word in, it'll be a major defense victory. So tell me, Dick, why did you come to



Cashinbanka?

Dick: My wealth — I came for the lotto.

Juste-Sayneau: What lotto? We're in the middle of the bible belt.

Dick: I was misinformed.

Juste-Sayneau: Dick, be on your guard. Victor Laylow is prowling about, looking for a pair of tickets to the QVC argument next week. He's led a charmed life. Why, he's gotten tickets for every major hearing for the past ten years! He always uses the same MO: he struts up to counsel table after the argument on behalf of some white knight or another. Totally redoes the deals. He's always managed to pull it off, too, until now. This is the end of the road for Mr. Laylow. He won't get into that Paramount hearing.

Dick: Twenty thousand bucks says you're wrong.

Juste-Sayneau: What do you think this is, Kent County? Make it ten — I'm just a poor, corrupt official. But seriously, Dick, there must be no tickets for Laylow.

Dick: I told you, I stick my neck out for nobody.

Juste-Sayneau: Well, Dick, you're enough of a sentimentalist to be a security risk. I've done a background check on you. In 1985, you ran microphones into a closed trade secrets hearing in District Court. In 1986, you actually took a derivative suit on the plaintiff's side.

Dick: But I was well paid on both occasions.

Major Stressout arrives, accompanied by a brigade of fawning associates.

Juste-Sayneau: Ah, Major Stressout! Have you met Mr. Gaine?

Stressout: Mr. Gaine, your reputation and your resume precede you. Tell me again, what is your specialty?

Dick: I'm an unemployed associate.

Juste-Sayneau: That makes Dick a citizen of the world!

Stressout: I presume you've heard about my firm, Dewey Beatts Truman. We're the fastest growing firm in the world. We've taken over the entire legal practice in Japan, Hong Kong, and Malaysia. Just last month, we penetrated Wilmington.

Dick: Well, there are certain parts of the Delaware bar that I wouldn't advise you to invade.

Stressout: Mr. Gaine, I think you know why we are here. Victor Laylow has slipped through our clutches at least

three times in the past three years. Stealing clients from us after sneaking into Supreme Court arguments. I've been sent down to make sure that doesn't happen again.

Laylow and Loot arrive and sashay over to a table with a Chia bull.

Victor: Thunderbird for me, please, and a Blue Nun for the lady.

Elsa: Class all the way, Vic!

Stressout spots the fugitive couple and storms over.

Dick and Elsa see each other. Sparks fly, but his associate takes the train. Their eyes lock, but not their lips. After all, this is the '90s.

Elsa: Do you remember the last time we saw each other?

Dick (pulling up piano stool to the table, dumping Sham to the floor): Yes, at the Second Circuit in New York. The judges wore gray, you wore blue. Luigi, I'll have a Perrier with Ms. Loot.

Juste-Sayneau: Ah, a precedent is

The decor at Dick's is eclectic, as is the architecture. Flying buttresses merge with open skylights. Doric and Ionic columns overlap haphazardly. Gargoyles glower. The tables are modern. A Chia Pet in full bloom sits at the center of each. The place is mobbed like Air Transport Command on a Saturday night.

Stressout: Mr. Laylow, welcome to Cashinbanka. I expect that you and your moll are looking for a fast ticket out of here.

Victor: Stressout, I haven't seen you since you tried to trip me in the aisle at the Time-Warner hearing. Ms. Loot and I are here on some private business.

Stressout (serving papers): Please be so kind as to show up at the Clerk's office at 10:00 a.m. tomorrow morning. I have a motion for a rule to show cause why you should not be kept here indefinitely. *Goose-steps off the stage.*

Victor: This time they really mean to stop me.

Elsa: Oh, buck up, Vic, and have another 'Bird.

Elsa and Sham spot each other, and Sham starts to sweat profusely.

Elsa: Sham, you old droog! How 'bout playing some of the old songs?

Sham: I don't know anything before 1990, Ms. Elsa.

Elsa: You used to be a much better liar, Sham.

Sham: I was in rehab then.

Elsa: Play it, Sham. Play 'In-a-Gadda-da-Vida.' I'll hum it for you. Dum dum da da da dum dum dum dum ...

Sham looks at her quizzically, then bangs out the first few chords.

Dick (approaching rapidly): Sham, are you out of 'ludes? How many times have I told you not to play ...

being broken!

Victor (sidling up to table): Elsa, we've got an appointment tomorrow. We'd better head back to the hotel for a glass of warm milk and a good night's sleep.

Elsa rolls her eyes and sighs. With a shrug, she accompanies him out of the bar.

Fade out ...

Dick sits alone at bar, nursing a ginger ale and moping.

Sham: Boss, you gonna hit the hay?

Dick: No

Sham: You planning to seek the horizontal in the near future?

Dick: No, Sham, go find yourself an open pharmacy.

Sham staggers back to piano and starts playing "Smoke Gets in Your Eyes." Upon receipt of angry stare from Dick, Sham changes tune to "Scarborough Fair."

Dick (waxing philosophical): If it's March '94 in Cashinbanka, what time is it in New York? The arbs are asleep. They're probably asleep all across America...(places head into hands). Of all the fern bars in all the towns in all the world, she waddles into mine.

Cut to flashback - curtain.

END OF ACT I

How will it all turn out? Watch for Act II in our September Issue! (If Warner Brothers doesn't get an injunction.) ♦

CASHINBANKA

by Sir Reginald Humphrey-Bogus

Explanatory note: in the back room of a disbanded Wall Street law firm, at the bottom of a battered litigation bag, one of our stringers discovered this faux-Brit treatment for Acts I and II of a screenplay that seemed suspiciously familiar. We can't quite put our fingers on it, but the document has an aura of

purloined greatness. You be the judges of its authenticity. Ed.

Cast of Characters

Dick Gaine: Fortyish, worldly-wise, former corporate attorney. Graduate of second-tier law school on East Coast. Like 90% of his colleagues, hated practice of law, so decided to open a saloon in a sleepy backwater. Chain smoker who drinks more than he should. Morally flaccid and intellectually bankrupt.

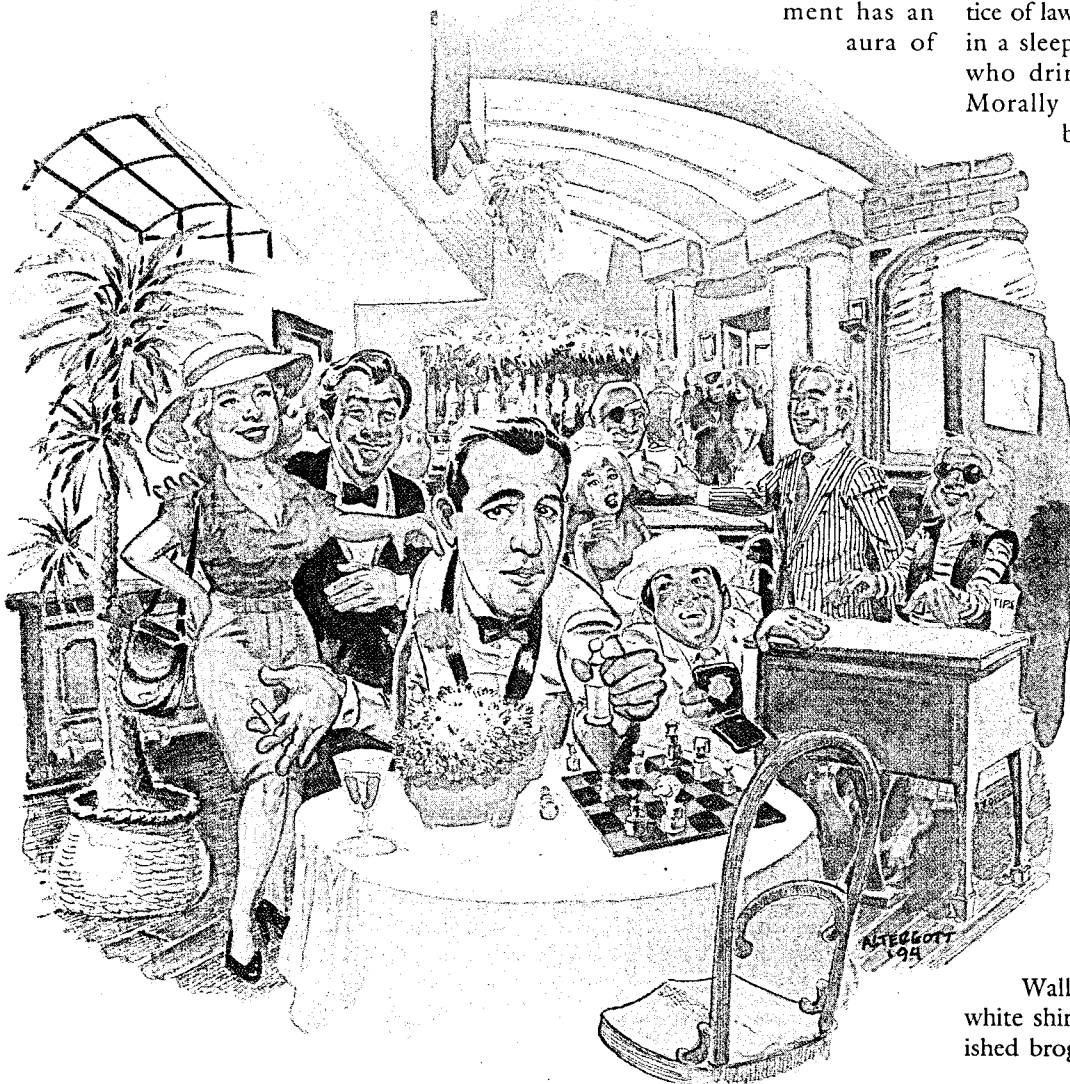
Elsa Loot: Gaine's old flame. Accent is vaguely Eastern European. Finished in top quarter of class at Hell's Kitchen Law School. A tough señora who knows how to get what she wants. Once had impressive physical charms but could now use 10-day freebie at Jenny Craig's. For that matter, so could Gaine.

Henri Juste-Sayneau: Small-town police chief with penchant for bad puns and unrequited flirtations. A Frenchified fop with a greasy palm.

Victor Laylow: Epicene prig with rich baritone voice. Lofty business ethics with reputation for saving overleveraged deals. A hit on the European canasta circuit. For some reason, women love this guy.

Major Stressout: Type-A Wall Street lawyer with starched white shirt, matching braces, and polished brogues. Up-tight Teutonic type

continued on page 30



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Clock courtesy of Hagley Museum and Library.

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