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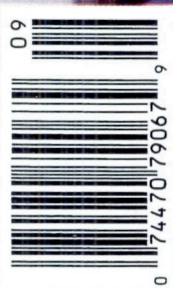
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LAWYER LIFESTYLES



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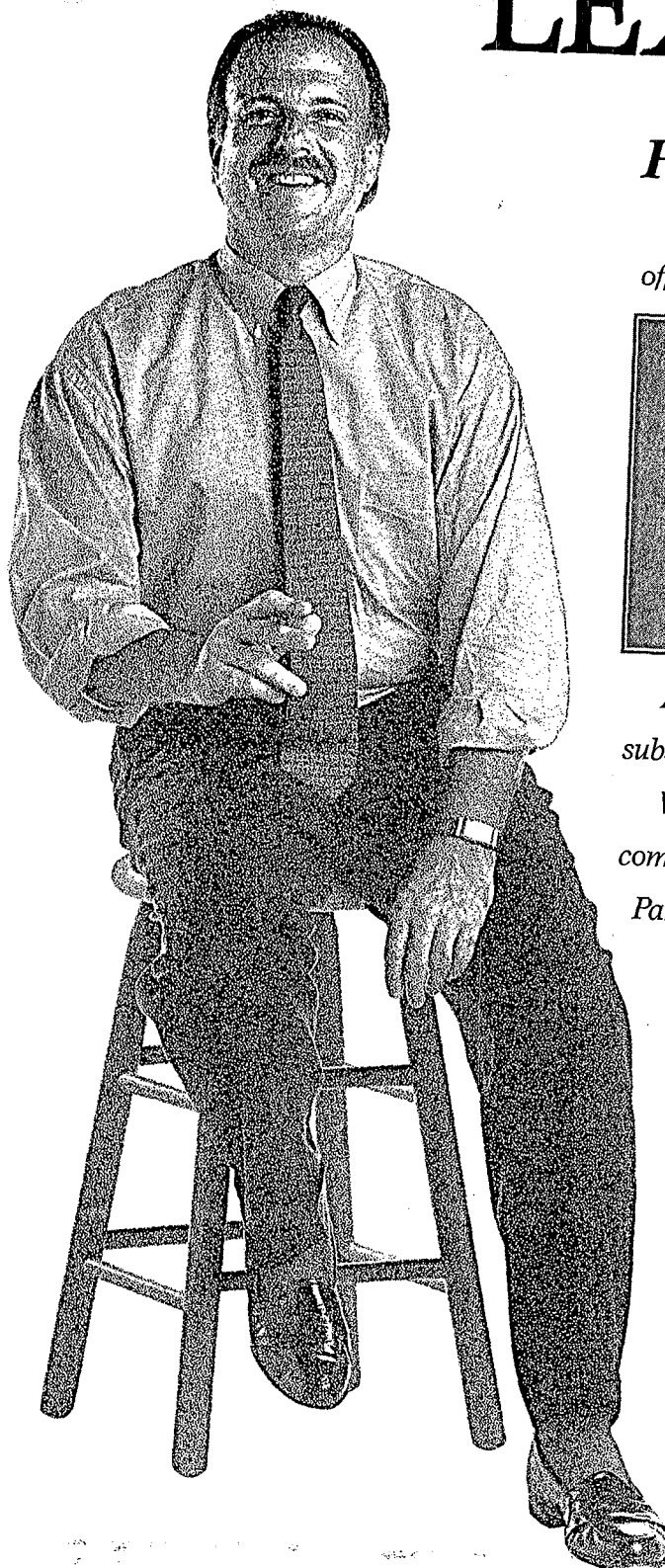
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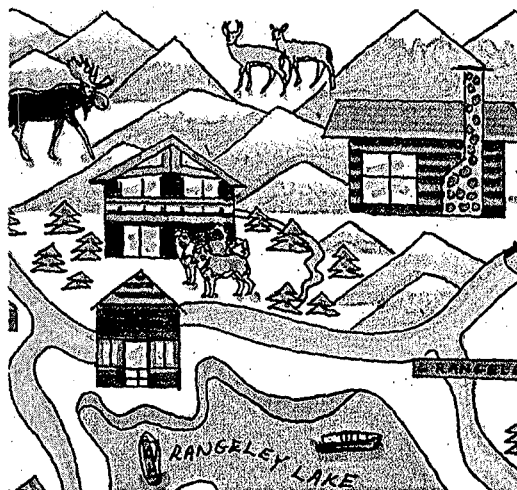
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SPLINTERS FROM THE CHAIR

by Vernon R. Proctor

A lawyer's life, like Gaul, is divided into three parts: our blissful, pre-legal days; the grueling years of earning a living as a practicing attorney; and, finally, the relative peace and quiet of retirement. In this issue, we offer a representative sampling of the experiences of a number of our colleagues in each of these "life segments." We hope and believe that you will be impressed by the broad range of activities in which your fellow Delaware lawyers are, and have been, engaged. We hope and expect that a "Lawyer Lifestyle" column will become a regular feature of this magazine.

Limited available column-inches preclude me from sufficiently praising Karen Pascale for the terrific job she did as issue editor. Karen's indefatigable work habits, her smooth writing style and her contagious enthusiasm made her a joy to work with. Hardly a day passed during June when I did not receive a sheaf of correspondence between Karen and the contributors to this issue. Congratulations on a job well done!

I commend to all of you Judge Stapleton's thoughtful analysis of the problems facing our Federal court system as we approach the millennium. As always, Judge Stapleton's prose is lucid, and his proposed solutions merit close consideration. We hope that members of

the Delaware bench will always feel free to express their views in *Delaware Lawyer* with respect to such public affairs issues.

Finally, I was gratified by the overwhelmingly positive response from the people from whom articles were solicited. We even received commitments for future contributions from several individuals who, for various reasons, did not have the time to prepare a piece for this issue. Gene Maurer's concise articulation of the problems with DNA typing was an added bonus. Your Board of Editors hopes that this "gung-ho" willingness to write will carry over to future, substantive issues.

Vernon R. Proctor

LAWYER LIFESTYLES: BEFORE, DURING AND AFTER

by Karen L. Pascale

From the vantage point of the average reader of *Delaware Lawyer* — in the thick of his or her legal career — the concept of "being a lawyer" can easily subsume one's identity and self-image. Most of us are thoroughly immersed in our struggles at the legal battlefield, with its onslaught of motions, briefs, arguments, depositions, trials, contracts, negotiations, plea bargains, deals and corporate power struggles. It is easy to forget that the practice of law is but one point on the arc of an entire life, and that it should be but one facet of a well-rounded existence.

In this self-described "Lawyer Lifestyles" issue, we have tried to shift our definition of "lifestyle" away from a "Robin Leach" sensibility that highlights a few sterile examples of conspicuous consumption among the rich and famous. Instead, we have aimed to foster a greater understanding of the private motivations and aspirations that shape our characters and influence the way we practice law.

Although the concept of this issue is

clearly light-hearted in nature, the many wonderful contributors unwittingly illustrate several important life lessons. For example:

Jaya Gokhalé, born and raised in India, recounts the journey that

**We have aimed
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and aspirations
that shape our
characters and
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we practice law.**

led her to question the very foundations of justice in Hindu society. While uniquely dramatic in its context, her experience will recall for many of us the process by which we made the intellectual shift to the study of law and the

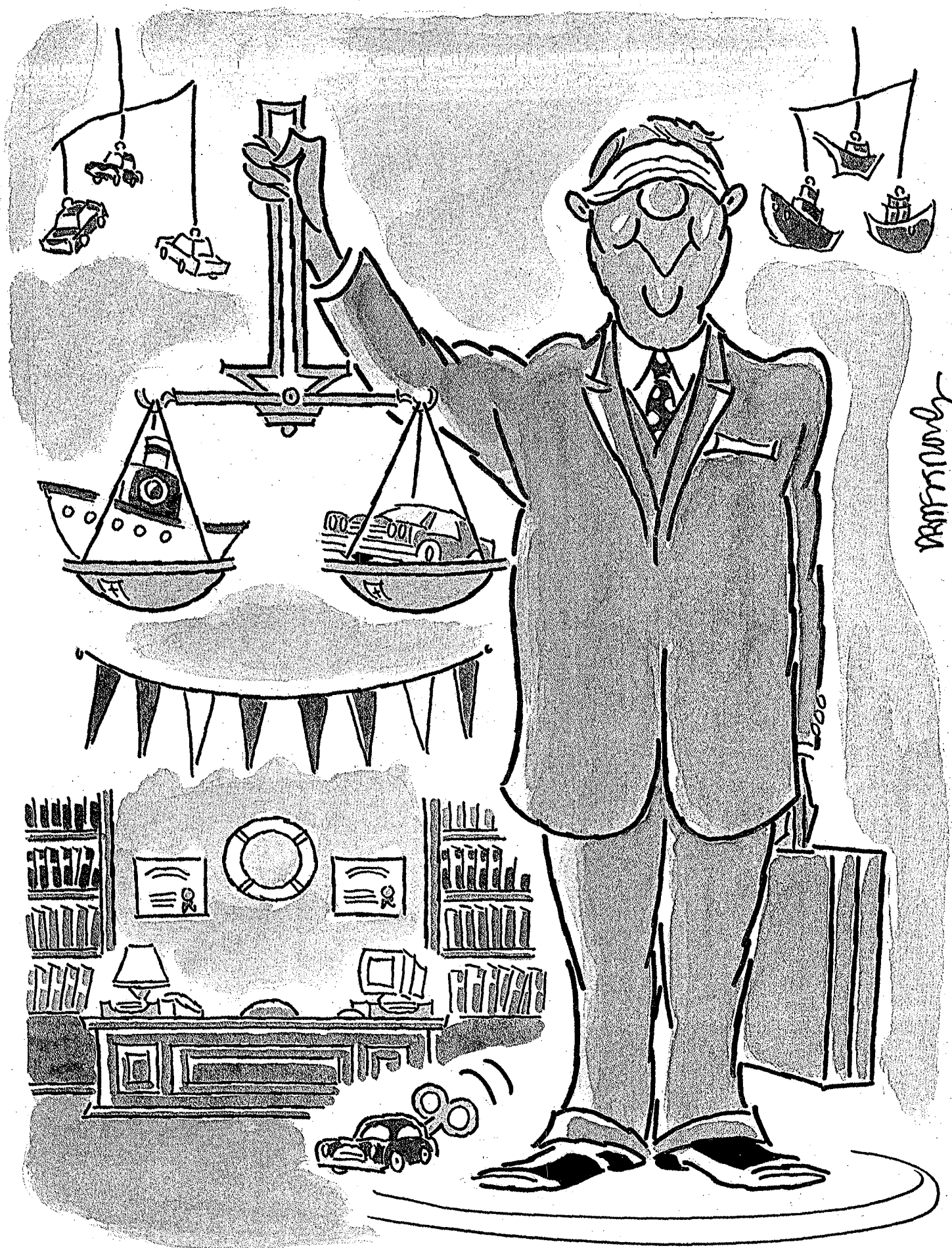
pursuit of justice.

Susan Faw, having successfully practiced law out of her home for the past five years, reassures us that our most valuable asset — our brain — doesn't require the trappings of a big firm, a fancy office or designer duds to get the job done for the client.

Walt Pepperman, an early retiree to the mountains and lakes of western Maine, reminds us that if we truly decided to live each day as if it were our last, we might well choose to leave the courtroom behind.

The goal of this issue is to introduce you to sides of your fellow Delaware lawyers that you might never have seen — whether those aspects manifested themselves "before," "during" or "after" the active practice of law in Delaware. As part of the "evolutionary" changes described by Vernon Proctor in the last issue, we plan to feature more articles which encompass this "lifestyles" perspective. For now, we hope you enjoy this rare opportunity to reflect on our private lives today, as well as our memories of the past and our image of the future.

Karen L. Pascale



Ted Johnson:

MY BRILLIANT CAREERS

In 1959, Edmond D. "Ted" Johnson went off to Harvard College to study math and chemistry. By 1983, when he joined the Delaware bar after graduating at the top of his class from the University of Florida School of Law, he was already a veteran of several careers. Here, he shares with us some of the high points (and low points) of his pre-"Delaware Lawyer" days.

I was working my way through school at Harvard, working at campus jobs 44 hours a week, plus studying the sciences, which meant you were in labs all day. Eventually, I ended up with mononucleosis. The school took away some of my jobs, which really wasn't the solution, because I still needed money.

Some friends of mine from school had started a foreign car business. These were guys whose primary interest was racing cars. I started out working for

them as a gofer, moved up to keeping the books and preparing tax returns, and later acted as parts manager. By senior year, I was doing more work there than I was at college. After graduation, I took over as manager.

The business wasn't really a solution for me, though, so I left and became a manufacturer's representative for a couple of years, selling housewares and small appliances. While I was doing that, I took a part-time job selling yachts on the weekends. Eventually, I gave up the manufacturer's repping business and started a yacht business with a friend that I knew from sailing.

I have had an unerring timing problem with business ventures throughout my life. I started this business in 1968, just as the Boston area was going into a major recession. My customer base was largely unemployed, or expecting to be, and it was a very bad time to be selling yachts.

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I was working very hard — too hard — and so was the fellow I used to work for. After a year or two, he asked me if I'd like to come into his business, and we could end up with the biggest dealership in New England. I said yes. Shortly before we were going to make our move, Nixon let the dollar float for the first time on the international exchange. Meanwhile, we had a whole year's worth of boats coming in from Europe at fixed rates. The dollar was devalued by 10%, which meant that all of those boats went up in cost to us. We were just coming out of our recession, which had been killing us, and then we got hit another way. Once again, my timing was impeccable. However, we found ways around the problem and managed to survive.

As usual, I'd been working very hard. In fact, I'd worked my way into mononucleosis again. About that time, my partner found a boat business down in Florida that he was interested in buying, so we bought the business together and I moved down there to run it. I sold my house — a beautiful house on a pristine piece of land, which I built mostly myself — and put all of my equity into the business.

That was 1974, just at the beginning of one of the worst recessions ever to hit the country. Within a couple of years we had lost that business, which was very traumatic, to put it mildly. My soon-to-be ex-wife came to the conclusion that I was washed up and left me.

Losing my business was a terrible blow to my self-confidence. I tried several selling jobs but just couldn't make it work. I needed money so badly that I just wanted a job that would pay me something. I applied for a job spraying lawns at Terminix. At the time that I entered the scene, the owner of the office needed a new termite control supervisor. The boss took one look at my resume and decided I could be a termite supervisor.

Now, I had never seen a termite in my life before that time, but I thought I could do the job, and I did. In fact, I did very well at it. I didn't get paid much, but at least it was stable. More importantly, I got my self-confidence back.

I was really poor. After paying my ex-wife, I had about \$300 a month to live on. All of the people who lived where I lived were on welfare, and they all did a lot better than I did. I'd moved into a ghetto in West Palm Beach but, to my surprise, I was the happiest I'd ever been in my life. It really was amazing, and

from that I learned that happiness has absolutely nothing whatever to with money or things, because I had nothing and I was very happy.

One other significant event occurred while I was living in the ghetto. I met my second wife. What she saw in me, I'll never know. In a society where image is everything, I didn't even have an image. Somehow she saw through all that and believed in me. One thing is sure, she didn't marry me for my money!

My next job was managing a foreign car parts store, which was part of a nationwide franchise outfit. The store had been losing money for years, but I went in and turned it around real fast. The trouble was, once we got the store into a profitable situation, the franchisors wanted to sell it. They did.

One of my main reasons for moving to that job in the first place was that I was constantly having to defend myself from my ex-wife in court. She apparently wanted to confirm her judgment that I was all washed up, so she kept suing me whether I needed it or not. (She had taken a job in the courthouse and had a lot of lawyer friends.) I certainly couldn't afford a lawyer, so I had to defend myself. The only way I could study law was to go to the County law library, which was only open from 9:00 to 5:00. I took the foreign car parts job, so I could work downtown and go to the library at lunchtime to read law.

My second wife was working as a legal secretary, and she used to type up my briefs for me. Unbeknownst to me, she showed some of my briefs to one of the attorneys at the firm, who told her that I'd missed my calling. He thought I'd done as well as a real lawyer. My second wife came home and asked me if I would like to go to law school. She offered to work two jobs, if necessary, to put me through. Since two judges had also encouraged me to think seriously about studying law, I took the LSAT to see if it might be possible. It was.

If I've learned anything from my experiences, it's that what I really enjoy is trying to straighten out a messed-up situation. In the business world, that can be a problem, because you don't start to make money until you get past the point where the mess is straightened out. In the legal profession, on the other hand, you get paid up front — and handsomely — for doing just that. The practice of law fits me perfectly.

Ted Johnson is a partner in the Wilmington law firm of Morris, Nichols, Arsh & Tunnell. ♦

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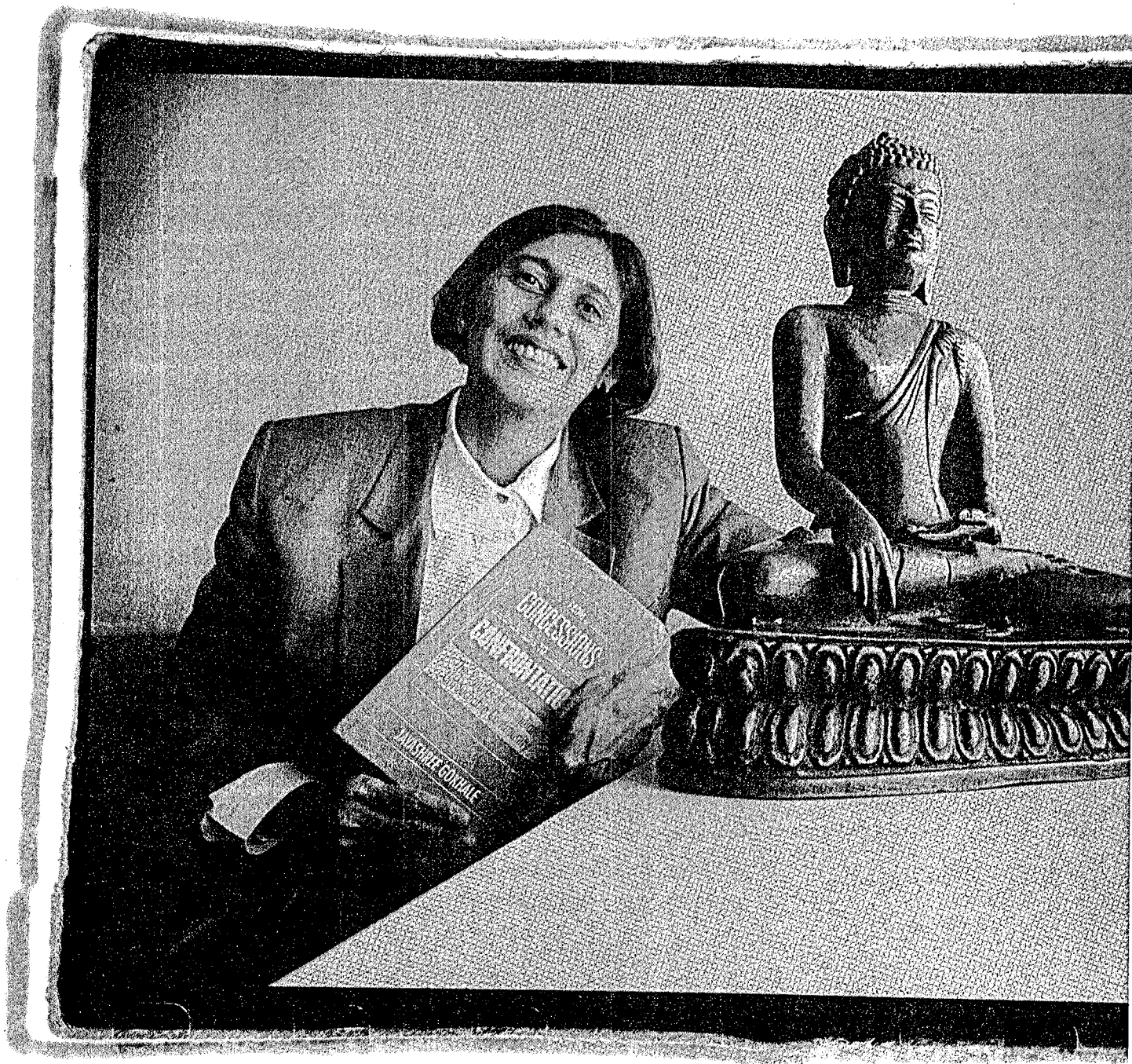
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Jaya Gokhalé:

AN INDIAN JOURNEY

In a previous life, I was a social scientist who studied Indian Untouchables (in Sanskrit, *Asprusya* — those who cannot be touched), those who occupied the bottom-most rungs of the Hindu hierarchy. Untouchables existed outside the classical *varna* (caste) order, were consigned by birth to perform the lowliest and most “polluting” tasks, and were required to accept their position without complaint.

In some ways, my choice of career was a curious one for someone who had been born at the top of that hierarchy. As a Brahmin, my view of Hinduism, or the *Sanatan Dharma* (eternal religion or order), had been formed by very different sentiments and experiences from those who lived “beyond the pale.” But, as a student of politics, I felt impelled to discover the structure of justice. The very existence of Untouchables seemed to demonstrate that Hindu society rested on a fundament of injustice. Moreover, at the time when I took up this research (the late 1970s), Untouchables had manifested a militant brand of politics in the form of Dalit Panthers (*Dalit* — in Marathi, poor and downtrodden), who modeled themselves on the Black Panthers in the United States.

When I first went back to India to begin

my work, the Dalit Panthers, with their imagery of revolt and rhetoric of violence, were very much in the news, both in India and abroad. I soon discovered, however, that it was impossible to understand fully the present without excavating the past. I could not hope to understand the Dalit Panthers, and their rejection of everything I had been taught to value, without understanding the process and the events that made these angry young men (despite their words of equality, the Dalit Panthers were very much male-dominated).

And so my studies took me further and further back into history, into “traditional” India much before the British era. I read the ancient Hindu texts in order to comprehend their organic view of society, animated by a concept of the whole that ascribed distinct, but unequal, places to all who occupied it. Though this view of society had developed into its most sophisticated and intricate form in Hindu thought, I learned from Louis Dumont (*Homo Hierarchicus*) that pre-industrial western society had rested on very similar ideas. These ideas, which ordained that one’s position in society was determined by birth, with the rewards for present deeds meted out on a time scale that transcended the present life, were fundamentally alien to the egalitarian notions of modern democracy.

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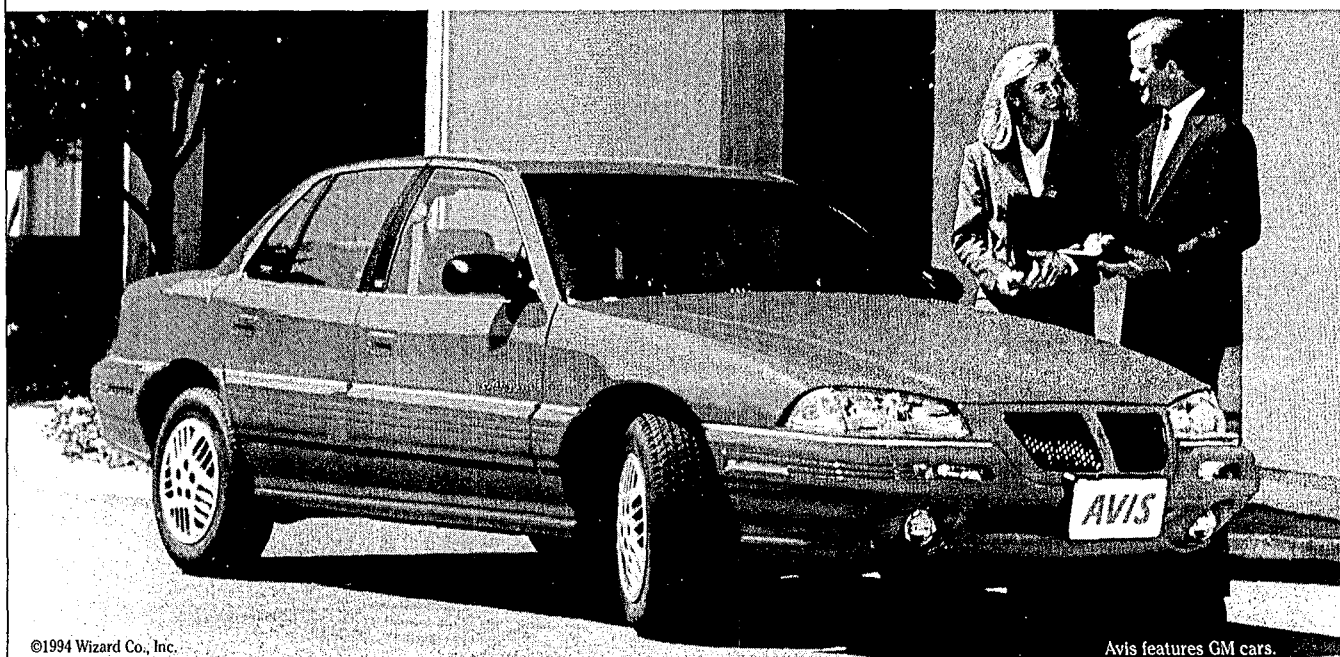
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As a child, these ideas had been benign and self-evident. As an adult, confronting the effects that they had on those at the bottom of Hindu society, they took on a more ominous cast. As I studied the Hindu caste and class system, I learned how pervasive the idea of caste was, and how it penetrated the Indian Christian community, the Muslim community, and the Untouchable community as well.

My journey took me into villages and city slums, to middle-class homes, government-issue flats, and the huts of agricultural laborers. I traveled by train, bullock cart and rickshaw to talk to ordinary people, literati and political leaders. I went to party meetings, community gatherings, religious ceremonies and literary conferences. I read the ephemera and the official texts of a movement that had as its goal the remaking of the Untouchable psyche.

I learned the limits of the tools of social science, and turned towards history, religion, and literature as a means of understanding the contemporary politics of the Untouchables. I focused on the interrelationship between organization, in which people come together to effect change, and ideology, beliefs which unite them and give their actions mean-

ing. In so doing, I necessarily studied the religious transformation involving the wholesale denial of Hinduism and the embrace of Buddhism into which the Untouchables had entered. I read the burgeoning new Dalit literature, which exhorted Untouchables to reject a self-image of piety, acceptance, and self-abnegation. I studied the Indian Constitution, which abolished Untouchability and decreed special quotas in government service and educational opportunities for those born Untouchable. I observed a new Untouchable elite, created by the Indian state as a result of the quotas, and saw, with some misgivings, its alienation from its roots and its separation from caste-Hindu society.

Out of this experience came an intellectual shift from social science to law. The legal system of the Indian, which sought to remake Hindu society on a new basis of equality, and created special reservations for those who had been denied equality for so long, seemed a much more appropriate forum to discover the structure of justice. Whereas Untouchable political organizations had seemed largely ineffectual and driven by ancient feuds and factions, the new Untouchable elite,

which was largely a product of the Indian legal system, had a far more decisive impact on the future of Untouchable politics.

Some vignettes of my long sojourn as a social scientist still remain with me:

In a hut lit by a kerosene lantern, an old woman offers me tea with her last bit of sugar and is grateful that I, a Brahmin, accept.

A poet-bureaucrat tells me with sadness that his mother cannot read what he has written, and that he inhabits two different worlds, light years apart, when he rides his bicycle from his air-conditioned office to his parents' dark and airless hut.

A nine-year-old boy, his face freshly scrubbed, gets up on the dais at a literary conference in the hinterland, miles from Bombay, and recites a poem that he has written to the Buddha, which celebrates his transformation from a Hindu Untouchable to a Buddhist free man.

Jaya Gokhalé's investigatory research culminated in a book: From Concessions to Confrontations: The Politics of an Indian Untouchable Community, 1993. Ms. Gokhalé is currently an associate in the Wilmington office of Skadden, Arps, Slate, Meagher & Flom. ♦

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Kevin E. Walsh: THE GUITAR MAN

I have been playing electric guitar in local bands since the age of ten. Some of those bands include Shytown, Alfie Morris and the Melton Brothers, and the Dominos.

I am primarily an R&B or Blues guitarist, although I play other styles such as country, jazz and rock. My playing has been influenced by guitarists such as Eric Clapton, Steve Cropper, Jimi Hendrix, and Stevie Ray Vaughn.

Also, I have done a considerable amount of studio recording. I played guitar for Wayne Beardwood, a local sax player, on his CD released in 1989 entitled "Finally . . ." I also released my own self-titled CD in 1991. I am cur-

rently recording a new CD that should be available in late Fall of 1995.

I have an extensive collection of late Fifties and Sixties Fender guitars and amplifiers. Also, I collect Vox amplifiers from the early Sixties that were made famous by the Beatles and the Rolling Stones.

Other highlights in my career as a musician include meeting John Lennon and "sitting in" with Delbert McClinton.

Kevin E. Walsh was admitted to the Delaware Bar in 1981. He is currently Vice President, General Counsel and Secretary of Montell North America Inc. (formerly HIMONT Incorporated).



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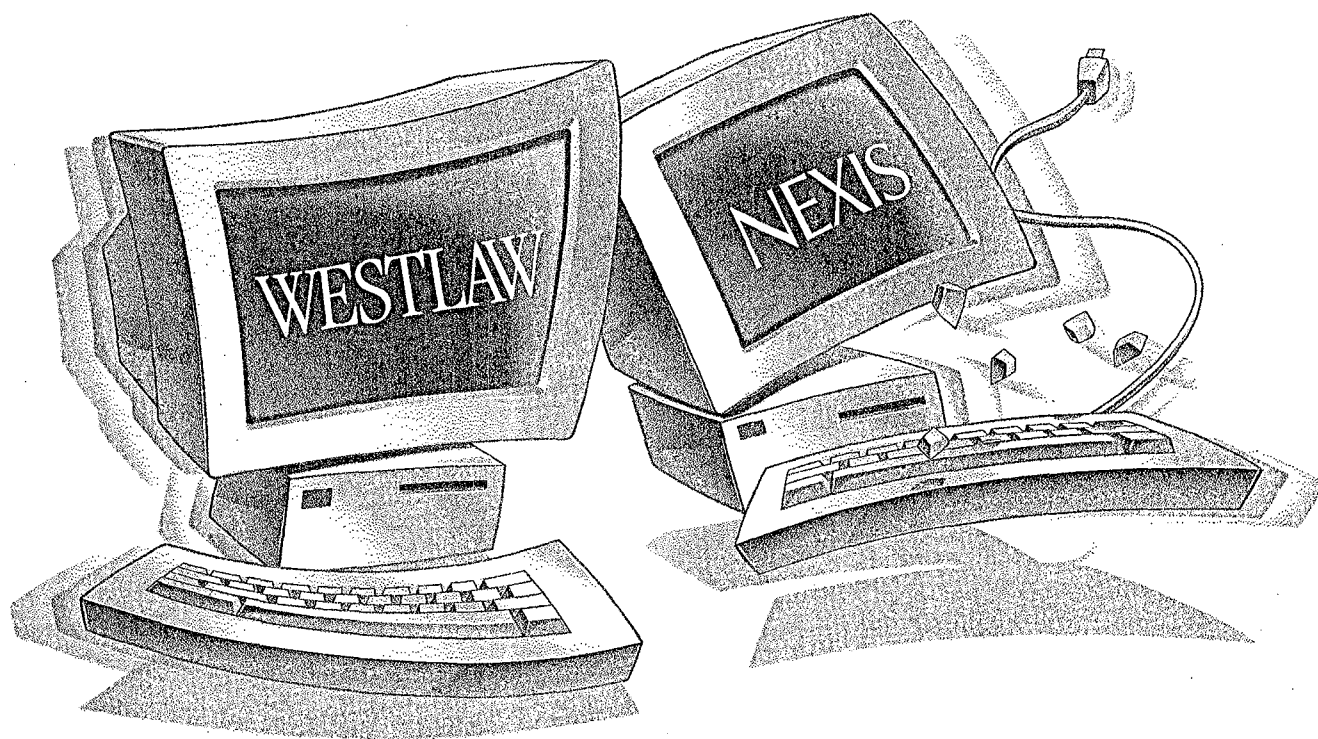
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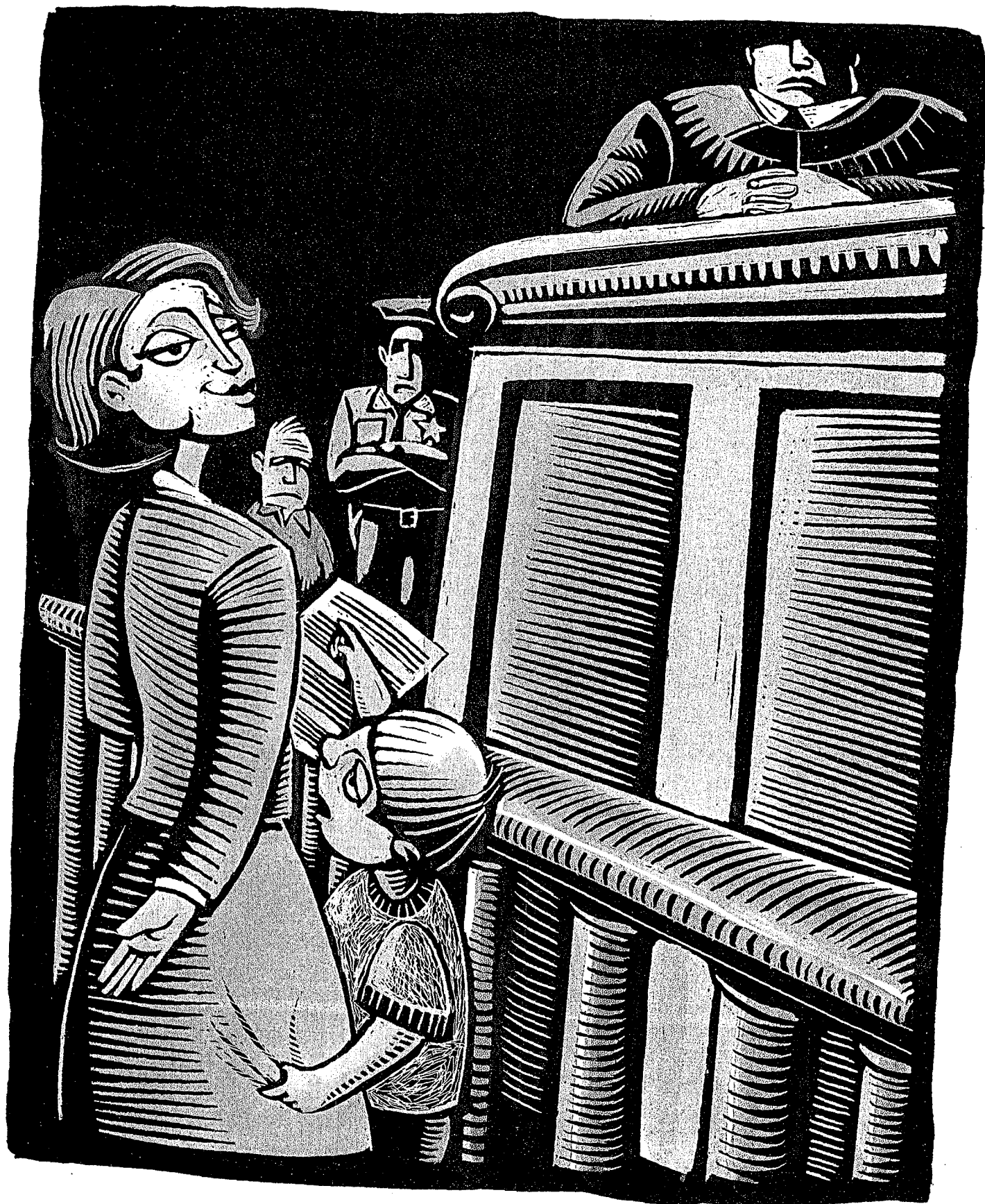
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Rosemary Betts Beauregard:

CH A O S

a n d

LA U G H T E R

hen I began
my professional

career in 1983, I decided that I wanted
to be a great attorney. Although my crim-
inal and family law practice was (and is)
extremely stressful, the stress was manage-

able for a single, childless, young woman.
Even after I married an attorney, my office
and home life, though busy, were still man-

ageable. Then our children were born, and all hell broke loose.

My aspirations of being a great attorney and a great parent have
been at odds with each other ever since. Now, after twelve years of
practicing law, eleven years of marriage and seven years of parent
hood, I have learned to be content with good rather than great.

When asked to contribute an article to *Delaware Lawyer* on my
lifestyle as a practicing attorney, wife and mother, I was immediately
filled with panic. How would I describe the daily juggling act that
takes place between my professional and home life in five hundred
words or less? Did I really want the world to know just how chaotic
my life is? What words of encouragement could I share with those
who, like myself, start sprinting when the alarm rings at 6:00 a.m.
and collapse at 10:00 p.m. when the daily race is over?

The daily metamorphosis from litigator and crisis manager at
work to mediator and sibling squabble referee at home can be
quite a jolt. Sometimes the transformation is not quite successful
— I end up disciplining my clients for quarreling with each other,
and then at home I calmly request my children to present their
best arguments as to why we should eat at Burger King rather



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than McDonald's.

On other occasions, there is simply not enough time to morph from attorney to parent. When this happens, the two worlds collide. For example: I recently undertook the representation of an individual who had been charged with murder. It was imperative that I visit the scene of the crime before the weather washed away the evidence. My dilemma was that I also had to pick up one of my children from school that day. The only solution was to take the child with me.

**After twelve years
of practicing law,
eleven years of
marriage and
seven years of
parenthood, I
have learned to
be content with
good rather
than great.**

Since the murder scene was a vineyard (something my seven-year-old had never seen), I convinced him that he should look around and learn how grapes grow. While my son examined the vineyard and asked grape-growing questions, Attorney/Mom was able to review the scene of the crime. Though the parent in me felt guilty for taking such an innocent child to the scene of a gruesome murder, my son was thrilled to see how grapes grow and how wine is made.

There have also been many occasions when a sick child has had to accompany me to work. Sometimes the dichotomy is simply mind-boggling. I'm thinking of the day I was trying to concentrate on the suppression motion I was about to present to the Court and, at the same time, explain to my child why my clients were in handcuffs and wearing orange jumpsuits.

But nothing has really driven home the difficulty in separating the different facets of my life as succinctly as the school essay written by my eldest child about his parents and their work. His story began: "My parents are Lawyers. They do murders and burglaries."

As mentioned earlier, every day for me

is a 100-yard dash at breakneck speed. The unavoidable stress that surges through my life is akin to a runner's high. The first two hours of the day are filled with making lunches, fixing breakfasts, dressing children, catching buses, feeding pets and getting myself to the office and court. The next part of the day is comprised of court appearances, client consultations, witness interviews, correspondence, prison visits, mail and phone calls. After work I have the luxury of rushing to feed the family, cub scout meetings, little

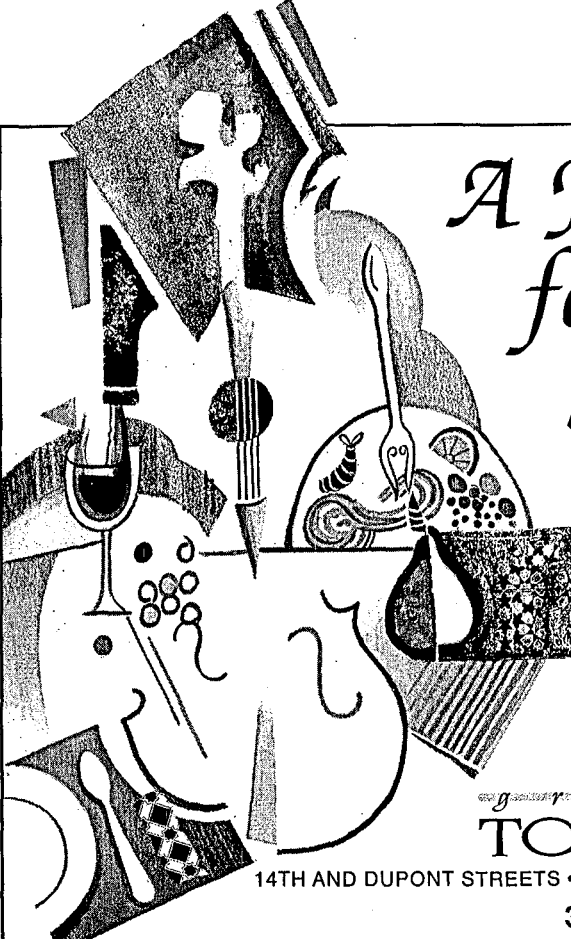
**With my
lifestyle, I am
convinced that a
lack of humor
would result in
instantaneous
insanity.**

league games, school plays, swimming lessons, and the never-ending loads of laundry that materialize out of thin air.

While I have never been able to juggle apples, I have learned to juggle lifestyles, schedules and conflicting commitments. Organization, flexibility, humor, a great secretary, and a supportive husband are the keys. To keep my work schedule, school activities and family life flowing, four calendars are necessary — one for my desk, one on my secretary's desk, a mobile one in my purse, and one on the fridge at home. All of these are coordinated on a daily basis and really do help map out life for the month. Flexibility is important, because no matter how organized the calendars are, a sick kid and a canceled or rescheduled event will require me to move instantly to Plan B. Finally, without the ability to laugh at all of the daily predicaments and chaos, why bother? With my lifestyle, I am convinced that a lack of humor would result in instantaneous insanity.


I smile now when I remember my visions of greatness. After all, what's wrong with chaos and laughter?

Rosemary Betts Beauregard practices law in Georgetown in partnership with her father, A. Dean Betts. ♦



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L. Susan Faw: GOING HOME

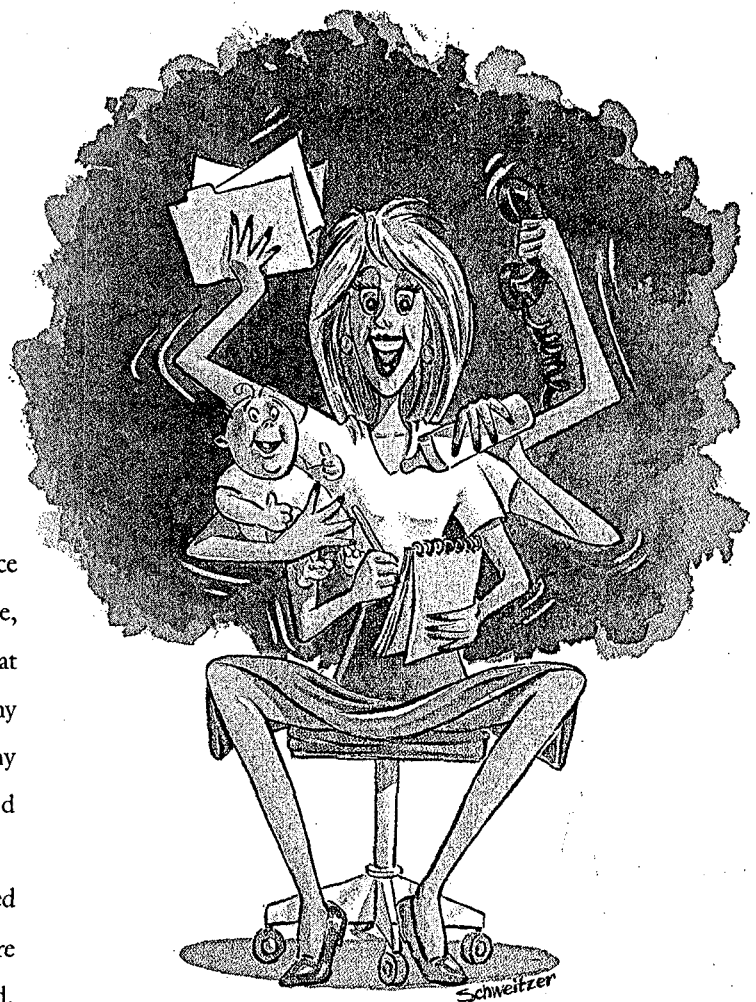
For twelve years, I found the full-time practice of law all-consuming. I brought work home, toiled late at night, and spent more weekends at the office than not. Even when I didn't tote my briefcase home, I carried files around in my head. My singular focus made me a good lawyer, but a preoccupied wife and mother.

I decided to "go home." When a colleague asked about my decision, I said I wanted to spend more time with my then seven-year-old. "Ah," he responded, "some children need that." Ah, I smiled. He'd missed the point: I needed that. So I left a job I enjoyed, worrying about what I'd do with my soon-to-be-unfilled days. I needn't have worried: I've yet to have any.

Shortly into my "early retirement," a number of opportunities began popping up. So, for the last five years, I have been "at home" while still keeping my big toe in the legal profession. I give this advice to anyone considering this "alternative lifestyle":

Home offices. At first, some people seem uncomfortable dealing with a home office lawyer. Never apologize. You know your brain still works at home. And if you do a good job, nobody thinks twice about it.

Working *sans* support, it is critical to have a chair with good rollers so that you can operate the fax, the photocopier, the computer and the telephone simultaneously. This way, you can be as efficient as the big-firm lawyer working with a Ben-Hur-size staff. Also, a portable phone is a must. It allows you to conduct business while making grilled



cheese sandwiches or watering the pansies.

Setting limits. Limit the quantity and nature of your professional undertakings. Realistically assess time demands and learn to say "no" to projects that require more time than you want to give. Equally important, only take work that falls within your "competence comfort zone." This is much less stressful and far more efficient. For instance, I have at my fingertips, in my tiny office, a nicely stocked library of materials in my field.

I have had not had one moment of regret about "going home." I have broadened my professional experience in ways I would not otherwise have done, serving as a Superior Court special master and teaching as an adjunct law professor. At the same time, I have been able to pick up my son from school every day, bake for those ever-recurrent bake sales, enjoy carefree vacations with my husband — and even have a little time left over for myself — while staying professionally current should I ever return to the real world. But I probably won't . . . at least not anytime soon. ♦

LIFE DURING THE BAR

Jan R. Jurden: A CARTOON IS WORTH A THOUSAND WORDS

When I was about seven years old, my father told my sister and me about a cartoon competition. The theme of the competition was: What would the United States be like in the year 2000? My sister and I spent hours and hours over the course of a weekend coming up with many different ideas. We raced to our father each time we finished a cartoon, seeking his comments. We spent two solid days drawing. Several years

The Honorable Carl Goldstein: The Lure of Bluegrass

I was drawn to bluegrass and traditional country music while trying to maintain my sanity in law school. I remember Shel Sandler and myself trying to learn guitar and banjo, respectively (although not respectfully) — in lieu of reading cases. This was a great strategy, as it turned out, because we lowered the average grade of those who had to listen to us sufficiently to compensate for our neglect.

Well, the music never let go. I've been collecting, playing, listening to, presenting (as a DJ on the University of Delaware station and in the form of festivals and concerts) and writing about this music for thirty years now. This music, with its roots in the British Isles and Southern blues, can have a powerful effect on those who really listen. I have found that people who enjoy "alternative" music like jazz or blues find this to be pretty interesting stuff, just as I enjoy related music such as cajun, blues and other ethnic folk music. I've even attempted to expose my colleagues to this music (with limited success). The music has a strong sense of time and place and can be a rewarding experience. I enjoy sharing that with others. ♦

later, I learned that my father told us about the competition because it was a rainy weekend and we were so bored we were driving my mother and him crazy. Whatever the motivation, I'm glad he did it. From that point on, I began to doodle. This used to get me in trouble quite frequently in school, because I doodled on my school work instead of paying attention to the teachers.

My love of drawing comes from my father, who still sits in his art room at home drawing for hours and hours while listening to classical music. When I was little, I used to love to look over his shoulder while he was sketching. I pestered him constantly to draw for me and spent hours attempting to re-draw his creations. It never occurred to me when I was younger that not everyone could simply pick up a pencil and draw something by looking at it.

In junior high and high school, I began to draw birthday cards for my friends. Then various groups started asking me to make posters to advertise school events. I drew mural after mural for trophy cases and classrooms. I drew posters to advertise sports events and plays. In college and law school, I drew t-shirts for student orientation, races, and various other student activities.

Drawing is my outlet and my best source of relaxation. What makes drawing fun for me is that I never have to do it. I have always said that if I had to

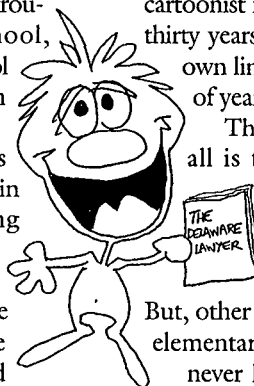
draw, even if I was paid for it, it would take the pure relaxation and fun out of it.

Fortunately, my father and my sister (who both make their living from their artistic talent) do not feel the same way I do. My father has been the editorial cartoonist for *The News Journal* for over thirty years, and my sister launched her own line of greeting cards a number of years ago.

The interesting thing about it all is that I never took drawing lessons. My parents signed me up for an oil painting class when I was about ten years old, and I loved it. But, other than the art classes we had in elementary school and junior high, I never had a formal art lesson. One day, I just realized that I was able to look at something and reproduce it on paper — with the exception of people, that is. To this day, I have never been able to master drawing people.

One of the biggest thrills I ever had in connection with my drawing was when I drew a cartoon about Richard Nixon and the Watergate scandal. I was sitting in class doodling one day and drew a reel of audiotape with two arms coming out of it and with both hands forming the peace symbol. I showed it to my father, who added a Nixon-like nose, and it ran in *The News Journal*. That, I'm afraid, is my only claim to fame with respect to drawing.

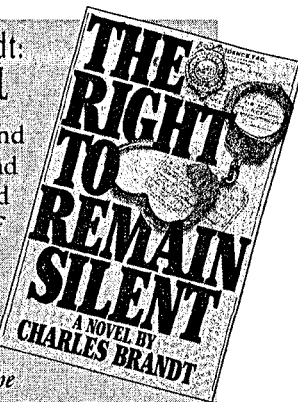
Jan R. Jurden is an associate in the Wilmington office of Young, Conaway, Stargatt & Taylor. ♦



Charles Brandt: THE GREAT DELAWARE NOVEL

"At fifteen my class loved my satire on segregation and encouraged me. In college I won a fiction prize. By forty I had a trial career, but no writing. I drew on my prosecuting and published a mystery, then a *Reader's Digest* article critical of the exclusionary rule. I'm on my second mystery, but trials come first."

Charles Brandt, Chief Deputy Attorney General of Delaware from 1974 to 1976 and past president of the Delaware Trial Lawyers Association, is now a partner in the Wilmington firm of Brandt and Dalton, P.A.



Carl Schnee: LAWYER AND BIKER EXTRAORDINAIRE

By William Prickett

Most of the Bench and Bar of Delaware thinks of Carl Schnee as a perennial trial lawyer with a string of successes, particularly in the defense of important criminal cases. However, there are many other facets to Carl, including a Master's Degree in Liberal Studies at the University of Delaware, traveling all over the world, hiking and running, as well as attending every party from Claymont to Fenwick Island.

However, this vignette focuses on a different aspect of Carl's life — that is, his career as a 10-speed bicyclist and, more particularly, on his yearly penchant for crossing Iowa from West to East in the yearly cross-Iowa bike tour. Carl has done this annually for the last twelve years. The cross-Iowa bike trip starts with the biker's back wheel in the wide Missouri River and ends when the biker, seven days later, puts his front wheel in the Father of Waters, the

Mississippi. In between, the bikers, who now total more than 10,000, pedal 60 to 85 miles a day in the blazing hot Iowa July sun. The cyclists spend the evenings (and part of the afternoons) drinking beer, dancing and telling stories of biking adventures in the Iowa towns that are designated as the stopping points. Since the routes across Iowa are always different, Carl knows Iowa almost better than Delaware. We are told that he knows so many Iowans that he could clearly run successfully for some office in Iowa, such as Commissioner of Bicycling, Tavern Commissioner or Judge of Iowa Porkers, and win by a country mile.

Indeed, one of the many amusing incidents in Carl's Iowa career happened some years ago. Governor Pete duPont was stumping Iowa in his quest for the Republican nomination for President. At a crossroad in one of the

remoter parts of Iowa, Pete was haranguing a large crowd of about 38

people and three pigs when suddenly he spotted a small, sweaty, white-haired figure: it was none other than Carl Schnee. As Pete remarked ruefully, "It would be a liberal Democrat that would be the only friendly Delaware face I ran into in Iowa!"

This year, again, Carl will look up from his legal labors and take his rusty 10-speed bike to Iowa, leading a growing group of Delawareans, including lawyers, both men and women from his law firm and elsewhere, to pedal again across Iowa. (As someone remarked, one man's pleasure is another

man's poison.)

Incidentally, contrary to popular impression, Iowa is not flat at all. If you don't believe it, then join Carl! ♦



David Curtis Glebe: PORTRAIT OF THE LAWYER AS A YOUNG ARTIST

PRE-LAW HIGHLIGHTS:

Taught undergraduate courses in philosophy and art theory at Ohio State University. Doctorate in analytic philosophy from Ohio State (dissertation was a comprehensive analysis of the legal theories of Oliver Wendell Holmes, Jr.).

ARTISTIC STYLE:

Recent work involves a new technique of reverse-painting clear acrylic panels with acrylic paint on black backgrounds, using a variety of dynamic colors and producing evocative and unusual effects. Other work includes graphic and symbolic painting.

RECENT ACHIEVEMENTS:

Glebe's work has been widely exhibited, particularly over the past five years. A new painting for the Plant Space Biology Facility at the Kennedy Space Center was completed in March 1994. Another painting was done in connection with the launch of the International Microgravity Laboratory in January 1992.

David Curtis Glebe is Chief Counsel of the Office of Disciplinary Counsel of the Supreme Court of the State of Delaware.



Warren B. Burt: THE SHOW MUST GO ON

Auspicious Beginnings: High school — lead role as The Judge in tenth-grade spring musical production of *Trial by Jury*.

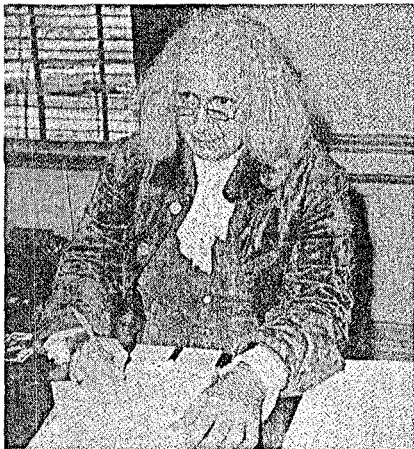
Onward and Upward: College — Princeton University Triangle Club Show, including Christmas tour (by train in sleeper cars) through New York City, Richmond, Atlanta, New Orleans (three days over Christmas) and various midwestern cities, with parties in each city for our troupe, hosted by alumni.

Favorite Roles: Ben Franklin in *1776* (Candlelight Music Dinner Theater — one run in 1973, then a run in 1976 of 48 performances including three performances at The Playhouse Theater); Daddy Warbucks in *Annie*; Finian in *Finian's Rainbow*; Herr Schultz in *Cabaret*; Mr. Bumble in *Oliver!*

Most stressful experience: Simultaneous trial of a dental malpractice case and "production week" of a show (opening week, including late rehearsals every night, dress rehearsal and

opening nights). Very limited sleep, but the show experience in the evenings was such a change of pace and atmosphere from trial during the day that it was invigorating and refreshing, and the two were compatible although I was exhausted at the end. (Very successful outcome to both.)

Mr. Burt's extensive participation in musical comedy theater has encompassed productions by many Wilmington area groups, including Candlelight Music Dinner Theater, The Brandywiners Ltd., Wilmington Opera Society (now Opera Delaware), the Delaware Children's Theater, and the Chapel Street Players. In real life, Mr. Burt practices law with the Wilmington firm of Warren B. Burt & Associates. ♦



Henry Clay Davis, III: CIVIL WAR AFICIONADO

Early influences: I was born in a house with a library containing books on subjects as diverse as Darwin's *Origin of the Species*, Thucydides' *Peloponnesian Wars*, *The Complete History of France*, *The Book of Knowledge*, and Pope's translation of Homer's *Iliad*. I credit Grandmother and *The Book of Knowledge* for teaching me to read. However, the first book to which I was devoted was a sixth grade history book. It had probably been given to one of my uncles by a teacher.

Why the Civil War?: Literature, particularly English literature, and current novels draw me on occasion, but I always return to history in general and

ON THE COVER:

Pat Gallagher, attorney and long-time motorcyclist, sits astride her BMW K75S. A Vice President of MBNA America Bank, N.A., Pat has ridden her motorcycle to destinations as far south as Daytona Beach and as far north as the tip of Nova Scotia and Prince Edward Island. A true testament to her love of the "biker" lifestyle is her recent honeymoon — a cross-country ride to the international BMW rally in Durango, Colorado. Pat is also a devoted runner and marathoner. She successfully completed South Africa's Comrades Marathon, an 87-kilometer run, in 10 hours and 23 minutes.



fervently to the history of civil war in the United States. From the day Jefferson Davis rose to bid his fellow Senators good-bye, to the day the last Civil War veteran died, I study this period of monumental conflict, which defined the Nation to which we all pledge allegiance.

Why study this painful past? I read about the Civil War for the same reason that I read Shakespeare, Yeats, and the Bible: inspiration.

Roots: As with so many Delawareans, the Civil War is part of my personal history. I was brought up on stories of Great-Grandfather Davis of the First Maryland Cavalry, CSA. He was a "free thinker," opposed to organized religion and slavery. Great-grandfather Carey of the Union's Third Volunteer Delaware Regiment was wounded at Antietam. Ironically, his family had owned slaves. Recently, I learned from my oldest daughter's genealogical searches that my mother's grandfather, from the hills of North Carolina, was also a Union soldier.

Heroes: From my study of the War and its battles, I identify two individuals who exemplify the South and the North.

Major Roberdeau Wheat: As Commander of the Louisiana Tigers, Major Roberdeau Wheat was shot through both lungs at First Bull Run. A doctor told him he would not survive. Wheat insisted that he was not ready to die. The doctor replied, "There is no recorded recovery from such a wound." Requesting that his case be put of record, Wheat recovered, only to be killed at Gaines Mill. Shelby Foote, *The Civil War, A Narrative*. The South could not replace such sol-

diers. After each Rebel victory, the defeated Union Armies came quickly back to strength.

Joshua Chamberlain. A native of Maine, Joshua Chamberlain (unlike so many of Lincoln's less competent officers) was untrained in warfare, having been a Professor at Bowdoin College. He was promoted for his valor and merit. At Gettysburg, Chamberlain secured Little Round Top for the Union. Later, recuperating from wounds, he was the general assigned to oversee the disarmament and dispersal of Lee's defeated Army. In what I find to be one of the most gallant acts



recorded, Chamberlain not only forbade his men to jeer as the ragged remnants of the Army of Northern Virginia filed past to stack their arms, but he ordered the Union troops to salute the vanquished veterans of so many battles.

Who would not be inspired by such people?

Henry Clay Davis, III is in private practice in Georgetown. ♦

Walter L. Pepperman, II:

EARLY RETIREMENT

HOW MY LIFE HAS
CHANGED AND WHY I DID IT

High in the western mountains of Maine at the heart of the fabled Rangeley Lakes Region lies the tiny Village of Oquossoc. While it is actually part of the Town of Rangeley for all municipal purposes, and its inhabitants are included in Rangeley's year-round population of 1800, Oquossoc has an identity and character all its own.

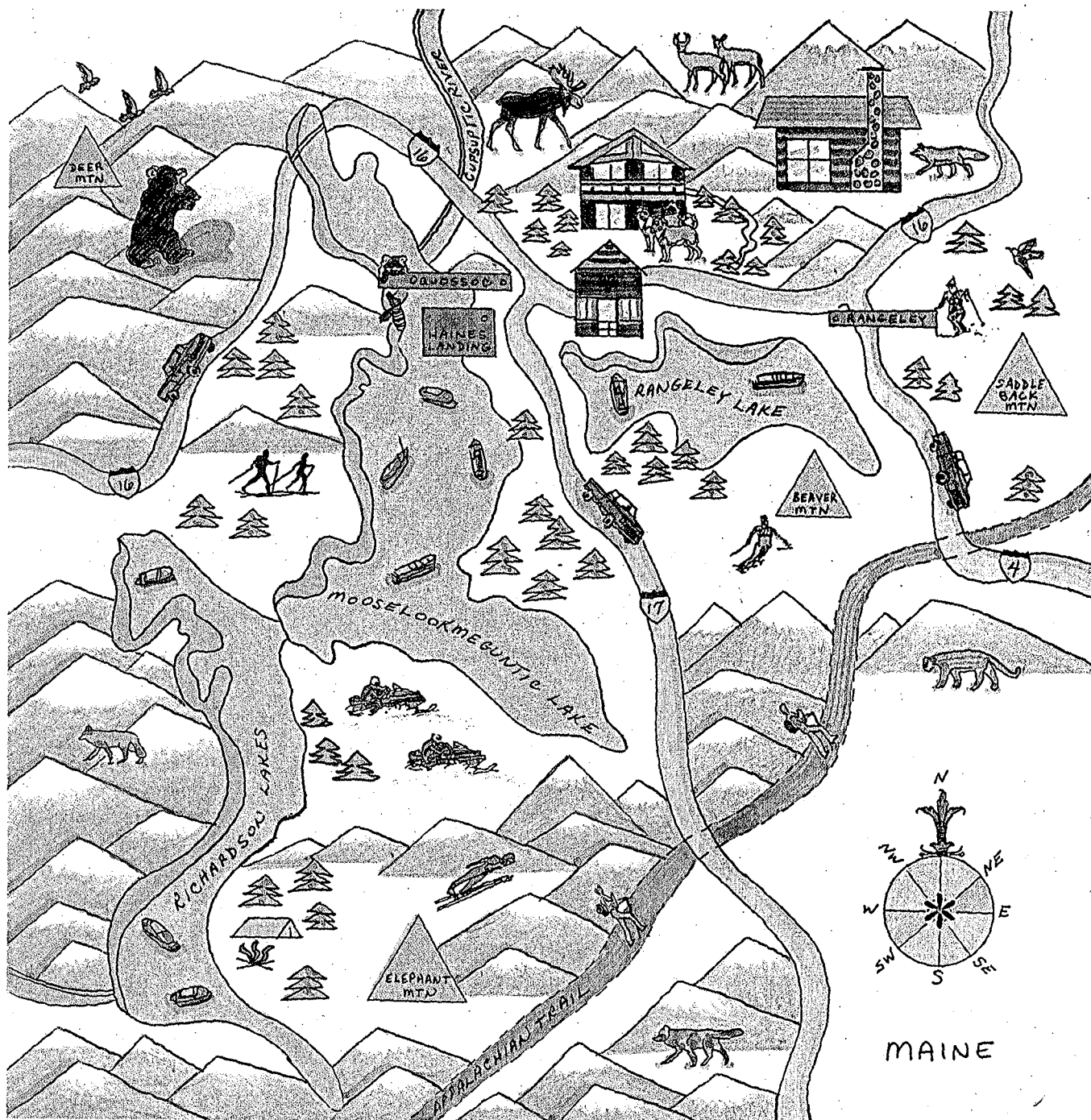
Situated on the northern shore of Rangeley Lake and in the shadow of Bald Mountain, Oquossoc is also the gateway to Carry Road that leads to Haines Landing on the great wilderness Mooselookmeguntic Lake and to the wilds of the Richardson Lakes, the Rapid River and Umbagog Lake below it.

Oquossoc boasts a grocery store, a service station, a marine/snowmobile dealer, a restaurant, a bar and grille, an ice cream and sandwich shop, a minuscule post office, and a small marina. I live a mile from Oquossoc on 84 acres of mountainside that is made up of The Mountain House (50 acres) and The Farm (34 acres). Both have dirt road access off the main road from Rangeley to

Oquossoc, and The Mountain House sits in a small field dotted with trees and beside a flowing brook. At the highest point on the property (approximately 2400 feet), there is an Adirondack shelter, complete with stone fireplace and magnificent views of Rangeley Lake and the Border or Longfellow Mountains beyond. One-half mile away in a cove on a beautiful acre of lakeshore is my Moose Lodge, with 244 feet of frontage on Rangeley Lake, a built-in boat basin and two docks (one for Moose Lodge and another secluded one for guests of The Mountain House).

My job now is to manage these wonderful pieces of real estate for vacation rental purposes and to keep them in tip-top shape. I am also buying, renovating, developing, and selling some small lots in Oquossoc for season-





al residents. In addition, I am, of course, taking advantage of my marvelous location and all of the necessary equipment, which includes boats, snowmobiles, chain saws, skis, snowshoes, an ATV, and a pick-up truck. My latest helpers are two Alaskan Malamute puppies, Strike and Star, born April 4, 1995.

But I have other company as well. In winter, there are never fewer than 20 deer who show up for evening feedings. One recent early morning as I was on my Nordic Track by the bedroom sliding glass doors, I saw a mother moose, with calf following behind, trot through

my yard, past the house and into the woods. A red fox shows up almost daily to look for the can of cat food I leave at the edge of the woods for my carnivorous friends. On some nights when arriving home, my headlights hit a pair of raccoons scampering off the deck as I drive up. And birds of every type always abound around the feeder at the prow of the house. I also must keep watch all summer for the elusive black bear who has been known to raid my dumpster. One of these days, I am hoping to run into an eastern coyote on my property, or maybe even the mysterious eastern cougar.

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on the magnificent coastal plain of the Arctic Refuge in Alaska. Unfortunately, this portion of our last arctic wilderness has caught the eye of the oil industry. Right now Congress is considering proposals that would allow the oil companies to drill there, even though reports indicate there's less than a one-in-five chance oil would be found.

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As if all of this isn't enough to keep me busy, I am an active member of the Maine Appalachian Trail Club and the official maintainer of two miles of the Trail from the summit of Saddleback Mountain (the fifth highest mountain in Maine) to the remote Eddy Pond (reached only by a ten-mile, round-trip ATV ride over a rough winter snowmobile trail). I am also a board member of The Maine Wolf Coalition, Inc., and the chairperson of its Policy and Governmental Relations Committee. In that capacity, I have testified at two legislative hearings in Augusta and met with the Maine Commissioner of Inland Fisheries and Wildlife in support of the natural recovery of the eastern timber wolf to its historic range in western and northern Maine. I have also addressed the Rangeley Rotary Club on the importance to Rangeley of this subject because of its status as prime potential wolf habitat, having been so identified by the federal government as part of its endangered species studies.

So why did I make this drastic change in my life from Delaware litigator to Maine outdoorsperson? There are many reasons, and they are interrelated and complex. Among the more important that I can articulate here are the following.

First, in the early 1990s, I suffered the only real health problem of my life, resulting in two dangerous carotid artery operations. As I lay in the hospital awaiting the second of those operations (a carotid by-pass), I swore I would kiss the ground on my next return to Rangeley and vowed not to end my life with a stroke or heart attack in the middle of arguing somebody else's case.

Second, the prevailing mindset in tough litigation ("Try to get away with as much of what you know to be improper as possible") quite frankly caused me to question whether continuing on was in the best interests of my physical and mental health. The rules in my profession were becoming a moving target. Could I talk to my witness during a recess in the deposition — or not? Was my selection of documents to be reviewed by my client in preparation for the deposition discoverable — or not? Was the Delaware Supreme Court's admonition on attorney conduct during depositions to be taken seriously — or not? I was growing weary of being subjected to what I saw as a double standard in vigorously advocating my clients' positions against less prepared and conscientious opponents, and of marginal lawyer behavior being consis-

tently tolerated (and thus encouraged) by the judiciary.

Third, I was unhappy with the way my firm functioned and with what I perceived (rightly or wrongly) as a lack of appreciation for what I was capable of bringing to bear in the firm's practice. I was also saddened and frustrated by the firm's adoption of a formal anti-nepotism policy just at the point when my son was coming out of law school and considering practicing law with me in Delaware.

Fourth, the tax system in this country constantly caused me to ask myself whether all the work, stress and commitments were worth paying over such unfair percentages of the fruits of those efforts, primarily to a federal government which then proceeded to waste most of the money.

And finally, I really did not want to get up every morning; do my exercise routine worrying about litigation tactics for the day; put on a shirt, tie and suit; and go off to spend ten or more hours warring so that I could have the money to garner one precious weekend per month, and scattered vacations in Maine for the rest of my working life. In the final balancing test, the professional status and the money were clearly outweighed by the opportunity truly to enjoy each and every day of the years that I have left.

In that regard, I think I am getting a pretty good start. This past winter, I visited northeastern Minnesota where, for the third year in a row, I prowled the Boundary Waters Canoe Area on skis in search of wolves. I went dog sledding and winter camping in Maine on the Richardson Lakes with Mahoosuc Guide Service, and I skied the final 25 miles of the Catamount Cross Country Ski Trail (which traverses the entire length of Vermont) from Montgomery Center over Jay Peak and into Canada. I rode my snowmobile on an Arctic Cats Pride Ride with Olympic skater Nancy Kerrigan and her family, and I took some guests on winter picnics to the far reaches of Mooselookmeguntic Lake via snowmobile, with me cooking a hot trail lunch. In spring, I canoed the Androscroggin and Kennebago Rivers, dipped for smelts at midnight in Mill Brook and at Upper Dam, and fished for brook trout and landlocked salmon on Azischohos Lake.

Is there life after litigation? *Res ipsa loquitur.*

Until January 1, 1995, Walter L. Pepperman, II was a senior litigation partner in the firm of Morris, Nichols, Arsht & Tunnell. ♦



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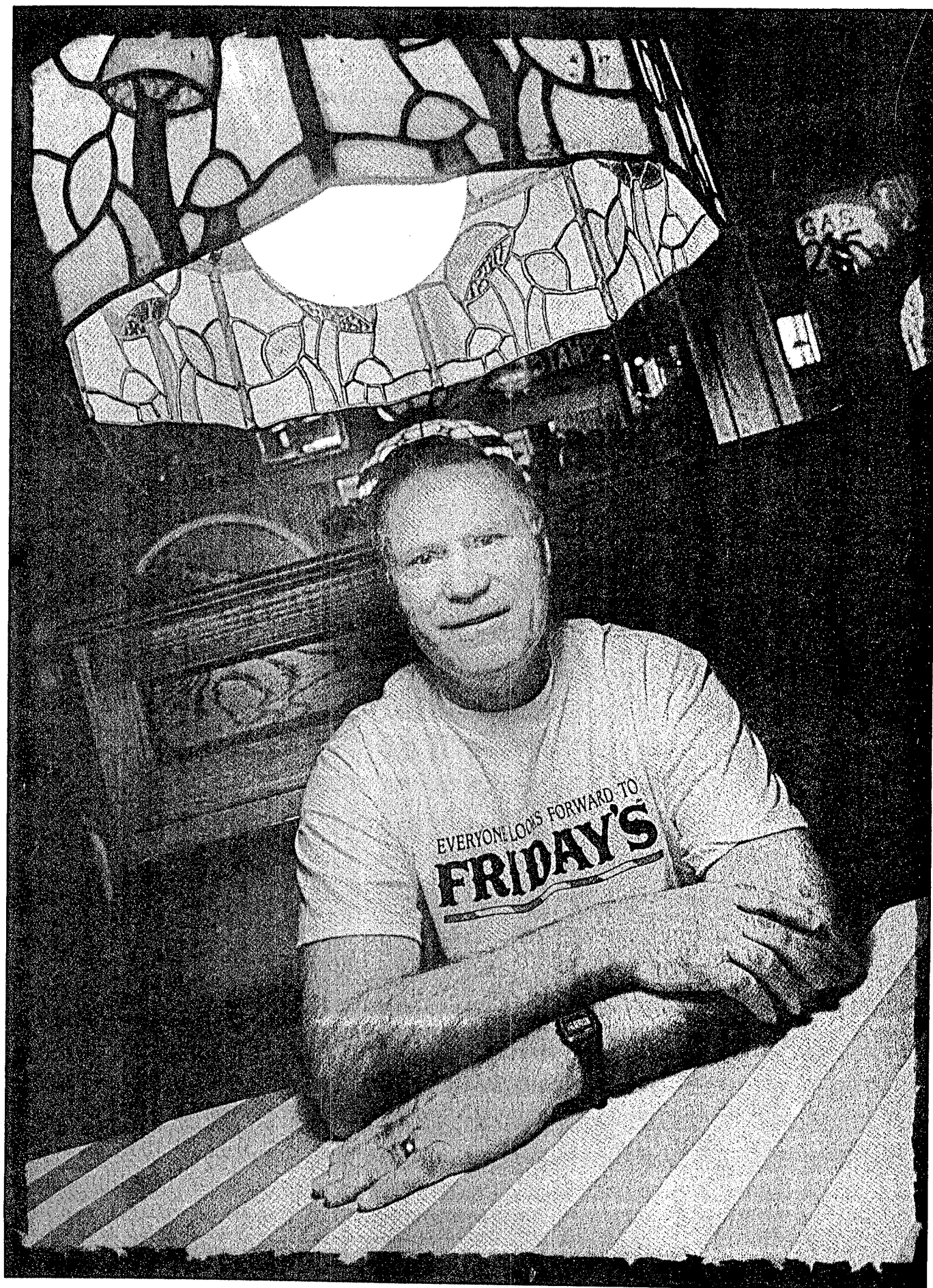
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BILL VAUGHN:

THE BUSINESS OF RETIREMENT

By Vernon Proctor

Some of us wonder why in the world we ever started practicing law. Others of us can't imagine doing anything else and wonder what we'll do after we stop. A lucky few, on the other hand, enjoy the practice of law while they are doing it and have enough foresight and outside interests to enjoy retirement as well. William H. "Bill" Vaughn, Esquire, of Dover is such a person.

Bill Vaughn, a member of a prominent Kent County family that includes a state senator and a police officer, was admitted to the Delaware Bar in 1964. He practiced law in Dover and ran a small office with a high-volume "retail" practice, primarily in real estate. After about twenty years, his wife asked him to slow down. As Bill knew about half of his clients personally, he realized that it would be harder to cut back his practice than to quit altogether. He also understood that, if he was ever going to retire, he would have to conceive and implement a careful financial plan and figure out what business and other interests he wished to pursue.

Bill's retirement plans were aided by shrewd investments in bank stocks and real estate. He became a stockholder in two small banks — one in Kent County, Delaware, and the other in rural Maryland —

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"almost by accident" as a result of his law practice. Both banks were bought out by larger entities in the mid-1980s, enabling Bill to augment his retirement nest egg in time to escape the confiscatory aspects of the Tax Reform Act of 1986. Bill also bought stock in a publicly traded bank "on a downward spiral" and ultimately sold out at a price almost three times as high as his purchase price.

Bill also invested wisely in rental properties in the Dover area. Most of them were residential properties within a mile or so of the Dover Green. With his keen business sense, Bill found that he could increase his rental income by managing his own properties — a practice that he continues to this day.

After retirement, Bill became a restaurateur. With a group led by his son-in-law, he purchased franchises for TGI Friday's restaurants. They currently have four restaurants — three in Virginia (at Virginia Beach, Richmond and Midlothian) and another in Greensboro, North Carolina.

As a result of his careful planning, Bill decided on December 1, 1986, that he would take no more appointments for his law practice. Six months later, his practice was wound up and turned over to his nephew.

Since retirement, Bill has managed to complement his business interests with a number of recreational activities. Like Vice Chancellor Steele, Bill is an avid University of Virginia sports fan. He attended the "final four" in Seattle and in Philadelphia when the Cavs advanced to that lofty level, and he has seen all Atlantic Coast Conference basketball tournaments since the early 1970s. With his wife, Bill travels frequently with Elderhostels (an organization that offers to older adults inexpensive, short-term academic programs hosted by educational institutions around the world), visiting England, Scotland and the Middle East, among other places. In January of this year, Bill did field work on a Hawaiian macadamia nut farm purchased by his son a couple of years ago.

Bill Vaughn has enjoyed his retirement and has no regrets about leaving his law practice in the prime of his professional life to pursue other interests. He sees the practice as more complicated and impersonal now, noting that the number of Dover lawyers has grown from roughly 30 in the late 1960s to well over 100 now.

If only all of us could be as fortunate! ♦

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Charles Allmond:

SCULPTING A NEW CAREER

Have you ever wondered what it would be like to give up the practice of law and do something completely different — become a writer, an artist, a musician? The stuff of daydreams, you say? Well, this is the dream that Charles Allmond is living every day. After more than 30 years as a lawyer in Wilmington, Allmond is enjoying a thriving new career as a sculptor.

Allmond is a self-taught artist whose interest in working with his hands manifested itself at an early age. Over the years, he has been involved in the restoration of antique furniture, picture framing, art restoration, furniture making and traditional Pennsylvania German decorating.

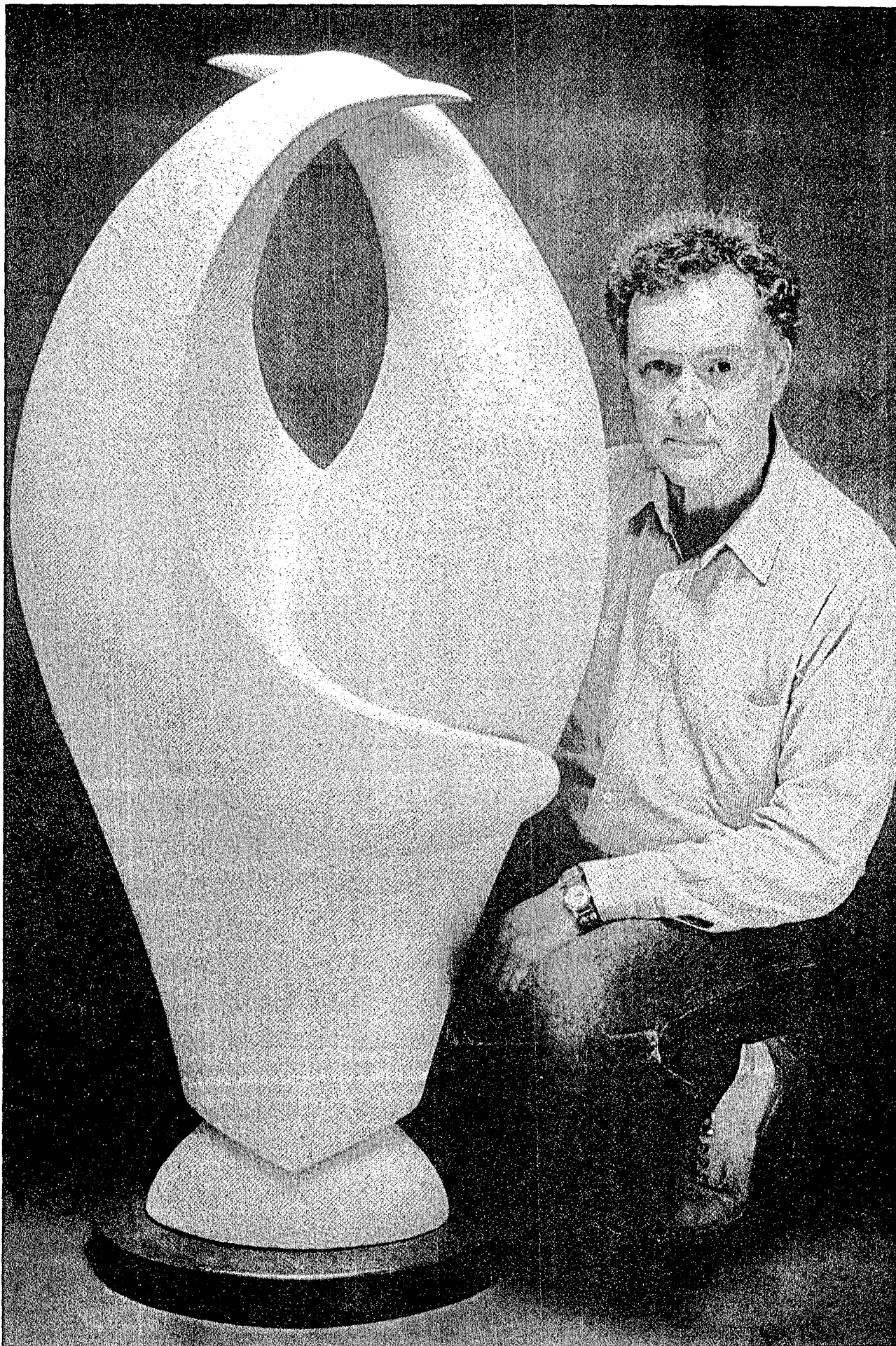
In 1982, at the age of 51, Allmond began to carve sculpture out of wood and stone — just to see if he could do it. His discovery that he was able to conceptualize in three dimensions encouraged him to pursue art in earnest. He has continued to work in wood, stone and other media and produces limited editions in bronze. His distinctive style ranges from

realism to purely abstract.

Allmond's inspiration is derived largely from the natural world. It is his goal to express ideas in a universal manner that can be understood by anyone. Although he regards his carving as a celebration of life, he avoids the mere duplication of nature. Eliminating all but essential details, his works are uncomplicated, sometimes impressionistic, and always pleasing to the eye.

Allmond's work is exhibited regularly in galleries in Wilmington, Santa Fe and Sanibel Island, Florida, and has been shown in more than 35 museums. His sculptures have received many national and regional awards and are included in public, private and corporate collections in the United States and Japan.

Allmond is also a member of the Salmagundi Club, the oldest artist club in the United States. He is President of the Society of Animal Artists, an international organization of some three hundred painters and sculptors who depict animals, birds, and other living creatures in their work. Allmond has been listed in *Who's Who in American Art* — surely the first Delaware lawyer to be included in that elite group. ♦



THE FEDERAL JUDICIAL SYSTEM IN THE TWENTY-FIRST CENTURY

Ruby R. Vale Distinguished Scholar Lecture
before students of Widener University School
of Law and the Delaware State Bar Association

Honorable Walter K. Stapleton

March 17, 1995

I want to talk about the future of the federal judiciary — about what the federal judiciary may be like 25 years from now, in the year 2020. I find the prospects troubling. But first, I want to set the stage by talking briefly of the federal judiciary as it was 25 years ago in 1970 and as it is today in 1995.

I am qualified to speak about the federal judiciary of 25 years ago because that

was when I first became a federal judge. I can get downright nostalgic about those good old days. Some of you were still in the cradle, but many of you will recall how it was. For better or worse, we have come a long way since then.

I had a corner office on the second floor of the beautiful Greek-revival Post Office building that stood on Rodney Square (the one that someone stuck a

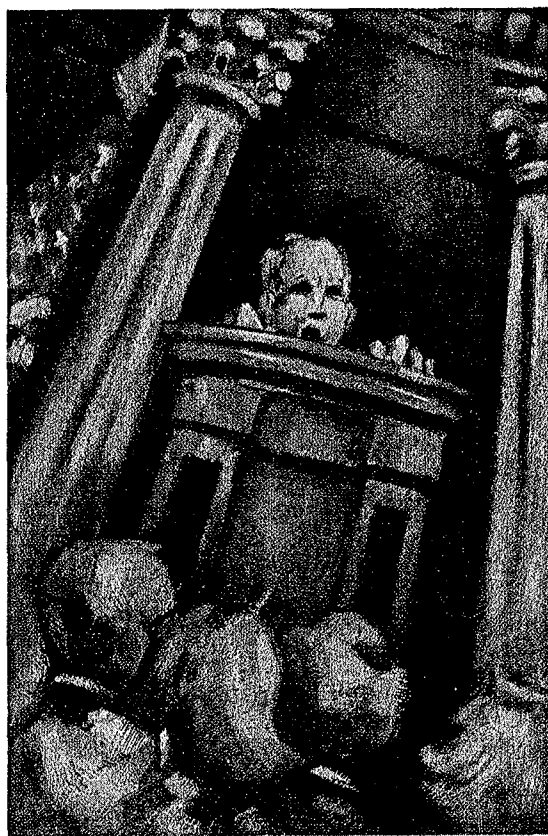
tower on some years later). Behind the bench in the principal courtroom was a gracious mural of the Swedes landing, and Judge Latchum even had a fireplace in his chambers. There was a cheerful, 300-pound elevator operator who greeted you with a "Good morning, Judge," every morning before he took you from the post office level to the court level. Judges had one law clerk and what was then called a bailiff, who also greeted you each morning and even took your coat. If you had a criminal case to try on a given day, it was more likely to be a selective service evasion case or an interstate auto theft case than a drug case. And if it was a drug case, it involved marijuana or heroin, not cocaine; it had a single defendant; and it lasted only a day or two.

There was ample time to

think and to write. Judges on the Delaware District Court decided an average of 84 cases in 1970. The national average was 292 cases per year per judge. Judge Biggs, of the Court of Appeals, who had the office next door, also had plenty of time to think and write. A judge of the Third Circuit decided 90 appeals in 1970. The national average was just 93.

Not that life was perfect! We still did opinions, as lawyers did briefs, on a mimeograph machine. The mimeograph ink was overwhelmingly pungent and, if you wanted to add a paragraph on page 2, all 49 pages had to be retyped. In addition to such minor annoyances, the only worry I can remember having was the one my wife kept reminding me about. District judges were subject to the same occupational hazard they have to live with today. District judges, then as now, had to worry about getting a swelled head from all the respect shown by those around them. District judges sit by themselves. They make up their minds about the facts or the law and announce their conclusion. Everyone around them says, "Yes, your honor"; "Oh, I see, your honor"; "Oh, very good, your honor." You can get to feeling pretty good about yourself in that kind of atmosphere.

My wife no longer has to be concerned. On the Court of Appeals, you also formulate your own view regarding the merit of an appeal, but you have to attend something called a conference with two other colleagues in order to announce that view. I will never forget




the first time I sat as an active judge on the Court of Appeals. I explained my position in a very insightful 10-minute analysis and, in response, Chief Judge Aldisert, who was on the panel with Judge Mansmann and me, said something very much like "Surely, you jest!" It was something of a culture shock.

But I digress. The contemplative atmosphere of the federal courts in 1970 is only a memory in 1995. Instead of the 292 cases that the average district judge disposed of in 1970, the average district judge disposed of 399 last year, a 37% increase. There are no more selective service or auto theft cases, and drug cases accounted for over 40% of criminal filings. The average length of a criminal jury trial is now 4.4 days and, in most drug cases, there is no longer a single defendant.

The increase in district court dispositions per judge pales by comparison to the increase in appellate dispositions per judge in the same period. Instead of the 90 cases each that Judge Biggs's colleagues participated in deciding in a year, each of my colleagues decided 417 fully briefed appeals last year. That's a 363% increase. But let's try to get a feel for what this means in terms of my mental health and the kind of attention your appeal gets in my court. Divide 417 by 255 working days and you get 1.6 cases per day or, based on a hypothetical eight-hour day, five hours per case. That's five hours in which to read the briefs, read the key cases, confer with colleagues, perhaps hear oral argument, think through to a decision, and write an opinion or issue an order. Of course, some appeals take less than 5 hours, and the more complex cases receive considerably more than that allotment of time. It remains true, however, that there is no staff screening in the Third Circuit and that I personally read the briefs in all of those 417 cases. So every case takes some judge time and the pace is no less than frantic.

So, what else is new? Judges have been complaining to lawyers about their workload for as long as I can remember and, as those of you who know me well are aware, I wouldn't trade my job for any other I know. There is something new, however. What's new is "The Proposed Long Range Plan for the Federal Courts." This document is the product of a distinguished group of federal judges, including my colleague Ed Becker, working in concert with an impressive assemblage of experts. The Plan attempts to project demands upon the federal judicial system 25 years down the road, based on our




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experience in the last 25 years, and makes suggestions regarding measures that might enable the system to survive. The bottom line message, as I read it, is that business as usual cannot go on. While improved case management techniques and additional judgeships have gotten us through the challenge of the last 25 years, should the current trends continue, it will take more fundamental, structural change if our federal judicial system is to survive the next 25.

The Plan forecasts that the number of appeals filed each year in the federal system over the next 25 years will go from 49,000 to 276,000, an increase of 463% over the filings last year. I find the idea of coping with five-and-a-half times the appeals we had last year incredible, but the Plan sets forth the methodology behind the projection and I find it pretty persuasive.

In the past, our answer to challenges of this kind — albeit challenges on a much smaller scale — have been primarily supply-side solutions — the most prevalent being the creation of new judgeships. Yet, if we rely on a “new judgeship” approach over the next 25 years and use the formula currently utilized, the number of U.S. Circuit Judges will go from the current 167 to 1,247. Assuming the existing structure were preserved, this would mean courts of appeals with well in excess of 100 judges. It is, of course, true that past trends may not continue at the same rates. But even if one cuts this and the other projections in the Plan by 50%, they remain alarming.

Fortunately, the Proposed Long Range Plan contains many thoughtful suggestions for handling the increased appellate workload other than the creation of new judgeships. It points out that our current structures for appellate review are not the only possible ones. The current circuit-based courts of appeals could remain at approximately their present size and number, for example, if first-line appellate review were provided in a new tier of appellate tribunals between the district and circuit courts. If this approach were taken, the “circuit” courts would be in a position to maintain a relatively consistent and coherent body of circuit law through discretionary, *certiorari* review of decisions rendered in the lower appellate courts.

I have neither the time nor the expertise to evaluate all of the proposals made in the Plan and I won't attempt to do so. Having hopefully alarmed you, I will content myself with leaving you with two

propositions, both of which are foundational for me from a planning standpoint.

The first is that courts of appeals with more than even 15 members carry a higher price than our society should be prepared to pay. As I have just implied, courts of appeals, in addition to their so-called "error correction" function, have the responsibility of preserving and nurturing a coherent circuit jurisprudence. I think it self-evident that this latter responsibility cannot be fulfilled unless each judge knows what each of his or her colleagues has been writing. I think it equally apparent that a judge with a full case load of his or her own can't read with understanding what 99, 79, or even 49 colleagues are putting out.

My point becomes a bit more difficult to make, however, when one is talking about wisdom of having courts of appeals with 20 or 25 members. As you know, the Ninth Circuit is already above those levels. My argument becomes more difficult in the context of those levels because it depends on convincing others of the priceless value of something very intangible — something we call collegiality. I don't much like that word — it literally means, of course, the relation between colleagues. We tend to think of it in terms of the courtesy that individuals must show to one another in order to coexist in a group. In the context of an appellate court, however, collegiality is not about the courtesy necessary for coexistence: it is about relationships of personal trust and concern capable of surviving confrontations over matters of life and death — relationships that can only be built on close personal contact over time.

We ask our federal judiciary to resolve some very intractable problems and to do so in a manner that will provide guidance for the future. Men and women come to serve on a court of appeals to be part of a problem-solving team. They do not select each other to be problem-solving partners, however, and they come from very different backgrounds and life perspectives. Given this fact and the complexity of human problems, conflict is inevitable — serious, value-driven conflict is inevitable. Frequently, institutional considerations counsel strongly in favor of compromise. Always, the search for insight counsels strongly in favor of candid discussion in which each point of view is really heard and considered by those holding a different view. The kind of discussion and compromise required simply cannot take place in the absence of genuine trust between the participants. It is

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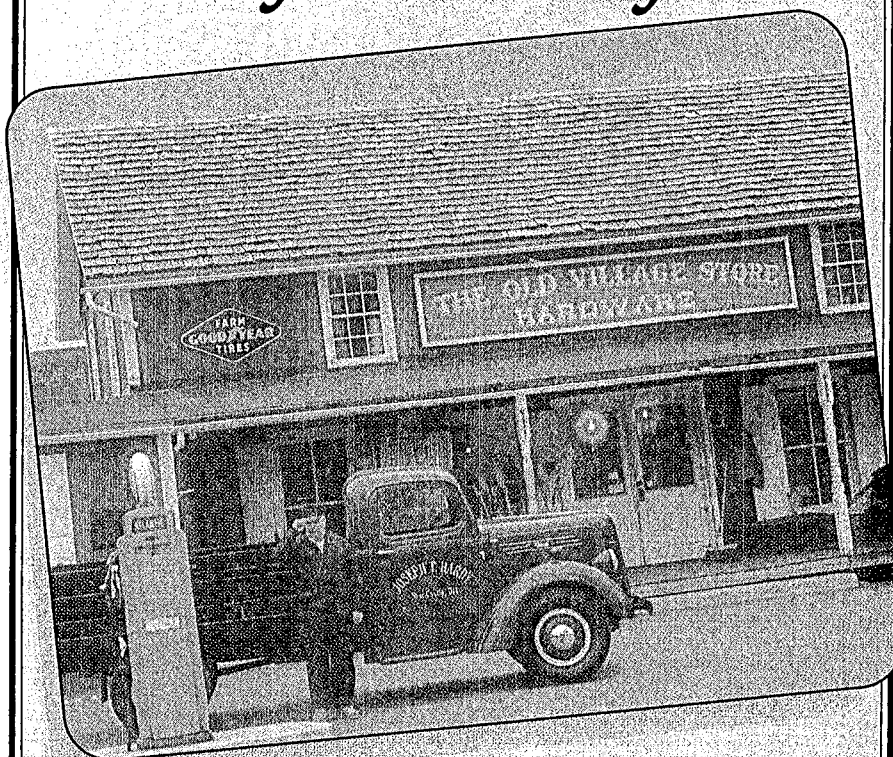
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difficult to listen, much less give up something important to you in compromise, if you are dealing with strangers.

It is only when you come to know a colleague in some depth as a human being that you accept without question his or her good faith. Only when the good faith of your colleagues is taken as a given is it possible to find wisdom in a thought of another in conflict with your own.

I have tried to think of ways to convey to you just how important collegiality is to a court of appeals judge, and the best way that has occurred to me is to relate it to the importance of life tenure. Hardly a sitting goes by that I do not thank the founding fathers for the assurance of objectivity that is the fruit of life tenure. But I place no lesser value on collegiality. I truly believe that the kind of collegiality of which I speak has been as crucial to the performance of the federal judicial system throughout our history as the existence of life tenure. So whatever form the federal judiciary of the future takes, let's have appellate courts, like my present 14-judge court, where collegiality can still thrive.

The second and final proposition I want to leave you with is that a large part of the solution to the challenge of the next 25 years must come from demand-side measures — measures that reduce the input into the federal judicial system. Federal courts have always been courts of limited jurisdiction. The founding fathers and the Congresses that later fashioned the inferior federal court system we know today viewed the federal judiciary as meeting needs not served by the state judicial systems. The original statutes establishing federal jurisdiction were the result of asking two questions: (1) Is this the kind of case in which federal interests predominate?; and (2) if not, is there some other reason the state court systems cannot serve this adjudicative need as well? The Long Range Plan for the Federal Courts calls on Congress and the Executive Branch to return to this approach.

During the last quarter century, there has been an enormous expansion of private rights of action enforceable in the federal courts. During that period, Congress has passed more than 200 pieces of legislation expanding federal court jurisdiction. In most instances, there was an important, distinctly federal interest. In some instances, however, it is difficult to perceive a justification for not allowing the state courts to continue to serve where they

were already serving well.

It does not denigrate the plight of the victims of domestic violence or the victims of felonies committed with handguns to suggest that federalizing the criminal laws in these areas does not represent the most sensible allocation of society's resources. Nothing distinguishes these cases from those that state judicial systems efficiently and effectively resolve on a daily basis. Accordingly, there is no justification for diverting federal judicial resources that should be devoted to criminal cases directly affecting the national government or its agents, for example, or to cases involving state or local government corruption where public confidence in the effectiveness of local prosecutors may be impaired.

On the civil side, the Plan calls upon Congress to eliminate diversity jurisdiction except in consolidated "mass tort" litigation, actions involving aliens, interpleader actions, and cases in which the plaintiff clearly demonstrates local prejudice in the relevant state court. Perhaps because of the fate of earlier, similar suggestions, the Plan has a fall-back position here. It suggests, alternatively, that diversity jurisdiction be scaled back by raising the amount-in-controversy, by excluding claims for punitive damages from the amount-in-controversy calculation, by providing for state court appellate review of federal diversity judgments, and by barring diversity access where the plaintiff is a citizen of the forum state. I was surprised to learn that this last category, for which diversity jurisdiction makes no sense at all to me, comprises 31% of all diversity jurisdiction filings.

But these are only examples. The principle that needs to be recognized is that the federal judicial system should continue to be viewed as having a specialized mission, a mission that complements, rather than duplicates, the courts of the various states. I am pleased to report that the Conference of (State) Chief Justices, which has reviewed the Plan, agrees with this principle.

The federal judicial system has served our nation well over the last 200 years. I feel proud and privileged to have been a part of that system during the last 25 of those years. While I do not expect to be playing the same part when the year 2020 rolls around, I do feel a special obligation to defend the core values that have enabled the federal judicial system to serve us so well. As lawyers and citizens, I hope you will feel a similar obligation as we face the challenges ahead. ♦



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DNA: Revolutionary or Obfuscatory?

by Eugene J. Maurer, Jr.

The role of DNA in the double-murder prosecution of O.J. Simpson shows how far this science has come in the space of five or six years. The notion of using genetic information to identify the perpetrators of heinous crimes emerged in the late 1980s, and first appeared in Delaware in the case of convicted serial killer Steven Pennell. The Cellmark Lab, and Dr. Robin Cotton in particular, were presented in our own courts when the technology was still in its nascent stages.

Billed as a revolutionary advance in the identification of violent criminals,

DNA typing is not without its detractors. Although the results of DNA typing are admissible by statute in Delaware (see 11 Del. C. §3515), the process remains mysterious to most attorneys and should be subject to substantial challenge by those whose clients are affected by it.

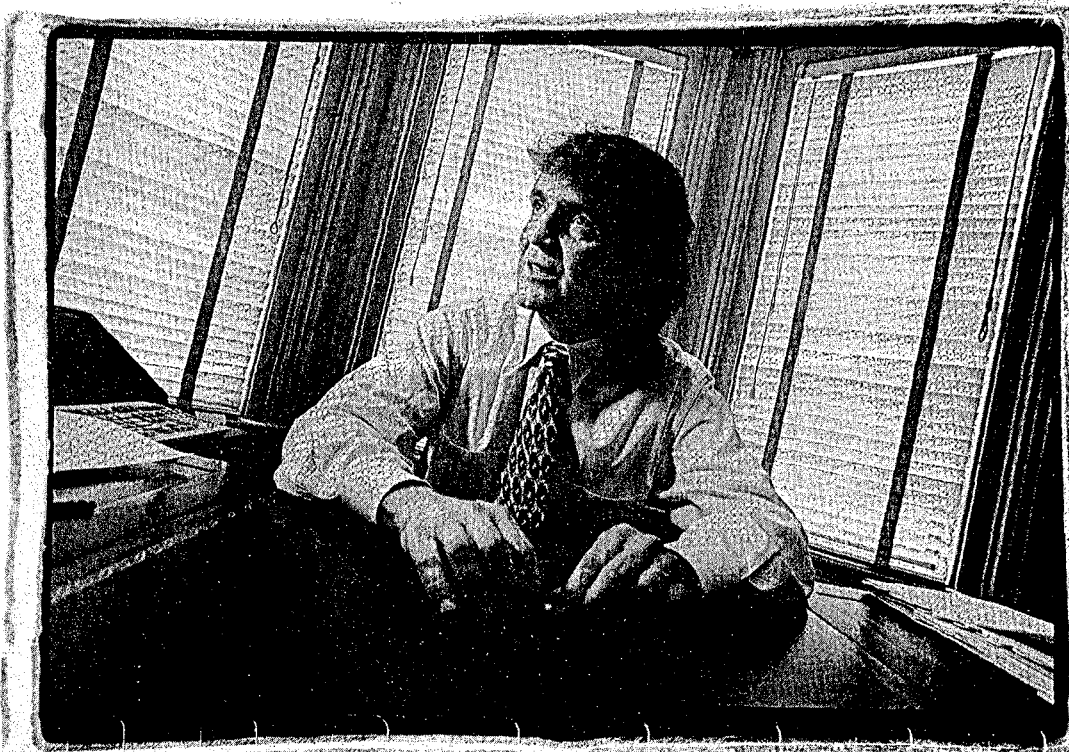
Indeed, the statistical method used to generate the astronomical probabilities seen in the Simpson case is the subject of ongoing academic dispute. When one understands that the databases used to extrapolate the probabilities of a DNA match were derived from approximately

300 individuals drawn from an isolated area of the country, the results appear even more esoteric.

DNA typing is here to stay, however, and a lawyer attempting to discredit the technology may have his or her best ally in the jury itself. As one juror in the Pennell trial opined several years later, "We couldn't understand the DNA, so we disregarded it and based our verdict on other evidence."

So much for science!

Eugene J. Maurer, Jr., a prominent criminal defense attorney, represented Steven Pennell. ♦



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When too many demands on your time keep you from effectively handling your financial affairs, it is time you realized the advantages of a Delaware Trust Private Banker.

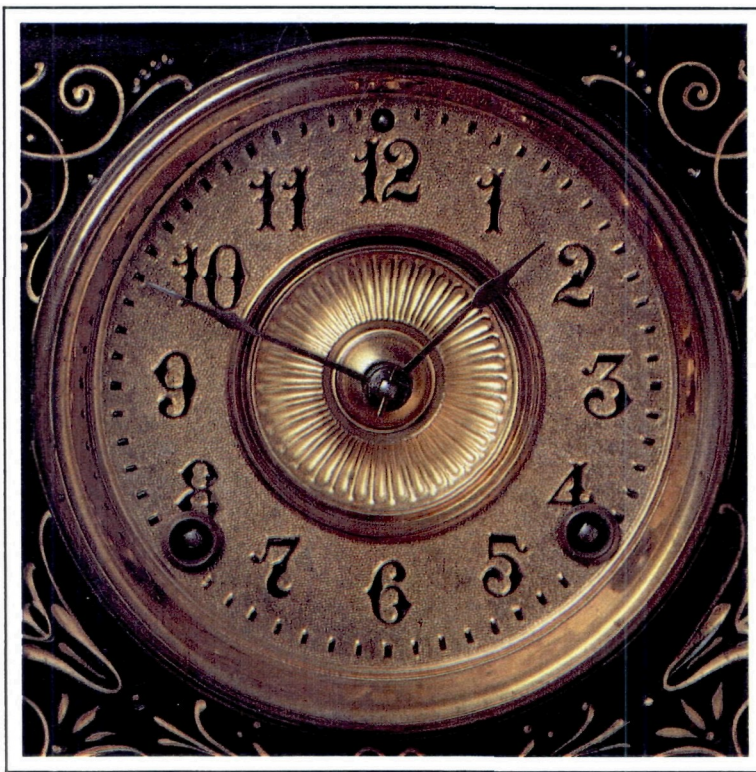
Delaware Trust developed the first Private Banking Division in this region over a decade ago; providing clients with the utmost in sophisticated banking services and confidentiality. Many prominent families throughout Delaware and the United States have benefited from our seasoned approach.

Our Private Banking Officers make it their business to know and understand the needs of our clients, providing a personalized plan to assist in achieving your financial goals.

Acting as liaison with all divisions of the bank, your Private Banking Officer affords you the convenience of

one bank, one contact. Also, a bank within a bank, our Private Banking Division offers you exclusive access to a special suite of offices, along with your own teller to assist in conducting your banking transactions.

We are at your service anytime of the day or night; wherever and whenever you need us. In fact, we are there even when you are not. While out of town on business or vacationing abroad, your Private Banking Officer can tend to your Delaware Trust financial matters in your absence. And we respond quickly should any complex financial situations arise.



Clock courtesy of Hagley Museum and Library.

Not everyone requires this extraordinary attention and highly personalized service. If you are someone who equates time with money, contact our Private Banking Division at (302) 421-7450.

Where people make the difference™



DELAWARE TRUST

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