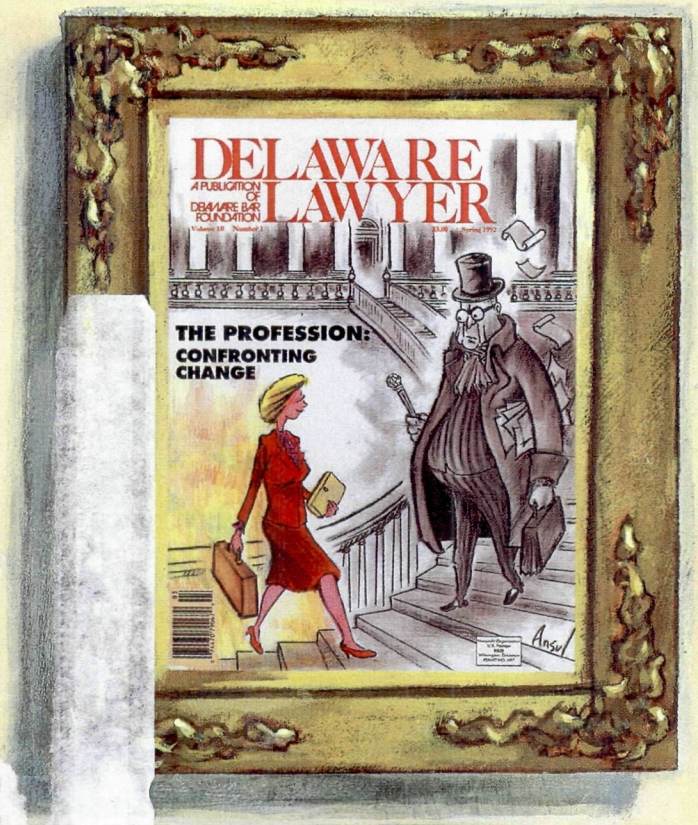
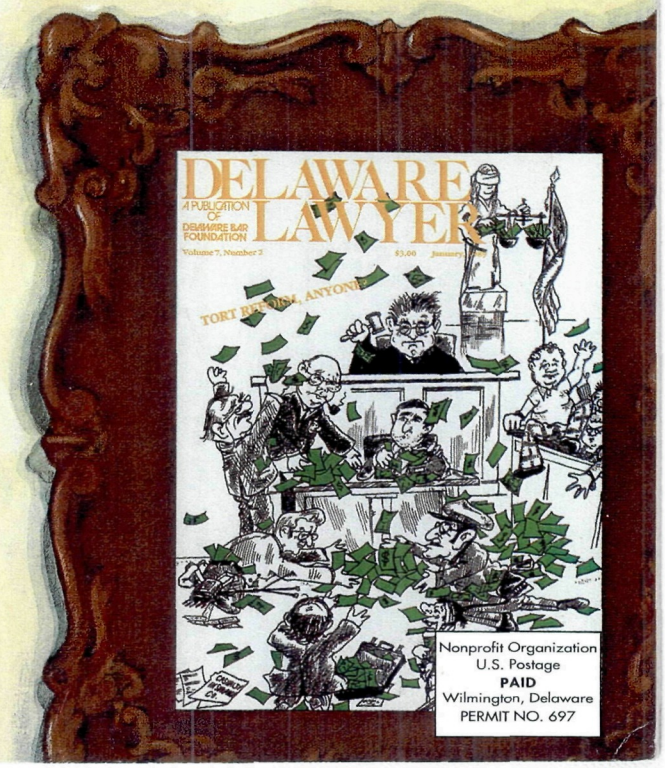
DELAWARE LAWYER

A PUBLICATION OF DELAWARE BAR FOUNDATION

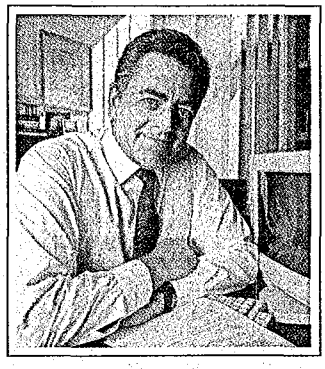
Volume 13 Number 2 $3.00 Summer 1995

Retrospective: Prospective





0 74470 79067 9 06



He realized he'd outgrown his bank.

It was time for a bank that could take him to the next step.

Why Wilmington Trust?

Not just because we're consistently rated one of the strongest financial institutions in the country. But because we'll work with you to create an interactive partnership – one that allows us to create flexible, innovative solutions for your unique needs. Your Wilmington Trust Private Banker will not only arrange for customized credit, but will also provide for your financial, tax and estate planning, personal trust and asset management needs.

To discuss how we can meet your financial needs, please call Halsey Spruance at (302) 651-8081.

WILMINGTON TRUST

VERNON PROCTOR

A Tough Act to Follow

On behalf of the Board of Editors of DELAWARE LAWYER, I should like to thank Bill Wiggin for his unflagging dedication to the magazine for the first dozen years of its existence. Bill, more than any other member of our Bar, made a personal commitment to producing a publication of which we can all be proud. Rest assured that the high standards of which he justifiably boasts in his introductory piece will be maintained.

I also thank Bill for his personal good wishes as I begin my tenure as Chairman of the Board of Editors. I must confess that the appellation "Chairman Proctor" chills the cockles of my red-baiting heart, conjuring as it does unflattering images of Messrs. Mao, Brezhnev and Tito. However, because I understand the complimentary spirit in which the title was used, and because the Board of Editors would not permit me to act in the authoritarian manner that the sobriquet suggests, I will let it go at that.

Some of you responded to a "readers' poll" that was recently commissioned by DELAWARE LAWYER in order to determine how we might improve the magazine. The poll results told us, among other things, that our "theme concept" for each issue was not entirely successful. As legal specialists, we tend to ignore Bar publications that do not cater to the needs of our particular practices. A number of the respondents to the survey also indicated a preference for more practical, "nuts and bolts" articles. On the other hand, the overwhelming majority of the respondents acknowledged the quality of the magazine's art and literature. For our advertisers' sake and for our own edification, we want to make sure that DELAWARE LAWYER is actually read by its intended audience.

During my term as Chairman, we shall strive to maintain DELAWARE LAWYER's reputation for quality and elegance of expression. We believe that these goals can be attained without abandoning the "theme concept" that we have adopted. Certain changes will be made, although they will be evolutionary instead of revolutionary. Your Board is considering a variety of possible, occasional features, including opinion articles on timely topics, fiction, humor, updates on legal technology, and "how-to" pieces for the utilitarians among us. Your comments and suggestions are always welcome. However, bear in mind that we want to remain fundamentally true to the theme concept: we do not want to become a small-state clone of the ABA JOURNAL.

Finally, DELAWARE LAWYER will not shrink from controversial subjects. Our intent is to present any such issues in a forthright but tasteful way. The Board of Editors will strive to ensure that the manner in which controversial ideas are presented, as opposed to the content of the ideas themselves, is as informative and inoffensive as possible. Those readers who cannot bear even to hear a contrary point of view — those who, in Bill Wiggin's words, will "defend to the death your right to agree with them" — might be in for a tough time.

This month's issue includes several selections from previous volumes of DELAWARE LAWYER, including Bruce Stargatt's homage to the semicolon, Irv Morris's thoughtful piece on First Amendment issues, and a now-classic story by Bill Prickett about a young lawyer's maiden argument. We are not arrogant enough to call this issue "BEST OF DELAWARE LAWYER." However, we wanted to give our readers some confidence, through this "flashback," that they might continue to expect submissions of similarly high quality and variety in the future, regardless of a particular issue's chosen theme.

DELAWARE LAWYER is a magazine for Delaware attorneys, written predominantly by members of the Delaware Bar. The magazine depends for its success upon your contributions of articles and ideas. We look forward to working with all of you.

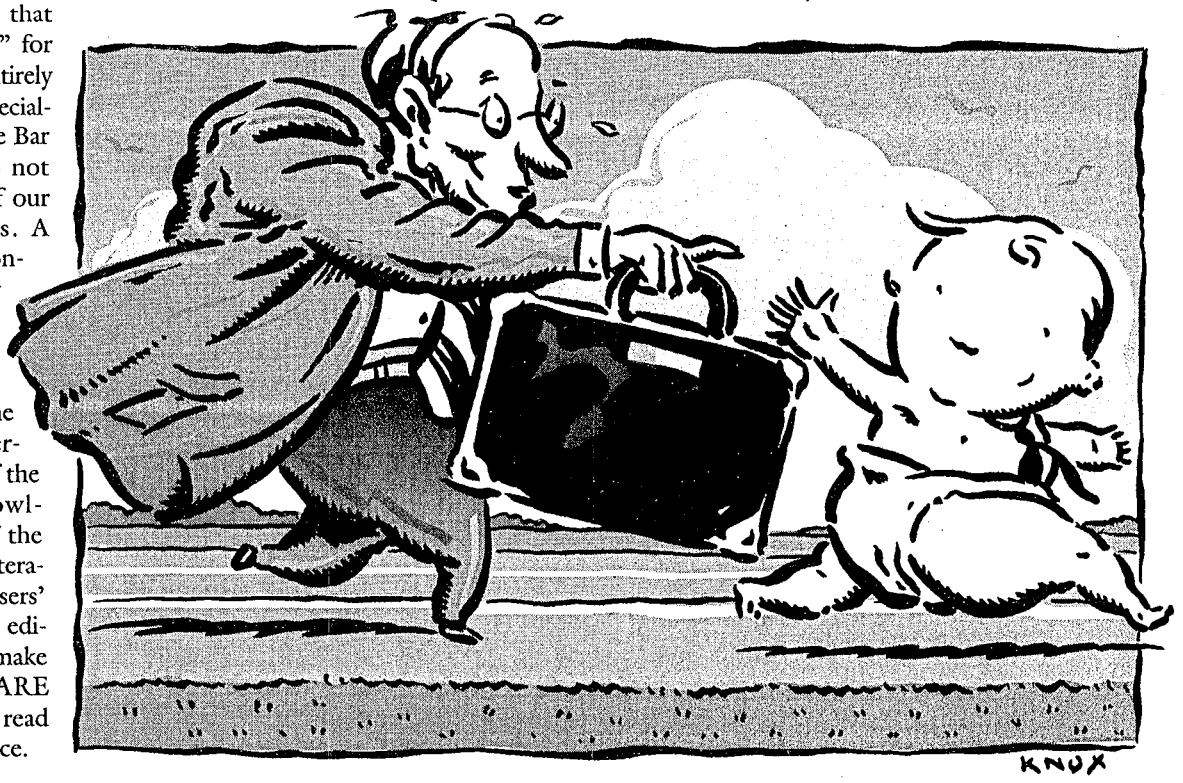
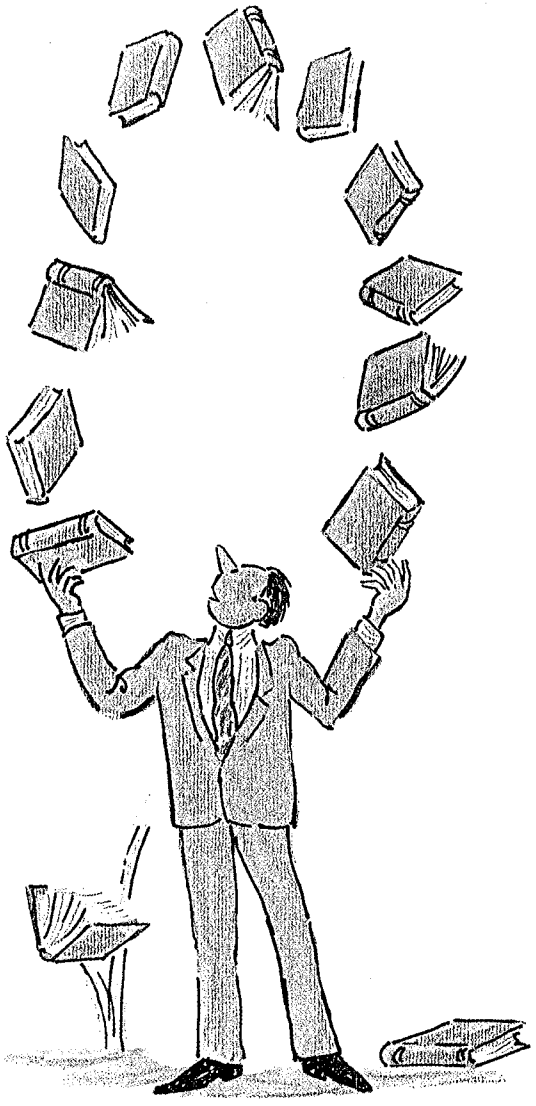


Illustration by Larry Knox



With West's federal case books, you have to buy all 13 circuits.

MICHIE'S™ FEDERAL LAW ON DISC.™ FOR LAWYERS WHO WANT TO DO FEDERAL RESEARCH WITHOUT TAKING ON THE NATIONAL DEBT.

If you litigate federal cases, you know exactly which circuits you need to research. You want that case law on your desk without the needless expense of owning a national library.

That's why Michie created the first federal CD-ROM library that lets you choose just what you use—and enjoy substantial speed and savings over West's federal case books.

Each Michie federal disc contains the full-text decisions of one federal circuit. We also publish a complete U.S. Supreme Court library on CD-ROM.

Our FOLIO® search program is the best in the business, giving you a clear path to law on point in either DOS or Windows™ versions. And the optional **Online Connection™** program provides circuit court updates from special LEXIS® libraries. **Michie's Federal Law On Disc.** The speed and convenience you want without taking on the national debt.

With Michie you can be more... judicious.

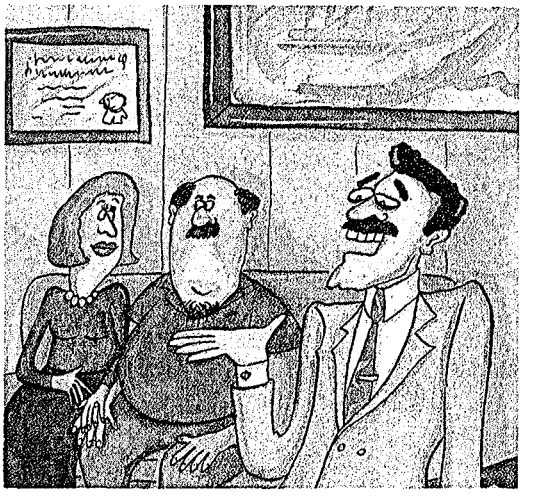
THE MICHIE COMPANY

A member of the LEXIS-NEXIS family

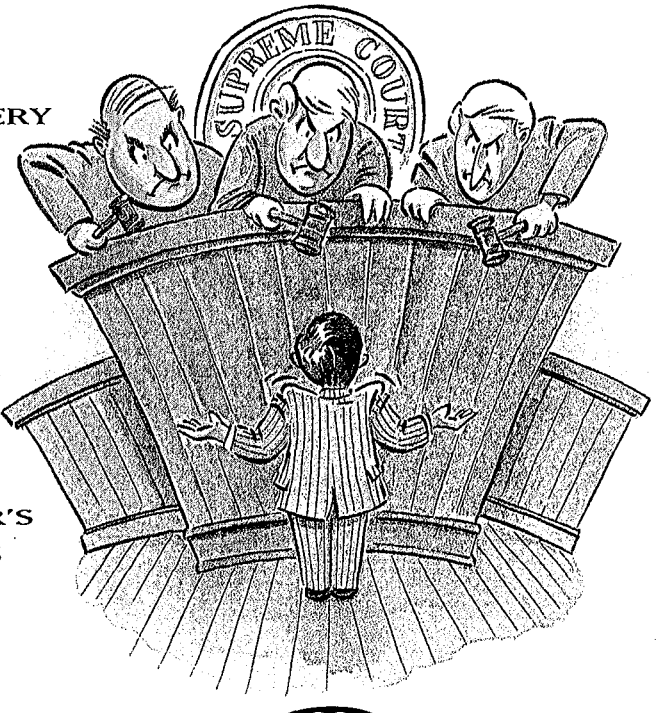
800/356-6548

BY POPULAR DEMAND! Now you can also get the full-text decisions of the U.S. District Courts of any federal circuit with Michie's Federal Law On Disc. Call Michie for prices and details.

Contents



10



30

Cover illustration by Mike Wohnoutka

Top Illustration by Paulette Bogan Bottom Illustration by Michael Schweitzer

DELAWARE LAWYER
A publication of Delaware Bar Foundation
Volume 13, Number 2
1225 King Street
Wilmington, Delaware 19801

DELAWARE LAWYER
Attention: Chairman, Board of Editors
c/o Suburban Marketing Associates, Inc.
Three Christina Centre
201 N. Walnut Street, Suite 1204
Wilmington, Delaware 19801

Address changes, subscription orders, requests for information about advertising should be directed to:

SUBURBAN MARKETING ASSOCIATES, INC.
at the preceding address
Telephone inquiries to (302) 656-8440

Editorial inquiries should be directed to:
Margaret Gilmour, Associate Editor
(302) 656-8440

DELAWARE LAWYER is published by Delaware Bar Foundation as part of its commitment to publish and distribute addresses, reports, treatises, and other literary works on legal subjects of general interest to Delaware judges, lawyers, and the community at large. As it is one of the objectives of DELAWARE LAWYER to be a forum for the free expression and interchange of ideas, the opinions and positions stated in signed material are those of the authors and not by the fact of publication, necessarily those of Delaware Bar Foundation or DELAWARE LAWYER. All manuscripts are carefully considered by the Board of Editors. Material accepted for publication becomes the property of Delaware Bar Foundation. Contributing authors are requested and expected to disclose any financial, economic, or professional interests or affiliations that may have influenced positions taken or advocated in the articles. That they have done so is an implied representation by each author.

WILLIAM E. WIGGIN

BON VOYAGE!

I am flattered to be asked to address our readers on the occasion of Vern Proctor's first issue of DELAWARE LAWYER in his new role as Chairman of the Board of Editors. During the past year, the magazine has been fortunate to have Dave Drexler as interim Chairman. That streak of great good luck will continue under Vern's leadership.

DELAWARE LAWYER has enjoyed another kind of good fortune since it was created 13 years ago: a wide range of subject matter and viewpoint and a catholicity of authorial background have made for a much more stimulating vehicle for ideas than you will find in the usual musty, pompous, and clumsily written professional journal. We have viewed the law through the eyes of legislators, poets, theologians, environmental mavens, and even one ex-convict, contemplating the institution of justice from the outside, if not the wrong side, of the law. To lure our readers inside these pages, we have set out such diverse bait as the little princes in the Tower of London, heartless plutocrats savaging a helpless labor union, and a flabbergasted St. Nicholas about to be sued by a three-year-old ingrate. As Chairperson* Proctor tells us elsewhere in this issue, the same unorthodox imagination and innovation will continue to enliven DELAWARE LAWYER.

My greatest satisfaction in the magazine comes from the importance the Board of Editors has placed on style and grace of self-expression. I strongly suspect that this attention to civilized utterance is what prompted a President of the American Bar Association speaking to our Association to hail DELAWARE LAWYER as one of the finest legal journals in the country.

The promise made in our first issue in the Spring of 1982 has been kept:

> Our editorial board will wield blue pencils with missionary fervor. Things won't transpire around DELAWARE LAWYER: they will simply "happen." Our authors will not discuss "verbal" contracts when they mean "oral" ones. We shall aim at correct usage, decent grammar, and unpretentious clarity. In short, we want to make DELAWARE LAWYER attractive and sensible to the audience to whom it is addressed.

Under Chairman Proctor's leadership, that promise will continue to be kept.

Finally, I believe that one of the great virtues of the magazine has been the unrestrained wit of the contributors. (Not a conspicuous attribute of your typical professional journal.) Wit represents the triumph of intelligence over absurdity, which, after all, it is the business of the law to unmask and defeat. Dr. Johnson once remarked that "the size of a man's understanding may always be justly measured by his mirth." I am confident that we shall continue to be merry in the pursuit of wisdom. My best wishes to our editors and our fortunate readers.

W.E.W.

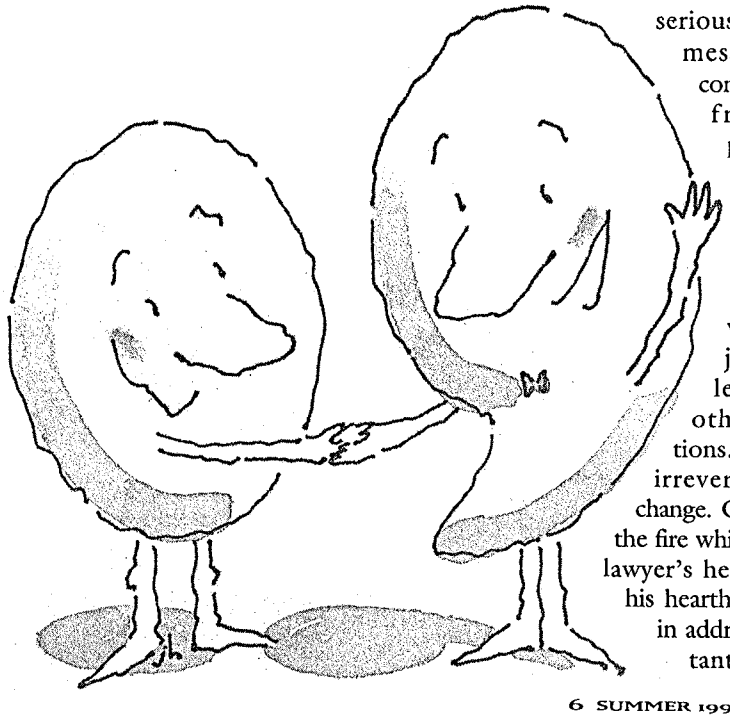
* *Coward! Ed.*

BRUCE M. STARGATT

Re: Mostly Punctuation Marks.

Fracture the semicolon. That's my point. Or semipoint.

I cannot be sure that this subject was in the forefront of our Editors' minds when they signaled in my direction for "Remarks" to be included in this first issue of DELAWARE LAWYER. What they surely meant to convey was an invitation to join, on the Bar's behalf, in celebrating the birth of this publication. Easily and sincerely done. The Delaware State Bar Association salutes Harold Schmittinger and the other directors of Delaware Bar Foundation whose creative and dedicated efforts have culminated in today's publication. From a personal standpoint I'm more proud that I can say that by a happy accident of timing these efforts have blossomed during my incumbency.



But there is also a serious substantive message to be conveyed. If this fresh-faced publication is to achieve its full promise, it must not be pious. Blandness is a vice in law journals no less than in other publications. Responsible irreverence creates change. Controversy is the fire which warms the lawyer's heart and fuels his hearth. Fearlessness in addressing important issues must be the hallmark of DELAWARE LAWYER.

And so in that spirit, gloves off, to the argument.

Fracture the semicolon! Heresy? Perhaps, but think about it. The semicolon is really not half a colon at all. Unbuckled, it is a comma lurking sheepishly beneath a period. And it bears far more similarity in its use to those two marks than to the colon whose name it semi-purloins. A colon is an introductory daub of punctuation. It evokes expectation. "Here's what's next:", it says. But the semicolon is a break between thoughts, like the period and (often) the comma which compose it. *Semicolons are the favorites of equivocators.* They are of service mostly to those who cannot decide between a period and a comma. In short, semicolons are the misnamed, ambiguous tools of those too fearful to adjudicate the period vs. comma controversy, and of those who entertain some doubt whether they have completed the utterance of a single thought.

Lest I be charged with radical views (which would greatly distress me), let me make it perfectly clear (as another president was wont to say) that I do *not* favor entirely abolishing the semicolon. There are two discrete instances in which there are compelling reasons to preserve the *status quo*:

(1) *Lists.* It should be permissible to separate items or thoughts (*e.g.*, cases in briefs, or numbered paragraphs) by semicolons because usage has made the mark, when employed for that purpose, less displeasing to the eye; and

(2) *Judges.* The semicolon may be used by a court whenever and wherever not prohibited by its rules under the

Illustration by Johanna Hantel

doctrine — recognized by prudent lawyers — of judicial immunity from the strictures of style.

Further, please do not understand from what has been said about the semicolon that I am an antipunctuationist. To the contrary, I am a confirmed capitalist who delights in doodling "E. E. Cummings" during depositions. And I would have found *Ulysses* less a classroom drudgery if Bloom's thoughts came in periodic drops rather than unbroken streams. I spend hours in Court musing on where we would be without the question mark. It is the rule in our law firm that no brief may be filed without underscoring our adversaries' *warped reasoning*. Quotation marks are unattractive but necessary. Parentheses are unnecessary, but their curves are pleasing to the eye. (I use them a lot.) I like apostrophes. Apart from conveying the idea of possession (which lawyers relish), they help shorten words. And asterisks are decorative and distinctive. The little spikes make them look like tiny thorn balls, or land mines, occasionally appropriate to the footnotes they signal.

Having considered my argument, and having been sensibly convinced, the right-thinking lawyer will ask: "How do we unhinge this little villain who has so long bedeviled us?" Voluntary action is too slow. An Affirmative Punctuational Action Plan would invite those delays in which bureaucrats rejoice! It would take decades to convince Philistines. My (respectful) suggestion for prompt solution would be a Supreme Court Rule. For this there is precedent: disregarding accepted practice, custom and usage, our Supreme Court has courageously decreed that Delaware cases be cited before it in a style different from the citation system used everywhere else.* The Supreme Court's action was criticized by the irreverent as capricious, even iconoclastic. But we remind those anonymous, misguided critics how quickly they learned to follow the new convention. The cynic may contend that acceptance was grudging, because non-conforming briefs were not accept-

*Supreme Court Rule 14(g) requires that Delaware cases be cited in this style: *A v B*, Del. Supr., 500 A.2d 1 (1983). The (otherwise) generally accepted system is laid out at Rule 10:4 of *A Uniform System of Citation*, The Harvard Law Review Association, 12th Ed., 1976, which suggests that the style be: *A v B*, 500 A.2d 1 (Del. Supr. 1983). *De Gustibus Non-Disputandum.* (Italics permitted by *A Uniform System of Citation, op. cit.*, Rule 7.)

ed for filing. I prefer to think it came from a common recognition of our lofty tribunal's good taste.

If our Court could with one stroke of its pen alter habits of citation for reasons of mere taste, how much more forceful would be a mandate (it could easily be added as Rule 13(h)) simply saying: "Except in lists, the use of the semicolon is barred in all writings filed in this Court." Mind you, I am not suggesting the rule apply to lower courts, except to their opinions offered for publication. See Supreme Court Rule 93(c). It couldn't take much time for the force of reason to bring Chancery around. The Superior Court would soon follow. The Court of Common Pleas would not be outdone. The Municipal, Family, and Magistrate Courts might take a little longer. Meanwhile, our Federal District Court, a bastion of literacy, would surely warm to the idea. From there the Third Circuit is but a step away. And after that the horizon is limitless.

In short, semicolons are the misnamed, ambiguous tools of those too fearful to adjudicate the period vs. comma controversy, and of those who entertain some doubt whether they have completed the utterance of a single thought.

In the end the stress on the little semidevil will be too great. The argument in favor of dividing it has too much merit to be long resisted. Time is on the side of lucidity. Banged on the anvil of logic, the semicolon will break into a comma and a period. And, on the happy day when that occurs, DELAWARE LAWYER can take quiet pride in its heroic service.

[Volume 1, No. 1] ◆

FICTION SHELF:

A MUCH BETTER CLASS OF IMBECILE

DELAWARE LAWYER, in a spirit of eclectic audacity, is including the following passage from an unpublished (and quite possibly unpublishable) novel by a member of the Delaware Bar. The author, fearful of being torn limb from limb by practitioners of domestic relations law, has demanded anonymity. Our lips are sealed. Since the passage is plucked from a larger narrative, a little explanatory background is in order: Henry, married to Brenda, has been cuckolded by Sheldon, a fat dentist, whom Brenda nonetheless finds irresistibly appealing. ("His mustache enabled him to resemble, in Brenda's uncritical view, a squat Errol Flynn.") The scene is Boston, Massachusetts; the time the early 1970s.

Henry, forgetting that God punishes us by answering our prayers, continued to hope that his wife would come to her senses and return. Then he received a letter marked "Personal and Confidential." It came from a Mr. Scheinswit, an associate with a law firm on Bromfield Street. Scheinswit announced his understanding that Brenda had been driven out of the marital home after indignities beyond imagining. As the wronged party to a domestic controversy she was entitled first to pre-trial alimony, then divorce, then permanent alimony, and finally, a division of property suitable to her station in life. "Would you be so kind as to have your attorneys contact the undersigned?" The letter made a very disagreeable impression on Henry, who had been brought up to believe that gentlemen do not use the word "contact" as a verb. Brenda had sunk low, to be sure, but to engage such a champion was the nadir of her depravity.

Henry reluctantly called his lawyer, the senior partner of a very fine old firm on State Street. Henry's large and complicated business affairs made him an important client. His lawyer, a Mr. Goodale, notoriously arrogant but always deferential to the rich, invited him to come in straightaway.

Half an hour later he sat in the reception room of Goodale's offices, waiting for his lawyer, who was sequestered in the men's room. Mr. Goodale, who was

ANONYMOUS

Illustration by Paulette Bogan

seventy-five years old, was foolishly trying to put off an inevitable prostatectomy, and he spent a great deal of his time barricaded in a lavatory booth. When legal emergencies arose, his partners, who depended on Goodale's vast experience and sound judgment, always knew where to find him. They consulted with him from adjoining stalls. Only a week before, a knotty problem of corporate reorganization had yielded to the powers of suggestion, when a fortuitous flush of urinals had inspired Mr. Goodale to suggest a downstream merger.

Such an occasion was at hand again. As Henry sat in the reception area pretending to read *The Wall Street Journal*, Mr. Potter, accompanied by young Mr. Repplier, headed for the men's room. Before swinging the door Potter instructed the receptionist, "If anyone wants us, just say we're in conference." Henry, already much depressed and a little disenchanted with lawyers, wondered if he was being charged for his attorneys' calls of nature. He then rejected the thought as unworthy both of him and of Mr. Goodale. But as he looked around the uninviting reception area, he noted that this distinguished law firm, so old and prominent that it could proclaim its self-confidence by housing in drab quarters, had livened up the decor with Bachrach portrait photographs of departed members, a group some of the meanest-looking and most transparently rapacious Anglo-Saxon gentlemen Henry had ever beheld. Perhaps his ungenerous suspicion was well founded.

Ten minutes later Goodale emerged from the lavatory, grinning with relief, which Henry, who did not know the reason for Goodale's euphoria, considered a little hardhearted at the time of his own great trouble. Potter and Repplier, dancing attendance on their senior, followed close on Goodale's heels. Potter was in raptures!

"Asa, that was positively inspired! I just hope I have all the details straight. I keep telling you, Asa, we simply have to hire a male stenographer."

Goodale turned to Henry.

"Come, come now, no long face! Buck up! You're young, you're handsome, and you're rich. I daresay in four or five years this will just seem like a bad dream." Goodale didn't know much about divorce and separation, but he was familiar with the length of the process. He ushered Henry into his office and read Scheinswit's letter with an expression of amused disdain.

"Hah! So her lawyer has offices on Bromfield Street, does he? Heh, heh, heh! Dreadful place. A rabbit warren of pettifoggers perched in cheap suites over second hand jewelry stores!" Goodale then instructed his secretary to get Scheinswit on the telephone, made him wait for a minute or two, and then grandly announced himself. He proposed a conference to discuss Brenda's demands, to which Scheinswit readily agreed. It was to be held the following Wednesday at Bromfield Street.

The letter made a very disagreeable impression on Henry, who had been brought up to believe that gentlemen do not use the word "contact" as a verb. Brenda had sunk low, to be sure, but to engage such a champion was the nadir of her depravity.

At this stage of the battle Henry did not realize that Mr. Goodale, a brilliant lawyer who knew virtually everything worth knowing about corporation law, secured transactions, and maneuvering suspect business combinations through the shoals of the anti-trust laws, was so weak in the law of domestic relations. Probably no one in this august firm was qualified by experience or temperament to handle a mess like this. Goodale, who hoped that his firm name and his own imposing presence would enable him to bluff his way through with these paltry Bromfield Street impudents, was determined to oblige a valued client. Little did Goodale know that he was in for a truly dreadful afternoon as he climbed the dark, steep flight of rickety stairs to Scheinswit's office.

"Wouldn't you know the elevator would be out of order," grumbled Goodale. When they reached their third floor destination he was puffing badly. After catching his breath he examined a plaque that read:

LOEB & LEOPOLD
(Formerly Snyder & Gray)

Beneath this there was a list of six lawyers, Scheinswit's name in small lettering and at the very bottom. Goodale rubbed his hands with satisfaction. He would make mincemeat of this stripling. They entered the reception room, which in contrast to the scruffy staircase and corridor, was as glamorous as Aladdin's cave. The place suggested to Henry nothing so much as a cinematic recreation of a hideaway of affluent gangsters, which in a sense it was. There were thick beige wall-to-wall carpets, a profusion of glossy plants and several pieces of very good contemporary furniture. Henry and Mr. Goodale sank into opulent club chairs while the receptionist, who had turquoise eye shadow and long orange fingernails, completed a telephone call, apparently with a client.

"Mr. Larkin's appointment was for ten o'clock." (Then reprovingly) "It is now 3:00 p.m." (pause) "Oh, I see. At seven this morning, you say? Please accept my sincere sympathy. You understand there will have to be a charge for late cancellation unless, of course, we're going to represent the estate." There was a long pause during which the young woman positively scowled at the telephone. Then the line must have gone dead. "Well, talk about bad manners!" The receptionist turned to Henry and Mr. Goodale. "May I help you?"

Mr. Goodale explained their mission and asked the whereabouts of the bathroom. The receptionist deflected his question and announced that there had been a change. Mr. Scheinswit was unavailable. Mr. Loeb, the senior partner, would be handling the matter "personally."

This was not as planned. Goodale, who pretended to be ignorant of the very existence of this stygian little firm, was well aware of Loeb and his formidably nasty reputation. Loeb did not specialize exclusively in matrimonial causes, but he was well qualified to handle them since his major efforts in personal injury and medical malpractice

cases also involved the unjustified extraction of large sums from well-heeled innocents. He had attained a national reputation among trial attorneys by writing a scholarly study of recoveries won by people who had slipped in the aisles of supermarkets. His practical advice on how to persuade jurors to hate the A&P was masterly. Lawyers for insurance companies cringed when they heard Loeb's name.

Brenda was indeed fortunate to have Loeb in her corner. She had, at first, retained Scheinswit (a name that beckoned wickedly to helpless spoonerists) on the advice of her family. Scheinswit's father had once very ably defended Brenda's parents when they were charged with fencing oriental rugs. But Scheinswit was not the powerhouse his father had been. He was a mousey, unassuming sort, of value to Loeb principally because of his uncanny skill in retouching x-rays for personal injury cases. A week before the conference Loeb had reviewed Scheinswit's case load with an eye to increasing it to a point just short of a responsibility calling for larger wages and discovered that his junior was representing the wife of a very rich man. The fees might be impressive if he handled the case vigorously. Loeb snatched away the file and banished Scheinswit to his darkroom and his portfolio of unimportant cases.

Loeb had planned the conference carefully. His aim was to infuriate Henry into damaging statements and to humiliate the senior partner of the most prominent law firm in town. He knew that his client's case was worthless, but he believed that he could shame, harass, and insult the opposition into a fat settlement just to be rid of Loeb. His first step was to arrange for the elevator to be out of order. Next, he saw to it that Henry and Goodale had to wait forty minutes. A stickler for artful detail, he instructed the receptionist to say that the key to the men's room had been mislaid so that Goodale would enter the meeting in a state of wounded dignity and acute discomfort. (It was well known in legal circles that Goodale now conducted his practice from a succession of rest rooms. Because of his affliction he had been unable to try a case for nearly three years.) Loeb also instructed the receptionist to be sure that the conference was periodically interrupted by a succession of insultingly unimportant matters. He would be as discourteous to Goodale as Goodale had hoped to be to Scheinswit. He would put Goodale in short pants. His final touch was intended to reduce Henry to dangerous and reckless anger: he ordered Sheldon to accompany Brenda to the meeting, and he instructed them to hold hands.

At last Henry and Goodale were admitted to Loeb's office. Greetings and introductions were uniformly chilly, except for Loeb's false bonhommie. He actually dared to address Mr. Goodale as "Asa."

"Do we really need the paramour?" asked Henry angrily, pointing at Sheldon with a gesture of disgust better suited to warning pedestrians against the presence of dog droppings.

Henry, who had spent fifteen years enslaved by infatuation, was startled and even a little proud to hear himself likened to an ogre. He had quivered in self-reproach at Brenda's slightest displeasure, and now, *mirabile dictu*, he had been transformed in Loeb's fertile and dishonest imagination into a macho monster. Whee!

"Easy now, boy," cautioned Goodale.

"I'm afraid Mrs. Axelrod insists on his presence," said Loeb. Brenda nodded in agreement.

"His presence is completely unimportant. We couldn't care less," said Goodale grandly, still confident he would have his way. After all, he had noted with disapproving satisfaction Loeb's framed diploma from CCNY. No client of Hall & Mills was going to be pushed around by this tawdry little suit and cloaker. "Why don't you state your client's position, Mr. Loeb? We have been waiting much too long, and I think we should come to the point."

"I apologize for the press of urgent business," said Loeb very sweetly in order to make Goodale look rude.

At this point Miss Wisniewski broke in, oozing fake contrition for her imaginary disobedience to the "in conference" sign on Loeb's door.

"A Mrs. Monahan says she absolutely must talk to you. It's one of Mr. Scheinswit's cases, but he's over at District Court suppressing a dope peddler's confession."

"I'm familiar with her case, Veronica, but I am in conference."

"She insists on talking to someone." Loeb sighed heavily.

"Please remind her that our latest statement hasn't been paid," said Miss Wisniewski as she left the room.

Loeb shrugged his shoulders and assumed an expression of martyrdom. "So sorry about this." He picked up the phone. Since Loeb parroted back just about everything Mrs. Monahan said to him it was easy to determine that Mr. Monahan was being difficult. He wouldn't sign the separation agreement, he wouldn't get out of the house, and he wouldn't disgorge the savings bonds he had taken from the joint safe deposit box. What was Mrs. Monahan to do? Loeb thought a moment.

"See if you can provoke him into striking you," was his creative suggestion. "You shouldn't find that very difficult," he added darkly. "Mrs. Monahan, I hate to remind you of this, but our last statement has not been paid." A pause. "Yes, yes, I understand perfectly and I'm very sympathetic. But isn't this the third time in the last six months you've had to replace your furnace? You must understand, Mrs. Monahan, we can't return those bronzed baby shoes while our bill is outstanding."

Goodale, accustomed to representing a much better class of imbecile, rolled his eyes to heaven in disbelief.

Loeb hung up on Mrs. Monahan. "To respond to your request, Asa, that we state our client's position, I refer you to Mr. Scheinswit's letter to your client. Have you read it?"

"Of course I have read it!" thundered Goodale.

"And what is your response?"

"Our response, in a nutshell, is *this,* Mr. Loeb: my client does not intend to stand in the way of Mrs. Axelrod's happiness. He will not contest a divorce, but

he sees no reason to shower support and assets on a lady who, in violation of her marriage vows, has elected to cohabit with a more congenial partner."

"That will not do, and you know it. Your client is a very rich man and (though it pains me to say it) a very selfish one, cold, insolent, sexually demanding and insensitive, profoundly difficult to live with. He has driven Mrs. Axelrod to her present unhappy plight." Loeb waxed eloquent over Brenda's misery, suggesting that had she remained with Henry a moment longer her reason would have been unhinged and only the blessings of therapeutic adultery had saved her from madness. Moreover, she would need extensive psychiatric help, for which Henry must pay. It seemed that Loeb had even retained some professional charlatan who was prepared to testify that Brenda's frail emotional health was the result of "mental cruelty."

Henry, who had spent fifteen years enslaved by infatuation, was startled and even a little proud to hear himself likened to an ogre. He had quivered in self-reproach at Brenda's slightest displeasure, and now, *mirabile dictu,* he had been transformed in Loeb's fertile and dishonest imagination into a macho monster. Whee! But Goodale, outraged, proceeded to lose his temper.

"This is preposterous! No court in this Commonwealth is prepared to reward strumpetry."

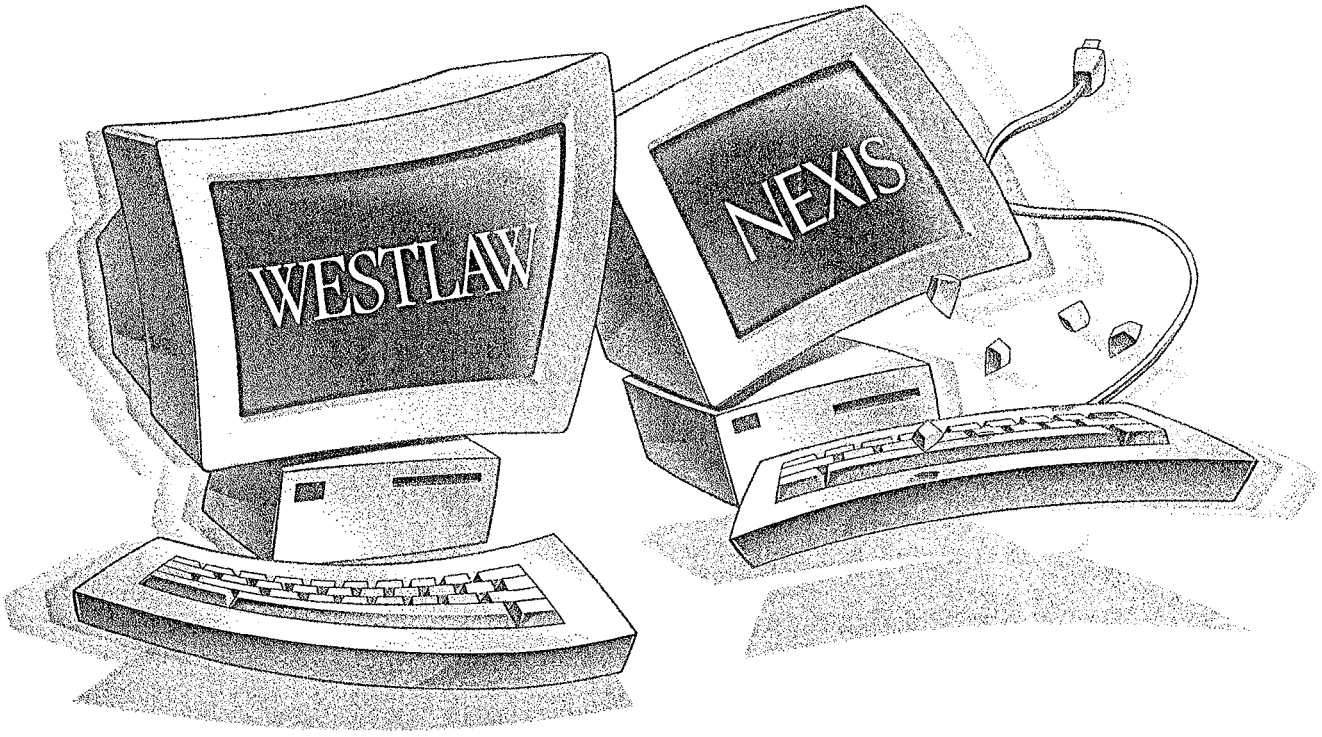
"Just as you wish. We'll do it the hard way." He summoned Miss Wisniewski and handed her some money. "You will buy a box of Fanny Farmer candy and take it to Miss Kelly at the Clerk of Court's office. (We've neglected her recently.) You will tell her that I want an appointment with Judge Simpkins preferably on Friday afternoon. He's usually slightly drunk and very sentimental on Friday afternoons, in just the proper condition to hear of Mrs. Axelrod's cruel plight, and to sign an order restraining her husband from disposing of any of his assets. You will file the complaint with Miss Kelly along with the sweets."

Loeb then brandished an important-looking document and handed it to the receptionist.

Goodale, visibly shaken, plucked carphologically at his watchfob and croaked, "Sir, you are a blackguard! You'll never get away with this."

"Even if we don't, your client will find it extremely expensive and very inconvenient. When I get done, he'll be

Move over Nexis.
Now Westlaw has more business and financial information.



Move over Nexis®.

WESTLAW® now offers the legal community more business and financial information online than you'll find anywhere else.

Including Nexis.

The numbers tell it all.

For example, WESTLAW gives you more full-text U.S. newspapers.

Exclusive access to Dow Jones newswires.

Fifty percent more full-text market and technology newsletters than you will find on Nexis.

And that's just the beginning. Because we're adding even more information to WESTLAW at an unprecedented pace.

It's no wonder that so many are making the switch from Lexis/Nexis.

WESTLAW. One name. One source for all your legal and business research needs.

TO LEARN MORE, CALL 1-800-328-9963.

WESTLAW®

More ways to win

West. An American company serving the legal world.

properly trussed and tied up. He won't be able to go to the bathroom without a court order."

"That reminds me," said Goodale in anguish, as Henry took over in defense of his lawyer.

"Do your damnedest, Loeb. Let's get out of here, Mr. Goodale. There's nothing more to discuss."

"Have a nice day!" said Miss Wisniewski as Henry hustled the old man out of the office. "I'll walk down with you," she added. "I'm on my way to the courthouse."

Henry had analyzed the problem far more coolly than had Goodale. He was convinced he should fight and he was certain that no court would hogtie him to the degree Loeb had predicted. He not only understood this; he knew that Goodale did not understand, and, unaccustomed to divorce work, was suffering the terrors of the unknown. Henry, who was as kindly as he was intelligent, forgot his own troubles in attempting to comfort his lawyer. He bundled Goodale into a taxicab and took him off to his club, where there was a really sumptuous bathroom.

When Goodale reappeared twenty minutes later, Henry had sorted things out in his mind, and had made a very wise decision. Henry was that rarity among even intelligent laymen: he knew when and how to fire a lawyer.

"Mr. Goodale, I apologize for subjecting you to an experience beneath your dignity and that of your fine firm. I believe that Hall & Mills is too busy with really important work to undertake this."

"Well," said Goodale, "the litigation department is stretched a bit thin right now, what with all these damned fool tender offers."

"Exactly. I want Hall & Mills in a position to give my commercial affairs undivided attention. Wouldn't you rather send my messy private business to someone who specializes in that sort of thing? Surely you have other clients who have made fools of themselves? I'm certain you can recommend someone in whom you have absolute confidence."

Goodale concurred gratefully. It just so happened he knew the right people for the job. Within a few days after the filing of Brenda's petition, the slightly shady firm of Burke & Hare swooped down from their aerie in Barristers' Hall and started making things disagreeable for Brenda and Loeb.

[Volume 1, No.3] ◆

SIDNEY B. SILVERMAN

An Outsider Looks at Chancery

There are many reasons suggested why corporations incorporate in Delaware. To my mind, one reason appears paramount: the competence of the Court of Chancery. Directors and officers, by subjecting themselves to the well-defined body of law in Delaware, can be assured that their transactions will be judged on established precedent.

My first three years as a lawyer in New York City were spent writing memos and briefs. I wanted to argue cases as well as prepare papers and was eager to advance the time when I would be tasting fire and not merely smelling smoke. Another young lawyer, who shared my ambition, suggested that we form our own firm to specialize in stockholder actions, a field in which we both had gained some experience. Under the law, any stockholder may bring an action on behalf of a corporation to recover the corporation's money or assets from its management if the management has caused or permitted the assets or funds to be wrongfully diverted or misused. The theory is that a management that has participated in wrongful conduct, causing loss to its corporation, obviously will not sue itself to recover these losses.

From the perspective of the lawyer who represents the complaining stockholder, this kind of litigation is a chancy proposition. If the stockholder's action results in the return of funds to the corporation, the judge presiding over the case will award a fee out of the fund created by the successful lawsuit to the attorney bringing the suit. However, if the stockholder is unable to prove his claim, there is no recovery for the corporation and no fee for the stockholder's lawyer, even though enormous time and effort may have been expended.

Although I recognized that I was embarking on an endeavor involving a great personal risk, the opportunity to try my own cases in court proved irresistible. I accepted my colleague's proposal, and in 1960 we began our practice, specializing in stockholder actions.

Corporations are chartered under the laws of a state selected by their organizers. Delaware is a popular choice. It is estimated that Delaware can lay claim to half of the Fortune "500" and one-third of the corporations traded on the New York Stock Exchange. Because of the large number of Delaware corporations, many stockholder actions are commenced there and under long-standing principles of practice are tried in the Court of Chancery. Hence, it was not surprising that my first court appearance was made not in my home state of New York, but in the Delaware Court of Chancery.

The case involved a proposed settlement of a stockholder's action brought on behalf of Schenley Industries, Inc. Unlike conventional private suits, stockholders' actions cannot be settled without court approval. The interests of all stockholders of the corporation are affected and a private settlement with the plaintiff stockholder offers a potential for abuse. To prevent it, a notice describing the lawsuit and the terms of settlement must be mailed to each stockholder of the affected corporation. The notice also informs stockholders that they may appear in court at a fixed day and time and, through counsel of their choice, present arguments as to why the settlement is not fair to the corporation or its stockholders. As I was soon to learn, opposing a settlement is often a foolhardy undertaking. By the time a settlement is proposed, the former adversaries — that is, the stockholder's lawyer who brought the suit and the corporate lawyers who defended it — are allied in wanting it approved by the court and view an objector as an unwanted interloper. Nonetheless, when a friend dissatisfied with the proposed settlement sent us his copy of the Schenley notice, we

had our first client and our first case.

On the day set for the hearing on the settlement, my partner and I appeared in Chancery Court. The hearing was conducted by Vice Chancellor William Marvel. Although the Vice Chancellor had been on the Bench only a few years, his bearing and demeanor made it seem as though he had been a judge all his life. The hearing lasted the entire day. Arrayed against us were prominent New York attorneys and the legendary Delaware lawyer, Aaron Finger.

One of the New York attorneys for the defendants stressed during the course of his argument my inexperience and pointed out that I had not made my mark in the liquor industry, nor even as an attorney. Accordingly, he contended that the Court should place no weight on anything I might say. In reply, I admitted that I lacked experience, both in business and in law, but that the genius of our system of justice was that a case is determined on the strength of the arguments and not on the experience, or lack of it, of the counsel making the argument. I thought that my reply evoked an approving smile from Vice Chancellor Marvel.

After a luncheon recess, Mr. Finger began his presentation. His tack was different. He started by magnanimously conceding that there was apparent merit in a few of my points, but, he assured the Court, only apparent merit. He then proceeded to demolish, by references to decided cases, each and every point I had made. It was the rapier that Mr. Finger wielded so effectively, rather than the bludgeon used by the New York attorney, that, I believe, carried the day. My opponents were so confident of obtaining court approval after Mr. Finger's argument that, at the conclusion, they presented to the Vice Chancellor a form of judgment approving the settlement. In view of Mr. Finger's persuasive argument, it was probably only to spare my feelings that Vice Chancellor Marvel delayed signing of the judgment. He announced that he had been given a lot to think about and was not ready to make an immediate decision. A few days later, I received notice that the Vice Chancellor had approved the settlement. Nonetheless, we walked away with the feeling that we had been treated fairly and courteously.

Since many corporations organized as Delaware corporations are based elsewhere and are sued in the Court of Chancery by stockholders who are also non-residents of Delaware, a practice has developed which enables the out-of-state attorneys representing both the corporation and the litigating stockholders to participate actively in the case along with Delaware counsel. The trial of a case is generally a joint effort between Delaware counsel and out-of-state counsel on both sides and, in my experience, it has never made a difference whether it was my Delaware co-counsel or I who was taking the active role in a particular facet of a case.

The Delaware lawyers who represent the corporate defendants have developed a vast amount of expertise. Based on experience, they are often able to predict at the early stages of a case the likely outcome and, should the case go to trial, the decision proves them good prophets far more often than not. Hence, acting on the advice of Delaware counsel, defendants have, for many years, usually settled the meritorious plaintiff cases and prevailed after trial in the less troublesome ones.

As a general proposition, the settlement of a case goes largely unnoticed in the legal community beyond, of course, the actual participants. There is no written opinion to be reported to the profession. However, when a case is tried, a comprehensive decision, setting forth the judge's findings of fact, reasoning and conclusions, is published. Since, for years, only the weak cases, on advice of Delaware counsel, were tried, law professors, who had no actual experience in Chancery Court, read decision after decision finding against the plaintiff stockholder in the Delaware law reports and leapt to the conclusion that the Court of Chancery had a bias in favor of corporate defendants. One law professor wrote a widely publicized article in which he linked this purported bias to Delaware's dependence upon corporate franchise tax revenues, and concluded that Delaware had somehow corrupted its courts and had thereby won "the race to the bottom" in pandering to corporate interests at the expense of stockholder rights.

Some out-of-state defense attorneys, unfamiliar with the integrity of the Court of Chancery, accepted this ill-formed opinion of the legal scholars that Delaware favored the vested interests and ignored the advice of the true experts, the Delaware attorneys who practiced before the Court. Those who chose to ignore the latter's advice received a rude shock when, in 1977, a trio of decisions written by Supreme Court Justice and former Chancellor William Duffy, made it plain that Delaware provided no "safe harbor" for those who would abuse the responsibility of high corporate office. The decisions were regarded as high water marks of enlightened judicial treatment on the subject of corporate governance and were, ironically, favorably commented upon by the very same scholars who had several years before vehemently criticized the Delaware courts. Those decisions reinforced my view, based upon many personal experiences, that the Delaware Court of Chancery presents an even-handed forum to advocates of stockholder interests.

While my choice of career has placed my heart on the side of the plaintiff, I remain envious of defendants' attorneys who receive their compensation directly from their clients, whereas I, as a plaintiff's lawyer, have to apply to the court for my fees. Since the prosecution of a stockholder's case often requires several years of concentrated effort, it is not unusual for the stockholder's lawyer's request for fees after a successful outcome to exceed by a multiple the annual salary of the judge who must pass upon the application, a fact which can hardly escape notice by the judge. I can recall a New York judge informing me that his

Although time has wrought changes, the gracious and scholarly atmosphere of the Delaware Court of Chancery has remained constant. Like a torch, it has passed from one generation to the next and burns as bright and true today as when I first appeared there in 1960.

A Special Offer From
The Employee-Owners Of Avis
Exclusively For Members Of
Delaware State Bar Association

The Best Case For Renting From Avis: Great Member Benefits.

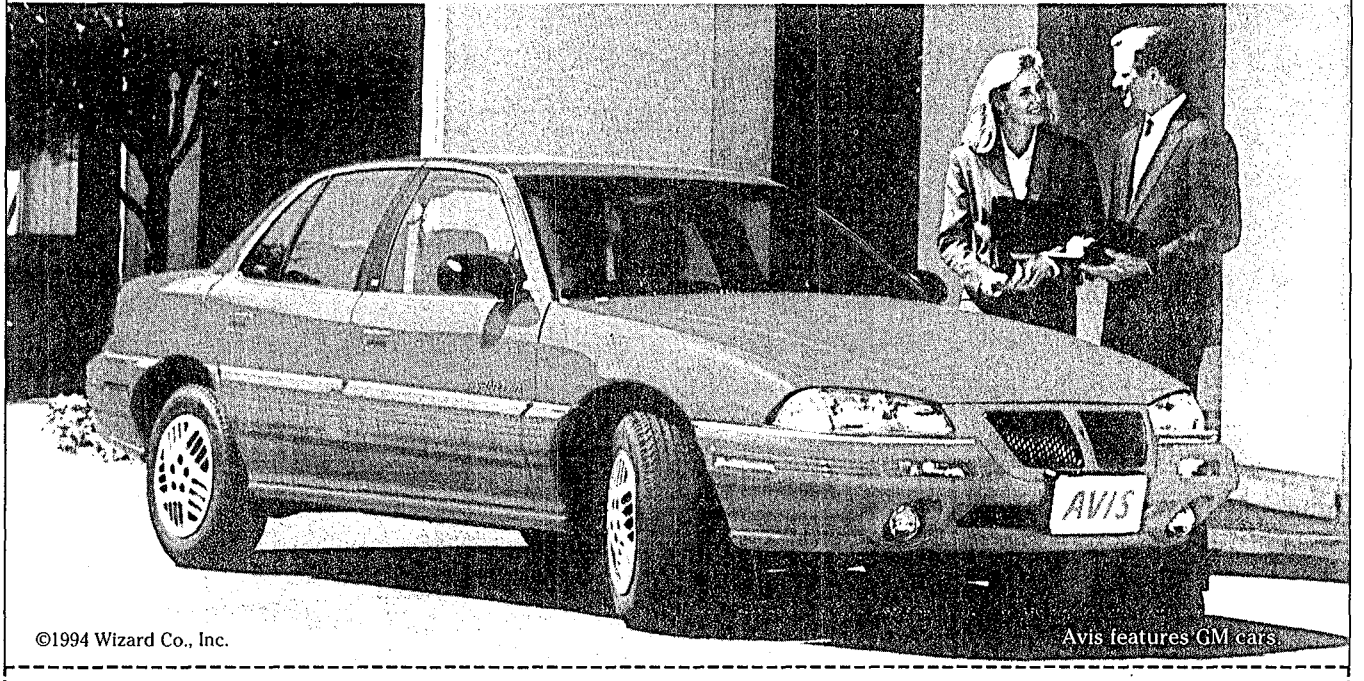
AVIS®
We try harder.®

Avis is proud to offer the legal community the newest, most comprehensive rent-a-car benefit program, bar none.

We've worked hard to make this program the best ever by addressing all your car rental needs and concerns. **Case in point: our rates**. Avis rates are among the best in the industry. Whether you're renting for business, leisure or vacation, our rates translate to excellent savings and value. **Another case in point: our service**. At Avis, the "We try harder" commitment of our employee-owners means you'll receive the quality service and attention that has made Avis the choice of travelers worldwide. Plus, the convenience of our timesaving services — the Avis Preferred Renter℠ program, Avis Express℠ and Avis Roving Rapid Return℠ — that can make renting and returning your car fast and easy.

To get you started, we're offering a free upgrade. See the coupon below for details.

Call Avis now at **1-800-331-1212** to compare our savings and value. And learn why so many bar members across the country swear by Avis. Don't forget to mention your Avis Worldwide Discount (AWD) number when you call: **A603300**



Avis features GM cars

A Free Avis Upgrade!

Reserve an Avis Intermediate through a Full Size 4-Door car. Then present this coupon at a participating Avis U.S. location and you can be upgraded one car group at no extra charge. **An advance reservation with request for upgrade is required.** Subject to complete Terms and Conditions. For reservations, call your travel consultant or an employee-owner of Avis at **1-800-831-8000**.

Terms and Conditions
Coupon valid for a one-time, one-car-group upgrade on an Intermediate (Group C) through a Full Size 4-Door (Group E) car. Maximum upgrade to Premium (Group G). Offer valid on daily, weekend and weekly rates only. Coupon must be surrendered at time of rental; one per rental. Coupon valid at Avis corporate and participating licensee locations in the continental U.S. Cars and upgrades are subject to availability at time of rental. **An advance reservation with request for upgrade is required.** Renter must meet Avis age, driver and credit requirements. Minimum age is 25.

Rental Sales Agent Instructions. At Checkout:
Assign customer a car one group higher than car group reserved. Upgrade to no higher than Group G. Charge for car group reserved. In CPN, enter number printed below. Complete this information:
RA#_____Rental Location_____
Attach to COUPON tape.

AVIS®
We try harder.®

AWD #A603300. Coupon #UUGC661. Offer expires 6/30/95.

salary, based on the hours he spent on the job, came to about $15 per hour, and he saw no reason to compensate me at a higher rate. Like many lawyers, I am more comfortable arguing a client's cause than my own and, in the case mentioned, I was ultimately awarded what I believed to be an unfairly low fee.

In Delaware, by contrast, the plaintiff's lawyer is not made to feel like a mendicant. I recall Chancellor Duffy's putting me at ease on one such occasion, when he said that it was a happy day in his life as a judge when he had the opportunity to award attorneys' fees.

Many judges are overworked as well as undercompensated. As a result, the lawyers who appear before them are often forced to adapt their schedules to that of the Court, often at great inconvenience. The Chancellor and Vice Chancellors of Delaware, although as busy as any in the country, find the means to extend a courtesy to New York lawyers. Aware that the loneliness and expense of a night's lodging away from home can be avoided by making a slight adjustment in the order in which cases are heard, the Court of Chancery generally accommodates New York attorneys by scheduling their appearances late in the morning to allow for timely arrival on a morning train. Such courtesy, which is the rule in Delaware, is the exception in many other states. Recently, I left home early on the Sunday of Thanksgiving weekend, cutting short my time with my children who were home from school for the brief holiday, in order to be in court in a distant state to start a trial scheduled for Monday morning at 9:00 a.m. When I arrived in court with witnesses in tow, I was advised to return after 2:00 p.m. since the judge was busy with other matters. The case was finally heard the next day. As is usual in such situations, the lawyers accepted the delay without comment to the judge, and the judge offered no apology for the inconvenience caused clients, witnesses and attorneys. Such practice is, unhappily, the accepted norm in many courts.

The Delaware Court of Chancery is different. I remember Vice Chancellor Isaac D. Short, II, once asking counsel if it would be all right with them if he ended the court day an hour earlier than usual. He explained that his son was scheduled to pitch a night game in Philadelphia and that he wished to have an early dinner and attend. He offered, in exchange, to start one hour earlier on the next day and stay late on that day, if nec-

essary, to conclude the trial. That night, in my hotel room, I listened to the Phillies and cheered for Chris Short, who pitched a fine game and won. The next day, the trial started an hour earlier and was completed by the end of the day.

There are many reasons suggested why corporations incorporate in Delaware. To my mind, one reason appears paramount: the competence of the Court of Chancery. Directors and officers, by subjecting themselves to the well-defined body of law in Delaware, can be assured that their transactions will be judged on established precedent. Investment bankers, who raise money for corporations through the sale of stock to the public, can be assured that their customers will be protected in those isolated cases where there is fraud or over-reaching on the part of corporate management. Out-of-state lawyers, who are often influential in the selection of Delaware as the state of incorporation, know that if called upon to appear in the Delaware courts they will receive courteous treatment from the Delaware Bar and a sound determination of the dispute from experienced and knowledgeable arbiters.

In almost twenty-five years of representing stockholders, I have appeared many times in Chancery Court. The young associates who assisted the senior partners in the great Delaware firms when I began practicing are now themselves the seniors in those firms. Former Chancellors have moved on to other positions or have retired. Although time has wrought changes, the gracious and scholarly atmosphere of the Delaware Court of Chancery has remained constant. Like a torch, it has passed from one generation to the next and burns as bright and true today as when I first appeared there in 1960.

Mr. Silverman, exercising admirable delicacy, has not identified the professorial detractor of Delaware law and the Delaware courts. We, however, in the interest of a good story, choose to be indelicate: the reference is plainly to the late Professor William Cary, a brilliant and distinguished lawyer, teacher, legal writer, and former Chairman of the Securities and Exchange Commission, whose lucid intellect was nevertheless subject to one idée fixe, *an implacable hostility to the General Corporation Law of the State of Delaware. To hear him on that topic was rather like listening to Madalyn Murray O'Hair on the subject of God. When it came to talking about Delaware and*

things Delawarean, Professor Cary's formidable powers of righteous invective were not shackled by the artificial constraints of good taste. On one unforgettable occasion at a Practising Law Institute forum in New York, the Professor indignantly branded Delaware as "a pygmy state, interested only in revenues."

Occasionally, the Professor had a kind word for Delaware. The rendition of our Supreme Court's opinion in Singer v. Magnavox Co., *380 A.2d 969 (Del. 1977), which Mr. Silverman discusses without naming, examines sensitively the position of a minority stockholder holding his investment at the whim of a majority juggernaut. Briefly — very briefly — Professor Cary mellowed, announcing at the same PLI meeting that with* Singer, *"the Delaware Supreme Court has hit the sawdust trail." Professor Cary died before* Weinberger v. UOP, Inc., 457 *A.2d 701 (Del. 1983), and was spared the wounding spectacle of judicial recidivism.*

Singer *came as a nasty shock to many of the corporate Bar. Grandees of the big Wall Street firms began telephoning their Delaware cronies, with but a single question on their lips, "Has your Supreme Court gone crazy?" In a word, no. It became apparent that* Singer *was becoming more a toe trap for legitimate corporate planning than a shield for minority owners. In* Weinberger, *our Supreme Court drew* Singer's *pious fangs and set about fashioning more precise, yet more flexible, devices for discriminating between corporate sheep and goats.* Singer, *like Little Nell, was probably too pure to live, at least in all its celestial radiance. When* Weinberger *came along, it provided the occasion for the Supreme Court to proclaim, "Enough, already!" But during its years of prosperity,* Singer *and those cases which derived from it (invariably referred to as "*Singer *and its progeny") enjoyed a considerable vogue. The word "progeny" always jarred us a bit: the thought of anything of such exaggerated purity as* Singer *stooping to the earthy mechanics of the reproductive process is incongruous, but then* Singer, *like man, proved mortal.*

W.E.W.

Sidney Silverman, a most accomplished corporate lawyer of the New York Bar, is well and favorably known to Delaware practitioners and to the Court of Chancery. A graduate of Colgate University and of Columbia Law School, Mr. Silverman is a partner in the New York firm of Silverman, Harnes & Harnes. ◆

IRVING MORRIS

Of Power and Prayer

For more than a generation Irving Morris has practiced law in Delaware with great distinction. He is best known for his corporate practice, but he and his former partner, Joseph Rosenthal, have been among the most ardent and skillful defenders of civil liberties in Delaware.

In 1976 Joseph F. Mclnerney sought the Democratic nomination for United States Senator. The nomination went to another and Mr. Mclnerney decided to form an independent party ("The Delaware Party") and continued his run for the Senate. Following Mclnerney's nomination by the new party, the General Assembly passed, and the Governor signed, a statute of dubious constitutionality designed to keep The Delaware Party and Mclnerney off the ballot. The would-be Senator went to Court. Here is what former Attorney General Joseph Donald Craven has to say about Mr. Mclnerney's lawyers:

The firm of Morris and Rosenthal, engaged by Mr. Mclnerney, is nationally known for its success in handling civil litigation, particularly cases protecting the rights of minority stockholders. But their success as corporation lawyers had not lessened the interest and concern of Irving Morris and Joseph Rosenthal in assisting Delaware citizens whose civil rights had been denied or endangered.

Mclnerney won his case and his name appeared on the ballot. Mr. Craven observes, "If it were not for Mclnerney and his lawyers, the people of Delaware might still be politically strangled by an unconstitutional law." A fuller account of this litigation appears in Mr. Craven's book, ALL HONORABLE MEN — The Anti War Movement in Delaware 1965-1966.

The statutorily compelled reading of verses from the Bible and saying of the Lord's Prayer as part of the daily opening exercises in public school classrooms in Delaware never struck me as the burning issue of my time. The School Prayer case was offered to me when I served as President of the Delaware Chapter of the American Civil Liberties Union ("the ACLU") in the early 1960's. I use the word "offered" in a special sense. Doris, my wife, and I were guests on a friend's power boat when a discussion arose as to the propriety and constitutionality of school prayer in the public schools. Several other guests said they thought I should bring an action attacking the constitutionality of the statutes. Although I immediately expressed my judgment that school prayer was undoubtedly a violation of the First Amendment to the Constitution, I went

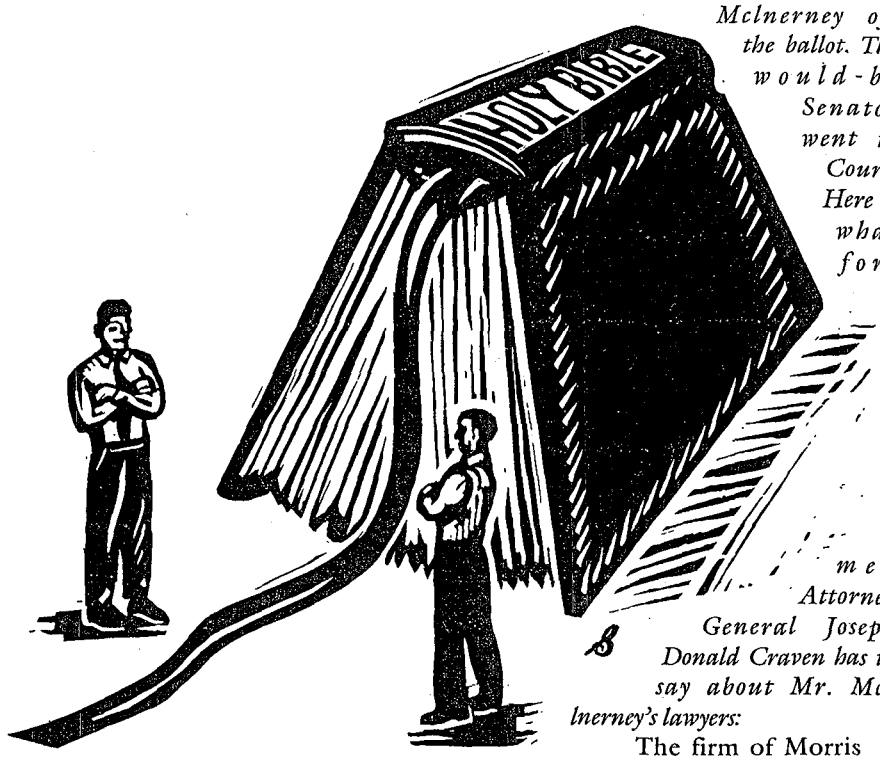


Illustration by Stephanie Shieldhouse

on to emphasize that, given other major issues the Republic faced (i.e., resolution of the problems of race, which threatened and still threaten to divide our people, the achievement of peace in the world, etc.), I thought that I should devote my time and attention to matters other than the recitation of verses from the Bible and the saying of the Lord's Prayer in public schools. Thus, I rejected the "offered" opportunity to take up the cudgels and flail away at school prayer.

Henry W. Sawyer, III, and the ACLU Chapter in Pennsylvania held a disparate view from mine about school prayer and went forward to challenge the practice prevalent in the public schools across the country. On June 7, 1963, in the case of *School District of Abington Township, Pennsylvania v. Schempp,* 374 U.S. 203 (1963), the case which Sawyer brought, the United States Supreme Court ruled that mandatory prayer in public schools was unconstitutional. I did not disagree with the opinion which, I thought, in keeping with the First Amendment of the Constitution, was a resounding proclamation of everyone's freedom to practice religion or not as one chose.

In Delaware some officials promptly acted in a way to distort the meaning of what the Supreme Court had ruled and make political capital in the process. When newspaper people asked David P. Buckson, then Attorney General of Delaware, his view, he answered that he would issue a ruling to the State Board of Education to the effect that prayer should continue in Delaware's public schools since the specific Delaware statutes had not been before the Supreme Court in the *Schempp* case. On August 17, 1963, Attorney General Buckson issued his opinion to the State Board of Education in which he made clear that the Delaware statutes required the reading of the Bible and repeating of the Lord's Prayer in the public schools. George R. Miller, the Superintendent of Schools, in turn, directed Delaware school administrators to obey Attorney General Buckson's ruling.

Although I was fully prepared to ignore school prayer as a litigable issue (I wonder at times what would have happened had those who were so concerned about school prayer first addressed the matter in the various legislatures to convince elected representatives of the unconstitutionality of mandatory prayers in public schools rather than used the courts as the forum for the effort), I was not at all prepared to have the chief law enforcement officer in Delaware abandon the rule of law, which is the essence of the social compact. If Delaware were free, as Attorney General Buckson suggested, to ignore the ruling of the Supreme Court, not only each State but every citizen was then free to observe each statute or case decision as whim dictated. Attorney General Buckson's opinion set an example for the people of the State of Delaware to follow, which, I thought, would have put us on the road to anarchy; I would have none of it.

When newspaper people asked me, as the President of the Delaware Chapter of the ACLU, what the Chapter intended to do about Attorney General Buckson's position and school prayer, given the Supreme Court's decision in *Schempp,* I said that the ACLU would consider going forward with an action should any citizen ask that we do so. Within a day after the newspaper article correctly quoted what I had said, I received two calls. One was from W. Harry Johns, Jr., of Dover, Delaware, and the other was from Gary DeYoung of Middletown, Delaware. Both offered themselves as plaintiffs.

I promptly met separately with both Mr. and Mrs. Johns and Mr. and Mrs. DeYoung. I explained to them the harassment that undoubtedly would come their way should they become plaintiffs. I did not think of the harassment that would come my way. Not until many years later did my daughter, Debbie, share with me the abuse she took under the taunting of her schoolmates, in whose eyes my stand appeared to be against prayer and, therefore, against God. She endured it at a time when she mourned and tried to understand the death of Jonathan, her six and a half year old younger brother. As devastating as was our son Jonathan's death upon Doris and me, I never really comprehended how terrible the loss of the brother they loved must have been to our daughters, Debbie, not quite ten, and Karen, only four and a half. Both coped. I did not help Debbie by taking on the school prayer case.

With knowledge of the problems ahead, the Johns and the DeYoungs said they were still willing to come forward as plaintiffs. The situation of Mrs. DeYoung was particularly sensitive since she herself was a teacher in the public schools of Middletown. We prepared a complaint and filed it, confident of success. After all, there are not many cases a lawyer initiates in a professional lifetime backed by a United States Supreme Court decision hot off the press.

I went forward with the preparation of the case. Through my clients I secured the names of their children's teachers at their schools in Dover and Middletown. Particularly through Mrs. DeYoung I was able to enlist several of her colleagues to come forward as witnesses. The trial, I was certain, would be a piece of cake.

Meanwhile, the local newspapers published articles about the forthcoming trial. Prayer in the public schools was an emotional issue. My experience is that more emotion is generally accompanied by less understanding. It certainly was true in the school prayer case.

The day of trial finally arrived. At that time the law required a three-judge court since a State statute was under attack as a violation of the United States Constitution in a federal court. Chief Judge John Biggs of the Third Circuit presided with Chief Judge Caleb M. Wright and Judge Caleb R. Layton of the District Court joining him. I had assembled my witnesses, subpoenaing each of the teachers I wanted to testify to make certain that they would appear. For their own protection in their jobs, I wanted to compel the presence of the teachers so that the school authorities could not accuse them of cooperating with the plaintiffs by appearing voluntarily. The school authorities themselves were under pressure by many people in their communities to find ways to oust anyone who was against the saying of prayers in the public schools. For the teacher witnesses I developed a standard set of questions, the answers to which would readily establish that the reading of the verses was part of the required daily school exercises and that the children bowed their heads in prayer assuming a reverential attitude as they said the Lord's Prayer following the reading of verses from the Bible.

My patterned questions led to one of the more embarrassing moments I have had in a courtroom. As I went through my questions with each teacher, I received the expected answers. The questioning was brief, and Attorney General Buckson, who personally tried the case, had no questions in cross-examination. Finally, one teacher took the stand whose answers to the first few questions followed the "script" as I had anticipated the testimony would come forth. Thus, the teacher's answers established that under the mandate of Delaware's statutes, she saw to the reading of at least

five verses from the Bible each morning at the start of the school day and that the children in the classroom said the Lord's Prayer following the reading. I then asked, as I had with the other teachers, whether the children bowed their heads in prayer as they recited the Lord's Prayer. "I wouldn't know," came the unexpected reply. "Why wouldn't you know?" I foolishly asked without hesitation, ignoring the almost axiomatic rule that a lawyer should never ask a witness "Why?" without knowing the answer in advance. "Because my head is bowed in prayer too," said the teacher. I had no immediate further question to the forthright answer to break the stunning silence pervading the courtroom. There was no place I could go to hide. But the teacher's testimony was not my most embarrassing experience in the school prayer litigation.

The testimony of Harry Johns and Mrs. DeYoung went off uneventfully. The testimony of Gary DeYoung was something else again. Gary DeYoung, a poet, was a free spirit with a strong commitment to the rights of the individual. He held other views, as I was to learn during the cross-examination by Attorney General Buckson.

On direct examination, I had no reason to fault Gary DeYoung's testimony. On cross-examination, I found myself again looking for some place to hide. I am not at all certain how Attorney General Buckson came upon his opportunity, but in short order I was listening to the Attorney General explore with Gary DeYoung some of his more exotic views. Before I had a chance to object to the lack of relevancy to our proceeding of Gary DeYoung's views, I heard him opine that all priests and nuns of the Catholic Church were sexual perverts. I knew immediately what the newspaper would seize upon for its headline. I was not mistaken.

When the afternoon session ended and I returned to my office, I found my mentor and partner, Philip Cohen, with the afternoon newspaper before him on his desk. Gary DeYoung's views were front-page news as I thought they would be. The minutes were painful as I unsuccessfully tried to explain to Mr. Cohen why I was consorting with a person who held such offensive views. Freedom of speech and freedom of religion at the cutting edge threatened to tear apart the eleven-year-old partnership of Cohen and Morris. I am certain Mr. Cohen's concern was motivated by a desire to protect

me. Nonetheless, I knew that I could not ignore the testimony of Gary DeYoung and Mr. Cohen's reaction to it. Before the evening was out, I spoke to my friend, Father Thomas A. "Father Tom" Reese. (He remained Father Tom to almost everyone even after he was designated a Monsignor.) I asked Father Tom to do what he could to assemble a group of clergymen who would write a letter or letters to the *News Journal* attesting to their knowledge that I did not personally hold the views that my client, Gary DeYoung, had expressed about priests and nuns. Within a few days, the *Evening Journal* carried a letter signed by eight local clergymen (all known to me) who gave the approbation I needed. I do not believe Mr. Cohen was much mollified.

Attorney General Buckson was no fool. For purposes of his career, the litigation I had brought could not hurt him. No one expected him to win in the face of the United States Supreme Court's decision in *Schempp*. Meanwhile, he had taken a stance in favor of God. Were he to win, the public would perceive him as a miracle worker. Once engaged in a fight, his nature would not permit him either to back off or give up. But if he were going to lose, it would not be without his having made the effort to win. Early on, Attorney General Buckson embarked upon a search for an expert who would support the view that the reading of verses from the Bible in the public schools was a "good thing." His search ended when he found Bishop James A. Pike, who was to be Attorney General Buckson's star witness.

Bishop Pike had an established presence in liberal circles. His initial training had been in the law. After graduation from the Yale Law School, he served with the Securities and Exchange Commission. With another scholar, he published a standard text on the securities laws. Upon turning to a religious vocation, his career was again marked by repeated successes. Although I had not met him, I knew about him. Bishop Pike, as the leader of the Episcopal Church in the Northern District of California, had his main quarters in San Francisco. My brother, Herbert, a Rabbi whose congregation was in San Francisco, California, frequently worked with Bishop Pike in community affairs in the Bay area.

In agreeing to testify in the school prayer case for the Attorney General, Bishop Pike certainly did not do so for money since he charged no fee. He used the hotel room the Attorney General had reserved for himself and did not charge for travel costs since he was on the East Coast on other work. Whatever variation in purpose Attorney General Buckson and Bishop Pike may have had in the one's asking and the other's agreeing that resulted in Bishop Pike's testimony, there was one purpose to which both apparently subscribed: neither shied away from publicity.

While Bishop Pike was in Delaware for the hearing, Channel 12, the local public education television station, invited Attorney General Buckson and Bishop Pike to appear to discuss the school prayer case on a panel show. When the Channel 12 people called me and told me that Attorney General Buckson and Bishop Pike had agreed to appear and invited me and my clients to join the panel, I was not at all pleased that the forum for the legal debate was about to shift from the courtroom to the airways. What I should have done at the time was to call my friend, Attorney General Buckson, and make an effort to convince him to abandon his agreement to appear upon the televised panel. Instead, I agreed to appear with one of my clients, Harry Johns. Thus, in the midst of the hearing, Attorney General Buckson, Bishop Pike, Harry Johns and I taped a show for Channel 12. The television broadcast was uneventful. Nonetheless, before the proceedings in court began the following morning, Chief Judge Biggs asked Attorney General Buckson and me to appear in Chambers, whereupon he told us that the Court frowned upon the appearance of lawyers before the media during the course of the trial. I did not bother to explain to the three members of the Court that I was not about to permit the legally trained Bishop Pike and my able adversary, Attorney General Buckson, to debate the merits of the school prayer case with my clients, Harry Johns and Gary DeYoung.

Upon the conclusion of the hearing, the Court set a brief schedule. On behalf of my clients, I submitted the shortest brief I ever filed. The entire Argument section of the brief consisted of one sentence which read:

> In the opinion of plaintiffs, there is no legal issue arising out of the uncontested facts enumerated heretofore which was not considered and resolved by the Supreme Court of the United States adversely to the contentions made by the defendants herein in the cases of *School District of Abington Township, Pennsylvania, et al. v. Schempp, et al.* and *Murray, et al. v. Curlett, et al.*, 374 U.S. 203, 83 S. Ct. 1560 (1963).

When all of the briefs were in, the three-judge Court heard oral argument. Sometime before the argument, Doris and I had taken the children to the Washington Monument. As a parent, I always believed in teaching by doing. Thus, with the children I climbed the steps of the Monument to its top. At the third landing of the Monument, there begins the listing of the States in the order of their admission to the Union with the seal of each State and its motto or other appropriate inscription appearing beneath the seal. Since Delaware was the first State to ratify the Constitution, on December 7, 1787, Delaware's seal and inscription occupies the third landing. I used the inscription that appears beneath the Delaware seal as the central theme of my argument to the three-judge Court in the school prayer case: "The first to join her shall be the last to desert her."

The thrust of my position was not so much that a State could not compel students to engage in prayer in the public

Prayer in the public schools was an emotional issue. My experience is that more emotion is generally accompanied by less understanding. It certainly was true in the school prayer case.

schools (the Supreme Court had so held), but, rather, that no State had the right to repudiate the ruling of the United States Supreme Court and, in effect, desert the Constitution. By Attorney General Buckson's ruling that the United States Supreme Court's decision in the *Schempp* case need not be observed in Delaware, the Attorney General of the State of Delaware had said as a practical matter he would take Delaware out of the Union.

At the argument, the bantam-size, feisty, powerful David Buckson, the Attorney General of the State of Delaware, took on the tall, autocratic, powerful John Biggs, Chief Judge of the Third Circuit, who presided over the panel. Chief Judge Biggs acted in a peremptory manner (he was to this manner born in my view) and left no doubt as to who was in charge when he was present. At a particular point in the argument, Chief Judge Biggs interrupted Attorney General Buckson with a question. Attorney General Buckson's unusual response was to the effect, "I do not choose to talk about that matter." Back came the immediate response from Chief Judge Biggs, "You will talk about anything we want you to talk about." Even Attorney General Buckson was cowed. He responded. On Chief Judge Biggs' turf, Attorney General Buckson had met his match.

After the briefing and the argument but before the decision, the Middletown School Board told Mrs. DeYoung that the Board would not renew her contract for the coming 1964 school year. The Board's action was obviously motivated by Mrs. DeYoung's participation in the case. Since she did not have tenure, we would have had quite a struggle to block the Board's action. Nonetheless, I was willing to undertake the fight for her and told her so. She then confided in me that she was not planning to teach during the coming school year anyway since she was pregnant. She and Gary had decided to return to Minnesota where they had family. Reluctantly, since they no longer would have standing to maintain the suit as Delaware residents with children in the public schools, the DeYoungs withdrew as plaintiffs in the case.

In due course, the three-judge Court's unanimous opinion, which Chief Judge Biggs wrote, came down supporting the position my clients and I had taken that the compulsory reading of the five verses of the Bible was a violation of the Establishment Clause of the First

Amendment, citing *Schempp. Johns v. Allen,* D. Del., 231 F. Supp. 852 (1964). Prayer in the public schools of Delaware thus ceased and the rule of law prevailed. My concern about the rule of law, which prompted my taking and trying the case, never surfaced in Chief Judge Biggs' opinion. I still regard the silence as a missed opportunity Chief Judge Biggs or one of the other judges should have seized to educate the citizenry on the responsibilities of all of us, particularly those in power, to abide by the law.

The school prayer case held a third embarrassment for me, although not one that occurred in the courtroom. Out of the case arose the only complaint to my knowledge ever made about my professional conduct as a lawyer to the Censor Committee of the Supreme Court of Delaware, as the Court's disciplinary committee was then known. Since the proceedings of the Censor Committee that did not entail any action by the Censor Committee or the Supreme Court were kept confidential, my third embarrassment did not become public.

John Zebley, a balding, portly, retired man, made the complaint. Zebley headed an organization called "Defenders of the Republic." The Defenders consisted of Zebley and a small coterie of like-minded persons whose views were on the far right of the political spectrum. My hope for the health of the Republic is that there are only a few who would hold and act on the views Zebley held. I had heard of Zebley when he participated in an unsuccessful effort to block the appointment of Alexander Greenfeld as United States Attorney in 1961. After the school prayer case, I was to have more experience with Zebley when he attended court sessions in the school desegregation litigation and from time to time tried to participate in the proceedings. (He eventually succeeded when the Third Circuit permitted Zebley, a non-lawyer, to appear and argue the cause of "grandparents" on one of the State's unsuccessful efforts to block the desegregation of the public schools in New Castle County.)

What Zebley did was to seize upon the comments I had made in response to the reporter's inquiry after the *Schempp* decision came down and Attorney General Buckson had publicly made known his views. Zebley claimed that I had committed an act of barratry (i.e., stirring up litigation) by saying that the Delaware Chapter of the ACLU would consider the bringing of an action should anyone come forward and ask that it do so. Zebley's claim was that, in effect, I was soliciting a client to bring the action. Since the United States Supreme Court had already held in *National Association for the Advancement of Colored People v. Button,* 371 U.S. 415, 432-438 (1963), that there was no violation of professional conduct in what I had done, it was nonsense for the Censor Committee to take Zebley's complaint seriously. The ACLU had a commitment to civil liberties, including the freedom of religion. Attorney General Buckson's comment clearly put everyone on notice that he intended to have Delaware infringe freedom of religion as it is protected by the First Amendment to the United States Constitution — and as the United States Supreme Court precisely had held — and ignore the mandate of the High Court and, thus, the rule of law. The ACLU and I, as the President of the Delaware Chapter, had every right to solicit a person to come forward to challenge the Attorney General's position and that of the State of Delaware in a courtroom. The master fact was, of course, that there was no profit motive in the litigation for me or any other lawyer who would act for a plaintiff since ACLU lawyers in the field serve as volunteers without compensation.

I used the inscription that appears beneath the Delaware seal as the central theme of my argument to the three-judge Court in the school prayer case: "The first to join her shall be the last to desert her."

The fact that someone had made a complaint about me for the first time in my career, of course, disturbed me even though I knew it was a baseless one. The fact that the Censor Committee took Zebley's complaint seriously was even more disturbing.

The Censor Committee was then under the chairmanship of James L. "Jim" Latchum, a partner at Berl, Potter & Anderson, Delaware's oldest law firm, from whose ranks came a number of judges during my days at the Bar: Daniel F. Wolcott and Collins J. Seitz to the Court of Chancery (Wolcott went from Chancery to the Delaware Supreme Court, first as an Associate Justice on the first separate Delaware Supreme Court and then as Chief Justice, succeeding Clarence A. Southerland; Seitz went from Chancery to the Third Circuit Court of Appeals, eventually becoming its Chief Judge); Paul Leahy (for whom I served as law clerk for almost two years) to the United States District Court as its Chief Judge; Clarence A. Southerland to the first separate Delaware Supreme Court as its Chief Justice. Jim Latchum knew me as did most, if not all, of the members of the Censor Committee. How they could fail to recognize the baselessness of Zebley's claim angered me then and it still angers me.

The Censor Committee never asked me to appear before it. In response to a letter from Edmund N. "Ned" Carpenter II, a member of the Censor Committee in charge of investigating Zebley's complaint, I wrote a letter commenting upon Zebley's complaint and provided Carpenter and the Censor Committee with the citation to *NAACP v. Button,* which made clear the propriety of my conduct. Some months later, I received a telephone call from Jim Latchum in which he told me that he was pleased to inform me that the Censor Committee had "cleared" me of any charge of professional misconduct. Having had some time to reflect upon the matter (one might call it an extended "slow burn"), I told Jim Latchum what I thought of the fact that the Censor Committee had taken seriously Zebley's nonsense. Zebley, of course, had a right to make any complaint he wanted to make about me or anyone else. But the Censor Committee had the obligation to

exercise its judgment in distinguishing between substantive and frivolous claims. Prompt word from the Censor Committee to Zebley that his complaint was without even a semblance of merit was what I thought the Censor Committee's tack should have been. My friend Jim Latchum was kind enough to listen to me with patience. He took the brunt of my belated (and perhaps unfair) attack without a single word of displeasure or, indeed, of defense of the Censor Committee's handling of Zebley's complaint. I think that the charge of barratry against me was the only such charge in the entire history of the work of the Censor Committee. It is a distinction I could have done without.

After he left office as Attorney General, Attorney General Buckson went on to serve as a Judge of the Family Court. He had already served as Lieutenant Governor of Delaware under Governor J. Caleb Boggs and briefly as Governor of Delaware during the few days between Governor Boggs' resignation in order to be sworn in as a United States Senator in January, 1961, and the expiration of Governor Boggs' term. Jim Latchum in 1968 joined the other luminaries of his firm who had ascended the Bench when he was named a United States District Court Judge. He subsequently served as Chief Judge of the District Court. A few years after the school prayer case, Bishop Pike wandered with his wife, but without a guide, into the Judean wilderness west of the Dead Sea. He met a painful death when, after his vehicle ran out of fuel, he left his wife with their car in a vain effort to make his way back and bring help. An Israeli search party found her in time to save her.

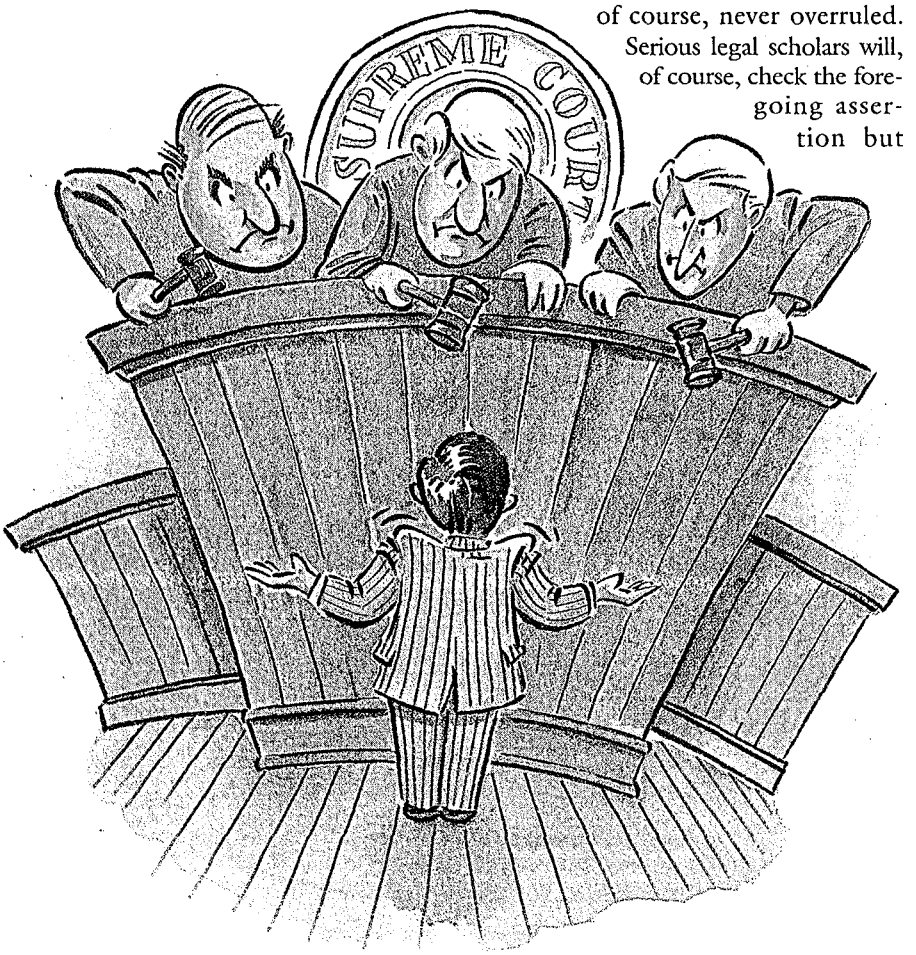
At the time of Bishop Pike's death, I recalled the conversation he and I had had when we were together at the Channel 12 studio for the panel discussion. When we were apart from the others, I asked him how he, a steadfast defender of many liberal causes, could espouse the view that State-compelled school prayer was constitutional. Bishop Pike leaned toward me and in a confidential, conspiratorial tone shared with me the fact that adoption of this conservative position helped him tremendously with the likes of United States Senator Strom Thurmond when he appeared before congressional committees to testify in support of liberal positions. Bishop Pike certainly had his own way of doing things.

[Volume 5, No. 2] ◆

WILLIAM PRICKETT

"May It Please The Court?"

There simply could not possibly be a single Delaware lawyer or judge who is not familiar with the seminal Delaware case on the effect and scope of general releases, *Hockem v. Rising Sun Trucking Company*, Del.Supr., 199 A.2d 1471 (1956). *Hockem* has been cited by the Courts and appears regularly in bar exams in connection with questions about general and special releases. There is no use shepardizing *Hockem* or running it through Lexis: it has been repeatedly cited, never questioned and, of course, never overruled. Serious legal scholars will, of course, check the foregoing assertion but rest assured that it is correct.



This little article will, however, provide some fresh insight on how that great landmark decision came into being. On the one hand, those who are interested in the law of general releases should consult that scholarly, unanimous opinion by the three great justices who made up the new Supreme Court of Delaware when it was first formed in 1951. On the other hand, for those who like to peek behind the judicial curtain (sort of like Dorothy in the Wizard of Oz) and see how such a decision really came to be, read on. Of course, if you do, you should be mindful of the remark of Bismarck who is reported to have said: "One should neither watch sausage or the law being made: if one does, one would never, under any circumstances, indulge in either one." This account is addressed, of course, only to members of the legal fraternity. It would never do — no, not at all — for the laity to profane the sacred mysteries of the law: they simply would not understand, among other things.

This article is titled "May It Please the Court?" It is with this archaic mumbo-jumbo phrase that Delaware lawyers (and indeed lawyers in all English systems of law) commence their legal arguments addressed to Courts. (Of course, the phrase is nonsense when one really thinks about it but so is a good deal of the law, and no one ever does really think about such matters. However, no harm is really done nor any good for that matter.) But you will soon discover, if you do read on, that my first argument to the Delaware Supreme Court did not please the Court one damn bit, to put it plainly. Nevertheless, I won the *Hockem* case. The result, as we all know, was a landmark opinion. The

Illustration by Michael Schweitzer

reasons why my oratory did not please the Court are plainly set out, but on the other hand, neither did the arguments of my so-called "worthy friend" (to use another phrase that lawyers, since the time of Hogarth and Daumier, have mouthed about one another) please the Court. In other words, neither argument pleased the Court, yet the Court came up with the definitive opinion on the scope and effect of general releases. How did this happen?

However, enough of this rambling prologue. Let those who have nothing better to do read on. Let's get started and thus finished.

My first argument before the Supreme Court of Delaware was in about 1956. The Supreme Court of Delaware had only come into being in 1951. At the time of its creation, the Supreme Court consisted of only three justices, but the three originally appointed were the most distinguished Delaware lawyers: Chief Justice Clarence Southerland, Justice Daniel Wolcott, and Justice James Tunnell. These lawyers had been specially selected to launch the new Supreme Court, it being agreed that their intellect and energy would preserve and enhance the already deservedly high reputation of the Delaware judiciary.

I had recently been admitted to the Bar. I had no business whatsoever coming before such an august group of legal scholars. Of course, I was not there by choice. Somehow, I had won a jury verdict for a trucking company against a nasty old school teacher, Miss Hockem. The brakes of the truck owned by the defendant, Rising Sun Trucking Company, had somehow failed, and it rear-ended the last of a series of stopped cars. There was a domino effect that rippled all the way right up to the head of the line. In the first car was the nasty old school teacher. The bump, she claimed, gave her a permanent whiplash and aggravated her already testy disposition. However, unfortunately for her, she signed a general release in favor of the driver of the car directly behind her. We pleaded what in "kick the can" used to be called "allee, allee in-free." In the law, that homely phrase embodies the principle that a general release releases everyone. The jury, I think, did not like the old school teacher and rather did like our nice truck driver, especially as he was accompanied by a worried, attractive, young, blond woman with three adorable little toddlers. The blond and the infants could have been the defen-

dant's wife and children. In fact, our genial defendant had just divorced his second wife. The lady was the defendant's sister. The children were neighbors' children for whom she was babysitting. Thus, the jury decided against the old harridan and in favor of the cute blond, the toddlers, the genial divorcee, the Rising Sun Trucking Company, its insurance company and, incidentally, me.

An older lawyer, whose name I will have the delicacy not to state, represented the school teacher. In a fit of temper, he took an appeal. His appeal was confined to some nice questions on the Byzantine intricacies of general releases. I read it: it was Greek to me. After I had written what I thought was a reasonably presentable answering brief, saying in effect that I had won fair and square in front of a jury of twelve good men and thus that should have been the end of the case, I submitted the draft to my father. He was aghast. He spent the next two days and nights reworking the brief to put it in presentable form. From my simple, little effort, the brief had grown to a fifty-page opus with citations to thirty-three cases and four law review articles. I scanned it, but I lost interest halfway through, about where there was a long discussion of the legal history and meaning of the phrase "but except" running all the way back to the Magna Carta. When the brief was filed, my father asked me if I knew how to shepardize cases. (Shepardizing means looking the case up in a publication called Shepard's in order to make sure that the case in question has not been overruled or questioned by another Court in a later opinion.) I told him that I knew how and would be glad to shepardize the cases in our brief. "Good," said my father. "There are two important cases we rely on that state the minority view which we, of course, need to persuade the Court to adopt. These two particular cases could have been overruled, questioned or limited by later decisions. I do not need to stress the importance of shepardizing these cases, do I?" I replied "Of course not — done!"

My father went on to say that the scope and effect of general releases was a legal subject of abiding interest to him. Thus, he said that if it was all right with me, he would argue the case to the Supreme Court. For my own part, I could take or leave the intricacies of the law of general releases (still can). I was just as pleased to leave this highly technical appeal to my father, especially since it appeared to be a matter of professional interest to him and none whatsoever to me. Also, I had no burning desire or indeed any desire at all to appear before the three fearsome justices of the Supreme Court just yet. My father did add that if there was time, he would do a practice argument with me acting as his adversary, so I should make myself thoroughly familiar with the briefs, the issues and the cases. I assured him I would do so and promptly put the argument out of my head.

On the one hand, those who are interested in the law of general releases should consult that scholarly, unanimous opinion by the three great justices who made up the new Supreme Court of Delaware when it was first formed in 1951. On the other hand, for those who like to peek behind the judicial curtain (sort of like Dorothy in the Wizard of Oz) and see how such a decision really came to be, read on.

My father then looked at my attire. He said that my suit looked like I had slept in it. (As usual, my father was dead right.) He said that my suits generally not only needed pressing but were apt to be dirty. He told me to get my suit cleaned and pressed before we went to Dover. He also said that I should wear a newly laundered white shirt for the argument. I replied that, at least in my generation, white shirts were thought as sort of "square". My father, in exasperation, said that was all very well: perhaps our new Supreme Court consisted of three "squares" but that I should understand that my generation's preference for dirty linen was not the matter in issue: our client's cause was. He said the Supreme Court preferred to have officers of the Court in fresh white shirts rather than looking like roofers after a rough day.

I then went about my own legal business and indeed my pleasures. I did manage to remember to shepardize the cases as instructed except for the two most important cases: the pages referring to these cases had been torn out of the books. I had meant to go around to the DuPont Company Library to finish the job but just had not gotten around to this last little detail. I also fully intended to scan the plaintiff's reply brief.

In due course, the Monday morning rolled around on which the argument was scheduled. I had had a tumultuous weekend culminating in a party most of Sunday night and the predawn part of Monday morning. Thus, I came to the office at 8:30 a.m. with a sort of a dry taste in my mouth and a crashing headache. However, I was young and knew that with a couple of jolts of strong, black coffee and an alka seltzer or an aspirin or two, I would be right as rain probably by noon. I had quite forgotten that this was the day that I was to accompany my father to Dover for the argument in *Hockem.* Thus, my suit that particular day was definitely rumpled and not a little soiled.

My father's secretary, Eva Ryan, was waiting for me with a grave look on her face. My father had telephoned from the house Sunday night: he had had a sudden attack of what he referred to as "lumbago." Actually, it was a pinched nerve in his back as a result of an airplane crash during World War I. When it happened, my father was totally incapacitated and writhed in his bed until the pain subsided.

I replied to her that I guess that meant that the *Hockem* argument would have to be continued. She smiled grimly and said, "Your father wants to speak to you." I gulped quite audibly (maybe it was a frightened burp).

I telephoned my father. I could tell from his tone that he was indeed in great pain and had taken the rather strong painkillers that he needed when these attacks came on. He told me flatly that I

was to handle the argument in *Hockem*. I remonstrated briefly. He replied sternly that I had tried the case and written the answering brief on appeal, or at least the first draft. He assured me I could and should do the argument. However, he admonished me to leave immediately for Dover so as not to take any chances on being late. He then gravely wished me good luck in this my first Supreme Court argument and hung up. Just why my father thought I could handle the argument, I still do not know, but paternal pride at times interferes with objective judgment. Perhaps it was the painkillers.

Thus, in addition to all my other problems was the fact that my father, on whom I depended so much at this stage in my career, was again totally incapacitated by his recurrent back injury. Thus, I felt very lonely indeed as I hung up and faced the grim reality of having to handle a serious appeal, which I had not really considered at all entirely on my own.

As I said, when I came into the office, I had quite forgotten the *Hockem* argument. Thus, I did not have a clean, starched, white shirt on at all: rather, I had had a somewhat tired blue Oxford buttoned-down shirt that had withstood the rigors of my vigorous weekend. My first task, therefore, was to run up to Mansure & Prettyman in the DuPont Building as fast as my legs would carry me and buy a white shirt right off the rack. The fussy old clerk simply could not understand why I did not want to discuss the niceties of haberdashery but simply wanted to buy and put on the first white buttoned-down that was my size as soon as I could pull out the hundreds of pins that the shirtmaker had for some reason put in. I was visibly annoyed as his shaky fingers slowly wrote out a spidery sales slip. Then he started to launch into what promised to be a lengthy discourse on my grandfather's proclivity for starched, detachable, white collars in the fashion of men of the bar prior to World War I. I left him, mouth open, quite in the midst of his rambling reminiscences, saying that I was due in the Supreme Court in Dover in fifty minutes, as indeed I was.

I thought, as I raced back to the office to pick up my old car, that I would have time on the way down to Dover to collect my wits. I had a twinge of fright as I remembered that I had not followed my father's admonition that I shepardize all the cases and that I had not read the plaintiff's reply brief at all, much less carefully, since my father had not been able to schedule a practice argument. Perhaps I could read the plaintiff's reply brief as I drove down to Dover. My problems were compounded when the claims manager for the insurance company covering the trucking company breezed into our office. He said that he had decided to accompany my father to Dover for the argument. I told him that my father was laid up: I was going to make the argument. He did a massive unconcealed doubletake, but it was altogether too late to do anything. Thus, we went on off together in my car. As I say, I had hoped that I would have time in the drive down to Dover to assemble my thoughts and prepare a brilliant oral argument. Just why I imagined that I could put anything together that would be even faintly of any assistance to the Supreme Court in deciding this case while driving down in excess of the speed limit, now baffles me. However, having heard a good many arguments, I think that some of my brethren at the bar still believe that the reason the Delaware Supreme Court sits in Dover is to give certain Wilmington and New York lawyers some time to prepare their thoughts and speeches.

> **"One should neither watch sausage or the law being made: if one does, one would never, under any circumstances, indulge in either one."**

Now, as I said, I had the insurance company claims manager with me. He was a frustrated lawyer: he liked nothing better than to wrestle with intricate legal problems. Thus, he at least had read all the briefs. He tried to engage me in a learned discussion on the niceties of the legal points and cases. Of course, he had an advantage or two over me. First, I was desperately hung over. Secondly, I just had a nodding acquaintance with the plaintiff's opening brief and answering brief and no acquaintance at all with the reply brief of our opponent. I tried to drive, pay attention to his questions and nurse my hangover. It was a juggling act that was compounded by the fact that we were going well in excess of the speed limit, mindful of my father's exhortation that under no circumstances should I be late. At one point, I was forced to tell my passenger that, while I was of course fully prepared to make the argument, I had been out a bit later than I would have if I had known my father was not going to make the argument. One thing led to another and I was forced to admit I was slightly hung over (a gross understatement). My passenger reached in his briefcase, pulled out a bottle, and unscrewed the cap on a pint of Schenley's. The last thing in the world I needed at that point was a belt of hot blended whiskey. But my passenger insisted and, after all, an attorney must do his client's bidding. I gagged down a mouthful. He followed my forced example by taking a triple swig and remarking jovially that it was just the thing "to get the old engine going."

We drew up at the beautiful Green in the center of Dover. Miraculously, I found a parking place. We walked across the Green at a brisk pace and arrived at the awe-inspiring Courtroom at two minutes of 10:00. I was afraid that the first argument might have been continued for some reason and that I would be up to the judicial plate rather than being "on deck," so to speak. That did not happen. At the stroke of 10:00, the bell in the adjoining Courthouse tower began to toll lugubriously. A small door opened and the three justices solemnly and majestically padded toward their chairs. They stood while the clerk solemnly intoned the usual opening, concluding with: "God save this honorable Court: all those wishing to be heard may now draw nigh and they shall be heard." As I say, there was another case before ours. Unfortunately, a lawyer (whose name shall also remain unstated, at least in this little account) was not present as the Justices sat down. The Chief Justice looked up over his glasses and then asked the missing lawyer's opponent if he knew where his colleague was. The response was in the negative. The Chief Justice then told the Clerk, Jack Messick, to get on the phone to the delinquent attor-

ney's office and determine just where this luckless lawyer might be. In the meanwhile, the members of the Court sat up reading the stacks of briefs before them and quietly discussing some of the points of law amongst themselves. In about five minutes, Jack came back. He said that the attorney's secretary had said that the attorney had been delayed in leaving his office and had only left for Dover about 9:25. However, the secretary added that her boss was a fast driver and thus he should be at the Supreme Court "in a jiffy." At just about that time, the lawyer in question came barging into the back of the courtroom. He bustled genially up to the podium, offering profuse apologies breathlessly to the Court. Of course, not knowing that the Clerk had just telephoned his own office, he said:

> "I left Wilmington at 8:30 sharp this morning so as to be here right on time. As luck would have it, I had a flat tire just south of Odessa and thus have been unavoidably delayed, so sorry Your Honors. Now I will begin my argument, if it pleases the Court."

The Chief Justice interrupted:

> "Just a moment, counsel, not so fast if you please."

The Chief Justice and other members of the Court then said nothing for what seemed even to me to be a long time. The stony silence was grim and appalling. Then the Chief Justice gravely looked from left to right at his judicial colleagues and asked in a flat tone: "Which tire went flat?" The surprised attorney replied with fear and trembling in his voice: "Why do you ask?" The Chief Justice replied: "This Court is interested in all the details on matters that affect the performance of officers of this Court." The attorney said: "The right." The Chief Justice said: "Front or back?" The attorney blanched and then said, "Front" and then added, "I think."

The Chief Justice and the other two on the bench savored this flat lie in total silence for an awesome length of time. Finally the Chief Justice said with deliberation: "Very well. For the present at least, let us proceed with the argument in this case, lest we delay those attorneys who have managed to avoid having flats south of Odessa." The ominous way in which he pronounced these words struck fear and trembling into my own wicked little heart. I decided right then and there to make a new beginning since it was plain that at least here, the full unvarnished truth was all that would pass muster. (Little did I know that very shortly I was going to have occasion to carry out that recently acquired precept and discard some of the more liberal approaches to veracity that had been my style at times in school, at home and elsewhere.)

Actually, in view of the above horrible little curtain-raiser, I have entirely forgotten what the first appeal itself was all about. I do remember that the attorney who had been there on time tried unsuccessfully to wipe a certain smirk off his face arising from the quiet satisfaction of knowing that he and the Court were sharing a secret. Thus, the unfortunate liar launched into his argument, trying by his sincerity, legal knowledge, and wit to convince the Court of the merit of his client's case. However, I recall that the attorney who was late did not get his client penalized. The Court decided in favor of the client, though I later heard it whispered about that the Court administered the liar a blistering private reprimand.

After the Court had filed out, my opponent leered over at me the way a wolf does at a lone sheep when he discovers the shepherd is away. He said snidely, "Well, sonny boy, and just where is your learned parent?" When I disclosed that my father was flat on his back and that I would be making the argument, his grin broadened; he could taste blood.

As the first argument drew to a close, I looked over at my opponent. He did not have a starched, white shirt: instead, he was wearing a sort of a ratty gray-blue shirt, the collar tips of which curled up. By this time, I had begun to feel just a tad better. The Chief Justice courteously apologized to me and my colleague for the delay; he said that, if it was agreeable to us, the Court would feel more comfortable with a five minute recess. After the Court had filed out, my opponent leered over at me the way a wolf does at a lone sheep when he discovers the shepherd is away. He said snidely, "Well, sonny boy, and just where is your learned parent?" When I disclosed that my father was flat on his back and that I would be making the argument, his grin broadened; he could taste blood. This annoyed me considerably, so I decided to have a little sport of my own with my opponent.

Just as the Court was about to come back on the bench again, I slid alongside him as he stood waiting at the podium ready to begin his argument. I said quietly: "Excuse me, but I think your fly is ever so slightly open." He never even looked down. Instead, he looked venomously at me and hissed back: "Young fella, you can't catch me with the oldest trick in the book. But just for that, I am going to call the Court's attention to the fact that you could not have shepardized the citations to your two main cases. I might otherwise have overlooked that filing but for this dirty little trick you tried to play on me." Further exchanges were cut short as the three members of the Court again regally trooped back through the door and sat down. Of course, my opponent had put his legal rapier at exactly the place where I was most vulnerable: I had not indeed shepardized our two most important cases. But how did that old wolf know that? The Chief Justice duly asked if counsel was ready for the argument. We both replied "Ready." I must say that what my opponent had just said made me so nervous that I did consider for an instant whether I should blurt out that I was not ready (indeed not at all ready).

Well, my worthy opponent launched into his argument with a half-bow to the Court. He said cringingly: "May it please the Court?" He then recited all of the usual reasons why the Court might hold that this general release was not a general release at all. To my secret pleasure, the members of the Court looked uninterested. However, just before my opponent was about to sit down, his tone and

manner turned as unctuous as Uriah Heep. Looking slyly at me in a brief, sidelong glance, he said in most deferential tones: "Now I know that my young colleague is a graduate of the great and well-known Harvard Law School and not an old graduate of a humble night law school like myself. Thus, I am sure that he shepardized each and every one of the cases cited in his brief. But for his distinguished legal pedigree, I would have thought that one of the principal cases or perhaps two that he has cited in his brief just might have been overruled. Perhaps they were just questioned in later decisions. But I am sure my brilliant young friend would not offer cases to this, the highest Court of this State, if in fact there were later authorities that overruled or questioned a case." As he went back to sit down, he gave me a wicked half-smile.

I am sure that I blushed or went pale. Now did I not wish that I had shepardized *all* of the cases carefully as I had been instructed to do! I did not, of course, know if one or two of the unshepardized cases might have been overruled or questioned by later decisions. They both seemed sound enough to me though I knew nothing about the law of releases.

Of course, I didn't have too long to stew or fret over this legal quandary that my opponent had put me in. All too soon, far too soon, it was my turn to stand up and approach the lectern. However, as I was about to get up and to the lectern, I saw that the insurance manager was already at the podium. I was horrified at first but quickly saw that fate perhaps intervened and saved me from disgrace. Perhaps he was inspired by our cause or perhaps fired up by Schenley, or at long last he saw his one opportunity to show the world his wasted gifts as an appellate advocate; in any case, he began:

> "Learned Judges of the highest Court of the State of Delaware, I am going to make the argument since our lawyer, William Prickett, Sr., is flat on his back with a war wound and this youngster does not know a general release from a hold harmless agreement. Why —"

At this point, the Chief Justice interrupted and inquired if this would-be Daniel Webster was a duly authorized member of the Bar of the State of Delaware.

When the insurance manager ruefully admitted that he was not a member of the Bar, the Chief Justice said:

> "Well, in that case, you do not have the right to appear and be heard. We will hear from the young Mr. Prickett and hear what he has to say that will shed some helpful light and learning on the murky subject at hand — the scope and effect of a general release."

Sadly, my savior relinquished the podium and (sadly) I took his place. My client whispered: "Go get 'em tiger" and slapped me on the back as we traded places. Whatever thoughts I had on the subject of releases had been quite scattered by all that had thus far gone on. However, there was nothing to do but launch bravely into the argument. In point of fact, my argument at that point consisted principally of reiterating various legal platitudes that I had picked up out of legal garbage cans. For example, I told the Court: "A litigant who comes to the appellate court armed with a jury verdict is in the strongest position known to the law." The Chief Justice listened to me repeat that nonsense about three times.

He then remarked with just a touch of sarcasm: "Yes, Mr. Prickett, we have heard you run through that old nostrum three times by my count, though I may have missed some. We get your point, minor though it is; the phrase, I believe, was originally that of Stephen Decatur. You might have had the courtesy, at least, of acknowledging the source. I am something of a student of that American hero. Mr. Decatur was known for his patriotism rather than his legal brilliance, particularly on the rather dry subject of the scope of general releases, which is all we are considering today. Stephen Decatur also said: 'My country right or wrong.' Incidentally, since we have gotten off on Stephen Decatur, you may also be interested in another of the sayings of Stephen Decatur: 'The law is that which is stoutly asserted and boldly maintained.' It's a pity you didn't throw that into your argument since it seems to be one of the principal bases of your argument."

At one point, referring to a recently decided case, I said: "The Supreme Court has recently held in *Spalding v. Central Railroad* — " The Chief Justice held up his hand and leaned over the bench. He peered owlishly over his glasses, raised his eyebrows and said with feigned astonishment and incredulity: "My goodness, Mr. Prickett, for the life of me, I do not recall that this Court has ever decided a case by that name. Do any other members of the Court recall such a case?" The Justices duly shook their heads (clearly, they had participated in this sort of judicial snipe hunt before).

"Oh," I said hastily, "I'm referring to the Supreme Court of the United States." The Chief Justice paused and said: "Young man, here in Delaware when reference is made to 'the Supreme Court,' we assume that whoever is using the phrase is referring to this Court and not some other Court that is said to sit in the District of Columbia." Letting that sink in, he added: "The Court in the District of Columbia is a court in a collateral system of justice. What that Court says is at times legally significant and at other times not at all significant, particularly when that Court issues nine different opinions. Nevertheless, we now understand what Court you were trying to refer to and will accord the decision of that Court just the weight that it merits in view of the source."

Then Justice Wolcott said: "Mr. Prickett, your colleague seems to suggest that there just might be one or two of the cases cited in your brief that have been overruled or at least questioned. However, he assures us that he at least relied on you. In fact, he doesn't even say flatly that some of your cases have been overruled or questioned. Would you please assure the Court that each and every one of the cases cited in your brief has, in fact, been shepardized and that none of the decisions have been overruled or questioned?"

Now was when my recent lesson in candor came to my immediate rescue. Overcoming a propensity of my youth to fib, I said as manfully as I could, "Your Honors, to my great embarrassment, I have to admit to this Court that I neglected to carry out my father's direction to shepardize all cases cited in our brief. There were two cases I could not shepardize: some of the pages from Shepard's had been removed from the County Law Library's volumes. Now I know I should have gone to the DuPont Law Library, but I did not take the time to do so."

The Chief Justice, having heard my pitiful account, said with a mock mournful sigh: "Oh dear, that just means that we overworked judges must now do the attorney's work. Young man, we must now shepardize your cases as you could and should have done." I was close to tears.

However, Justice Tunnell,who I think had been enjoying the game, now spoke up and said: "Now, now, Chief Justice, I do not think that will be necessary at all. I have, in fact, already shepardized *all* the cases cited by both parties, including the two cases as to which the pages in Shepard's were torn out by someone last week. I can assure the worried young attorney for the appellee who neglected to shepardize those two cases that none of the cases cited in his brief have been questioned or overruled: on the other hand, I did find that there are two cases cited by the attorney for the appellant, one of which is miscited and one of which was overruled some ten years ago." Quite suddenly, the sun came out. The tables had been turned and the hunter was now the hunted.

Well, this little horror story eventually came to an end. The Court had not been strict in its rule on time. I guess that the three of them had decided amongst themselves quite tacitly that they were not going to get much help from the two attorneys appearing in front of them. They proceeded to throw the legal ball about general releases back and forth among themselves, occasionally asking me or my colleague whether we agreed on a particular point. Thus, they had a lively discussion among themselves, almost ignoring us, there being no one else in the courtroom other than the Clerk and my client.

The Chief Justice then thanked both of us for the argument, saying that it had been a help to the Court in several different ways. He concluded that the Court would in due course render its decision.

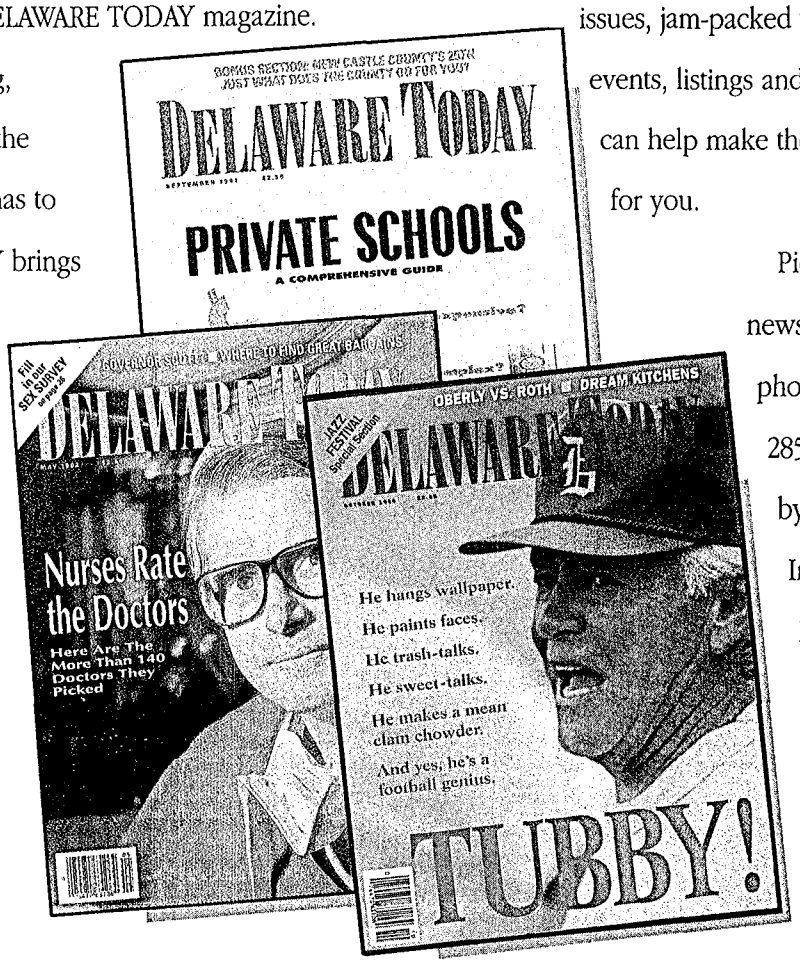
When I came home, I drove immediately to my father's house. To my great relief, I found that the acute episode was over. The nerve spasm had passed, and in a day or so he would be back in legal harness again. That was a great relief, of

Court had adopted our views on the scope and effect of general releases. Of course, I knew very well that I had precious little to do with the result or with the opinion. However, aside from those who read this little account, the world will never know that the genesis of the law on general releases here in Delaware at least does not stem from my scholarly efforts or my oral advocacy. I am quite content to leave it just that way.

READ IT.
LIVE IT!

In Delaware, discover new places to go, new things to do, and new spots to eat – each and every month in the pages of DELAWARE TODAY magazine. A national award-winning, comprehensive guide of the very best that Delaware has to offer, DELAWARE TODAY brings you up-to-date news on the people and places, events and issues that are constantly shaping the First State.

Don't miss our spectacular BEACH GUIDE in June, our annual BEST OF DELAWARE issue in July, or any other information issues, jam-packed with calendars and events, listings and restaurant reviews that can help make the FIRST STATE special for you.



Pick up a copy on the newsstand, or order by phone from 9 to 5 at 1-800-285-0400. Brought to you by Suburban Publishing, Inc., publishers of DELAWARE LAWYER.

DELAWARE TODAY

READ IT. LIVE IT.

course, to me. He questioned me closely with professional interest in the argument. I told him the whole unvarnished truth. He was amused at all that had happened to me and all that I had learned. When I told him about why I had not shepardized the two important cases — because the pages were missing — he said, "I always suspected that _____ took pages out of library books, but your experience confirms it."

Suddenly, I realized what my opponent had done. I said, "That's how he knew I had been unable to shepardize them."

My father replied, "Of course, and Justice Tunnell realized that as well."

In due course, the Supreme Court handed down its landmark opinion in *Hockem v. Rising Sun Trucking Co.* My father read it with great professional interest (and paternal pride) since the Court had adopted our views on the scope and effect of general releases. Of course, I knew very well that I had precious little to do with the result or with the opinion. However, aside from those who read this little account, the world will never know that the genesis of the law on general releases here in Delaware at least does not stem from my scholarly efforts or my oral advocacy. I am quite content to leave it just that way.

However, I did learn a great deal from this initial argument, including the importance of white shirts, shepardizing cases, becoming familiar with all of the briefs, practicing an oral argument, getting a good night's sleep the night before and not drinking rye whiskey on the way down to an argument. I also learned that candor pays off and that the function of an attorney in an oral argument is really to try to provide the judges hearing the argument with some further insight into issues and questions which they have to decide correctly. I also learned that decisions in appellate cases necessarily, at times, transcend the interests of the individual litigant and the scholarship and advocacy of the attorneys for the parties. Perhaps what I learned so painfully may be of service to younger colleagues.

[Volume 8, No. 3]

William Prickett, a frequent contributor to this magazine, is a former President of the Delaware State Bar Association and is currently a Director of the Bar Foundation. He practices law as a senior member of the firm of Prickett, Jones, Elliott, Kristol & Schnee. ◆

Letter

continued from page 40

been brought up to believe that gentlemen do not use 'contact' as a verb."

This could only have been authored by Bill. The first sentence has authorly charm. The rest is editorial instruction. Who around here but Bill Wiggin would have thought that "contact" could not properly be used as a verb? Who would have cared?

Bill would not have been so good an editor were he not so fine a writer. And he certainly would not have been so good an editor had he lacked a love of language, its roots and its rules.

I have heard a hundred anecdotes about Bill Wiggin and could add a hundred of my own. He is an original, one of a kind. When he talks, every phrase is elegantly sculpted, as if in the expectation that the words will be transcribed. Until I learned better (thirty years or so ago), I wrongly thought he came from England. This is not because of the William E. Wiggin name, or Bill's shabbily distinguished style of dress. It is because Bill speaks the King's English with the King's accent. At first I thought the Oxonian style of speaking an affectation. Not at all. I soon came to realize that such is Bill's respect for our language that he long ago decided it sounded more authentic when spoken in the original.

Last Fall Bill Wiggin, having earlier retired from the practice of law at Richards, Layton & Finger, and, later, as Executive Director of the DSBA, decided to shed the burden he had so long shouldered as Chairman of the Board of Editors of DELAWARE LAWYER. Bill is a wise, erudite, engaging, gentle, decent person. The LAWYER will miss his active involvement, as will we all.

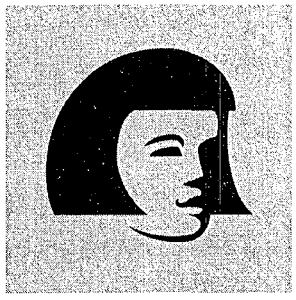
Having talked of the Editors, I wish, finally, on behalf of the Foundation and the Bar, to express our gratitude to the dozens of lawyers and judges who have contributed to (and in some instances taken charge of) individual issues of the LAWYER. We do not take such work for granted. Good, substantive writing does not come easily. It is a mark of the respect felt by the Bar and Bench for the LAWYER that so many have worked so hard to make its first thirteen years such a success. To all of you, and especially to the new Chairman of our Board of Editors, Vern Proctor, our thanks, and our well wishes for the future. ◆

BRUCE M. STARGATT

Thanks to Delaware Lawyer's Editors and Contributors

This Spring DELAWARE LAWYER is thirteen years old, a significant birthday. Perhaps because I was President of the DSBA at the time the publication was conceived by the Bar Foundation and have been on the Board of the Foundation almost since its beginning, I have been given by the Board the honor of seizing the occasion to express for ourselves, and for the Bar as a whole, our gratitude to those whose quiet labor has made possible the publication of the LAWYER.

To begin, a bit of history. DELAWARE LAWYER was the brainchild of Harold Schmittinger, the first Chairman of the Delaware Bar Foundation. Harold's vision, as he wrote in the LAWYER'S opening issue, was: "The magazine promises to fill a void and provide Delaware lawyers with an outlet for scholarly and responsible works of appeal to the professional and public alike." The Foundation, with Harold's impetus, got the LAWYER started. Since then the Foundation's main role, spearheaded by Harold, and later by Foundation Chairs Victor Battaglia and Frank Biondi, has been to back it. The Foundation has kept hands off the LAWYER's day-to-day operations. From the first issue, through fifty or so issues since, the staggering work of organizing and publishing the LAWYER fell to its Editors. They've done a splendid job.



Having so long enjoyed the fruits of their labor, the Foundation and the Bar hereby acknowledge our debt to the Board of Editors of DELAWARE LAWYER: Tom Ambro and Dave McBride, who have served our Board continuously from the first through this issue, John Bader, Justice Carolyn Berger, Dave Carrad, Vice Chancellor William Chandler, Bob D'Agostino, Dave Drexler, who has been Interim Editor-in-Chief for the last three issues, Larry Drexler, Vice Chancellor Jack Jacobs, Richard Kiger, Justice Randy Holland, Susan Paikin, Karen Pascale, Carroll Poole, who for a time ably filled in as Chairman of the Board of Editors, Judge Vince Poppiti, Vern Proctor (the newest Chairman), Elaine Reilly, Helen Richards, Judge Battle Robinson, Jay Schmittinger and Paula Shulak.

I have left off the list, saving for last, two individuals to whom the Foundation and the Bar owe special thanks.

Richard Levine has been Managing Editor of the LAWYER continuously from its first publication to now. The Managing Editor is the person who makes sure the publication comes out on schedule and doesn't lose money. The only time the business manager of a non-profit operation seems to get recognized is when the business goes broke. Except for start-up costs, and some relatively modest expenses incurred when changes in printing companies and the like were required, DELAWARE LAWYER has been a break-even proposition. Such was the Bar Foundation's objective from the beginning. But in business, as in restaurants, many are the slips between the wish and the dish. Without Richard's willingness to spend many hundreds of hours over the past thirteen years in the handling of all financial aspects of the LAWYER, it could have become a black hole which, long before now, might have imploded, sucking into its maw the energy of the Bar and the resources of the Foundation. Richard has our special thanks.

And then there is Bill Wiggin. Bill has been identified with the LAWYER more than has any other person. He has been its personification. Every issue, beginning with the first and continuing during the many years of his Chairmanship, bears Bill's imprint.

In the Winter/Spring 1983 edition of DELAWARE LAWYER appears an anonymously bylined bit of fiction. It begins:

"Henry, forgetting that God punishes us by answering our prayers, continued to hope that his wife would come to her senses and return. Then he received a letter [from a lawyer] marked 'Personal and Confidential. Would you be so kind as to have your attorneys contact the undersigned?' The letter made a very disagreeable impression on Henry, who had

continued on page 39

If Time Equals Money, it Pays to Spend it Wisely.

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.

Clock courtesy of Hagley Museum and Library.

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.

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
Member FDIC