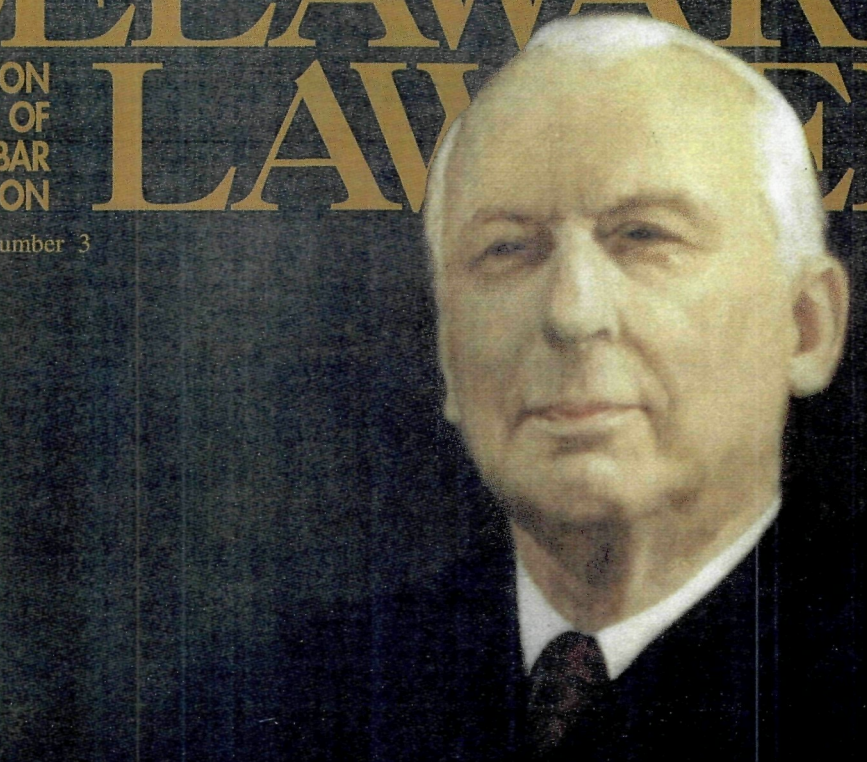
COLLINS J. SEITZ

DELAWARE LAWYER

A PUBLICATION OF DELAWARE BAR FOUNDATION

Volume 16 Number 3

$3.00 Fall 1998



A MAN FOR ALL SEASONS

Fall For The Music

October 15 — October 18

Dianne Reeves

Roomful of Blues

Eric Marienthal

Tom Grant

Heads Up Super Band

Rehoboth will be the place to be with the cool sounds of hot jazz at this year's jazz festival.

Featured acts include:
Dianne Reeves
Tom Grant
Eric Marienthal
Roomful of Blues
Joshua Redmond
Extremity
and more ...

New Thursday night concert featuring Heads Up Super Band and a Taste of Area Restaurants.

Make a long weekend out of it ...

Plus ... 75 other exciting events at over 30 different venues, including a free Midday Concert, Educational Seminars, Jazz Brunches, Intimate Club Shows, Art Exhibits and more ...

REHOBOTH BEACH AUTUMN JAZZ '98 FESTIVAL

Ticket and Accommodation Information:

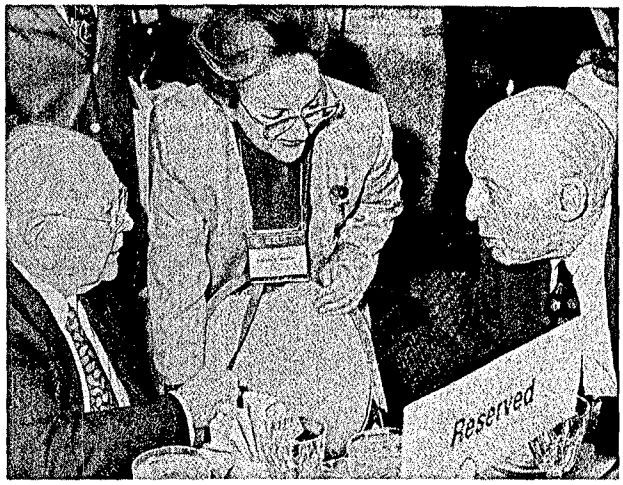
1-800-29-MUSIC

Call for the latest info!

All acts scheduled to appear, subject to confirmation.
Presented by the Delaware Celebration of Jazz, Inc.

CONTENTS

FEATURES



DELAWARE LAWYER
A publication of Delaware Bar Foundation
Volume 16, Number 3
3301 Lancaster Pike, Suite 5-C
Wilmington, Delaware 19805

DELAWARE LAWYER
Attention: Chairman, Board of Editors
c/o Suburban Marketing Associates, Inc.
3301 Lancaster Pike
Suite 5-C
Wilmington, Delaware 19805

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.

LETTER TO THE EDITORS

Thomas L. Ambro, Esquire
Richard, Layton and Finger, P.A.
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899

Dear Tom:

Thank you for your kind and generous letter to me of June 9, 1998. Without your help and that of Bill Wiggin, I am certain the stories of these "five pioneers" would never have been told.

This edition of DELAWARE LAWYER remains much in demand here in Washington, D.C. and among my friends and colleagues across the nation. It has even sparked an interest in similar features for bar journals published at the federal and local levels of the legal communities in Washington, D.C. and its environs.

The concept of featuring "pioneers" of all ilks and persuasions, in the several legal fields, appears to have wide appeal among the more recently admitted practitioners in many fields of legal endeavor. Several have commented that to hear from such "pioneers" gives them a new perspective on their daily undertakings. You, Bill, and DELAWARE LAWYER have been innovators in this regard.

I deeply appreciate your efforts and I hope that DELAWARE LAWYER will continue to instruct and inspire the Delaware Bar in all facets of its rich tradition.

Sincerely yours,

Frank H. Hollis

Mr. Wiggin disclaims any credit for these kind words. He joins Mr. Hollis in congratulating editor Tom Ambro, whose initiative and perseverance made that issue possible.

EDITOR'S NOTES

"[He] is a man of an angel's wit and singular learning: I know not his fellow. For where is the man of that gentleness, lowliness, and affability? And as time requireth a man of marvellous mirth and pastimes; and sometimes of ... sad gravity: a man for all seasons."

Robert Whittinton

In November 1961 Robert Bolt's play, "A Man for All Seasons," debuted in New York. It was based on the life of Sir Thomas More, a lawyer and scholar who was Lord Chancellor, the highest judicial office in England, during the reign of King Henry VIII. More resigned this position in 1532 because he opposed the King's plan to divorce the Queen and marry another. He was beheaded in 1535 for refusing to accept the King as head of the Church in England. (The Roman Catholic Church canonized More as a saint in 1935.) Bolt's work explores how a person so successful in the secular world, and hardly an ascetic, "nevertheless found something in himself without which life was valueless and when that was denied him was able to grasp his death."[1] Bolt touched a resonant chord "not only about a man for all seasons but also about an inspiration for all time."[2]

We ourselves have such an inspiration in Collins J. Seitz. Appointed as Vice Chancellor in 1946 at age 31, he was the youngest judge in Delaware in over a century. Though extolled by many as the State's greatest jurist on corporate matters, Vice Chancellor Seitz made national news initially by being the first judge in the Nation to order desegregation of a public university — *Parker v. University of Delaware*, 75 A.2d 225 (Del. Ch. 1950). He was only 35.

In the spring of 1952, in *Belton v. Gebhart*[3] Seitz was again the first judge in America to order the integration of public elementary and high schools. Later affirmed by the Delaware Supreme Court, this was the only case affirmed by the United States Supreme Court in *Brown v. Board of Education* in 1954, the most famous decision of the Supreme Court in this century. Chief Justice William Rehnquist called *Belton v. Gebhart* "the Court of Chancery's proudest accomplishment." Former Justice Thurgood Marshall stated that *Belton v. Gebhart* was "the first real victory in our campaign to destroy segregation of American pupils in elementary and high schools."

To understand (but only faintly) the significance of these decisions and the courage shown, consider that in the time between his decisions in *Parker* and *Belton* Vice Chancellor Seitz gave the commencement address at Salesianum School for Boys. He did so to commemorate the special efforts of Father Thomas A. Lawless, the head of Salesianum, in integrating its classes. The Vice Chancellor told the grad-

Continued on page 4

Continued from page 3

uating class that they were entering a world where too many lacked conviction and courage. To illustrate, he addressed "a subject that was one of Delaware's great taboos — the subjugated state of its Negroes."[4] "'How can we say that we deeply revere the principles of our Declaration [of Independence] and our Constitution and yet refuse to recognize these principles when they are applied to the American Negro in a down-to-earth fashion?'" [5]

The speech's incendiary directness was all the more remarkable when considered against the backdrop that only 11 days later the Delaware State Senate was to act on Governor Elbert Carvel's nomination of Seitz to be Chancellor. The courage and conviction (not to mention the political acumen) of Governor Carvel and Lt. Governor Alexis I. du Pont Bayard, coupled with Senators returning to Dover with police escorts, resulted in Seitz's confirmation shortly after midnight on June 16, 1951.

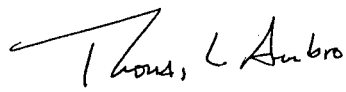
Chancellor Seitz stayed on the Court of Chancery until 1966, and became recognized as the leading American jurist on corporate matters. He then accepted the nomination of President Johnson to the United States Court of Appeals for the Third Circuit, where he served as Chief Judge for thirteen years and where he remains a Senior Judge today. In his 52 years on the Bench, Judge Seitz has written over 1,100 opinions — nearly 380 on the Court of Chancery and approximately 750 on the Third Circuit.

Judge Seitz's accomplishments are widely recognized. Among his many awards are the First Annual St. Thomas More Society Award in 1989 and the American Judicature Society's Edward J. Devitt Distinguished Service to Justice Award in 1997. A courtroom at the Third Circuit Court of Appeals is named after him. Former Justice William Brennan placed Judge Seitz "in the pantheon of the eminent judges of our time."

This issue of *DELAWARE LAWYER* is dedicated to the continuing legacy of Collins Seitz. We deal with his remarkable career from many viewpoints. Judge Delores K. Sloviter of the Third Circuit remembers him as a colleague and friend. Helen M. Richards, a former law clerk to Judge Seitz, writes of him as a mentor. Former Chancellor William T. Allen notes not only some of the more distinguished corporate cases of Chancellor Seitz, but also imparts valuable insights into his judicial philosophy. C.J. Seitz, Jr., one of Judge Seitz's four children and a lawyer himself, pays tribute to his father. Finally, Edmund N. Carpenter, II conducted a comprehensive interview with Judge Seitz that is excerpted here.

Judge Seitz touches all the bases of a great judge. He decided fairly (even if to do so meant to act courageously out of step with public sentiment), efficiently, and without delay. He wrote lucidly, logically, and learnedly (with deft displays of simple elegance). And all the while he conducted himself with grace and modesty, remaining sensitive and kind to litigants and their counsel.

Watching anyone do almost anything superbly is a great good. Accomplishments well earned in a life well lived are special. But of selfish importance to us is that Judge Seitz's dignity and strength graced our profession, in our time, and in this State. He is our "Man for All Seasons."



Thomas L. Ambro

1. Robert Bolt, Preface to "A Man for All Seasons" (1960).
2. *New York Times* (Nov. 1961).
3. Belton v. Gebhart, 87 A.2d 862 (Del. Ch. 1952), *aff'd* 91 A.2d 137 (Del. 1952), *aff'd* sub. nom. *Brown v. Board of Education,* 347 U.S. 483 (1954).
4. R. Kluger, SIMPLE JUSTICE, 432 (1976).
5. *Id.* (excerpt from speech of Vice Chancellor Seitz).

Contributors

William T. Allen, a former Chancellor of Delaware, is Professor of Law and Clinical Professor of Business at New York University.

Helen M. Richards, a member of the Delaware Bar, also serves on the Board of Editors of this magazine

Collins J. Seitz, Jr. practices law with the Wilmington, Delaware, firm of Connolly, Bove, Lodge & Hutz.

Dolores K. Sloviter served from 1991 until this year as Chief Judge of the United States Court of Appeals for the Third Circuit. She continues as an active circuit judge.

FEATURE

William T. Allen

THE HONORABLE COLLINS J. SEITZ: GREATNESS IN A CORPORATE LAW JUDGE

In my very deep admiration and regard for Judge Collins J. Seitz, I am of course not special among Delaware lawyers. I share this affection with all members of the Delaware Bar. Though not unique in this respect, my years as Chancellor have earned me this occasion to contribute a few words to the commemoration. I am grateful for this opportunity to convey to Judge Seitz and his family my own deep appreciation and affection, and to note for others some personal observations or interpretations of this magnificent man and his career that stands as a monument of public service. I have had occasion before to join in the general acclaim for Collins Seitz the man and the judge, but I do not grow tired of singing the praises of the greatest Delaware judge of our age. My assignment directs specifically to corporation law, a field in which Collins Seitz's Chancery work continues to have great pertinence and in which I have spent much of my time. The subject of Chancellor and later Judge Seitz's contribution to the evolution of corporation law is deserving of a major piece of historical scholarship. I can here only touch briefly on the surface of that subject. Moreover, I wish to speak a bit more broadly about Judge Seitz, for he is and has been a great corporation law judge mainly because he is a great judge, regardless of the subject matter or field that provides the rule of decision for a case.

Thus, I start with the most evident truths. Collins Seitz was born to be a judge. He now and for many years has occupied a unique place in Delaware history and in the hearts of Delaware's lawyers and judges. He is a hero to Delaware lawyers and judges in an age in which the pressures of the business of law have forced professional heroes to the margins of our attention. To Delaware lawyers and judges, however, Judge Seitz has presented a remarkable model of effort, selflessness, and professional accomplishment for the public good. Perhaps it is not entirely pleasant to be an icon, as Collins Seitz is. It would be understandable if Judge Seitz had concluded that it ought to be enough (more than enough really) that one has done one's work conscientiously and well for half a century. Must one endure being classified as a superman as well? We all know our own limitations, and perhaps it would be irksome from this perspective to be honored so regularly as our great judge is honored by us. But we need our heroes. The hero is an essential figure. He or she personifies the values and virtues upon which we depend. We honor the hero so that young people may be more inclined to strive toward and reflect those virtues. Thus, in serving as a hero to the Delaware Bar, Collins Seitz provides an additional valuable service in a life dedicated to public service. For those of us who have known him over the years, and we constitute most of the lawyers in Delaware over a span of more than half a century, he is and always will be heroic: the epitome of a judge and our premier role model.

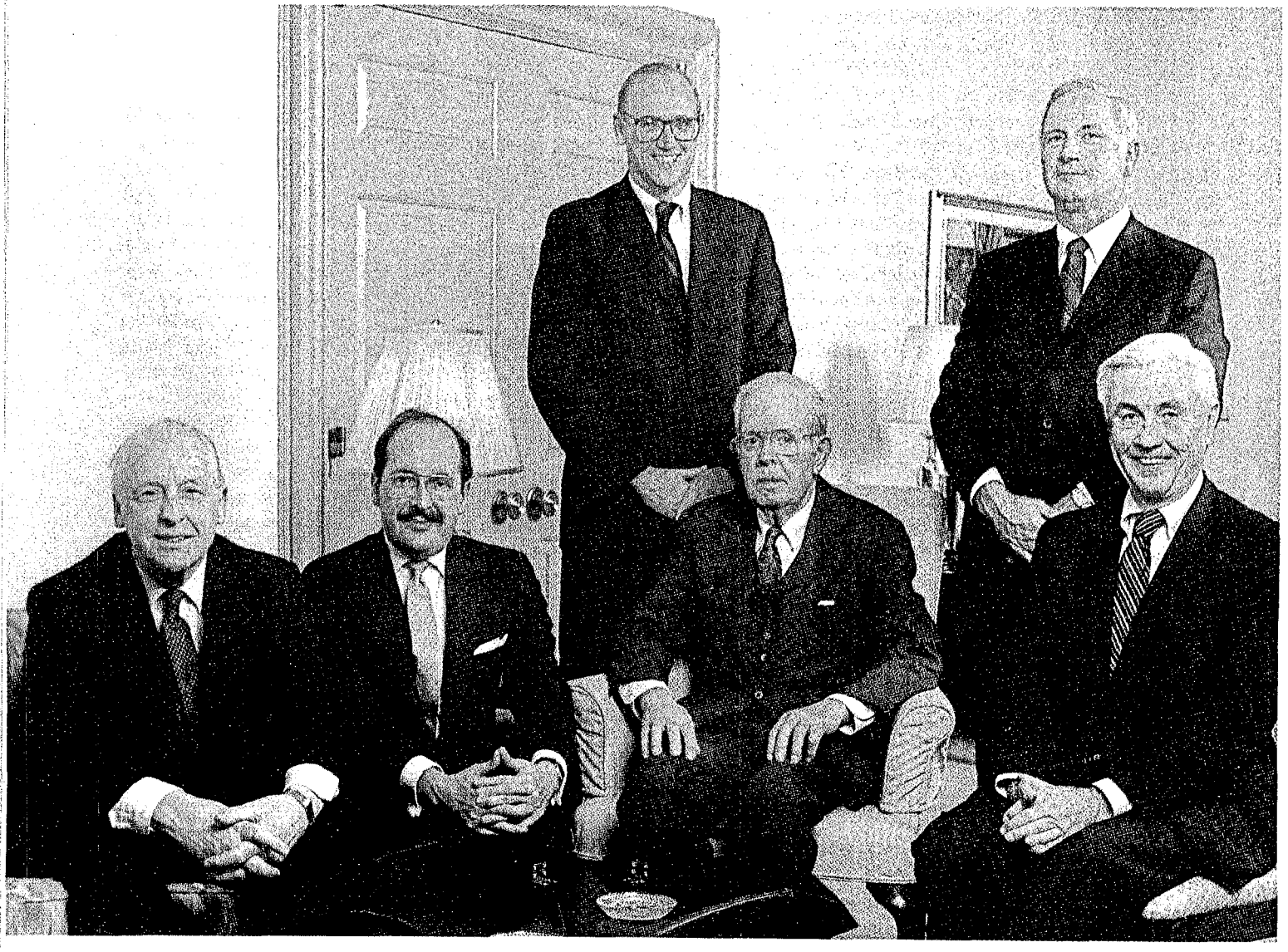
The characteristics that earned the young man the place of high esteem occupied by the mature man were evident from the beginning. Of course there was and is diligence in pursuit of duty. This characteristic, the willingness to sacrifice other pursuits in the service of public duty, is not so widespread as we might hope. An aspect of his generous nature has been his willingness to sacrifice his time so that the judicial work might be done right. Yeats talks about a man's choice "between perfection of the life or perfection of the work," and says that no matter what the choice, we leave "a mansion raging in the dark." Judge Seitz no doubt struggled, as we all have done, to balance life's opportunities and obligations, but no matter how that balance was struck, two things are apparent. First, his diligence and fidelity to his duty as a judge were remarkable over more than fifty years of service, and second, we the public owe Virginia and the Seitz children some part of our gratitude.

The young man and the mature judge possess high intelli-

gence and mastery of law as a distinct body of knowledge. Of course, intelligence and legal knowledge are not alone enough to produce greatness in a judge. But they are necessary conditions of greatness and they are clearly apparent in the judicial work of Chancellor Seitz. Intellect and knowledge equipped the young Collins Seitz to be able to make his contributions. In the Court of Chancery, however, the greatest opportunity to make a positive contribution to the advancement of justice may come from exercising the mind's imagination to craft equitable remedies. Chancellor Seitz was a master of this critical talent.

These characteristics – diligence, intellect, learning, and imagination – are essential conditions for greatness in a judge, but even together they fail to capture the core of the greatness that lay within the young man and which flowered so magnificently in the mature Collins Seitz. We get closer to the core of the matter perhaps when we think about character and temperament. There are many personal characteristics that have contributed to Collins Seitz's greatness as a judge. Among them are his modesty and respect for others, his lack of pretense, his rationality, and his love of justice. By modesty, I refer to that characteristic that allows one to listen with respect to the views of others, to hold one's own ideas gently so that a good argument may dislodge them, and to reduce the need for the ego-gratification that comes from enforcing one's view upon others.[1] Modesty is not a lack of confidence. Collins Seitz's magnificent intellectual and analytical powers are those of a dominating intellect. His modesty allows him to consider the views of others respectfully. It is a modesty that sees one's place in a complex cooperative community of effort and does not strive for dominance but for community. Every great judge must, of course, have strength, as Collins Seitz's record shows he has, but conviction alone is insufficient for greatness. His respect for others is reflected in a judicial manner that is, again, a model for others in this era of crowded dockets and pressure on judges. His courtesy and patience, even friendliness, on the bench and off is often remarked upon.

Modesty is also reflected in Judge Seitz's respect for precedent. His commitment was to law, not politics. While his jurisprudence is suffused with a palpable desire to do the right thing, there is not the hint of an ideological bias. His first and last commitment is to *justice* according to law. Both aspects of that commitment are vital. Certainly the



Former Chancellors. Front row: Collins J. Seitz, William T. Allen, William Marvel, William Duffy
Back row: William T. Quillen, Grover C. Brown

young man knew what the older man witnessed time and again: the law is an imperfect tool for the achievement of justice. It is imperfect because it is human and because law always represents the past reaching out to control the present. The present will always be different in some more or less vital respect than the past imagined it would be. So justice may have to be fashioned in the interstices of law sometimes within the very limited space that interpretation necessarily provides. But this realization that justice and law are not always clearly coterminous does not, in Collins Seitz's vision, give to him or to any judge a roving commission to do right unencumbered by the rules of law. As a judge, he is controlled by law and principle.

The case for which generations yet born will know him, *Belton v. Gebhart*, the racial discrimination case, is a good example of the way in which Judge Seitz reached for justice while observing the law. The moral courage is there, of course. That indeed is why, almost fifty years later, we have not grown tired of congratulating him for reaching the right result in that case. It would have been easy to do otherwise. But *Belton* also represents the conservative side of Judge Seitz's judicial nature. He plainly found the racially discriminatory school system that the case treated as morally indefensible. His opinion says so. But in his view, it was not for him, a trial judge, to anticipate that the hoary precedent of *Plessy v. Ferguson*[2] was no longer good law. Certainly a less principled jurist might have flatly announced that, in his opinion, due process of law and equal protection of law could not be squared with the state-ordered discrimination. But for Judge Seitz, this job was exclusively for the United States Supreme Court, if it was to be done at all.

Thus, Vice Chancellor Seitz did not seek directly to impress his own vision of wise or humane society upon the people of Delaware. Neither did he duck the great issue, however. He announced publicly that he believed that the "the separate but equal doctrine . . . should be rejected," but added that "I also believe its rejection must come from [the United States Supreme Court]."[3] Instead of directly expressing his view of the normative rule, he applied the existing law in a conscientious way, concluding finally that the existing conditions were unconstitutional even under *Plessy*. Thus, our history was changed. We were summoned to our own higher ideals not with thunder and righteousness, but with modesty, clarity, and grace.

I cite *Belton* not because it is Judge Seitz's must important case, which of course it is, but because it is fairly representative of what I think is an essential characteristic of his jurisprudence: courage and moral clarity surrounded by modesty and institutional conservatism. It has been Delaware's good fortune to have had several outstanding jurists serve as Chancellor during this century. Chief among them, in my view, are Collins Seitz and Joshiah Wolcott. These two, more than any other individuals, helped secure for the Delaware corporation law its place as the leading law for business organization in the world. Chancellor Wolcott, who served from 1919 until 1938, was the chief architect of the modern fiduciary duty law of Delaware. Chancellor Seitz was the greatest practitioner of the craft of judging and a moral beacon. In his hands, corporate law problems became not technically complicated questions but carefully adjudicated fact-based rulings by someone who understood the facts and their business significance, and the central importance of the fiduciary duty rule.

He is a great corporation law judge mainly because he is a great judge, regardless of the subject matter or field that provides the rule of decision for a case.

Consider, for example, his masterly opinion in *Ringling v. Ringling Brothers-Barnum & Bailey Combined Shows*,[4] written more than fifty years ago, when he, as a very young man, first assumed the burden of judicial work. Young Seitz was not a highly experienced business lawyer when he went on the bench. Surely he had worked at the side of a great Delaware lawyer during his few years in private practice, but those years would seem to have been too few to allow him to be exposed to a great breadth of business law problems. Yet in this important early opinion he is masterly. His opinion is not lost in construing the particular words of prior judicial opinions. He is mindful, first, of the facts of the case. He does not treat them as mere props for an interesting discussion of abstract legal principles. He treats them as the heart of the matter. The law is treated as applicable principles for which cases that stand as examples are cited. And the result conforms both with reasonable construction of the existing law and with principles of fairness in corporate contracting.[5] I mean no disrespect to the generations of Delaware judges that have followed the young Collins Seitz onto the bench in saying that Delaware jurisprudence would be even better than it is if the principle-centered opinion style, reflected in *Ringling* and indeed in most of his Chancery opinions, were followed more closely today.

The Seitz Chancery years were filled with interesting corporation law cases. The emergence of stock options as a form of executive compensation in the late '40s gave rise to a series of cases trying to work out the corporation law aspects of these securities. Mindful that one of the principal problems that corporation law had to deal with during the first several decades of the twentieth century had been the issuance of the watered stock (*i.e.*, stock for little or no real consideration), courts tended to be protective of the idea that valid consideration was necessary to support the issuance of stock. Judges generally had to be convinced that this new idea was valid.

In one of his earlier opinions, *Kaufman v. Shoenberg*,[6] the Chancellor already demonstrates the typical Seitz characteristics of flexibility and insightfulness. *Kaufman v. Shoenberg* began the process that led to the formation of legal rules that secured the validity of option compensation. During this period, Chancellor Seitz accomplished the adjudication that must have been his most arduous case. The Bata Shoe

Company was a family company of immense size and complexity. Control over the company was contested in a Chancery action that took one hundred days to try.[8] The judicial opinions in that case reflect a level of conscientious effort at fact finding and legal resolution that by 1958 were well known hallmarks of a Seitz opinion.

Today's law students continue to read Collins Seitz's words in their corporation law courses. *Campbell v. Loew's Inc.*,[9] for example, is universally studied. It estab-

Modesty is also reflected in Judge Seitz's respect for precedent. While his jurisprudence is suffused with a palpable desire to do the right thing, there is not the hint of an ideological bias. His first and last commitment is to justice according to law.

lished a principle of corporate law that has remained unshaken to this day – that corporate directors on a staggered board must be accorded procedural due process before they can be removed. *Miller v. AT&T Co.*,[10] is a rare judicial opinion that allows law professors to engage students on the difficult question of whether a corporate director breaches a fiduciary duty if he or she knowingly permits the corporation to violate a binding law or regulation. In *Johnson v. Trueblood*,[11] Judge Seitz clarified the operation of the business judgment rule

'98-'99 Season

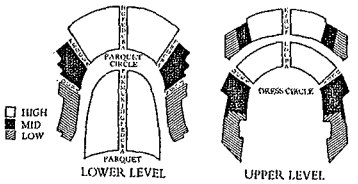
Russian Ballet Theater

Photos by Dennis Degnan

3 19806
25-0447

Fifth Anniversa

y Season
The Grand Opera House



October 9-11, '98

New Work, Vive La France *by Daniel Baudendistel*

music by Jacques Offenbach. **Black Swan, Swing Bar**

Opening Night Gala Party featuring The Fabulous

Waller Family. Friday, October 9th 10 p.m. Save the Date.

February 19-21, '99

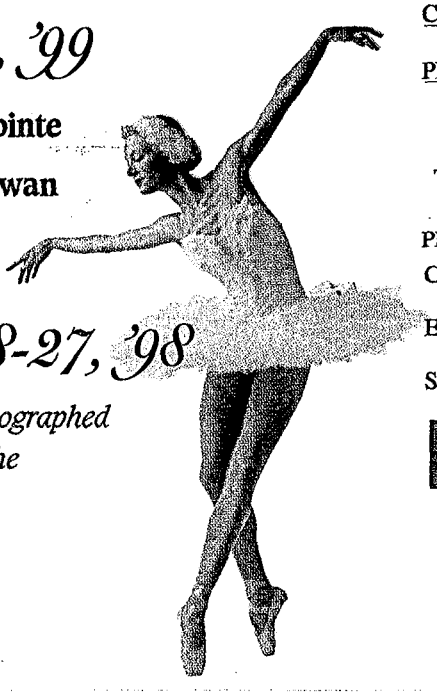
Alchemy, Spring Water

Come Dance with Frank

April 23-25, '99

Pointer Sisters En Pointe

Le Corsaire, Dying Swan



December 18-27, '98

The Nutcracker *Choreographed by Robert La Fosse of the New York City Ballet*

SUBSCRIPTION SERIES Includes tickets to October, February and April performances

# of tickets	Price (for all 3) $123	$105	$63	Total
___ Three Fridays 8:00 p.m.				_____
___ Three Saturdays 8:00 p.m.				_____
___ Three Sundays 2:00 p.m.				_____

NUTCRACKER TICKETS

Subscriber discount	$45	39	31
Non-subscriber	$50	44	35

Date and time		# of tickets	Total
Fri. Dec. 18	7:00 p.m	_____	_____
Sat. Dec. 19	2:00 p.m.	_____	_____
Sat. Dec. 19	6:00 p.m.	_____	_____
Sun. Dec. 20	2:00 p.m.	_____	_____
Sat. Dec. 26	2:00 p.m.	_____	_____
Sat. Dec. 26	6:00 p.m.	_____	_____
Sun. Dec. 27	2:00 p.m.	_____	_____
Sun. Dec. 27	6:00 p.m.	_____	_____

Please add $3.00 processing fee to all orders *$3.00*

Yes, I would like to make a tax deductible contribution to the Russian Ballet Theater in the amount of _____

GRAND TOTAL $_____

SENIOR, STUDENT AND GROUP RATES AVAILABLE

programs subject to change

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

PHONE _____

Enclosed is a check in the amount of _____ payable to:

The Grand Opera House • 818 N. Market St., Wilmington, DE 19801-3080

Please charge my: ☐ Visa ☐ MasterCard ☐ Amex ☐ Discover

CARD NUMBER _____

EXPIRATION DATE _____

SIGNATURE _____

Russian Ballet Theater

To order tickets by phone call:

302-652-5577

or 1-800-37GRAND

3 19806
25-0447

in the takeover setting. That opinion was influential on the Delaware Supreme Court's decision in *Unocal*,[12] when it innovated its intermediate standard of review for defensive actions; in *Moran*,[13] when it addressed the validity of "poison pill" rights plans; and in *Williams v. Geier*,[14] when it addressed the rights and duties of controlling shareholders.

Chancellor, and later Judge, Seitz's influence on the development of corporation law has been deep and pervasive. To a great extent, however, the effect is not captured by a recitation of specific rulings. Much of this influence has been on the tradition of Delaware judging. We that followed him did not, and do not, do it as well as he, but we have tried to continue a tradition of which Judge Seitz is both an heir and a progenitor. That tradition in corporation law is mindful of what is essential and what is peripheral in legal disputes. It rejects cant, legalisms and formalisms, while respecting the utility of formality in corporation law. It recalls that law draws its force equally from procedural predicates and from its ability over time to reflect the better aspects of our nature. And it respects those who respond to its opinions by offering candor, modesty and effort in its work. Collins Seitz has been the exemplar of this tradition in the modern age. Though it seems wholly inadequate, we offer thanks for his life's work. ◆

FOOTNOTES

1. Some conceptions of a great judge might exclude modesty. Think of Justice Douglas for example. Some might think him a great judge (I would tend respectfully to disagree), but few would, I think, regard him as especially modest.
2. 163 U.S. 537 (1896).
3. *Belton v. Gebhart*, 87 A.2d 862, 865 (Del. Ch. 1952).
4. 49 A.2d 603 (Del. Ch. 1946).
5. That the Delaware Supreme Court modified the Court of Chancery Opinion, of course, does not require one to conclude that Judge Seitz's opinion was not an outstanding resolution of the problem he faced. See 53 A.2d 44 (Del. 1947).
6. 92 A.2d 295 (Del. Ch. 1952).
7. See *Lewis v. Vogelstein*, 699 A.2d 327 (Del. Ch. 1997)
8. *Bata v. Hill*, 143 A.2d 728 (Del. Ch. 1958), aff'd in part, modified in part, 163 A.2d 493 (Del. 1960).
9. 135 A.2d 191 (Del. Ch. 1957).
10. 507 F.2d 759 (3d Cir. 1974) (applying New York law).
11. 629 F.2d 287 (3d Cir. 1980).
12. *Unocal Corporation v. Mesa Petroleum Co.*, 493 A.2d 946, 954 (Del. 1985).
13. *Moran v. Household Industries*, Inc., 500 A.2d 1346 (Del. 1985).
14. 671 A.2d 1368 (Del. 1996).

FEATURE

Dolores K. Sloviter

COLLINS J. SEITZ, AN UNPARALLELED COLLEAGUE

In George Bernard Shaw's play *Androcles and the Lion*, Androcles, who is removing a huge thorn from the lion's forepaw, tells the lion to make "velvet paws." After Androcles removes the thorn, he and the lion dance a waltz while Androcles, who has been encircled by the lion's tail, murmurs "Velvet Paws!" "Velvet Paws!"

To me, those two words often come to mind when I reflect on Collins Seitz as colleague, not because I see in Judge Seitz any parallel to Shaw and his tale of the Christian martyrs but because I believe he was uncommonly successful as Chief Judge in large part because he led with "velvet paws." His words fall as gently to the ears as the softest fabric feels to the touch, but he follows the path to the task at hand with the directness of a fencer's thrust.

When I took my place on the Court of Appeals of the Third Circuit in August 1979, Collins had already been Chief Judge for eight years. He would continue to serve in that role until 1984 when he became 70, the statutory age limit for a chief judge of one of the "inferior" (in constitutional terms) federal courts. His thirteen years as Chief Judge will be the longest anyone will ever again serve in that capacity because in 1980 the law was changed to limit that position to seven years. Fortunately for me, the new statute did not apply to incumbents so I had a full five years to observe his interaction not only with the lawyers who practice before us and the staff of the court but, of prime interest, with his colleagues. Even today, more than a decade after he took senior status and the accompanying reduced sitting schedule, he continues to teach us, not by lecturing but by example.

I have never before openly confessed that at the time I joined the Third Circuit, I had only limited familiarity with his landmark civil rights decisions. These include *Parker v. University of Delaware*, issued when Collins was Vice-Chancellor of the Delaware Court of Chancery, holding that black students could enroll at the University of Delaware because the facilities at Delaware State College, the "black" college, were inferior and hence unequal, and his later decision as Chancellor, *Belton v. Gebhart*, requiring the segregated Delaware public schools to admit black children. Richard Kluger's book, *Simple Justice* (recognizing the role of those decisions in the movement toward equal rights through law), had already been published, but it would be years before I would read it.

I was more familiar with his contributions to the law of equity and corporations through his decisions in the Court of Chancery. I knew nothing at all of Collins Seitz, the man. The incremental pleasure I would derive from our interaction was still in store for me.

For starters, my confirmation must have caused him no little stress. The Third Circuit at that time consisted of nine active and two senior judges, most of whom were strong-willed and independent, with a well developed sense of the privileges (and responsibilities) of life tenure. All eleven were men, faced suddenly with their first professional sister who, probably to their dismay, had no prior judicial experience. Only now, almost two decades later, can I imagine the apprehension with which my colleagues viewed my imminent arrival. It would have been to Collins that they expressed their anxiety, and it must have been Collins who soothed their concern, at least enough so that I was greeted warmly, with personal notes from each of them welcoming me as a colleague.

Collins did more. He invited me to lunch. I had shed any remaining timidity during 16 years as an active litigation lawyer and 7 years as a law school professor, but drove to Wilmington for lunch with my soon-to-be chief judge more nervous than I had been when I had faced the Senate Judiciary Committee.

I needn't have worried. The first characteristic that impressed me was his courtesy and quiet charm. My commission was signed on June 21, 1979 but I wanted to delay my investiture until August so that Peter Liacouras, who was my dean at

Judges Seitz and Sloviter

Temple Law School and who had strongly supported my nomination, could return from teaching at one of Temple's summer courses abroad. This meant that I would be unavailable for the first court sitting for which I had been pencilled in. But Collins promptly agreed to an investiture ceremony two months later and never hinted at the extent of the complication my delay was causing for the court. Instead, he offered to swear me in privately so that I could be put on the payroll promptly. It was an offer I quickly declined, but his generosity in that respect was illustrative of his concern for each of his colleagues that I was to see over and over.

It wasn't until I became chief judge myself, some eleven years later, that I realized how much restraint that must have taken and how seamlessly Collins had arranged my introduction into the schedule of the court. He was unfailingly patient, no matter what the cause or how serious the provocation. He considers prompt preparation of opinions to be one of the highest virtues for a judge, but he waited without comment for my often delayed drafts during my early years on the court, letting me reach for myself the conclusion that, as he has since stated, "the uncertainty generated by prolonged delay seriously undermines our *raison d'etre*."

My commitment to equal treatment for women also happened to present Collins with a series of ticklish situations. Within a month after I joined the court, I was invited to a dinner celebrating the ten year anniversary of one of our colleagues on the court. I learned this had become a traditional event and was attended by court members only. I would willingly have attended, but it had been arranged at one of the city's prestigious private clubs that did not accept women as members. I told Collins that as a matter of principle I would not attend. He in turn explained rather ruefully that nobody on the court had previously been conscious of the issue, the event was upon us, and it was too late to change the arrangements. He noted that, as the newest member, my absence would be conspicuous, and gently promised that if I attended this one private event, the court would never again schedule an event in a facility that didn't provide full equal opportunity to women. It was a deal I could readily accept, confident that he would keep his side of the bargain.

The issue arose shortly thereafter when the Lawyers Club of Philadelphia presented its quarterly dinner honoring the judges of the Third Circuit in a facility that didn't accept women as members. This time, I had no difficulty in publicly voicing my decision not to attend. I don't know if Collins had intended to go, but he, like almost all of my colleagues, followed my lead.

Within the same year, I noticed, at my first Third Circuit Judicial Conference, that the lawyer delegates were almost exclusively white males. I asked Collins if he would provide me with an opportunity to address the judges on this issue. There was already a full program and he tried to dissuade me, assuring me that there would be other opportunities, but I

was resolute. He found a spot during the judges' executive session, and I made my short, mild but pointed comments that a system under which each judge picked a delegate would invariably lead to delegates who were mirror images of the judges. The reaction of most of the judges was neither warm nor cordial. I realized that Collins had probably foreseen this, and had tried to protect me. I also was confident that he, having taken courageous stands for equal rights of minorities, understood and respected my motivation. It was inevitable that he would have been sensitive to the issue; certainly his wife and his daughter would have taken care of that.

Collins Seitz's commitment to diversity extends to all. When he briefed the

Even today, more than a decade after he took senior status and the accompanying reduced sitting schedule, he continues to teach us, not by lecturing but by example.

Presidential Commission on its task to nominate candidates to fill the new judgeships, he told them that, in addition to considering candidates on their merits, "there is nothing wrong with considering the existing composition of the Court and nominating at least some qualified individual who, if appointed, might give the Court an even more representative appearance." This is typical understated Seitz language. It covers a lifetime of willingness to open doors, one by one. It is consistent with his dislike of provincialism and his receptivity to change.

Many of the readers of this magazine still think of Collins Seitz in terms of his long service on the Delaware judiciary. As distinguished as was Judge Seitz's tenure on the Delaware Court of Chancery, he

has served more time as a judge on the Court of Appeals. His years as our Chief Judge resulted in dramatic innovations that are not generally recognized, because they were quietly initiated in his unique manner. During his chief judgeship, our court became the first to experiment with the use of electronic mail for the circulation of draft opinions. Under his leadership, we also were the first circuit to prepare and publish our court's internal operating procedure, to establish a Lawyers' Advisory Committee, and to appoint a circuit executive. All of these steps are now mandatory.

His creative steps in judicial administration were acknowledged by his selection as the recipient of the 1997 Edward J. Devitt Distinguished Service to Justice Award. In presenting that award, Justice Anthony M. Kennedy said that throughout his career Judge Seitz "exemplified those virtues of detachment and neutrality and moderation that are the distinguishing marks of the judiciary of the United States."

Working with him over the last 18 years, I have observed how meticulously he prepares each case or motion, large or small, because he recognizes the importance that every matter has to the litigant who has raised it. He expects the same dedication from each member of the court, and, spurred by him, it is frequently forthcoming. A colleague and I often remark on the two-hour grilling to which he once subjected us in order to satisfy himself that we had thoroughly considered all options before we had independently voted to affirm. I have always viewed him as the conscience of the court illustrating the care we must take not only with substance but also with procedure.

Collins is reported to have told an inquiring reporter who asked "what does a chief judge do" that "he keeps the animals on their stools." Anyone who knows Collins recognizes the wry humor that prompted this response, because in fact as chief judge he used a light rein.

He treats colleagues and employees in the same manner as he writes his opinions – clear, direct, and without flourish. In his long career, he has been the subject of many encomiums, and has been described by his colleagues as gracious and understanding, modest and unassuming, and possessed of supreme intelligence and unfailing enthusiasm for the law. Justice William Brennan called him "punctiliously fair." It is all true, and yet not enough.

Above all, it is the simple humanity of Collins Seitz that means the most to me. That, and the fact that I have been privileged to call him colleague and friend. ◆

FEATURE

Helen M. Richards

IN CHAMBERS

Four years ago, I had the great good fortune to dine with Judge and Mrs. Seitz and most of the 64 men and women who had served as the Judge's law clerks since he joined the federal-bench. The occasion was the Presentation of Portrait and Dedication of Courtroom in Philadelphia on June 17, 1994, honoring Judge Seitz. On this particular evening, however, all that was on our minds was good food and good fellowship. The atmosphere, I hasten to say, was not at all what we had been accustomed to as clerks. Although Judge Seitz has always had a practice of eating lunch with his clerks four days a week, the venues selected by the Judge are not notable for their ambience. As one clerk put it, a restaurant didn't qualify for our patronage unless the food was cheap, the glasses spotted and the waitress complaining. How we loved those lunches. The conversation ranged far and wide from the law to sports to current events, and, most interesting to us clerks, the Judge's experiences with various lawyers and litigants.

What stays with me in meeting and talking with my fellow clerks was how remarkably similar our experiences as law clerks had been, although they spanned 30 years. All of us carried away from those chambers the realization that we were privileged to share with the Judge lessons not just in the law but in the graceful pursuit of a life in the law. Judge Seitz characterizes that life as follows: "I must confess that from the day I was admitted to the Bar in 1940, I had a love affair with the law which has never diminished. It is the one calling that suited me perfectly and where I feel at home . . . ."[1] That love continues to inspire the Judge. I remember as if it were yesterday the ripple of excitement that spread through chambers when Judge Seitz finally said "Let it go," the signal to release an opinion for publication.

Among the lessons we learned was to decide things. That is, we learned to frame an issue, reflect upon it, make a decision, and move on. Judge Seitz organizes his chambers to move toward closure. Briefs were placed on his desk first. He would read them all and sort out for our consideration only those that merited additional attention. We were encouraged to reflect upon them, dig behind and beyond the arguments of the parties and test new theories and ideas.

The best of these reflections always took place with the Judge himself sitting with us in our tiny cubicles and dissecting an argument or an authority.

I remember one particular opinion that was giving me a lot of trouble. The way the panel had decided the case did not appear, as I got into it, to be quite right. Yet there was a Supreme Court decision that seemed to compel the outcome. I thought the Supreme Court was dead wrong (law clerks are not known for humility!) and that we should find a way to distinguish it. The Judge and I discussed the case extensively. Eventually, he told me to go ahead and write it up the way I thought it ought to read and he would take it from there. I was never prouder than when the Judge read the draft and said he agreed with the analysis. He then deftly added material that would help the other members of the panel feel comfortable with our approach.

That is another lesson we learned from Judge Seitz: collegiality. Judge Seitz is a consensus builder. He does not like dissents or concurrences and has written remarkably few of them. As the Judge explains: "[A] concurrence written in an attempt to disassociate the author from an unpopular but required majority decision is a reflection on the author," leaving no doubt that the reflection is not a favorable one. "A dissent by its very nature has the potential for crossing the line between what is principled and what is personal."[2]

A closely related lesson we all learned was civility. We learned to be civil to one another, to court personnel, to litigants and to attorneys. Judge Seitz tells of a case he decided while he was on the Court of Chancery. "I wrote the opinion," said Judge Seitz, in a way that said the plaintiff's principal

witness was lying "to anyone who read it carefully." He met that witness at an event a while later and the man congratulated him on his fine opinion. "He never realized," said the Judge, "what I had done to him."[3]

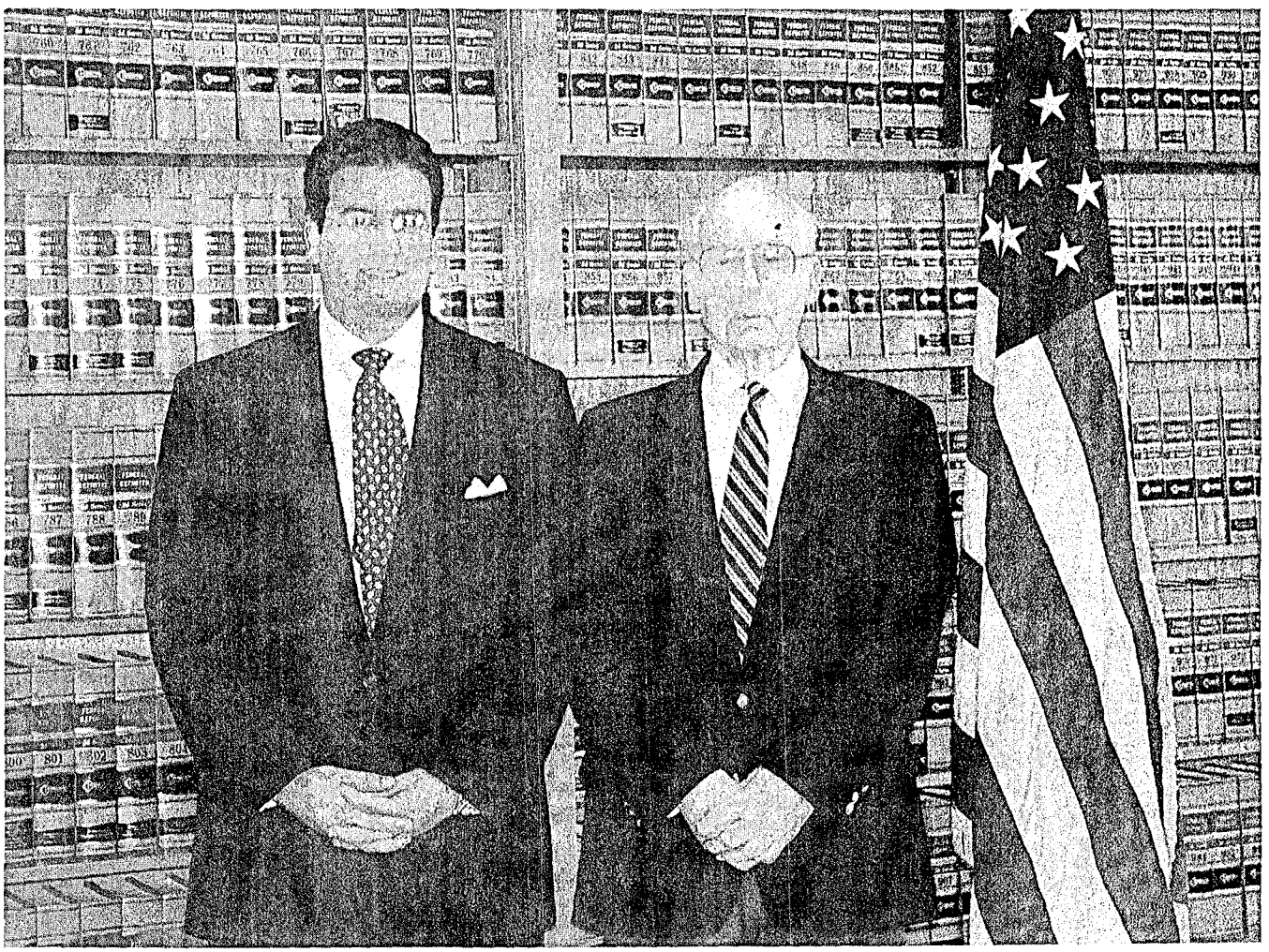
Nothing brought out the Judge's red pen faster than a biting comment or an intemperate criticism. I remember characterizing one plaintiff as "a cat with nine lives" because he had been so dilatory in pursuing his case. Of course, I thought the description was particularly apt. And so it may have been, but it was gone in the stroke of a pen. District courts were not "the lower court" or "the court below," but rather, simply, "the district court." District court judges did not "abuse their discretion," although they could "act in a manner not consistent with the sound exercise of their discretion." A litigant's argument was never "absurd," "ridiculous," or "unworthy of further discussion," although it might well be "unpersuasive" or "insufficient."[4] I had occasion to reflect on this civility not long ago when I was litigating a case and the judge characterized my carefully crafted motion for reargument as "frivolous," "a waste of the court's time." How those gratuitous comments hurt.

By contrast, I remember how gently the Judge dealt with the wonderful, as we thought, and novel arguments we proposed. The Judge would listen carefully, seemingly with approval –the barest trace of a twinkle in his eyes, and then ask a perfectly devastating question that blew our arguments out of the water. When one or the other of us would come up with a particularly fallacious argument, the Judge would say mildly, "You don't mean that." That was our cue to back up and start over.

Judge Seitz taught us restraint. We clerks were always trying to get the Judge to decide the whole matter instead of the narrow legal issue certified for appeal because we thought we knew how the entire case should be decided. The Judge never wavered from his view that the Court of Appeals should decide only what was necessary. The Judge would laugh and say to us, "With any luck, we won't have to decide it again."

Restraint is also evident in the way he eschewed hyperbole, string citations and obscure references. The Judge taught us to write short, concise opinions constructed out of simple declarative sentences. Judge Seitz tolerated footnotes, but only barely. This was quite frustrating to most of us because we had honed our footnote-writing skills to a fine edge in law school. One of Judge Seitz' clerks explains a scheme the clerks devised to circumvent the Judge's propensity to cut out footnotes. The scheme was simply to throw in a first footnote that begged to be deleted in the hopes that would satisfy the Judge's footnote-cutting appetite. She insists the scheme worked splendidly but admits that there was absolutely no evidence of this. Unnecessary footnotes, whatever their location, continued to hit the cutting room floor.

Judge Seitz also taught us to appreciate what one of his clerks has described as "a sense of humor so keen and subtle that it can be a little, gentle time bomb he



A. Ray Ibrahim (law clerk) with Collins J. Seitz, June 26, 1998, Wilmington, Delaware

leaves with you."[5] I always suspected that it was this sense of humor that prompted his first assignment to me as a law clerk. The case, as I recall, was *Dorothy Drinkwater v. Union Carbide* and dealt with a complaint of sexual harassment that, allegedly, produced a hostile work environment. It was 1989 and, while *quid pro quo* sexual harassment was fairly well understood, it was still "early days" for hostile environment sexual harassment. It was only as I delved into the facts that I began to suspect Judge Seitz of a certain deviousness. Dorothy Drinkwater was a graduate of Smith College, one of the

> "It is such a pleasure to have the opportunity ... to associate with my law clerks who are a wonderful, wonderful group, who made it a joy to come to the office in the morning, a special joy, because we dealt as equals, except occasionally I had to remind them that I took the oath of office."

few remaining single sex institutions, who had gone to work for a large chemical company and encountered more than she bargained for. I am a Smith College graduate, who spent 16 years with a large chemical company and lived to tell about it. I think it amused Judge Seitz to see if I could sort out the purely personal experience from the analytical process. I believe the case was decided in favor of Union Carbide but the experience of working on it set the tone for a certain pugnaciousness with respect to chemical companies

that characterized my career as a litigator.

One of the lessons that unfortunately I did not learn, and I suspect exceeded the grasp of many of my fellow clerks, was Judge Seitz' calmness. Louis Nizer said of Judge Seitz in *My Life in Court,* "I have never seen greater concentration in repose."[6] Some of those arguing before him have misinterpreted that calm demeanor. One clerk recalls attending a particularly lengthy argument during which Judge Seitz asked no questions. As he describes it: "When the argument was over, I got in the elevator, and some of the lawyers who had just argued the case got in and began discussing the argument. One commented, 'I can't tell what Judge Seitz was thinking. I'll bet he was thinking about his yacht.' I knew that was a lawyer who had seriously misjudged at least one member of the bench."[7]

Judge Seitz taught all of us to enjoy the practice of law and the administration of justice and, when all is said and done, to sit down with friends and have an egg salad sandwich. Judge Seitz, gracious as always, said at the dedication ceremony in Philadelphia: "That is why it is such a pleasure to have the opportunity to meet so many and to associate with my law clerks who are a wonderful, wonderful group, who made it a joy to come to the office in the morning, a special joy, because we dealt as equals, except occasionally I had to remind them that I took the oath of office."[8] Your Honor, it is your law clerks who are grateful to you for being permitted to share in that joy. Thank you.

The author wishes to thank the many former Judge Seitz' law clerks who contributed to this article. ◆

FOOTNOTES

1. *Presentation of Portrait and Dedication of Courtroom: Honorable Collins J. Seitz,* 35 F.3d lxxiii, xc (1994).
2. The Honorable Collins J. Seitz, *Collegiality and the Courts of Appeals,* 75 Judicature 26, 27 (1991).
3. Remarks and Presentation: "A Ceremonial Compendium on the Honorable Collins J. Seitz.," by W. Thomas McGough, Jr., at 7 (June 17, 1994). Mr. McGough clerked for Judge Seitz in 1979.
4. Id.
5. Beth Nolan, *Master of the Craft: A Tribute to Collins J. Seitz,* 40 Vill. L. Rev. 565, 565 (1995). Ms. Nolan clerked for Judge Seitz in 1980.
6. Louis Nizer, *My Life in Court* 502 *(1961).*
7. Richard G. Andrews, who clerked for Judge Seitz in 1982.
8. *Presentation of Portrait and Dedication of Courtroom: Honorable Collins J. Seitz,* 35 F.3d lxxiii, xc (1994).

FEATURE

Collins J. Seitz, Jr.

TRIBUTE OF A SON

Beginning in 1950 with *Parker v. University of Delaware*, followed in 1952 by *Belton v. Gebhart*, my father used the Chancery Court's unique powers to strike at the heart of Delaware's segregated society. Instead of resorting to minimalist and politically popular measures to improve the condition of black schools, he ordered Delaware educational institutions to admit black students to white schools. These decisions started Delaware on its journey, still unfinished, towards equal rights for all citizens.

Others will recount these judicial stories again in tribute to his six decades of service as a Judge. I write instead to provide a glimpse at his upbringing, and to offer the family perspective of following a few steps behind a Delaware legend.

Born on June 20, 1914, one of nine children of George H. and Margaret J. (Collins) Seitz, my father was raised in the Forty Acres neighborhood of the City of Wilmington. His father was the third generation of his family to work in the du Pont Company powder mills along the Brandywine River.

My father attended elementary school at St. Ann's School, a strict Catholic school in Forty Acres. Although it is unfair to characterize him as a "troublemaker" in his formative years, he did enjoy teasing the nuns, who more than once inflicted corporal punishment in exchange for wise-cracking behavior.

Thereafter, he attended Warner Junior High School, commuting from Lore Avenue in eastern Brandywine Hundred, where my father's family had moved and his sister still resides. His family was one of the first Catholic families to move into this early suburban neighborhood. Here my father experienced his first taste of prejudice. It was not uncommon for members of his family to be called "dirty Catholics" in this predominately Methodist enclave.

When my father was in eighth grade, his father died. At that time, the du Pont Company made no provision for survivors. As the Depression deepened, my father's family struggled to keep their house and provide for their mother. These difficult times steeled my father. As he continued his education at Wilmington High School, he became interested in college.

His matriculation to the University of Delaware in 1933 owed much to good fortune and good faith. He was able to enroll only because his oldest brother persuaded the college's business administrator to accept a post-dated tuition check.

The hardships of his college years are unimaginable in Delaware today. Many admitted to the college in 1933 had no money. At least half the class was malnourished. Supporting the Seitz family required ingenuity and the college student had to do his part. After commuting to and from college each day, my father, with other family members, would distribute magazines and newspapers to more than 500 homes.

His summer job says something about the then-primitive state of organic chemistry. He dyed cemetery grass. Traveling as far as New York City, he and his brother would visit cemeteries to repair the grass surrounding graves, dying it for proper effect and earning up to $400 per summer.

My father was inspired to become a lawyer after hearing Clarence Darrow in a debate at the Wilmington Playhouse. He admired Darrow's dissection of his opponent's reasoning, often arguing for an unpopular or counter intuitive point of

view. He came away from the event with great admiration for Darrow and the legal profession.

My father's law school education was made possible through his own resourcefulness and determination, as well as the generosity of the du Pont family. Forced to look for schools that offered scholarships, he discovered that the University of Virginia School of Law had received a $6 million grant from Philip Francis du Pont. He took a chance and wrote to his widow, asking for her support to attend Virginia. Unexpectedly, one day Mrs. du Pont called and asked to see my father. After their meeting, she agreed to support his application for a scholarship. He was admitted with a full scholarship in 1937.

While attending the University of Virginia, he lived in a boarding house for $10 a month. Only able to afford one meal a day, his usual diet was gravy over potatoes and green beans. He cannot to this day stand the sight of green beans.

After graduation in 1940, he returned to Wilmington and practiced law with Stewart Lynch, at the time the United States Attorney for Delaware. While Stewart Lynch spent most of his time prosecuting cases, he handled Mr. Lynch's lucrative corporate practice. In 1943 he joined Southerland, Berl & Potter, writing corporate briefs for the two senior partners. His modest salary jumped from $1,200 a year to $18,000.

My father was extremely successful as a fledgling corporate lawyer. He quickly gained respect for his quick mind and indefatigable pace of work. In the early 1940s he also became involved in Democratic Party politics. He served as secretary of the Democratic County Committee for New Castle County while his good friend (and fellow University of Virginia graduate) William Potter was Democratic State Chairman.

My father's social conscience developed after law school through the influence of Father Tom Reese, a Catholic priest in Wilmington. Father Reese was an early advocate for interracial relations and a critic of the Catholic Church's indifferent attitude towards blacks. He founded the Interracial Council, and drafted my father and others to write editorials for the Council's monthly publication. The editorials addressed issues such as interracial marriage and St. Francis Hospital's refusal at that time to train blacks as nurses.

Chancellor William Watson Harrington appointed my father, then age 31, as Vice Chancellor. At that time, the Vice Chancellor was a statutory position, appointed by the Chancellor. In 1949, the General Assembly enacted a constitutional amendment to make the Vice Chancellor a constitutional judge, appointed by the governor and confirmed by the Senate. Because my father's term had not expired, he was "grandfathered" into a twelve year term expiring in 1958. But he would have to face the Senate much earlier. In 1951, Chancellor Harrington retired and Governor Carvel nominated my father as his successor, shortly after the controversy caused by the University of Delaware civil rights decision. His confirmation was a tribute to the courage of Governor Carvel and insistence, by many lawyers of both parties, that the principle of judicial independence should prevail over any short-term commotion caused by a single decision.

During this exciting period of his career, on July 30, 1955 he found time to marry Virginia Anne Day from Hudson, New York. My father and mother met on a date arranged by his brother on a motorboat cruise down the Hudson River. He was a handsome and talented man; she was an attractive and intelligent schoolteacher from a close-knit town in the Catskills.

My father was an exceptionally hard worker, and, in a tale that could be retold by spouses of other attorneys and judges, was physically and sometimes mentally absent from home. His love of the law was at times all consuming. In 1957, as my mother was in labor with me for many hours, my father sat in the waiting room, drafting the opinion in the famous corporate case *Campbell v. Loews Theatres, Inc.*

While Chancellor, my father prided himself in issuing decisions as promptly as possible. His trademark style was the short declarative sentence. He believed that it was important to decide cases promptly to permit the litigants to get on with their lives. In corporate law, he believed that management was often less concerned with the specific result of a case than with the need for certainty and consistency in judicial decisions on corporate governance. The Court of Chancery's reputation for consistent and reliable judicial decisions was fostered by my father, and continues today.

Judge Seitz's children (Nov. 25, 1962). Left to right: Muffy (Virginia Ann), C. J. , Mark, and Stephen

In 1966 my father was appointed to the United States Court of Appeals for the Third Circuit. The most dramatic part of the transition was from a one-judge courtroom to three-judge panels. The Third Circuit had many talented but difficult judges. After learning the political maneuvering necessary to foster collegiality among his colleagues, he became a highly skilled consensus builder. As Chief Judge he was instrumental in adopting the Internal Operating Procedures, which steered the Court toward unanimous decisions and away from the splintering caused by frequent dissents.

Although his time was now spent in the federal system, my father was always fond of his state court colleagues and maintained his contacts with them. His dearest friend was William Duffy, who served as a Justice in the Supreme Court,

Chancellor in the Court of Chancery, and Judge in the Superior Court. Judge Duffy and his wife, Louise (Boo) Duffy, were my parents' closest friends. On many warm Sunday summer afternoons, my family would visit the sprawling Duffy farm in Hockessin. While the children played in the corn cribs and chased the sheep, the two judges would retreat to the house to reflect on judicial issues. Both men were ideally cast for judgeship. The same firm but gentle hand controlled their courtrooms. One disapproving look could silence the wayward lawyer, litigant or misbehaving child. The friendship between these great men was typical of the collegiality between the state and federal benches.

One special friendship outside the judiciary that endures to this day is with Arthur G. Connolly. They shared a common dedication to the legal profession and a profound loyalty to their children. For many decades, Mr. Connolly and my father served on the Laffey-McHugh Foundation, a charitable foundation that provides funds to many Delaware non-profit organizations. My father was particularly fond of Mr. Connolly because of his unqualified support for his friends, whether they be right or wrong in someone else's eyes. Although Mr. Connolly was a ferocious litigator, he was generous to a fault with his family and friends. As often as possible, Mr. Connolly and my father still meet for lunch, seeking each other's counsel on family and other matters.

My father was careful about his friendships outside the judiciary. His reluctance to socialize was difficult for my mother, but was grounded in a belief that the public must perceive a judge to be above criticism for partiality based upon his social contacts. In his courtroom my father enjoyed leveling the playing field for less experienced lawyers. He put the senior members of the Bar on equal footing with the youngest lawyer. His philosophy was an outgrowth of observations as a young lawyer that the relationship between the Bench and the senior members of the Bar could be a bit too cozy.

My father was also careful not to take advantage of his position as a judge. When lawyers acted inappropriately in court, or took positions that were unwarranted, sanctions were not wielded to deter poor lawyering. Instead, after the argument or trial ended, the lawyer was asked to speak with the Chancellor in chambers. A private discussion took place, outside the client's presence,

where the point could be made firmly of the need for appropriate behavior. This approach brought far greater and lasting results than humiliation of the lawyer in front of the client.

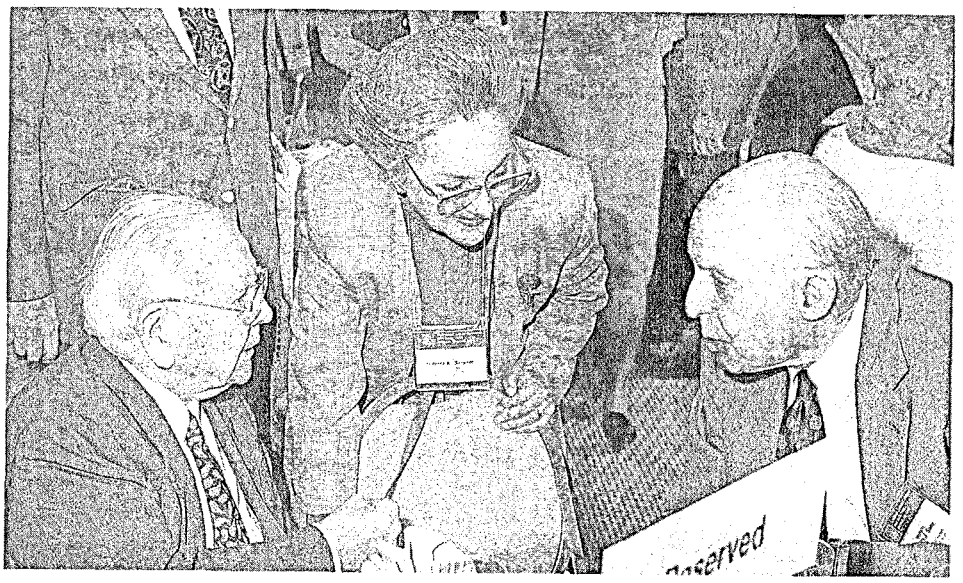
For all my father's intellect and insight, the Philadelphia Phillies were able to extract an amazing loyalty from him, and inflict excruciating punishment on him, almost every baseball season. Game after game my father would watch innings of "pathetic baseball" from a team with "no pitching and no hitting." We rarely attended a complete game at Connie Mack or Veterans Stadium. We generally left when, usually around the eighth inning, my father declared the game "over." Even now he watches the team's struggles year after year.

Though my father met my mother in mid-career, it is undeniable that his distinguished career was abetted by my mother's hard work and patience. Her strength and loyalty were a perfect complement to my father's principled approach to his life and livelihood, and an antidote to the comparatively private life he believed a judge should lead.

My mother and father raised three boys and one girl. Three of the four children are practicing lawyers – in Delaware, Tennessee and Washington, D. C. Their youngest child is a big game expedition leader in South Africa. While my father worked long hours to satisfy the demands of lawyers and their clients, my mother filled the gaps by providing a steady hand at home raising us. It is a sacrifice to be the spouse of a judge. I know she grew weary of the legal banter during family dinners. She is the best mother, role model, and friend her children could have.

At age eighty-four, my father continues to sit as a Senior Judge. Opinions are issued from his chambers with the same enthusiasm as in earlier years. Circuit court judges call him for his sage advice. His once controversial rulings have become bedrock legal principles. Our family says "congratulations, Dad," for making Delaware not only a prestigious forum for the resolution of corporate disputes, but a state that can now proudly say that it led the way in the struggle for equal rights for all citizens.

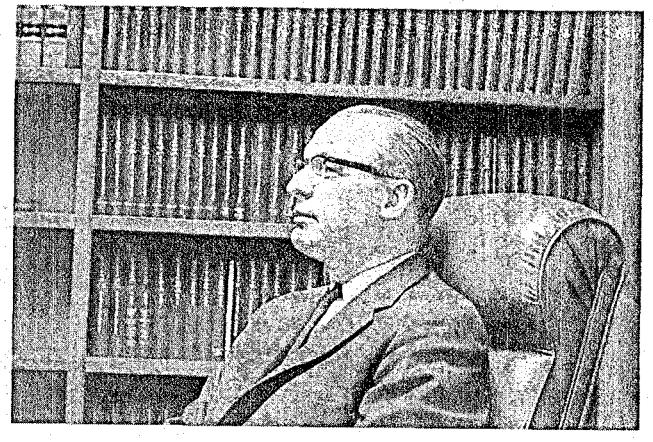
In preparing this article, the author gratefully acknowledges the assistance of interviews with Judge Seitz, conducted by the Honorable Leon Higginbotham for the Historical Society of the United States Court of Appeals for the Third Circuit. ◆



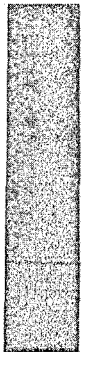
Former Justice William Brennan, Judge Dolores Sloviter and Judge Seitz – 1993

Collins J. Seitz – a student at St. Anne's School in 1926

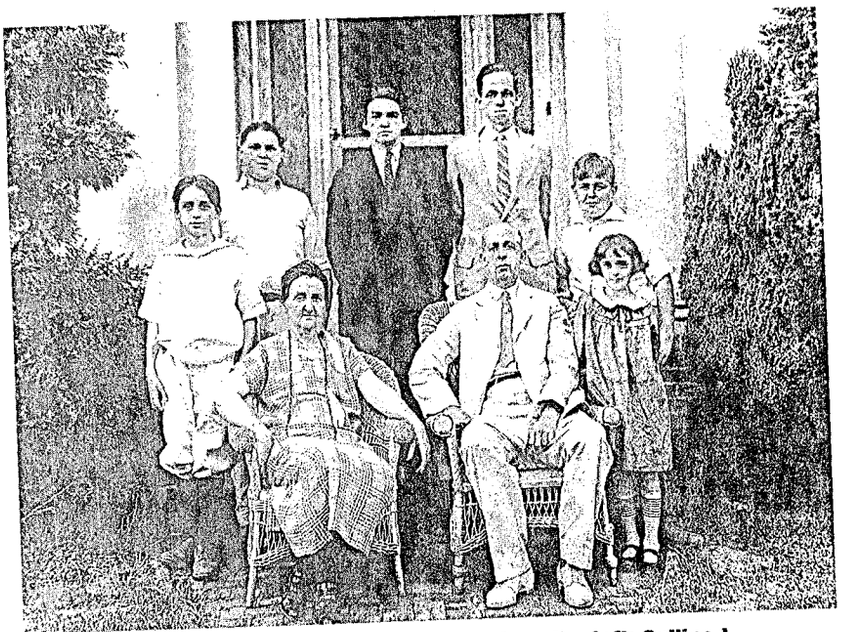
Judge and Mrs. Seitz - The 1974 Holly Ball



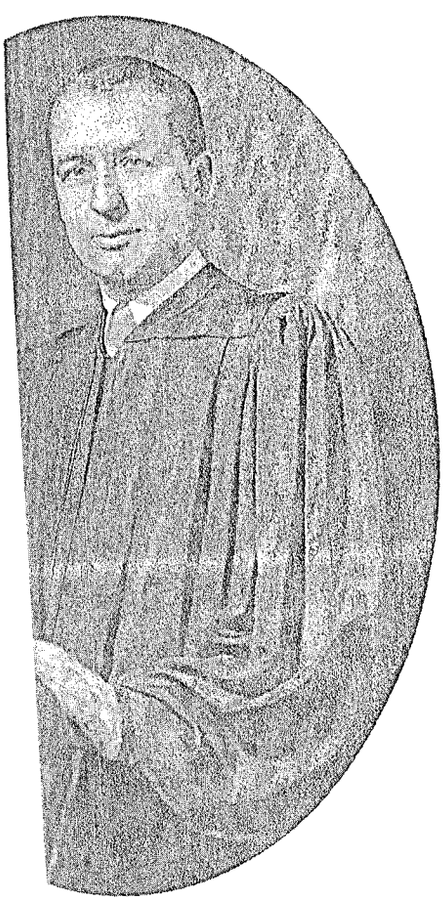
In Chambers



Chancellor Seitz and three of his children: Muffy, Mark, and Collins, Jr. ("C.J.")



The Seitz family in 1928. Clockwise from the left: Collins J., Alfred, John Francis, George, Cazenove, Margaret, George and Margaret



Chancellor Seitz – 1958

Chancellor and Virginia Seitz (1954)

FEATURE

A CONVERSATION WITH JUDGE COLLINS J. SEITZ, SR.

On June 12 of this year, Edmund N. Carpenter, II, a distinguished member of the Delaware Bar and a former president of the Delaware State Bar Association, interviewed Judge Seitz at his offices in the Federal Building in Wilmington. Herewith their discussion:

Q. Judge Seitz, let me start by thanking you for permitting me to come in and talk to you about your wonderful experiences on the Court of Chancery, to some extent the Supreme Court of Delaware, and the United States Court of Appeals for the Third Circuit. Could you tell us something about your early life up through your graduation from the University of Virginia and your experiences during the terrible Depression that existed at that time?

A. Yes. I'm a child of the Depression, there's no doubt about that. I once started to write my autobiography by saying I know only by hearsay that I was born on June 20, 1914 here in Wilmington. I was the fifth boy in the family. My sister is younger than I am. I was born right here in Wilmington in what's called the Forty Acres. I don't remember a whole lot about that period because we moved out to the suburbs when I was about five years old, and it *was* the suburbs. There was a wheat field in the back of our house at Gordon Heights.

I commuted to St. Ann's Parochial School for eight years. That school was located in the Forty Acres, too. I remember my father would drive in. He worked for Du Pont, as I guess everybody did, and he would drop us off at Delaware Avenue and Van Buren Street. And we would have to walk out to the Forty Acres in the morning and then back in the evening and meet him there. It makes me laugh when people today say how far they have to walk. That was something that was taken for granted in our period.

Q. That was about three miles each way?

A. Not quite that far, but pretty close to it. Of course, I was seven years old. My older brothers left St. Ann's and went to Salesianum High School.

When I finished St. Ann's in 1929, that was the year my father died and things were very rough. That foreshadowed the Great Depression, of course. I started at the Warner Junior High School, the first class in that new school over on 18th Street. I graduated from there in 1930 after one year. Then I went to Wilmington High School for three years, which I finished in '33.

That was a very bad period for our family. That was the heart of the Depression. And though my oldest brother had graduated from the University of Delaware in chemical engineering and my second oldest brother had graduated from West Point in '29, the rest of us had to struggle, and it *was* a struggle. My mother was committed to education above everything else, so we kept going.

Finally I commuted four years to the University of Delaware, brown-bagging it all the way. In 1937 I finished there and Mrs. Philip du Pont recommended me for admission to the University of Virginia Law School and for one of the du Pont scholarships, that enabled me to start there – the greatest thing that ever happened to me. After three years at Virginia, struggling along economically, in 1940 I finished law school. I had done reasonably well there.

Q. Let me ask you something about your experience going to college and going to the University of Virginia Law School during the Depression. Was there an occasion when you were examined by the doctor at the University of Delaware and he made some comment about the nourishment of the students?

A. Oh, yes. I remember the doctor at the University stating that about a fourth or a third of the entire student body was malnourished because they weren't getting enough to eat. And I could understand that because I can still remember being a student standing outside the commons and the students who had gone in to have their meals would bring some of them out to the people who couldn't afford to buy meals. You will probably find it difficult to believe, but my first year I only ate one meal a day. At Virginia that was. But all I could earn is what I could generate in the summertime in cash to take down there and, thank God, the tuition was very low in those days. And so I struggled along financially until the third year. I remember I got a student instructorship and got a handsome increase, a hundred dollars more or something like that. I have great memories of the University of Virginia. I needed money one

day and I walked into the loan office and said, "I need some money." They asked, "How much?" And no holds barred, they just handed me the money. I was so grateful that when I finished law school the first thing I paid back was that loan.

Q. Let me just inquire, because it will become relevant later on, during your childhood and primary education, secondary school, at the University of Delaware, and the University of Virginia, did you get to know any blacks at all?

A. No. They were all segregated schools. Every school I went to was segregated, including the parochial school.

Q. Here in Delaware was that segregation a matter of law?

A. It was a constitutional provision, right. Of course, it didn't apply technically to private schools, but they honored that same provision.

Q. Now, after the University of Virginia, you came back to Delaware to begin the practice of law. Why did you do that?

A. Let me say I loved Delaware and it really never occurred to me to want to go anywhere else. I was offered a job in Pittsburgh as counsel for a corporation there, and I decided I didn't want to work for a corporation and so my opportunity was here.

I had clerked for Stewart Lynch at the end of my second year of law school and when I finished, he offered me a job in his office and that's where I started. And it turned out to be a fabulous break for me because at that very time he was appointed the United States Attorney for Delaware and he loved that job and neglected the private practice. So I was thrown into corporate matters which he had and into the Court of Chancery.

Indeed, I argued a case in the Supreme Court of Delaware before I ever even tried a case, all because he was sort of abdicating his private practice. So that's how I became familiar with the Delaware judiciary, way ahead of what should be my status. I can well remember having cases in Chancery against your old law firm, Mr. Layton and people like that, which was something for a fellow who was in his twenties.

Q. You haven't mentioned how you happened to go to law school or how you happened to begin the practice of law. What was it that drew you to that particular area?

A. You know, I have been asked that many times. I don't know. No one in our family had been connected with the law, at least on the law side before. But I do remember, strangely enough, writing on my booklet at St. Ann's School, Collins J. Seitz, Attorney-At-Law, so I must have been thinking about it. I remember being impressed with Clarence Darrow. He came here to speak and I went to The Playhouse to hear him. I don't know if it was a speech or a debate, but I was really impressed with him. I must say I had a pervasive sense of fairness and maybe that was from having four older brothers. I abhorred injustice at any level and that's been true my whole life. And it seemed to me the law afforded me an opportunity to make changes, someof which I made once I got into a position to do so.

Q. After you worked for Stewart Lynch, there was a time when you became associated with Berl, Potter & Anderson, then Southerland, Berl & Potter? And in that connection, you met Clarence Southerland?

A. Yes. I didn't know Mr. Southerland at all before I went with the firm. Mr. Potter, of course, who also went to the University of Virginia, is the one who asked me to come with the firm. But when I got there, I practically became Mr. Southerland's man. Nearly every case he had, he would ask me to write the briefs and so forth. And I developed a great affection for him, though he did not suffer fools gladly. If you let him down once, you were dead. That's the way he was, which reminds me of a little story.

One day a law firm was calling from New York and they wanted an opinion about something that day. And of course he came in and told me to see if I could find some case law on it. I researched it and I thought I found a case right on point. And I took it into his office and he wasn't there and I opened the volume to that page and put it on his desk. In a few minutes when he came back, a message came to see Mr. Southerland.

I came in and he said, "What does this case have to do with our problem," which crushed me. I still remember it because I always wanted to please him. Finally, I realized he was looking at the wrong page. He was looking at another case, for which he apologized profusely. But I remember that. I had such admiration for him. He was one of the smartest men I ever knew. I just thought he was great. He used to come into my office and sit down by my desk. He would have the Law Week with him and he would say, "Collins, look at what your New Deal Supreme Court has done now." (He knew I was a supporter of the New Deal.) But it was all in good fun.

Q. He later became the first chief justice of our separate Supreme Court in 1951. Before that had he been attorney general?

A. Yes. He argued the big New Jersey-Delaware boundary dispute in the Supreme Court for the state.

Q. Also in that firm was another attorney, Bill Poole, with whom I believe you founded the Legal Aid Society?

Can you tell us something about that and also something about Bill Poole?

A. He was called a grown-up Boy Scout and that probably captures some of his personality. Before I went with the firm he and I had a big case in Chancery and I had won. Bill took every loss very hard and so when I went with the firm, we were not immediately on the greatest terms. But in time I got to realize that he was the soul of integrity. I don't know of anyone who called the shots straighter than he did in any field. I came to admire him immensely, so we got on. I was active in the American Bar Association at that time and so was he. So we got the idea of Legal Aid and of course I felt strongly that a large segment of the society was not getting the benefit of legal representation. This Legal Aid Society was an opportunity. We got Mr. Southerland involved. He wrote the first letters to the members of the bar and to the establishment lawyers asking for contributions. So for two or three years the whole thing was funded by the lawyers with Mr. Southerland leading the way. I was treasurer or secretary for several years, but Bill was a dynamic force. His death was a loss to our society.

Q. When you joined Southerland, Berl & Potter, do you recall how many lawyers there were in the firm?

A. Probably six. That's about right. It was during the war so they didn't have many attorneys. That was 1943, I think. They didn't have many attorneys there. Now I guess only God knows what the size of that firm is today. Do they need more lawyers today? Or do they have more lawyers work on a case today than they used to?

Q. Well, have you observed that there is much greater specialization in the practice of law?

A. Oh, definitely, yes.

Q. I suspect when you began to practice law, you did just about everything but with an accent on corporation law in the Court of Chancery?

A. Right. I did everything. As the saying goes, I got wet all over. No matter what the case was about. Gee, I can remember sitting over at the law library

going through the English Reprints looking for an old English case on point because Chancellor Harrington liked English cases. That's all changed. When I see some of the firms with cases like managed funds and the mutual fund disputes about compensation and all, I remember Arthur Dean would come down to argue because I guess the client wanted him. The real work was done by the people in back of him at the counsel table and they would sit at the table dying when he didn't know how to answer some of my questions. I told him once to turn around and get the answer. I don't think he liked it.

Q. Do you have any recommendations for the improvement of the lot of lawyers such as your clerk who called and said he was dissatisfied?

A. Well, it's not original. I just saw this advice given by a lawyer in Washington about the importance of the partners' cultivating the younger lawyers on a personal basis and not merely using them only for legwork. Whether you can do that, I don't know. I think you can but there are some people who by their natures are unable to slap you on your back, right?

But there is a definite feeling by a lot of the younger lawyers that they are not appreciated. And years ago I did a lot of work for Bill Potter too, and you knew him. He had that great southern attitude. I mean, he would pump you up, and I don't see anything harmful with that. Like I tell my clerk once in a while, "Gee, that's an outstanding job you have done here." Unless you're young and have gone through that, you don't appreciate the importance of a compliment like that or having a partner say good morning when you walk by. I know of a lot of partners who wouldn't even deign to say good morning to some of their partners. And I have heard that from my clerks who have gone on.

So it depends on maybe a little sensibility, but I think one really important thing is a sense of collegiality among the firms and the status of people at all levels in the firm. It makes a big difference. When I went on the Court of Appeals and became chief judge of the court, I made a special effort to practice collegiality. Some judges didn't always get along with one another when I went on the court. At one time some of them didn't speak to each other. You knew some of the personalities on that court. But I never believed in that. I thought life's too short.

Q. After you arrived in Wilmington and began the practice of law, were there attorneys and judges or others who provided special guidance and advice to you?

A. No. I must say in candor Stewart Lynch was not loved by a lot of the profession, to put it mildly. I think some of that rubbed off on their relationship with me. But, no, I tried to do my own thing. I do remember the graciousness of Judge Rodney and Judge Pearson.

I became active in politics fairly soon after law school and, as a matter of fact, I was secretary of the Democratic County Committee while I was still with Stewart Lynch. And I think that was Bill Potter's doing. I think he was the state chairman then. But, no, I was pretty much on my own in those days.

I remember going to apply for a job with Mr. Richards and later Judge Morris. Let's just say that I didn't get the job.

Q. I know that you at some point became very close to the late Justice Bill Duffy. Can you tell us something about him and your relationship with him?

Q. He was my best friend. He was a superb human being, not appreciated by everybody, but one of the finest people in this world. I'm trying to remember how we first met. He was three or four years behind me at the University of Delaware, but you probably know he had a great war record. He came back from the war in very bad shape. It took him a while. Then he went to Penn Law School.

And I have forgotten how I got to know him. I think it was through Frank Melson. They were neighbors here in Wilmington. And Frank Melson, Judge Melson of Family Court, he and I were classmates at Virginia and that's probably how I got to know him.

The more I got to deal with him, the more I admired him. We were active in the same Catholic affairs. He was sort of following me in the Catholic Welfare Guild. I was President of the board. He later became President of the board. There were some other things, including the Catholic Interracial Council and things like that. So we worked together.

I don't know if you ever knew Father [Thomas] Reese or not. He's the one who got me involved a great deal with interracial matters. As I say, I never had any contacts with blacks. He was another one of those devoted people. Nothing would shake his feeling about the need for the Catholic Church to practice what it preached, and I admired that a great deal. That helped influence me and Bill Duffy too. For example, Bill went to St. Francis Hospital to ask the Mother Superior to train black nurses. They weren't doing it. And it ended up with her ordering him out of the hospital. That shows you the feelings. It's hard to believe today when you hear these stories, but they were going on, all of them. He had that same devotion.

Yes. As a judge, of course, he was very much loved by Governor Terry and he was appointed President Judge of the Superior Court and Chancellor.

Q. Then thereafter he became a member of the Delaware Supreme Court?

A. Right. I probably had lunch with him a few weeks before he died. If you want to talk about the word Christian, he exemplified it to me.

Q. Tell us something, if you will, about your relationship with Father Reese and also his position both as a priest and as head of the Catholic Welfare League.

A. Yes. He was running The Catholic Welfare League. I don't remember how it started out. Nobody could say he wasn't persistent and he kept after me to become involved, I guess to get on the board there first. And then he was intimately involved in the black issue, as well as running that Catholic agency. And I was there quite a few years and I was the head of it for a while. I remember presenting their budget to the United Way.

But he was a dominant spirit in this community in interracial matters and he was loved by the blacks. He was the most amazing person. He could say the most profound things in a quiet way. And he would go to the legislature in Dover in the same way and they would beat on him and he did not retreat. I had great admiration for him and I'm sure more than anyone else he influenced my views about interracial matters.

Q. That was while you were still a lawyer, before you were appointed to the bench?

A. No. It was after I went on the bench. I didn't know him when I was a lawyer. I had spent those years just trying to make a living. About the only thing I did in those days was in politics.

One year I wrote the whole Democratic state platform myself.

Q. At what age?

A. I was twenty something. I'll tell you one little story about that platform. Colonel Berl was going to run for the Senate. But the labor leaders did not support him, which, if you knew him, you could understand. But Mr. Potter came to

me and said, "When you are writing this platform, can't you just work in a little statement of approbation for Colonel Berl?" I tried it, but that was the one thing the labor leaders would not permit to go by in my draft. But it was a one-man job.

Q. You were appointed to the Court of Chancery at a very early age, were you not?

A. Right. 31.

Q. Can you tell us how that came about?

A. Yes, I can. I had practically no support to be appointed. As you know, the appointment came from the Chancellor rather than the Governor at that time. Of course, I had already had matters before the Chancellor and got to know him pretty well. I really didn't want to be appointed. And over at the firm, of course everybody was supporting Dan Wolcott for the appointment, including me. We were friends and I flat-out told him that. One day I got a phone call from Chancellor Harrington asking me to come to his chambers. I can still remember it. He always called me Seitz, nothing but that, Seitz. When I got there he said, "Seitz, I would like to appoint you vice chancellor."

I figured something was up and I really at my age shouldn't have said it, but I said, "Chancellor, you ought to appoint Dan Wolcott." I can still remember that he said, "You can take it or not but he's going to be appointed over my dead body." I figured that was fairly strong evidence Dan wasn't going to get it under any circumstances, so the next day I accepted it. That was the background.

Now, I'm told my biggest supporter was then Vice Chancellor Burton Pearson. I had tried a big case before him, which I won. And I think he persuaded Judge Morris too, but I would think that I had about three supporters.

Afterwards, Mr. Southerland said to me "I want you to know I didn't support you. I supported Dan Wolcott." I said, "Well, I fully understand that, Mr. Southerland." He tried to placate me by saying, "We didn't want to lose you."

Q. Thereafter you became not only an appointed Vice Chancellor but a constitutional Vice Chancellor, did you not?

A. Yes. They passed a Constitutional amendment giving the same status to the Vice Chancellor as other state judges, a twelve-year term and appointed by the Governor.

Q. By then you had experience both as a lawyer and then, of course, as a judge. Can you tell us something about your views as to the characteristics of a great lawyer or the characteristics of a great judge?

A. When you start thinking about that, you think about impartiality, whether you use fairness, equal treatment, impartiality or whatever. That ought to be true of every judge. So it's hard to say. What makes a great judge? Gray matter helps, but it doesn't help if you have biased views rather than an open mind. So I can think where we had judges of both types in Delaware. Sometimes I could argue a case before a judge who I thought was really a fine judge, but I soon detected he was either for my client or against him. And if he was for my client, I didn't need to say a whole lot. He would decide for me. But I always thought that was dreadful, frankly, in terms of the appearance of justice in the system, but we had that of course for a long time. That was one thing that I was going to try to change if I got the chance.

Yes, a great judge has all of those things in full measure. But it varies. Like Learned Hand, a lot of people thought he was a great judge, one of the greatest, but apparently he didn't suffer fools gladly. I practiced law every day of my life as a judge in Chancery Court because I had lawyers of all abilities and lack thereof. And I always said I wasn't judging lawyers; I was judging clients' rights. So I practiced law a lot to straighten lawyers out. Some of it was appreciated. Some lawyers deeply resented it when I would question the witnesses to clarify a point or two.

Q. You referred particularly to the characteristics of a great judge and you emphasized impartiality and evenhandedness. Both as a lawyer and perhaps even more particularly as a Vice Chancellor and Chancellor and Judge of the United States Court of Appeals for the Third Circuit, you have seen some of the great lawyers in the country come before you. Can you tell us what in your view are the characteristics of a great lawyer?

A. First of all, on oral argument it's clarity of expression, sticking to the point and saying what they have to say and sitting down.

There was an attorney in the *Ringling* case from Washington who was representing the family. He was the type of fellow that had to combine personal concerns of the family's along with a legal issue. And he testified before me. He would be called 3:00 and 4:00 in the morning on some silly question which he had to deal with about the circus, which was one of the parties. And it was the human side, along with the fact that he was trying to placate both factions of the Ringlings and the Norths, that was so impressive. He tried to keep them at peace and to deemphasize the legal issues in favor of the human issues. He sticks in my mind as a great lawyer.

Locally here, of course, one of the great commercial lawyers was Aaron Finger, no doubt about that. I saw him in a case – a big case – where on cross-examination he destroyed the president of the company who exuded the attitude that it was a bother for him to come to Wilmington to testify. But by the time Mr. Finger finished with him, all of the pretenses had dropped away and he had lost his cool.

Mr. Finger was just an outstanding lawyer and a clear thinker, again. He, I think ranked, and I have heard lawyers from out of state say that they considered him, one of the best commercial lawyers in the United States. I considered him at that level also.

Q. You already referred to the fact that you came on the Court at age 31. Looking back on that now, do you think that was an appropriate thing for Chancellor Harrington to do or were you too young? Particularly, I have in mind would you recommend today that a lawyer of that age be appointed as a judge?

A. I have been asked about that. They get a big laugh when I say how objective can I be about that question? So I would have to answer that it all depends. Though we come to expect more mature people, I don't think a lot of people realize how much experience I had already accumulated because of Stewart Lynch and so forth. When the people would speak to me and say Your Honor, I would look over my shoulder. I couldn't believe they were addressing me at 31.

I can remember one day coming out of the Court of Chancery over there and a prominent lawyer who didn't know me stopped and he said, "Where is Vice Chancellor Seitz's chambers?" And I pointed in and I didn't let him know I was the Vice Chancellor. He would have been too embarrassed. I don't think he would believe me that with my full head of hair I was the Vice Chancellor, but that sort of thing happened a fair amount.

Q. A number of your opinions have attracted nationwide attention, and I'm referring to the Court of Chancery and to *Bata Shoe* and *Ringling Brothers*, which you have already mentioned, and

Campbell v. Loews, which I suppose is in many textbooks, and a number of other very prominent cases. Which among those would you particularly like to be remembered for?

A. I don't want to be modest, but all cases are transitory. I would rather be remembered for fair treatment in handling the cases rather than any particular case. I know you get short-term publicity, particularly in the *Loews* case, which is in all of the law case books, but it didn't go to my head.

Incidentally, I had no law clerks in those days, so it was all pure Seitz, whatever it was, right or wrong. But I love corporation law, which made me different. I even found the struggles in the corporate field very exciting, proxy fights and things like that.

Q. We have talked for a moment about *Campbell v. Loews* and of course one of the attorneys in that case was Louis Nizer. Can you tell us what you remember about him and your views about him?

A. He was a short man. I'm sure he wore elevator heels. He was like a peacock. Of course, he wrote that book afterwards, in which, by the way, he took some liberties with the facts. Yes, he was completely introverted. Everything was what he thought and what he said. He had some good lawyers against him in that case, but he put himself in the position of combating the giants of the legal profession and prevailing. Clair Killoran was in that case and my recollection is he made the principal persuasive argument, but you wouldn't know that from Nizer's book. He was the type of individual who wouldn't appeal to me. I'm told he had a platform built in his chambers and he sat on it so he could look down on his clients. That may be apocryphal.

Q. You have referred to *Ringling Brothers.* Can you tell us something about the case and the witnesses who appeared?

A. That was an amazing case. The courtroom was packed with the two families, who were feuding. I think maybe somewhere I have mentioned that one of them – I don't know whether it was a Ringling or a North - was testifying and the issue came up about how soon the case would be decided. And he turned to me and said, "Your Honor, I don't care how you decide this case, but we want you to decide it promptly so I can go to Europe and sign up some new acts for the circus."

The case had some of the other characters in the back of the courtroom. There was one, in particular, who was sitting back there making like he was playing a horn. I could hear him. And that's how much attention he was paying to what was going on in this trial. There were these odd people and it all came out when the lawyer from Washington testified that a lot of them were really nuts and he apparently kept the boat on even keel despite these characters.

As you know, the Supreme Court modified my opinion and I was pleased to see that the legal community around the country supported my view rather than Burton Pearson's modification.

Q. In these cases and your experience on the United States Court of Appeals for the Third Circuit, did you form any impression about the value of oral argument?

A. Yes. I am asked that many times. I personally do not find oral argument helpful in most cases. A lot of my colleagues disagree with that. Let me just say I'm prepared for every case ahead of time, so that may help to explain why I don't feel I get that much out of oral argument. I try to use it to clarify what was unclear to me when I read the briefs and got ready.

For every case my law clerk and I spend time. We spent three days last week on the cases set for Thursday and Friday and he had done a memo ahead of time. I had read the briefs and we had a pretty good idea what the issue was. Once in a great while oral argument is helpful. My colleagues don't agree with that. They said they get a lot more out of it.

I ought to say that many times in Chancery Court I had a draft of my opinion in front of me when I listened to the oral argument after briefing. What I did was try to see whether there were any bugs in my draft by asking the lawyers about certain points in controversy. The lawyers didn't know about my draft. As you know, I rarely took time off from work in Chancery. I really knocked the opinions off. I wasn't married in the early years so hours meant nothing to me. But I concede that once in a great while argument helps. I had a case where it turned out to be helpful to find out the true relationship between a woman and the testatrix, which wasn't apparent on the face of the papers. The testimony helped persuade me that the one who looked like a stranger on the papers was really to be treated as though she were a blood relation.

But as you know, we have cut back on oral arguments in the Third Circuit quite a bit. I suppose there are now only about 50 to 60 percent of the cases that are argued. When the judges come on new they all want oral argument in everything, but as time goes on I notice they change their view about it. That may be disappointing for lawyers to hear.

Q. Now, in the Court of Chancery, of course, you usually do not have a jury, but you are able to call an advisory jury from time to time. Is that a procedure that you made use of with any frequency?

A. Not with frequency, but I made use of that. I would use that whenever the lawyer's veracity was really material to the disposition of the case so that it couldn't be said that I was deciding that issue in favor of a member of the bar. I remember specifically one case I referred to a Superior Court jury to decide those factual issues. But other than that, I faced up to them. Credibility is at the heart of the judicial system.

If you were to stand back and look at my opinions over the years, you would notice that I always try to assume without deciding certain issues so I could avoid credibility findings. That's one of the biggest issues there is, of course, in the practice of law. What the future holds for that concern I don't know. It may be that there will be a device someday where you can be sure about the true version.

Q. An accurate lie detector?

A. Yes, something like that. As a matter of fact, I wrote my paper at the University of Delaware on lie detectors in criminology class. But I know if you talked about the advancements of the practice in law and all, that would be one of the greatest. Whether it's ever going to take place in a criminal case, I don't know.

Q. Speaking of lie detectors, I believe one of your brothers was a police officer who was quite an expert with lie detectors.

A. Yes. After he retired he set up his own business in lie detector tests for a lot of the banks, interviewing people who were going to be employed by the banks and so forth.

Q. You had another brother who was a very prominent Army officer and a general. Can you tell us something of him?

A. He was the second child. My oldest brother was also in the military. He was in during the war. He was a colonel. But the second oldest brother went to West Point at 17. He never came out of the service. He spent his whole life there. And he was at Pearl Harbor when the Japanese attacked and

he was in North Africa when they landed and he landed on D-Day in Normandy and fought across Europe – he was in the First Division. They called it The Big Red. And when that Division got into France, I think the commanding officer was a Roosevelt. I have forgotten his first name, but he died on the battlefield and my brother took command at that time and went all the away across Europe, met up with the Russians. Later on he was sent to Korea and commanded the First Division there. He tried to get to South Vietnam, but they wouldn't give him a medical clearance.

Q. You also had a nephew who was a recent ambassador to the Court of St. James?

A. Right. He was one of the general's children. He stayed in England after his term was up. He's done very well, too. He was a career diplomat.

Q. During the period we're talking about you met your wife, did you not? That is, after you became a judge, a Chancellor?

A. Yes, I was Chancellor.

Q. How did you happen to meet and get married and live happily ever after till this very day?

A. I had driven to Boston for a meeting of the American Bar Association. My mother said, "You must stop on the way back to say hello to your brother," who was in business in Kingston, New York. He had a boat on the Hudson River, some sort of a motorboat. He said, "I have a friend who's coming down for a ride on the boat this afternoon. She's bringing a friend and we would like you to join us." I said, "I'm tired. I don't want to go on that boat." Finally, I broke down and went on the boat, and you can guess who the friend turned out to be. From there we had long-range courtship because she was getting a master's degree at N.Y.U. and I would meet her in New York and sooner or later it developed into something more serious. She resigned as principal of the school up there in Schenectady and we got married. She's never worked. She would not like that word "worked" because she thinks she works harder than I do. So we had four children in five years and that kept her busy. And I still marvel at how I was able to educate four children at Tower Hill on my salary.

Q. Those children were all born during the progress of one trial, were they not?

A. Oh, yes. They were born in the total expanse of the case at least.

Q. You're talking about the *Bata* case?

A. *Bata Shoe* case, a company that originated in Czechoslovakia and was taken over by the Germans during the war. It was the largest shoe manufacturer in the world.

Q. Is that still the longest trial ever held in the State of Delaware?

A. Of course, I haven't kept track of it, but I can't think of another one that would have lasted that long. That was a civil case too.

Q. While it was a hundred trial days, it extended over several years?

A. It went to the Supreme Court of Delaware and then the United States Supreme Court. They didn't review it. The losing party was a relentless litigant, I'll tell you. And there were two long opinions in that case by me. The second one was to give him compensation if he turned over the minority shares of the subsidiaries. He wouldn't do it, so he lost a few million dollars that way. I was going to give him several million if he obeyed my order.

Q. You are famous for your decisions on Delaware corporation law. But in that particular case, the *Bata Shoe* case, were there other laws involved also?

A. Oh, were there ever! We had expert witnesses on Czechoslovakian law, on Dutch law, on Swiss law, and on New York law. My opinion runs right through all of those fields. That was a great case in that sense. I can still remember that.

I wrote everything out longhand and somebody might say well, how can your secretary read what you write? But she somehow did.

Q. I would like to turn to another set of cases that you handled in the Court of Chancery dealing with the question of segregation, particularly the *Parker v. University of Delaware* case and the two school cases, *Belton* and *Bulah*. Could you tell us something about your experience with those cases and the situation here in Delaware at that time?

A. Yes. In *Parker vs. University of Delaware*, the plaintiff had named the board of trustees of the University of Delaware as defendants too. Chancellor Harrington was on the board, so he couldn't take the case and it fell to me. That was an easy case. It was decided under the separate but equal doctrine. And to compare the University of Delaware with Delaware State College at that time was sort of ludicrous. I visited both universities before I decided the case and the opinion sets forth the disparities. As I say, it was easy.

Q. That was an application by black students for admission to the University of Delaware.

A. People misunderstand that decision. I decided that the University of Delaware could not consider color when passing on admissions, not that I ordered them admitted. That may sound like a distinction without a difference to some people, but that's really the typical equitable form of injunction. So that, in effect, they then apply for admission on their merits like anyone else.

Q. Was the effect that black applicants could apply immediately, whereas in other courts they were giving the state time to bring the educational facility up to being equal?

A. That was the typical approach to segregation in all of those cases: we may be in default, but give us time. That same thing happened later in *Belton*, that same argument was made. That's the difference between my decision and a lot of the others.

Q. Why did you take that different approach, that is, to permit blacks to apply immediately to the superior education facility?

A. I haven't read my *Belton* opinion in a long, long time, but I think I said why in that opinion, that the Constitution on equal protection didn't say it was to be deferred for some students. It was to apply to all students. When they could come back and show that it applied to all students, then maybe we would have a different problem. Otherwise, we weren't to wait to educate their grandchildren.

Q. Now, in that case and later in the school cases, the plaintiffs were represented by a black lawyer here, Louis Redding, and by Jack Greenberg from the National Association for the Advancement of Colored People. Can you tell us something about those two attorneys and your experience with them?

A. Jack Greenberg said that was his first case. I really didn't know Mr. Redding. Maybe aloof is the way to describe him. He was not a back slapper, a cordial fellow at all, from what I heard about him. People would describe him as cold. But as you know, he has that wonderful speaking voice and aplomb in court. He was very good. Greenberg did a lot of the cross-examining too, but I think you couldn't choose one over the other. But that's the way it went. Can I tell you a little story about that? One day I was having lunch at The Wilmington Club while the trial was going on, and Mr. Richards, Sr. sat down next to me. I had noticed he had

been attending the proceedings every day. He was a trustee of the University too. And he said – well, I knew that Redding didn't speak to him. Do you remember the old Court of Chancery that you had to walk back and out that back door from where the lawyers were? Maybe you don't.

He said, "I decided I was going to force Redding to speak to me." This sounds funny to hear it from him. He said, "I got up and I stood in that doorway where the lawyers had to go to get out of the courtroom and he had to move when he was beside me. And I said hello to him and he said hello to me."

That was a small thing, but I can still remember that. These are the little things that make it, I guess, special.

Q. Later both Mr. Redding and Mr. Greenberg brought suit on behalf of some students who were applying to public schools.

Q. Those cases, one involving the Claymont School District and one involving the Hockessin School District, also came before you. Tell us about those cases and particularly tell us if the feelings in Delaware were quite strong either before or as a result of your decisions.

A. They were. The University of Delaware case stirred little emotion because I don't think it touched a great many Delawareans, but these two cases, elementary and secondary, did. I don't know that there was any personal attack on me that I can remember, but feelings ran very high.The Claymont High School was a strange case in that I think they were busing the black students to Howard High School, weren't they? The Hockessin School was down along the creek there, as I recall. I'm not sure they didn't have a wooden stove heating the room.

Anyhow, high on the hill was the beautiful new elementary school for white children, and the blacks were down here in the low area and you walked in and there were two, three, four grades maybe all in the same room. And, again, it was pretty hard to say there was any basic comparison physically with the rooms and with the teachers spread out, one teacher teaching three or four grades, which incidentally is what used to happen generally.

One of the big arguments I well remember about that case is the Parent Teachers Association of the white school had bought a lot of equipment and they had a very good playground there for the students. Of course, the blacks had no playground at all. But the white teachers resented my pointing that out in my decision because they said that the equipment wasn't provided by the state; it was provided by the parents.

The other thing which I think is mentioned in one of my opinions was the teacher from that white school; she was teaching dancing when I went through the school. I mentioned it in my opinion somehow. And she came in to see me and said, "If I had known you were going to mention that in the opinion, I never would have been teaching that," she said.

Q. Now, the decision in the University of Delaware case, was it not the first decision in this country that resulted in the immediate admission of blacks to a white undergraduate university?

A. Yes.

Q. The decision in the school case was, was it not, the first decision which resulted in the immediate admission of blacks to white primary and secondary schools?

A. That's right.

Q. Now, before looking at the future of the school case which became quite famous in the United States Supreme Court, let me ask you about an event in June of 1951 when you gave a speech at Salesianum.

A. That was a commencement address. I pointed out the disparity between the whites and the blacks in Delaware and in the nation. I haven't seen that speech for a long, long time but I think I said that the Constitution doesn't mean a whole lot unless it applies to 10th and Market Street and anywhere else.

Q. You said "The most pressing domestic issue today in Delaware and, in fact, in the United States generally is the condition of the Negro in this country." You believed that then. Is that still the most pressing issue in the country today?

A. Yes. Maybe the issue is not just black anymore but other nationalities.

Q. Race problems generally?

A. Right, like Puerto Ricans. And I'm told in Miami there are now more Puerto Ricans than there are blacks. Yes. I'm sure it wasn't original with me, but years ago I said democracy contains the seeds of its own destruction. And that's because so many disparate groups are part of our society now with their own vested interests. You can see that in connection with the language problem now, where the Spanish seek to have their own language used in some parts of the country.

Q. You're speaking of bilingual education?

A. Yes. That's going on in California, among other places. It's really a tough problem. I don't know the answer, but I don't see any reason why they can't have street signs in both languages. A lot of people object to that.

Q. With respect to the race issue generally but, most specifically, about the race issue that you dealt with, the blacks, do you have any suggestions as to how that situation could be improved in the United States?

A. I really haven't gotten a chance to read the speech I gave in Charlottesville. At the end I said something that's not very satisfactory to some people. The changes really have to come in the hearts of people primarily, and that's not easy to bring about. All you need to do is look around the world to see in other contexts that same problem. We have been lucky, I think, in some ways to handle it the way we have, but I cannot see any real improvement unless we have a vast improvement in the black families, for example, so that the children can get the benefit of a stable environment. I can't see how these children can go home and do their homework in the atmospheres that I have seen. So I think it's like a multifaceted problem, whichever way our American society is going it seems to even be going the other way with white families. So what about blacks? I don't know. I'm not sanguine about where it's going. The same thing with busing: The belief was that if they went to the same school, they would get a better education; things would be different. That sounds good in theory. It doesn't seem to always work in practice. So I don't know. I'm the same way. I think in Virginia I said the same thing. The jury is still out on that. In some places they say it's been helpful.

Q. Let me return for a moment to the school cases. After your decision, there was an appeal to the Delaware Supreme Court and your decision was affirmed by Chief Justice Clarence Southerland. Thereafter, it was appealed to the United States Supreme Court and it became part of the case known as *Brown v. Board of Education.* As a result you were affirmed once again? The other cases with which it was consolidated were all reversed. Can you tell us your own view of the *Brown v. Board of Education* opinion and, particularly, what it did with your comments in the lower court?

A. Well, it confirmed what I said the Supreme Court should do, as you know. Some people thought that was pretty much out of order for me to say that, but that argument was being made and I was explaining why I couldn't do it as a mat-

ter of judicial deference in the hierarchy, but it may have helped say something. As you know, that case was far from unanimous when it started out with the Supreme Court from reading the history of later events. But there were so many strange things that happened there.

I had never had any doubt in my own mind that the Constitution could not take cognizance of color. In other words, desegregation to me was easy. Then the problem of integration became a separate issue and that's when the heat was really at the highest.

I recognize all of the problems, but if we're going to have United States citizenship, they should be the same for everybody or start out that way at least, but the problem then arises when the state won't do anything about it. I noticed you cited the voting case as an example in your notes there. That was a classic example where the legislature would not act and the question is: How extreme can that get to be before compulsion is felt in the Supreme Court to take cognizance of the case?

Q. When you say the Supreme Court adopted your suggestion, in your opinion you had noted the doctrine of *Plessy v. Ferguson* that separate but equal facilities are approved and you suggested the doctrine should be reexamined and reversed because if they were separate, they would not be equal. And that's what the Supreme Court held in *Brown v. Board of Education*?

A. In effect. I don't know if they said it literally. They don't say that they are overruling their own precedent, but that was the effect of it.

Q. Your opinion in the school cases had resulted in the blacks being able to be admitted immediately to the public schools. That, however, was not what *Brown v. Board of Education* said with respect to other schools. What was the difference?

A. Well, they were doing it nationwide and they used that phrase "with all deliberate speed," which of course was construed differently by different people. What we had in my case was an actual application of their admission on the ground there was no other remedy available at that time. And the state was saying, "Well, wait," and that's where I differed. I said, "No, we're not going to wait. This is for these plaintiffs, not for future generations." That upset a lot of people too.

Q. As a result of *Brown v. Board of Education*, all the schools in the country were ordered to become integrated?

A. No. Desegregated.

Q. Were your expectations of the effect of that on the race problem and on the status of the blacks realized or are you somewhat disappointed with the result?

A. Yes, I am disappointed. I'm disappointed in the blacks and the whites on that. I thought if the Supreme Court spoke, the white community would be more likely to respect it. Rather, a great many of them felt the Supreme Court had gone beyond its power in doing that, so we had this confrontation. By the same token, the blacks I think expected too much to happen too soon given the long history of segregation and the situation in the south, which wasn't realistic. So in that sense, I have been disappointed. And I really don't know, for example, what effect that's had on the black community across the nation. I think things are somewhat better. I think it may have helped in affirmative action. I believe one of its advantages was not affirmative action but a change in the minds of, say, the corporate directors who now want to open up our society regardless of whether there's a law or not. They now have a different attitude. The board of directors has a different attitude. I noticed it in the DuPont Company because when my father worked there, there was no such thing as a black employee. So I think it's a mixed blessing. But how are we going to know the answer? We are not going to live long enough to see.

Q. Do you think where integration in the schools has been achieved there has been improvement in a lot of the blacks or are you disturbed by the statistics relating to education performance, criminality, unemployment and the other figures which continue to show a disparity?

A. Yes. I don't know how much of that you can blame on the schools but, yes, it is disappointing. We went through a period of social promotion to get them out of the teachers' classes, and I can understand that. I have a niece who teaches in the public schools. It's a very tough problem. But, there again, you can't mention that without mentioning the families, the family life, and the whole situation. There are enough blacks who do cut the mustard to make you realize that it can be done. Children who went to Salesianum, for example, I understand have done very well.

But it's a social problem of great magnitude and it's prejudiced by the fact of now choosing up sides on a lot of issues, like the blacks defending the conduct of black students when they shouldn't really be defending their conduct in the public schools, but you get these knee-jerk reactions sometimes. My niece was hit in the jaw and knocked to the floor by a black student and that was in a suburban public school.

Q. You referred to affirmative action. I think when you got on the United States Court of Appeals and became Chief Judge you were one of the leaders in affirmative action in the courts.

A. I used to walk into our clerk's office in Philadelphia and there would be a sea of white faces. It struck me as very undesirable in a city with 40 percent or more blacks that our clerk's office would be all white. So I got the court to adopt a plan. Our clerk was difficult to deal with. Every time I tried to persuade him to try to change things, he said, "No. I have got an arrangement with (Mother somebody at some parochial school) and she's providing me with employees and we don't have any vacancies." So I finally had to order him. I said, "You're not going to fill any more vacancies until." And that started it. Then we adopted this plan, which I think has since been rescinded. I think it probably violates the Supreme Court opinions now on allocation. I really don't know how it stands. But what it did demonstrate is we had some of the finest clerks naturally who are black and that at least made some people have second thoughts about it, but it demonstrates the importance of affirmative leadership. If you don't do it, nobody else is going to do it.

Q. As you know, affirmative action has rather recently been rejected by voters in California. I gather from what you have said that if you were a California resident, you would have voted to retain affirmative action?

A. I would have. I know there is a problem when you come to displace a white with a black, which is the hardest problem.

Q. Looking again at that period and your school decisions and the results of the school decisions here in Delaware and looking with 20/20 hindsight, do you think the idea of busing was good, that is, busing to achieve some sort of racial balance in the schools?

A. I think we can start off by agreeing that without busing nothing would have happened in terms of a desire to have a mixture of students. There's a lot of belief that that mixture doesn't really help black and white students. I really don't know whether it helps or not. But on the premise that it's helpful, I don't know of any other solution that would have caused this to break open. I don't know whether

anybody has done a study on that of the students who have been bused. I am not, was not very much in favor of busing at the elementary school level. I must say that. I thought children, regardless of their skin color, ought to be near home.

Q. Going one step beyond bussing and using sort of 20/20 hindsight, we have spoken of Judge Garrity and the takeover of the administration of the schools in Roxbury and South Boston, Massachusetts. There have been other judges who have taken over prison systems and administered them. Looking back on those experiences, do you think that was a good idea or was necessary, whether or not it was a good idea, or did the courts for a while go too far?

A. You know, equity courts are not supposed to have continuing supervision. What do you do once you conclude that nothing else will work if you are a judge? Do you say well, too bad, hands off, back away? Because you know Congress is now considering a statute to prevent federal courts from taking over prisons. It is obviously an extreme measure. But if you have a sense of some of the people who are manning these institutions, you get a better sense of how unwilling they are, particularly when they have public support. Once the requisite showing appears, I would be inclined to support them, having taught in a prison for two years myself when I was at Delaware. Everybody said, "What did you teach?" I said, "Current events." They said, "What good was that?" I said, "I was getting them ready when they got out," but they were all serving life sentences for murder.

Q. One of the prominent figures in Delaware at the time you were on the bench here in the Court of Chancery was Judge and later Chief Justice and later Governor Terry. Did you know Governor Terry at all?

A. Yes. We were very good friends. I think he liked my wife more than he liked me. That's another story. When I left to go on the federal bench, I was forfeiting all my pension rights and hers too because I had not completed 24 years, which state law required. And Charlie was outraged when he heard that. He didn't care about me, he said, but he did care about Virginia. So he got somebody to draw up legislation. I have forgotten who it was. It doesn't matter. But what got put into the bill was to save her pension rights if I continued to pay into the fund for 24 years. I can remember being in his chambers one day and he called up the fellow from the legislature and he said, blank blank you, you got to pass that bill today. And it was passed and Virginia has the protection of that right if I ever die.

Terry was very well-liked. He liked the good life. Of course, he loved to play golf. And he smoked too much, but that was commonplace in those days. Nobody was more engaging than Charlie Terry or more fun to be with. And his wife was a dear. I remember her. She was a lovely, lovely woman.

Q. Before we leave Delaware and go on to the United States Court of Appeals for the Third Circuit, I would like to ask you whether or not the decisions which you made in the school cases had any effect on your prospects here, first for being Chancellor and, secondly, for perhaps even going on the Delaware Supreme Court.

A. This is hearsay. I really did want to go on the Delaware Supreme Court. I never thought about the Third Circuit. I never thought about it until the day that Jim Tunnell came over and asked me if I was interested. I'm told that when there was a vacancy on the Delaware Supreme Court, and I was interested in it, some lawyers were interested in espousing my cause. There was a vacancy on the Delaware Supreme Court, and I was interested in it, here was a meeting of lawyers in which the feeling was expressed that I should not be supported for the Supreme Court because of my value to the corporate bar as Chancellor. Now, I don't know whether that's true or not, but certainly it got back to Governor Carvel and I'm told that's one reason I was not considered.It wasn't long after that that Jim Tunnell came over and asked me if I would be interested in succeeding Judge Biggs on the Third Circuit.

Q. Was there any difficulty that you recall in connection with your appointment as Chancellor, either as a result of your decision in the *Parker* case or your speech at Salesianum?

A. Yes, there sure was. Dan Wolcott came to see me and he said, "We're supporting you for Chancellor, but I think you ought to know that there's feeling against you in the Senate because of your racial views." And so of course that turned out to be true, and the newspaper article of course says what happened. The Senate met hour after hour and the Republicans abstained and the Democrats, some of them would not support me. And apparently it got late and a lot of senators left and Governor Carvel sent the State Police out to bring them back and at about 2:30 in the morning they confirmed me. I never had the guts to ask Carvel what kind of a deal he made with them to vote to confirm me, but that's the story. One of the leaders was a senator from Milford. I remember very well they had a big celebration in New Castle the next day celebrating the landing of the Swedes. And the senator came up to me and said, "I want you to know I didn't oppose you because you're a Catholic but because of your radical views on racial matters."

I wasn't married then. I told my mother, who was very diplomatic, and she said, "I would have spit in his face."

Q. You were the first Catholic member of the judiciary in Delaware?

A. Yes, on the Delaware state judiciary. Paul Leahy, of course, was a Catholic on the Federal Court.

Q. In 1966 you were appointed to the United States Court of Appeals for the Third Circuit and you started to speak of how that came about, that Judge Tunnell came to talk to you?

A. Yes. He was chairman of the State Bar Judiciary Committee at the time. I think he also was representing the other members of the committee and asked me if I had an interest in being considered for the position. And that was the first time I really even knew it was available. And since I had heard that I had no future in the Delaware Supreme Court, I said yes and it went on from there.

Of course, both of the senators from Delaware were then Republican, so there was no support from them. There was a Democratic congressman who supported me. I think it was Harris McDowell. And the Governor, Governor Terry, supported me and had written letters and so forth.

Another inside story?

Q. Yes.

A. Someone called me and said, "President Johnson is going to trade you off for another appointment to placate the Republicans by appointing a Republican from Delaware and a Democrat in California, and I just wanted you to know." I remember I was going to a Lincoln Day dinner and I met Bill Potter there. I said, "Bill, the rumor is that the President is going to trade me for a Republican from Delaware." He left the meeting and called an adviser to Johnson. He told Potter that he took the substituted papers off the President's desk. I don't know whether it was that dramatic or not. Anyhow, he quashed the deal so that I was appointed to the position. I know he had been trading around because I know from indirection that Crawford Greenewalt had been asked to suggest a Republican candidate for the job. It's written up in *The Wall*

Street Journal, by the way. That's not my word for it, this attempt to make a deal.

Q. Was the story that the adviser switched the papers on the President's desk?

A. That's the story. In any event, I ended up with the nomination and then had a great fight over my confirmation with Sol Dann.

Q. And you replaced another Delawarean, did you not?

A. Not replaced. Succeeded.

Q. Succeeded. And he was then Chief Judge and I'm speaking of Chief Judge Biggs.

A. No, he wasn't. He was a senior judge then.

Q. Can you tell us about Judge Biggs, your relationship with him, and your views of him?

A. Again, if you didn't know the man, it's hard to capture it all, but he was an incredible person.

There are so many stories I have got to limit myself.

But the day I was confirmed he called me to congratulate me. And I remember very well he said, "Congratulations. I'm not giving up my office." He had those chambers that looked out on Rodney Square, which were very attractive, and he wasn't about to give them up to me no matter what I said.

And there were so many funny stories. He called me one day I remember and said, "I heard you gave a funny speech about a bench eye view of the bar. I have agreed to give a speech and I don't have anything. Can I borrow your speech?" He borrowed my speech and I never heard another word. I understand it was much funnier when he gave it than when I gave it, but he never thanked me.

And he was so arrogant. Judge Freedman on our court told me one day that the two of them went to Pittsburgh and were at the William Penn Hotel. And Judge Biggs always wanted a hotel room, even though he wasn't going to stay overnight, to freshen up and so forth, always. So he goes into the desk clerk and says, "I would like a room." And the desk clerk said, "We have no rooms." Abe Freedman was standing next to him and he said Biggs then bellowed out "Do you know who I am? I'm John Biggs, Jr., Chief Judge of the United States Court of Appeals for the Third Circuit, and I demand a room." They could hear him all over the lobby. Abe said he kept shrinking down while this was going on. Biggs got the room.

Q. After you were appointed to the United States Court of Appeals, who among the judges there did you regard at least in your initial years as sort of a mentor for you or with whom you were particularly closely associated?

A. Philosophically it was Judge Freedman. He had been only on the court himself for a couple of years and had come on under very tense circumstances because of some feuds with Judge McLaughlin, who was on there, among others. But they were mostly a lot older than I was. What was I? 51, I think.

So I was philosophically connected with hardly any of the others except Abe Freedman. The chief judge then was quite inadequate. A lot of the other judges, except for Judge Hastie, of course, who was different, but Judge Hastie was quite an aloof person. He was not a great glad-hander either, but very smart.

Q. Now, Judge Hastie was the first black judge on the United States Court of Appeals?

A. Yes. The first black Circuit Judge in this country, I think.

Q. And did you later on become very close to Judge Hastie?

A. Not close, but friendly enough. I heard someone else tell a story the other day that confirmed what I had felt. Judge Hastie was active in the black movement, but he was quite circumspect about things then and diffident because of his color, I think.

I remember one day saying to him we ought to call a District Judge to book because of his conduct when Hastie was Chief Judge. He said, "I'll never do that." And I believe that was his attitude vis-a-vis white judges. He wasn't about to do that. But I heard the other day on T.V. that somebody was saying that when Hastie was recommended for the United States Supreme Court, both Warren and someone else opposed it on the ground that he wasn't militant enough with the black cause. And I guess that's probably why Thurgood Marshall got the appointment, but he was head and shoulders over Marshall intellectually.

Q. I also think of you as being associated perhaps principally and intellectually but also as a friend with Judge Arlin Adams.

A. Oh, yes. Yes.

Q. Could you tell us something about Judge Adams?

A. Yes. Judge Adams was an interesting study too. Interestingly, he argued a case before me last week. He was active in Republican politics in Pennsylvania and I guess a cabinet officer with Governor Scranton. I think it was Scranton. And he was appointed to our court, very well-qualified, and then just missed the Supreme Court by a story which I'm sure you have heard. Or have you?

Q. I don't think I have, although I know he was very closely associated with Nixon.

A. Yes. He was told to wait by the phone for a call, which never came. It turned out that the attorney general, Mitchell, opposed his appointment and, Arlin told me, attacked him at a meeting that they both attended on his decision involving the war. Was that father somebody? Do you remember that priest and sister who got in trouble, all kinds of trouble for throwing blood on the military vehicles and all? He was in our court several times. Sister Egan was her name. Mitchell was attorney general and I think Arlin may have written that opinion against the government and he deeply resented that opinion and opposed Arlin for the court. That's why he didn't get it.

He was a very able person, first in his class in law school and just a gentle, gentle, two words, man. Yes, we were good friends. He didn't cut the mustard with all of the members of the court. There were I think people who mistook his gentleness for weakness.

Q. Now, shortly after, relatively shortly after you became a judge on the United States Court of Appeals you became Chief Judge. How did that happen?

A. I went on the court in '66. In '69 Judge Hastie had decided to step down to give Judge Freedman a chance to be Chief Judge as next in line. And before the time Hastie submitted his resignation for June 1, Abe had a heart attack and died. So I moved in out of time, so to speak, and that's how I became Chief Judge in three years.

It was a traumatic experience for me because I had no idea about it.

Q. Did you become involved with discipline of judges fairly promptly after you got to become Chief Judge?

A. I sure did. The day I became Chief Judge I met with a District Judge who had a serious drinking problem to explain to him he ought to either resign or take senior status. And I can remember that three-hour session till this day. He kept telling me that he was going to complain to President Eisenhower (!) about me.

Leon Higginbotham persuaded him to take senior status, who was the most

unlikely one on the court we thought, but he did. Leon told me that himself. His taking senior status was a blessing because that judge would come back from lunch every day loaded and go on the bench.

He got into a dispute with Judge Rosenn of our court on a three-judge court. He told Judge Rosenn right on the bench to trot back to Wilkes-Barre and he would take care of things. We felt that was just about the end of the line. It's a shame too because he was an able person when he stayed away from the bottle.

Then we had a judge in Newark who had the same problem and we did get him to step down. The third one I had was in Pittsburgh. I finally said, "I can't do anything about you. I'm going to have to report you to Justice Brennan," our circuit justice. He said, "Oh, don't report it to Justice Brennan." Finally, he gave in.

But drinking is the worst problem in the world. There's nothing like it, trying to handle judges when they have a drinking problem. It seems the bench has its fair share.

Q. What was the situation at that time with respect to your ability to administer judicial discipline and how has that changed since then?

A. Now you can really direct a limitation on the cases they can hear. It's not a substitute for impeachment, but it's just short of it. And it's been used both to help the judges, as well as to throw the book at them in the interest of justice. Occasionally the order will set them straight. I operated under it for maybe three years or so, but it's been used with great circumspection. There was great criticism that it violates the independence of the judiciary to do that. I have been accused of that, but I used to say is there anything wrong with requiring a judge to come to work at 9:00 and leave at 5:00? We had judges who never came in in the morning at all, never came in.

Q. As Chief Judge, did you change that?

A. Yes. I used to first go to the Chief Judge of the district and say, "Would you like to handle this or do you want me to handle it?" The Chief Judge in Pittsburgh always said, "I want you to handle it." He didn't want to make enemies with his colleagues. I can understand that. But those are the things that go with the job. As I used to tell my successors, you don't get paid an extra dime for it. But some of them had a lot of trouble with aberrant judges and I did too. I mean when you get to know people well and like them, it's hard to be objective.

Q. Now, you referred to the independence of the judiciary in connection with your comment on the new statute relating to discipline of judges. There has been quite a bit of publicity about this recently and efforts by the American Bar Association and others, as they say, to preserve or protect the independence of the judiciary. Is this a real problem today in your view?

A. I don't think they're going to succeed in having judges impeached for being so-called activists. What is more dangerous about such attacks is that the judges will cut their sail to avoid that type of decision in hard cases, which I think is abhorrent to anybody who is interested in equal justice.

Q. Do you have any suggestions to preserve the independence of the judiciary and to avoid improper threats or influence on judges decisions?

A. We elect a lot of people to Congress who really have no conception of our system of justice. They wouldn't understand what you're talking about when you talk about the independence of the judiciary. I'm convinced of that. The protection of our independence has to come from the bar, certainly when you're dealing with constitutional problems. I don't have any doubt that occasionally judges go too far. That's to be expected with a human system. That's what we have the Court of Appeals for.

Q. I want to turn for a moment to the decision in *In re: Japanese Electronics Products Antitrust Litigation* and the ruling there that the case was too complex to be considered by a jury and, therefore, it should be decided by the Court alone. Do you recall that decision?

A. I wrote the opinion.

Q. Let me go from that into your observations on the jury system itself. There's been a lot of criticism recently, perhaps because of the *O.J. Simpson* case or the *Rodney King* case and other cases, where it's felt the jury has come to an obviously wrong conclusion.

Do you have any views about our jury system or any suggestions as to how to deal with situations of that kind?

A. Well, I have been badgered over the years in expressing any opinions because they say I'm just an equity judge.

Q. That's why I referred to the *Japanese Electronics* case.

A. Yes. I was amazed I got Judge Maris to agree with my opinion. He was the third judge in that case. But that's an open question whether under any circumstances one section of the Constitution can trump another. In other words, the Seventh Amendment trumped by the Fifth was basically the issue in that case. Maybe you can attribute that to my activist sentiments. I thought I put in enough protections to take care of it, but someday the Supreme Court is going to have to decide that issue, whether it can be trumped by a requirement for a fair trial. My colleagues in the state court used to say they had great faith in juries. But I have seen some of these punitive damages awards against corporations today that are so ludicrous that you wonder whether they aren't going to have to do something about it.

I remember one case I sat on where a woman slipped and fell in a shopping center. The jury awarded her $6 million and she didn't even go to the hospital. That sort of stuff is shocking. I tried to get the trial judges to do more about a remittitur than they were doing. That's helped some, but I notice around the country they won't cut the verdicts back. You have seen some that the Supreme Court refused to take recently where they just are shocking. I don't know what the remedy is.

Q. Turning again to the *Japanese Electronics* case, let me ask you how far you can extend that idea and specifically could it be extended to criminal cases? Let's assume, for example, in the *O.J. Simpson* case it was concluded that no black juror could vote for conviction there because he or she would have to return to the black community and might fear for physical injury or other violence as a result of such a decision. Could you extend the *Japanese Electronics* case to a criminal situation where the jury could not be expected to return an impartial verdict?

A. I doubt it because in the *Japanese Electronics* case it was their inability to comprehend the issues they were called upon to decide, which is quite different from their fears. I think that, given the great value given to the jury trial, that wouldn't wash in criminal cases.

Q. As a result of the decisions I referred to and perhaps for other reasons that flow from the *O.J. Simpson* case and the *Rodney King* case and some other recent cases, there's a certain dissatisfaction among the public and others with the administration of our criminal justice system. Would you comment on that and make whatever recommendations you think appropriate?

A. I can be accused of lack of exposure in that field since I never sat on a criminal case, except on the Board of Pardons.

I think there's a great inefficiency

that's going to stay with having the jury try these criminal cases. You are not going to do away with the jury system. It's got a sanctity all of its own. What can you do? I don't know. How much of it turns on the quality of the lawyer's performance is another worry. Should guilt or innocence turn on that, whether you appoint a good lawyer or a poor one? I don't know. I think the courts should be as militant as they can be to make sure that the trial is fair, especially when there's a great disparity in the quality of counsel. But there are people who criticize judicial intervention.

Q. While you were on the United States Court of Appeals both as Judge and as Chief Judge, you were involved in a lot of cases that received great attention from the public and especially from those involved in the legal world and many of them went to the Supreme Court and in some cases your dissents were adopted by the Supreme Court. Are there cases that you would particularly like to be remembered for when you were on the United States Court of Appeals?

A. Not remembered for particularly. But I got great satisfaction in one case. I dissented and the Supreme Court agreed with me and sent it back and the majority decided the other way when it came back and I dissented a second time and they reversed a second time. I don't know how many times that can happen in the history of a judge's lifetime, the same case reversed twice.

Q. Was that the Nicholas Romeo case?

A. No. That's a big case, that *Romeo* case. That opinion I think was written by Justice Powell. He adopted my ruling, right. Yes, that was a great satisfaction in that case. That field, I was pretty much in the dissent. You know, they're talking about the retarded and all, closing all the big homes and sending them out into the community. There was a big difference of view about that.

Q. Now, of all of your many, many opinions on the Court of Chancery, including both the corporation opinions and the prominent segregation cases, and the United States Court of Appeals, is there one case or one opinion which you took particular interest in and would like especially to be remembered for?

A. I took particular interest in it, but I'm sure I will not be remembered for it, and that's the *Lindy* case because there was a lot of dissatisfaction with that as I tried to help the legal profession by relating the services to the time spent on the cases rather than the huge awards that were made, especially in contingent cases where I myself had granted million dollar fees in the old days. But I know that *Lindy* made the lawyers very unhappy and I know the process of justifying a fee has created a lot of problems for lawyers. Some feel that settlements are dragged out so they can create a record. I'm aware of that. I may have been wrong, but my desire was really to help the profession on the issue of responsibility rather than having people saying how outrageous their fees are.

Q. In the *Lindy* case you determined that in fixing a fee by the Court, there should be a lodestar, as you phrased it?

A. Yes.

Q. What was that lodestar?

A. Well, that's a basic calculation of reasonable value of the hours spent. The Supreme Court adopted that terminology, by the way. I know hours can be misleading, but I was looking for something tangible. If you don't do it with that, there's just going to be the chancellor's foot as the guide.

Q. When you started practicing law, did you even keep time records?

A. No.

Q. At that time did any lawyers to your recollection keep time records?

A. Not to my recollection, no. I can remember going into Bill Potter. He would say, "What do you think the case is worth?"

Q. Do you think that was an improvement, that is, the idea of keeping time records apart from the situation where you had to have your bill approved by a court? Was it desirable for the lawyers to work by the hour instead of by the value of their services to their client?

A. You ought to know better than I about the burden on the firm, but there are a lot of clients who are very uneasy about the fees charged them when nothing is documented. My daughter worked with a labor law firm which put a ceiling on the amount of time they could spend and the use of – what do you call it, the research?

Q. LEXIS.

A. Yes. The labor unions wouldn't pay over X dollars for a case. It's arbitrary, but it shows the sort of attempts to try to do it. I don't know. I used to sit in my chambers and say what do I think this case is worth. And after I went on the court, I remember one time Dan Wolcott called me when he was Chancellor and he put a file down in front of me. He said, "What do you think that case is worth attorneys' fees-wise?" I said, "Well, $250." He said, "Do you know what he wants? $5,000." He said, "I cut him back to $2,000 and he's asked for rehearing." But there you are. I mean, how do you handle that disparity? That brings up another point. I think the lawyers who are marginal lawyers are under great stress to comply with the Code of Ethics. I mean, they need to make money to feed their families. You can say what you want about what they need, but in those areas they have to have money to support their families. They may not treat the canon of ethics as they should all the time. I have seen some of that. What are you going to do about that? There are a great many lawyers living on the edge. People don't realize that, but there are.

I used to run my own private operation in Chancery by finding out the lawyers who were in big need and assigning them some little things to get them a fee, sequestrator, among other things.

Q. But I wondered particularly if you thought the accent on billable hours now has been a desirable trend in the practice of law or perhaps made lawyers more mercenary in their outlook in emphasizing money rather than the value of their services to their client.

A. I think that criticism can be made. I wouldn't doubt that. I would ask what is the substitute that has some certainty about it?

Q. That's the problem, I suppose.

A. Yes, that's the problem. I'm not going to ride to heaven on that approach in *Lindy*. I know it's been severely criticized.

Q. You have had an experience both with the federal courts and with the state courts. Did you have any particular preferences or any particular criticisms when comparing the federal court experience with the state court experience?

A. Passing over the fact that I thought in the state court the subject matter was more interesting than the federal, which is largely looking at statutes and regulations, I didn't see a great difference in the caliber of the work that was done that I can think of.

Q. Now, you have touched on court administration and you have a great reputation for improving court administration, not only in the Court of Chancery but more particularly on the Circuit Court. Could you tell us about some of your innovations up there on the United States Court of Appeals?

A. A lot of those things started out in the Federal Judicial Center in Washington. They would offer these experiments and so forth. I never turned any down for the

Third Circuit. For example, we started a one-year experiment for the judges to keep time sheets, which caused some flak too. But like the mailing, the electronic mailing, well, its use made a fabulous difference. We were the first circuit in the country to adopt electronic mailing so that we sometimes could clear opinions the same day they're sent out. It used to be we used the U.S. mail. If somebody had some comments it could take days before you finally got an agreement on a final draft. So that's been fabulous and everybody now agrees that that's true.

We have a statistical setup now that tracks all of the cases, which is really invaluable to see what's happening around the circuit.

One of the things I'm proudest of is the circuit-wide library system I created which didn't exist before, and which then became a model for the whole country. Also, the adoption of internal operating procedures, which now is required for the whole country, setting forth what some lawyers thought were secrets within the chambers. Now they know how the work is handled.

Q. Under you as Chief Judge, as I recall the United States Court of Appeals was the first court to publish its internal operating procedures? What was the effect of that?

A. It turned out all to be favorable. There was some opposition, but judges by nature are secretive, so some of the opposition was in the court. But I thought it was a great PR idea, if nothing else. We didn't always have unanimity, but some of them were willing to give me the benefit of the doubt.

Q. But the purpose of publishing them was to make the bar aware of how cases were handled after they came in?

A. Right, to have confidence of how they were processed.

Q. I believe you were also the first circuit under your leadership to adopt a lawyers' advisory committee. How did that work out?

A. That worked out fine. We run all of the proposed rules and things like that, policy statements by them. It's a fairly representative group of lawyers across the circuit. Im not sure that isn't required by statute now too. I think it is.

Q. And other circuits, therefore, have adopted it?

A. Yes.

Q. One of the big changes that's taken place since you started practicing law was the admission of women to the bar and a much, much more active participation by women both as lawyers and as judges. Do you think that's made a difference apart from enormously improving the status of women?

A. I thought you were going to say the appearance of the bar. Well, it's hard to be as enthusiastic as I am about the addition of women. I think it's great. Of course, having a daughter practicing law makes it even more so. But, no, I think it's made a big difference. Whether it's made a difference in the quality of the representation, I think I would leave that to you or others like you. I really don't know. We see a great many women now. The funny thing used to be in the early days of the sexual harassment cases the plaintiff would be represented by a woman and the defendant by an old, stodgy, male attorney, but defendants finally wised up and now they send women in to defend the sexual harassment cases. That's something that we noticed after a while. They evened the playing field, I guess.

But now we have a great many very capable women. Philadelphia has some of the very best that you can find. We just had one last week. She was outstanding. She's a partner in one of those big firms. I think she's going to lose, but she was outstanding.

Q. You have been a judge since 1946 on one court or another. Speaking not only from your personal experience but your observation of the experience of others, do you feel the role of a judge has changed dramatically in any way over that period of time? In particular, are judges more activist or less, are judges working harder or not as hard, and are there the same caliber of judges today as there were so many years ago?

A. I think some of the things that we have been talking about, such as standards, have caused the judiciary to be more attentive to their work than previously. The caliber of the judges I think, for the most part, is of better quality than it was, though I must say I can't be sure about that where they're elected.

Whether the judges have more respect from society or not, I don't know. I think federal judges on the whole are respected. That's just a feeling that I have. I think the Delaware judiciary's status has risen a great deal over the years. Maybe it would be better to ask someone else about that. But I think we have a good state bench. I saw where Judge Quillen got an award the other day.

Q. He was awarded the Herbert Harley Award by the American Judicature Society. Many Delaware lawyers have commented on how fortunate Delaware is in the selection of judges and, of course, we have here the system of appointment rather than election. I gather from what you just said, you very much approve of that and favor it over election?

A. I certainly do. Also, I'm not sure that a lot of people remember that trauma when Justice Layton wasn't confirmed. That really taught a very strong lesson to a lot of people about the conduct of the judges on the bench as compared to what it used to be. I saw some very overbearing judges, but now I think it is realized there's somebody who may be looking over their shoulder a little bit. Certainly, the press covers courts much more than they ever did.

Q. We haven't talked about books at all. Are there any books, looking back over your reading both as a lawyer and as a judge or looking over the books that you plan to read this summer, are there any books that you would recommend for lawyers or even judges?

A. We had a library at home. We lived out in the hinterlands, so many times there was nothing for me to do. I became what is known as a non-discriminating reader. One day I might read Einstein's Theory of Relativity and another time I would read Dick Prescott's Fourth Year at West Point. Anything that was there I read like mad and we had a lot of books there. That passed away a lot of my time when I wasn't delivering newspapers growing up. As the years went by, I found it harder and harder to read because of the amount of reading I do as a judge.

Q. In your job?

A. Yes. Now I'm having even worse trouble because I had a corneal implant which I think my body may have rejected, so I only have real vision in my right eye and that again is an obstacle to reading. I do read, but I can't say that I look forward to going through a whole volume, a novel now because I probably wouldn't be able to work the next day because of the fatigue factor.

But, yes, I have been a workaholic my whole time on the bench. I worked seven days a week for years, before I was married particularly. See, I was 41 when I was married and so I had been on the bench for ten years. So time meant nothing to me. I had a doting mother and sister and anything was all right with them. I would go to the office day after day. I would have those opinions in corporate cases ready for the lawyers before they knew it.

Q. Looking back over your long and enormously successful career, are there any things which you wish you had

done but for one reason or another never were able to get done or to get to at all?

A. That I wish I had more aptitude in certain fields, like foreign languages. I always regretted I didn't have any aptitude for foreign languages and I deeply regret that. My brother spoke French fluently. Of course, my father did. My grandfather was born in France, but I never could get it down. I remember one professor telling me "Your trouble is you think in English." And he may have been right. So I deeply regretted that.

What other things would I do? I probably would have traveled more. The opportunities of course in those days when I was growing up were not there. It was just a matter of making enough money to make a go of it. I can well remember that Bill Potter called me one day when I was with Stewart Lynch and he said, "How would you like to be an inspector of election, an inspector of a stockholders' election?" I said, "Sure." So I was and a few weeks later I got a check for $250. I thought that was manna from heaven. I was then being paid $100 a month practicing law.

Stewart Lynch never was much for paying, but at Southerland, Berl & Potter it was a different world. Mr. Southerland used to say to me "How much do you think I should receive?" I thought to myself a senior partner asking me how much I thought it's worth? But he was extremely generous too. So that was one reason I wasn't concerned about whether I went on the bench or not. I was just starting to really live it up. My income probably multiplied 200 percent.

Q. When you went on the bench you took a substantial pay cut?

A. Yes, I did.

Q. Over the years looking back on what would have undoubtedly been an enormously successful career as a lawyer. I suspect you have continued to take a substantial pay cut? Have you ever regretted that?

A. I haven't regretted that basically because I never was crazy about money. Incidentally, that's why it was easy for me to award big fees to other people. I thought I was entitled to be paid enough to take care of the necessities and so forth. It was not a big deal with me. Of course, it got to be harder when we sent all our kids to Tower Hill at the same time. And I was chairman of the tuition committee fixing the tuition there and sticking myself, but it worked out for them.

I could have used more money. Virginia was always very unhappy about not having more money, but I got such satisfaction that I would not leave the bench. I had offers of a partnership I think it was starting at a hundred thousand a year when I was making thirty, I think. I said, "No. I don't want to get involved in discovery."

Actually, I didn't want to leave the bench. I found it very creative. Every opinion I file is exciting to me even today. Maybe it's like having a new baby, but I do feel that way. I don't think you can have that satisfaction in the practice of law. You may have the momentary joy of winning the case. Generally, it's very transitory. And the client thinks that you should have won it anyhow.

Q. Now, I have asked you a lot of questions. Are there any questions which you wish I had asked you to cover at some point which we haven't had a chance to cover today?

A. Actually, I think you have covered a great deal. When I tell my children about the rough times I came through, they all play the violin. They can't really comprehend it. I finally realized that, so I never dwell on that factor. But that left an indelible mark on me and an interest in the unfortunate and a need to be thought-

Continued on page 39

Continued from page 37

ful and discerning to realize the needs of people. It's easy if you don't think about it. For example, I never thought about the blacks at all while I was in school, never occurred to me, even when I finished school. I never went to school with blacks. I never really thought about their predicament. It's only when you become more informed that you do. And at the same time you have to retain a sense of balance about the whole thing. I mean, you can't go overboard because you see all these injustices. So you do what you can. I spent a long time devoted to various organizations when I look back over the years, the United Way, Catholic Social Services, and things like that. I paid my dues, I felt.

And I think I got that clock (indicating) for something I did. I don't know what it is now, but I enjoyed doing it. I have a great admiration for volunteers. And I'm not wedded just to the government doing it. There are some things they do well and some things they do poorly, but I'm thankful I live in Delaware.

Q. We have spoken now of things which you would have wanted to do but for one reason or another did not have an opportunity to do it. Are there any things you have done which you wish you had not done or had done differently, any particular things in your life?

A. You mean decided a case another way?

Q. No. No, not that so much as volunteer activities. Were there volunteer activities which you wish you had undertaken instead of the ones you did or things of that sort?

A. It was a matter of time. See, I had no law clerks in those years, so my research hours were tremendous. I lived in the law library day and night, but I enjoyed it. I did what I could. There were a lot of different things. I probably have given 200 speeches too, around, on various subjects. I was very popular at the women's clubs because I always gave them a series of facts in a case to try to decide. They loved it. I called it *You Be The Judge*. So I did that for a good many years.

I got on the Court of Appeals and I had to give a lot more speeches on other subjects. And I was on the executive committee of the Judicial Conference of the United States. It took a lot of my time.

I can't think of any profundities that I haven't uttered today.

Q. Well, thank you very much for giving us this time.

A. It's my pleasure. ◆

MEETING the ORGANIZATIONAL CHALLENGE

by David McGurgan

my first job out of college was as a document analyst on a litigation case in a repository. Among other things, I flipped aimlessly through thousands of pages each day searching for omitted documents and illegible bates numbers. With so many documents, things inevitably got lost. Many times I stayed late or all night rummaging in vain through a dusty warehouse in search of a misplaced document. It was hell.

The massive amount of documents, in the case, (three million) I dealt with made me hate life. I hated the job, too. So I quit. But I learned the hard way. The working world doesn't operate that way. A few months later I came back groveling for my job. I couldn't live without those documents!

My next assignment was to index documents in a database to manage all of the information. As my organizing efforts started to pay off, it meant easier and faster retrieval of information. It also meant that I could go home at 7 or 8 p.m. instead of pulling all-nighters. The light bulb over my head clicked on. Organization was the key!

Organization might sound like an overly simplistic solution, but with the overwhelming amount of information we process on a daily basis, managing massive amounts of information and keeping track of appointments and deadlines has become a daily challenge for all businesses and individuals. With this in mind, let's discuss local vendors who specialize in the latest technologies and office products to help you meet the organizational challenge.

Upgrading, replacing or purchasing computer equipment can be a daunting task. It pays to be an educated consumer. Many computer dealers will gladly sell a company equipment only to be impossible to reach when equipment needs maintenance. Purchasing computer equipment requires pre-planning, assessing needs, research and a reliable vendor who can provide guidance throughout the buying process as well as facilitate effective service and operations during actual use.

GBW International Computer Products provides information and support to clients that allow them to maximize their computer investment. For 15 years, hundreds of businesses and law firms have approached GBW to help them make the right choices when purchasing computer equipment.

GBW has established relationships with thousands of software and hardware developers and distributors. By keeping up to date on the latest developments and innovations in the industry, GBW provides customers with the knowledge to make the right choice when it comes to computers.

Owner George Winston says, "The underlying force of all these services are the people of GBW. Considerable time and effort has been spent in recruiting people that not only bring expertise, but a sincere desire to offer the highest levels of customer support that has become a hallmark of GBW." (www.gbwcomputers.com)

When you have to outfit a new office, the convenience of going to one store can save a lot of time and energy. Hilyard's, the largest independent dealership in Delaware since 1959, provides professional sales and service for photocopiers, facsimiles, typewriters, calculators, shredders, computers, printers and supplies.

Hilyard's preferred customer support program provides thorough service to ensure satisfaction. Virtually every step of the purchasing phase is monitored by Hilyard's staff, from an individualized analysis of your needs to follow-up training and support.

Hilyard's guaranteed upgrade program allows customers to use investments in their current equipment towards the investment in new products. With so many ways to ensure customer satisfaction, it's no wonder why Hilyard's has been Delaware's office specialist for almost 40 years. (www.hilyards.com)

Since 1979, Tower Business Systems has provided equipment and support locally for the legal community who need equipment, parts and service. Tower is an authorized sales, service and warranty repair station for Hewlett Packard, Compaq, IBM and many other major manufacturers. Tower Business Systems also sells, services, rents and leases other business machines such as paper shredders, dictation and transcription, calculators, cash registers, typewriters and supplies.

As the only full-service dealer downtown, Tower can provide in-house service as well as the convenience of on-site service to area law firms. Bill McMillan sums up Tower's mission as "providing value for the customer's money." Information about many of Tower's products is also available on-line, so you can research and shop from your PC as well. Whether it is service, evaluation, consultations or products, Tower is a pillar in the office product and technology community. (www.towerbiz.com)

Buying new equipment isn't always practical. Peak workload times like discovery or depositions may require additional computers and more imaging equipment to handle the workflow. In these situations, renting equipment is a more prudent alternative.

Corporate Computer Rentals specializes in renting and leasing equipment to help deal with overflows of work and the completion of time-sensitive tasks. "For some people, renting is a viable alternative," says CCR's Tom Poppert. "If there's no ongoing need for a computer, there's no need for a capital expenditure." Renting of equipment can often result in saving you and your clients time and money.

Corporate Computer Rentals provides a variety of equipment including printers, monitors and even a high-resolution projection device. CCR can also accommodate depositions, on-site due diligence and court appearances. When short-term peak loads and the need for extra equipment are temporary, CCR offers practical, money-saving solutions that will make presentations and projects more effective. (www.computer-rent.com)

With the advances in digital imaging, lawyers and law firms are now able to get crisp, custom-designed courtroom displays prepared on short notice. Metrocolor, located in downtown Wilmington, has been providing high resolution trial exhibits to Delaware's legal community for over 10 years. With free pickup and delivery, Metrocolor offers convenience, flexibility and a finished product to your specifications.

Metrocolor also offers high-volume document reproductions in black and white as well as color. Copy jobs can mount quickly and the need for quick turnaround is usually essential. Metrocolor's

24-hour availability takes the strain off your staff so they can concentrate on other urgent tasks.

Aztec Copies, nestled in Wilmington's Trolley Square offers round-the-clock legal copying and courtroom displays. Opened in early 1998, Aztec Copies has become a reliable same-day and overnight copy vendor. Aztec Copies' Ed Dwornik says that they plan on expanding their operations by 200% this year to ensure rapid turnaround and excellent customer service. Aztec Copies also offers free pick-up and delivery and 24-hour service.

Information management and storage is crucial in litigation. TAB of Delaware offers an enormous array of storage systems to solve your storage problems. Whether you have records, supplies, data media or reference materials, and no place left to put them, TAB of Delaware has high-density filing solutions for your office.

TAB of Delaware also offers comfortable furniture including the Paoli Wood furniture line. The product comes with a 10 year guarantee ensuring your work area will not only look and feel professional but will stay that way. TAB of Delaware also offers a wide array of legal shelving, file supplies, fire-proof files and bar code systems so that no document can ever be misplaced again!

If you meet the organizational challenge, your work productivity will soar and time management will become more effective. Make sure you are as prepared as possible for tomorrow's workload. Remember, you can never be too organized!

Aztec Copies

1606 Delaware Ave., Wilmington, DE 19806 Phone: (302) 575-1993, Fax: (302) 575-1977. For 24-hour service call (302) 740-0627. e-mail: azteccopies@ravenet.com

Provider of legal copying, binding and courtroom displays. Specializes in desktop graphics, design and color copying. Free pickup and delivery service as well as 24-hour service available. One-stop shopping for your legal copying, reproduction and printing needs. Located in Trolley Square, Wilmington, Delaware.

Berger Brothers

3rd and Market Sts., Wilmington, DE 19801 Phone (302) 655-7166, Fax: (302) 656-4083.

Berger Brothers has been Delaware's

office expert since 1919. Their massive walk-through showroom has a comprehensive selection of chairs, desks and workstations to fit any size office. For almost 80 years, Berger Brothers has supplied Delaware and its legal community with furniture and products that maximize work productivity while conserving office space.

Corporate Computer Rentals

1017 West Ninth Avenue, Suite G, King of Prussia, PA 19406-1207 Phone: (800) 947-4724 or (302) 652-3393, Fax: (610) 337-3972. www.computer-rent.com

As a leader in the computer rental industry, CCR has been serving the tri-state area since 1989. CCR is deeply committed to providing both responsive and personal service. From start to finish, uncompromising support combined with state-of-the-art computer and presentation equipment will guarantee your satisfaction.

CCR can facilitate all legal needs including courtroom appearances, depositions and on-site due diligence. CCR also provides computer equipment for peak workloads, trade shows, business meetings, training and seminars.

GBW Computer Products

101 East 13th St., Wilmington, DE 19801 Phone: (302) 658-1315, Fax: (302) 658-4386.e-mail: gbw@gbwcomputers.com. Web site: www.gbwcomputers.com

Your complete computer products resource center since 1983. GBW has relationships with virtually every major manufacturer including IBM, Hewlett Packard, Microsoft and more. Their expertly trained staff specializes in network installation and system and HP laser printer on-site service. GBW's Web site features an on-line catalog, service and support information and a form you can use to obtain a price quote and product availability.

Hilyard's

1616 Newport Gap Pike, Wilmington, DE 19808-6794 Phone: (302) 995-2201, Fax: (302) 995-6294. e-mail: hilyards@hilyards.com. Web site: www.hilyards.com

Office specialists since 1959, Hilyard's offers sales, service and rental of fax machines, printers, photocopiers, computers and networking equipment. Also available: advanced document systems and

electronic document management. Excellent customer service programs and certified sales and service representatives ensure top-quality work.

Hilyard's is also Delaware's largest authorized Sharp dealership. Sharp's full line of copier/fax products is available ranging from high-volume productivity enhancing models to reliable mid-sized modular systems as well as compact performance copiers and facsimiles for small offices.

Metrocolor

224 West Ninth St., Wilmington, DE 19801 Phone: (302) 888-1718, Fax: (302) 888-1728.

Serving Delaware trial lawyers for over 10 years, Metrocolor specializes in trial exhibits and courtroom displays as well as b/w and color document reproduction. Design services, 24-hour service, legal copying, high-volume reproduction are also available.

Free pickup and delivery service, located in downtown Wilmington.

TAB of Delaware

117 J & M Drive, New Castle, DE 19720, Phone: (302) 326-0660, Fax: (302) 326-0902. e-mail: tabofde@aol.com

TAB of Delaware provides the finest in storage systems to keep law firms efficient and organized. Products include fine wood furniture, legal shelving, lateral file cabinets, movable file systems, computer furniture, letter/legal file supplies, system furniture, file indexes, fireproof files and bar code systems.

Tower Business Systems

215 West Ninth St., Wilmington, DE 19801 Phone: (302) 571-0773, Fax: (302) 571-0989. Web site: www.towerbiz.com

Since 1979, Tower Business Systems has provided equipment and support locally and nationally for the business community. Tower is an authorized sales, service and warranty repair station for Hewlett Packard, Compaq, IBM and many other major manufacturers.

Tower Business Systems also sells, services, rents and leases other business machines such as paper shredders, dictation and transcription, calculators, cash registers, typewriters and supplies. Their Web site allows quick access to major vendors of business equipment, computers and accessories. ◆

BED & BREAKFAST

DELAWARE

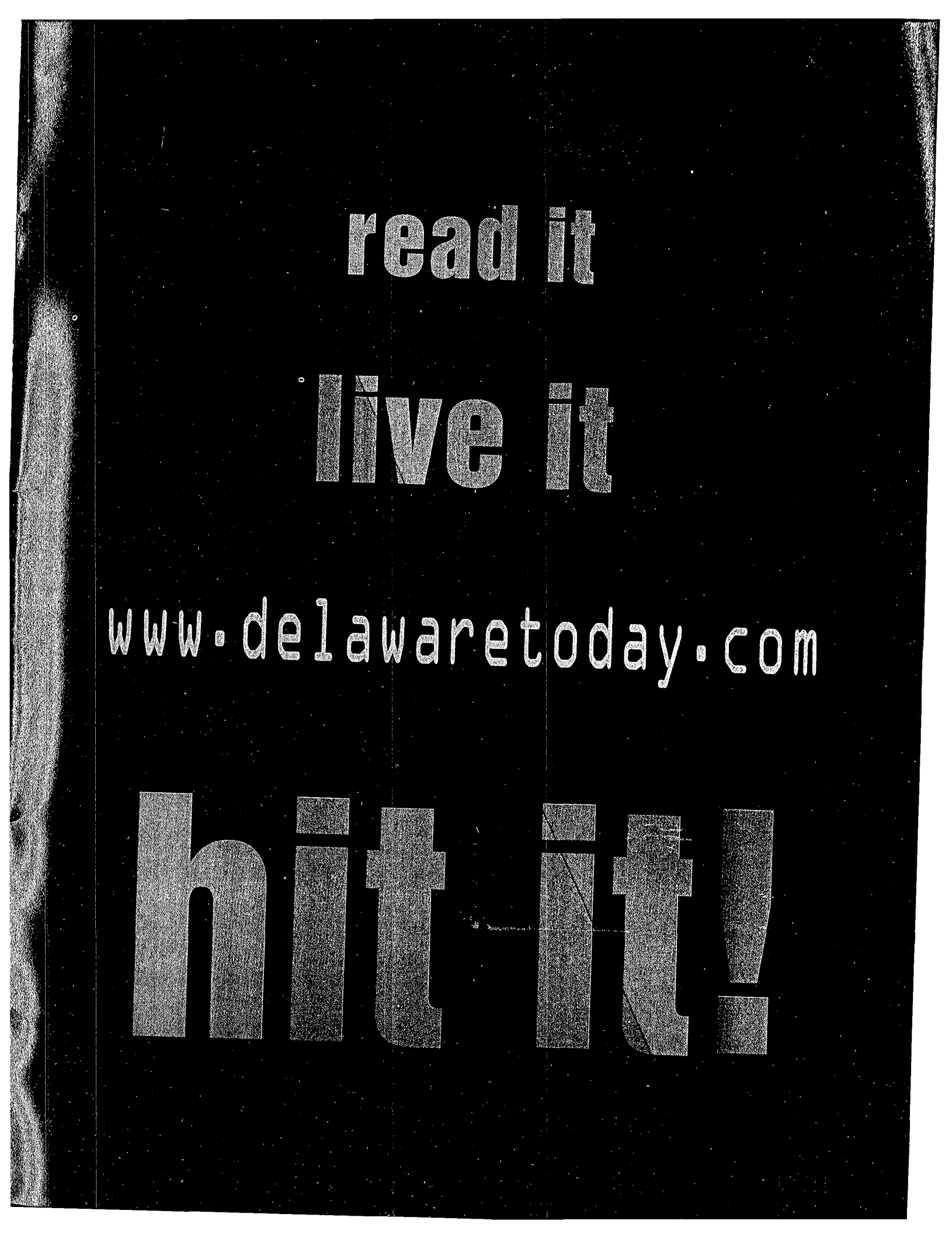
COMPUTER SERVICES

OFFICE RENTAL

SKIP TRACING/LOCATOR

STRUCTURED SETTLEMENTS

ADVERTISE HERE


read it
live it
www.delawaretoday.com
hit it!