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Volume 19 Number 4

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Cover Photograph by Heidi Scheing

## NOTE FROM THE EDITORS

This issue of *Delaware Lawyer*, like that which preceded it, salutes that great generation of lawyers and judges who became our role models, standard bearers, and mentors, and who exemplify at the highest level what our calling as Delaware lawyers truly signifies. Our purpose is to memorialize, for Delaware legal posterity, the insights of that generation.

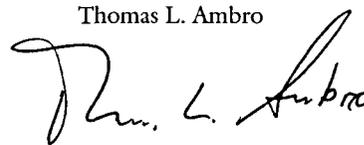
Our contributors to this issue, who are among the best of the best, achieved their prominence through painstaking hard work and honing of professional skills. Each was the first lawyer in his family, and each followed a different path. Victor F. Battaglia, Sr., O. Francis Biondi and Bruce M. Stargatt started as small firm practitioners, ended up as the leaders of Delaware firms, and along the way presided over the Delaware State Bar Association while also attaining national prominence in the profession. Similarly distinguished is the career of William T. Quillen, who served on the Delaware Superior Court, the Court of Chancery, and the Supreme Court, after which he became general counsel of a medical institute, then a law professor, and thereafter Delaware's Secretary of State. In the aggregate, these leaders of the Delaware bar have mentored countless members of our succeeding generation, including the undersigned.

We are also fortunate to have successfully assembled

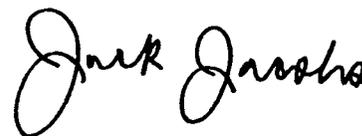
— and recorded the reminiscences and insights of — a gathering of distinguished judges and lawyers in a Roundtable Discussion. Chaired by Edmund N. Carpenter, II, and Bruce M. Stargatt, the Roundtable included four judges (now retired except for Judge Stapleton) — Judge Walter K. Stapleton, Judge James L. Latchum, Justice Maurice A. Hartnett, III, and Judge William T. Quillen — as well as attorneys Victor F. Battaglia, Sr., Charles S. Crompton, Jr., Louis J. Finger, Andrew B. Kirkpatrick, Jr., Joseph A. Rosenthal, Harvey B. Rubenstein, Donald C. Taylor, and Rodman Ward, Jr.

We offer this with the hope that the wisdom of, and example set by, this generation of truly remarkable lawyers will serve as a beacon for the generations of Delaware lawyers yet to come.

Thomas L. Ambro



Jack B. Jacobs



## CONTRIBUTORS



**Bruce M. Stargatt** is a past president of the Delaware State Bar Association and the Delaware Bar Foundation. He is a Fellow of the American College of Trial Lawyers, Delaware delegate to the American Bar Association's House of Delegates, and a member of the firm of Young, Conaway, Stargatt & Taylor.



**O. Francis Biondi** is a past president of the Delaware State Bar Association and Delaware Bar Foundation, and a former Wilmington City Solicitor. He has chaired or been a member of many committees as part of his public service, including the Board on Professional Responsibility and the Commission on Delaware Courts 2000. In his spare time, Mr. Biondi was a member of Morris, Nichols, Arshat & Tunnell and is currently of counsel to that firm.



**Hon. William T. Quillen** has the unique distinction of being a past member of the Delaware Superior Court (twice in fact), the Court of Chancery and the Supreme Court. In addition to these positions, Judge Quillen has been, inter alia, Delaware's Secretary of State and the Democratic candidate for Governor. Judge Quillen is currently the Visiting Distinguished Professor of Law at Widener University School of Law.



**Victor F. Battaglia, Sr.**, like Mr. Stargatt and Mr. Biondi, is a past president of the Delaware State Bar Association and, as Mr. Stargatt currently is, was a past delegate from Delaware to the ABA's House of Delegates. Mr. Battaglia's community service is, quite simply, too numerous to list (indeed legendary). He heads Biggs & Battaglia.

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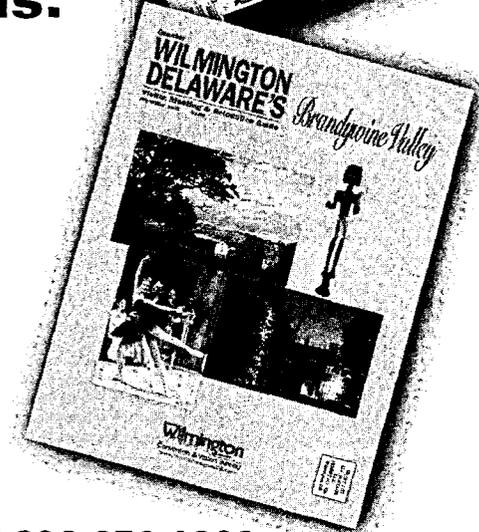
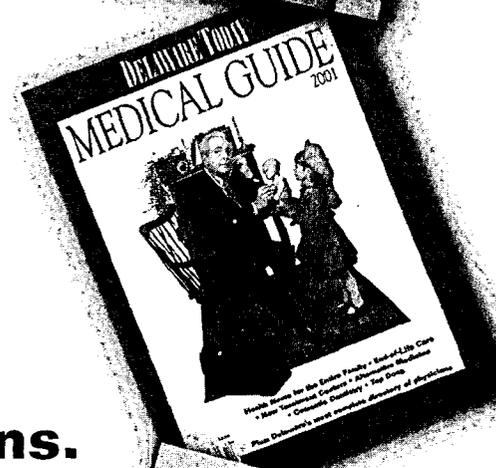
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SEPTEMBER 11, 2001

*The following is adapted for Delaware Lawyer from an introduction Judge Ambro wrote for Business Law Today, the publication of the American Bar Association's Section of Business Law.*

September 11, 2001. No one of us forgets where she or he was that day. Death, the companion of life, came suddenly — all too soon, on our doorstep, and to our friends. Our routines, comfortable and familiar, were displaced by disorder, fear and the unknown.

As the tragedies unfolded, there were no words of understanding that held us from the edge. Numbing silence and shock held sway. We grabbed small rays of hope — many of our colleagues in New York do not arrive for work before 9:30-10:00 a.m. They would be spared, we prayed. Indeed, we know of no member of the Delaware bar killed in either the World Trade Center or Pentagon tragedies.

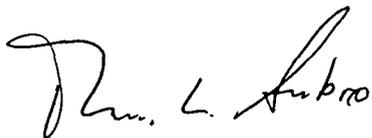
Then — slowly, inexorably — the tragedies came closer. People we knew in Delaware were victims. One couple has, in 15 months, lost two of their three sons, the first (at age 15) by accident, and the second (at age 22) in the World Trade Center. The elder son started work only two weeks before he died. Every death had a story; every story ended in tragedy.

For those who survived, relief was replaced by the frustrating search for those they loved and residences destroyed or caked with dust. The smell of death stayed.

What, then, do we do? We grieve. We remember — a colleague's kindness, a lover's embrace, the words we wanted to say but stubbornly didn't. We comfort. To quote Phyllis Theroux: "When we write [a] letter ... and slide it under a grieving friend's door, we are sliding our own hearts toward another in the hope that in companionship there will be relief." We clutch at the conviction that terror can be stopped, and justice served. And we pray.

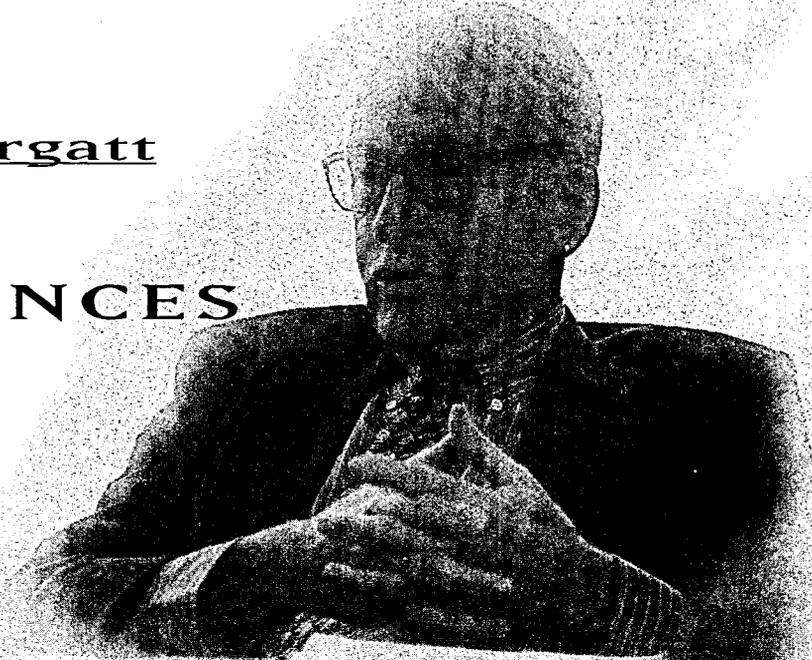
Finally, we resolve to care more deeply, to give more selflessly, and to continue on our missions, personally and professionally. And we realize all the while that, whatever we achieve, we build by the light and lessons of others now passed.

Thomas L. Ambro

A handwritten signature in cursive script, reading "Thomas L. Ambro". The signature is written in dark ink and is positioned below the typed name.

Bruce M. Stargatt

## REMINISCENCES



**T**here used to be at the southwest corner of 10th and Market streets in Wilmington, on the ground floor of the North American Building, a shop with a “United Cigar Store” sign in the window. It did sell cigars, as well as cigarettes, newspapers and magazines, Lifesavers, chewing gum and the like. But it also had a lunch counter, and several tables. The tables were unreserved, but they might as well have been roped off to give notice they were for lawyers only.

I had come to practice law in Wilmington in November of 1956 somewhat unexpectedly. My wife Barbara and I had no Delaware ties. She was from Maplewood, New Jersey, and I from New Rochelle, New York. We had met at the University of Vermont, and were engaged after I went on to Yale Law School. Immediately after graduating in June 1954, I took the New York bar exam, and went to work for Arnold, Fortas and Porter (now Arnold and Porter) in Washington, D.C. We got married in August, and a few months later, in November, I was called up by the Air Force to serve my two-year ROTC commitment as an Assistant Staff Judge Advocate at Dover Air Force Base.

While Delaware was to that point in our lives only a place to pass through, and Dover was no place at all, we soon were at home there. We were allowed to live off base, and rented at Garden Court Apartments between Legislative Hall and Route 113. Compared with what I had been doing in Washington, the pace at the Staff Judge Advocate’s office was relaxed. We had plenty of time to ourselves, and were blessed with our first child, who was born at Quonset Hut Hospital at the base in the summer of 1956.

As a legal officer at Dover Air Force Base, I began, after a very short apprenticeship, to try special and general courts martial representing, variously, the prosecution and the

defense. It had always been my aim, at law school and even before, to be a trial lawyer. The criminal practice into which I was thrust as a young officer-lawyer enhanced that desire, and encouraged me to believe that I had an aptitude for it.

Meantime we were beginning to spend time with non-Air Force Doverites. I got to know Herman Brown, an able and engaging Dover lawyer with offices on The Green, and even did a little legal work for him. Maybe it was through Herman, or possibly at a social event at the Officers’ Club, that, in early 1955, I had become acquainted with Charles L. Terry, then Kent County’s resident Superior Court judge. (He was to become chief justice in 1963, a position he left to run successfully for governor in 1964.) Judge Terry was a large, heavy, ruddy man, who enjoyed life’s earthly pleasures, including eating, drinking, and gunning. He was open and gregarious, strong in his views and direct in the expression of them. I know no one who did not like Judge Terry and there were many, of whom I was one, who loved him. Judge Terry and his sweet, very Southern, wife Jess, soon invited us to their home for dinner, and even allowed us to reciprocate in our small, not well-furnished apartment at Garden Court. Not long after that, he asked if the Air Force could spare me to be his part-time after-hours clerk. He said he thought he might even get some funding from the Levy Court. (I later learned that Charlie Terry, as he was called by everyone but me, was seldom turned down in Kent County.) I asked Captain Dodsden, who was my boss, and got the okay.

Knowing and working for Judge Terry, and getting better acquainted with Delaware, made me decide in 1955 to take the Delaware Bar exam. I was admitted in Delaware in December, 1955, having previously gotten my license in New York and, by reciprocity, in the District of Columbia.

In mid-1956 I received a letter from Arnold, Fortas and Porter saying that they had kept my job open, and inviting me to return. But by then we had decided to give it a go

here, a decision we have never regretted. One of Judge Terry's many friends was H. Albert ("Hy") Young, a distinguished trial lawyer in Wilmington, who had recently completed a term as Delaware's attorney general, and was in need of an associate. Judge Terry arranged for me to have an interview. Mr. Young offered me a job at \$5,000 a year (then the going rate). I happily accepted. And so in November 1956 we came to Wilmington.

Which brings me back to the United Cigar Store. Mr. Young's office was on the 8th floor of the old Bank of Delaware Building at the northwest corner of 9th and Market streets. Trying to figure out where to eat lunch, I soon became aware of a private club called the Wilmington Club in a free-standing building a couple of blocks north of us on Market Street opposite the Post Office (which also contained the Federal District Court and Bankruptcy Court facilities). I asked Mr. Young about it. He gently told me that my religion would bar me from membership, even if I could afford it. He was afflicted with the same disability. (Not the afford part.) Mr. Young said there were plenty of better places to eat lunch, and suggested the United Cigar Store, which is how I came to stop there.

From late 1956 until the North American Building was torn down in the mid-60s to make room for the Farmers Bank (now Mellon) Building, the United Cigar Store came to be my luncheon club. It was everything a young lawyer could wish. The food and coffee were adequate and cheap. The manager, Jack Conrad, was tolerant. Hospitable and unpretentious, the tables were always filled with lawyers going to or coming from the Public Building or, less often, the Federal Courthouse. Case evaluations were often solicited by ingénues like me, and freely given. Pomposity in all its forms was the target of good-natured derision. Court decisions were passionately critiqued by the losing party, and defended by the winner, with a fervor not common in learned law journals. In any event, law journals would not likely be interested in United Cigar cases which would typically stem from (say) a Superior Court decision to grant a remittitur or a Family Court decision denying custody. These were cases that then interested me.

There have been many celebrated giants of the Delaware bar in the

years I have practiced here. I want here to remember a few of the United Cigar store lawyers who are not routinely celebrated.

One such, a they-broke-the mold-when-when-they-made-him character, was Francis Reardon. He was short, wore thick glasses, and was as feisty as a Jack Russell terrier. Judge Reardon sat in the Family Court in the years when that court sat in the basement on the 11<sup>th</sup> Street side of the Public Building. He tried to do justice and, most of us thought, usually succeeded. But appearances before him were an adventure. Unlike Judge Hellings of the Municipal Court (not a United Cigar customer) who was known as "whispering death" for his inaudible voice coupled with the severity of his sentences, Judge Reardon was a shouter. If a deadbeat father was seeking a reduction in support while at the same time unilaterally reducing his payment, it would not be unusual for the judge to summon the sheriff and point his finger at the defendant and holler "You're going to jail." Undeterred by issues of privilege, he might ask defense counsel, "Did you tell this man to cut his support payments?" And, if the answer were anything but "No," out would leap, "You're going, too." (In retrospect, it's far more amusing to remember being remanded to the sheriff's care than it seemed at the time.) The lawyer would usually be released after a few minutes in the sheriff's office. But the defendant would often have to spend at least a few days in the cooler. Chancellor (later Judge) Seitz was once heard to say: "To Francis Reardon due process is a legal technicality." Whatever the merit of his rock-'em, sock-'em style, I remember Francis Reardon with a smile.

Jim Gallo was a kind, gentle man, and had a telephone book full of friends. Jim came to United Cigar as a lawyer, and continued to come after he became a part-time Common Pleas judge. He would do anything to avoid an argument, and largely succeeded by reason of his tough-as-nails secretary, Mary (also his wife), who was his negotiator. Jim had no peer at the bar in the trial of uncontested divorces. He was hands-down Delaware's most successful divorce lawyer. He would, on divorce-day-Fridays in the Superior Court, have more of the calendared cases than the rest of the lawyers combined. Lawyers waiting their turn would time his cases to see how long they took. It seldom was more than a

few minutes. For many years I played poker once a week with Jim Gallo and friends at the Unital Club on Marsh Road. A few other lawyers were also regulars (Warren Roberts, Tony Emery, Courtney Cummings). Jim also loved to go to Delaware Park, and (it is said) place an occasional wager. Jim was over 90 when he died. His memorial service was overflowing with friends and colleagues.

A daily lunch companion at United Cigar was Joe Flanzer. Many of the younger lawyers reading this magazine have never heard of Joe. That's a loss. You would have loved him. Big, bald, gruff, Joe Flanzer was a lawyer's lawyer. He had a man-in-the-street practice, and was in fear of no opponent, however powerful. Joe could be in a Municipal Court one day, the Superior Court the next, in the Family Court on the morning of any of those days, and in Magistrate's Court at night. Occasionally he'd be in Chancery, most likely in a will contest or boundary dispute. Joe was straight as a good left jab, friendly to fledgling lawyers, free with his time. He was much admired by his fellow luncheon club members, particularly me.

Another of the sustaining members of United Cigar store luncheon club was Harold Leshem, who had offices a few floors below us in Market Tower. Harold was a lovely man, known as The Silver Fox because of his full head of gray hair and his wiliness in settling (he seldom tried a case) his clients' personal injury cases. Unable to make a living practicing law during the hard years of the Depression, Harold had taken a job as a musician on a cruise liner. He recounted many interesting stories of the friendships he had enjoyed with passengers (especially the female passengers) during his time at sea. Harold was always willing to take the time to help others evaluate their cases, which I particularly appreciated since plaintiffs' PI cases constituted a large part of my practice in the early years.

The United Cigar store is a story in itself. Talking about it has gotten me a little ahead of my other, less colorful, thread ... reminiscing about how I got here and what's gone on since. To which I now return.

After going to work for Hy Young in late 1956, I did mostly trial work. In the beginning it was only in Family Court and Municipal Court. But soon I found myself in Superior Court, and later in

Chancery and the Supreme Court.

Mr. Young had a broad trial practice, and I was able more and more to help shoulder the burden as I learned under his experienced eye, and improved my skills. Early in 1958 Mr. Young began considering a possible partnership with James R. Morford. Jim Morford was himself at the time in conversation about the formation of a firm with H. James Conaway, Jr. Messrs. Morford and Conaway wanted to ask William F. Taylor, who was working in Mr. Prickett's office, to join them. Discussions ensued, and with surprising speed and no written agreement, the firm of Morford, Young & Conaway was formed. The firm started on January 1, 1959, on the top floor of a brand-new tower, next to and part of the Bank of Delaware Building, later changed to Market Tower, a name it still carries.

The blend worked well. I thought that Mr. Young was the finest trial lawyer in the state, but those who disagreed would likely name Jim Morford. Both Morford and Young had been attorneys general, and each had a large practice. Jim Conaway, who was about seven years older than Bill Taylor and I, was (and remained throughout his life) a Sussex County boy. Jim had a rapidly growing and diverse client base. Bill and I were contemporaries. He had gotten the best of training while with Prickett in the trial of insurance defense cases, was beginning to make a fine reputation in that field, and in time became the dean of the insurance defense bar. Bill came from an established Delaware family, and was beginning to get some business from that direction. I was also starting to get clients of my own, a few from social and community activities and, increasingly, from lawyers with and against whom I had tried cases.

The happy excitement of the start-up of Morford, Young and Conaway was shattered by Jim Morford's death at age 60 on July 1, 1959, just six months after the firm was formed. He was sorely missed personally, and for a while there were concerns about whether the firm would survive his death. But, while the personal grief remained, the business apprehensions soon diminished. Led by Hy Young, the firm prospered and grew. In 1964 the name of the firm was changed to Young, Conaway, Stargatt & Taylor. As more lawyers joined, the firm filled

the 14th floor of Market Tower, which had early on been left partly empty to accommodate hoped-for expansion. Then in the 1960s and '70s, floor by floor we came also to occupy 13, 12 and 10.

By the early 1980s it became apparent that the law firm needed to move. In 1982 we signed a lease for a floor in a to-be-built building being put up by Wilmington Trust Company, mostly for its own use, on the site of the old Post Office Building taking up the block at the north side of Rodney Square. We took the 11th floor, a part of which we subleased because we didn't need all of it, with options on the 10th floor.

On May 29, 1982, while the new Wilmington Trust Center was under construction, Mr. Young passed away at age 78. He had been the leader of the firm from its formation, and continued to be a presence until the days of his final illness. During his life and since, he has served as a model for the rest of us. As did Jim Conaway, a fine man, a truly professional lawyer, and wonderful friend, who died in 1990.

Despite these losses, in our new quarters at Wilmington Trust we continued to prosper. After a few years, we took over the space we had subleased on the 11th floor, and in pieces exercised our options on the 10th floor. In the end we ran out of space and could not stay. As a result, in October 2001 the firm moved into new offices on the top three floors of the newly renovated Brandywine Building, just a few blocks from 9th and Market where I started.

Sitting up here, looking down on Delaware Avenue, semi-retired after 45 years in the active practice of law, gives me license to end up with an answer to a question of my own asking.

What's better and what's worse now about the practice of law than when I went to work for Hy Young in 1956?

I'll start with what's both better and worse. Money. As I said, in 1956 I was earning \$5,000 a year. And that, plus or minus a little, was the going rate. Now, new admittees to the bar who get a job with my firm, or the other large Wilmington firms, are paid a huge multiple of that ... far out of proportion to what can be explained by inflation. While it would take more than a few lines to explain, I think the basic reasons are the increase in legal specialization, and the business judgment by increasingly large and sophisticated entities that they will

be better represented by large and sophisticated law firms. They're willing to pay, I assume as a result of the inexorable economics of supply and demand, large sums of money for what they perceive as top lawyering. No apologies for that. Lawyers deserve to be well paid. It's on the "better" side of the equation.

Now for the flip side of the money coin. With new lawyers at big firms making relatively large amounts of money, and older big-firm lawyers making much more, financial expectations have changed. We have more, and we want more. While professionals are sometimes depicted as being naïve when it comes to business, and I have known some who are, that stereotype does not fit the typical lawyer. We advise businesses, and we know something about business. Hence, we have learned that to make more money, we need to pay more money for space, the latest technology and to get talented lawyers who will yet make more for us (and themselves). Thus has emerged the emphasis on productivity (hourly billing and the like). Time now has a price tag much more direct than it did when hourly billing was almost unknown, as was the case when I started. (In writing "A lawyer's time and advice are his stock in trade," Abe Lincoln didn't have this in mind.) When time and money are literally equated, and lawyers expect to make large amounts of money, non-paying activities like family life, community and professional undertakings tend to receive a lower priority. Indeed, I wonder whether I would allow myself the time (and pleasure) to patronize a present-day United Cigar were I now a new associate at Young Conaway Stargatt & Taylor. This is bad.

Another change has been both for the better and worse. Our bar is more than ten times bigger now than when I came to Delaware. Within a few years after we settled here, I knew most of the active trial lawyers in Wilmington, and many in Kent and Sussex Counties. Now that's not possible, and I feel nostalgic about that memory of good old days. On the other hand, when I became a Delaware lawyer there were only one black and a few women lawyers. Since then, the balance between male and female lawyers has dramatically improved and, while our aspirations remained unfulfilled, we've done better in attracting minority lawyers. We're not yet where we want to be, but the bar is now more representative of our community than when I start-

ed. That could not have happened without an increase in the lawyer population. It's better now.

The final it's-better-today is the new technology. When I started to practice, the only tool for word processing was the typewriter. Corrections were made by hand, and corrections on multiple copies required each carbon copy to be fixed. There was a machine called a "Multilith" used for making large numbers of legal documents, but it produced a mediocre quality product, and was slow and dirty to boot. I think it was a year or two after I started to practice that there came into use copy machines called Thermafax (by 3M), and a Verifax (by Kodak). They were slow and often produced hard-to-read copies. It wasn't until much later than the Xerox technology was introduced, and later still that fax machines made their appearance. Now we work amidst a technological explosion with the ubiquitous computer, and internet to which it connects, which make it easier to keep track of and retrieve information. We can now do better legal research faster, and more cheaply produce beautiful paper work. The technological revolution has made it possible to practice better law. I'm grateful to have been around to see the start of it.

The driving force in our decision to settle in Wilmington in 1956 was the quality of life here. Small, friendly community, good place to raise a family, decent public schools, short commute to the office, a couple of hours to the big city attractions of New York and Washington and only half that to Philadelphia. I did not begin to visualize the joys of practicing law in Delaware: the camaraderie, the prideful sense of being members of a small and special enclave within our special profession, the tradition of service to the legal system and those unable to access it without help. As I traveled elsewhere I came better to appreciate the generally high level of lawyering here, the almost invariable competence, courtesy and patience of our judges and the mutually respectful relationship between the bench and bar. While other aspects of the practice have changed over the 45 years past, these have not. I hope it will remain so, and that in years to come, in a long-in-the future edition of *Delaware Lawyer*, a new generation of older lawyers will pleasurably reminisce about the joys of practicing in Delaware, as have I here. ♦

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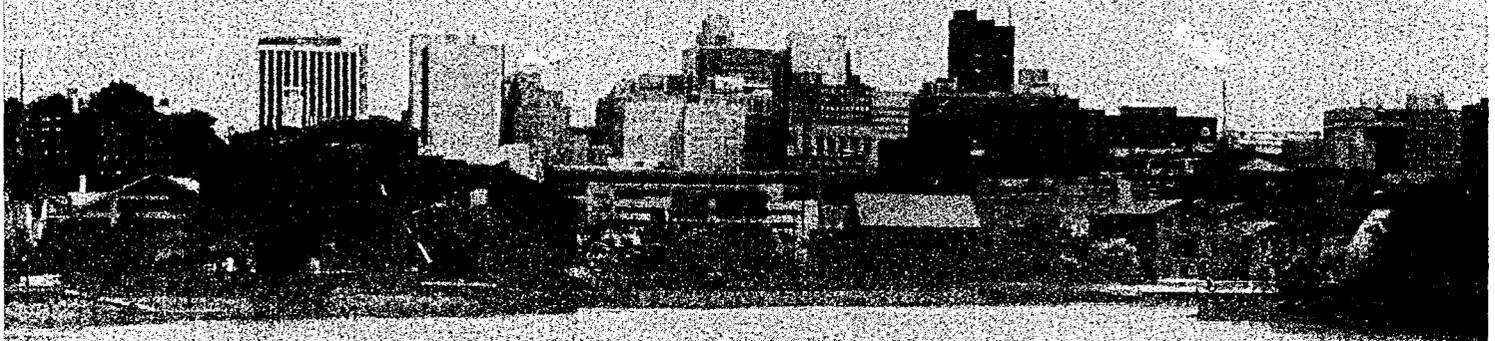


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O. Francis Biondi

## A TALE OF TWO BRIEFS



**A**s I look out over the East Side of Wilmington while writing at my desk, the memories flow. I can see the streets that became known as the "11th Street Bridge Italian Community." My father settled there when he came to America in 1911 as a teenager, as did many other families who came from small "paese" near Aquila in Abruzzo, Italy, including my mother's family. You could go door to door, block to block and visit friends and relatives.

I can see the remnants of the laundry and jute mill as well as the hose and rubber factory where Mom worked as a young woman. I can see the railroad shop where Dad worked almost his whole life. And I can also see the house where I was born and raised on Vandever Avenue in the Prices Run area, the grammar schools I attended, and the parks and ball fields where my friends and I played.

It was a wonderful neighborhood. Our neighbors were folks from Georgetown, Laurel, and Milford, Delaware and Suddlersville, Maryland, who had come to Wilmington to work on the Pennsylvania Railroad. You could walk to the railroad shops and terminals from our area. Spaghetti, ravioli and meatballs went over the back fences and chicken and dumplings and homemade ice cream came back in return.

Walking to another window I can see the Wilmington Library. My mother took me there every Saturday until I

was old enough to go alone. It was there that I discovered the world of books. I am very happy that another Biondi, my wife Anita, has served on the Library's Board of Managers for many years.

On the way to the library, I would pass the Court House, the Public Building and the Federal Building and wonder how people got to work there. Early on, I decided I wanted to be a lawyer. I realized my ambition because I was the beneficiary of parents and an extended family who highly valued education, perhaps more strongly than some because they had not had the opportunity. My extended family included our neighbors, Leander and Nellie Rust from Georgetown, whose daughter, Mrs. Jeanette McDonald, was vice-principal of P.S. DuPont High School and a noted local educator. From my earliest years in school, the Rusts kept track of report card time and reviewed my report cards. I can still hear Mr. Rust saying, "Young-un, you still got a lot of work to do."

That extended family also included friends and relatives from the old country. One of my happiest memories was an evening when an Italian-American fraternal organization gave a dinner at the DuBarry Room of the Hotel DuPont in recognition of my academic achievements. A young lawyer named Januar D. Bove came and gave an inspirational talk. Jan Bove was one of the first lawyers I ever met, and he was of Italian-American heritage. In the Italian-American community in Delaware, becoming a lawyer was

not taken for granted. Until Michael A. Poppiti was admitted in 1948 and Jan Bove in 1949, there had not been an Italian-American admitted to the Delaware bar since 1929, and only four had been admitted before then. Their admission was a great encouragement to an East Side kid graduating from Salesianum in 1950.

After earning a B.A. in Economics at La Salle College and an M.A. in Economics from Boston College, I entered the University of Pennsylvania Law School in 1955. I commuted from Wilmington to Penn, as I had done for my four years at La Salle, on my Dad's railroad pass. When I graduated from Penn Law in 1958, I never considered practicing anywhere but Delaware. It was the best choice I never had to make. Delaware had a small bar that was competitive but friendly, and a distinguished judiciary. Delaware was a growing state and lawyers had an unparalleled opportunity to have an effect on the law, government and public policy.

I had an early experience with the Delaware judiciary. Because I was commuting to law school at Penn, I asked and received permission to use the judge's law library to study. Somehow Judge Albert J. Stifel found out that I didn't have a car. Many a night he would come by around 11:00 p.m. to midnight to chat and say, "By the way, would you like a ride?" Who would want to practice anywhere else?

I was admitted to the Delaware bar in December 1958, having survived the bar exam. Admission to the "in" group for morning coffee at the Smoke Shop in the Old North American Building took a little longer and a few good war stories.

I began practice with a well-known general practitioner in a small firm, Joseph A.L. Errigo. Errigo was really the only lawyer I knew well and had been my preceptor. The firm included Frederick Knecht, Jr., who was admitted to the bar the year before me in 1957. Freddie was simply a whirlwind and we learned the fundamentals together.

Shortly after joining the firm, however, in early 1959 I wrote the first of two briefs that changed my life. The first was a brief in a Chancery case that impressed Chancellor Collins J. Seitz. Although we lost the case, Chancellor Seitz recommended me to the Wilmington City Solicitor (later Judge), Stewart Lynch, for a law clerk position. There was a statutory limita-

tion on the number of Assistant City Solicitors, but Judge Lynch decided it did not apply to "law clerks." Judge Lynch was never one to be constrained by precedent or strict construction.

Judge Lynch called me and asked if I was interested in the part-time law clerk position. Because I was earning only \$65.00 a week plus 50% of my own non-existent fees in private practice, I readily accepted. Judge Lynch was a great mentor for a young lawyer in public office. He taught me a lesson I never forgot: "Whenever they ask you for an opinion, ask them why they want it. Then tell them what they should be asking and give them an opinion on that question." It saved me a lot of grief over the years.

Judge Lynch was not the only mentor in the office. I joined Aubrey Lank, Jim Mulligan, Frank Gentile and Jim Kelleher, all seasoned lawyers. Ultimately, I served in the City Solicitor's office for almost ten years although I risked it all in 1960 when I joined with others and opposed the incumbent mayor and City Democratic organization over the mayor's failure to support John Kennedy at the Los Angeles Convention.

In 1961, I was appointed First Assistant City Solicitor. In 1963, at the age of 30, I was appointed City Solicitor of Wilmington by Mayor John E. Babiarez, and I served until January 1969. It was the beginning of a life-long interest in public affairs. And what an education! In addition to learning how government really worked, by prosecuting cases two or three days a week in Municipal Court I learned how to litigate a case from the best: Dave Cox, John Bader, Bob O'Hara, Joe Flanzer, Henry Wise, Sid Balick, and many others, sometimes all on the same day. It may have been the Municipal Court, but to Judge Thomas Herlihy, Jr., it was the Supreme Court.

The '60s were a period of turbulence and change for our nation and for our city and city government. I remember the positives: the state's first public accommodation ordinance in 1961, the first rezoning of the city since the 1920s, the state's first housing code, and the city's first home rule charter which abolished the commissions and vested executive power in the mayor and legislative power in the council.

But the defining events of the '60s were the civil disorders which occurred

in many cities, including Wilmington in 1967 and 1968. The experience of seeing civil disorder erupt in your city is one you will live with forever: fires, destruction, gun shots, threats, endless rumors, hundreds of arrests, distrust, and fear. As the city's top legal officer, I had to draft emergency ordinances, balancing public safety and civil rights, advise the police, organize prosecutions and prompt court hearings on a massive scale, and maintain communication with the community. The highest priority was the protection of all human life and the preservation of the social fabric so that there was a basis for recovery and the restoration of normal life.

I was reminded of the need for perspective on the first night of the 1967 disorder. I was out on Madison Street with my investigators to observe the conditions. The only persons about were reporter and columnist Bill Frank and a *News Journal* photographer. We were standing under a bay window talking when we heard a loud crack — we all dropped to the pavement. We then heard a window being raised, looked up and saw an older woman in nightclothes who said, "Would you please stop your loud talking. I have to go to work tomorrow."

The actions taken were not without controversy, notably the presence of the National Guard on the streets of Wilmington following the 1968 disorder. But the Delaware bar and judiciary distinguished themselves in these crises. Former prosecutors returned to help sort out the arrestees with criminal responsibility and those simply at the wrong place at the wrong time. Defense attorneys — like Vic Battaglia, Irv Morris, Jake Kreshool and others — appeared to represent defendants who were without counsel at initial hearings, and judges held hearings throughout the day and night to assure prompt dispositions. There were also acts of courage and leadership by leaders of the black community such as Judge Leonard L. Williams, Roy Wagstaff, Roosevelt Franklin, Reverend Dandridge and Reverend Herring.

While the position of City Solicitor was consuming, it was officially part time and private practice continued. A traumatic event occurred, however, in 1966. My law partner and I discovered that the senior partner of our small firm, a well-known lawyer, civic leader and commissioner of public safety of

the City of Wilmington, had embezzled approximately \$500,000 of client funds beginning in 1932. My partner Harvey Porter and I formed a new firm and continued practice. Our former partner was imprisoned. It was a very difficult time. We learned a lot about partnership liability and about client loyalty. We never lost a client who did not have a claim against us. We also learned a lot about Delaware lawyers. Victor Battaglia and Joe Flanzer advised and counseled us without fee. Bill Poole and Tom Lodge, and especially Andy Kirkpatrick and Dave Drexler, worked for years on the defalcating partner's receivership, eventually paying the principal of the claims. Shortly after this affair, in 1967, the Superior Court created the Client's Security Trust Fund.

John E. Babiarz, Jr. (now a judge) joined me in practice in 1967, and we subsequently created the firm of Biondi & Babiarz, P.A. We built a thriving general practice with offices in Wilmington and Dover, employing five lawyers and several paralegals. Our practice included real estate, land development, wills and estates, domestic relations, personal injury and commercial litigation, some criminal defense, banking and labor law representing unions. The labor practice was especially interesting, ranging from police and fire unions, sheet metal workers and oil refinery workers to Teamsters and the American Association of University Professors at the University of Delaware. There are many memories, but one stands out: it is of a Teamster who brought his son to a union meeting so that he could meet a lawyer and be encouraged to work hard and study so that one day he too could be a professional.

In 1979, we merged Biondi & Babiarz with Morris, Nichols, Arsht & Tunnell, giving us the opportunity to work with many of the finest lawyers at the Delaware bar. Andy Kirkpatrick and Dave Drexler had raised the issue prior to 1979, but neither side had pursued it. The triggering event in 1979 was the coming of Skadden, Arps to Delaware and a subsequent inquiry by the Prickett firm as to whether we had an interest in merging. The opportunity to work with leaders of the bar like Justice Tunnell, Sam Arsht, and Andy Kirkpatrick, as well as Justice Randy Holland and Chancellors William T. Allen and William Chandler before

their accession to the bench, was a lawyer's dream.

Unlike many lawyers whose practices are mostly office practices or trial practices, my practice at Morris Nichols for many years involved appearances before administrative agencies and legislative bodies and representing public entities. Controversial zoning cases before planning boards, councils or boards of adjustment involving shopping centers, borrow operations (gravel pits), and mobile home parks can be exciting. In one hotly contested case, a hush fell over the audience as I completed my presentation. At that moment a "gentleman" who had unceremoniously taken my seat when I began to speak announced that "I'm just going to punch that [lawyer] in the mouth." A councilman promptly called the County Police and I looked for bigger associates in such cases.

Not all the opposition is so aggressive. They are normally considerate and on occasion even sympathetic. In another controversial case, a very polite lady asked me if I would like to wear a sticker in opposition to the rezoning. I respectfully declined without comment, and we had a very pleasant conversation. As she was moving away, she looked at the crowd and turned to me and said, "Lord, I would not want to be the poor lawyer representing this client. He's going to catch hell tonight." She was right!

Representing public agencies can be the most rewarding and trying experience at the same time. We had the opportunity to represent the City of Wilmington and the State of Delaware in creating Brandywine Gateway, Inc. and negotiating the relocation of Hercules Corporation in Delaware. The leadership of all the entities, including the City, State, Hercules and DuPont (who owned the land), were all of one mind as to the big picture. But there were devils in the details, particularly since the Federal Department of Housing and Urban Development was providing the required grants and we were not lacking in strong personalities.

Perhaps the most difficult single transaction representing a public agency was the representation of the state in the acquisition of the Port of Wilmington and the creation of the Diamond State Port Corporation. Suffice it to say we had to have a consensus of the governor's staff, the sec-

retary of finance, the secretary of transportation, the bond bill committee, and the members of both houses, all of whom had valid concerns, before and while negotiating with the city. As was my experience on many occasions, the more important the issue, the more responsible the players.

It was my privilege to represent the Delaware River and Bay Authority, a bi-state authority of Delaware and New Jersey, for twenty-seven years, having been first appointed in 1973 by Governor Sherman W. Tribitt. The highlight of those years was undoubtedly the enactment of the Amendments to the Compact in 1990 that enabled the Authority to engage in economic development in both states. Enactment of the Amendments by Delaware, New Jersey and the United States Congress took five years, four of which were spent in Delaware dealing with issues relating to the environment, compliance with state and local laws, and control of activities in each state by the governor with input from local governments and the General Assembly. The legislation was approved by New Jersey and the Congress without a single word changed.

Representation of clients before the Delaware General Assembly on major legislation, including drafting and advocacy, is an experience which varies with the issues and the interests affected. In the course of twenty-five years, with my partners at Morris, Nichols and other colleagues at other firms, I drafted and presented legislation relating to land use, economic development, insurance investment, partnerships, court reform, banking and other issues. Undoubtedly, the most significant was the Financial Center Development Act of 1981 (the FCDA) and its progeny.

I found my trips to Dover to be exciting experiences each time because of the unstructured forums. Delaware is probably unique in that both the House and the Senate routinely grant the privilege of the floor to proponents and opponents of legislation, and you can and will be asked any question which comes to any legislator's mind. The questions reflect personal, political, economic, social or cultural background or life experience or those of his or her constituents. They will range from broad philosophical comments to

whether a comma on line 16 on page 21 should have been a semi-colon. There are no rules of evidence or relevance, and you may find yourself debating unexpected issues with any member on the floor. Sometimes the questions are open-ended. For example, with the FCDA, the floor leader, Senator Tom Sharp, opened the debate by calling me as a witness and asking simply: "With respect to each section of the Bill beginning with Section 1, tell us what the law is, how you would change it and why we should do it." That began a debate which lasted for eight hours.

Appearing in the legislative forum was one of the experiences I enjoyed the most in the practice of law and one I will miss the most.

A joy of my practice has been and continues to be the representation of Father Roberto Balducelli, the former pastor of St. Anthony's Church who is now its director of development, in connection with his construction of schools, housing for the elderly, senior and community center, a day camp for children and families and the establishment of an education fund for the award of scholarships. A Renaissance man, he is a legend in his own time.

Representing Father Roberto has been exhilarating and exasperating. One memory typifies his approach. At one time, I was soliciting support from the DuPont Company for his conversion of the old Wilmington Armory to a senior and community center and for his housing for the elderly project. Joe Rule, who was a community service officer at DuPont, indicated that we would have to present a short-term, mid-term and long-term plan for the project and scheduled a meeting for review of the plan. I notified Father Roberto of both the need for the plan and the date of the scheduled meeting. I called him innumerable times before the meeting requesting a copy of the plan, but none was forthcoming. On the date of the meeting, Joe Rule arrived at my office with two other DuPont representatives and I was embarrassed to report that I had no written plan to present to them. Father Roberto arrived in his work clothes — khakis and shoes covered with dirt and cement. He listened patiently to Joe Rule's explanation that the consideration of any funds from DuPont required that the appropriate committee for Father Roberto's project must

be given a written short-term, mid-term and long-term plan. Father Roberto then said, "Well, let me tell you, I built a beautiful school, a rectory, a beautiful camp and many other things with little or no money but with volunteer labor, contributions of men and materials by contractors and unions and materials for things that no one else wants. Today I work on the Armory with volunteer labor, contributions of men and materials, union apprentices and men from the work release program. My plan is simple: we will start and with the help of God we will finish. You fellows got a better plan?" As usual, he received the assistance requested. By the way, for those of you who remember the beautiful gray marble that used to line the walls of the executive offices at DuPont before they renovated, you can find it in the first floor lobby of the Antonian, the housing for the elderly project at 10th and DuPont streets.

As I have indicated, Delaware affords lawyers and other citizens a unique opportunity to participate in public affairs and create public policy. Our Supreme Court has throughout my years at the bar been involved in the work of the administration of justice, including membership in and regulation of the bar, court planning and court reform.

In addition to service on other committees, I have had the opportunity to chair the Board on Professional Responsibility, the Supreme Court ad hoc Advisory Committee on Alternate Dispute Resolution, the Supreme Court ad hoc Advisory Committee to Review the Disciplinary System, the Supreme Court ad hoc Committee on the Model Rules of Professional Conduct, and to co-chair the Commission on Delaware Courts 2000. There is an opportunity in these efforts and in the leadership of the bar not only to serve the administration of justice but also to experience the enjoyment of working with members of the bar from other firms whom you may otherwise meet only in adversary or purely social situations. I have had the honor of serving as president of the Delaware State Bar Association and president of the Delaware Bar Foundation. Working with Ned Carpenter, Henry Herndon, Vic Battaglia, Bruce Stargatt, Dick Poole, Chief Justice Veasey, Rod Ward, Harvey Rubenstein, Charlie

Crompton, Art Connolly, Frank Balotti and other "usual suspects" has been a highlight of my years at the bar and a source of lasting friendships.

Delaware also presents the lawyer with an opportunity to participate in making public policy outside the legal forums. Governors of both parties have afforded me the opportunity to work with citizens from throughout the state on issues of public policy in many capacities: as chair of the Delaware Franchise Tax Committee, the Delaware Tomorrow Commission, the Delaware Agency to Reduce Crime, the Crime Reduction Task Force, the Governor's Investigative Strike Force, and as a member of the Governor's Committee for Review of the Criminal Code, the Council on Banking, and the Governor's Strategic Economic Council.

While such opportunities may exist in other states, the smallness, the openness and bi-partisanship which characterizes this state presents unique opportunities. I remember calling the office of Governor Pete du Pont in the 1980s and arranging a meeting to discuss a proposed banking bill. To my surprise, when I arrived at his office the Governor was alone and there was no staff present. I presented him with a written memo, economic documentation, statutes and case law, and we sat across a coffee table in his office and discussed the proposed legislation. At the end of our meeting the Governor simply said, "Let's do it." I am certain there have been many other such meetings with other governors and legislative leaders. It's what makes Delaware unique.

Working in city government stimulated my interest in public office and politics. Early on, I learned a basic lesson in the nature of Delaware politics. It was 1960 and the incumbent United States Senator J. Allen Frear was being challenged by Republican Governor J. Caleb Boggs. Sid Clark and I were staffing a Democratic Party headquarters on North Market Street on a Saturday morning before the election. The building was covered with signs, posters, slogans and pictures of the Democratic candidates. We were passing out literature and urging people to come in and learn to operate the voting machines. A car stopped across the street and the driver stepped out of the car. It was Governor Boggs. He came over, greet-

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ed Sid and me by our first names, said he had seen my dad while campaigning, shook hands with everybody in the headquarters and told everyone how important it was to vote. As he was leaving, he put an arm around Sid and me and said, "It's great to see you young fellows working in the political process. We need young people to be involved. Good luck to you." Meanwhile, the party workers were all excited about the governor's visit. Sid and I decided to call it a day.

Senator Boggs figured indirectly in another memorable day in my political education. In 1966, he was running for re-election against former Justice James M. Tunnell, Jr. A visit to Delaware was arranged for President Lyndon B. Johnson in support of the Tunnell campaign. I was one of a group responsible for the arrangements. It was to be a noon day rally in Rodney Square when the downtown workers were on their lunch break and great preparations were made, including the reservation of a "Presidential Suite" at the Hotel DuPont. It turned out not to be a great success. The President's plane was late arriving at the New Castle County Airport, he insisted on taking a little nap although the crowd was restless, and delayed the event further by insisting on using his own personal rostrum which had been left at the airport. By the time he appeared half the crowd was gone. To top things off, he repeatedly mispronounced his "good friend" Jim Tunnell's name. We were happy to see LBJ leave.

Over the years since, I have participated in a number of political campaigns in Delaware for national and state office. I have tried not to forget those lessons about the spirit of Delaware politics and the unpredictability of planning.

I indicated at the beginning that there were two briefs which changed my life. The second was a brief I wrote in 1960 in a workmen's compensation case for James P. D'Angelo, Esquire. We won in the Superior Court and Judge Tunnell agreed to argue for the injured worker when General Motors appealed to the Supreme Court. The Supreme Court affirmed the award. See *General Motors Corp. v. Joseph Freeman*, Del Supr., 164 A.2d 680 (1960). Jim D'Angelo invited me to dinner to celebrate and asked if he might bring his cousin Anita. She has been my wife, best friend and partner for thirty-nine years. ♦

William T. QuillenIT TOOK MORE  
THAN A VILLAGE

**A**s far as I know, I am not a direct lineal descendant of any lawyer. It is an occupation that has been avoided by, or unavailable to, my parents, grandparents, older brother, aunts and uncles, and first cousins. My father, a Kent Countian, never went to college and he settled in New Castle at the age of thirty in 1926 when he started a Ford dealership with his brother. Two years later, he married my mother, who was from Collingswood, New Jersey. Mother had the annoying habit of going home to New Jersey for purposes of childbirth. At home she had a doctor brother and four sisters to nurse her through the then normal two-week hospital confinement. But otherwise my parents' marriage seemed to me to be remarkably harmonious and uneventful. Dad made the money and Mother ran the house, every bit of it. And, other than sports, Mother also ran the children. Except for birth and temporary duty, both my brother, now seventy-one, and I, now sixty-six, have lived in New Castle all our lives. In short, I am a small-town boy and I never wanted or needed to be anything else.

My interest in law was sparked by an interest in government and politics. I remember FDR and, at the age of thirteen, I got all wrapped up in Harry Truman's campaign in 1948. I also noticed early on how many of the founding fathers were lawyers and I am a fervent admirer of their creation. Mother helped immeasurably by educational choices. In those days, not everyone in public school looked forward to college and Mother made sure my brother and I were put in a school atmosphere where college was anticipated. Beginning in the seventh grade (upper school), I was sent to Friends School. I do not remember being consulted about the decision. I had liked William Penn, then a small-town school, grades one through twelve all in one building, with about forty-five kids in

each class. The teachers in the first six grades, all women, all residents of the town, seemed as permanent as the building (now the New Castle Middle School). And they were known in town by the grade they taught, e.g., "This is Miss Jones, the fifth grade teacher." I don't think there was a private school in the country that had more stability than the William Penn lower school in the 1940s, but two things made my transition to Friends easy. First, a tribute to the William Penn school marms: entering in the seventh grade I was at least current with the Friends School grade pace, so the fear of being behind never materialized. Second, Friends gave me a midget football uniform the first day I was there and I have loved the school ever since.

I do not remember thinking too much about the practice of law while I was at Friends but I do remember being aware that Latin was supposedly useful, which it proved to be, primarily because two years of Latin was a requirement for the Delaware Bar. My recollection is that my candidate, President Truman, got three votes in the Friends School upper school mock election in 1948. I was blessed by two teaching mentors in high school, a history teacher, George Reeser, whose demanding course, largely memorization, reinforced my predilection for government and politics, and an English teacher, Sally Longstreth, who voluntarily undertook individual tutoring to raise my verbal SAT score to college acceptability. My Friends School graduating class of 1952 included Larry Fenton and Walt Stapleton along with other wonderful people.

Mother and I went on a New England college tour to Dartmouth, Williams and Amherst and I applied to all three. I can't remember for sure if Dad went or not but I doubt it; this too was Mother's department, she having a home economics college degree from Drexel. But I remember Dad at dinner one night, after introducing the subject of college with his customary poor-boy disclaimer, noted that I applied to three schools which were quite similar, and, if I got accepted at one, I would probably be accepted at all three; and, if I didn't get

accepted at one, I would probably be rejected by all three. His inquiry was what did I plan to do in the latter eventuality. I said, without any real disappointment as to his premises and with almost indifferent contentment, that I would go to the University of Delaware, an available safety option in those days. Dad said, "Fine, just so you've thought about it." And as far as I can remember, he never participated in the college discussion again. Mother was friendly with Mrs. George (Patsy) Hyde, then a young widow who had moved to New Castle with her five children. As far as I could figure, all the Hyde men had gone to Williams since the creation and Mother thought that would be a nice place for me to go, especially since Arthur Hyde would be in the same class. Given Mother's preference, I went to Williams without further consideration. I was pleased when I learned ex-Friends Schooler Rod Ward, one of the smartest people I have every known, would be a classmate.

I managed to go through Williams giving little thought to the practice of law although I had four professors who did play a role that proved to be of considerable importance. The first was Richard A. Newhall, a history teacher, who I had both as a freshman and a senior. Mr. Newhall had a point of view which was somewhat new to me; he thought an opinion should have some relationship to facts and that somewhere in one's educational career, one should learn to be fact specific when expressing opinions. I always give him credit for teaching me to think. I also had two political science courses with James MacGregor Burns who taught me that the model constitution needs only four words — "Majority Rule, Minority Rights." His seminar on presidential leadership consisted of only four students. We met in Mr. Burns' home and reviewed galleys of the first volume of his biography of Franklin D. Roosevelt. I was in heaven. The book *Roosevelt — The Lion and the Fox* was a great success when published and I felt remotely connected to that success. A third teacher, Robert C. L. Scott, taught the English and American New Deal periods in nineteenth and twentieth century history and was my undergraduate thesis adviser. My thesis was "Jim and the Boss," a study of Jim Farley's relationship with FDR. I think Mr. Scott liked the thesis but the other faculty reader, sort of a verbal bean counter, came down somewhat hard on the amateur historian. One

theme from the thesis that has served me over the years is Farley's weighing of his own loyalty priorities when he refused to support FDR's nomination for a third and fourth term. Sometimes you have to lose friends. Finally, my Williams education included a course in public speaking taught by a lawyer turned professor named George G. Connelly. He taught me not only to prepare well and speak clearly but also that mannerisms need to be controlled and how a twisted mouth might disclose a weakness of the position being advocated. So, if I drifted toward law school without building much specific understanding of the study or the practice of law, I did develop skills in the general processes of thinking, writing and speaking, largely because some faculty members insisted upon such development.

Like most people from non-lawyer families, I talked to Dad's lawyer, Edward W. Cooch, Jr., when law school application time came. Mr. Cooch told me he could not serve as my preceptor because he had not been admitted to practice for ten years. But he said he would introduce me to William H. Foulk, a more senior lawyer with whom he shared offices in the Delaware Trust Building. It so happened that Mr. Foulk's son, Gerry, and I had been Friends School classmates for a couple of years so there was a ready connection. Mr. Foulk was wonderful to me and I spent three summers clerking for him before the bar exam summer, including the summer before law school. Mostly, I searched titles in the old Recorder of Deeds Office in the Public Building, receiving guidance from such experts as Sybil Ward and Stanley Lynch. I'll never forget little Miss Ward hauling the big deed books around, generally refusing all offers of help. I was clerking in the office when Mr. Foulk was working on the law school jurisdictional staple, *Hanson v. Denkla* (1958) in the United States Supreme Court. I got a chance to do some research for Mr. Foulk working out of a very good small library he had accumulated. I also got a chance to mix with, and occasionally work with, the lawyers who shared Mr. Foulk's space — John Walker and Frank Miller, and future Family Court Judges Herb Cobin and Bob Wakefield, and most importantly, Ned Cooch and Bill Duffy. I enjoyed them all on a first name basis and I've always been grateful to Ned Cooch for the generous interest he took in me. Mr. Foulk in particular was very

smart; he would frequently come to the office library, read a case, reshelve the book, return to his office and jot in the draft brief he was writing at his office desk the excerpt he carried in his memory along with the citation.

On Mr. Foulk's advice, I decided to go to Harvard Law School, one of five to which I had applied. One of the others had been Mr. Foulk's own law school to which he was very loyal, but surprisingly he thought the opportunity to go to Harvard should not be skipped. This generation of lawyers does not appreciate that it was relatively easy, compared to later decades, to get into name law schools in the 1950s. A high B average from Williams and a mediocre LSAT was enough in my case. The day before I left for Harvard I appeared before the Board of Bar Examiners to complete my registration as a law student and to report on Zane, *The Story of the Law*, the dreaded required reading at the time. I must have answered some questions correctly, but I only remember Arthur G. Connolly, Sr., the President of the Board, asking me a question about the book for which I had no answer. Mr. Connolly, trying to be helpful, then asked if I had read the book some time ago. No, I said, I read it yesterday. That answer seemed to suffice and I went off to Harvard as a registered law student. Unless it was on one of my better pages in Zane, I don't think I knew what a tort was.

Harvard was an experience and to eliminate the risk of saying something which would seem ungrateful, suffice it to say that the movie *The Paper Chase*, which I think came out in the seventies, had the Harvard atmosphere about right. But there were a few high spots. Warren A. Seavey of tort and agency fame was retired but he frequently substituted in both courses and his gentle brilliance was a sharp contrast to the prevailing atmosphere. I had Archibald Cox, an expert in labor relations, in torts and he was a great teacher, toughness with humor. Austin W. Scott taught our section in trusts and I learned from him that, contrary to the elite approach, the whole class could be taught. Finally, there was Louis Loss. I was so naive, I did not even take securities law from the world's most prominent expert, but fortunately I got him for agency and Professor Loss was helpful in his approach, always simplifying the law. He was also helpful to me in my career after law school. These were four great teachers, great lawyers and great gentlemen.



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Harvard was a good place to have been. I should note that my father paid every dollar necessary for my education at Friends, Williams and Harvard.

I returned home to study for the bar in the summer of 1959. There was no bar review course and so study groups were the norm. As I remember I studied with Rod Ward, Walt Stapleton, Dick Allen and Larry Hartnett. I think Larry was one of the last applicants permitted to take the bar without a law school degree. Marcia and I were married on June 27, 1959 and it was a hectic summer, living with my parents and cramming for the bar with an able but demanding group. It was a rough start for a wonderful marriage. The bar was given in September and the results came out in November. The day the bar results came out Robert H. Richards, Jr., who somehow seemed to know I had done well, called Mr. Foulk to ask if Richards Layton & Finger could talk to me about employment. Mr. Foulk kindly relayed the message with his own recommendation that, if I got an offer there, I should accept it given the firm's stability and clients, particularly the Wilmington Trust Company. Maybe that was the reason Mr. Foulk had recommended Harvard some years before. He also told me I could work for him if I preferred but it was better not to be tied to one person. I went over to the DuPont Building and met with Mr. Richards, but I had to tell him that I had a three year military obligation. I had been in the Air Force ROTC at Williams and, unlike most of my classmates I, with eyesight unsuitable for flying, had nonetheless stayed in ROTC after the Korean War, which ended during the summer between my freshman and sophomore years. And I had managed to get one of the few non-flying commissions on my Williams graduation in 1956. The Air Force deferred my active duty for law school and bar admission. Without any promises, Mr. Richards said to call him in three years.

Somehow, probably through Mr. Foulk, Chief Justice Clarence A. Southerland learned that Larry Fenton and I could not go into the service until we were admitted to the bar and he kindly accelerated our admission at a private ceremony in his Wilmington chambers, then on the first floor of the Public Building (now the Herrmann Courthouse). The next day, Mr. Foulk took me to the District Court in the old Post Office building and to the Third

Circuit Court of Appeals in Philadelphia for further admissions. I think it was the next day that District Court Judge Caleb M. Wright appointed me to defend a criminal case and his kindness to a lawyer making his first appearance I'll never forget. (See W. Quillen, *Remembrances and Prayers*, 12 DELAWARE LAWYER NO. 4 (Winter 1994) at 35-36.

On December 15, 1959, I started three years as a JAG officer in the Air Force. Serving in the peacetime military at Mitchel Air Force Base on Long Island and at Dover Air Force Base in Delaware was hardly difficult. While at Dover, we did have the Cuban Missile Crisis but, other than that, my military lawyer experience was quite similar to a civilian job. Both of our children were born during the service years. But, in lawyer terms, the trial experience of the service years was very valuable, mostly special courts martial, both as prosecutor and defense counsel. In addition, we did contract work and legal aid for service personnel and their dependents. At Mitchel, I had a hard task master from World War II and Korea, Major George H. Hempstead, Jr., who let me know in unmistakable terms it was not manly to come back from a defeat in court with your tail between your legs. George's son is a member of the Delaware Bar. My Dover AFB experience was more of the same with my Air Force dentist being Gary Lyons and one of my legal colleagues being Drew Moore.

I think my father played an important role at this point. Dad was a great success as a well-liked small town businessman and he was, at the least, one of the leaders of the New Castle community. He did things for people totally unselfishly. Dad cared. And Dad knew everybody in Delaware, not excluding governors, United States senators and judges. One of his friends from boyhood days in Camden was Charles L. Terry, Jr., in 1961 the president judge of the Superior Court. I don't know exactly what triggered the telephone call, but whatever the event, Judge Terry called me one day and invited me to be his part-time law clerk while I was stationed at Dover AFB. Judge Terry made it a point to be close to the base commanders at Dover AFB, a relationship that smoothed town-service relations and gave Judge Terry the enjoyment of top military company at the

Officers Club and on the base golf course. So I got to work at night for Judge Terry, doing research while I was in the service. I had the pleasure of introducing Drew Moore to Judge Terry. I think it was the first time they met. Drew also clerked and he and Judge Terry became good friends. It was great to be able to help produce real opinions in real cases. Judge Terry helped so many young lawyers, including Bruce Stargatt and Mo Hartnett. Judge Terry threw his full support behind my prospective employment at Richards and, near the end of my active service, I visited Richards Layton & Finger again and interviewed with Henry Canby and Ned Carpenter. I confessed to them that I was a Democrat and a member of Delawareans for Orderly Development, an organization opposed to further industrial development on the Delaware River. But they hired me anyway and I began on January 1, 1963, with a yearly salary of \$7,500.

As I recollect, I became the twelfth lawyer at Richards, a small number, but what a group — Aaron Finger, Robert H. Richards, Jr., Henry Canby, Rodney Layton, Louis Finger, Ned Carpenter, Jim McKinstry, Max Bell, Bill Wiggin, Norm Veasey, and the only other out Democrat, Dick Abrams. I think I had work contact with all eleven and I know each left a very positive mark on me. Robert H. Richards, III writes wonderful memories of 4072 DuPont Building in the current Richards internal newsletter. But I remember in particular working on cases with Aaron Finger, Henry Canby, Rodney Layton and Ned Carpenter. Mr. Finger, the consummate gentlemen, could combine dignity and cordiality in a manner that made everyone from errand boy to corporate executive feel privileged just to be in his company. Admitted to the bar in 1912 after reading law with Robert H. Richard the eldest, he in the early 1960s still did most of his own research and it seemed to me he double checked any research done by others. Mr. Canby arrived early, worked hard and was short with words and quick, and brief, with laughter. Mr. Canby was efficient, truly worth his hourly rate, and I would have loved to see him produce in the computer age. Rodney Layton liked to play the crusty judgmental conservative, but, in viewing people, he was one of the least preju-

diced men I've ever met. My best experience was trying a case with Ned Carpenter against Jimmy Latchum with President Judge Duffy presiding. Every one of them was a pro and I'll never forget the detail of pretrial preparation that went into a Carpenter trial.

An outside event arose in 1964 and politics came to the fore. Judge Terry had become Chief Justice and, with the support of Governor Elbert N. Carvel, Chief Justice Terry was being moved toward his own run to succeed Governor Carvel. I was active in a Draft Terry group and, after his nomination, I worked on his successful close election over his fellow Kent Countian, Attorney General David P. Buckson. Governor-Elect Terry asked me to come to Dover as his administrative assistant for two years. I went to Mr. Canby and he rather characteristically said, "One year, people die and things change and you have to be here to participate." There was another hurdle. My father was not excited about my entering politics, "You're positioned in the best firm for a lawyer and you can be hurt in politics." But I wanted to do it and I did — on Canby's terms.

I had a marvelous year working in

Legislative Hall with Ned Davis as Governor Terry's administrative assistant and I think the governor thought I might stay on. But, pursuant to the understanding, I returned to Richards as of January 1, 1966. Governor Terry, however, had another idea which I'm sure had not occurred to anyone else. Shortly after my return to Richards, he called me to come to Dover and the conversation went like this: "Boy, do you want to be a judge?" — "What, now, Governor?" — "I ain't going to be here forever, boy." Well, my father liked this idea and Mother thought it was respectable and I was encouraged by both Chief Justice Daniel F. Wolcott and President Judge Duffy. Wolcott said Samuel M. Harrington was younger than I when he was first appointed to the bench in the late 1820s (not totally reassuring) and Duffy said, "In six months, you will have tried more cases than ninety percent of the bar." My friends at Richards tried to understand. Mr. Canby kindly came to my office to explain the financial implications of the decision and Rodney Layton questioned my sanity. Obviously their concern was for me

and not the firm, which certainly would survive. But, when all was said and done, I guess it went back to the beginning, my boyhood interest in law had been sparked by my interest in government and politics and being a judge seemed the best way to combine law and public service. I actually developed a passion for law as a judicial public servant. Passion is a desirable quality for any lawyer and a prerequisite for a good one.

So, on March 31, 1966, at the age of thirty-one, I was sworn in as a Superior Court judge with Dad, Mother, Marcia, our two young daughters, my brother and numerous relatives present. In two years, my father would be dead at seventy-one, followed in another two years by Mother's death at seventy. I was young to be a judge, but in a way I was ten years late. The judicial investiture for me marked my arrival as independent adult. I'm glad my parents were there. My father once said, "We went from Dover High School to Harvard Law School in one generation and that's not bad." The "we" is surely right. Thanks, Dad. Thanks, Mother. And thanks to all the others of whom I've mentioned only a few. ♦

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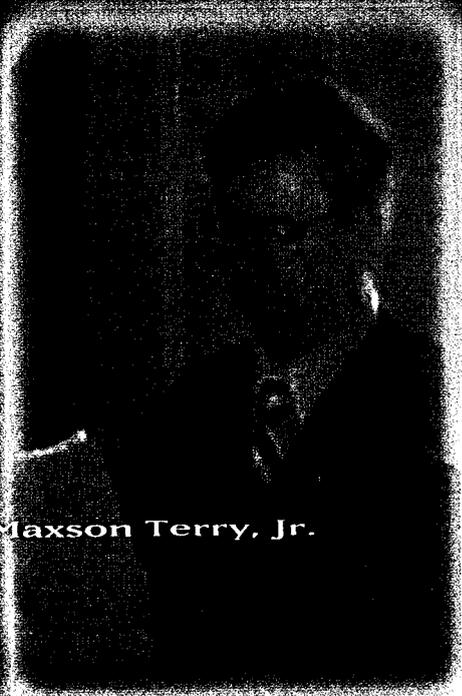
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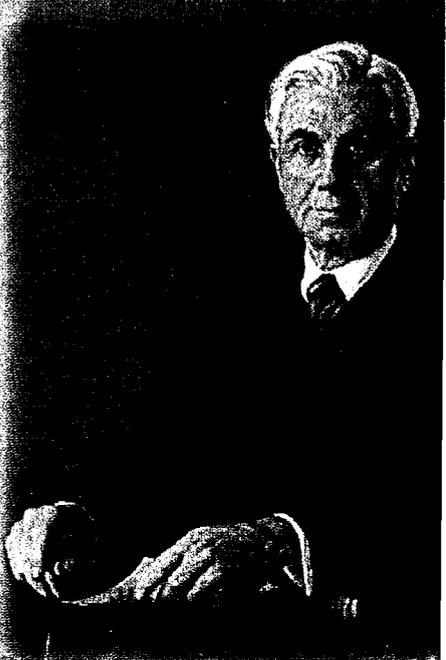
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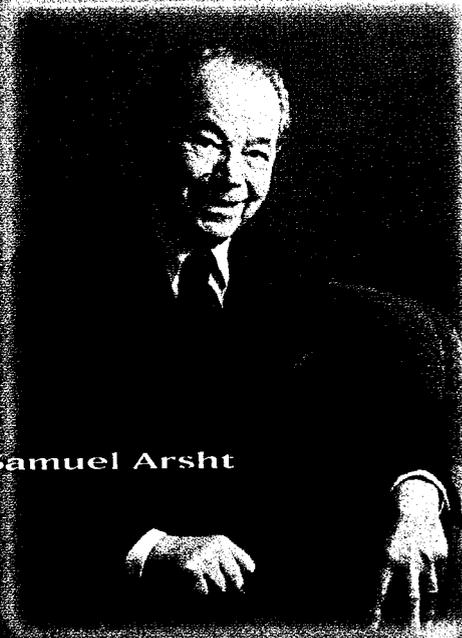
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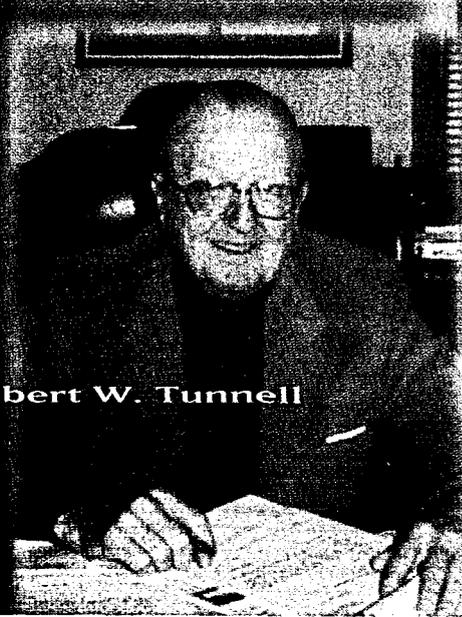
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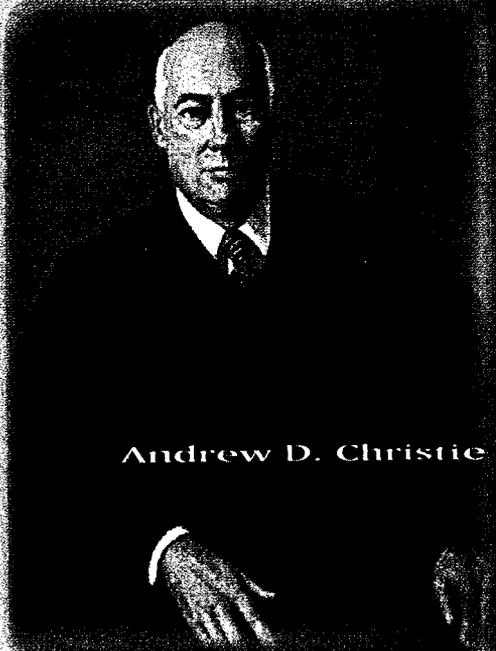
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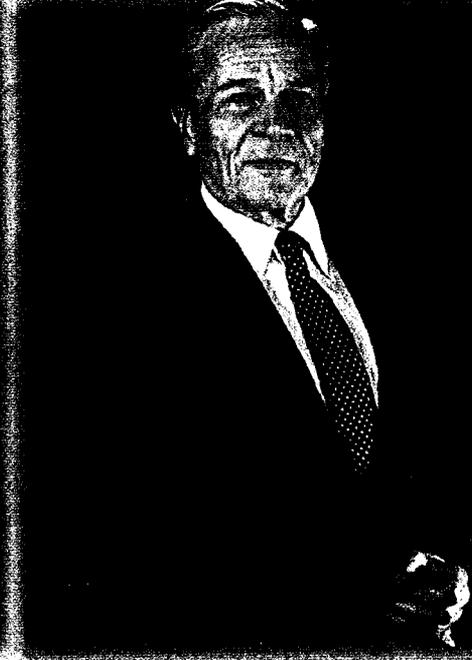
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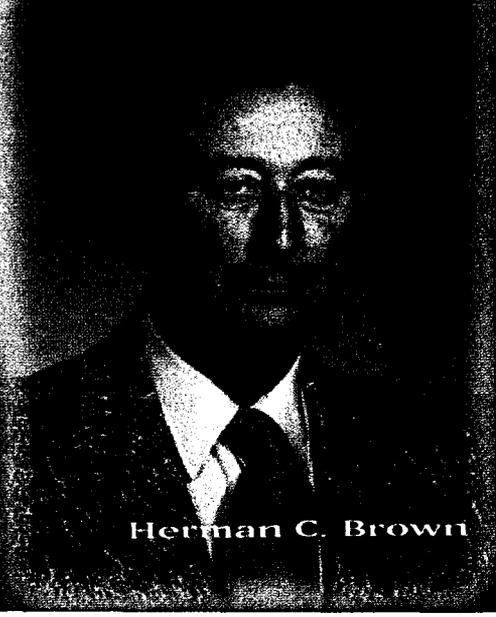


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## THE PRACTICE OF LAW AND OTHER STUFF



**W**hen Judge Ambro told me that he was coordinating a series of articles on Delaware lawyers and offered me the opportunity to submit an article, I jumped at the chance to write about the great lawyers who have inspired all of us. I thought it was an easy assignment. Stories about the giants like Jim Tunnell, Hy Young, Henry Canby, Ned Carpenter, Dan Herrmann, Andy Kirkpatrick, Irv Morris, Bill Potter, Bruce Stargatt and Rod Ward would almost jump onto the paper.

I handed in my paper well ahead of the deadline, only to learn that it was rejected. The Judge told me that I was to write about Victor Battaglia. I could not imagine that anyone would want to hear about me, let alone read something I wrote about me.

It has been one of my goals not to say no to any request from the Bar Association. Hoping to find a sympathetic ear, then, I submit this paper on me and the practice of law and other stuff.

I believe, with few exceptions, that I have tried as many cases as almost any lawyer at our bar. I do not propose to discuss cases. Good or bad, they are a matter of record and nothing is to be gained from boasting of the good results or complaining of the others.

I want instead to talk about concepts that have caused me to do whatever it has been that I have done in the hope that it will please those that like me and at least provide an apology to those who do not.

As the son of parents who immigrated here from Calabria, Italy, I learned at an early age the value of hard work. My father worked anywhere from fourteen to sixteen hours per day and never failed to provide for and take care of his family. In the early years of my practice, my typical work day was from ten to twelve hours. I suspect that if my father were still alive, he would frown on my poor work ethic. I developed a large and successful practice and was able to participate in community and professional activities that interested me.

The law is as close to a religious calling as I can imagine. I may be wrong, but I felt that my clients had more faith in me than any other person in the world. Many of them who feared criminal charges knew or felt that their best chance to avoid punishment was to tell me the exact truth. I had a strong feeling that I knew more about what they had or had not done than their confessor. I felt therefore that I was in a better position than anyone in the world to help them because they needed me and they believed in me. I think what led them to have faith in me was my own sincere feeling that "there but for the grace of God go I."

In the very early years of my practice, I was shocked to learn that some lawyers would not appear unless the client paid in advance. It took me about five years to learn that those lawyers were just not tough businessmen but that the rule had a solid basis in necessity.

I developed a huge criminal law practice which I had to scrap when, for no apparent good reason, I accepted the invitation of then-Mayor Harry G. Haskell, Jr. to become City Solicitor of Wilmington. When he first asked me, I thought frankly that he had taken leave of his senses and said no. But he is a persistent and persuasive person, whose

dedication to public service is certainly a lesson and an inspiration to me. So I decided to sign up for one year as City Solicitor of the City of Wilmington. That one year seamlessly turned into four years. It was an exciting four-year period because Wilmington was suffering the aftershock of the unfortunate shooting of Reverend Martin Luther King, Jr. The detail that went into the operation of the city boggled my mind. Alan Rusten, the administrative assistant to Mayor Haskell, was a master of detail. As City Solicitor I had a stable of lawyers who worked very hard to protect the interests of the city, but the wise advice of my late friend, Clem Wood, was invaluable. He was a high-quality lawyer who was able to teach me some of the administrative skills that were required to keep a large office operating. That training was an important aspect of my later ability to run a large office of my own. The City Solicitor's job in those days was part time. That meant that I could maintain my civil practice while acting as City Solicitor. They were exciting and rewarding years. I will never forget the opportunity to work with Hal Haskell or the kind and generous support that we got from the State of Delaware in the person of Russ Peterson and New Castle County in the person of Bill Conner.

As I built my practice, I frequently encountered lawyers who needed a lawyer. It was distressing to see lawyers, especially young lawyers, victimized by the people to whom they had committed their efforts.

At first I took it as a professional responsibility to represent any lawyer who sought my help without charge. Unfortunately, the requests for help got so frequent that, unless I charged, my ability to maintain my practice would be impaired. I had to change my policy and did so with the following conditions. It was not infrequent that lawyers needed help with the Board on Professional Responsibility and for that we charged. Dealing with personal or professional problems, we did not charge.

I can recall one very sad situation in which a prominent local lawyer had joined a Philadelphia firm. When he was not able to pay his taxes, the IRS threatened to file a lien against him. The Philadelphia firm would not help. He needed to borrow \$35,000, but the bank would not lend it to him. He

believed that if he could not pay the IRS, his right to practice would be imperiled. I called ten lawyers and asked them to sign a bank note of \$3,500.00 each. The tax-troubled lawyer would pay the interest on the notes as they became due, and in three years he would repay each loan. Not a single lawyer declined to participate. Unfortunately, the debt-ridden lawyer died about eighteen months later. The first thing his widow did was to pay off each note out of the proceeds of his life insurance policy and to send each of us a letter of deep gratitude. Even quality people can have problems.

For about the last seven or eight years (I refuse to consult the records), I have been privileged to serve as chairperson of the Professional Guidance Committee. This year I serve as one of the co-chairs of the committee. My friends Barry Guerke, Dennis Schrader and I serve together. That committee provides guidance to any lawyer who requests help or who will accept help. Today it consists of about sixty-five members, many of the best lawyers in the state. No records are kept of their intervention. Queries about a lawyer are held in strict confidence. We see many people and do some good.

Not infrequently I was called to represent members of the judiciary, their family or friends. If I wanted to continue to practice in the courts, I was of course, required to charge for my services. Members of the judiciary were understandably reluctant to be plaintiffs or defendants in lawsuits. I was always instructed to bend over backwards to avoid litigation. Most times that could be done. Occasionally, it could not.

Notable exceptions were two lawsuits I was required to bring on behalf of all judges in the mid-'70s. While those cases directly involved the Superior Court judges, they benefitted the judges of all the courts. The General Assembly had attempted to take away pension and salary benefits that had been enacted by statute. Those actions clearly violated the "emoluments" provision of the Delaware Constitution. Both cases ended up being appealed to the Delaware Supreme Court. Because the justices, like all other judges, had an interest that would be affected by the decisions, all Supreme Court justices disqualified themselves and the governor specially appointed justices *ad litem* to hear and decide the cases. I don't know of any

similar event in the history of the state. We were successful in both cases. Fees and costs were divided equally among all of the judges and were promptly paid. The important thing that came out of those cases was that they provided a vehicle for a settlement with the General Assembly that established a permanent mechanism for a judge's salary adjustments that has worked successfully ever since.

The conduct of the members of the judiciary was instructive and awe inspiring. In the public interest and to a person, they gave up what would have been very large payments in exchange for a reasonable compensation plan because it was in the public interest.

My faith in Delaware lawyers and judges has never been disappointed. In the years I served as president of the Bar Association and as president of the Delaware Bar Foundation, I have never had a Delaware lawyer or judge refuse an assignment or fail to complete an assignment. While I cannot say that I have agreed with every court decision, my faith in the Delaware judiciary knows no bounds. Delaware lawyers and judges discharge their duties faithfully and honestly. The dedication of the members of the judiciary to the public benefit was once again demonstrated to me by their attitude in settling their cases just as our colleagues at the bar rallied to support our friend with the tax problem. They demonstrated a spirit of collegiality and generosity that is heartwarming. For many years, I served as a member of the Long Range Courts' Planning Committee. Most lawyers and the public generally have no idea of how dedicated the members of the judiciary are to their service. Serving on that committee and later as its co-chair with Justice Joseph Walsh gave me a bird's eye view of dedication to service and sacrifice made in the name of public service. I was impressed that the members of the judiciary (usually good lawyers at the time of their appointment) actually grew in the job.

I have always believed that it is important to keep faith with people. That includes doing public service when requested (not when it is convenient). I have been blessed in so many ways. I believe that I have been provided many opportunities because I was willing to do public service without seeking a personal benefit.

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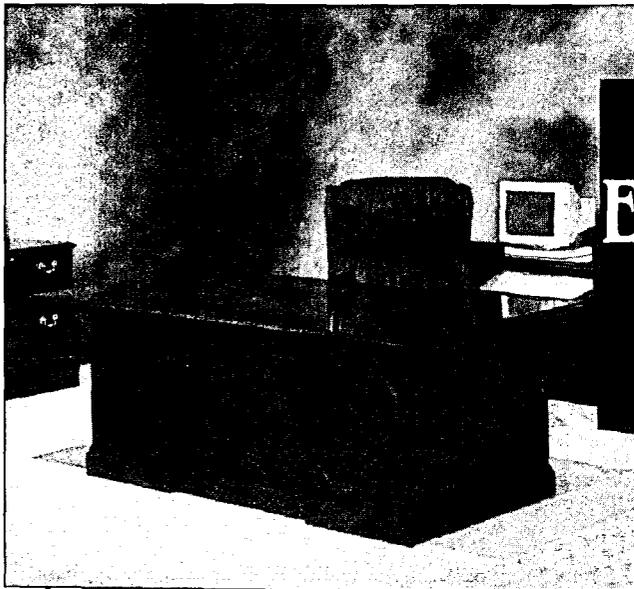
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a member and then as chairman of the Farmer's Bank Commission. I learned so much from Chuck Welch, whom I later replaced as chairman. I had the great help of Rod Ward, who plotted a course to save and sell Farmer's Bank. Dan Cielevich, who came here from Buffalo, New York, did an incredible job of returning the bank to good health so that it could then be sold. People on that commission demonstrated courage and wisdom in pushing the bank to sale. The benefit to the state of that sale has been so immense as to be incalculable.

I think no service has been as personally rewarding to me as my service as the chairman of the board of trustees of Delaware Technical and Community College. Working with President Jack Kotula, Jack Owens, Linda Jolly and a very smart guy named Jim Decker filled me with fire to elevate the educational level of the Delaware workforce. The service focused my attention on education. I came to believe that we had the capacity to develop the best workforce in the world, if only we would spend some extra money for two years of college. With the help of others, I developed a plan to have the state provide fourteen years of education instead of twelve. I was not able to get that implemented. I am convinced, however, that before I die I will see that change or some modest variation of that theme.

I sincerely believe that those of us who are afforded the high privilege of practicing law in an absolutely wonderful community have an obligation to do whatever can be done to maintain the quality of life that is available in our community and to improve it wherever possible. Early on, I came to believe that the United Way was the best vehicle to improve the general quality of life in our community. I don't know how long it has been that I have worked with the United Way, but there has never been a single thing that I have ever done for its causes that was not more rewarding to me than it was to anyone else. I have become convinced that every dollar that I have raised for the United Way, every dollar that I have contributed the United Way, helps me, my family, my friends and the people who live in this community with me. Work in the United Way has exposed me to some of the most wonderful people in this community, people like Ned Carpenter, Lance

Weaver, Ed Woolard, Jack Krol, Kurt Landgraff, people who are much more talented than I am, and who have given much more, both of their time and of their money than I have. To work side by side with them has been a blessing which I could not otherwise have afforded.

I guess that the very great lessons that I have learned include the fact that it is best that you do not take yourself too seriously. Beyond that, you can practice law and do a good job, but you must not stop there. There are so many lessons that can be learned from community service. In fact, without community service, your education will never be complete.

I have been involved in many things during my career. Frankly, I wish I could have done a better job on those things that I attempted. One thing is crystal clear: My education began with my graduation from law school. The great lawyers and non-lawyer members of our community have provided an education for me which in my humble judgement far surpasses whatever I learned in college or law school. I am sure that I have never said thank you to those hundreds of people who have helped me, who educated me, who have been mentors and who have pulled me along. My sincere hope is that some of those people will have read this article and they will know that my failing to say thank you does not mean that I am not deeply indebted and grateful to them. It is absolutely true that none of the things that I have done or attempted to do would have been possible without the active support and love of my partner, Toni Battaglia. To the extent that I have done some bad or dumb things, I am solely responsible, but to the extent that I have been able to make some contribution, then the credit needs to be shared equally with Toni who has worked side by side with me unstintingly over more than forty-four years. I am grateful for my time with Toni and Victor and Chris and for the love and help they have given me and for their attempt to educate me. I will never be able to earn the love and comfort they have provided, for which my response has been inadequate. In similar fashion, I have gotten more from the community than I have given. Just got to keep trying. And so should you. ♦

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## A GENERATION SPEAKS

On September 24, 2001, Edmund N. Carpenter and Bruce M. Stargatt gathered with many of the colleagues of their great generation of judges and lawyers—Judge Walter K. Stapleton, Judge James L. Latchum, Justice Maurice A. Hartnett, III, Judge William T. Quillen (also a former Justice, Chancellor and Vice-Chancellor), Victor F. Battaglia, Sr., Charles S. Crompton, Jr., Louis J. Finger, Andrew B. Kirkpatrick, Jr., Joseph A. Rosenthal, Harvey B. Rubenstein, Donald C. Taylor and Rodman Ward, Jr. Their reminiscences and wisdom follow.

**I** (Introduction by Judge Ambro.)

**MR. CARPENTER:** Let me say, by way of introduction, I want to echo Judge Ambro's thanks to everybody for, A, being here, and B, for participating in what is intended to be a "bull" session. But we are going to have it a little more organized than the normal "bull" session, at least at the start, just because we think it will be more efficient and ensure that everyone gets a chance to speak.

As I told some of you while we were waiting a little earlier, we are going to go around the table — I am going to start on my right — but initially, just go around and give everybody a chance to reflect on their early experiences in the practice of law in Delaware. What was good about it, what was bad about it, and how it has changed? What should we do to get back to the good parts, or is it fortunate that we have the better parts? To mention, perhaps, names of older attorneys, especially those who are not here with us anymore, and point out who were your mentors. Tell us what you liked or disliked about being here, and about having what some of us regard as the very good fortune to practice law in Delaware.

I will have a watch. I may rudely interrupt you after five minutes, just to go around at first. But I encourage you, as we go around, if you feel it would add to our discussions, to comment on remarks made by those who have already spoken, perhaps to interject at the end of some of these remarks, "Well, I remember that experience, but here is my recollection."

The whole idea is to end up with a transcript that we hope will be published in *Delaware Lawyer* and will edify for generations to come.

We will ask your permission to edit the transcript to make it flow a little more easily, but I know most of you won't need any editing at all.

Some of you here are judges. If you desire, you should comment not only on the practice of law, but on your experience or observations as a judge. We hope that the lawyers will not hesitate to comment on those comments, as well.

Any questions before we start? Okay.

Can we start with you, Judge Quillen.

**JUDGE QUILLEN:** Yes, sir.

Well, I always thought, in my own case, that the biggest difference between myself and a lawyer coming up today is how many people had a role in making me whatever I am.

I wrote down just a few: Ned Cooch, Bill Foulk who was my preceptor, certainly Charlie Terry, Aaron Finger (I worked with him a couple of times during his last years), Bob Richards, Henry Canby, and Ned Carpenter. That's a pretty lucky group

to have to teach you what the practice of law is all about.

I suppose I probably ought to talk about [former chief judge and later governor] Terry a little more than the others, because he is probably less familiar to the rest of you, except for Mo Hartnett.

Terry I clerked with when I was in the Air Force in Dover. He was really the embodiment of a county judge. He ran that courthouse. He ran it in every way. He knew what was going on in all the offices. He wasn't an isolated judge.

My favorite story is one time, someone working in the courthouse became pregnant by an officer in the Air Force. The officer was married. Terry found out about it in the morning. By the afternoon, he

had had the officer in his office and had talked to him. The officer went down to the prothonotary and signed an acknowledgment of paternity. The amount of money that was going to be paid was fixed, all without the intervention of one lawyer.

That was the type of dominance Justice Terry had. He had not known the officer before, but he was just a very much revered figure. That doesn't happen, I don't think, anymore. (Maybe Billy [Judge William Swain Lee] had a little bit of that in Sussex as resident judge, in recent times, I don't know.)

One thing I will always remember about Lou Finger's father — this had nothing to do with the practice of law, it was just the incredible courtesy that Aaron Finger had — if a 15-year-old kid would walk in his office to serve him a paper, he would stand up, sort of bow, take the paper, ask the young man his name, introduce himself as Aaron Finger, and treat him just as if he were a lawyer from New York. I am not sure we have that type of courtesy anymore.

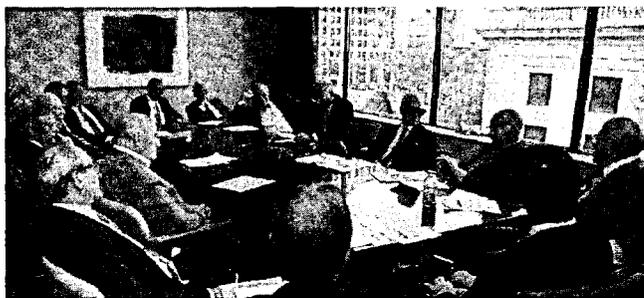
I said at the reception that Victor Battaglia organized for me last August that I see two changes that strike me as the most significant. One, we must recognize that at one time the bar was very small and narrow, very white and very Protestant. That has changed. We now have greatly different opportunities to be a lawyer. I think socially it has changed, too. (I think people talk differently than they did 40 years ago.)

So that is important.

But the other change that strikes me about our society — and I think to some extent we probably all contribute to it — is that our society is more vulgar than it used to be. I use that word "vulgar" not lightly. That to me is regrettable. Yet I can see times, in my own behavior, where I say, well, I wouldn't have done this 30 years ago.

Somehow, those are the two trends that strike me more than any others over the last years.

But I feel very fortunate. I learned something different from each of these people. I learned from Ned Carpenter how to prepare a



case. He might not remember, but I do. Henry Canby was tremendous. When I went to Richards, Layton & Finger, he pointed to a machine behind him. He said, "That's a dictating machine. Learn to use it." And I think often how he would love what is now available to us. Henry Canby was one of the few people that was worth his hourly rate, because when he went into a library, he actually produced whatever the going rate was at that time. Boy, he would have been a whiz with a computer.

Mr. Foulk was also wonderful to me. Ned Cooch introduced me to Mr. Foulk because Ned hadn't been in the bar long enough to be my preceptor.

I will pass.

**MR. CARPENTER:** Rod Ward.

**MR. WARD:** I will start by saying that all my life I wanted to be a lawyer, practically from when I went to kindergarten. The proof of it is I took four years of Latin in order to make sure I got into the Delaware bar, and not because I loved Latin.

When I thought of becoming a lawyer, I thought only of becoming a Delaware lawyer. To show how narrow my focus is, or was, at that time, I, like some other people here, had five generations of lawyers in Delaware ahead of me. I found out actually that there is a sixth generation, a justice of the Delaware Supreme Court shortly after the revolution. He was not a lawyer, so I can't say six generations of lawyers.

Also, when I thought of being a lawyer, I thought of being a trial lawyer. I did not think of becoming any other kind of lawyer. The result was that I ended up working with William Prickett, Sr., who was one of finest trial lawyers I have ever known. He and Ned Carpenter are two of the finest trial lawyers I have ever known.

I aspired to do that, really.

Ned had a case against Bill Prickett, my friend, Young Bill, as I call him, involving a Colonel Mancota. You no doubt remember that case, which they had to try three or four times. That, I think, was absolutely fascinating to me and made me totally dedicated to becoming a trial lawyer.

I also had an early case with Bruce. It involved a person who got his arm caught in a press. "Judge Steel," I think you said to him, "Your Honor, I think this will be a very pressing case."

**MR. CROMPTON:** Pressed in what?

**MR. WARD:** The defendant, my client, had a coat pressing machine, a steam machine. And Bruce's client caught his arm in it, and my client went (illustrating). It was very entertaining. That was one of my first federal cases and it was against Bruce.

What is really most different to me is that not only have I changed my career entirely, except for the trial part, but also there was no such thing as an associate. I didn't even know what an associate was for the first ten years of my practice because I wasn't at Richards Layton or Morris Nichols, which

actually did have associates. I was at the Prickett firm, where we were just lawyers and we went to court, and you had to try your case all by yourself.

My first year of practice was 1962. I had been in the Air Force for three years, and must have had ten jury trials. There is nobody that I know who has ever had that experience in the last 20 years. It was the most extraordinary experience, since I had prepared most of my life in my mind to do that. To have it happen suddenly was very exciting. The judges



in the Superior Court, to a person, were prepared, interested, and focused on the cases, invariably nice to me because they were nice to everyone.

The District Court, at that time, was, in my judgment, one of the finest District Courts in the United States, and it stayed that way for quite a long time, with extremely wise, thoughtful, prudent people. You didn't always win, but you always knew why you lost and later on you figured that was probably the right result.

I am not sure whether we have become more vulgar. But at that time, this bar — and this may be the rosy glow of hindsight — was the least vulgar place I knew or had known anything about.

A lot of things have changed since then. I now know what associates are, for example. I don't know where the library is. (I do know, but I never go there.)

I have a closer relationship with clients, perhaps, but a much more distant relationship with the courts and with the actual nitty-gritty of what is going on in normal law. I think that is a big loss, frankly.

The big gains, however, are that there is certainly no lack of brains in the people coming into the practice. The diversity that has been gained by the introduction, for example, of women and of people of diverse ethnic backgrounds who do not have six generations of lawyers in their background, has been an enormous improvement.

So I think that what we have lost has been less than what we have gained in significance and meaning within the society. At least that's my feeling.

**MR. CARPENTER:** Rod, I am going to have to cut you off. Before I do, let me ask you, as a partner in a New York law firm, if you could just take a minute to comment

on the difference between practicing law when you started in Delaware and practicing law in New York, that is, the difference between being a New York lawyer and a Delaware lawyer?

**MR. WARD:** I never have really been a partner in a New York law firm, contrary to popular belief. I have always been a Delaware lawyer, and will die a Delaware lawyer.

My firm's headquarters are in New York. I have a many friends who are partners who are very, very able lawyers.

I will say that one reason that compelled me to join Skadden Arps is that I had several experiences with associates, coming from down on high who didn't know what they were talking about, telling me what to do and then performing badly in court. I thought if I could get closer to that situation, I wouldn't be put in that awkward position.

But I think that the practice of law in New York in my area of specialty is not really that dissimilar from the practice in Wilmington, for instance, in Richards Layton and Morris Nichols. I think it is really quite similar. It is more wearing. New York is a horrible place to be, because you leave a building and you have to fight to get on the street, you have to fight to get in the subway, you have to fight to get in a taxicab, you have to fight to get a reservation. In other words, the practice of law like anything else in New York City is a continual battle. That may be what causes rudeness occasionally. But the better lawyers in New York are just as, I think, admirable as the better lawyers in Delaware. And that is saying a great deal.

**MR. CARPENTER:** Thank you.

Andy.

**MR. KIRKPATRICK:** I also had great mentors, Ed Steel and Jim Tunnell. What strikes me, though, is one of the most significant differences between then and now is that then, we had I think some very distinct advantages sort of forced upon us. The system, as it existed then, required us to do things that gave to us wonderful experience that I am not sure is so readily available today.

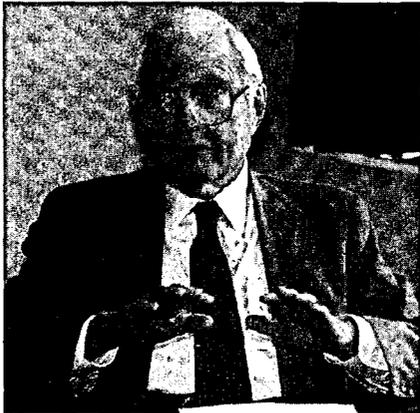
An illustration would be the requirement that all of us knew — that we, from time to time, would represent an indigent defendant in a criminal case. If you did that a few times, you began to get serious cases, and ultimately you would get a capital case.

Let me with illustrate with a little war story I like to tell. I ultimately came to have such a case. I never will forget going down on a beautiful May Sunday to that old workhouse to prepare the defendant for his trial testimony the next week. That particular defendant had had two previous manslaughter convictions, and this was a murder case. We were convinced that we needed to put the defendant on the stand because he really had a pretty good story to tell about this particular incident. But we also knew that it was very important to keep these prior convictions from com-

ing out in cross-examination.

The rule in those days, I don't know if it is the same today, was that once cross-examination came, the prosecution could ask the witness initially only if he had previously been convicted of a felony. If there was no equivocation and he said yes, that ended the examination on that topic.

So we had quite a lengthy session that Sunday afternoon on how to handle that question. The defendant was sort of an independent kind of guy. I was never really convinced that he got the message, but I did my utmost to get that across.



In any event, at trial he did pretty well on the stand in direct examination. Then came cross. And the prosecutor was obviously just — his appetite was just sizzling to get to that question, thinking that the defendant would somehow stumble a little bit and open the door to get the prior manslaughter convictions into evidence.

So he asked him, "Have you ever been convicted of a felony?"

And my man said, "Yes, sirree," and in such a gleeful way you would have thought you were asking him if he loved his mother. The thing just went right over the jury's head. The prosecutor looked stunned, realizing that he couldn't go any further.

He was acquitted, which was the right outcome for that particular case. But the next day, the newspapers gave it a good bit of play, and of course reported the prior convictions. Well, I began to get telephone calls from the jurors. And I can tell you, it was very plain that if they had known of those prior convictions, the result would have been quite different.

The moral of all that, though, is that a lawyer could not have had a more meaningful lesson in the critical importance of preparation. It stuck with me from that moment, I mean, every second down in that stinkin' workhouse on that beautiful Sunday afternoon in May was worth the time spent, because that changed the outcome of that case. The preparation was important — of course, his performance was magnificent — but the preparation, I thought, had something to do with that, and it was a great lesson in the importance of that part of the practice.

I am not sure that that kind of opportunity exists today.

That is my little war story.

**MR. CARPENTER:** I was just about to say your time is up, but I would like to ask you one question. I believe you clerked for Judge Biggs.

**MR. KIRKPATRICK:** I did.

**MR. CARPENTER:** Could you comment on Judge Biggs?

**MR. KIRKPATRICK:** I could go on forever about that.

There was no more colorful man in this world than Biggs. It was a great experience, Ned. But it was an experience in life broadly, not confined to the narrow practice of law. It was a great experience in seeing how the court works.

That particular year, I can't resist reporting, Judge Biggs was functioning as the executor of the estate of F. Scott Fitzgerald. And life on the federal bench was a little different in those days. That was a very important function for him that particular year. He was negotiating with Darryl Zanuck about that unwritten, unfinished novel of Fitzgerald's and this and that.

It was a rich experience. He was a colorful man, who was interested in everything. He was interested in the law, and he brought his flair to that in the opinions of the Court and all. He was just a very colorful individual who brought to the law a very refreshing personality.

**MR. CARPENTER:** Thank you.

**Victor.**

**MR. BATTAGLIA:** I wish I could think of a successful case to tell you about, but my mind is blank. Maybe that means there were not many of them.

You know, in our day, the bar really was



divided amongst the larger firms and the smaller firms. We admired the same people that Bill Quillen and Rod Ward and Andy admired: Jim Tunnell, Ned Carpenter, Henry Canby. And Bill Potter — just to see him walk down the street with a bowler, then with Charlie [Crompton] by his side the same way, was really an impressive sight.

But the thing that really bears mention is that I just loved being a lawyer. I come from a family of ten, and I was number nine. So to have somebody listen to me was just a really refreshing thing.

I am sorry, but I came along, I think, after Rod's five generations. But we did have wonderful lawyers, superior lawyers, that we could see every day. And there would come times when we would go to

court to watch a Bruce Stargatt or a Ned Carpenter or a Jim Tunnell. And we had the most amazing resource. We had the United Cigar Store. You could go there any time of the day or night and there would be a group around that table. And if you were looking for a motion to return property that had been seized or if you were looking for a motion for temporary alimony, somebody would have a paper there, and it was always freely exchanged. And there was never any animosity or anything like that. Lawyers who were on opposite sides of the case would meet there and have coffee and talk about how dumb or how smart the judge had been, depending upon whether the judge had ruled for them or not.

But that United Cigar Store was an amazing resource. I think a lot of us got a lot of education at the United Cigar Store.

**MR. CARPENTER:** That is a great story.

**Charlie.**

**MR. CROMPTON:** I will pick up two themes already begun by, I guess, Rod and Andy.

I always wanted to be a lawyer, too, with no genetic precedence like Rod, but I just came from a small town where everybody said, "Well, this guy can talk and write, he ought to be a lawyer."

I was fortunate enough to begin with two wonderful mentors. The first was Judge Rodney, who I clerked for in the court that Rod mentioned, the Federal Court, which was wonderful while I was there. Chief Judge Wright had Ralph Winter, who is now on the Second Circuit, as his clerk. Dick Sutton was Judge Steel's clerk. Floyd Abrams, a prominent New York lawyer, was the clerk for Judge Leahy, and I was clerking for Judge Rodney. We had a wonderful time.

Ed Pollard was the Court Clerk, who would make everybody's day a lot of fun, just by remembering everything that happened and everything that had been done wrong in front of him, especially breaching the Federal Rules of Civil Procedure.

When I finished, I went to work with what was then Berl, Potter, & Anderson. And Bill Potter was my mentor, and one of the best friends and teachers I ever had. A wonderful guy, who was maybe five-feet-eight at most. But people tell you today, he was six-feet, five-eleven. And whenever he approached the lectern, he would pull himself up to his full five-eight and looked like it.

I couldn't have asked for a better time and for a better mentor, in both personal and professional demeanor.

I also had fun. Judge Rodney was a charming man, as well as a scholar and a great judge. Bill Potter was a lot of fun, and a good lawyer, and a good businessman. He had built a great firm, maintained a great firm.

If there is a big difference I see between



the practice today and the practice then, I guess it's the tyranny of the time sheet. The business aspects of practicing law today are so overwhelming and they appear so early in somebody's career.

Associates, as Rod said, we have learned what they are. Leveraging, it's called. You expect a certain number of hours out of an associate, probably because you are paying them ten times what I was paid, or more than that. But it is a different atmosphere because of that business pressure. That also means there is less fun. There is less humor. There is less personal camaraderie, ability to be just frivolous sometimes. I enjoyed that with the mentors I had.

I want to mention one other thing, before we get to my friend on my right, because I had a great time in the early days of the sixties, when Governor Terry appointed the Corporation Law Revision Commission. Chief Justice Southerland was the chairman of a group that was charged with rewriting the Delaware corporation law, which had been dormant since the 1890s. Henry Canby, Dick Corroon, Irving Morris, Jack Killoran, Sam Arshat, and the laymen, or the non-lawyers, Marcus Story, head of the corporation department, and the corporation service companies, were all represented.

We, the committee, met for two years or so. We circulated the whole nation for comments on how our law should be changed. The committee met with a reporter, who was a professor of corporation law from Virginia (Ernest Folk). And then the committee assigned topics to each member. We debated them. Then they created a drafting committee of Canby, Arshat and Corroon, who dragged their legal secretaries, Walter Stapleton, Charlie Richards and me. And we met every Saturday for about a year, and argued over everything, commas, semicolons, how to number things. It was wonderful. It not only gave you an exposure to what I think were the leaders of the Delaware bar — the corporate bar, anyway — but also it taught you the corporation law.

That was an experience I don't think you can duplicate today. And, unlike Andy's unfortunate trip to the workhouse, I had

fun, even though every Saturday for about a year was given up to this group.

**MR. CARPENTER:** Very interesting story.

Judge Stapleton.

**JUDGE STAPLETON:** I, too, was very fortunate mentor-wise. In practice, Sam Arshat, Jim Tunnell and Andy Kirkpatrick were my mentors. When I got to the Bench, Ed Steel and Jim Latchum and Collins Seitz were my mentors and teachers. I was very, very privileged, and I learned one hell of a lot from all of them. I practiced from '59 to '70. I would have to say I think the Delaware bar during that period of time had about everything a lawyer could want in an environment in which to practice law. It was collegial. It was characterized by high professional and ethical standards. There was an awful lot of public service. Public service, community service, was affirmed and encouraged and subsidized. And I really don't think that is rose-colored hindsight. It really happened. Oral commitments you lived by day in and day out. You call up somebody and say I need an extension or I am going to object to this and that in discovery, and with very few exceptions, you could rely on that. And it made the practice of law a hell of a lot easier.

Ethics and standards were things that were discussed. I can remember, one of the first two or three days I practiced law, Andy Kirkpatrick told me the story of when Judge Morris sent Ed Steel out to the Midwest to supervise document production on behalf of a Fortune 500 company, a very old client of the firm's, Judge Morris's client.

Ed Steel got out there. And in the course of doing the search before the production, they found one of these smoking-gun documents. And they also came up with a theory that this smoking-gun document was not quite within the scope of the document demand. Ed Steel called Judge Morris, because it was Judge Morris' client, and Judge Morris told him to pack his bag and to tell them that he had his bag packed, and they were either going to produce the document or they were going to get themselves a new lawyer and he was going home. And this was an old, old, very important client.

Judge Tunnell, as much as he tried a case, he never went into court without a notebook, where he had outlined there, if not every question, every topic that he was going to cover with each and every witness, what he anticipated, and the cross-examination. I mean, we prepared and prepared and prepared and prepared. And it was all part of the culture. I am not a very good judge of how things have changed in the practice. I hear lawyers talk about less collegiality and less confidence in telephone agreements and that sort of thing. But I don't know, somebody else will have to comment on that.

I don't think, from my experience on the bench — which is a terrific organiza-

tion for passing the tradition of the bar, professionalism, down through generation to generation — I really don't think that ethics or the quality of the practice has suffered in the interim. I think, if anything, the bar is performing. While it is a different public service and we don't have the indigent defense work anymore, I think the bar probably does more now than it did then in the way of public service.

The quality of the practice, I am not quite sure why it is, but there is no doubt in my mind that the average performance before the District Court in Delaware is considerably higher, considerably, noticeably higher, than the average performance in the Third Circuit. It has to be preparation. I am not quite sure why that is. It



may be that if you are in a smaller legal community, you know you will be before the same judge again and again and again in your career, and maybe that gives you a little more incentive to be better prepared. But I think the Delaware bar is still turning out exceptionally fine work, I really do.

**MR. CARPENTER:** Thank you very much.

**JUDGE STAPLETON:** I have more stories about Ed Steel and Jim Latchum than Andy does about Judge Biggs. But I will save that for another occasion.

**MR. CARPENTER:** Okay. We hope we can get back to you.

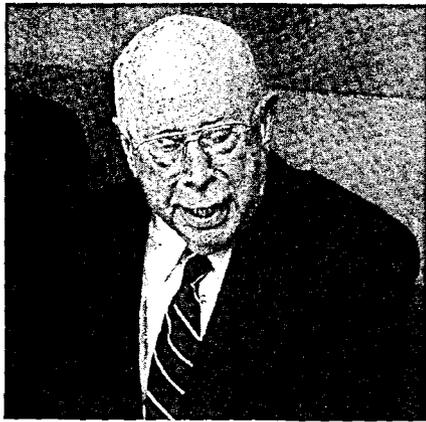
Judge Latchum.

**JUDGE LATCHUM:** Well, I am probably the oldest one here. The first three months of my clerkship was in 1941.

We still had common-law pleadings at that time. And it was also when I became a member of the bar after serving four years in World War II, we still had common-law pleading.

I can say that the older members of the bar here, I became familiar with because they would not permit anyone in their office, other than themselves, to accept service of a pleading after they adopted the new type of pleading that the Federal Court had.

So I used to be able to go over and serve a paper on Richards, Layton & Finger, but I had to see Mr. Robert Richards.



You couldn't serve it with the receptionist, with a secretary, or any other member of that firm. It had to be with the lawyer who was handling that case.

I remember the first time I went over to see Mr. Richards. I walked in there, and he had his head down. I walked up, stood in front of the desk, not knowing much what to do. I thought, maybe, maybe he will speak first — I better not say too much about him because he was a pretty austere old fellow — he was the chairman of the Bar Examining Committee when I had filed as a preceptor. And you had to do that before you went to law school, and he could head you off at the pass if he wanted to. He was a very austere man.

After while he looked up, he says, "What is it you want?" And I said, "I have a paper here, sir, to be served on you." And he took it and he looked at it, and he signed it. Then I started out. He said, "Come back." And I came back. And he says, "Who are you?" And I told him my name. He said, "Are you any relation to Senator Latchum? And I said, "Yes, he's my father." He said, "All right, I will know you the next time."

I knew Judge Morris. My father introduced me to him when he was a district judge. I was about, I guess, 10 or 12 years old. I knew Judge Rodney long before that, because every time Daddy would come to Wilmington, he would always go in to see Judge Rodney because they both re-fought the Battle of Bull Run in 1900 and 1901. Judge Rodney was in the New Castle Militia, my father was in the militia. The militia, of all the several states around, went down and had a big formation at Bull Run and they re-fought the battle. And my father said he carried Judge Rodney on his shoulder across that stream. Anyway, they used to talk about the Battle of Bull Run.

But if you ask me, it was a different world then. There was a different type of pleading. There were very few lawyers that could draw a declaration that would get through the first demurrer. Bill Prickett was probably the only one. You really had to know what you were doing. You had to think about it, because you repeated yourself six ways backwards to get one that would go through the Superior Court the first time, without being dismissed or have a demurrer being issued,

which means that you had to go back, redo your declaration, repeat all that stuff a hundred times.

I remember when they came with the new rules, Clarence Southerland, he was like the older ones, wasn't used to it. Bill Prickett fought that thing. He didn't want the new rules. And Judge Southerland didn't want it. He thought it was terrible to have notice pleading. And I remember Southerland saying, "Oh, you can draw a complaint now. All you have to say is, You hurt me, you hit me, you hurt me, and pay me." And you got a completely good declaration, it would get through, no demurrer, no dismissal.

So what has changed? Of course, there were only five Superior Court judges then. There was one for each county, one at large, and the chief judge, I guess he was called chief justice then. You only had a chancellor and a vice-chancellor. And the vice chancellor at first was nothing but a master. It was a couple years that he was made a judge who could sign his own orders.

At that time Delaware had about 125, as I recall, practicing attorneys. Now, there were more on the record as being members of the bar, but many of them no longer practiced in Delaware, or they practiced in other states, or they were retired, or just quit the practice of law and moved away. But there were really about 125.

In Dover, I think there were only about 20-some, and only about four would ever go into court. They didn't want to try a case. They would settle it out.

I remember, when I was first in Potter Anderson's office, Berl Potter then, Dan Wolcott came over to me. He had gotten a letter from his brother-in-law, Max Terry. Max wanted him to handle this case, which was against Ernest Keeve. And he says, You know, this is stopped by the statute of limitations, which prevents this thing. But Max didn't want to file it against another lawyer in Dover, because that lawyer might file that kind of a notice against him. So Dan turned it over to me. And of course I filed a motion to dismiss or demurrer, whatever it was at that time, citing the statute of limitations. It got dismissed. But that was the kind of thing that would happen.

Now, we didn't even keep time in our firm until the year before I went on the bench, which was in '67. And that came about by Connie Murdoch, who came in then, and insisted on keeping records of our time.

Well, it took more time keeping your time than it did anything else.

I will say that it did pick up little odds and ends and increase the monthly intake.

But I always felt that we changed from a profession to a business. The Supreme Court of the United States didn't help anything that way when they started saying, oh, you can advertise, you can do this, you can do that. They just turned the practice into something that it wasn't when I started practicing law.

I didn't know what pro bono was. But Judge Southerland had a policy in that firm that if anybody came in here seeking some kind of legal advice, they were to get it whether they could pay for it or not. Or he said you had to charge them what you think they could pay. And that's what we did. Now, he didn't say pro bono, you got to do this, you got to do that. That was the law.

We had a thing, we never sued a client. Our firm, as long as I can remember, would never sue a client. They said that was undignified. But today, they are fussing about fees, one another to lawyers, fussing about fees and one thing or another. It's just a different situation.

Now, I could go on and talk about everybody from Andrew Grey down, because I did know Andrew Grey. I met him when the old firm was in the DuPont Building. And I was a young man, and my father came up to see him. They were both involved in Democratic politics. When my father used to come to Wilmington, I used to come with him. He used to say, "Now, son, you listen and don't say anything. But after we leave, you can ask all the questions you want and I will tell you what was said and what the background of it was." And he did. Thank God, I haven't got a good memory, because if I wrote down everything I knew about everybody in the State of Delaware, about half of them would go to jail.

**MR. CARPENTER:** Thank you very much. I am going to come back to you



give you time to discuss Andrew Grey. Justice Hartnett.

**JUSTICE HARTNETT:** The practice of law, when I started — and the other reason I am kind of the odd man out here is I, of course, practiced law in Dover. When I started practicing law, I suppose there weren't more than 12 or 13 really active lawyers. As Jimmy said, there were probably 20 lawyers in Dover. And almost half of those were sort of semi-active. They were in their eighties, and no one ever stopped practicing law. They keep on writing deeds and writing wills up until they die.

So it's an entirely different background than you all are used to in Wilmington.

There were no law firms in Dover at all, except for one, called Hope & Harmonson, which really wasn't a law firm, because Mr. Hope, the senior partner, was 85 years old. He spent six months in Florida in the winter and six months in Dover in the summer. While he was in Dover he always had a huge, thick overcoat on the entire time he was in Dover, even in the summer. Mr. Harmonson, it was his law firm and Mr. Hope just hung out there when he came to Dover. Of course, you know, it puts an entirely different color on how law was practiced.

And Dover had its eating place, too, just like Wilmington, I remember very well United Cigar. But in Dover it was a luncheon place, the Dover Tea House, next to Capital Hill. And most of the lawyers, active lawyers, would show up there for lunch at least once or twice a week. It was not unusual at all to go during a trial. Usually most trials were just one lawyer on either side. There were the lawyers and the judge would come and eat lunch together during the trial. Sometimes the jurors and the witnesses thought that was kind of strange. But it really wasn't. They didn't discuss the case during lunch.

But it was very difficult to eat lunch with a fellow lawyer and go into court and be nasty to him. And that's why, I think, one of the reasons that nastiness has crept into the practice of law. It just wasn't a thing you would do back in those days.

Well, who were my mentors? Like Bill Quillen, Judge Terry, of course, was my number-one mentor. He was, you know, a great person, just absolutely a great person, with tremendous personality, and impressive.

How it all came about, I guess, is when I decided to go to law school. Judge Terry lived a block away from my parents. And he had grown up with my mother and father.

After dinner he would love to go out for a walk every night, something that was done in those days, a hangover from the Victorian days, when the people would go call on their neighbors and even leave cards if the neighbor wasn't there. I don't think Judge Terry left any calling cards around. But he would just pop in. If there was an open door, he would say, "Anybody home?" He would come in, chat with my father, and go on.

During World War II, I as a young man would listen to my father and Judge Terry talk about the war and what a terrible job the Americans were doing, especially in the Navy. They thought the Navy was just doing terrible. Of course, nobody knew that the Battle of Midway was a victory until many, many, many months later.

Anyway, he came in and he said, "Maurice, are you going to law school?" I said, yes, I was. And he said, "How would you like to be a clerk this summer?" I said, "I don't know." He says, "I went to a judicial conference out west and all those judges were talking about

having clerks. I decided I got to have one, too."

He said, "Unfortunately, there is no money in the budget."

Now, back in those days, the county paid all the judicial expenses. They didn't set the judge's salary, but they had to pay it. And they paid all of the fees, all the attaches and everything else, it was voluntary. All those costs were paid by the county.

He said, "The county doesn't have anything in the budget for law clerks, but they do have it in there for pages." He said, "I don't know what pages are. We haven't had them for a hundred years. But they still have in the budget \$300 for pages." And he says, "I would like you and Arthur Edgeworth — who was a contemporary of mine and who became a Delaware lawyer but practiced in the District of Columbia — he said, "I would like you two to be my law clerks this summer, if you don't mind working for \$150 each." I said, "Well, we will do it."

So that's the way it was. We worked for \$150 each that summer, starting out as Superior Court law clerks.

I think as Chief Justice, which Terry was for only about a year and a half, I think his method of administration is something that we really haven't seen in this state for a long, long while. Whenever Terry had a problem with a trial judge, he didn't call him up and say, "Come up here. I want to talk to you." He would go down and see him.

He would go down and knock on the door or he would call ahead of time and say, "Judge so-and-so, could I come down and see you?" Of course, they would say yes. He would go down, and he would say, "There is a problem we have. I came to work this out."

He was always able to work the problems out by that system, by that method. That was sort of typical of what his philosophy was.

Another thing that I think has changed so much, which we all know but we don't think about, is how the machines, et cetera, that we now use have changed the practice of law tremendously. When I started practicing law in Dover, nobody had an electric typewriter. The reason I got an electric typewriter is that when I went to hire a secretary, she insisted I get an electric typewriter because she had been taught on an electric typewriter in school. There were no such things as copiers, and no such thing as a fax.

The bane of the secretaries' existence was carbon, because it came off on your fingers and every secretary came home at night with ink on her fingers, because that is how you made copies. Of course, that is all changed now. We are now slaves to a paper trail.

Something that I always thought was kind of cute was one time Henry J. Ridgely gave me a case to work on. I started going through the file, and I found a letter there from a lawyer

addressed to Henry saying, "Dear Brother." I thought, "Dear Brother"? I didn't think Henry Ridgely had a brother. So I asked Henry, and he said, "Oh, that's the way we used to talk to each other back in the twenties and thirties. It's kind of died out now. But lawyers would always write letters and refer to each other as "Brothers," which I think sort of showed the way that lawyers felt about each other.

Have I used the five minutes up?

**MR. CARPENTER:** Well, why don't we come back to you and go on. I know everybody here has lots to say.

Lou?

**MR. FINGER:** My turn to talk, I gather.

**MR. CARPENTER:** It is your turn to talk.

**MR. FINGER:** I will try.

Up until the time Jim Latchum started to talk I thought I was the oldest fellow in this room. And after listening to him for a while, his schedule, I concluded he probably was a few years older than I was.

**JUDGE LATCHUM:** I think so.

**MR. FINGER:** Although we took the bar examination at the same time. But that was just due to the fact that there was a war and we were all off to war, and there wasn't anybody to take the bar examination, I gather, or there was not enough of them. We got a whole group of them all of a sudden — in 1947, was it?

**JUDGE LATCHUM:** I took it in '46 but I didn't get admitted until '47 because I still had three months to go on my clerkship after the war.

**MR. FINGER:** Well, I think I probably took it in '46, also, because there were 17 of us at the time.

**JUDGE LATCHUM:** There were 12 of us at the time I took it.

**MR. FINGER:** You might be ahead of me or I might be completely wrong on the figures.

**JUDGE LATCHUM:** We are close, close to a lot of things.

**MR. FINGER:** I started law school before the war, and I finished after the war. I went to that radical law school up in New Haven where we had professors who had ideas that the purpose of the law is to keep pace with what would be prop-



er social progress. That the practice of law and pleadings should be simple and complete. And one of the leaders on that was Dean Clark of the Law School, who had headed a committee to modernize the practice of law, the pleading part, to conform to the ideas that are current now. That is, the complaint is supposed to be a simple statement of what your grievance is. The answers are to be simple. It did away with demurrers. And I don't even remember the names of those pleadings. They had an approach which they called — which of course, I knew perfectly well what it was called, but at my age, I don't remember anything.

I guess I was destined to be a lawyer from the day I was born. My father was a lawyer, and he was a partner with Robert H. Richards, had become a partner with him in 1912, when he was admitted. He had a rather unique situation. He was the first Jewish lawyer who was ever admitted to the bar, and he never finished high school, let alone college and law school.

In those days, you had to take an examination from professors at the University of Delaware on a string of subjects which I doubt that I could pass now. I think my father's ability to pass it was largely due to the influence of Robert Richards. He studied. His father was a letter carrier in the city of Wilmington. And his duties took him up to the offices of Robert Richards, where he informed Mr. Richards that his son had just graduated from Goldey-Beacom and had become proficient in typing and shorthand, and if there were any place that he could have a job.

I guess that must have been around 1906 or something like that, because his father died shortly after that. And he, along with his older brother, was left with the job of supporting their three younger brothers and sisters and his widowed mother. And Goldey-Beacom was a step in that direction. And he went for that job.

In the meantime, he had gotten a job as a runner for the DuPont Company, which was an additional job for him. Then he thought he would be interested in being a lawyer. So he asked for permission to study law under Robert Richards, who became his mentor. He took the bar examination, such as it was in those days. He passed, and he was admitted to the bar in 1912.

I, of course, was not around at that time. I was not born until 1920. And it seems to me that from the date of my birth in 1920 until February of 1947, when I was admitted to the bar, I was destined to become a lawyer, with a military career that interrupted it for a few years.

The bar examinations were really interesting at that time. Somehow or other, I managed to learn enough about ancient things, which were taught in a way at Yale Law School but not in the same way

that they were taught at other law schools at that time.

Nevertheless, I was informed that I had the second highest grades on that examination. I was told that I had only flunked one subject. That was the subject of procedure. And I remember specifically one question that was asked. Mr. Prickett, Sr., of course, was the leading authority on common law practice and procedure. He had a question, which was to draw a nar, as they called them, that is, the narrative. That pleading, which was officially called the declaration, was the equivalent of the complaint today.

One of the questions that they asked was to draw a nar on a complaint for fraud in which you had to have each of the five elements. Of course, you had to know the five elements of fraud. I don't know if I could recite them now. I could in those days. One of them was action in reliance. And Mr. Prickett gave the facts, which did not include any action in reliance.

So I proceeded to draw a nar, attempt to draw a nar, in which I thought I used a lot of ingenuity to cite an action in reliance, although I knew it was not any good. And I was told that I had flunked that question because the proper answer was there was no action in reliance and



therefore I could not draw a nar.

Now, that struck me as really a fair way to question upcoming lawyers.

I was admitted to the bar in 1947 — finished law school, was admitted to the bar, and went to work for Richards, Layton & Finger as a clerk, in a six-month clerkship. And as was the custom in those days, I got paid zero, just like any other person clerking to be admitted to the bar. But when I was admitted, I got paid more than the other people going to the big firms were paid. They were only getting \$150 a month, plus half of whatever they bring in, which meant for the most part, they were getting \$150 a month.

I was paid \$200 a month, and it didn't make any difference what I brought in. I actually brought in some things, which might have increased it by two dollars and fifty cents on occasion. But that's the way it was.

We had no mentors. If Robert Richards wanted something done, he had me at

the time, and another fellow, William E. Taylor, Jr., who was with the firm at that time. Apparently, he was not in favor with the partners, so I got the jobs. That kept me busy, and I was learning in the process. And then the next year, they got some help. I got some help, too, with Ned Carpenter and Rodney Layton when they came into the firm in 1948.

**MR. CARPENTER:** Thank you, Lou. That is a great time to pause. And let me go on and get back to you, if I can. Joe.

**MR. ROSENTHAL:** Hearing everyone has brought back a lot of memories. This will be very disconnected.

Let me start by saying I, too, was one of those young lawyers who served papers, and I can recall serving Mr. Finger. We always called him Mr. Finger. I don't know anybody who called him Aaron Finger. So I served him. And I said to Mr. Finger, "Will you accept service" of whatever it is? He said, "No, I will not accept service. I will acknowledge service." So I learned a lesson right there, to be very precise.

The major difference between the practice then, at least from my perspective, and the practice today is that in those days, I will use this phrase loosely, we were actually practicing law. We did a lot of things. We were in Family Court. We were in the Court of Common Pleas. We were in Superior Court. We were in the Municipal Court, the Justice of the Peace Courts, the Court of Chancery. They had a separate Supreme Court. But I rarely, in my younger days, of course, saw that.

Today, the lawyers are specialized. There are an awful lot of young lawyers today who have never been to the Family Court. Maybe that is just as well from the Court's perspective and their perspective. In any event, I have always thought a lawyer, even a highly specialized lawyer, is better equipped to handle the practice of law if he or she has broad experience dealing with human beings, dealing with the various kinds of cases that are dealt with in the separate courts, dealing with clients who have a variety of problems. The focus today, however, is largely sort of a one-way street. And that is all the young lawyers seem to be exposed to.

That is good and bad. They don't have the broad experience, the broad background with which to address problems, which I think is invaluable to the practice of law.

On the other hand, they know their field, I think, much better than I certainly did when I started practicing. And if somebody asked me a question about Family Court, I could speak from a very generalized experience, but I really wasn't a specialist as some lawyers are today.

But it was fun. I mean, there were some, I will call them characters. Judge Reardon, for example, Francis Reardon — you will see everyone is smiling, that won't appear in the transcript — but everyone remem-

bers Francis Reardon. I can recall appearing before the late Judge Melson, not the son, the father, representing a woman who was accused of adultery, and he almost laughed me out of court. He said, even if I found her guilty, she would only be charged \$25, why are you wasting the court's time with that kind of a defense?

I was also very fortunate because most of my practice subsequently turned to the Court of Chancery, which I think is one of the great judicial institutions, legal institutions in this country.

If I had one mentor, it would be Judge Seitz. He was not simply a judge going by the rules, but he really took the word "equity" seriously. It was a wonderful experience to see the law applied in a manner that really attempted total fairness and equity to all concerned. His successors, I think, have lived up to that tradition. Bill Quillen was certainly one of the great chancellors. And we have a wonderful bench today. I won't name anyone, because I probably would leave some out, and that would do a disservice to those who really deserve mention. But the court has kept up its tradition. And it is acknowledged now as a national institution.

Anyone who practices in Delaware, and is fortunate enough to practice before the members of the Court of Chancery, is experiencing something which I think very few lawyers elsewhere can possibly imagine. From a variety of accounts, I have a sense that some people think that some of their state court judges in other states — I am talking about other jurisdictions — are not up to snuff. I think a lot of that is probably untrue. But nothing, nothing like the Court of Chancery, I think, appears in any other state. And for me, as an individual practitioner, that has been an absolute joy. And it is true of course with the District Court and the Supreme Court.

I rarely, rarely get to Superior Court. It's been a long time. So I can't speak about the Superior Court. One of the last times I appeared before the Superior Court goes back to the days when Judge Terry was sitting. And I only mention this story because I don't want any one of today's young lawyers, particularly those who read this article, to think that the icons who have been identified here were less than human. As human beings, they had faults. And I want to tell everyone that I tried a case before Judge Terry, seeking to direct a corporation to let me inspect its books and records. In those days, that goes back a long ways, Superior Court had exclusive jurisdiction over a books-and-records case. And that case is still pending.

(Laughter.)  
**JUDGE QUILLEN:** You will get an opinion from Judge Story soon.

**MR. FINGER:** I want to tell an anecdote about Judge Terry. There was a lawyer in town by the name of Steve Hamilton. He was quite a good lawyer

from an academic standpoint. And he was arguing before Judge Terry one day. And in the middle of the argument, the argument had gone on for a while, Judge Terry asked Steve Hamilton a question, which showed he didn't understand what Hamilton was saying. And Hamilton, he threw up his arms, turned around and walked away, and then came walking back to the bench. Everybody in the courtroom was waiting to see what was going to happen. And Judge Terry said, "Now, Mr. Hamilton, you must have patience with the Court. I am trying to understand."



**MR. CARPENTER:** Thank you very much, Joe. Harvey.

**MR. RUBENSTEIN:** Well, I came to Delaware to serve as law clerk for Paul Leahy, who was then Chief Judge of the Federal District Court. I had already taken and passed the Pennsylvania bar, and was admitted to all the courts, fully expecting to return there. It was during the latter stages of my clerkship when Judge Leahy asked me if I might be interested in staying in Delaware. And I said, Well, I really like the community. It was much different from Philadelphia.

And he said, "Well, if you do decide," he said, "I will act as your preceptor."

So I gave it some thought, and eventually decided that perhaps I would. So he served as my preceptor. And I went down to the Bar Examination Office to see what the requirements there were. And in those days, you had to have certain requirements, as I recall, in English and history and social studies. And one of the requirements was Latin. And I had never taken Latin in school. And when I told Judge Leahy about it, he said, "Well, that's no problem." And he picked up the phone and he called a priest at Salesianum. Apparently, this had occurred in the past. And he made an appointment for me. Salesianum was then right in town. The school was in town, had not yet moved. And I went over there, and we arranged that I would go there three times a week. And they gave me exercises to perform, which I did on the buses and subways and trains, because I was still commuting.

Finally, I reached a certain point of proficiency, and I was certified as having passed the requirement. And actually, I enjoyed Latin. It is a very structured language. It is, I guess, the parent of all the Romance languages. Quite frankly, I am sorry that I really didn't take it. I think I would have enjoyed three or four years of Latin.

In any event, on June 1<sup>st</sup>, 1967 — I was admitted to the Bar in 1957 — on June 1<sup>st</sup>, 1967, I opened my own office as a sole practitioner. From that time forward, the only person I had working with me was a secretary. I have had no paralegals and no assistants and no other attorneys. So it has been perhaps a different experience than many other people may have had.

I enjoyed working in the law library, actually having the feel of books in my hands, as opposed to a computer giving you 137 cases, all defining a certain word or referring to a certain phrase. I loved the feel of having books strewn around you and actually looking from one decision to the next. You get an historical feel for how the law developed that perhaps I think you lose today.

I think the personal relationships are pretty much the same. There were fewer of them in those days because I think there were fewer lawyers. But I have found that lawyers today are very personable. I don't have any observation to make about that.

I really think the Bar Association has done a tremendous job in bringing lawyers together and organizing the kinds of things that are required with the bar. I remember a past president of the bar used to just transfer the file from one president to the next president. So we have come a long way, with the Bar Center that we have, since then.

**MR. CARPENTER:** Thank you very much. Don.

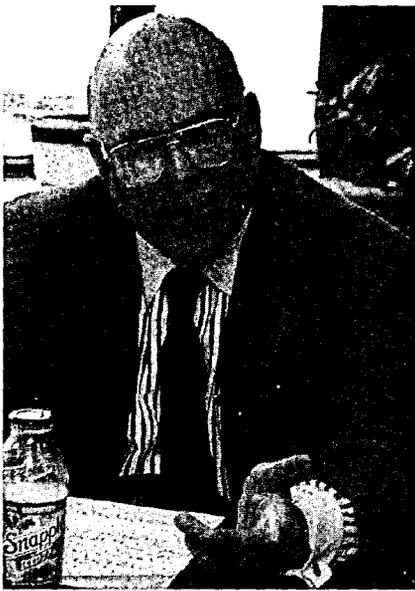
**MR. TAYLOR:** Thanks, Ned.

First of all, unlike so many of you, I knew I wanted to be a lawyer from the time I was very young, being a native from Delaware, born and raised here, I didn't think of anyplace else except Delaware.

However, I was first admitted to the District of Columbia bar, but that was only because we took the bar there, I passed in 1954 — about 50 percent were failing the first time here, we didn't have any cram course, so those who failed would go down to D.C., take a cram course, pass the D.C. bar and come back up here and pass the Delaware bar the second time. I thought, well, that's dumb. Why not go to D.C. first, take the cram course, pass the D.C. bar and then pass the Delaware bar?

And it worked very well, since I passed the Delaware bar the first time and was already admitted to D.C. before I had to take the Delaware bar, so I walked in with confidence that I could practice someplace, anyway.

I feel very blessed that I was able to prac-



tice in Delaware and be associated with fine people like yourselves. It was funny, talk about the court-appointed criminal cases and how that was a good experience for all of us. I was admitted to the Delaware Supreme Court. Within a week I got a letter from the Federal Court appointing me to try a case in Federal Court. A man had stolen a marked Air Force car, drove it across state lines and stolen chickens down in Sussex with it, and still drove it to New Castle County. I never understood that.

But I called the clerk and I said, well, I can't try this case. I am not admitted in Federal Court. He said, "That's all right. We will admit you the day you plead him guilty or the day you try the case." Newt White tried it, and Judge Leahy was the judge, and my client was found guilty. Dumb me, I told him we could appeal to the Circuit Court. I didn't even know I had to wait three years or whatever it was to get admitted to the Circuit Court. And the client told me after the trial he really was guilty so I shouldn't worry about it, even though we got him off half the charges. We never appealed that one.

The only other case I had before I got drafted, six months from the time I was admitted until I was drafted, was a federal civil case. I then got drafted and went to Korea, and ended up as secretary for the commanding general of the 24th Infantry Division.

When I was rotating home, the assistant division commander, General Bonesteel, called me in and said, "Don, you have been a great soldier. I want to do something for you."

And I said, "I don't know what you can do for me, but thanks, I appreciate your comments." But, he said, "I was a Rhodes Scholar. I know James Tunnell and Bill Poole well and I would like to write to them and give you some friendly advice."

He said, "Maybe you should go with a firm." I said, "Thank you, sir." I thought, these men don't know who Don Taylor

was. They will never call Don Taylor. Within a week, I had a letter from Justice Tunnell and Bill Poole. And they didn't know Don Taylor from a hill of beans.

Justice Tunnell. I went in to see him, he was very kind, and he said, "You can't be as good as General Bonesteel said you are. If you want a job at our firm, you can have it. But don't. If you want to go on your own, that is how to learn to practice law and really practice. Build your own firm," he said.

I went to see Bill Poole, and he gave me just about the same words and advice. And they were both right. Later, thanks to Judge Rodney, I formed a partnership with Ned Cooch. We never had an unkind word. But he is still goofing off. He doesn't come in until 9:00 and works till 4:00, five days a week. It's awful. I try to set him straight. It doesn't work.

I did start on my own, but Judge Rodney called me over and said, "I need a law clerk. Tybout is going over to the Attorney General's office."

Dumb me, I didn't know how great it was to be a clerk for Judge Rodney or any other federal judge. And I said, "Judge, I am honored you have asked me, but everything is going so well on my own, I want to stay by myself and build my practice." And he said, "Don, I can't say you are wrong," but for two hours he told me how I was wrong and how we could work it out — how I could still do research at night and things for my own practice and so forth. So that was obviously a great mentoring experience.

I saw great lawyers, like Ned Carpenter and Lou Finger. I remember the Beechcraft cases. They were great. Of course, then we had contributory negligence as a complete out, and you guys were brilliant and you got the commercial pilot to say, make it clear that that was contributory negligence on the part of the dentist who was killed in that flight. So I was very impressed.

I saw some really good lawyers and learned a lot just by watching gentlemen like the two of you and other people over there.

I think it was Abe Hoffman — I remember when I first saw him over there. He would stumble around, and was tied in with New York lawyers on maritime-type stuff. And I thought, God, he's not very smart, he is always stumbling. I later realized though, that he was the greatest actor in the world. He would stumble before the trial, and you could see people trying to help him out and so forth. The New York lawyers on the other side would put on such a show. He won every case. The jury kept pulling for him. He was a local boy and did a great job.

I enjoyed Judge Rodney, obviously. Then, I went strictly on my own. The Judge suggested Ned and I go together. Dumb me, after talking to Ned several times, I went back to Judge Rodney, said, "I am honored going with your son-in-law, but everyone is going solo, I will stay by myself." And the Judge said, "I can't

say you are wrong," and told me for two hours why I was wrong. Obviously, he was right again.

I could bore you for hours and tell you how great Judge Rodney was. All have similar stories, I am sure. One nice thing, when I was in Korea, the general took his R&R. His driver, me, a secretary and his orderly had to go at the same time. So I went to Japan. Dumb me, suddenly all the other guys disappeared. And I couldn't figure it out. Then I realized, wait a minute, I am married, I am not looking for the same thing these guys are, and they found what they wanted and they are off. So I had nothing to do. Dumb me, I went to the Supreme Court of Japan, knocked on the door. Can you picture going down to Washington and knocking on the door of the Supreme Court and saying I want to come in?

The law clerk finally came, and I told him I was a lawyer from the United States, I would love to come in and see the Court. He said, "I will ask one of the justices," and he did. And I was allowed in. And he introduced me to some of the justices doing research. They had the Federal Reporter. I went over to the Federal Reporter and pulled out the case that I had been involved with, my one civil case, which was reported in it. I cannot explain — when you are unhappy, your wife and child are in Delaware, you are in Korea or Japan at that point — and to see your own name in print and have the thrill of saying, "I am a member of the Delaware bar" — that is great. And I showed it to the law clerk. He was so funny. He kept running to the justice of the Supreme Court, saying, "That's him, that's him, that's him," and pointing to my name.

That was a great thrill, and it brought me back down to earth about what a real pleasure and privilege it was to be a member of the Delaware bar. Of course, I think we had more time active in politics. It seemed to me every young lawyer was either with the Young Republicans or with the Young Democrats. At that time I was treasurer, and Bill Roth was president.

The senior party had a trailer that they had used for campaigning, and they needed to sell it. So they said to the Young Republicans, "Get rid of it." Roth said, "Don, you are treasurer, you get rid of it." I had two guys hard-headed bidding against each other. Neither wanted to give in. So I got about twice as much as I should have. Mr. Richards couldn't believe it.

I got summoned to appear before Mr. Richards. So I appeared, shaking in my boots a little bit. He wanted to know how I managed to do all this. We talked a while. Next thing I know, Ned was the chairman of the Platform Committee that year, and here is a Young Republican, I got appointed to tag along with Ned on the Platform Committee. So that was another event that was pretty neat to me as a young lawyer.

Later in my career, Judge Latchum



appointed me to a criminal case in the Federal Court. It took five weeks. The government's case was five weeks, my case was only two weeks. He let us off on Fridays. For a real estate lawyer it was pretty neat, trying a criminal case again. We appealed that to the Third Circuit, and there was a conflict between Circuits, so I filed a petition for *certiorari* in the United States Supreme Court. Unfortunately, they did not decide to hear me. Maybe that was just as well. I am sorry I drove the poor judge nuts.

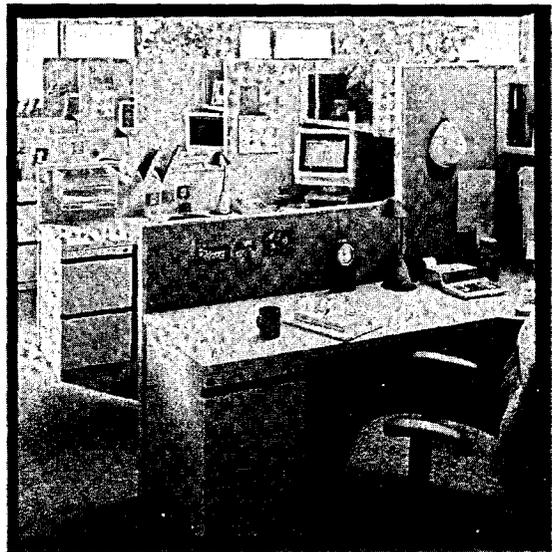
**JUDGE LATCHUM:** Thirteen defendants, 13 lawyers, all as good as a couple of them are in here.

**MR. TAYLOR:** And I had the lead guy, unfortunately.

**JUDGE LATCHUM:** You kept me on my toes, I will tell you.

**MR. TAYLOR:** That was interesting. Well, just to sum up, I am probably out of time here, but, yes, things are different. But they are still great. I got out of other things, like divorces that upset me and trial work that even when you win for people they don't seem happy about it. I got into real estate because I always felt, a buyer wants to buy, a seller wants to sell, everybody wants to get together. If you can do a good job getting everybody together, then basically people are happy and you feel you have helped people out. Again, I realize the bar is changing. But the commercial real estate bar, to me, hasn't changed. It's still complete courtesy, completely helping each other. Pointing out when you make a mistake, even yourself, "Hey, that's not what we agreed to, it was this, even though it would be in his favor or her favor."

I feel very blessed to be a Delaware lawyer. At this time, being blessed to be chairman of the board at Dickinson Law School where I graduated is even neater. I love being with those students and love congratulating them when they get their diploma. About a third of them give me hugs, because I do pay attention to them when I go up there and try to learn their problems and help them.



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**MR. CARPENTER:** Thank you very much.

Bruce, what can you tell us?

**MR. STARGATT:** I look around the room here, talking as we all are about the Delaware bar and our feelings. I know you have all noted, even though you haven't said, here we are, of advanced years, but still friends, each and all of us.

There is nobody around this table who I don't regard as a friend, don't know very well, haven't known for a lifetime, and haven't had a myriad of contacts with.

Harvey and his dear wife who we lost recently, we have been friends forever. He is just taking over as new Chairman of the bar Foundation. Joe and Joan, likewise, I have known them for years.

Louie and Dorothy, ever since we came to Wilmington we have known them.

Mo Hartnett and I took the bar in 19 — I guess it was '55.

Judge Latchum, I am going to come back to you because I have a good Judge Latchum story. Knowing how involuble you are, I know you will let me tell it without saying a word.

Judge Stapleton I knew at a time when he was a great corporate lawyer. Charlie, of course, and Jean (and now your wife Mimi), I have known forever.

Toni and Victor, I have known you forever. Victor probably has done more for lawyers in this state than anybody in their lifetime.

Andy, we have been dear friends for years. So too with Rod.

Bill and Marcia, we still see each other for dinner every few weeks.

Ned and Carol. Ned is a lawyer's lawyer. But all of us know each other. And we have for a lifetime. What other state has a group of lawyers who could sit down at a time like this, around a table like this, sharing those same sentiments? If there are any others, I congratulate them.

The Judge Latchum story I have to tell also ties in with Judge Leahy, whose name was mentioned before. When I first came to practice law in Delaware, I went to work for Hy Young, who was then recently finished as attorney general. Just the two of us. We have a much larger firm now. But at the time there were only the two of us. I was doing the same things that others have said they were doing, the Magistrate cases and Family Court cases and what have you.

But I had a case involving the Pennsylvania Railroad, some guy named Marciniak was hurt on the Pennsylvania Railroad. The case involved some interesting issues. Jim Latchum, whose firm represented the railroad, was on the other side. Hy gave the case to me to take care of. It was my first appearance in the District Court. It might have been a motion for summary judgment. The reason I particularly wanted to argue that case was because it was before Judge Leahy. And while I was in law school, Leahy had earned a national reputation. My professor, who was Judge Moore,

greatly admired him.

So I stood up before Judge Leahy, and I said, "Judge Leahy, I want you to know — it may not be appropriate to say this, I haven't had that much experience — but I want you to know what a pleasure and privilege it is to be appearing before Your Honor. I have heard about you in law school, and it's a real honor."

And Leahy looked at me and looked over at Jim Latchum and said, "Mr. Latchum, is it a pleasure for you to appear before me? And Latchum looked and said, "It's a real privilege, Your Honor."

(Laughter.)

After being suitably chastened, I went on with my argument, and I have no memory whether I won or lost.

I think Hy Young was the best trial lawyer that I have ever heard. He was marvelous on the facts, a great cross-examiner, a marvelous oral advocate in closing. And he looked the part of a lawyer. He was always beautifully dressed, dapper, mustached, never out of place at all. A different suit every day in court. And just a genius in terms of finding those few things that are going to be interesting to a jury and emphasizing them.

The best appellate advocate I ever heard was Jim Tunnell. I argued many cases against Justice Tunnell. The most difficult part I had, in terms of the argument, was trying to pay attention to what I was thinking of, because my mind would always go over to what he was saying. He was so good that I had trouble concentrating on my own presentation.

But all in all, it's been a good life, and I am pleased, and I am honored to be sitting here around the table with you guys.

**MR. CARPENTER:** Thank you, very much. And thanks to all of you. I said we would be here a couple of hours. And we have been here.

**MR. WARD:** Ned, you have got to say something.

**MR. CARPENTER:** Actually, I was also asked to write an article for *Delaware Lawyer*, which says very much the same thing I would have said here. So you are all going to be exposed to that in any event before this is published. But I did want to say this, that in these last few minutes I wonder if some of you felt you were cut off before you were finished. I know Judge Latchum did, and would like to —

**JUDGE LATCHUM:** The only thing I want to say is we have just scratched the surface here. If you wanted to make a record of what the bar was from B.C. to now, and there is not one in this office that I haven't been involved with in some way or another. There is Rubenstein down there and Morris, we were on a Commission together. I remember a case I had against you, Ned, you held my feet to the fire and won the damned case, before Judge Duffy. Do you remember that?

**MR. CARPENTER:** I do.

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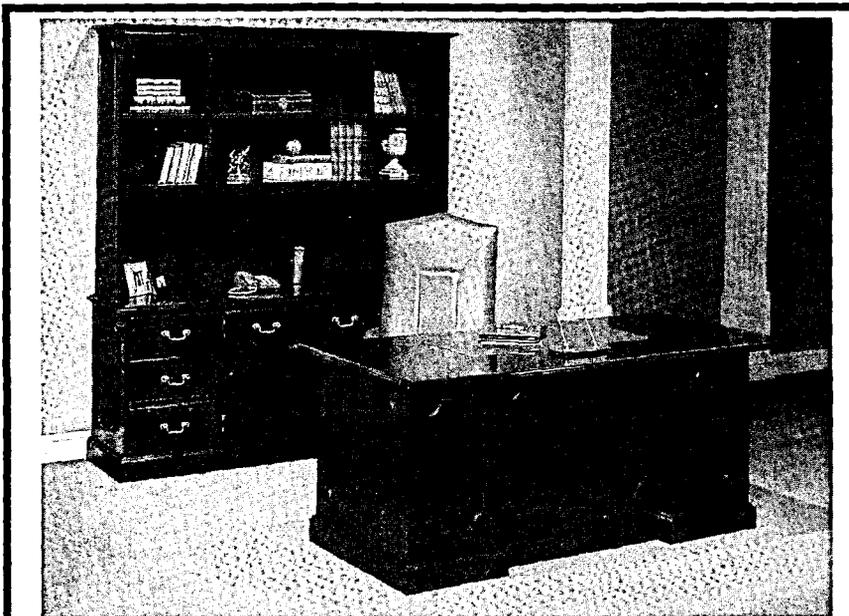
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**JUDGE QUILLEN:** I remember it, too.

**JUDGE LATCHUM:** I have known everybody here one way or another, you in the firms, on the bench together, or have appeared before me. And I will remember what Donald says, I had 13 lawyers in that FBI beating case, that's when they were marching and going to march around the courthouse, and I luckily found a case down in Louisiana the Supreme Court had written. Justice Black had written a decision that you couldn't do that, even though it may be freedom of speech and this, that and the other, but you could not intimidate the jury. And I said, "Oh, my Lord, I have had every other problem in this thing and I don't want them intimidating that jury."

Well, I called Tommy Hughes. He was involved in ACLU. And I said, "Tommy, I understand that somebody in your organization is going to organize a march." I said, "Now, I want to tell you beforehand, if you do, you are going to have to contend with me because I am going to have the Marshals put you all in jail." And I said, "Won't you please, just for the sake of a fair trial, and I will try to give it to you," but I said, "Don't do this." And I don't know if Tommy went back and talked to somebody and avoided that.

But it was a three-ring circus, wasn't it, when they huddled in the center. Every time we would have the lawyers up to sidebar, it was like a huddle, not only the 13 lawyers, but there were 13 defendants. It was a hard trial. But we got through it. And I think justice was done, even though they let some off.

(Laughter.)

**JUDGE QUILLEN:** Ned, I would like to say something. I will try to be brief.

Irv Shapiro hasn't been mentioned. Celia Cohen [of *Delaware Law Weekly*] called me the other day. I said, and I think it was fair, that I thought he was the most important Delawarean in private life for the last 50 years. And I distinguished public life mainly because it was apples and oranges. But there is one story of his which is very simple, and I have never forgotten it.

He was at airplane security and somebody was going through this lady's bags and she didn't understand them. She was foreign, of some extraction, I am not sure what. And Mr. Shapiro went up and said, "May I help you?" And the lady said, in English, "Who are you?" And he said, "I am a lawyer."

**MR. CARPENTER:** That's a great story.

Anyone else who wants to comment on what others have said or to add to what they said?



**MR. WARD:** I had one piece of what I think may be, it is not intended as a correction, just an amendment. I spent three or four years, I guess, with William Prickett, Sr., and learned pretty much what Williams College and Harvard Law School had not taught me because I hadn't been willing to learn what they were teaching me: how to think and write. So I have tremendous respect for him. But if the suggestion was made that he was not in favor of the Federal Rules of Civil Procedure, I note that he was the chairman of the committee which adopted them for Delaware.

**JUDGE LATCHUM:** He was the chairman but he fought it like hell. (Laughter.)

**MR. WARD:** In any case, he was the chairman of that committee and spent a great deal of time on it, and recommended and supported its adoption. And in Chief Justice Herrmann's eulogy, which we used to do for our distinguished lawyers when they died, in the Chief Justice's eulogy for Mr. Prickett, he mentioned that aspect.

**JUDGE LATCHUM:** That he was chairman.

**MR. WARD:** With the greatest possible respect for the death of my senior — I thought he was being sincere in that. And if you were to judge — I wasn't there in '48 when the Rules were adopted — but if you were to judge based on having learned from him, it was the greatest stuff in the history of the world. And he mastered them rather quickly, too.

**MR. KIRKPATRICK:** There wasn't anything wrong with being in favor of common law pleadings.

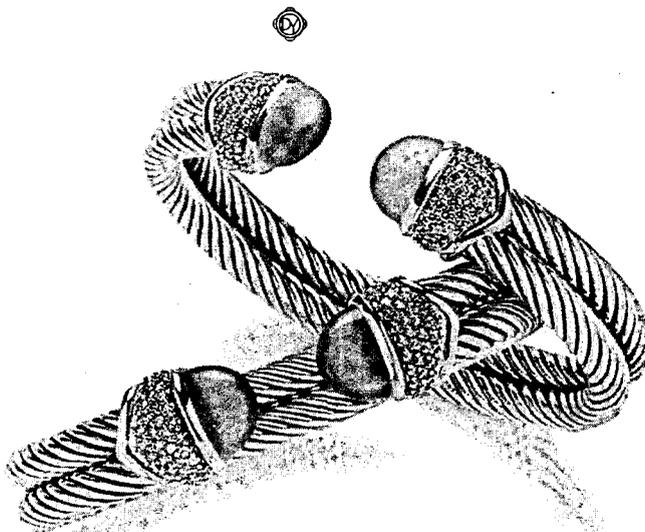
**JUDGE LATCHUM:** There was nothing wrong with that.

**MR. KIRKPATRICK:** That was a great discipline.

**JUDGE LATCHUM:** The older people didn't want it changed. Southerland, Richards, Prickett.

**MR. WARD:** Justice Hartnett as a member of the Uniform Laws Committee for Delaware advocated the adoption of uniform laws in almost every respect, because I was there I saw it, so it may be that he preferred Queen Anne pleading, because of his mastery. But when I

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came along, he was a great advocate for the simplicity of the Federal Rules. Mr. Prickett may well have been one of the finest men I know and surely one of clearest thinkers.

**MR. CROMPTON:** There is one topic we haven't discussed that was raised by Judge Ambro, that is, what is the biggest mistake you ever made in practice. And nobody has volunteered any. If nobody wants to, I have one.

**MR. CARPENTER:** Please.

**MR. CROMPTON:** In my first appearance before the Delaware Supreme Court alone, making my own argument, not just carrying somebody's bag, like Jimmy's or Bill Potter's, I thought I made a very good argument and everything went well, and I was relaxed when I left. And I had to stop at Route 13. When I got in, I had to go to the bathroom, and I got in and found I didn't have to unzip my fly. I thought, My God, did I move the podium, did I make any gestures? It was about 34 years later when I asked Chief Justice Wolcott if he had known anything. And he said, "No. If so, you would have heard about it."

(Laughter.)

**MR. CARPENTER:** Let me say something about our pleading. I had a professor at law school, Edmond Morgan, who was a great giant in the field of pleading. And he was from Missouri. And one time somebody said to him, Professor Morgan, I am so surprised you are an advocate of these improvements in pleading because Missouri is really a museum of the common law. And his response was, "Yeah, but you ought to see Delaware." And I think we really did have one of the most antique systems.

**MR. WARD:** It was said of Edmond Morgan that he practiced law for ten years and never met the merits once.

**MR. BATTAGLIA:** Ned, I think there is a nagging question that I leave here with. That is, 20 years from today, would a group of Delaware lawyers sit around the table and feel the same sense of brotherhood that we feel today?

**MR. TAYLOR:** Sure, we would.

**JUSTICE HARTNETT:** And sisterhood.

**MR. CARPENTER:** I hope so. Charlie has raised the question about the biggest mistake. How about somebody volunteering their most exciting case? Andy, what was your most exciting or most interesting case?

**MR. KIRKPATRICK:** There has been a lot of talk about Judge Terry, and a lot about Mr. Prickett. I had a case, one of my first long trials was against, of course Mr. Prickett, and then Bill succeeded him before it was over, before Judge Terry. It was an aircraft liability case, where a number of DC7Bs had been lost in mysterious disappearances because of the failure of a particular part in a governor, and Hamilton Standard, who made these things quickly, was involved.

In the course of discovery, we came across a document where they said, yes, all we need to do is put a little radius in this aperture and it will strengthen the piece sufficiently so this thing will never happen again. And it said, be sure the carriers get this new piece installed at next overhaul but get one on Air Force One immediately.

Well, when that came out at trial and Judge Terry saw it for the first time, he said, "Get it on Air Force One but

not other airplanes." After that, the trial was over.

**JUSTICE HARTNETT:** Did you try that case without a jury?

**MR. KIRKPATRICK:** Yes.

**JUSTICE HARTNETT:** I remember going in there, and he said, "Come up and sit here."

**MR. KIRKPATRICK:** It was a great trial.

**MR. CARPENTER:** Well, I can tell a Judge Terry story for you, if you have just a moment. That is, Mr. Aaron Finger and I represented Chrysler Corporation in a very bitter and hard-fought dispute with a distributor. And I should say the jury decided against us and we went to appeal. And when we went down to assist the prothonotary in the summary of the record on appeal, it was nowhere to be found. And a determined search was made of the record, and finally, it came out that Judge Terry had taken it to the beach and lost it. So counsel had to get together and re-constitute the record, which fortunately we were able to do.

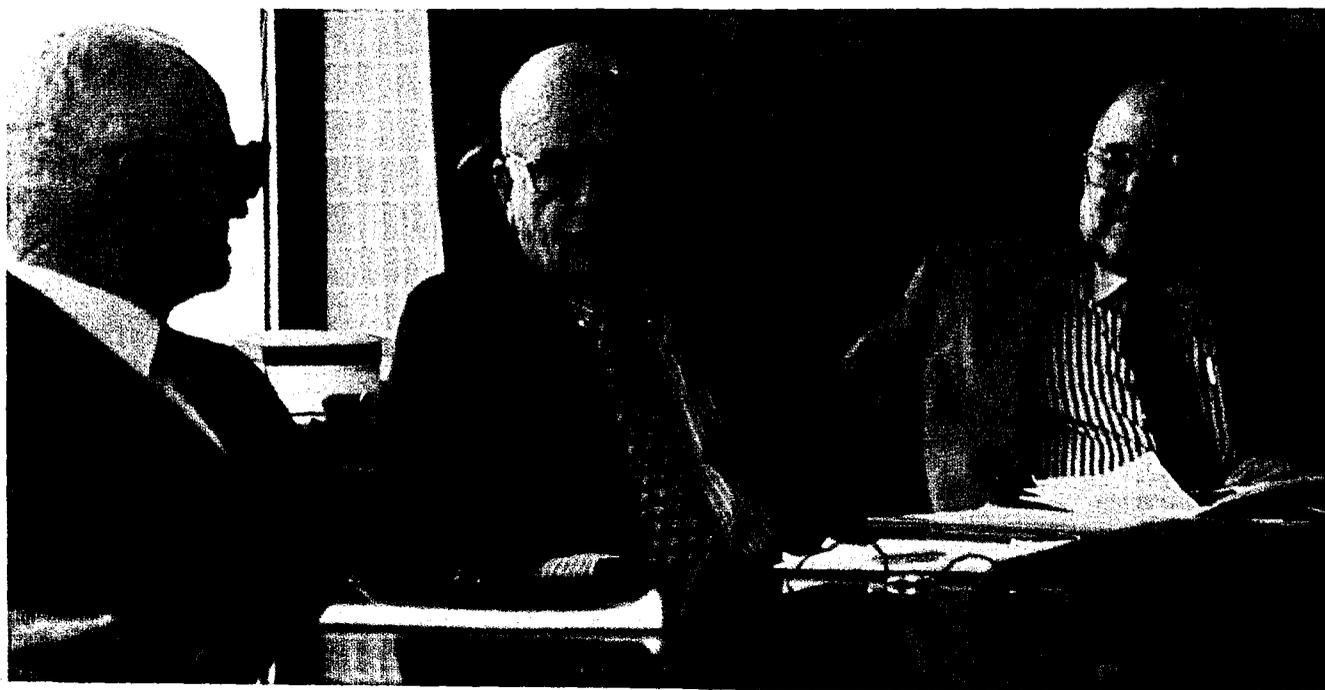
**MR. RUBENSTEIN:** Ned, one comment that came to mind when I was listening. That is, the one thing that stands out in my mind, I came from Philadelphia. I immediately sensed a great kindness and humanity among lawyers at the bar. That has never changed. When I was president of the bar, and other presidents I think experienced this, that when you ask a member of the bar to do something, no one ever refused the president of the bar.

**MR. CARPENTER:** I am glad you said that. That needed to be said.

Anything else?

**MR. KIRKPATRICK:** Thank you, Ned. Very well done.

**MR. CARPENTER:** Thank you very much. ♦



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