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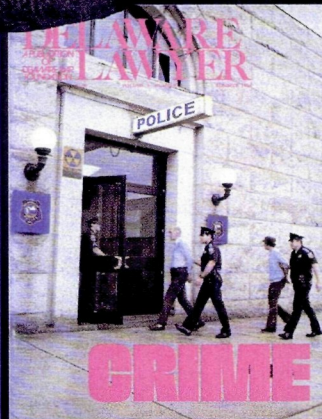
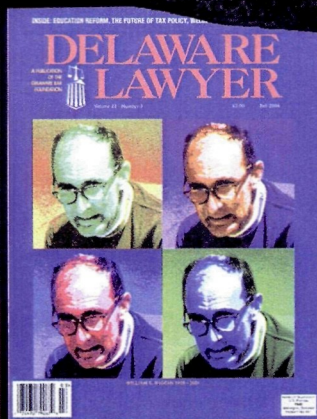
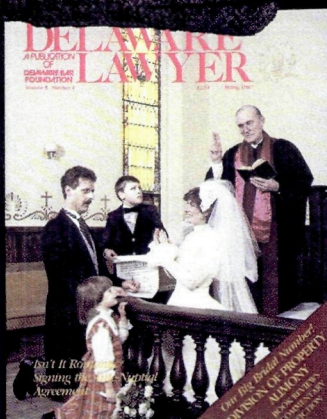
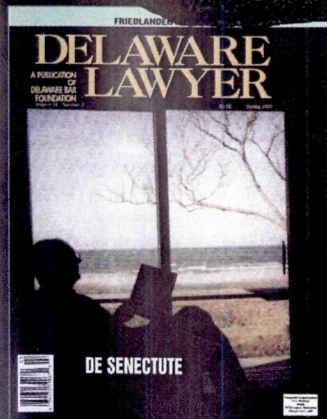
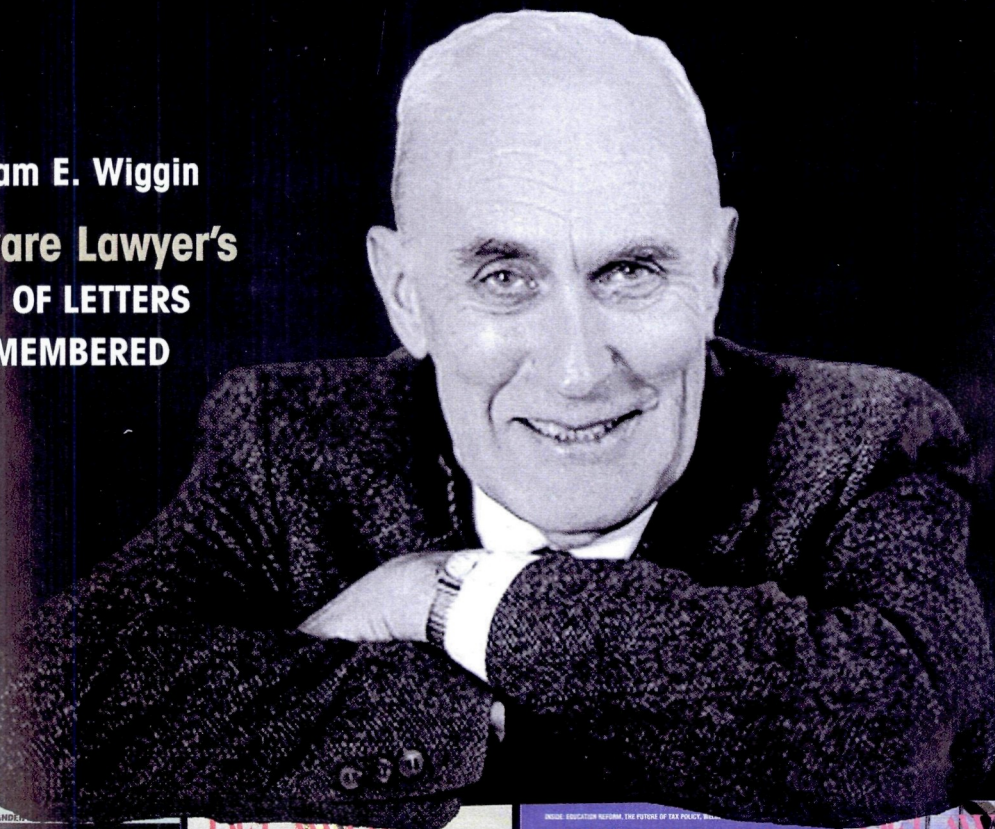
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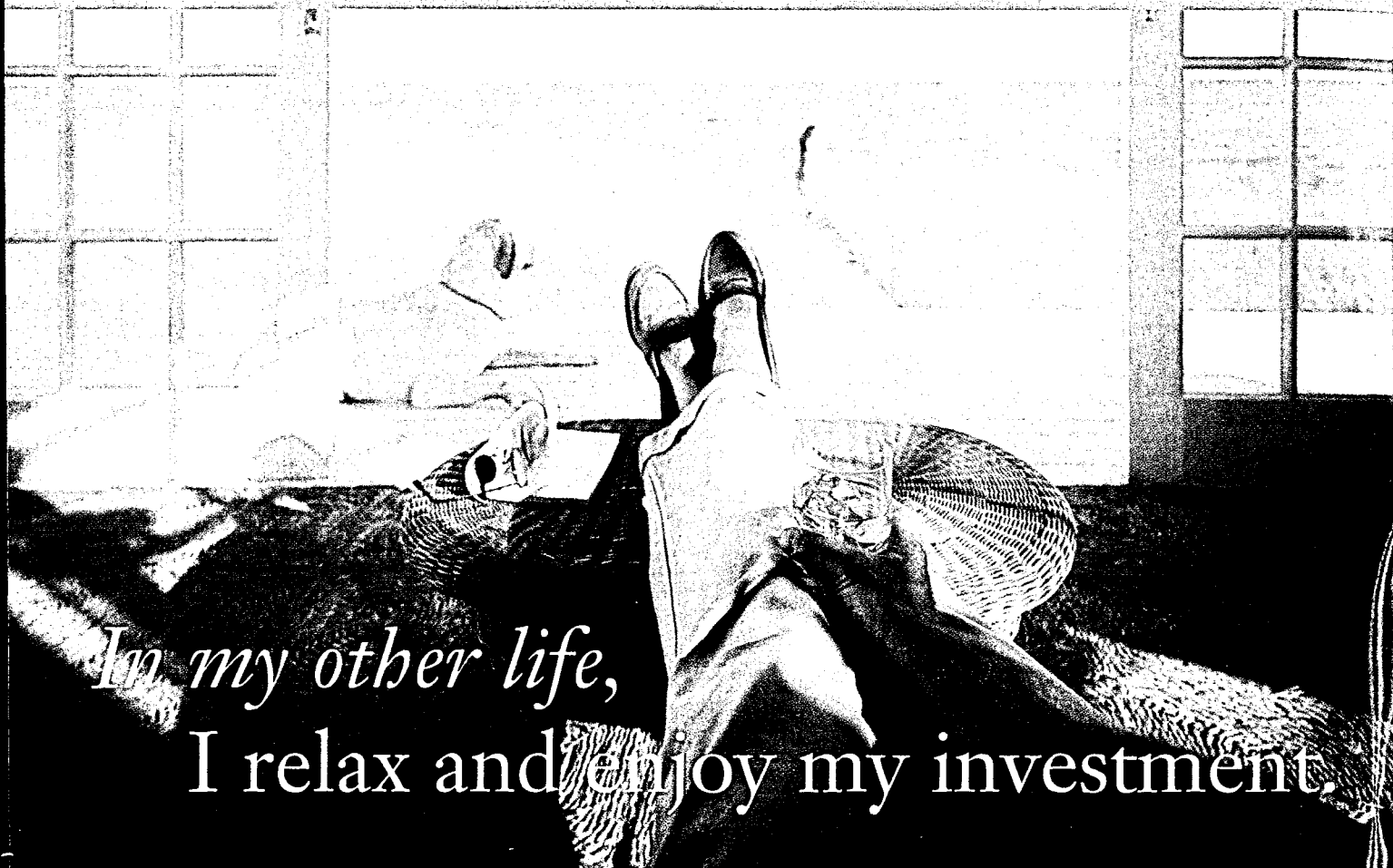
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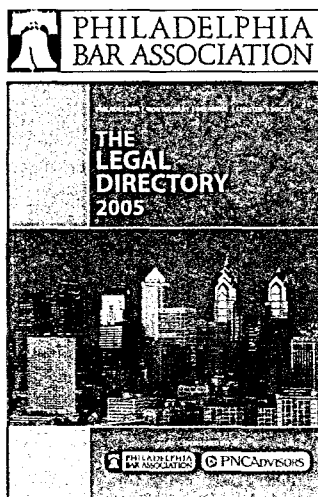
Photographs of Bill Wiggin and his family in this issue courtesy of Jane Wiggin.

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IN MEMORIAM: William E. Wiggin

Joan and Joseph Rosenthal

Reprinted below is an in memoriam piece on Bill Wiggin written by Joan and Joe Rosenthal, two very close friends of Bill and his wife, Jane. It captures, simply and directly, what we loved of our former editor and friend in whose memory this issue of *Delaware Lawyer* is dedicated. We can only add that Bill made us better readers, writers and persons.

Bill Wiggin was a rare human being who can only be described in terms of incomparability. To those who knew him well, he was "unique," an "original." His mastery of the English language, both written and oral, was extraordinary, not from a bookish preoccupation with words, but rather from an abiding, deep-felt devotion to and insistence upon lucid, cultivated, meaningful communication. His linguistic and literary skills were matched — perhaps even surpassed — by his irreverence for most of the icons other mortals hold dear. His irreverence was not the product of cynicism — although he had plenty of that. Instead, he had a passion for intellectual honesty, usually tinged by a hint of bemusement at the frailty of those among us who did not possess his perspicacity. He also had a prodigious memory for everything he ever read or heard. A conversation with Bill usually was sprinkled with verbatim asides from S.J. Perelman, W.S. Gilbert, Shakespeare, Noel Coward, Evelyn Waugh, or a multitude of other authors whose words would enliven and enlighten the topic at hand.

Bill was a partner at Richards, Layton & Finger until 1983 when he was appointed executive director of the Bar Association, a post he served with distinction for eight years during which the membership of the bar grew dramatically, with concomitant demands on the administrative staff. But his true love was *Delaware Lawyer*. Bill chaired the board of editors during its first 10 years, convinced that the Delaware bar would support a magazine devoted to professional themes presented with literary grace and excellence. Since most lawyers have not studied or practiced the art of writing (certainly to Bill's standards) except as dry legal prose, all of us who eagerly look forward to each new edition of *Delaware Lawyer* are indebted to Bill for nurturing the infant publication during its formative years.

He was patrician in height, bearing, vocal mannerisms and angularity of features, softened by an ever-present glint of puckish humor in his eyes as he readied himself to pounce on an errant comma or misguided metaphor (or the author thereof). But Bill's somewhat austere exterior masked a heart as warm and generous as Bill was tall. He and Jane, his wife of 45 years, adopted two daughters, Mary and Kate. Their experience gave Bill the resolve to do what he could to improve the system, which found expression in his long, devoted service on behalf of the Children's Bureau. Delaware is one of only four "agency" states, mandating that a child must be placed for adoption by the Department of Services for Children or an authorized agency, such as the



Children's Bureau, before the adoption can proceed through Family Court. Bill became a fierce advocate for children's rights, both in judicial proceedings and legislatively, to protect the sanctity of the adoption process and shield the adoption from collateral attack so the child could be secure, physically and psychologically, with his or her adoptive parents.

No remembrance of Bill would be complete without mention of his beloved Cape Cod. His father, a Boston physician, had the wisdom and foresight in 1912 to acquire about 25 acres on Cape Cod Bay in Orleans where the Cape narrows and heads north toward Provincetown. Bill took delight in sharing his experiences as a Cape Codder with the bar. Thus, when a student at Widener Law School, in an edition of *Delaware Lawyer* devoted to ocean and coastal law, chastised Delaware for denying public access to privately owned beachfront, Bill stoutly defended the right of private beach owners to enjoy their property free of unwanted visitors who were indifferent to the imperative of conserving environmentally fragile wetlands and keeping the beach from looking like a trash heap. In a similar vein, while politicians of all stripes were frequent targets of Bill's barbs, in an edition of *Delaware Lawyer* devoted to the environment, Bill graciously acknowledged the wisdom of the town fathers of Orleans who reacted with profound sensitivity to environmental issues peculiar to Orleans when Bill successfully applied for a permit to build a walkway from his beach house across the wetlands to the water's edge. Bill became a fan of local regulatory schemes that brought neighbors together in the continual battle between humanity and nature. He was always willing to give appropriate credit when credit was due.

Bill gave freely of his time to instill in others his love of language and literature. At the Academy of Lifelong Learning, he taught a course he called "The Serious Business of Comedy." He was a firm believer in George Meredith's view of comedy as "the ultimate civilizer, the polisher," to correct "pretentiousness" and "dullness." Bill participated in workshops both as an instructor and, ever the perfectionist, as a student.

Bill leaves his loving wife Jane; his daughters, Mary and Kate; his granddaughter, Audrey; and a host of friends and admirers, who were fortunate to have known this singularly gifted man of letters.

— Joan and Joseph Rosenthal



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Kevin F. Brady



recently joined Connolly Bove Lodge & Hutz LLP as Of Counsel to the Business Commercial and Corporate Practice Group. Prior to joining Connolly Bove, Mr. Brady was Counsel in the Complex Mass Torts and Insurance Group of Skadden Arps Slate Meagher & Flom LLP in Wilmington, Delaware, for almost 20 years. Kevin received his undergraduate degree from the University of Delaware and his J.D. from Widener University School of Law. Kevin served as a judicial law clerk to then-Chief Judge James L. Latchum from 1983-85.

Kent A. Jordan



was appointed in 2002 to serve as a United States District Judge for the District of Delaware. Judge Jordan was admitted to the Delaware Bar in 1984 and, prior to taking the bench, had been the General Counsel for a privately held business, a litigation partner in a law firm, and an Assistant United States Attorney. He received his B.A. in 1981 from Brigham Young University and his J.D. in 1984 from Georgetown University.

Michael P. Kelly



is the Managing Partner of the Wilmington office of McCarter & English LLP, where he practices in the areas of toxic tort, complex civil litigation, products liability, corporate

litigation, and environmental law. Mr. Kelly has tried hundreds of cases in many jurisdictions and has testified as an expert on Delaware complex litigation. He has lectured many times on issues pertaining to litigation and trial strategy, and has appeared as a legal expert on national television and radio. He has also offered legal commentary in many publications, including *Newsweek*, *Barron's*, and *The Wall Street Journal*. Mr. Kelly received his B.A. from Columbia University and J.D. from the Dickinson School of Law. He is a founding member of the Defense Counsel of Delaware and a member of the Delaware Trial Lawyers Association and Rodney Inn of Court.

Karen L. Pascale



practices in the areas of general litigation, corporate litigation and intellectual property with the Wilmington law firm Bouchard Margules & Friedlander, P.A. She received her J.D., *cum laude*, from Villanova University School of Law in 1990, where she was Articles Editor for the Villanova Law Review. Ms. Pascale has served on the Board of Editors of *Delaware Lawyer* magazine since 1994, and acted as its Chair from 2000 to 2003.

Vernon Proctor



a Director of The Bayard Firm in Wilmington, has practiced corporate law and litigation for over 25 years. Any perceived resemblance of any character in his story to any Delaware lawyer or jurist, living or dead, is a figment of your imagination.

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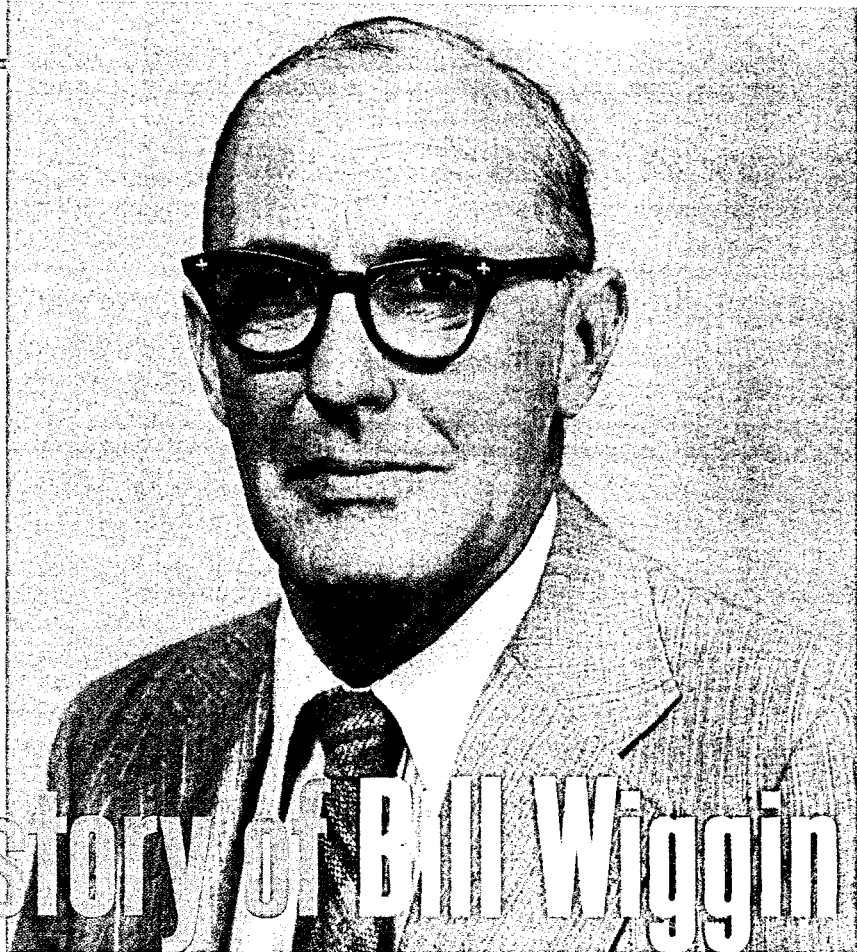
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Our Most Unforgettable Character:

An Oral History of Bill Wiggin



Let me explain
something to you.
The name is
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As part of *Delaware Lawyer's* celebration of the life and legacy of Bill Wiggin, our founding editor, I conducted a series of interviews and roundtable discussions with a cross section of folks who knew Bill well, either through his tireless work on this magazine, his legal career at Richards, Layton & Finger, and/or his tenure as executive director of the Delaware State Bar Association — Judge Thomas L. Ambro, Edmund N. Carpenter, II, Wendell Fenton, Henry N. Herndon, Jr., Justice Jack B. Jacobs, Richard A. Levine, David C. McBride, Vernon R. Proctor, and former Chief Justice E. Norman Veasey, as well as Bill's longtime secretary, Anita Garvey. What follows is a selection of loosely woven, sometimes freewheeling, reminiscences. We hope this rambling "oral history" captures some of the spirit of Bill Wiggin.

Cape Cod

Henry N. Herndon, Jr.: His love was Cape Cod. I know he went there on vacations. I at the time was, and still am, going to Martha's Vineyard. There weren't many in the Delaware legal fraternity who did that. And we would chat about these poor sods who went to Rehoboth Beach or Ocean City instead of enjoying the glories of the Massachusetts shore.

Anita Garvey: When my husband and I were planning on getting married, he

said, "I want to give you my place up at Cape Cod to go for your honeymoon." So, I went home and I said to [my fiancé], "Mr. Wiggin wants to give us this place at the Cape, and I can't say no to him." And he said, "Okay, well, that's where we'll go for our honeymoon." But Mr. Wiggin failed to tell us that his mother was there!

Thomas L. Ambro: I believe Bill's mother gave him the land, and he built a house on it in the early '70s. The Cape Cod place. And he would spend summers up there.

Vernon R. Proctor: Didn't he have property squabbles with the nuns over something? And the water balloons? And the ... oh, he had some great stories about his beach place. I wish I could remember them all. But the fracas with the nuns I think he did write about.

Politics

TLA: When I first met the guy I thought he was some sort of reactionary. While the impression proved wrong, there is no way I can describe Bill's politics because it defies any political party I can think of. I guess the closest might be Libertarian.

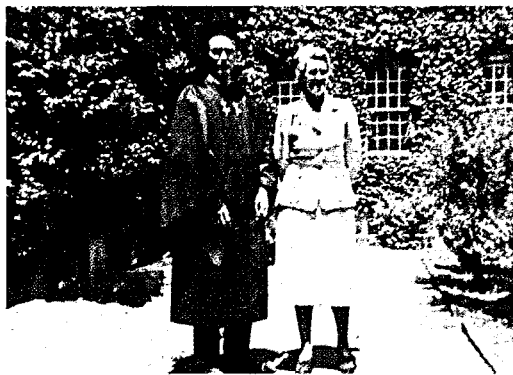
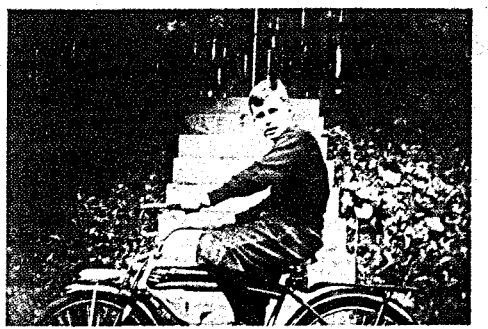
VRP: I interviewed him for *In Re*, I think, years ago, and asked him a lot of questions. One of them was about his politics. And I think he said that he was a small 'r' republican who believed in property qualifications for voting. Which we duly printed.

TLA: On matters of race, legal aid for indigents, and children's rights, he was really ... if you're going to put a label on him, quite liberal. Other matters, you didn't want to bring it up! But he was idiosyncratic in terms of his views. And pomposity of any kind, by any party, was *verboten*.

The Early Years

E. Norman Veasey: Bill Wiggin and I were hired at the same time, at Richards, Layton & Finger. I was at Sullivan & Cromwell in the summer of '56. And all the cases that I worked on at Sullivan & Cromwell were in Delaware, and Sullivan & Cromwell was using Richards, Layton & Finger. So I called up my friend Jim McKinstry, who was the only person I knew at Richards, Layton & Finger, and said, "It's a little late, but do you think I could get a job there? I've got these job offers in New York, but it looks like Wilmington is a good place." "Oh," Jim said, "I'm not so sure. We've just hired Bill Wiggin and Max Bell. We only have nine lawyers to begin with. It would be hard to take in three at once."

But I came down and had an interview, and I was hired along with Bill Wiggin and Max Bell. So we kind of



**"Bill Wiggin was
basically ... a very
Victorian figure,
sort of out of place in
the latter half of the
20th century."**

started out together, and that was great. We went all through the practice of law together.

Edmund N. Carpenter, II: He was a delightful, tremendously amusing guy. Always with a deft turn of phrase. I wish I had written down many of his sayings. But I remember particularly, not long after he first joined Richards, Layton & Finger, we somehow got involved with a family who then had a death, and had an estate. And the estate included a herd of goats. And poor Bill Wiggin was sent out to marshal the assets and get the estate underway. And so he became a goatherd for a short while, and made very active comments on that. And particularly devastating comments on

the family itself, which he characterized as being guilty of, as he put it, "greedy bad taste." A typical Wigginism.

Wendell Fenton: Bill Wiggin was basically sort of a very Victorian figure, sort of out of place in the latter half of the 20th century. He loved to use language. You sort of thought he was a Dickensian character.

AG: He was a character. Very proper. Very Bostonian. Very erect. You could hear him coming, he was very heavy-footed also.

ENV: I remember the day before Bill and Jane were married. There was a little party for Bill in the Christina Room of the Hotel DuPont. This was a party that was given by Richards, Layton & Finger. A lot of people went, and I sat next to Aaron Finger. And he leaned over to me and said, "Awful lot of drinking going on here!" And he said, "And they're drinking hard liquor, too!"

WF: Bill liked his martinis, I think.

ENV: He claimed to be a good chef. So, one day, my wife and I went goose hunting, and we got a bunch of geese. And it was early in the morning — we got our quota by, I don't know, eight o'clock. Back in the office by ten o'clock. And I saw Bill, and I said, "Well, we shot these geese, but I don't know what to do with them." He said, "I'll come to your house and cook them for you." So he did. He came to the house and he said, "I know how to cook the goose." Well, he stuffed all manner of vegetables and fruit in the goose and it cooked forever and ever. And he said, "You have to cook it a long time, so it gets tender and the gaminess gets out of it." And he said, "While we're doing that, we'll have a few drinks." So we had a few drinks, and I guess we didn't know what the goose tasted like. Anesthetize the taste buds!

AG: Mrs. Wiggin had a car back then. It was a small yellow Volkswagen. And it kept breaking down, and I told him about AAA. So he got that, and it kept breaking down. And even AAA said, "Maybe you need to do something." I said to him, "Mr. Wiggin, maybe for Christmas you could get Mrs. Wiggin a new car." And he said, "Mrs. Gah-vey,

money doesn't grow on trees!" My response to that was, "It grows on your trees a hell of a lot faster than it grows on mine!" And he just thought that was so funny; he laughed and laughed. She didn't get a new car for Christmas, though!

ENV: Bill had a case before the Delaware Supreme Court, on an appeal from [Judge] Stewart Lynch. And in that case — I don't know the name of the case — apparently Judge Lynch said, at the trial level, when the appeal was taken, "Well, if I had known you were going to appeal, I wouldn't have granted summary judgment." And that got into the record before the Supreme Court. So Bill went up to argue this case before the Supreme Court, and Chief Justice Wolcott leaned over to the other justice, and sotto voce said, "Did you see what the man wrote!" For everybody to hear!

HNH: I will tell you that my best memory of Bill was the first time that I was involved with him in anything at all as a lawyer. I'm not sure that I remember it very exactly, but I remember I was representing what was then Bank of Delaware, which was going to be an indenture trustee. I don't remember who Bill was representing, but he was representing another party to the transaction. We were working on a trust indenture, which is the dustiest, driest, most boring thing I ever had to do. We were working away, and Bill was commenting. ... He'd been talking about his law school — he'd gone to Harvard Law School — and he looked over the top of his glasses, and pausing in this discussion of — I don't know whether it was experiences, L-1, or what, but he looked at me and said, "You know, there was only one thing missing at the Harvard Law Review." I said, "Bill, what was that?" He said, "It needed a resident dermatologist."

But that's just sort of typical of Bill, that whimsical sense of humor and putting everything in a particular light that it had never been seen in before. I thought it was wonderful.

TLA: The first time I dealt with Bill was in the summer of 1976. I was to write him a memo on some issue. I wrote the memo to "William E. Wiggins." So I



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And even better, "Will
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run into him and he said, "Well, I like the memo, but let me explain something to you. The name is WIGGIN! Without the 'S'!" I thought, "Oh, man, I'm done! It's over! I'm outta here!"

AG: *[Indicating picture]* This is Mr. Wiggin. That was his sense of humor. The one with the wig on. He loved doing things like that. He was so proper, but he had a funny side that I don't think a lot of people saw.

Because he always — It was always "Mrs. Gah-vey." The day of my wedding he saw me outside the church, and it was "Miss France," and he came through the receiving line, and it was "Mrs. Gah-vey."

He and Mrs. Wiggin went over to

England a lot. He brought me back, every time he went, a little piece of china. And two shelves of my curio cabinet still have that china.

He also worked a lot for Children's Bureau. He felt very strongly about the Children's Bureau and working with termination of parental rights and things like that. He was very much devoted to children in that way.

The Genesis of Delaware Lawyer

TLA: I don't know who suggested it at the Bar Foundation, but it was suggested that we start this magazine. And Bill called me in and said, "Look. You like writing. How would you like to work with me on this magazine?" And I responded, "Well, I don't know. What's it all about?" He said, "It's about whatever we want. They want us to set this up."

Richard A. Levine: I don't really know exactly who suggested Bill Wiggin for the job, but Harold Schmittinger was president of the Bar Foundation, and it was Harold Schmittinger who called me. And I didn't know Bill Wiggin, though everyone sort of assumed that I knew Bill Wiggin. Justice Veasey, not-then Justice Veasey, Norman Veasey at the time, was the chairman of the Board of Bar Examiners. I don't think Norman was on the original Bar Foundation, but I have a feeling that his hand was in the

decision, because when Harold Schmittinger called me up, he was very clear that I was not being approached for any great writing skills or reputation for great writing skills. He said, "We're going to start this magazine, and Bill Wiggin, who as you know is a very talented person, needs someone as a keeper. And you are going to be his keeper and make sure that we don't lose all of our money, because he will spend it all." And I don't know that Harold knew Bill well enough, so I always thought that Norman Veasey's hand was in that.

ENV: I really don't remember how that all came about. But now that you mention it, I thought Bill Wiggin was a likely prospect. He was a grammarian, and very interested in writing. More so than

other things. He wrote very well. And he didn't write long stuff. Crisp with what he would write.

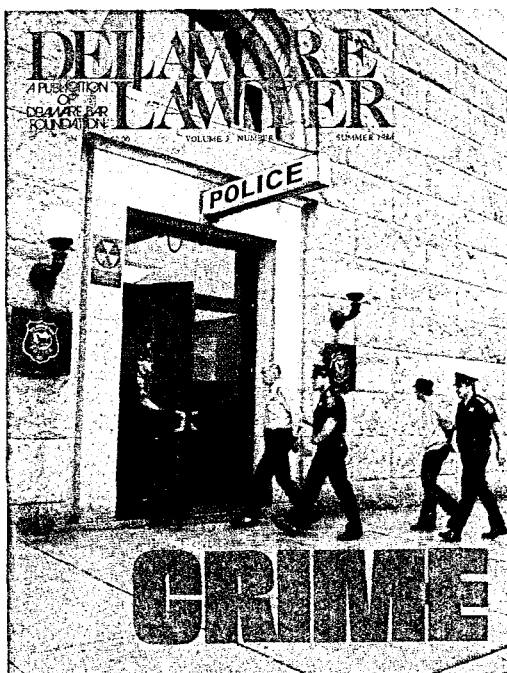
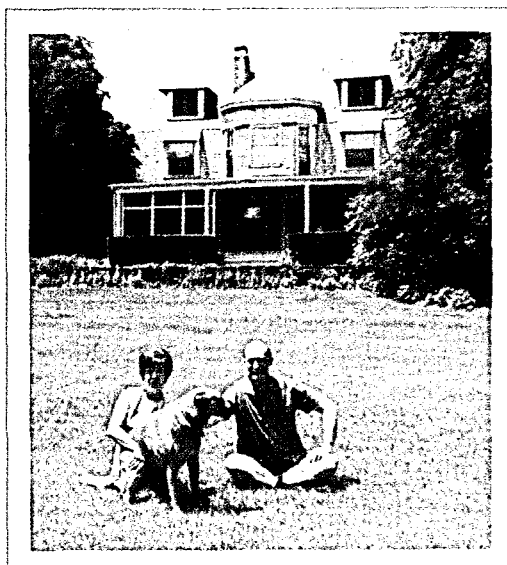
TLA: On the first issue of *Delaware Lawyer* [Spring 1982 (Vol. 1, No. 1)], I lined up the authors. On most of the issues thereafter, for years, Bill lined up the authors. He would do the Editor's Note at the beginning. He would do the layout with the publisher. He literally ... there was nothing he wasn't instrumental in deciding.

He used to do a lot of his work on the magazine at his home in Holly Oak. He had the back porch looking out over toward I-495. And that's where he did a lot of his editing, out back. Never touched a computer.

VRP: He was a Luddite, right?

TLA: That's right. The thing that actually made it easy for Bill, and he commented a number of times to me, was that he never had to worry about the financial side. Rich [Levine] took care of all that. Whatever Rich did was fine. Bill just didn't want to be bothered with it, he knew it was in great hands, and all he really wanted to do was edit and, if he knew somebody, line up articles.

RAL: Our first publisher was Ed Golin [of Gauge Corporation]. I think Ed died about a year or two ago. And then we went to a company called Miller Mauro. Miller Mauro was more aggressive about advertising. And that was important in those days. Important not to Bill but very important to the Bar Foundation. Because even then the Bar Foundation did not wish to see funds diverted from its core purpose to the magazine, although they thought that the magazine was a useful vehicle for the foundation, and always gave us cover and were very supportive. But when we lost money they were very unsympathetic. Bill's high point — or low point — in credibility with everybody was when he told me we were going to have a "small deficit" for the Bicentennial Issue [Fall 1987 (Vol. 6, No. 2) - "1787-1987: A Bicentennial Tribute"]. Said "small deficit," I think, being \$50,000 or something in that number. And he said,



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"Well, you'll go in [to the Bar Foundation meeting] and you'll talk to them about it and explain it." And I said, "You're coming with me, pal!"

The "Crime" Issue Cover

The cover of the Summer 1984 issue (Vol. 3, No. 1) was a photograph featuring Bill Wiggin and Tom Ambro being led into a police station in handcuffs.

TLA: That was my idea. It was a dumb idea. I thought, "Bill, wouldn't it be great, you know, if we get cuffed and we're being led in to the station?" And I told Bill, "We could have fun with that. I could send it to my mother as a joke." We were supposed to be with Mary Curtis, who was the head of word

processing at Richards Layton. Her father, Duke Curtis, was the former chief of police. And she knew a lot of the cops. It was supposed to be Bill and me, and Mary dressed as a hooker. And so what happened was Mary said she felt uncomfortable because she knew these folks. So Bill and I show up on a Sunday afternoon. The person who's supposed to take the picture shows up. It's drizzling outside. So we went in, I changed, got into these dirty old clothes and put this hat on, and went out. We got a corporal and a private or something like that, who were just new on the force. So we get the pictures all done, go back in, and Rich Andress, who was the captain or whatever, said, "Guys, can I see you for a second? We've got a little problem." I said, "What's that?" He said the problem is that the chief said that these bigger honchos, like a sergeant and somebody else, would have their picture in this. I countered, "Well, we've got these other folks, this worked out fine." He replied, "No, you don't get it. The chief said that these two ... and they're on their way in now. Coming from patrol." I said "Okay!" So we get dressed again and go back out and re-shoot it. And what we did was, inside [the magazine] we put the little picture of the more junior officers and said thanks to them for showing up as well. The police couldn't have been nicer.

The Bar Association

ENV: I became president of the Delaware Bar Association in 1982 to '83. And I had the unpleasant task of firing the then-executive director of the Bar Association at the end of my term. And seeing that Bill was interested in it, I had him interviewed by my successor, Henry Herndon, the next president of the Bar Association. So Henry benefited from having Bill, and I had to do the dirty work of letting the other fellow go, which I didn't like doing.

HNH: Bill was hired as executive director of the Bar Association I think toward the end of Norm Veasey's tour of duty as president — probably early 1983. Bill provided some real magic, I thought, as the executive director. His wonderful humor, as everyone I'm sure

has commented on. Also, he really did have a delightful perspective on the practice of law, with a perfect dose of common sense and enough cynicism to make it all make very good sense to me. He was a breath of fresh air as executive director. He was the first one, as I remember, who had any real legal experience before taking on the job. It was a career change for him, and as a result of that he really jumped into it with both feet and did a wonderful job.

TLA: Bill told me within one year after his leaving Richards Layton that it was probably one of the best things that had ever happened to him, because his blood pressure had gone down significantly. He felt much more at ease, and enjoyed himself much more.

HNH: We had to raise the dues of the Bar Association. And we had some wonderful discussions, Bill and I, as to how to go about this process. I don't remember exactly how he managed it, in terms of presenting it. But he did it very well. He did a wonderful job of enabling us to do that, and having the new and higher dues accepted by the association. It was a good effort, and something that was dramatically needed. At that time, too, we were reorganizing the Bar Association a bit and trying to make it a little less free-flowing and having a little bit better focus, and Bill was extremely helpful in that.

RAL: Actually it was a good time for the magazine in the sense that Bill, at that point having been relieved from his obligations at Richards, Layton & Finger, had more time and was more available daylight hours for the magazine. And Bill had a lot of time to try and train [new publisher] Miller Mauro. ... I say "train"; get them to do things the way he wanted them done.

The Feminist Outcry

The Spring 1994 issue (Vol. 12, No. 1 — "Graven Images") contained a full-page illustration of a woman entering the courtroom dressed in a bathrobe, slippers, curlers, and a bonnet, wielding a mop and an iron. The reaction was swift and vociferous.

TLA: That was the cartoon. Bill had this woman artist who had done work



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for a number of issues. He told her what the gist of it was, and she said, "Let's do a cartoon around" — for lack of a better description — "a woman dressed like she was a cleaning lady." And Bill thought it was roaringly funny. When he got the cartoon, he was really happy with it. She had, Bill believed, shown real imagination. Well, [Judge] Susan Del Pesco and Lana Richards weren't so happy. They got a whole group together. Then we all [members of the editorial board] got called on the carpet before Justice Moore.

David C. McBride: I remember we were over in the Supreme Court conference room.

TLA: Bill said there was no way in the

world he was going to show up. Out of principle. And even if he was next door, he wasn't coming into that meeting. Even if there was an order, he wasn't coming into that meeting. So I go into the meeting and I said, "Look. If we offended anybody, it was clearly not intentional." Rich [Levine] and I pretty much said this. "It was not intentional, we're extremely sorry, and please accept our apology." So then Bruce [Stargatt] and David [McBride] walk in, and David basically says, "What's the matter? This was good." And Bruce says, "I agree with that, you know? I mean, come on. Are we being so hypersensitive?"

RAL: Bruce had other things to say in a different context on that subject. He was much more publicly supportive of us than he was when we spoke privately. He said to me, "Doesn't anybody look at these things and *think* first?" And I said, "Well, let me put it to you this way. I can answer the first part of your question with a 'no,' so the second part doesn't matter." That's when we decided [the editorial board] would start discussing covers and illustrations. Because I said, "Nobody does look at them. We sort of can't wait to see them!"

Karen L. Pascale: That's literally how I got involved in the magazine. Exactly at the time that the magazine had come out, I was at the Women Lawyers and Judges Retreat. I remember Judge Del Pesco was there. And just about everyone signed a petition [protesting the cartoon]. What bothered me about the cartoon, frankly, was the juxtaposition with Karen Valihura's very scholarly and dignified article.¹ It was out of place. I got the joke of the cartoon, which didn't trouble me at all.

TLA: Bill put it where he was going to put it. But I agree, the cartoon was out of place.

KLP: And I got called on the carpet by Frank Biondi, who was DBF chair at that time. Myself and a few other Morris Nichols associates who had signed the petition. Frank said, "Well, you should put your money where your mouth is!" He placed a call to somebody, perhaps Richard Levine. And we all got a little

invitation to come and meet the editorial board.

The Grammarian

VRP: He had these pet peeves. And I think the one everybody remembers was the use of “unique” with a qualifier, as in “most unique,” or “very unique,” or “somewhat unique.” There was one particular judge in town who used it repeatedly with a qualifier. And boy, what Bill would say behind closed doors!

AG: He could not tolerate when somebody in *The News Journal* used the word “unique” and it would not be in the correct form. And he’d always send a letter to the editor, each and every time, and they knew what it was going to be about.

ENV: He also hated the word “hopefully,” particularly when people stick it in the middle of a sentence.

TLA: He was so particular. Of course, his bible was *Fowler’s [Modern English Usage]*. But the Third Edition of *Fowler’s* that came out a few years ago by Robert Burchfield would have been *verboten* for Bill. I’m not even sure he followed the ’65 version by Sir Ernest Gowers. I think he may have gone back to the original one that H.W. Fowler did in ’26. I mean, that’s how Bill was.

And he would go back and he would have pages, you know, almost memorized. And if somebody said “hopefully,” he would say, “Look at this! You can only use it ...” And I think actually at some point he copied and passed around an article or a little comment in the *New Yorker* on the use of “hopefully.”

ENV: He was not afraid to correct anybody’s grammar. Stop the music, correct that sentence, and go on. No matter who it was.

TLA: And remember — You could not split an infinitive. I don’t know if he ever changed, but you could not split an infinitive.

RAL: The little writing of mine that he did see — he picked up very early on that I loved to split infinitives. And I remember telling him that the problem was that I didn’t realize that I was doing it, but it sounded good to me!



“He was not afraid
to correct anybody’s
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No matter who it was.”

TLA: He would say things to me like, “Did somebody else write this? This can’t be you.” Ohhhh, take that!

Jack B. Jacobs: Or, “Is English your second language?”

The Wordsmith

VRP: I just liked his way with the English language. He had a real facility with it. He was very elegant — spare but elegant.

TLA: Bill was a lawyer, obviously, and he went to Harvard Law School. But I don’t think that’s what Bill really wanted to be. I think Bill really wanted to be something else in the literary field.

WF: Well, Bill was certainly more interested in writing than in the practice

of law. Certainly toward the end of his practice. I think for a while, when he was still at the firm, he was writing a novel.

AG: [His novel was] about a ghost. In limbo. I typed many a page. And we didn’t have computers back then, it was all typing, each and every page. And he was such a perfectionist, that you would do it over, and over, and over.

TLA: For the African-American issue [Summer 1998 (Vol. 16, No. 2) — “Five Pioneers: The Pursuit of Equality”], I lined up all the articles; and I said, “Look, Bill, why don’t you write the Editor’s Note?” And it was — it was a masterpiece. And he took time to write. It wasn’t something he would dash off, and he was constantly editing his own stuff. He edited his own work as much as he edited somebody else’s. I really believe that, if you go back and you look at his Editor’s Notes, you’ll find some elegant, but always pithy, products.

KLP: For our most recent Civil Rights issue [Fall 2002 (Vol. 20, No. 3) — “Civil Rights in Delaware: Where We Are Now”], he wrote a short opinion piece about the *Newdow* case. It was when that case was still pending. But it was the decision that eventually went to the Supreme Court about whether the use of “under God” in the Pledge of Allegiance is constitutional. And Bill’s piece was brief, and it was funny, and it was crisp, and it’s actually been cited in a couple of law review articles.²

RAL: Bill had such control of the English language and of foreign expressions that I think one of the things that he delighted in was sort of saying things that sounded like they were a compliment but they were not. I remember him saying something to someone, and that person, she smiled; and then Bill turned to me and said, “Ignorant” — you-know-what — “didn’t even know what I meant!” And I said, “That’s a common feeling for me. I hope you don’t turn and say that to others!” Because he could sort of speak at many levels and had such command of the language, you know, he could do that to

you. He would not be a person that you'd want to be engaged in an acrimonious debate with.

TLA: I don't know of any lawyers in Wilmington in his league, with a couple of exceptions, in terms of how much he read, how well read he was. He would read the *New Yorker* not just because of the articles, but to look at the style. I mean, how many people do that? And he *loved* a great turn of phrase. He would clip them out and bring them in to show around.

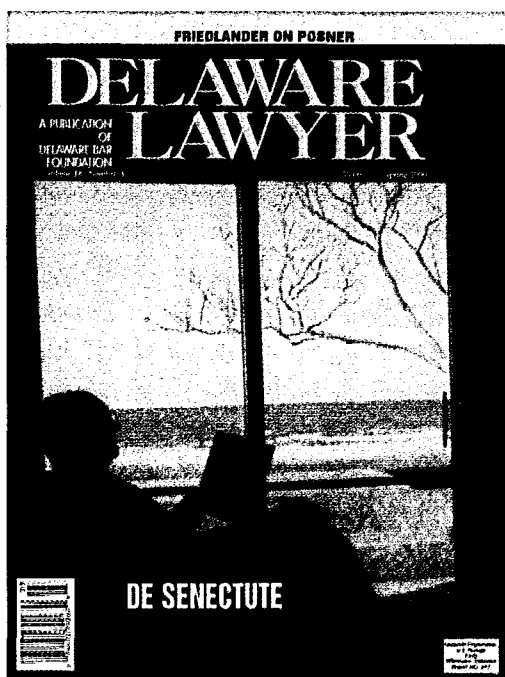
The Editor

TLA: You can ask Irv Morris, you can ask anyone. Bill was one of the best editors around. One time we had — I will not name the politician who gave us a piece in an issue on politicians. And this person gave us an article that was not so good. Bill and I took that article and we completely redid it. I mean, so much so that when we sent it back to this person we thought, "Uh-oh." But as it turns out, the "author" was very happy, very complimentary, and it worked out beautifully. Bill's attitude was — whatever it took!

VRP: I remember the next political issue, I had to do the same thing. I had to clean out the Augean Stables for some prominent Delaware politician who submitted basically an unreadable work. And Bill just said to me: "Have at it!" And I had the same experience. I rewrote it, and submitted it to the politician in question, and he loved it.

TLA: He liked finding talent. What attracted Bill to ask somebody to be involved [in the magazine] was his perception whether that person could write or edit well. Jack Jacobs, Vern Proctor, Dave Drexler, Bill Prickett, Dave McBride, Carroll Poole, Greg Inskip and Joel Friedlander come immediately to mind.

And the greatest compliment Bill could give was if somebody submitted an article and Bill said "You know, I really had to do very little editing." That was the best compliment you could get from Bill Wiggin. When it came to writing and editing, he was just intuitively good at it, not just at understanding syntax, not just understanding grammar.



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Understanding tone, and what communicates and what works. I took stuff to Bill to edit that I was really concerned about, and he had a way of looking at it and making it expressive — I mean, not that you bought every single comment, but he had a conciseness. In terms of my work today, Bill Wiggin's way of editing is the primary thought in the back of my mind when I'm working on an opinion.

DCM: That's what I remember, the conciseness. That's what I lack. And so he went over my work, and shrunk it down. He was excellent.

VRP: If it's good, it's always shorter than when you start. That's another thing Bill taught me.

DCM: I remember Bill's help. I did this

article early in the life of the magazine, on the Financial Center Development Act. My one and only time of trying to be a journalist or a reporter. I'd gone around and interviewed people about how the Act had come into being, and I wrote an article describing the history as people had related to me. Then I circulated it. I told everybody I'd interviewed that I would circulate it, so I circulated it. Well, I was so naive, it never occurred to me that everyone would want to rewrite the history, to make themselves look better, or not as bad. And I came to Bill and said, "I don't know what I'm going to do. I'm getting all sorts of people trying to rewrite what I wrote, because they say it didn't happen this way, or they wanted credit." Bill said, "You just tell them that you've written the article and that's it, we're not going to edit it anymore!"

TLA: I think that's one of the first times I heard Bill say, "I'm a whore for controversy!" He just loved controversy. The rest of us would, you know, sort of shy away from it. He just loved it. Because he thought that's what would get the magazine known.

On the Board

JBj: I'm trying to remember back to when exactly I got on the editorial board. And I don't remember the exact year, but it was in the early '80s. I do remember he called me.

And basically the only reason I wanted to go on there was because I'd had the opportunity to work with him. We somehow had, you know, we had the same kind of wacky personalities, although mine wasn't anywhere near as wacky as his. But there was something about him that appealed to me. Back in the early '80s, I hadn't been on the board that long. Bill and I got to talking about someone who will go nameless that I didn't care for very much, and neither did he. And so after he listened to me ventilate, he said, "Well, remember — time wounds all heels!" I've never forgotten that.

TLA: What he would probably say to you is, "Jack. It's not 'ventilate,' it's 'vent!'" And he would do that to me often!

KLP: I'd asked to meet with Bill when

I was going to take over his duties [as chair of the editorial board]. And notwithstanding my having been on the board for a while, you know, he was very ... he kept it all to himself in terms of the mechanics and the procedures and the ins and the outs of actually publishing the darned thing.

And I met with him, and he was as pleasant as could be. But the only thing he told me was, essentially, "Get yourself a copy of Garner's *Modern American Usage*." That was it! You know, nothing about schedules and procedures and instructions, and all this.

JBj: Bill liked to display Delaware lawyers. At least the ones who wrote the way he liked writing. But the other thing I remember was that he liked a consistent sort of style, editorial style. So he always would sort of look over the shoulder of those of us that were editing other people, just to try to keep some kind of uniformity.

VRP: I think Bill came up with the con-

cept of the theme night dinners, when [the editorial board] would start meeting at Del Rose or some porch restaurant. Brainstorming dinners. And it was his idea, but he was wide open to things. He'd love to talk about concepts and ideas, and break things down. And he was very open.

TLA: He was never tied to a mold. Again, the only thing that really drove him was, "Will it be interesting?" And even better, "Will it be controversial?"

JBj: I remember two sorts of quibbles. One is when we settled on a particular theme for an issue, like corporate law or environmental law. One of the problems was that the articles would tend to have a certain dullness about them. And so, one of Bill's questions was, should we throw in something humorous or light-hearted that has nothing to do with the topic? Just to liven it up. And I think he did that.

And then the other thing we did was to vary the magazine so it wasn't just

about law, but lifestyles. You know, the human side of what lawyers are concerned about.

TLA: Let me give you one example. One time, I threw out the idea of doing something on lifestyles. And I said, "We have this attorney, Pat Gallagher." Her thing was to go off on her 750 cc motorcycle. And on the cover we had Pat in her leather jacket on her BMW bike. And that's what Bill liked. He wanted her to show her standing outside the practice of law.

RAL: Bill was more interested in things "by lawyers" than "about lawyers." I think that some of the issues we had that are about legal issues and topics, to the extent they're not written by Delaware lawyers, were not his first choice. He really was interested in an outlet for Delaware lawyers who could write. I think his favorite pieces were the pieces that weren't about legal issues, that were fiction. Those were the things that he was most proud of, because he

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really was struggling to create a literary outlet for lawyers.

TLA: Bill was definitely interested in getting good pieces of fiction. Which I think is how he hooked up with Bill Prickett.

RAL: I think he was disappointed that we never became a publication of decent non-free circulation. He was very, very aggressively interested, in the early years, getting it to the smoke shop — blessed memory! — and other distribution sources.

I think you can learn a lot about Bill Wiggin from reading the masthead of the magazine, where he sets forth the mission statement, which has been unchanged. It's printed in each issue. And he drafted that with little or no input from anyone else. Very few people ever read it. It just sort of sits there. But I remember him struggling to put the words together, and really trying to decide what the mission was.

The Devotee

VRP: Bill really admired S.J. Perelman as a humorist. He really thought he broke the mold.

JBj: How about H.L. Mencken?

VRP: I could see him being a fan of Mencken. Say what you think, and don't be bashful.

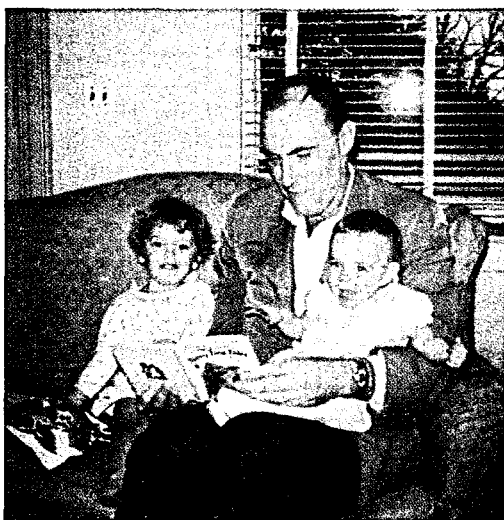
KLP: Bill was kind of the William Shawn of *Delaware Lawyer*.

TLA: If you said "Bill Wiggin" and asked me to do a name association, I would say, "William Shawn." Shawn actually had more idiosyncrasies than Bill. Shawn, you know, never left Manhattan. Hated to be in a car. Wouldn't fly. And didn't like going over bridges or through tunnels. And he edited the *New Yorker*. But that was the name that would spring to mind. You say "Bill Wiggin," I'd go, "William Shawn."

VRP: John P. Marquand comes to my mind.

TLA: Bill thought that David Drexler was maybe the best writer in Delaware. Bill just loved the way Dave wrote. And, in fact, we did have Dave on the board for a period of time. The succinctness of Dave's writing Bill found to be very close to the way Bill liked to write.

RAL: Among the lawyers he really revered Bruce Stargatt's writing because it was different. And that was something



that Bill always observed.

TLA: Oh, he thought the world of Bruce. Bill admired the fact that Bruce did not waste words.

RAL: Bill always had nice things to say about Bill Prickett, who he thought was a very good writer, and Irv [Morris] also.

TLA: I think Bill [Wiggin] and Irv [Morris] got along beautifully. I mean, they understood each other. Irv is working on his memoirs, and Bill, before he died, was helping to edit them.

Passion for Delaware Lawyer

RAL: It was apparent to me, after my second meeting with Bill Wiggin, that he was not going to remain at Richards, Layton & Finger very long, because he loved the magazine. He would have spent 26 hours a day on the magazine, which left little billable time for Richards, Layton & Finger.

TLA: I don't know what year it was, it might have been '82-'83, Jesse Finkelstein was to help Bill on a case that was going to trial. Purportedly, the night before it went to trial, Jesse goes in to see Bill and said, "You know, we've really got to get these witnesses ready for this. ..." — it was a short trial — "We have to get these witnesses ready." And Bill said, "Well, I'm editing the magazine. It's got to get out."

DCM: I just never imagined, once I met Bill, that he would like to practice law. He didn't seem to me to be the kind of person that would enjoy it, at least in terms of litigation.

TLA: He didn't produce a whole lot of business [as a lawyer] because he wasn't out there trying to do so. If you gave him a project to do, he would do it. But you had the impression, on legal mat-

ters, that that wasn't what interested him. It was clear that if his name was on something, it had to be done well. But he wasn't a self-starter. With the magazine, though, it was like Jekyll and Hyde. I saw the other end of the spectrum with Bill. I saw a guy who was committed, energetic, and active in terms of getting things started. And not reacting, which is what essentially he did as a lawyer.

He would call me in and he'd say, "What do you think of this?" And we'd bat around some ideas, and then he'd go back, and he'd call me back, "What do you think of this?" And it was like ... you're always good at the things that you think about subliminally, and that you're interested in. Bill would wake up at 3:00 o'clock in the morning and what he was thinking about was the magazine.

The Grandfather

VRP: Bill's daughter Mary married the son of a fellow who goes to my church. And so I heard indirectly about some of Bill's family through his co-father-in-law, Art, the guy I know. He's a straight-arrow Navy man, low-keyed, not at all like Bill. Can still fit into his uniform 50 years later.

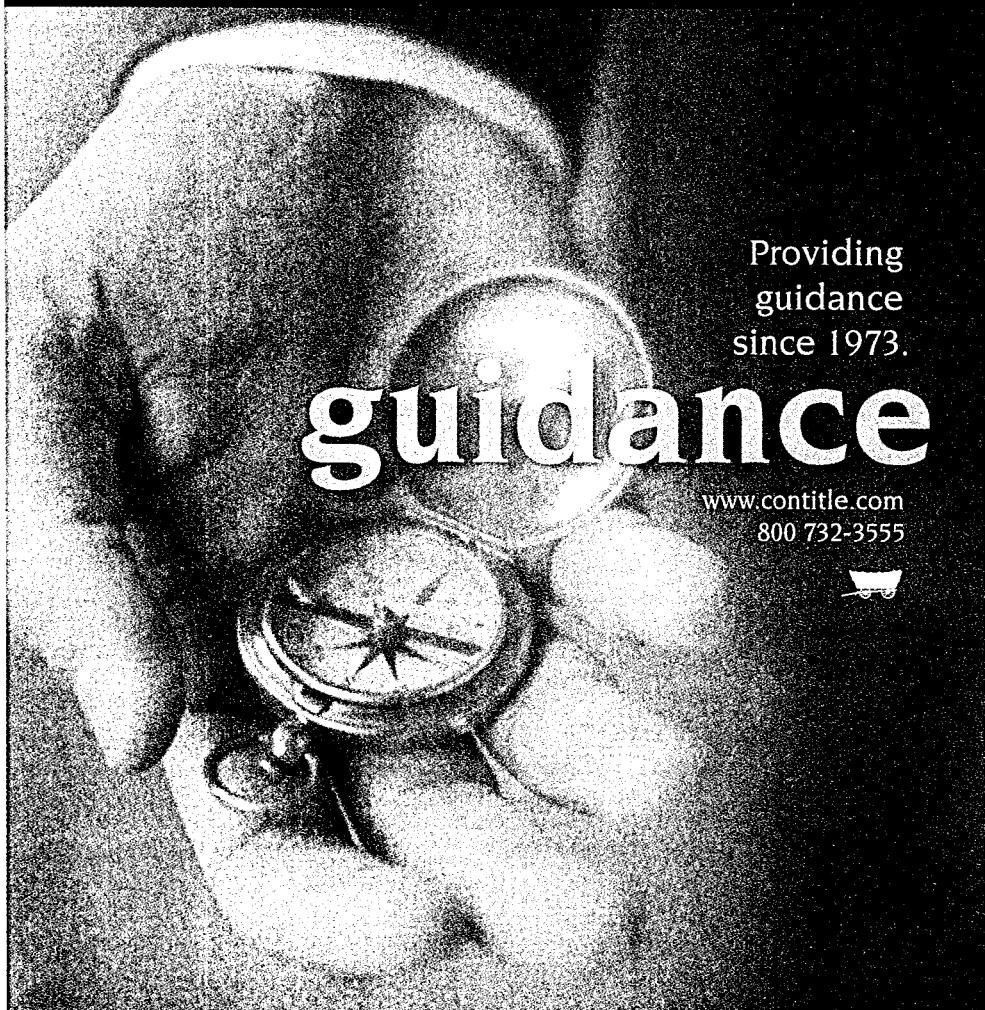
Mary and Art's son got married and they had a daughter. A baby daughter. And I asked Art not too long ago, "What kind of grandfather was Bill?" Art said, "Bill was looking forward to her getting to the age where he could read to her. Sit her on his lap." I guess she was under a year old when Bill died. Now, that's vintage Bill. That's the way he was going to communicate. And that's the way he was going to be a grandfather — by reading to her. ♦

FOOTNOTES

1 Karen L. Valihura, *Breaking Through the Barriers: A Reflection on the Participation of Women in the American Legal Profession*, DELAWARE LAWYER, Spring 1994 (Vol. 12, No. 1), page 4.

2 See Walter Lynch, "Under God" Does Not Need To Be Placed Under Wraps: The Phrase "Under God" Used in the Pledge of Allegiance Is Not an Impermissible Recognition of Religion, 41 HOUS. L. REV. 647, 650 n.12 (2004); John E. Thompson, *What's the Big Deal? The Unconstitutionality of God in the Pledge of Allegiance*, 38 HARV. C.R.-C.L.L. REV. 563, 574 & n.17 (2003).

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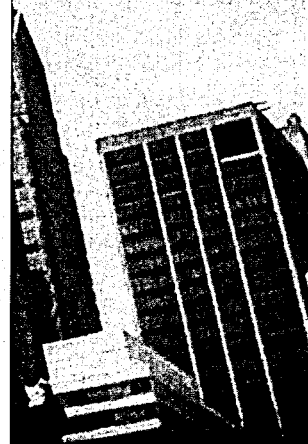
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really was struggling to create a literary outlet for lawyers.

TLA: Bill was definitely interested in getting good pieces of fiction. Which I think is how he hooked up with Bill Prickett.

RAL: I think he was disappointed that we never became a publication of decent non-free circulation. He was very, very aggressively interested, in the early years, getting it to the smoke shop — blessed memory! — and other distribution sources.

I think you can learn a lot about Bill Wiggin from reading the masthead of the magazine, where he sets forth the mission statement, which has been unchanged. It's printed in each issue. And he drafted that with little or no input from anyone else. Very few people ever read it. It just sort of sits there. But I remember him struggling to put the words together, and really trying to decide what the mission was.

The Devotee

VRP: Bill really admired S.J. Perelman as a humorist. He really thought he broke the mold.

JBj: How about H.L. Mencken?

VRP: I could see him being a fan of Mencken. Say what you think, and don't be bashful.

KLP: Bill was kind of the William Shawn of *Delaware Lawyer*.

TLA: If you said "Bill Wiggin" and asked me to do a name association, I would say, "William Shawn." Shawn actually had more idiosyncrasies than Bill. Shawn, you know, never left Manhattan. Hated to be in a car. Wouldn't fly. And didn't like going over bridges or through tunnels. And he edited the *New Yorker*. But that was the name that would spring to mind. You said "Bill Wiggin," I'd go, "William Shawn."

VRP: John P. Marquand comes to mind.

TLA: Bill thought that David Drexler was maybe the best writer in Delaware. Bill just loved the way Dave wrote. And, in fact, we did have Dave on the board for a period of time. The succinctness of Dave's writing Bill found to be very close to the way Bill liked to write.

RAL: Among the lawyers he really revered Bruce Stargatt's writing because it was different. And that was something

met Bill, that he would like to practice law. He didn't seem to me to be the kind of person that would enjoy it, at least in terms of litigation.

TLA: He didn't produce a whole lot of business [as a lawyer] because he wasn't out there trying to do so. If you gave him a project to do, he would do it. But you had the impression, on legal mat-

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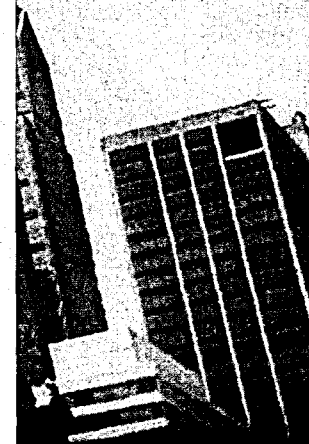
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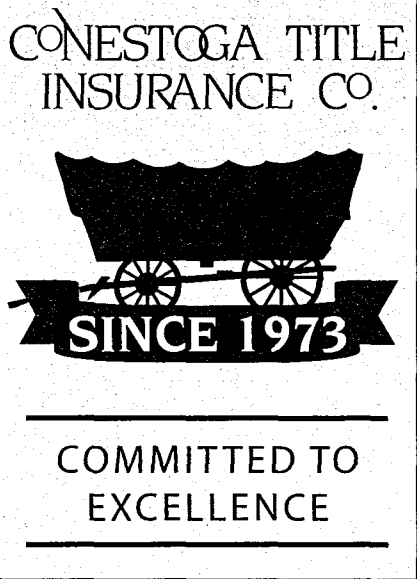
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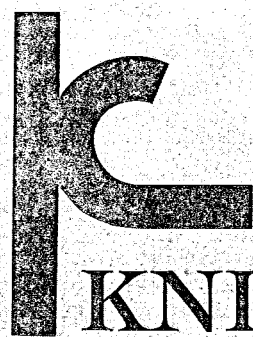


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My

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This apocryphal piece, bearing a timeline of 2075, looks back ... or is it ahead? As with Einstein's theory of relativity, it depends on your perspective.

I never thought 40 years could pass so quickly. Yes, four decades had elapsed since my admission to the Delaware Bar in 2035, and there had been a lot of changes, not all of them good. All of the old Delaware "nameplate" firms were gone, replaced by branch offices of four huge, faceless national "megafirms" that managed to divide most of the lucrative legal work while mysteriously avoiding conflicts of interest. Tired of the politics and the tedium, I had left one of those megafirms a decade ago, together with one partner from each of the other three behemoths, to form my own litigation boutique: Higgins Stambaugh Portnoy Gambini LLP. I'm Higgins.

Now, retirement was staring me in the face, and I had blinked. It was high time to play with the grandchildren. My wife and I had had the foresight to build our retirement beach cottage on the bay side, after all of Bethany Beach had toppled into the Atlantic Ocean during the great March storm of 2058. I loved swimming, fishing and boating, and I was about to do a lot more of them. But first, I had to get past my last appeal.

Let me provide some background here. Over the past several decades, due to a corporation law that relentlessly approached perfection and the

annoying tendency of Delaware judges to decide things (whether actually presented or not), very few open issues remained for litigation, much less for decision. Alternate dispute resolution had practically preempted the field, reducing erstwhile corporate litigators to the status of negotiators with law degrees. Yet my partner, Martha Stambaugh, and I had managed to land one of the few plum cases left: a no-holds-barred control contest between the respective Delaware subsidiaries of ABC Jujitsu Ltd. of Tokyo and XYZ Gesundheit GmbH of Berlin, in which the main issue was whether the fiduciary duty of good faith should be dis-

tablished as part of the venerable "Delaware triad" of such duties. My client, ABC, had prevailed at the trial level by taking the position, duly adopted by the Court of Chancery, that the duty of good faith was doctrinally redundant, a vestigial coccyx of Delaware corporate law that served no useful purpose as long as the duties of care and loyalty were preserved. Nevertheless, XYZ — the skunk at the garden party — had the temerity to appeal from Vice Chancellor O'Brien's cogent 80-page post-trial opinion. And there we were.

Martha and I had worked together on a number of corporate matters over the years, and we knew each other's strengths and weaknesses very well. She had been the lead trial counsel. She was a quicker thinker and better on her feet, but I took the laboring oar on the briefs. When the matter was called for oral argument, she and I settled responsibility for that task in our time-honored tradition: *Final Jeopardy*. First one to blurt out the right question was the winner. On the Friday evening before the argument, we switched on the 90-inch superplasma television screen in our firm's large conference room and awaited the appearance of Alexis Trebek, granddaughter of the "famous one," to announce the *Final Jeopardy* category, which was "20th Century Baseball Players." Here the advantage was mine because, although Martha was an avid sports fan, I was older than she was and had a gift for useless trivia.

Alexis Trebek then read the question to the three befuddled contestants: "Former Oakland and New York outfielder who described himself as 'the straw that stirs the drink.'" Faster than you could say, "Who was Reggie Jackson?" I was headed to Dover.

Although the practice of law in Delaware had changed mightily since the turn of the millennium, what with the abolition of class actions and all, the same could not be said for the Delaware Supreme Court. The state's highest court continued to pride itself on an excessively small courtroom, age-old standards of intellectual rigor, unpromising civility, and the most compli-

cated set of rules ever invented. Although I prided myself on not having received a "ding letter" for violation of those rules since I was a third-year associate, I remained in mortal fear of another one and proofread everything six times as a result.

Likewise, there were few apparent changes to the court's physical plant. Same marble floors in the hallway, same olive-drab decorating scheme. Just different high-tech gimcracks, like TiVo in the courtroom. The plaques on the walls that identified all Delaware attorneys since Thomas Spry had now outgrown the place, such that the names of all lawyers admitted after 2017 (when

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500 attorneys joined the bar) had been consigned to the basement.

In simpler times, various "eras" of the Supreme Court had been known by the surnames of the chief justices. Early on, we had the Wolcott Court, the Herrmann Court, the Veasey Court and the Steele Court. Slightly later, we had the Johnston Court, the Foster Court and the Jenkins Court. With the progressive decline in civility accompanying this century's legal practice, we had the Basketball Court (with the "Fab Five" all-American hoopsters, including two women), the Wahoo Court (all University of Virginia alums), and the Kangaroo Court (five naturalized Australians). The current court has not yet been baptized.

However, the lawyers' approach to appeals remained constant. Now, as then, and way back when, the main topic of conversation among appellate practitioners was not how good your briefs were, or how much time you had spent preparing for the argument. It was "What panel did you draw?" It was the ultimate question and was frequently outcome-determinative. Then, as now, you still didn't know the identity of your inquisitors until that creaky side door opened. On that fateful October morning last year, when the justices filed in, I knew that we had drawn a totally unpredictable group. How could I possibly pander to all of them?

First to appear was the curmudgeonly sexagenarian Beauregard J. Pierpont. As he was fond of telling anyone within earshot, often more than once, Justice Pierpont was a native of Ratspatoot, Alabama, a hardscrabble hamlet that was just a cow-pie toss from Uvula, the county seat of Beavis County. Justice Pierpont had graduated at the top of his class from the Jubilation T. Cornpone School of Law at the University of Southern North Carolina and had worked his way steadily northward to Dover, Delaware, where he joined a general practice firm and served on NASCAR pit crews on race weekends. Justice Pierpont, whose politics were as unfathomable as some of his syntax, somehow finagled his way onto the Superior Court, where his proclivity for imposing the death penalty in criminal cases soon earned him the moniker of "Pine Box Pierpont." His white-whiskered appearance was a hybrid of Colonel Sanders and Oliver Wendell Holmes, while his accent was a sour mash of Foghorn Leghorn and Fritz Hollings.

Next to come through the door was the senior member of the panel, Chief Justice Mary Lindhurst White. Chief Justice White combined a razor-sharp intellect with an austere personality and an aversion to claptrap. A convent-educated alumna of Wellesley College and Harvard Law School, she never wrote an opinion longer than 20 pages, and the rumor was that she whacked her clerks upside-the-head with a ruler if



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their bench memos were too long. She was known for her succinct but devastating questions and for the fact that she had never been known to smile or to crack a joke. Racquetball was her only known passion, and she was great at it. Her appearance? American Gothic in a robe. Mona Lisa on a bad day.

Last in line was the Supreme Court's Boy Wonder, Edward Chalmers Wiley. It seemed that Justice Wiley, like the elder George Bush before his election to the presidency, had lived his brief life in two-year increments. A cheerful workaholic, he graduated from Harvard College at age 19 and from Stanford Law School at 21. After completing a two-year clerkship with U.S. Supreme Court Justice Sylvia Hernandez, he worked for two years at a Wilmington megafirm before leapfrogging to the Court of Chancery at the ripe old age of 25 (shattering Collins Seitz's long-standing record), before his appointment to the Delaware Supreme Court that spring at 27. Fresh-faced and fuzzy-cheeked, with a full mane of red hair, Justice Wiley was a prodigious worker with a reputation for lengthy but lucid opinions. Although one fellow early in the century had cranked out 100-page opinions with some regularity, nobody could beat Justice Wiley. One of his Chancery opinions began at 867 A.3d 1. The next opinion, from any judge on any court in the Middle Atlantic region, started at 870 A.3d 1. And he had dashed off that three-volume baby in a matter of two weeks. For fun, Justice Wiley and his investment banker wife took exotic vacations and raised purebred borzois.

My task looked difficult, with that eminent panel before me. I also had to deal with my worthy opponent, Charles Winthrop ("you may call me Charles Winthrop") Hamilton, V. Hamilton, who had two Yale degrees and an affected Brahmin accent, was widely regarded as a rising star at his firm. Smart, haughty and utterly contemptuous of any other attorney's right to exist, Hamilton — who was not averse to an occasional bout of discovery abuse — had already earned a reputation as an obnoxious little punk. His virtual Martindale-Hubbell listing was 12 inches long.

The justices settled into their seats, and Hamilton strode confidently to the podium. It was my fervent hope that Hamilton's penchant for otiose rhetorical flourishes would start him off on the wrong foot. I guess I had lived a clean professional life, because Charles Winthorp "stepped in it" right away.

"May it please the Court, my name is Charles Winthorp Hamilton, V, for appellant XYZ. [That's right, he actually said, "the fifth."] The issue before Your Honors this morning is whether the Court of Chancery erred by amputating one limb of the three-legged stool of Delaware fiduciary duties: the sacred duty of good faith!"

With that opening sentence, the unraveling of young Mr. Hamilton had begun. Justice Pierpont harrumphed and looked for a spittoon. Chief Justice White knitted her brows and dropped a stitch. Justice Wiley audibly smirked.

"Don't you overstate your case, Mr. Hamilton?" asked Chief Justice White. "The record before the court below

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contained no facts to support a claim for breach of either the duty of loyalty or the duty of care. How can you continue to claim that there was a good faith violation? And even if so, what good would it do?" That was a year's speech for the Honorable Mary Lindhurst.

Hamilton was aghast that his carefully scripted argument had already been interrupted. He stammered a nonsensi-

cal response: "XYZ's position is, Your Honor, that a director can be totally diligent and clean as a hound's tooth, but nevertheless have other personal 'issues' sufficiently deep to warrant a finding of a breach of the duty of good faith."

With that dubious retort, Justice Pierpont's bushy handlebar mustache twitched, and he countered with something that sounded like, "Mr. Hamilton, are you saying that mere character flaws are actionable in this court?"

"Absolutely!" responded our hero, albeit tentatively. "But Mr. Hamilton, how do you square that conclusion with rational Hegelian concepts of normative judicial positivism?" Such was Justice Wiley's initial salvo in the intensifying barrage against the hapless attorney for the appellant, who was beginning to resemble Fort Sumter after the shelling stopped. The former Yale philosophy major was totally flummoxed, and it went downhill from there. Nothing like a good self-immolation, I thought to

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myself. The wartime streets of Saigon had seen nothing like it. And Hamilton was pouring more gasoline on the fire with every response he gave.

Although young Charles Winthorp had reserved five minutes for rebuttal, the red light came on before he knew what hit him. He then limped back to his seat under the withering, monocled stare of his client, Herr von Hindenburg-Goering. It was not a good day to be Mr. Hamilton the Fifth. Then it was my turn. "Mr. Higgins, you may proceed," said the chief justice, and I thought I saw that the corners of her mouth were upturned. My argument took precisely six and one-half minutes, and I managed to appeal shamelessly to the unstated predilections of each of the three sitting justices. With respect to "Old Hominy Grits," I assured His Honor that the abrogation of the duty of good faith could only strengthen the traditional manly Southern virtues

embodied in the duty of loyalty. I then addressed the chief justice's overriding precept of efficiency by emphasizing the neatness of dealing with two, rather than three, duties. Finally, having read up on legal philosophy myself, I parried Justice Wiley's Hegelian thrust and countered with a touch of Kant and a dash of Nietzsche. As Hamilton had already blown his 20 minutes, there was no rebuttal, and the court took the matter under advisement. God, I was good.

* * *

After the argument, I took my three partners to our favorite local crab shack for a celebratory lunch. After a couple of pitchers of beer and the initial crustacean platter, Martha and I performed a blow-by-blow reenactment of the Siege of Hamilton. The portly Lou Portnoy certainly had no complaint, but Vinnie Gambini wondered whether the

justices might have been offended by his new leather jacket and purple shirt. In a pleasant haze of choice hops and camaraderie, I assured Gambini that his sartorial gaffe had been overlooked.

The very next day, I was pleased to receive a three-line order affirming the judgment of the Court of Chancery on the basis of the well-reasoned opinion of the court below. The good people at ABC were understandably thrilled with the result, and they assured my remaining partners of the prospect of continued business for years to come. With this last great victory in hand, it was time to hang up my spurs and head for the beach. No more time sheets for me.

And whatever happened to Charles Winthorp Hamilton, V, Esquire? The last I heard, he had changed his name to "C. Winthorp" and was allowing his very good friends to call him "Thorp." ♦

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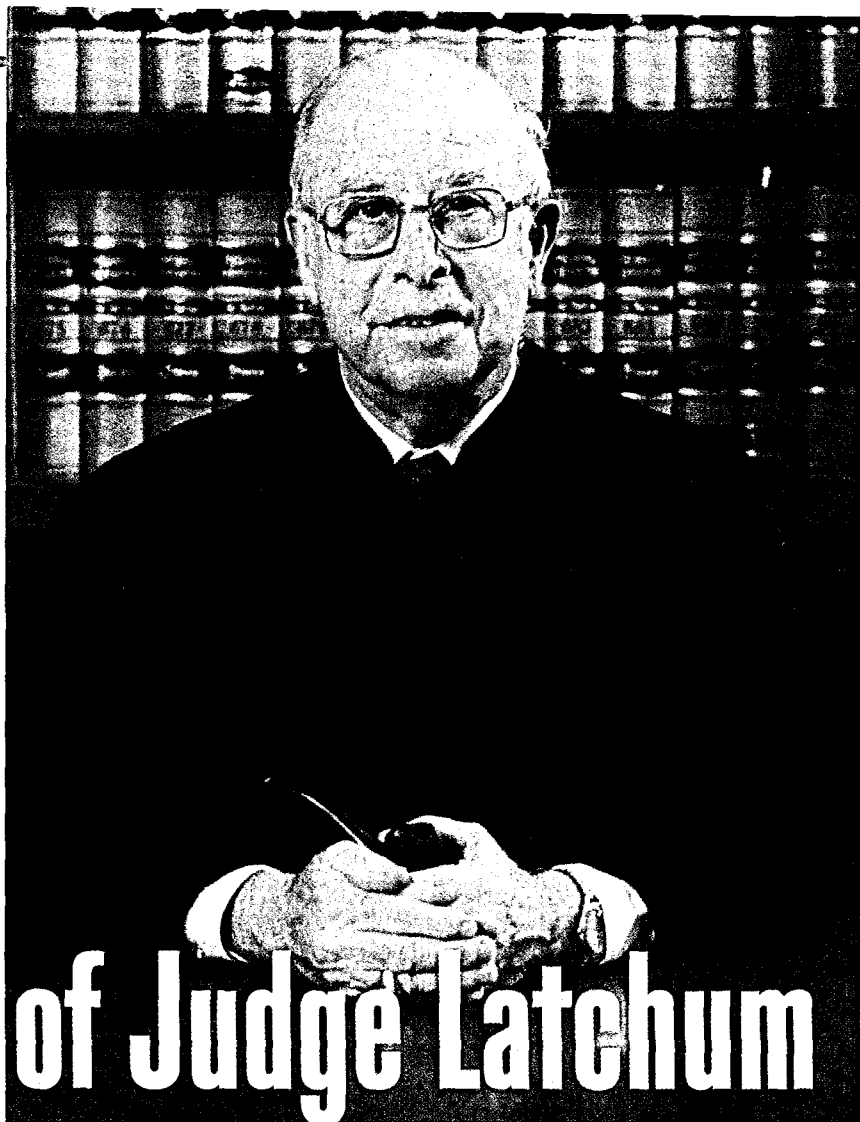
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The Jokes of Judge Latchum

Judge Latchum was a consensus choice for the Bar Association's Woolley award.

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He was gifted with a prodigious memory for anecdotes and jokes, an eye for irony, and a penchant for pulling pranks. Those who worked with and for him will never forget the experience of seeing a mischievous glint enter his eye as he planned or recounted one of his practical jokes. When Latchum fans gather,

there are invariably waves of laughter as they remember his commentary on the law, lawyers, judges, litigants, people in the news, and life in general. A full exposition of stories by and about the judge would run to several volumes, many of which would have to be published anonymously, but the following selection should give readers

an idea of why the judge was a consensus choice for the Bar Association's coveted humor award, the "Woolley."

One of the judge's great talents was his ability to imitate others' mannerisms and speech patterns. He also enjoyed putting on different voices, and was particularly effective at sounding like an old lady. He put this skill to use once when teasing the members of the clerk's office. It so happened that during the administration of President George H.W. Bush ("Bush 41"), the president paid a visit to Delaware and spoke at what is now the Wyndham Hotel in downtown Wilmington. The presidential motorcade was to make its way down King Street directly in front of the Federal Building. Judge Latchum came into the clerk's office and saw several staff members peering out the window in anticipation of the motorcade's arrival. Without a word, he returned to his chambers and there followed a phone call to the clerk's office from an elderly lady asking for the State Republican Committee to explain to her why she had not received her tickets to the president's speech. A flustered deputy clerk tried to make the confused woman understand that she was speaking to the federal court clerk's office, not the State Republican Committee, but there was no getting through to her. She became more and more irate, ending the call with "you've not heard the last from me." Shortly thereafter, the judge returned to the clerk's office, where some of the employees were talking about the strange call. The judge offered some advice about how to deal firmly with such people, not to take any nonsense, because the court is, after all, an important institution with important things to do, and then he went back to his chambers. Very soon there was another call from the Republican dowager. She asked to speak to the party's national committeeman or woman. The deputy clerk tried to be firm but was met with equal insistence by the caller that due

respect be paid to a senior citizen who was only trying to get her opportunity to see the president of the United States. As with most Latchum pranks, he eventually could not keep himself in character because he began laughing. Then, as was also his custom, he went to see his victims to make sure they had taken the joke in good spirits and to share a few moments of humor with them.

On another occasion, he disguised his voice and called several of his former law clerks, claiming to be a reporter interested in doing a local story about

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the workings of the Delaware District Court, a kind of "insider's view" along the lines of "The Brethren." To understand the full import of this prank, you need to know that the judge placed particular emphasis on what he liked to call the "law clerk oath of silence." The freedom to bat ideas around within chambers being critical, it was important to him that his clerks be committed to keeping chambers' matters confidential. He called three former clerks who at the time were in private practice but who now all sit on the Court of Chancery with law clerks of their own. He asked each of them, in his fake reporter's voice, to talk about working for Judge Latchum. The first hung up

on him. The second denied ever knowing the man. Then he called the third person, who responded by asking, "So how long do you think this interview would take?" With that, the judge leaped out of character with a string of words not fit for this audience but loosely translated went something like, "What the [blank] do you mean 'how long will it take?'" To which "let him remain anonymous" is alleged to have flushed, "I, uh, I, well, ahem, uh-hh."

It wasn't just former clerks who got the brunt of his humor. The clerks then serving with him were probably his favorite targets, particularly when they were brand-new to chambers. One of his clerks, Bob Hotz, recently shared the following story at a ceremony for the presentation of Judge Latchum's portrait to the District Court. One beautiful fall afternoon in October of 1992, near the beginning of Bob's clerkship, the judge told Bob and his co-clerk Mary Watson that he wanted to go for a ride. So they all got into the judge's car. Bob was sitting in the front passenger seat and Mary was in the back. As he pulled out of the garage, the judge said with a deadpan expression, "Now look, Bob, I'm having some trouble with my cataract in my one eye." Then he looks over at Bob, squinting, with his eyes tearing, and he said, "And I am having trouble telling colors on the traffic lights. So call them out to me as we drive." So, dutifully, for the next three blocks, Bob was calling out "green," "red," "green." After about the third traffic light, the judge burst out into that infectious, high-pitched Latchum squeal that the clerks came to love, and Bob knew he'd been had. The judge then asked, "How long were you going to keep doin' that?"

Judge Latchum liked to use his jokes to teach. On one occasion, he taught a law clerk the importance of paying attention to details, especially when applying rules of law. He came into the clerk's office, threw down a brief in

disgust and said, "Look at this. ... You would never do this, would you? ... Of course not ... If you did ..." The clerk, completely mystified, affirmed he certainly wouldn't do it (whatever "it" was). The judge went on, "Diversity is about citizenship, not residence. It's never about residence. What the [blank] do I care about residence. It's citizenship that gives rise to diversity! This complaint is DEFECTIVE!" his voice rising to a crescendo. "I'm going to dismiss this complaint and then call this lawyer up and tell him he must be an idiot for thinking that I would accept something as fundamentally wrong as this piece of [blank]. Then I am going to call the senior partner in his firm and tell him that he must be an idiot because he hired the idiot that filed this complaint!" The judge walked out, leaving the clerk in stunned silence. About a half hour later, the judge stuck his head into the clerk's office and said with a smile, "I had you going on that call to the senior partner, didn't I? You fell for it; I could tell. I'll bet you don't forget about diversity of citizenship, will you?" Then he laughed, put on his coat and left for the day.

Sometimes the judge's practical jokes went a bit further than he'd intended. On one famous occasion, he decided to teach his younger colleague, Judge Walter Stapleton, who was then on the District Court bench, to keep the door to the judges' garage locked (back in the days when it had to be locked manually). Judge Latchum claimed to have tried to get Judge Stapleton to lock the garage, so, when the door turned up unlocked one time too many, Judge Latchum concluded it was Judge Stapleton's omission and that only a dramatic illustration of the security problem would suffice. At the time, Judge Stapleton was in the midst of a lengthy criminal trial involving a notorious motorcycle gang called the "Pagans." Each day the testimony emphasized the lawless and violent character of the gang's activities. One of the Pagans' mottos was report-

ed to have been, "Kill 'em all - let God sort 'em out." (Indeed this was tattooed on the defendant's upper front torso.) So Judge Latchum penned a short note setting forth that same, touching sentiment, and placed it under one of the windshield wipers on Judge Stapleton's car. Judge Latchum expected that later that day he would stop by and ask Judge Stapleton if there had been any interesting notes on his car. What Judge Latchum didn't expect is that Judge Stapleton would take the note seriously enough to deliver it to the FBI officials, which he did. They, in

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turn, began an investigation that included immediately sending the note down to Washington, D.C., for fingerprint analysis. When Judge Stapleton came by Judge Latchum's chambers to report what was going on, he noticed after a while the look on Judge Latchum's surprised face, and asked, "Jim, you didn't?" To which Judge Latchum responded, "Walt, I did." When Judge Latchum asked what "we" should do about this problem, Judge Stapleton responded, "Where do you get this 'we,' kemosabe?" When an FBI agent appeared at Judge Latchum's chambers door that same day as part of a set of interviews it was conducting with all of the judges to try to get further informa-

tion about the threatening note, it was Judge Latchum's turn to say "I, uh, I, ahem," and ultimately confess.

One of the judge's standard practices was to try to make his law clerks laugh immediately before going into court, where everyone was supposed to look very serious. On one particularly painful occasion, the authors were required to go in and give the cry of the court immediately after the judge told the story of a friend of his from downstate who had come up to visit shortly after the judge was sworn in. The friend was enthralled by all of the formality and solemnity of the courthouse and its procedures. He had seen television shows and movies in which bailiffs called a court to order, and he wondered if anyone did that as Judge Latchum entered the courtroom. Oh yes, the judge told him, there was indeed a formal cry of the court, and he showed his friend the text for it which was printed on a card and included the ornate introduction "oyez, oyez, oyez." The friend asked if he could give the cry of the court that day and the judge said certainly, but, thinking to tease him, he said it had to be done from memory. The judge told his friend he would have to study it quickly because court was to go into session in just five minutes. The friend studied diligently but was clearly nervous when the time came to enter the courtroom.

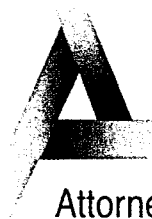
"You'll be fine," the judge assured him. But as they entered the courtroom, the judge did not hear "the United States District Court for the District of Delaware is now in session, Judge James L. Latchum presiding. All persons having business before the Court draw near and be heard. God save the United States and this honorable Court." Instead, he heard his poor friend yell, "Here he comes, here he comes. God save us!"

This article could go on and on, but suffice it to say that all who knew the judge are grateful that God saved him to work with us here in Delaware. His humor is a priceless legacy to the Delaware bench and bar. ♦

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"I'll handle the jokes, counsellor."

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Humor in the Courtroom

Humor should only rarely be used in the courtroom, and it must be respectful.

On the morning of my last Delaware Supreme Court argument, my good friend, colleague, and mentor, Joseph T. Walsh, wished me luck and then added, "Don't forget; no jokes." My reputation was worse than I thought. I have argued more than 10 cases to the Delaware Supreme Court, and I have never told a joke there — honestly, it's true. Oral argument before the highest court of our state is no place for humor, just as it is no place for a pink, or even dark blue, shirt. But humor does have a place in court sometimes.

Humor is a big part of my life. I was blessed to have as a father the funniest person I have ever been around — no doubt. If you knew John D. Kelly III, you know that I am not exaggerating. He had great material and impeccable timing (he appeared on national television three times). But he told jokes not just when he was on stage or at the podium, he told jokes all of the time. It did not matter where he was, he *always* told a joke. He began every meeting at work with a joke, he told jokes at the dinner table every night, he told jokes while he was working out (if you exercised at the Main Branch YMCA during the '60s and '70s you know what I am talking about), he told jokes in his campaign speeches, he joked in church (as an usher he often pretended that he was

stealing money from the collection basket just to get a laugh),¹ and he even told jokes in court. His courtroom quips while serving as Register in Chancery could fill many volumes.

So I grew up thinking that it is okay to use humor in any situation. My identical twin brother (good-looking guy) is an orthopedic surgeon in Philadelphia. Stop by while he is operating or delivering a lecture and you will surely hear at least three or four good ones. My sister, who is also an attorney, will give you five or six good ones, no matter where she is. I once saw her have the whole Delaware Senate in stitches. We Kellys try to find humor in everything. And we have learned that humor can be endearing, if you know when to take your shots.

I believe that, to be a good trial

lawyer, one needs to always keep in mind what the jury, and judge, may be thinking. If either is getting bored during the presentation of your evidence, you are in trouble. What can one do to save the day? *My first instinct is to tell a joke. After all, if my father can tell jokes in court, why can't I, if the joke can help my cause? Four years ago, on day two of a painful bench trial, I felt like I was losing the judge. My opposing counsel*

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could have been the poster child for Sominex. I needed an opportunity to break the monotony, and my witness gave it to me. I had to tell a joke:

Q: So, you don't take any medicine for your pain?

A: No sir, I do not.

Q: How about aspirin or Tylenol?

A: Not even aspirin or Tylenol. I don't like to take any medicine.

Q: Really?

A: Yes, you see I am Homeopathic.

Q: I wouldn't know anything about that; I prefer women.

Naturally, I knew that the judge was not homeopathic. Also, I would never have done this in front of a jury — too risky. You have to know your audience.

About three years ago, in closing argument before a jury, I had three jurors who were males over 60 years old. My opposing attorney, during trial, made much use of sports analogies. (I felt like he stole from my playbook.) I noticed that the three older, corpulent, "couch potato"-type jurors were unmoved by the references to swimming, biking and running. I had my chance to win them over:

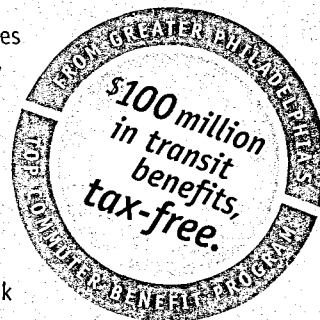
"Now some of you may not be athletes. I used to be an athlete, having played football for thirteen years. But now I can't do much at all. I do jog every morning, but it is to the bathroom and back."

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All twelve laughed, the three Archie Bunker look-a-likes most heartily. I had won over at least three. The bad news is that the presiding Superior Court judge (you know who you are), after presenting the jury instructions and excusing the jury, called me to sidebar to admonish me: "Mr. Kelly, this is a courtroom, not the Logan House." What he will never admit, however, is that he too laughed.

Believe it or not, that was the only time I have been reprimanded by a judge. My values compel me to offer the highest respect to the tribunal. They have a tough job, and are underpaid for what they do — it must kill a judge to see a snot-faced first year associate bungle his way through a trial, knowing that the associate is making more money. Besides, it is never wise to irritate the judge — it won't help you in the case at bar, or in the next case you have. Humor should only rarely be used in the courtroom, and it must be respectful.

There is a popular state court judge (I won't say which court) who invites humor. Once I get that invitation, I always oblige. A few years back His Honor asked why I looked so tired, and suggested that I had been out drinking late the night before at the family pub. The fun began:

MPK: *Actually, Your Honor, I am tired because I couldn't fall asleep last night. You see, I concluded last night that my wife might be cheating on me.*

THE COURT: *Really, Mr. Kelly?*

MPK: *Yes, Your Honor. You see, we just moved from North Wilmington to Hockessin, and I found out last night that we still have the same mailman.*

Just last year, before this same well-respected judge, in a criminal case where I had already negotiated a plea for my client, I again succumbed:

MPK: *Your Honor, my client is here for something he did not do.*

THE COURT: *What is that, Mr. Kelly?*

MPK: *Run fast enough.*

(Aside to Disciplinary Counsel Andrea Rocanelli: I would not have said this to any other judge, and I did not perceive any prejudice to my client (who is a good friend). It will never happen again.)

My humor before this judge does not diminish my respect and reverence for him.

When a joke is invited by the judge, you are safe. Unless, of course, your joke is, what we call in the stand-up trade, a bomb. You cannot ever deliver a bomb in court. There is no worse feeling in the world. I only "bombed" once in court, and I will never forget it.

I was in federal court (I won't say which district—I try cases in many jurisdictions) before a judge I have grown to admire greatly, if not idolize. I was about to argue a summary judgment motion and, as I had appeared before this judge many times, I thought that a joke at the beginning of my argument would "warm up the crowd." It happened that the day before, the acrobat known as "the Human Cannonball" (you know, the guy who used to get shot out of a cannon) had passed away. His death made the front page of *The News Journal* (which is a story in itself). I saw an opportunity for a joke:

MPK: Your Honor, I am not myself today. I am a little under the weather.

THE COURT: Why is that, Mr. Kelly?

MPK: Well, I don't know if Your Honor read this morning's paper, but there is a story on the front page about the death of the Human Cannonball.

THE COURT: Yes, I did see that, Mr. Kelly.

MPK: Well, Your Honor, you see I am saddened by his death, as I personally knew him.

THE COURT: I am very sorry to hear that, Mr. Kelly.

MPK: And what bothers me the most, Your Honor, is that I know I will never again meet a man of his caliber.

No laugh from the judge — not even a smile. I had bombed with that joke. I felt like crawling under a rock. I then began my argument, knowing that I got off to a very bad start.

I recovered from that fateful day, in part because the judge, obviously moved with pity, invited me to tell another joke at the conclusion of the hearing. He is a great judge: smart, well-prepared, and compassionate. By

the grace of God, my second joke ("The witness is so old, he was a waiter at the Last Supper.") got a laugh from His Honor. But the scars from "the bomb" remain, and I left the courtroom that day all the more cautious and humbled. I will never be as funny as my father. I carry with me his memory, and his material, but I will never have his perfect delivery. And, for better or for worse, I carry on his tradition of finding an opportunity for a joke in every situation — even in the courtroom. I don't use humor in the courtroom often, and it is always respectful to the court, the jury, my opposing counsel, and anyone else in the courtroom. But when the respectful joke gets a laugh from the judge or jury, there is no better feeling — well, almost no better feeling. ♦

'Editor's note: John D. Kelly, III was also reputed to have stopped when a congregant put nothing in the collection basket and intoned sotto voce, "Come on, Joe Smith, you don't mean to tell me you're taking a pass this Sunday, are you?"

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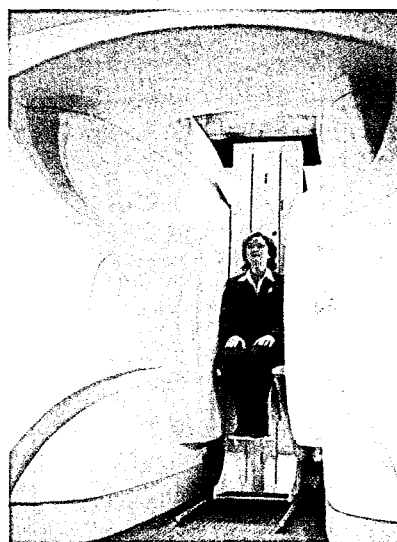
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