

INSIDE: Reflections on Retirement: When to Leave, How to Prepare, What Happens Next

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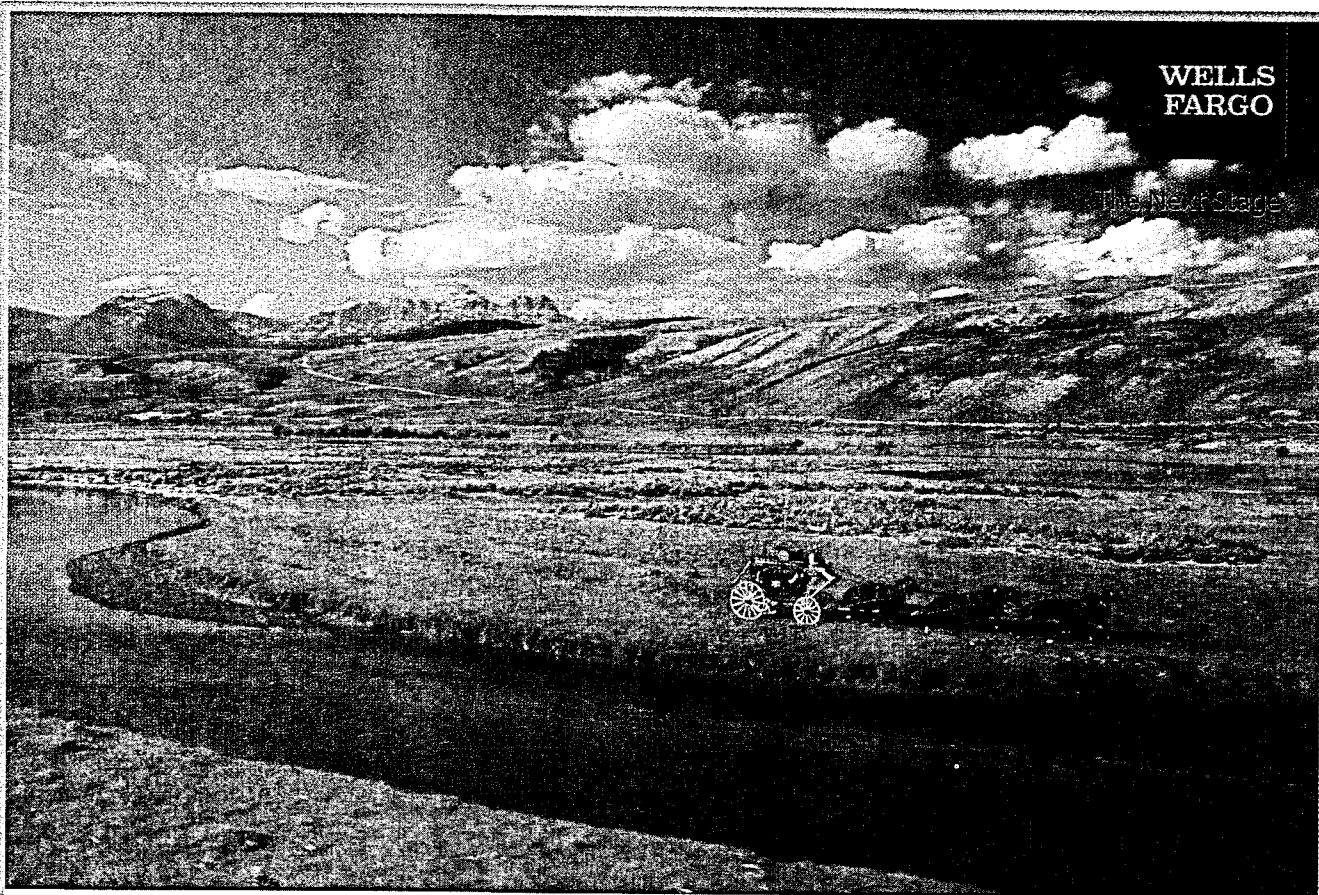
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Charles Allmond sculpting.



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Richard Poole with two of his grandchildren.

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EDITOR'S NOTE

At a meeting of the board of editors of this publication, I suggested devoting an issue to the subject of retirement. I thought lawyers needed to be reminded that early planning for retirement was critical. The board agreed, and I was asked to serve as editor of the issue.

Oddly enough, my personal experience actually shows the futility of advanced planning since my own retirement plans met with such an unexpected and unfulfilled end. On the first day of July of 2001, the day after my law office closed, my wife of blessed memory died after a brief illness. On that day, all of our plans — all of my plans — died with her.

Five years later, I confess that I am still doing hard time. I am no further along in accepting her death, or in managing fully without her, or in deciding what to do with the remainder of my days. For now, I am treading water.

Yet, I believe that early planning for a life after law makes good sense. Make no mistake about it, retirement presents

serious and sobering questions. When is the right time for you to retire — early or late or perhaps not at all? What arrangement must be made with your firm? How is your health? Are you married? Do you have dependents at home? Where will you live? What are your financial resources? Are you going to work? What will you do to avoid becoming bored or depressed?

The authors in this issue candidly address these questions in their own effort to find some measure of satisfaction in their retirement years. Their individual courses may not be yours, but their experiences may lead you to look within yourself, and sooner rather than later, to consider that other road — as Robert Frost described it, “the one less traveled.”



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CONTRIBUTORS

Charles Allmond



holds degrees in agriculture and agronomy from the University of Delaware and in law from Temple University. He retired in 1995 after practicing law for 31 years.

Nationally known as a sculptor, he has exhibited widely in this country and elsewhere and is represented in museum, corporate, and private collections. Among his honors are important awards from the Society of Animal Artists, the Audubon Artists, the Salmagundi Club, and Woodmere Art Museum. In 2004, he received the Governor's Award for the Arts.

James Freund



is a former partner of (now of counsel to) Skadden, Arps, Slate, Meagher & Flom LLP, and for 35 years was a leading business lawyer representing clients in many acquisitions and

corporate takeover contests. He still serves as a mediator helping to resolve business disputes. Freund is the author of *Anatomy of a Merger: Strategies & Tactics for Negotiating Corporate Acquisitions*; *Negotiating: How to Make Good Deals in the Real World*; and *Lawyering: A Realistic Approach to Legal Practice*, as well as two books of post-retirement photography. A graduate of Princeton and Harvard Law School, he has taught for many years at Fordham Law School near his home in New York City.

George F. Gardner III



was born in Wilmington, Delaware, in 1938 and grew up in the city's southern suburbs. He graduated from Conrad High School in 1956, received a B.A. from Dickinson College

in 1960, and an L.L.B. from George Washington Law School in 1963. He has been a member of the Delaware Bar since 1963. Mr. Gardner has practiced in all Delaware Courts and before the United States District Court for Delaware and the U.S. Court of Appeals for the Third

Circuit. He has been with the law firm of Parkowski, Guerke & Swayze, P.A. in Dover since 1987.

Richard E. Poole



graduated from Swarthmore College in 1963 and the University of Chicago Law School in 1966, and was admitted to the Delaware Bar during his judicial clerkship

with Collins J. Seitz on the Court of Appeals for the Third Circuit. In 1967 he began a 35-year career at Potter Anderson & Corroon, specializing in complex litigation. During 1997-1999 he was chairman of his firm, and in 1999 he was inducted as a fellow of the American College of Trial Lawyers. In retirement he and his wife, Elisa, own and operate AerieArt Gallery in Wilmington and Rehoboth Beach.

Battle Rankin Robinson



served as an Associate Judge of the Family Court of the state of Delaware from 1985 until her retirement in 1998. She is a graduate of Duke University and Yale Law School.

Robinson is an active member of the Delaware Republican Party and has served on the National Conference of Commissioners on Uniform State Laws, the U.S. Commission on Interstate Child Support and the committee that reviewed the Code of Judicial Conduct. Robinson has also worked at community groups and non-profit organizations Preservation Delaware, Biggs Museum, Grand Opera House and the Georgetown Historical Society.

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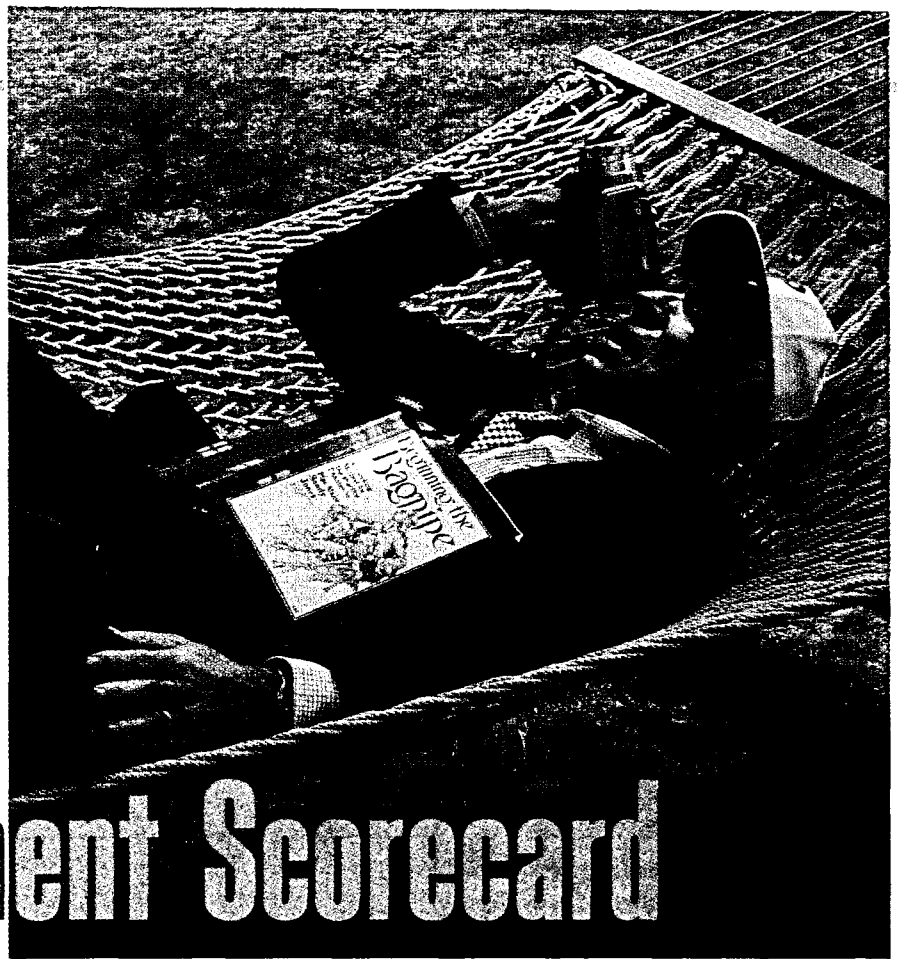
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A Retirement Scorecard

Like most things in life, retirement is not an unalloyed blessing, and individual reactions to the experience can vary widely.

I've been a retired lawyer for more than nine years now and have thoroughly enjoyed my unencumbered decade. But like most things in life, it's not an unalloyed blessing, and individual reactions to the experience can vary widely. My aim here is to provide you with a sense of what's involved in the two key retirement issues you'll have to face up to: first, the threshold decision of whether or not to retire, and second, how to spend your time once you've taken the step. Sure, you can choose to just wing it — but I think you're much better off giving these issues the kind of due care you apply to a thorny legal problem for a valuable client.

Let me begin with some basic assumptions I'm making:

1) Most of you are currently active members of the bar, who will some day — either soon or down the road — have to face up to the decision of whether or not to retire.

2) Your decision will be a voluntary one. Even if your law firm or company has a mandatory retirement age, you could presumably continue practicing, one way or another, if you really wanted to.

3) You aren't interested in pursuing a full-time second career in another field, such as investment banking.

4) When the time comes, you'll have the financial wherewithal to handle

retirement, and the urge to make a lot more money won't be your highest priority.

I'm also assuming that, in common with many practicing lawyers, you don't like to contemplate this subject, and even less, to discuss it with others. At my 40th Harvard Law School reunion, I chaired a seminar on retirement, attended by my fellow (mostly male) alumni and their spouses. When I asked for a show of hands as to who was considering retiring in the next few years, a smattering of arms were haltingly raised. The silence in the room was punctuated by a shrill cry from an incredulous female voice, "You are?"

I practiced business law for 35 years,

the final 30 as a New York partner of Skadden, Arps, Slate, Meagher & Flom LLP. Mergers and acquisitions were my livelihood, and delight, during the go-go years of the '70s and '80s. I had a great run — actively participating in the firm's copious growth from 17 lawyers when I arrived, to the 1,700-lawyer behemoth it has now become. But nine-plus years ago, I decided I'd had enough, and at age 62 — eight years before facing the firm's mandatory retirement age for partners — I hung up my gloves.

The Decision Whether Or Not To Retire

When I stepped down, I wrote an article for *Business Law Today* on the subject, identifying a dozen surefire signs that a lawyer is ready to retire. Some were light-hearted — although by no means insignificant — such as my frequent desire to spend an extra five minutes in the shower each morning before heading off to work. Another involved a recurring daydream — proof positive that I was living on the cusp of a fantasy world — in which my only task was to provide sage advice to my clients, at which point a younger colleague would see to its implementation without any subsequent effort or involvement on my part. One of the signs even exuded a whiff of melodrama — that despite my good health, I found myself making a quick daily perusal of the obituaries at breakfast, scanning the page for decedents in their 60s.

Most of the omens bore witness to the cumulative toll taken by so many stressful years. I didn't use the word, but "burnout" may have been appropriate to describe my awareness that I was no longer getting a kick out of work. Here's a brief summary of a half-dozen such signs — see if any of them hit home for you.

1) I was tired of servicing clients. For more than three decades, they had been my prime concern, and I had vigorously shouldered the burden — cheerleading their accomplishments, adapting to their idiosyncrasies, holding their hands, and making myself constantly available. But the day came when I no longer took satisfaction in pursuing the agendas of others — which, of course, is the essence of what we lawyers are supposed to be doing.

2) Trolling for new business was never my favorite pastime, even in the halcyon years, but as I crossed into my 60s, the effort became increasingly arduous. One reason was that M&A is a young person's game, so that most of the potential clients were a generation removed from this old foggy — impatient with war stories of illustrious deals from the '80s (a lot of "ancient history," to their minds).

3) I realized that, at three score and counting, most of the plaudits I was receiving — vital fodder for a healthy ego — related to past accomplishments. No one quite said it to my face, but I detected a distinct overtone of "what have you done lately?" in the air.

4) There was a noticeable absence

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of new heights to conquer. I had done what I'd set out to do and didn't feel the need to accomplish anything else in particular. As I undertook each new assignment, the faddish phrase, "been there, done that," kept reverberating in my ears.

5) As the years went by, the younger lawyers I had taken great pride in mentoring matured into accomplished attorneys. They became understandably intent on doing their own deals and uncomfortable with someone like me looking over their shoulders. Meanwhile, the new group of younger lawyers who needed advice were seeking it from the now-veteran lawyers whom I once considered my protégés.

6) For so many years, I had attacked my work with real intensity — putting in the hours, churning out documents,

meeting deadlines, handling pressure, rising to the occasion. Then one day my fervor waned — the zest was no longer there and seemed unlikely to return. I realized that, even though my brain was intact and my judgment sound, without intensity I would be less effective as a lawyer. And, unlike one of those prizefighters in denial, I wanted to go out at the top of my game.

In addition to these indicia of professional ennui, I was also in the grip of some potent affirmative impulses regarding a trio of activities I wanted to tackle once retired. (I'll have more to say about these below.) My conclusion was that in order to justify taking the plunge into voluntary retirement, you need a combination of both reasons:

i.e., you no longer get a kick out of your work, and there are other activities you want to take a crack at. Conversely, if you still enjoy your practice, or if you lack desirable enterprises to pursue after law, then retiring early is a risky proposition. From my present vantage point nine years later, that judgment stands up well today.

By the way, if you do decide to retire, you might try the method I chose. I told the firm of my decision a full year ahead of leaving. This gave me twelve months to get used to the idea, put my affairs in order, finish certain projects, turn over clients to other partners, make my farewells, and so on. During that year, I worked on several interesting matters, but I didn't find myself beguiled by them into staying at my desk. (If I had been, the decision to retire could presumably have been deferred or even reversed.)

Retirement — A Package Deal

Retirement has worked out well for me. But I'm not touting it as the recipe for everyone. Rather, retirement is what might be termed a "package deal," a balancing of pros and cons akin to what you achieve in negotiating a compromise resolution of issues in a tough deal, or in maintaining touchy personal relationships, or, for that matter, in pursuing most other generally desirable activities. For almost every positive, a correlative potential negative lurks around the corner — something you ought to factor into the decision when the time comes. For example:

1) The sense of relief that washes over you at no longer being beholden to clients is sweet indeed. But it's counterbalanced by the abrupt realization that you weren't indispensable. Even if you're missed, you can be replaced. And for most lawyers, the awareness that people are no longer depending on you or seeking your advice creates a real void. You've gone from a position of importance to one of relative insignificance. And if your mama taught you "absence makes the heart grow fonder," forget it. This is much more a case of "out of sight, out of mind." How quickly they forget. ...

2) Your time is your own. There's a wonderful sense of freedom as you realize you can do whatever you want with your waking hours. But the flip side is that there's no structure to your day, as there was in the law office. You have to schedule your activities each morning from scratch, which can be a little daunting at first.

3) The absence of stress is delightful — no more bruising confrontations, no burden of responsibility, and no required attention to detail. But a concomitant of this is that you spend a lot of the day alone. No one is chomping at the bit for an hour of your time. You have to learn how to be good company for yourself. (I'll talk later about developing pursuits that are suited to solitude.)

4) You can hop on a plane to see the grandkids, travel to exotic spots without a cell phone, and tool around in your new Mini Cooper convertible. But I must warn you, even if you've saved up a good sum of money for retirement, it's still something of a shock to watch the dollars flowing out when there are no longer any dollars coming in. And by the way, in case you've harbored some illusions about converting to frugality, let me confess how hard it is to relinquish creature comforts that you and your spouse enjoyed when you were earning enough to afford them.

5) Perhaps the biggest negative about retirement is that you are voluntarily giving up the one thing you're best at and most known for. Even for those of us who are secure in our identity apart from being a lawyer, this represents a major jolt that shouldn't be minimized in facing up to the end of a legal career. Very little adulation — even for past

glories — comes your way in retirement. Your self-esteem will definitely be tested (read on for a suggestion as to remedying this).

Retirement Activities

Turning now to the question of how to fill your time after retirement, it's difficult to generalize since individual interests vary so greatly. But at the risk of oversimplification, let me suggest this: that you try to have something going for you in each of four general areas.

Having Fun. The first category is just kicking back and having some fun. Travel, sports, reading, entertainment — you know the litany. You've worked hard all your life, and now you're entitled to enjoy some of this stuff. If you pack your retirement days so tightly

If you pack your retirement days so that the fun segment is ignored, you will have negated one of the major arguments in favor of retirement.

with demanding activities that the fun segment is ignored, you will have negated one of the major arguments in favor of retirement.

A Little Lawyering. Second, try to keep something on your plate that calls into play skills developed in your lawyering days. It shouldn't take up a major portion of your time; otherwise, what's the sense of retiring? But it does feel good to know you've still "got it."

The two part-time activities I've selected and can heartily recommend are mediating disputes and teaching at law school. It's not easy being a mediator, but you get to pick the time and place, you're treated with a lot more respect than when you were carrying someone's spear, and you'll experience a heady sense of achievement if you're able to bring the disputants together.

Teaching takes time and effort, but it keeps your mind sharp; and if mentoring young lawyers is an aspect of practice you savor, you'll find that imparting your accumulated wisdom to another generation can be quite satisfying.

Public Interest. Third, try to do something in the pro bono or public interest area. You'll feel good about doing good — benefiting others without considerations of self-interest. In my case, I've been presiding over the selection of candidates for public interest fellowships on behalf of a foundation set up by my college class. I find it very gratifying to be giving something back after an awful lot of years of receiving.

The Challenge. For me personally, the fourth category is the most crucial factor for a rewarding retirement. Lawyers who leave behind challenging careers need to find something to replace the sense of accomplishment and periodic acclaim that came their way in legal practice. Those three other areas noted above are desirable to pursue, but for maximum fulfillment, I think you need to become immersed in at least one activity with the following characteristics:

1) It should be something you can do primarily by yourself, without the need of a supporting cast.

2) It involves a skill that will require effort on your part to become proficient at and that holds out the prospect of continued improvement.

3) It produces something you can view with pride and perhaps show off to others.

I've gone a little overboard here and am engaged in three such activities. It's almost as if the intuitive right side of my brain — kept in check by its logical lefty counterpart during all those hectic years doing deals — cast off its shackles and came out bellowing, "Hey, pay attention to me!"

I always played the piano — jazz, standards, show tunes and such — but under limited time constraints while practicing law. In retirement, I've been able to give music more attention, playing gigs in clubs and at private functions (both solo and with my trio) and recording a number of CDs for my friends. The most satisfying offshoot of

this — combining my hobby with public interest — has been playing for weekly sing-alongs at senior citizen centers, providing a recurrent joyous hour for people who may not have many other cheery diversions in their lives.

I always wrote, but my books and articles were for the purpose of conveying advice or exploring nonfiction topics. In retirement, my goal has been to write fiction. I've been working on a book of short stories about the subject I know best — lawyers. It's a lot different than nonfiction and tougher to master, but the challenge is turning me on.

The most fertile field for me has been photography, which I took up in earnest after I retired. Since then, I've had a half-dozen exhibitions of my work, and two books of my photos of Central Park and the streets of New York have been published. Lately I've turned to video as a prime means of depicting an event, conveying the ambience of a place, or telling a story.

Photography is a splendid individual activity, and one that's available to everyone. It requires some skill, but

there's always room for improvement — especially in today's digital darkroom — and you can share the results of your work with others. Some financial outlay is involved, but it won't break the bank the way a yacht or country club membership might.

Again tying in with public interest, every year I supply disposable cameras to groups of students from an inner-city high school and lead them on an instructional tour of Manhattan's Central Park. To provide positive feedback, I enlarge their best shots for a montage to be displayed in the school, and the winner gets the winning picture framed and a camera as first prize.

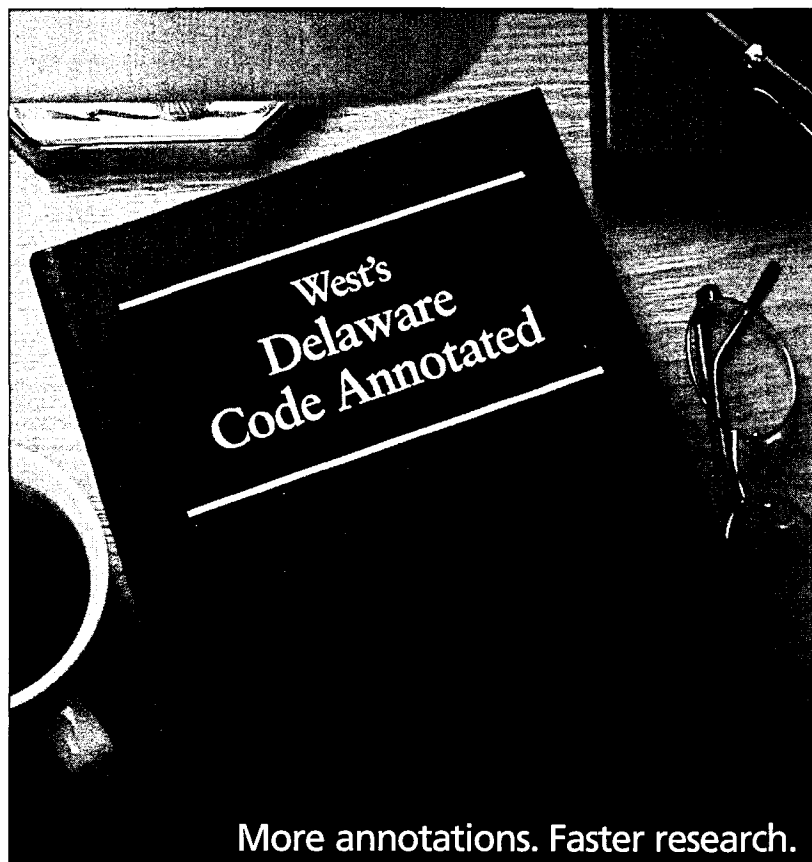
Over the past decade, I've talked to a lot of lawyers about the subject of retirement. A surprising number say they envy my range of interests, but as for themselves, they lack any particular avocation. They've been totally occupied by their profession, their families, their commitment to public interest organizations or other groups, and so on. As a consequence,

they're quite wary about retiring, and concerned at the prospect of finding themselves without anything significant to fill the time.

They're right to be wary. If you're one of those people who can't identify any hobby that seriously captures your interest, retiring early may be a real mistake. My advice to you is to develop a sideline that can ultimately serve as your challenge in retirement. Do it now, rather than having to improvise when the day comes.

The choices you have are manifold and not limited to creative endeavors. Collecting is a prime activity — stamps, rare books, whatever. Do you like to eat? Gourmet cooking is a splendid undertaking. How about planning and giving life to a beautiful garden from scratch? I know there's something out there that will suit your taste.

Well, I hope I've given you something to chew on in contemplating retirement. It's a beautiful day outside, so now I think I'll sign off, get my camera, and go on the hunt for some vivid images. ♦



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FEATURE

Charles Allmond



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Saving the Best for Last

**Life is an adventure.
There is no reason
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Have you given any thought to retirement from the practice of law? I suppose the answer to this question is in the affirmative, but the degree of thought expended is probably dependent upon the age of the respondent. In any case, it is never too early to start and sooner is better than later.

The decision of when to retire is, I believe, a very personal one except for lawyers associated with firms having a mandatory retirement age. For them no decision is required unless the issue is early retirement. It appears that some lawyers retire voluntarily while others have retirement thrust upon them.

This is one area where the small firm or sole practitioner may have the advantage. No one tells these lawyers that they must retire: They are free to remain in harness indefinitely. So long as they keep current with the law and are competent, why should they not continue to practice if that is their desire? Freedom of choice for lawyers is not a bad thing.

On the other hand, if you have reached the place where you know you do not wish to spend the rest of your days chained to a law office, you have already taken the first step toward

retirement. If you have reached that place, the question is no longer if you will retire but when. The answer turns largely on how you see your life when you stop practicing law. "Rule One" of retirement is that there are financial considerations that are basic and must be faced. It would be pointless, after all, to trade the stress of a law practice for the stress of trying to make ends meet. Remember, you could live for many years after you quit working. As much as one-third of your life could be spent in retirement. You need to have your finances in order so that you can go the distance. Everyone needs enough money to retire, but enough does not mean the same thing to everyone. Clearly, an extravagant lifestyle demands more to feed it than a modest one requires. It is up to each prospective retiree to determine how much is enough. Some are able to accumulate sufficient wealth so that their lifestyles are unaffected.

Most, however, of necessity find that they can live on considerably less income after retirement. How much less is often a function of how badly one wants to retire and the extent to which a lifestyle change is acceptable.

Careful planning is essential for retirement at any age but it is especially important for early retirement. Early retirement can be much more difficult to manage so far as finances are concerned. The early retiree may have a need for supplemental income from part-time employment. Whatever the situation may be with finances, the individual must make the determination that retirement is affordable.

Withdrawal from practice is not a simple thing to accomplish. It may, in fact, be quite difficult, but it can be done. Once it is done, what then? Withdrawal is only the beginning; the important stuff lies ahead. We are all familiar with the story of the retiree who takes his gold watch after 50 years, retires to the rocking chair on the porch only to die in six months. How do you plan to spend your retirement? Play golf? Fish? Those are interesting pastimes but a constant diet of golf and fishing is not very nourishing and can get old rather quickly. A retirement based on such limited interests is likely to fall flat and leave the retiree less than satisfied. Life is an adventure. There is no reason that life in retirement should be less adventuresome, less rewarding.

Retirement presents a golden opportunity to follow your bliss; to concentrate on things in your life that you have had to push aside or downplay while pursuing your legal career. You can even do something completely new. In a way, it is starting over, only this time it is without the stress and pressure. There are many directions that can be taken; for example, education either as a student or teacher, travel, volunteer work or part-time employment. A hobby can sometimes be developed into a business. Why not exercise the right side of your brain and hone your interests and abilities in writing, music, or the visual arts?

You might even toy with the idea of a second career. This is certainly not for everyone, but I must tell you that there

is something extremely satisfying about a new career in the September of your life. I recommend it with this caveat: Proceed only if you are willing to devote your full energies to it. A lesser effort will not suffice. Moreover, if you select a career in the arts as I have, keep in mind that art, unlike law, is a solitary profession. Compared to the hustle and bustle of a law office the artist's studio is almost monastic.

I hope you will forgive me for using my own story here, but it is obviously something of which I have firsthand knowledge and it does illustrate the point. For me the decision to retire was not so much an ending of a career as it was a natural progression on a

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life path that had been set many years before. As far back as I can remember I have admired in others creative artistic excellence and craftsmanship. The craftsmanship aspect has always been an important part of my own life and I have made things with my hands ever since I was a young child. Woodshop and art were my favorite school subjects. As I grew older and ventured out into the world, making things remained a strong interest, whatever occupation I was then following. I did not begin law school until I was well beyond the usual age for entry and it was something of a culture shock. A grueling experience was made easier by my ability to

disappear into my workshop for short breaks.

Throughout my working life I spent many off hours in furniture making, art and antique restoration, carpentry, and the like. In the late 1960s and early 1970s I made and carved picture frames for Frank Schoonover and other artists. Over the years I was able to develop useful technical skills. I always had a strong interest in art and pursued that interest through reading and observation, and even did some drawing from time to time. I thought about taking painting lessons, but thought was as far as it went as there never seemed to be enough time.

I was very lucky to have the rare opportunity to practice law with my father, Bayard W. Allmond, an outstanding lawyer. We worked together for 18 years without a cross word. In his later years he would often talk of the possibility of retirement, but because he had no outside interests or hobbies he could not come to grips with the prospect of empty days. Suddenly, it seemed, he was gone. His death in 1981 hit me hard, and more than ever I was reminded of my own mortality. I realized if I was going to pursue something in the art line I should quit stalling and do it.

It was pretty clear that the problem of finding time for art lessons was not about to go away. Moreover, I was then 50 years old — too old, I thought, to learn something new. How wrong I was! In 1982, it occurred to me that I might try my hand at sculpture just

to see if I could do it. I was confident that I had the requisite technical skills to do the work, but such skills are only part of the equation. Unless I had creative ability as well I would never make the transition from skilled artisan to artist. I started carving little wooden birds and animals. It did not take long for me to realize that I was a three-dimensional person; that is, I could conceptualize a sculpture in my head. I could see it from all sides, so to speak. This is a priceless gift for a sculptor. It is a skill one has or does not have and most people, I am told, do not have it.

Sometime in the early 1980s an art exhibition at the University of

Delaware's Clayton Hall coincided with the Bench and Bar Conference. I purchased a beautiful stone piece by the late Dorothea Donoho, a Newark artist. I went to see her to find out about stone carving. She said that if I could carve wood I could carve stone as the techniques were the same. She encouraged me to try it. Shortly thereafter my aunt, Frances Haskell Allmond, also an artist, gave me a little piece of soapstone. I carved a passable rabbit and was hooked. With the discovery of stone carving I felt I had found my ideal medium. It was as if I had been doing it all my life. Even more surprising was the fact that I was using my own designs and did not need to look to others for ideas. When I realized not only that I had the technical ability to carve, but also that I could actually express myself artistically, the excitement was genuine. Oh yes, I still have both pieces, Dorothea's and mine. Soon, I was turning out real sculptures that I was not embarrassed to show. Painting lessons were forgotten.

At first, I entered my work in local exhibitions and shows. While people were usually positive about the work, I always felt that I was not regarded as a serious artist. People knew me as a lawyer of many years standing. How could I expect them to accept me as an artist? More than once the comment was made, "What a nice hobby you have." I feared I would always be considered a mere dilettante. The solution was to prove myself elsewhere in the country, and fortunately I was able to do so. Despite my growing success as a self-taught artist, I still had nagging doubts about the adequacy of my preparation and wondered if I should seek formal instruction. Helen Farr Sloan (Mrs. John Sloan), artist and benefactor of the Delaware Art Museum, reviewed my work and advised me that as I had already developed my own style I should continue to work on my own. I have always been grateful for this advice.

My confidence received a real boost in 1987 when I was elected to signature membership in the Society of Animal Artists, a New York-based organization of leading artists from

the United States and several foreign countries who depict living creatures in their work. Inclusion in *Who's Who in American Art* in 1993 was further evidence of the wider acceptance of my work. I began to seriously consider the possibility that I might have a reason to retire. I also was becoming aware that job-related stress (one of the side effects of the practice of law) was beginning to take its toll. For the first time in my life I needed medication for hypertension. I no longer bounced back from adverse situations as I once had. Formerly, I had looked forward to each day in the office

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for whatever might come. I found I no longer felt that way. The day became something I had to get through so that I could work in my studio in the evening. I even started to work in the studio an hour or so in the morning before going to the office.

An important consideration in determining whether one should retire is family attitude. The idea of switching from lawyer to artist is a bit unusual. It causes heads to shake and tongues to wag. A lifestyle change of such magnitude is unthinkable without family approval. Luckily for me, my wife, Frances, who has supported me in everything I have done in the past 52 years, was also solidly behind me in this venture. So, too, were my son,

Bayard W. Allmond III, and daughter, Sarah A. Long.

Another important consideration involved my son, who had joined the firm several years before. As with my father before, I had an excellent working relationship with Bayard and did not want to leave the office before he was ready. This was a decision that deserved sober reflection. A career in the arts probably has a higher risk of failure than anything else one can do. I opted to go forward but to make the change a gradual one. I tried to ease out of the practice of law by cutting

back on office time to three days a week. It was not long before I realized that this was easier said than done. Clients never took to this arrangement and had to be served as they required, my self-imposed schedule notwithstanding. Many studio days were spent at the office and soon there were only two or three such days each month.

Finally, in 1995 conditions seemed right for a complete break and full retirement. I was 64 and had come to the realization that what I really wanted was to make art, and I could not adequately continue to do this on a part-time basis. Health concerns also pushed me toward retirement, as did my recent election as president of the Society of Animal Artists, a great honor but one carrying considerable responsibility. The actual withdrawal from practice proved to be surprisingly easy. Bayard and my

other partner, Thomas Eastburn, knew my clients and were prepared to take care of them. Retirement began in earnest.

Perhaps it would be appropriate for me to describe what I do. I am a stone carver rather than a clay modeler. As a carver, I start out with a chunk of stone and chip away at it, taking off material bit by bit. Stone carving of this type is called "direct carving." In direct carving the sculpture is designed for the particular stone and is carved by the sculptor. Constantin Brancusi and William Zorach were masters of direct carving. It differs from "indirect carving" in that indirect carving is the production in stone of a sculpture created in a different medium. For

example, through the use of an enlarging device the design of a clay figure can be transferred to a stone block. Skilled artisans then carve the figure in stone. Some of Anna Hyatt Huntington's famous animal pieces were carved in marble using this method. When working in alabaster or marble I use stones of random shapes and sizes. The irregular forms of the boulders often suggest the particular subject to be carved. Sometimes, I study a stone off and on over a period of several days, even weeks, before it speaks to me. When the subject finally becomes clear, I usually make a rough charcoal outline on the stone and just work freehand, making adjustments in the design as I go along, until the desired result is achieved. With limestone, on the other hand, I generally use squared-off blocks because that is the way the pieces come from the quarry. Sometimes I draw my design directly on the stone and other times I make a separate drawing on paper. In addition to stone, I also work in wood and plaster and cast limited editions of some of my work in bronze. Much of my art is inspired by the natural world. I like the idea of transforming the intangible concept of the spirit of nature into tangible form.

I now have been a sculptor for more than 23 years, the last 10 years of which have been full time. The work is physically demanding and mentally challenging but I never tire of it. I have had my share of successes and disappointments. Fortunately, the former outnumber the latter. I am truly living the artist's life and work in my studio nearly every day. I am happy that my sculpture is accepted in my home state as well as elsewhere. I travel to interesting places and meet interesting people. My sculpture has been shown in some very nice venues alongside the works of some of the world's most talented contemporary artists. People seem to appreciate the work; some like it so well that they buy it, and there are some who actually collect it. Not least in importance is the timeless quality of the sculpture. It will be around long after I am gone and can be enjoyed and appreciated by generations as yet unborn.

It may be a cliché, but there is life after law and that life is good. ♦

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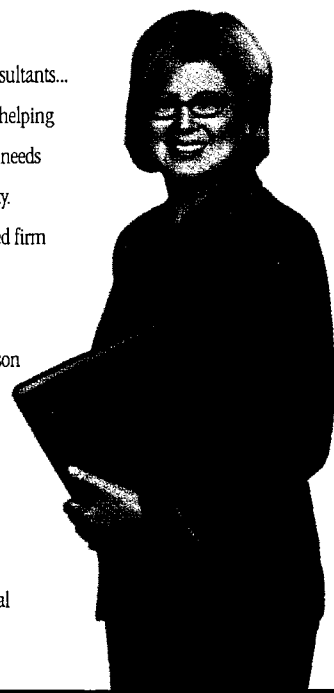
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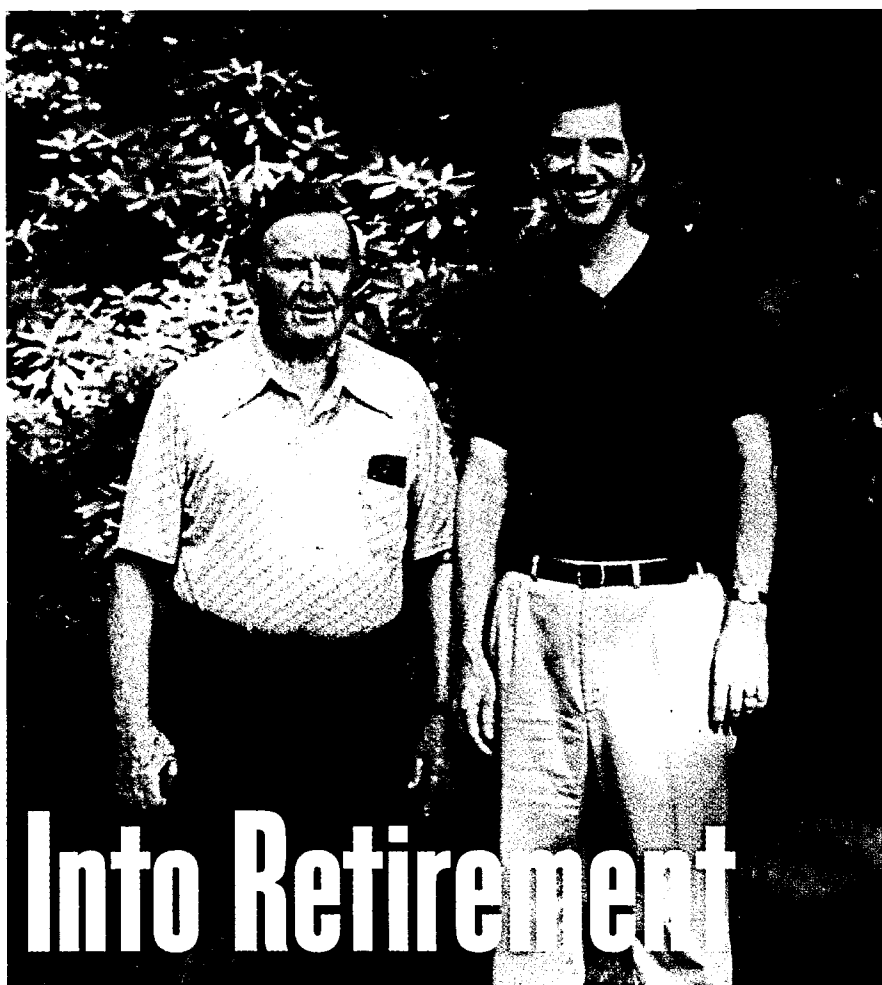
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Lurching Into Retirement

The author and his father, William Poole, who never "retired."

Only now do I know that my preparations for retirement began at age 22, when my then future wife and I bought our first painting together.

Although I did not know it at the time, my transition into retirement from the practice of law began at age 56 during the evening of Wednesday, April 2, 1997. What I also did not know was how long I would continue to practice law after my retirement became "official" on January 1, 2001, at age 60. Only now do I know that my preparations for retirement began at age 22, when my then future wife and I bought our first painting together, an original watercolor by Carolyn Blish, before I had even graduated from college.

As is already obvious, my observations about retirement are autobiographical. Regardless of an individual's varying circumstances, however, five areas of my experience may be instructive: 1) retirement preparations; 2) career decisions affecting retirement timing and lifestyle; 3) external events bearing on the transition into retirement; 4) joys of retirement; and 5) retirement longevity planning.

Consciously or not, a college undergraduate makes choices that impact retirement decades later. Most notably, it matters whether one actually graduates, goes to work or to graduate school, and, if the latter, in which field. Most readers of this magazine chose

law school (as I did), or are related to a lawyer. Yale University had accepted me into its highly selective graduate school of political science, but rejected me for admission to its law school. It appeared that I was destined for a career with the relatively modest salary of a college professor, until Swarthmore College recommended me for a full tuition scholarship at the University of Chicago Law School, which I accepted.

As a general rule, the more money one has, the earlier (if one so desires) and more comfortably one can retire. On average, lawyers make considerably more money than teachers, but Daniel Webster's old adage seems to apply to many attorneys — we tend to live

well and die poor. Within the legal profession, there of course is a vast range of incomes, from the corporate lawyer in a large private law firm at the top of the scale, to the public interest lawyer at (regrettably) the bottom. Judges are somewhere in the middle in terms of compensation. If I had followed the advice of Collins J. Seitz, for whom I clerked in 1966-67 on the Court of Appeals for the Third Circuit, and of Albert J. Stiftel, before whom I appeared in some of my early cases in Superior Court, I would have sought a judicial appointment, and if successful my career earnings would have been considerably less than resulted from more than 30 years in private law practice.

My decision not to seek a judgeship was dictated not by retirement considerations, but by fathering three children in the 1960s (the first during my second year of law school). My father, William Poole, who never retired from the Delaware bar and maintained his law office at Potter Anderson & Corroon until he died at age 88, counseled that the best thing I could do for my children was to give them a good education, as he did for my three siblings and me. Public schools in New Castle County were problematic in the 1970s, causing my wife and me to commit to private education, followed by college and graduate school tuition, and room and board for our children. In short, I felt that I could not afford to support my family as I wished except through toiling long hours in private practice.

Eventually, the last of our children finished graduate school, married and had a family of his own; our children finally were emancipated. Or so I thought. It turned out that our son and his two sisters, each with children of her own, needed loans for housing or other purposes, and one of our daughters needed a family investor in her small business as well. Grandchildren are a great blessing, and our eight clearly are no exception, but they have arrived with financial strings attached. Retirement before age 65 did not appear to be a viable option.

For some families, alternative sources

of income and capital are available. Inter vivos gifts, inheritances and/or expectancies may supplement current assets or provide retirement security. In my case, my father expected to live until he was 100 years old (his mother missed it by three months; one of his aunts died at 108; and his maternal grandfather died at 97 in an era when a man's life averaged less than 50 years). Thus, my father felt that he needed to hold onto his assets while he lived, and provide for my mother (a good thing — she was born in 1911 and will have survived him for almost a decade or more). My wife's parents had the Great

Grandchildren are a great blessing, and our eight clearly are no exception, but they arrived with financial strings attached. Retirement before age 65 did not appear to be an option.

Depression mentality; although their families had no one who had lived into his or her 90s, they were insecure about finances even though actually quite comfortable. It turned out that a prolonged disease of my wife's father, and the longevity of her mother who reached 91 last summer, proved the wisdom of their not having prematurely passed along substantial assets to their descendants. Indeed, many persons in their 50s and 60s find themselves truly sandwiched, needing to provide financial assistance as well as hands-on help for both parents and children, thereby affecting their own retirement plans. And one's own prospect of a long life has a bearing on retirement if one is

not to fear running out of funds during up to 30 or more years after leaving law practice. Alternatively, if one has genetic or lifetime risk factors that point to an earlier death, retirement planning takes on a different dimension.

Another important factor in preparing for retirement is whether a lawyer's spouse is gainfully employed, with much of the spouse's income ideally being saved for later. My wife had a position as a day-care school director when she was in her 30s. But during the year of the nation's Bicentennial I had a 13-week trial, and the *News Journal* ran an article headlined: "Elisa Poole

Quits a Job." I was in the stage of my law practice (lasting more or less for 20 years) when I could not always be counted on to pick up the children from school, or attend their sporting events, or go to their musical or stage performances. My routine was to eat dinner with the family virtually every evening, and to bathe the younger children and read stories to the older children, before returning to the office for three more hours of work. My wife decided in 1976, when I was in the longest trial of my career, and at times unavailable at home even for an hour or two in the evening, that our children needed one full-time parent. As a result, the income from the second job disappeared (but so did some babysitting, clothing and other job-related expenses).

On balance, we were able to keep current with day-to-day expenses, including a house mortgage, but saving for a rainy day, let alone retirement saving, just did not happen. Yet certain events in each of the decades of the 1970s, 1980s and 1990s were to prove to be significant for retirement purposes. When I became a partner of Potter Anderson & Corroon on January 1, 1972, the firm had established an unfunded pension plan,¹ as well as a Keogh retirement plan. Initially the pension plan was for five years, but later it expanded to a lifetime benefit. Still later the firm decided that the lifetime benefit was not actuarially sound, and the benefit was scaled back to 10 years for partners then under 55, a period that in my case of retirement at 60 will carry me until the time

when part of the loss of firm pension income will be offset by maximized Social Security and Medicare benefits. The Keogh plan for my first 10 years of participation in the 1970s actually lost money during a time of stagflation, but the 1980s, and especially the 1990s, showed substantial tax-free investment gains. Upon retirement my share of the firm's Keogh plan was rolled over into an Individual Retirement Account. Although the principal is a healthy amount, the downside is that every dollar withdrawn is taxed at ordinary income rates.

During the 1980s, a former partner of Potter Anderson & Corroon, District Court Judge James L. Latchum, handed down opinions in litigation in which my firm was not involved but which, unbeknownst to him, made "early" retirement possible for me. The litigation involved the New Castle County Tybouts Landfill, and the county's action to require its insurance companies to defend and indemnify it in connection with underlying environmental cleanup claims brought by the federal and state governments.² Judge Latchum's rulings in the New Castle County case were perceived by in-house general counsel and private practice policyholder lawyers from all over the country as favorable to corporate plaintiffs in environmental coverage cases.³ Again unbeknownst to him, a future Potter Anderson & Corroon partner also had a role in making early retirement possible for me — Joshua W. Martin III, who, as a Superior Court judge, ruled in two coverage cases filed in 1988 for Monsanto and North American Philips that comprehensive cases in Delaware were appropriate based on the corporations being incorporated here.⁴ I appeared in a dozen or so complex insurance coverage cases that followed in the 1990s, a very lucrative practice for the firm and me.⁵

For 10 years, from the mid-1980s to the mid-1990s, I was at the peak of my litigation practice, so overwhelmed with insurance coverage cases that I involved up to 15 of my partners and associates in the practice.⁶ Feeling financially secure, my wife and I purchased a

residential lot in Rehoboth Beach in 1993, and built our "dream house" in 1995-1996. In 1995 my wife and I bought a commercial property there with the idea of opening an art gallery in 10 years or so, our early interest in fine art having grown into a strong desire to "practice" it well into our old age. But it did not cross our minds that I would retire before I reached 65, at the earliest.

Probably as the result of the financial returns to the firm from the insurance coverage cases, I was asked to become chairman effective January 1, 1997.

In 1995, my wife and I bought a commercial property in Rehoboth with the idea of opening an art gallery in 10 years or so, our early interest in fine art having grown into a desire to "practice" it into our old age.

I was pleased by the timing because my father, who was terminally ill with cancer, saw me in that position before he died exactly one week later. I believed that I could continue with my law practice at virtually the same pace as before I had assumed the chairmanship. I had capable colleagues on the Executive Committee. In the dozen coverage cases in which I was the lead local counsel at the time, skilled lawyers from referring firms outside Delaware often took the lead laboring oar, and competent litigators within the firm assisted.

On the morning of April 3, 1997, firm chairman Richard E. Poole stood

in amazement as he gazed around the water-soaked offices where he had dutifully practiced law for the last 30 years. Although water of rain-forest density cascaded down all around him, he remained unworried as to the fate of the third and fourth floors of the 22-story Delaware Trust Building, the building that had been the "home" of the firm since 1929. He was confident that the event that came to be known as "the fire" would soon be over and a dry normalcy would return to his occupational habitat.⁷

How wrong I was!⁸ It became necessary for me to devote myself to full-time firm management, completely turning over my thriving insurance-coverage-litigation practice to my partners and associates. The Delaware Trust Building had to be vacated because it was an arson crime scene (never solved), and asbestos contamination and microbial infestation rendered occupancy an unacceptable health risk. "Temporary" space in the Hercules Plaza had to be arranged immediately so that the firm could continue to function. Recovery and decontamination of the firm's files and equipment had to be accomplished in the face of law enforcement and health safety concerns. The Delaware Trust Building landlord's attorneys threatened "blood on the floor" if the firm terminated its lease. A new lease with the Hercules Plaza landlord had to be negotiated. A large property damage insurance claim needed to be pursued. Basic amenities had to be secured for practicing law in cubicles originally designed for Hercules corporate workers. Renovations were required to make the Hercules Plaza space conform to a large law firm's needs. Daily operational management was undertaken when, shortly after the fire, the firm's administrator was diagnosed with terminal cancer. A little more than two years after the fire, exhausted, I retired as firm chairman, all my insurance coverage clients being well served by other lawyers in the firm.

In my late 50s I wanted to build up my practice again, but in the perhaps inevitable scheme of things, my younger colleagues decided to continue with

their inherited work and bring along still younger colleagues, rather than to reintroduce me into insurance coverage litigation, or to involve me with their own clients in other areas of practice.

On August 24, 1998, a Delaware state trooper, with the patrol car's siren intentionally turned off, went through a red light and smashed into the side of a sports utility vehicle, causing it to roll over one and a half times, coming to rest on its roof. A 9-year-old child was killed, a 12-year-old child was severely and permanently brain damaged, and his mother, the driver of the car heading through a green light on a bright sunny morning, suffered brain damage and severe nerve damage to her upper torso. An outing in Rehoboth Beach thus turned into a horrific tragedy. Within a matter of days, I was retained to represent the driver and her children (her younger son miraculously escaped serious injury) against the police officer and the state of Delaware. Other defendants were an

outlet mall and one of its stores, where a maintenance man had carelessly activated a mechanical alarm before business hours, precipitating a police response disproportionately drastic under the circumstances.

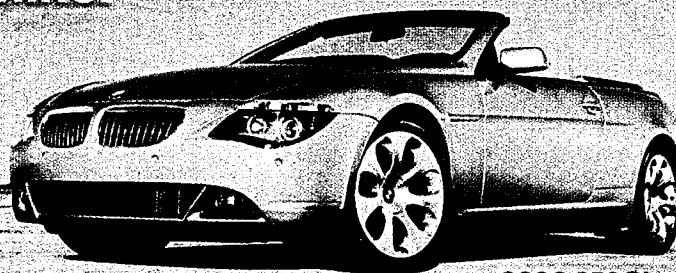
In the fall of 1999, my wife and I decided that two houses were one too many, and we sold our Wilmington residence and moved into the Park Plaza condominiums. I learned later that some of my firm colleagues interpreted that move as an indication, not intended by me, of my interest in an early retirement, even though the complex tort case was consuming a large portion of my professional life. Then, in October 2000, the firm received a substantial fee arising from one of the protracted-coverage cases I had brought into the firm and worked on extensively before the fire. It soon appeared to be in the firm's and my mutual best interest to negotiate a severance package based on my entitlement to a share of that fee, rather than for me to continue

as a partner for ensuing years with a substantially reduced interest in the profits of the partnership.

I was ready for retirement, but retirement was not ready for me. In 2001 my wife and I opened AerieArt Gallery in the lobby of Park Plaza. I spent very little time there as the tort case became more and more complicated. On the eve of trial, following extensive pretrial discovery with dozens of depositions of police officers, eyewitnesses and employees of the outlet mall and the store whose alarm had been falsely activated, the Superior Court granted summary judgment to the state on the basis of sovereign immunity, and the outlet mall settled the case. The Supreme Court of Delaware heard the appeal, granted reargument en banc, issued an opinion,⁹ again granted reargument en banc, vacated a portion of its prior opinion upholding sovereign immunity pursuant to one statute, but ultimately affirmed the trial court's invocation of sovereign immunity

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pursuant to another statute.¹⁰ On April 26, 2004, more than three years after my "official" retirement, my career as a practicing lawyer ended on a disappointing but "I gave it all I had" note.

At times my lengthy transition into retirement was emotionally painful. I felt that I had considerable skills as a lawyer that would no longer be put to use after 37-1/2 years. Now, 40

years after graduation from law school, I realize that I do not have time to practice law, even if I were in a position to do so. My wife and I have opened a second art gallery in Rehoboth Beach (and we represent from time to time the work of the wonderful Delaware sculptor, Charles Allmond, who is the author of another piece in this publication). Our marriage is thriving after times of stress during previous

decades of intense litigation practice when I neglected my wife. We travel frequently, having been to New Zealand, Oregon, Colorado, Utah, Nevada and California during the last year or so, and we are looking forward in the fall to a trip to England and Ireland with the American College of Trial Lawyers. Our eight grandchildren get more of my attention on occasion than our three children sometimes did at similar ages, a circumstance partially atoned for by our many opportunities for interaction with them as adult friends. Volunteer work can be as demanding as law practice (as I discovered during my recently completed two-year tenure as president of the Historical Society of Delaware).

It is not altogether clear the extent to which my experience is applicable to others, but maybe there are a few helpful lessons. No later than when one is in mid-career, maximize retirement plan savings because of the difficulties of saving for retirement from current after-tax income. Diversify investments (our beach real estate has appreciated fantastically). Do not overplan: Whether and when to retire are often determined by events largely out of one's control. Stay active, physically and also mentally. The law is a highly intellectual exercise, and it is important to keep the brain challenged. My interest in art even awakened a side of my brain that had been largely dormant. Most important of all: "retire to, not just from." ♦

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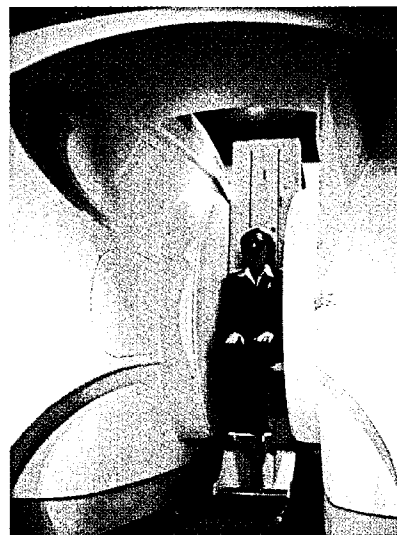
- 1 W. T. Quillen, *Potter Anderson & Corroon, An American Law Practice, The First 175 Years*, p. 122 (2001) (cited as Quillen herein).
- 2 H. L. Winslow, et al., eds., *The Delaware Bar in the Twentieth Century*, pp. 614-15 (Delaware State Bar Association, 1994).
- 3 *Id.*, at p. 616.
- 4 *Id.*, at p. 615.
- 5 *Id.*, at pp. 615-17.
- 6 *Quillen*, pp. 145-47.
- 7 *Id.*, at p. 127.
- 8 See *Quillen*, pp. 151-55, for details of the 14th floor fire and the firm's actions in overcoming its devastatingly disruptive effects ten floors below.
- 9 *Pauley v. Reinoehl*, 848 A.2d 561 (2003).
- 10 *Pauley v. Reinoehl*, 848 A.2d 569 (2004).

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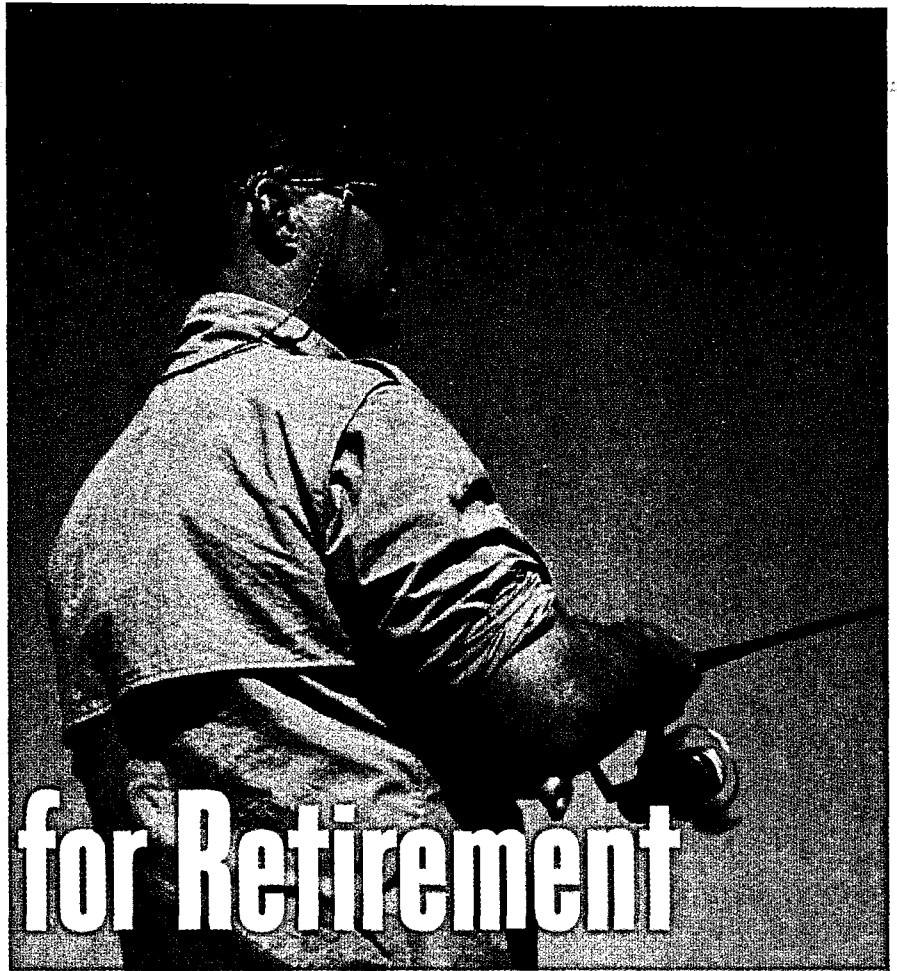
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FEATURE

George F. Gardner III

Some Thoughts on Preparing for Retirement



After health,
in my opinion,
the next important
consideration is
the impact
retirement will have
on your spouse.

When Harvey Rubenstein called and asked if I would be interested in writing an article on retirement, it seemed like a good idea. When I mentioned it to my wife, her immediate reaction was that I was not qualified because I had never really retired, despite having purported to do so with some fanfare in the summer of 2000. My response was that by the time of publication of this article I will have retired twice, thus making me doubly qualified. In any event, the hedge factor in the title of this article relating to “preparing for” retirement provides a safety net that I do not expect to need.

It seems such a short time ago. In 1963, I sat for the Delaware bar exam along with 32 other hopefuls. The exam was given at the end of September at the YMCA. There was talk about how crowded the bar was becoming with so many aspirants. Each of us had of necessity attended law school outside of Delaware. Reading law in a law office rather than attending law school was still technically possible. The exam consisted of three days of essay questions. It covered all subjects except, as I recall, the Uniform Commercial Code, which, while it was being taught in law school, had not yet been

adopted by many jurisdictions, including Delaware.

As a precondition to taking the exam, we had all passed an intensive and intimidating oral exam administered by the Board of Bar Examiners on a book called *Zane's Story of the Law*. There was the personal interview requirement (mine was with the late Arthur G. Connolly). There was also a “case stated” requirement that involved three and a half hours in a law library to research and write a memorandum on some fact-oriented legal dispute. In order, I suppose, to dispel the common rumor that the “case stated” really

did not count unless an applicant was on the borderline, it came first on a Saturday morning, with the remainder of the exam to follow Monday through Wednesday. There was no multi-state. The exam was prepared and graded by the members of the board or their surrogates. There were no women or African-American applicants sitting for the exam in 1963. The results were obtainable in only one way: The legal secretary to one of the members of the Board of Bar Examiners held them, and you had to appear in person to pick them up in a sealed envelope. I cannot speak for others, but I did not dare open my envelope until the elevator door had closed and I was alone heading down to the street. On that happy day, retirement was the farthest subject from my thoughts.

Every year for the Delaware bar is a good year. Despite our obvious lack of diversity, 1963 was no exception. Among the persons taking and passing the bar that year were a future governor, Pierre S. duPont IV; a future national corporate litigator, Charles F. Richards Jr.; two future judges, Vincent A. Bifferato and Jay H. Conner; and a number of attorneys destined to remain in practice for the long haul, including Charles M. Allmond III, James F. Kipp, the late Stanley W. Balick, and also this author.¹ That particular fall, the joy for those who passed the exam was cut short by our remembrances of President Kennedy dedicating I-95 on the Delaware-Maryland line shortly after the bar results came out and then a week later the tragedy in Dallas. It is hard to believe that those events occurred more than 40 years ago. Neither the world nor the practice of law has ever slowed down.

I was clerking for the late Daniel Herrmann that fall, who was less than a year away from becoming an associate justice on the Delaware Supreme Court. William D. Bailey, Jr. (who, remarkably, went on to spend his entire legal career with one firm, and just stepped down in the fall of 2005 at the age of 70), and Charles K. Keil (later a Family Court judge), had been practicing just two and three years, respectively, and were very helpful in steering me around

the pitfalls by sharing with me their ongoing experiences and knowledge. There was more time for providing such schooling in those days, unlike today when matters move so quickly. My timing was such that I finished the last of what was at that time a six-month clerkship requirement in late December, and was sworn in as a member of the Delaware bar by the late Justice James Carey on December 30, 1963. Two days later, I was on my way to Fort Benning, Georgia, to fulfill a military commitment as an infantry officer earned through ROTC in college. Later that year, I was fortunate enough to be accepted in the Judge Advocate General Corps of the Army,

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from which I returned to Delaware in March 1967.

Aside from a brief flirtation with becoming a developer (during which I cut back but never ceased practicing law), I was a full-time practicing attorney until June 2000, when I purported to retire with an appropriate ceremony from the office.² At that time, I had about a year's worth of work left to clean up. I actually was pretty much out of the office and practice for the period from around the summer of 2001 to the late fall of 2002 when, by inexplicably agreeing to take on a couple of major matters that no one else in the firm had time to handle, I ended up again becoming a full-time lawyer (sans nights and most weekends the second time around). Retirement Tip No. 1 is that if you stay around the office, your

clients and your partners will find you. It was only in December of 2005 that I once again fully extricated myself from the practice, with minor spillover to complete a couple of matters after the first of the year, and now consider myself totally and permanently retired.

The intent of this article is to attempt to acquaint an attorney thinking about or approaching retirement with some of what I view as the most important considerations for responsible retirement planning. Exchanges of ideas and thoughts with colleagues with retirement intentions can also be valuable, as can attendance at (or reviewing the minutes of) the monthly Senior Lawyer Committee meetings.

The most important factor for those considering retirement is, of course, health. Assuming that you are somewhere between 60 and 70 years of age and are in fairly good health, you can hope to have somewhere between 15 and 20 years to enjoy moving from being a part of the everyday work force to having unstructured time each day. There is value both to one's self and one's law partners, not to mention clients, in effecting timely retirement; otherwise we risk exercising the wisdom of youth in judgment coupled with the energy of old age. Neither of these inevitable progressions are winning combinations.

In this profession, we need to understand what the public's perception might be if we stay involved and active too long. While there is no question that, with medical advances, most of us are going to live longer and healthier than previous generations, there are still limitations that come with time. The eyes and hearing at some point will start to deteriorate. Loss of balance and reaction time may follow. Minds deteriorate and bodies go downhill, and if we stay too long at our familiar haunts, we run the risk of everyone seeing us at our worst and remembering us for the later years only. The joke that "old lawyers don't die, they just lose their judgment" will for most of us at some point be true.

After health, in my opinion, the next important consideration is the impact retirement will have on your spouse.

In the age group of 60 and over, most retiring attorneys will still be males. Many of us in this age bracket will have spouses who in many cases did not rejoin the work force after children arrived. We have to remember that our wives in most cases are going to continue their everyday routines and activities. It is likely to be a significant adjustment to the wife's schedule if the new retiree expects lunch to be served at a particular time each day. Insisting on this additional burden may well work an injustice to the independence and schedules of both spouses. The potentially conflicting expectations of the prospective retiree and the spouse merit deep reflection and a frank discussion.

Some consideration must also be given to the impact of a prospective retirement on the viability of the remaining partners and associates in the law firm. Attorneys in the largest firms can usually retire without significant burden on those remaining, since there is almost always someone competent and knowledgeable standing in the wings waiting to take over. While the ability to be a rainmaker may not be transferable, the capacity to take over and complete matters in an efficient and competent way in the larger firms is rarely a problem unless an attorney is in a highly specialized practice area. In the intermediate-sized firms (defined here as between 10 and 20 attorneys), unless the retiring attorney is the chief rainmaker, the transition is usually doable with a minimum disruption of workflow or loss of valued clients.

Retirement can be more problematic in smaller firms, where the clients may tend to be more individual than institutional. There are fewer attorney resources among which to reallocate the clients, and individual clients might tend to go elsewhere if they have enjoyed a long-standing and trusted relationship with the retiring attorney. (In contrast, representation of institutional clients normally is structured over time by law firms so that the beat goes on even with the retirement of a major player.) In the case of very small firms, one retirement may signal the firm's demise. Most of us

have clients to whom we have provided representation for years. It is difficult both at the personal level and the professional level simply to walk away at a given moment.

The increasing role of technology in the legal profession can also be a factor in the decision to retire. In any group of lawyers age 60 and over, there are bound to be enormous variations in our technological skills. Some of us have become very computer-oriented, but some of us have not and never will. I suspect that, for many of us in the current age group of 60 to 70, falling further behind in the technological area encourages retirement thinking. Even those who keep up technologically

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become less than enamored with spending their days sending e-mails to fellow lawyers and clients and e-filing court papers.

There are some lawyers who seem capable of practicing at the same high level forever. Several that come readily to my mind as of this writing (and there are many others) are Sid Balick and Ned Cooch Jr. in Wilmington and Nick Rodriguez in Dover. In this category, one also remembers the late Arthur G. Connolly and the late Don Taylor. Each of these gentlemen always maintained substantial practices and high standards. For most of the rest of us, there does come a point in time when, for whatever reason, we are ready, if not compelled, to stop.

It should be pointed out that there really is no shame in retiring more than once. Michael Jordan did it. Athletes, entertainers, CEOs, and persons in all occupations do it from time to time. The one surefire bit of advice that I would offer is that, unless and until you are absolutely certain that you wish to retire, you probably should keep some of your practice intact and as many options as you can open. However, if I have learned anything in the planning process, it is that there is no such thing as a partial or semi-retirement from the practice of law. Moving to "part time" or reducing your workload does not necessarily reduce those parts of the practice that inspire thoughts of retirement. I have never worked in the estate area (so I do not speak with authority), but it has always seemed to me that if you worked in that specialty, where most of your deadlines run from the date of death of a decedent, you could to some extent control your calendar and create periods of breathing room where you would not have to be in the office. It may also be a case where the grass looks greener.

For me, continuously meeting deadlines, working under time pressure, and having my calendar interrupted by unexpected events requiring representation on behalf of some client, represented the most pressing reasons to seek retirement. In short, the unpleasant aspects of the practice do not go away by simply reducing workload. The one thing you do accomplish by reducing your practice is to reduce your income. You can eliminate some of your hours by reducing the number of clients or by dropping areas of practice, but no matter how you structure it, practicing law is a full-time assignment. Unless you know deep down that you do not ever want to make a total break, you have to execute a clean withdrawal from practice.

The single obvious way to ensure one's permanent retirement would be to turn in one's license to practice. A simple direct act. You can — and must — tell anyone who solicits your legal services that you are no longer a member of the Delaware bar and, as a result, are not authorized to practice

law and unfortunately cannot represent them. Most of us, however, have been practicing long enough that we expect and prefer to be members of the Delaware bar when we die. For several years, the Senior Lawyers Committee headed by Dan Kristol has been trying to work out this issue. The economic aspects relate to the payment of ongoing dues, meeting continuing legal education requirements, and malpractice insurance issues. On the regulatory side, there are issues as to whether it is in the interest of the profession to have elder lawyers out there licensed to practice. It is an important and emotional issue that I hope will get resolved to our general satisfaction in the near future.

Once you have made a firm decision to retire, there are a number of substantial issues related to the practice of law that need to be promptly addressed. These will vary significantly depending on whether an attorney has been a sole practitioner or a member of a small, intermediate, or large firm. Arrangements must be made for notifying and providing ongoing servicing for all clients. It is inevitable that there will be ongoing matters that simply cannot be completed within a designated time period. These matters need to be transferred either in or out of the firm (as the client desires) as seamlessly as possible. Arrangements need to be made in the event that health insurance has been a benefit of the law practice. Clear guidelines as to any availability for consultation relating to prior clients or matters referred to others in mid-stream need to be worked out. Decide whether you will maintain office space at the firm and whether the existing firm will continue to use your name in its letterhead (and, if so, in what capacity).

The single most important law issue from the retiring attorney's point of view is to have a clear understanding of what, if any, malpractice insurance will be carried by the firm beyond retirement and conversely what, if any, tail malpractice insurance needs to be purchased (that is, for malpractice claims made after retirement relating to events which occurred while in practice). It is inconceivable in today's

climate that anyone would want to retire without such protection.³ Other relevant issues include whether there will be any continuing access to secretarial assistance and what to do about memberships such as the ABA, Delaware Bar Association, or other professional groups. You also need to have a clear understanding of whether you are going to maintain a business license to practice law, and how you will comply with the Delaware Supreme Court's registration and practice eligibility requirements (and in what status). Needless to say, it is also important that clients' files be properly indexed and stored under the firm's ordinary retention policies.

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All escrow or trust accounts need to be reviewed and closed out or responsibility delegated to others. All known loose ends, if possible, should be addressed and cleared up or turned over to someone who will have direct responsibility for their completion.

Other important decisions are personal and financial. In planning my own retirement, I have benefited from frequent lunches with Paul Boswell, who is my age and also starting to consider retirement issues. His practice areas of tax, estates, and estate planning are very helpful. In my case, this financial analysis involved a careful measure of what my cash flow would be, my expense projections (assuming normal health for me and my family),

and making appropriate allowance for escalating health care costs. In a perfect world, responsible retirement planning for attorneys would mean incorporating financial retirement provisions in the yearly budget of the law firm and in the personal budget of the lawyer from the very outset of employment and practice.

While there is no consensus of what percentage of preretirement income is represented by retirement spending to sustain the same lifestyle, it would be foolish in most cases to assume any less than 75 percent. Rising health-care costs likely make this estimate low. Whether one should seek professional assistance in fashioning a retirement portfolio is an individual decision. In any event, factors such as age, health, tax bracket, risk tolerance, inflation, and diversification in investments all play a role. Constant attention to your existing and future financial plan is just as important as the budgeting of your post-retirement expenditures. Be aware that your post-retirement lifestyle will be limited by available financial resources.

It is also necessary to review carefully any employer retirement plans, your social security, your savings, investments, any other retirement accounts, and to make some projection as to whether, in decent health and without an extraordinary illness, your assets should be sufficient for you and your spouse and any other dependents. It is only after this analysis that a selection of future lifestyle can be made. The bottom line is: Will our post-retirement income stream be able to support our preretirement lifestyle? If not, what changes (reductions) do we need to make?

Choosing a retirement lifestyle is very important. How active do you want to be? Do you want to continue to associate with people? Do you have a continuing interest in staying involved in some way with the law? Are you interested in politics or other community leadership or in charity work? If our health and financial resources hold out, it is very possible that the retirement years can be some of the best years of our lives. Most of us are at least part workaholic,

and most of us have been working a very long time. In retirement, there are an unlimited variety of activities that await us. Some of the more obvious include golf, fishing, hunting, carpentry, travel, reading, volunteer work, course offerings we never had time for, movies, dining out, skiing (for the very healthy), boating, attending various cultural events, and even gardening and lawn care. (In my case, gardening and lawn

care would cause me to reconsider practice.) There are available roles as a mediator or arbitrator or referee if one still wants to use his or her legal skills and yet seek to maintain some control over one's own schedule. We certainly could use more lawyer legislators in Dover.

Another difficult personal decision is whether to remain a resident of your community. Do you want to be

near children or grandchildren? Do you move somewhere else to enjoy a favorable climate, at the expense of leaving longtime friendships behind? You should also consider whether, if circumstances permit, to retain some kind of office outside your home, or whether a desk and computer in the home will satisfy your needs. The real issue here is not so much that you cling to some small segment of the past, but whether you and your spouse are both better off without you being under foot 24 hours a day.

For most of us, the most difficult decisions relate to future health care. Should we invest in long-term health-care insurance? This involves an analysis of yourself and your family to assess the likelihood of whether your remaining years will be spent with total independence, with some form of assisted living, or in a nursing home.

Primarily because of the health factor and the burdening costs of health care, there are no guarantees of a quality retirement. It is clear that the likelihood for a successful and satisfactory retirement in most cases will be enhanced with timely and careful planning. Plan while you can and while you have the maximum number of post-retirement options available. You should address the issues relating to post-retirement planning with the same care and attention you would give to your best client's most pressing legal problem. If at all possible, do your planning in good health and in a timely manner. In all events, good luck for a smooth transaction and in your retirement. I'm looking forward to mine. ♦

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1. N.B. Due to clerkship requirements or other factors, a candidate might pass the bar exam in one calendar year and be sworn in the following year.
2. In fact, one of my secretaries periodically asks me for her contribution to a gift for the 2000 retirement back. Once again, Colleen, the answer is no.
3. An experienced local attorney has suggested that ours is the only profession where the practitioner is never truly safe until eight months after death, and the law firm in some instances not even then.

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The Not-So-Secret Lives of (Retired)

Delaware Judges

Perhaps the biggest surprise about retirement is that I have continued to take on new projects and challenges.

When I was working and had thoughts of retirement, they centered on the things that had been so difficult to fit into my court and home responsibilities and which, at last, I would have time for. When retired, I told myself, there would be time to exercise an hour a day. Then I would practice my long-neglected piano for an hour, and follow that with an hour of Bible study. And I would clean out my attic, where all the items and projects I had accumulated through the years were stored. Of course, there would still be plenty of time for trips to New York and Philadelphia for the theater and concerts, and perhaps for even more adventurous travel. Time to read the entire works of Dickens. And in my leisure hours, like any good retiree, I would take up golf.

Wrong! Perhaps the biggest surprise about retirement is that, instead of being a time in which I finally have time for activities I didn't have time for before, it has been a time in which I have continued to take on new projects and challenges. Such as: planning a continuing legal education program, working for the General Assembly, publishing a book, traveling to the Czech Republic and Cuba, pre-

siding over a health insurance merger hearing, organizing two reunions of old friends and classmates, serving on a museum board, participating in many community organizations, and being deeply involved in family matters. No wonder that, just like in the old days, it is still difficult to fit in exercise, practicing, and study. My attic is still cluttered and my golf clubs unused.

When people ask if I miss Family

Court, where I spent the last 14 years of my career, my husband usually butts in to say jokingly, "She misses having people stand up whenever she enters a room." In many ways I do miss the challenge, discipline, and prestige of a judgeship. But oftentimes I think what I miss most from court is my secretary! It was really difficult for me to get used to doing my own typing, correspondence, telephone calling, and all those things I relied on Judy and the court staff to get done for me. And I quickly discovered that people don't return phone calls nearly as fast when it is just "Battle Robinson" calling, not "Judge Robinson." Fortunately, there are a few people who still get me mixed up with Chief Judge Sue Robinson of the U.S. District Court. I hear from them real promptly.

After the retirement dinner is over and a judge is turned out to pasture, so to speak, he or she has to decide what to do next. Unlike the federal courts, where senior judges continue to hear cases regularly and to have offices, secretaries, and other amenities, the Delaware courts make surprisingly little use of the state's retired judges, even though they would seem to be an ideal and accessible asset to help the judiciary deal with ever-burgeoning case loads. Indeed, in the federal system senior judges handle about 15 percent of the federal courts' workload annually. Of course, some judges return to private practice, making any kind of continued, though limited, service on the bench impossible. Others have moved out of state to someplace warm. And some, of course, develop health problems that preclude service. But others, it would seem, are tanned, rested, and ready for part-time service.

All states have provisions for retired judges to return to service. The Delaware Constitution, Article IV, Section 38, has, since at least 1981, provided for service by retired judges and justices of what were long known as the "constitutional courts" — that is, the Supreme Court, the Court of Chancery, and the Superior Court, all of which were created by the constitution. An implementing statute, 29 *Del. C.* § 5610, however, deals with service by all retired judges, including judges

of the so-called "statutory courts" — those courts that were established not by the constitution but by act of the General Assembly. Under the statute, service by the retired judges of the "statutory courts" is limited to the court on which the retired judge once sat. Retired judges of the "constitutional courts" have broader authority and are authorized to sit not only on the court on which they served, but any court on which they could have served under other provisions of the constitution and the Delaware Code. The distinction between "constitutional" and "statutory" courts has now been abolished, but neither Section 38 of the constitution nor its implementing statute has been amended to reflect this changed situation.

By an amendment to the constitution adopted in 2001, the office of senior judge was created. However, that amendment (Article IV, Sec. 39) leaves the qualifications, manner of appointment, and other matters relating to the office of senior judge to be set out by statute. To date, the General Assembly has not seen fit to enact a statute implementing the amendment. As a result, appointments of retired judges to temporary service on the state's courts are still basically done on an ad hoc basis, by appointment of the chief justice and subject to the provisions of Section 5610.

The Supreme Court, the Superior Court, and the Court of Common Pleas have all made some use of retired judges. But of the three, it is the Court of Common Pleas that has perhaps most often called on the services of retirees. Retired Superior Court Judge George Wright and retired Court of Common Pleas Judge Albert Fraczkowski have regular schedules in the court several days each month, handling a variety of calendars, including bench trials, jury trials, preliminary hearings, arraignments, domestic violence, and DUIs. They are also available on short notice to take over the docket of a judge who, for sickness or other reason, is temporarily unavailable. With the heavy scheduling of the regular judges, which affords little opportunity for them to "fill in" for absent brethren, the retirees have "really made a difference,"

according to the court staff.

While retired judges have been recalled into service on Superior Court on occasion, their use by that court has been less frequent. An exception is Judge Carl Goldstein, who, in an arrangement developed at the time he retired, returns to the court weekly to handle the Superior Court's drug court in New Castle County — a program that he was instrumental in starting. But otherwise, use of retired judges by the Superior Court has been limited. This is certainly due in part to the fact that the work of the Superior Court, which often involves long trials, written opinions, and extensive pretrial matters, is less compatible with the use of part-time judges than is the work of Common Pleas. President Judge James Vaughn states, however, that he would welcome back any retired judges who would be willing to serve and can meet the qualifications for service.

To date, the Family Court has not relied on its retired judiciary, although Chief Judge Chandlee Kuhn states she wishes to explore the possibility of recalling former judges. One of her predecessors, former Chief Judge Robert Thompson, noted that the court had opted to use masters and commissioners, rather than trying to line up retired judges to serve.

The Supreme Court has through the years made use of its retired justices. The late Justice William Duffy sat frequently on the court during his retirement. And while Justice Maurice Hartnett also served on a temporary basis after his retirement, he is currently unavailable as he recovers from surgery. To fill panels, the court calls upon sitting judges in Chancery and Superior Courts.

While there may be precedent in Delaware for calling back retired judges, the fact of the matter is that the courts, for the most part, lack the structure that permits retired judges to be fully effective. For instance, it is difficult to make available office space, secretarial help, computers, and other amenities essential for effective judging. These are made available to senior federal judges who, in return, are required to handle at least 25 percent of an active judge's caseload. Some

judges, while expressing willingness to serve when asked, were reluctant to return on a regular basis. They noted that the courts are changing at such a rapid pace, with expanded jurisdictions, technological advances, and different personnel that, when they return, it is often difficult to get back into the "rhythm" of the court. And some feel it is a relief to be away from the stressful issues that they had dealt with for so many years. However, Judge Wright says of his service on Common Pleas that, after only a few sessions, he felt "right at home." And Judge Goldstein comments that he thoroughly enjoys regular contact with his friends and fellow judges at Superior Court.

The limited use of retired judges by the courts does not, however, mean that Delaware's retired judges do not stay busy. A recent *New Yorker* cartoon depicts a judge, presumably retired, saying, "These days I'm mostly just legislating from the couch." Obviously not a Delaware judge, who wouldn't think of legislating from anywhere! And obviously not a retired Delaware judge, who spends little time on the couch.

A brief survey of some of Delaware's retired judges indicates that they remain busy and active and involved with the law in a variety of ways. Some continue to use their decision-making skills, honed by years of court service. Retired Superior Court Judge Vincent Bifferato, now part of his sons' law firm, has developed a thriving mediation and arbitration practice, at which he spends some 30 hours a week. He is also in the office almost every day, commenting that lawyers are used to being active and need something to do other than stay home. His fellow Superior Court Judge William S. Lee is affiliated with the Bifferato firm and does mediation and arbitration on a part-time basis, mainly in Sussex County. Former Chief Judge Vincent Poppiti of the Family Court, now with the firm of Blank Rome, is developing an alternative-dispute-resolution practice. He also serves as a special master for patent cases in the federal district court and has been a hearing officer for the insurance

department in insurance fraud cases, noting that after many years on the bench his main skill is decision-making. His predecessor as Family Court chief judge, Robert D. Thompson, began an arbitration and mediation service in Sussex County after his retirement from the bench. Former Family Court Judge Robert Wakefield, who moved to Florida after his retirement, was actively engaged in private mediation for several years. And former Chief Justice Norman Veasey prepared to do mediation and arbitration after his retirement, but has found that due to conflicts within his large international firm, such work has

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retired judges even
though they would
seem to be an ideal
and accessible asset to
help the judiciary deal
with ever-burgeoning
case loads.**

not been feasible.

A few judges have returned to "lawyering." Former Chief Justice Norman Veasey claims he has "flunked retirement." Only four days after stepping down as chief justice, he joined the firm of Weil, Gotshal & Manges as "senior partner and advisor to the firm." He keeps a full schedule, offering advice on a variety of corporate matters. He also does much speaking and traveling. Retired Supreme Court Justice Joseph Walsh does similar work with McCarter & English and he also teaches a course in appellate procedure and practice at Widener Law School.

Interestingly, few former judges

have returned to the courtroom. As one commented, "I already have that T-shirt!" Justice Veasey, Justice Walsh, Superior Court Judges Bifferato and Lee, and Chief Judge Poppiti, while affiliated with law firms, do no litigating or appellate courtroom work. In contrast, former Family Court judge Roger Kelsey, after stepping down from the bench, spent eight years serving as a CASA attorney in Family Court and appeared frequently before his former colleagues. So also did his fellow Family Court Judge David Buckson.

Perhaps the Delaware judges with the most unusual retirement activities have been Superior Court Judges Gebelein and Lee. Richard Gebelein is now "International Judge of the State Court of Bosnia and Herzegovina, Special Chambers for War Crime and Special Chambers for Organized Crime, Economic Crime and Corruption." Quite a mouthful! He is currently presiding over trials on an active basis and the court also handles appeals from other courts. He reports he is taking Bosnian lessons and has been able to do some hiking, although his full schedule leaves little time for recreation. And Judge Lee made a good run of it as the Republican candidate for governor of Delaware. He still stays involved in politics, serving as Sussex County Republican Party chairman. Bill also serves as vice chairman of the Beebe Medical Center's board of directors, which involves much time. While he has been invited to return to Superior Court to hear cases, his current political involvement precludes such service.

Some judges have eschewed the law altogether in order to enjoy other pursuits. Former Family Court Judge Karl Parrish, who once famously compared the relief felt at leaving judicial responsibilities to the sensation of removing a wet winter overcoat, has authored a book titled *Gallitzin* about the adventures of a Russian immigrant who became lost in the mountains of Western Pennsylvania. He has also served on the Board of the National Catholic Historical Society and has lectured in various areas of the country. His fellow Family Court Judge Charles Keil was instrumental in compiling

the Delaware Historical Society's recent exhibit on the contributions of immigrants to the Delaware scene. He is also pursuing a long-standing interest in the American Civil War and in perfecting his woodworking skills. Judge Roger Kelsey is heavily involved in community outreach in his large evangelical church in Dover where he has especially enjoyed leading a divorce recovery group. He recently auditioned for and won a role in a theatrical presentation, but had to give it up due to health problems. His fellow Family Court judge and former Delaware attorney general, David Buckson, now 85, states that he misses his service on the court because "my whole life has been people" and he misses those contacts. That is why one of his most rewarding activities is a weekly visit to the Modern Maturity Center, the senior center in Dover, where he assists the "old folks" with a variety of problems. The good judge passes along this word of advice, "Don't retire! It ends up killing you. Why, everybody I know who retired died."

Not that retirement is all work and no play. The Judges Balick spend time on frequent day trips, cultural events, and book sales. Judge Thompson is on the golf course two or three times a week and spends six months of the year in Florida. Judge Bifferato also spends time on the golf course, though he notes, "There is only so much golf you can play." But retired Family Court Judge Bill Horgan had bad luck with his golf. He left the bench so he could play more often, he says, only to come down with a bad back, which has precluded any time at all on the links. "I should have stayed on the bench," he laments. Judge Lee, of course, is frequently on the road to Durham, North Carolina, to follow the Blue Devils. Judge Goldstein enjoys organizing and attending folk and blue grass concerts and Judge Keil travels to Civil War sites.

As for me, when I first retired, I gave some thought to establishing a mediation practice in Southern Delaware. I also contemplated a return to private practice. I even considered another type of job that would keep

me involved with Family Court. But other demands soon encroached, so none of these plans came to fruition. But for several years, from January through June, I have worked for the Republican caucus in the Delaware House of Representatives as a legislative attorney, drafting bills and doing research. Ironically, this was the first job I held in Delaware, and it is still one of the most fun! Plus, through the years I have picked up some skills as bill drafter through my work with the National Conference of Commissioners on Uniform State Laws (NCCUSL). I have remained active with NCCUSL,

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being especially involved with efforts to improve child support enforcement laws and to help see that uniform acts drafted by the conference are enacted in the states. Just as my legislative job keeps me in touch with folks from all around Delaware, my NCCUSL responsibilities bring me in touch with lawyers and judges throughout the nation. Both keep me from vegetating!

Another thing I have discovered about retirement is that, just as the workplace seems more compatible with men's lives than with women's, so, too, is retirement. It is difficult to test this theory, because it is only

quite recently that many women have moved into official "retirement" status after active careers. Indeed, the late Roxana Arsht, Helen Balick, and I are, I believe, the only three women judges in Delaware to have reached this status. But retirement probably affords less recreational time for women than for men because one can never retire from household responsibilities and from family involvements. And these, I suspect, continue to fall more heavily on women than on men. Thus, I have continued to be responsible for the day-to-day management of our home and our beach retreat, just as I was

during my working years. And it is women who are most often called upon to help with other family members, be it aging parents or active grandchildren. In fact, this was what caused my retirement from the bench before I felt fully "ready" to leave — although recent examples of U.S. Supreme Court justices makes one wonder if judges ever feel "ready" for such a step.

At the time I stepped down from the court, my mother was in her late 80s and clearly needed help. And she had for some years borne the responsibility of caring for my disabled brother. Simply put, there was no one else to step in. So the first few years of my retirement were busy ones indeed, as I traveled frequently to North Carolina to move them both into a retirement complex, clear out and sell my family's home of almost 50 years, be with my mother as she declined and eventually died, settle her estate, oversee care of my brother, sell his home and help set up a trust for him, all while attending to my own family in Delaware. No wonder it was quite a while before I felt retired! But of course in addition to the sad and difficult task of attending to aging and ill family members, there is also the joy of being able to be more involved with children and grandchildren.

What, then, in my experience, makes for a happy retirement? Good friends, supportive family, varied interests, financial security, and good health — in brief, the same things that make for happiness at any time of life. ♦



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Dear Bar Members:

The Delaware Bar Foundation, incorporated on May 12, 1981, is celebrating its 25th anniversary. As someone who has been involved in its work for almost 20 of those years, I find it hard to believe that a quarter of a century has gone by already. What started as a modest effort by nine directors operating out of a file folder maintained in the president's private law office has become so much more.

In those 25 years, the foundation has had the outstanding leadership of Presidents Harold Schmittering, Victor Battaglia, Frank Biondi, and Bruce Stargatt. The board has been increased to 12 directors, an executive director has been employed, and an office has been established in the bar center, all to fulfill the foundation's important mission. And that is not all

Recently, an endowment fund entitled "Legacy of Giving" was created to help assure long-term financial security. In addition, a foundation Web site is nearing completion, which will give the foundation a higher profile and provide Internet access to every article of every issue of *Delaware Lawyer* and links to the bar association and Supreme Court Web sites.

These advancements would not be possible without the active assistance of you, the members of the Delaware Bar, lawyers and judges. Thank you for your continued support.

Harvey Bernard Rubenstein
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