DELAWARE LAWYER

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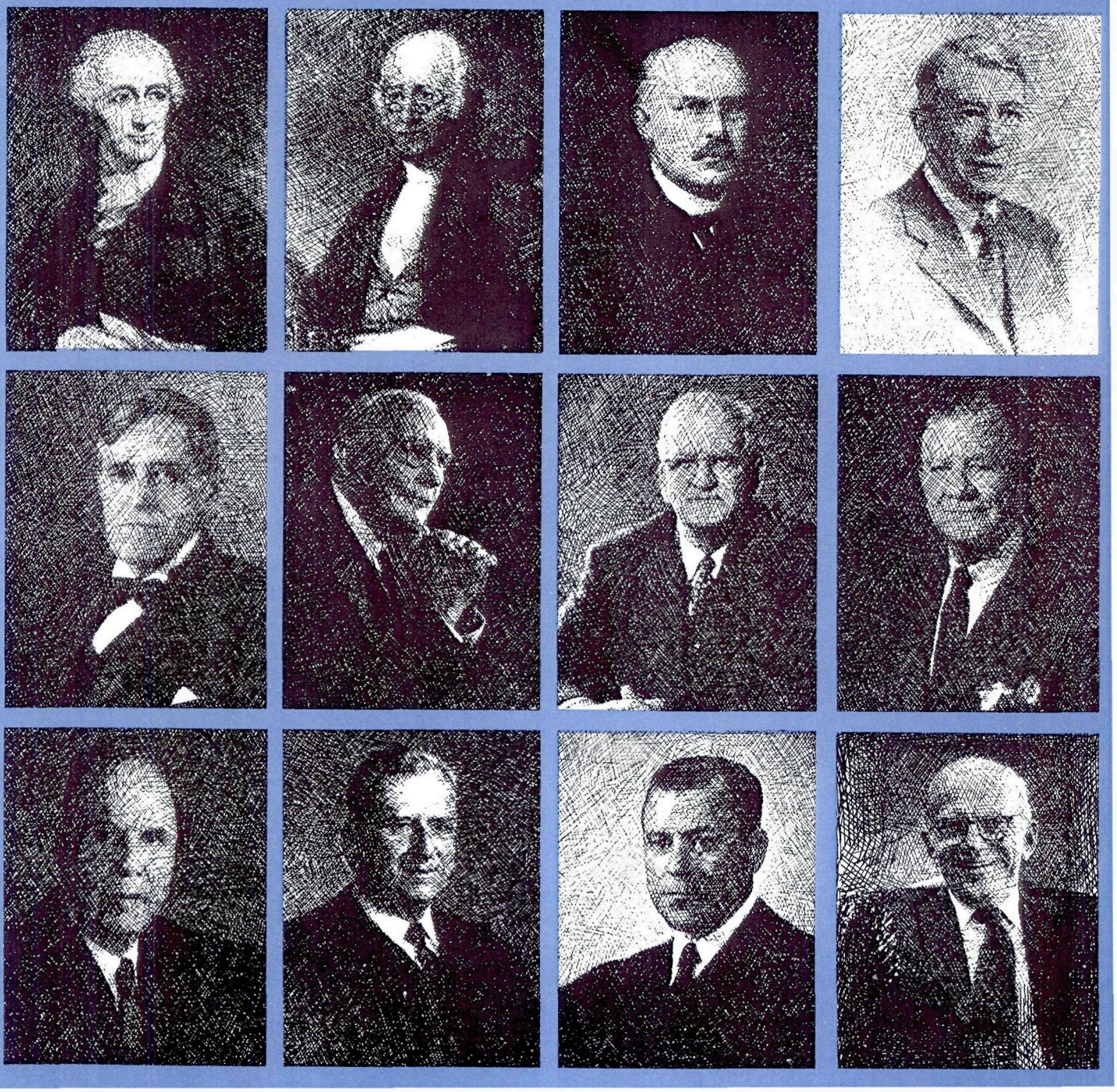

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Contents

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BAR FOUNDATION CORNER

Harold Schmittinger

Within recent months Delaware Bar Foundation has been activated and, thanks to the financial support of a substantial number of Delaware lawyers, it is now beginning to show signs of life.

The basic purposes of the Foundation are threefold:

a. To improve and facilitate the administration of justice;

b. To promote study and research in the field of law and the continuing education of lawyers; and

c. To promote and improve the public's knowledge and perception of our legal system.

Because of the public and educational objectives of the Foundation, we have been able to obtain income tax exemption under Section 501(c)(3) of the Internal Revenue Code. This means that not only is income earned by the Foundation not taxable but, also, contributions, dues, gifts, or bequests to the Foundation are deductible. We hope that, as the Foundation establishes a track record of supporting worthwhile programs and projects, we can attract gifts and bequests and in this way substantially expand our financial support now limited to dues payments.

The governing body of the Foundation is a nine member Board of Directors. Three members of the Board are appointed by the Chief Justice, three are appointed by the President of the Delaware State Bar Association (DSBA), and three are elected by the membership of the DSBA. Victor Battaglia, Frank Biondi, Honorable Grover Brown, Ned Carpenter, Bill Prickett, Charles Tolliver, Chuck Welch, Bill Wright, and I are the current members of the Board.

Thus far the Board has approved four projects.

1. Establishment of a professional education videotape library. The initial acquisitions for this library consist of one videotape playback system and two sets of tapes: "Basic Concepts of Evidence" (Irving Younger Lectures, 14 tapes) and "Appellate Advocacy" (4 tapes). We intend to acquire more tapes each year so that the library may grow and become more diversified. The operation of the library will be conducted by the Continuing Legal Education Committee of the DSBA.

2. Pro Bono — Community Legal Aid Society, Inc. (CLASI) Training Manual. A modest grant was made to the Pro Bono Committee of DSBA and CLASI to defray the printing cost of the 200 page Pro Bono training manual used and distributed at the training seminar held March 12, 1982, in connection with the Delaware Volunteer Lawyers Service project.

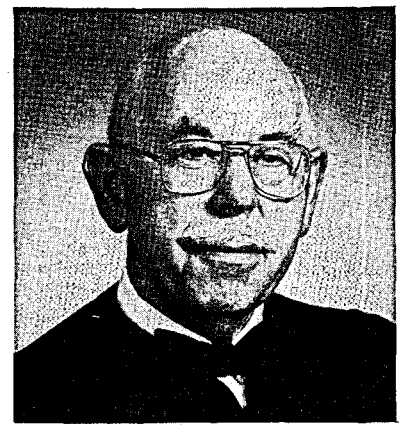
3. The *Legal Handbook for Delaware Women*. Another modest grant to the Women's Rights Committee of the DSBA was made to help defray the costs for the third printing of this useful handbook.

4. Establishment of *DELAWARE LAWYER*. Underwriting the publication of this magazine is by far the most ambitious project of the Foundation. The hard work, dedication, and talent of Bill Wiggin, Ed Golin of Gauge Corporation, Richard Levine, and the other members of the Editorial Committee, as well as the contributing writers, have made this publication a reality. The magazine promises to fill a void and provide Delaware lawyers with an outlet for scholarly and responsible works of appeal to the professional and public alike.

As this first issue of *Delaware Lawyer* goes to press, the number of Delaware lawyers and judges who have voluntarily elected to be dues-paying members of the Foundation approaches 500. The general public is also eligible for membership in the Foundation. We encourage such membership and the contribution of ideas, recommendations and a high level of dialogue between lawyer and layman.

We look forward to the second year of the Foundation and solicit your support, advice, and active membership in Delaware Bar Foundation.□

REMARKS
Chief Justice Daniel L. Herrmann For the First Issue of DELAWARE LAWYER



The appearance of this new publication is a welcome event in the history and progress of the legal community of our State.

Especially welcome are the announced goals of the publication's first Board of Editors that "[a] primary object of DELAWARE LAWYER will be accessibility to the intelligent general reader", and the intent "to stir a shared enthusiasm among professional and layman for quality in the practice and administration of justice". These are worthy objectives, indeed.

There is a great need in our State, as in most states, for a line of communication between lawyers and judges, on the one hand, and the general public, on the other. There is a great need for a flow of information and education leading to a better understanding by the public of the workings and functions of the law, lawyers, and judges in our continuing efforts to improve the administration of justice.

In 1906, Dean Roscoe Pound's classic address "The Causes of Popular Dissatisfaction with the Administration of Justice" opened with the statement: "Dissatisfaction with the administration of justice is as old as law". Although that address, delivered three-quarters of a century ago, "struck the spark that kindled the white flame of high endeavor" by lawyers and judges for the improvement of the administration of justice, "popular dissatisfaction" continues unabated to this day, locally and nationally.

A basic reason for that dissatisfaction, in my judgment, is lack of public information and understanding as to what we lawyers and judges are about. Our profession must address itself more resolutely to that problem. This new publication is an important and timely step in that direction.

For that reason, as well as for the other worthy objectives of DELAWARE LAWYER, the directors of Delaware Bar Foundation and all others involved in this project are to be heartily commended. □

GREETINGS
Governor Pierre S. du Pont IV

I congratulate Delaware Bar Foundation on two counts.

First, the Foundation has worthy missions: to encourage the professional development of lawyers and to enlarge public understanding of the legal community. Moreover, the Foundation is committed to providing legal services for the disadvantaged. These are sizable undertakings, but they are efforts the legal community must make if society is to understand both the problems of our profession and our capacity to advance the public interest.

Second, I congratulate the Foundation for publishing DELAWARE LAWYER. Until now there has been no means by which Delaware lawyers or others might address important legal issues. This journal should increase communication among members of the bar, between the bar and the state's lawmakers, and between the bar and the general public. Such a service should elevate the quality of public discussion and enlarge our appreciation of the law, our lawyers and our legal culture. For that the Foundation and those responsible for DELAWARE LAWYER merit our gratitude.

This first issue of DELAWARE LAWYER illustrates the type of exemplary service the journal can perform. By offering articles about legislation governing workmen's compensation now pending in the Delaware Senate — articles written by recognized experts in this field — DELAWARE LAWYER is already performing an educational function for lawyers, legislators, and the general public. A law that may have important consequences for labor and business in Delaware has been made the subject of vigorous and informed discussion. By inaugurating DELAWARE LAWYER the Foundation and the profession are engaged in an honorable service in the public interest.□

DELAWARE LAWYER
A Prospectus
(On the perils of initial publication)

Just about every new magazine lays its cards on the table face up and tells the readers what its editors hope to accomplish. Very often such a prefatory glimpse is called a "statement of principle" or, worse yet, a "manifesto". The latter term is a word of doom, associated with forlorn little rags put out by several poets, a radicalized sculptor, and a rich divorcee who is expected to pay the printer. After one or two issues the divorcee tires of the literary life and snatches back her checkbook. Finis. Accordingly, we eschew "manifesto", and, as our experience tells us that "statement of principle" commends itself only to the unprincipled, we'll stick with "prospectus", a nice lawyer-like word. Let us advise you of what we're all about.

DELAWARE LAWYER, a project of Delaware Bar Foundation, will seek articles of current interest to members of the Bar and to those whose work touches upon the law, the courts, and the practical and theoretical aspects of the administration of justice. Our goal will be to inform and stimulate, to entertain, and to provoke reflection on the quality of work done daily in our legal system. DELAWARE LAWYER will seek contributions not only from those "learned in the law," but from those laymen who have something of value and interest to bring to a larger understanding of that system.

A primary object of DELAWARE LAWYER will be accessibility to the intelligent general reader. Many learned articles about the law are *unreadable*, cast in a prose owlishly solemn, clotted in style, and peppered with footnotes. (We have footnotes, to be sure, but they don't leap at the reader, since we've caged them at the end of articles.) Such writing has its place in academe but does little to stir a shared enthusiasm among professional and layman for quality in the practice and administration of justice. Such writings are the kind of thing that once prompted Mark Twain to describe a classic as a book that everybody wishes he had read, but does not wish to read. Instead, we hope to sugercoat the pill of useful discourse: articles in DELAWARE LAWYER will be, ideally, short. Our editorial board will wield blue pencils with missionary fervor. Things won't "transpire" around DELAWARE LAWYER; they will simply "happen". Our authors will not discuss "verbal" contracts, when they mean "oral" ones. We shall aim at correct usage, decent grammar, and unpretentious clarity. In short, we want to make DELAWARE LAWYER attractive to the sensible and intelligent audience to whom it is addressed.

Who is that audience? All members of the Delaware Bar Association will receive the first copy of DELAWARE LAWYER. Copies will also be furnished to other legal journals and reprints will be available. We hope to offer subscriptions and to make copies available on newsstands. Articles drawn from longer and more self-consciously scholarly products will be made available to interested specialists.

We now plan to put out two issues a year. If we find both acceptance and that volume of worthwhile writing which we believe is lurking "out there" and in need of nothing more than our encouragement to publish, we may well convert DELAWARE LAWYER into a quarterly. We expect that it will be self-supporting through advertisements, subscriptions and reprints.□

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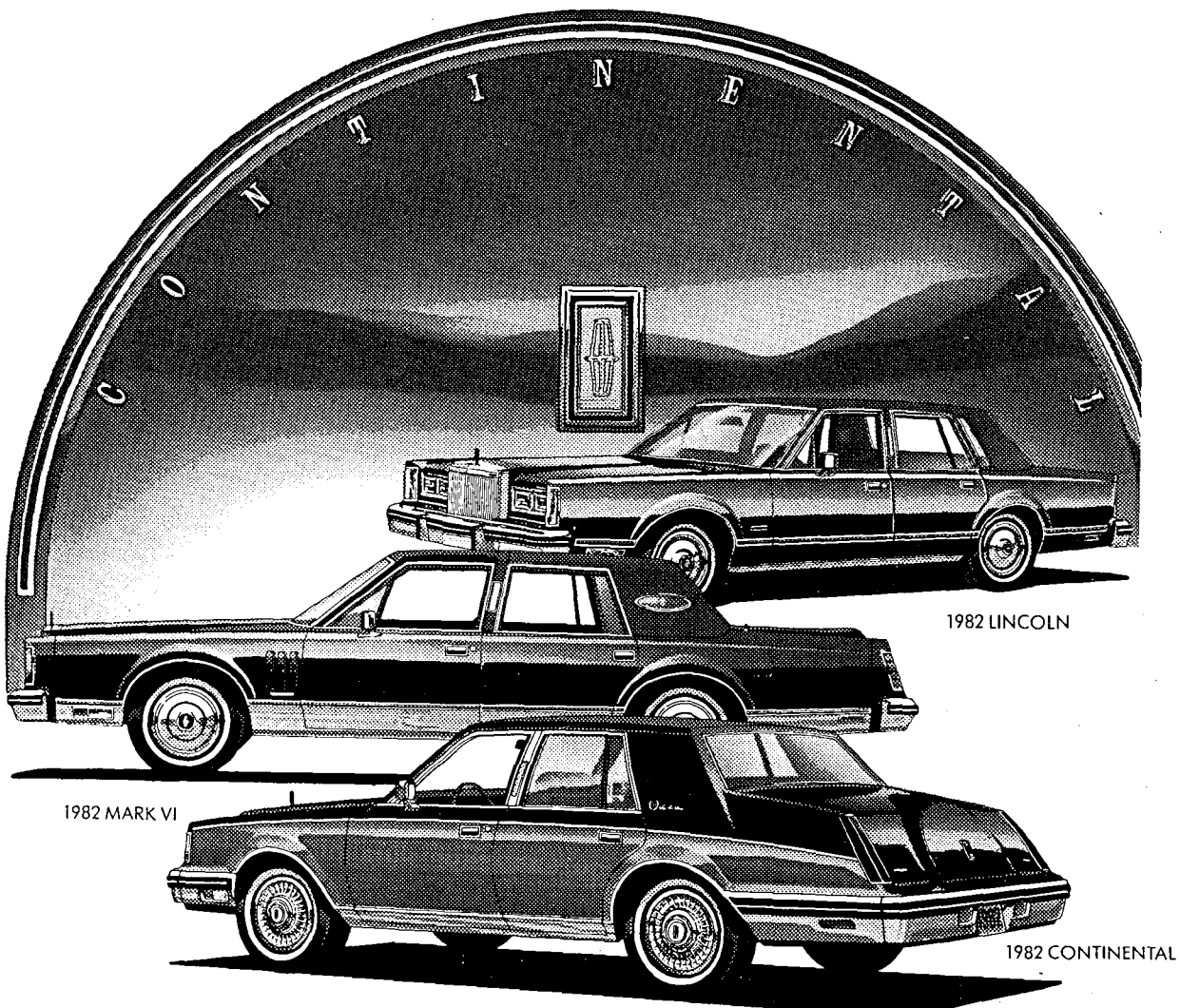

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WHY BUS?

Some observations on the rationale for compulsory transportation of children

Robert J. D'Agostino

Introduction

Several interrelated issues have occupied the attention of the courts in varying degrees since *Brown* v. *Board of Education*.[1] In resolving all of these issues the social sciences have been used in order to justify major policy decisions by the federal courts. In the *Brown* case, school desegregation was proposed as a remedy to the "invidious nature" of racial classification. It was argued that segregation was harmful in that it injured the minds of blacks and thus lowered their self-esteem, which reduced black academic achievement, which in turn engendered racial prejudice. It was put forward that if desegregation could improve the quality of the schools which black children attended, this would lead to the elimination of the above "harmful effects."[2]

Unfortunately, Title VI of the Civil Rights Act of 1964 provides that:

> "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.[3]

In order to justify a race conscious affirmative remedy, the courts had to ignore the plain language of the statute and the plain meaning of Congress. Desegregation became an affirmative duty "to convert to a unitary system in which racial discrimination would be eliminated root and branch."[4] The affirmative duty turned out to be a requirement to integrate. The courts undoubtedly felt, with some justification, that local school officials would not pay attention to the educational needs of blacks unless whites were in the same boat. Mandatory reassignments of students (busing) is required, in most cases, not because the Constitution or a Civil Rights Act mandates it but because it seemed to hold the answer to social and educational problems as perceived by a substantial number of federal judges, including a majority of the Supreme Court.[5] In the same opinion that ratified the use of busing in school desegregation cases, the Court said:

> This court has not ruled, and does not rule that 'racial balance' is required under the Constitution; nor that all black schools in all cities are unlawful nor that all school boards must bus children or violate the Constitution; *nor that the particular order entered in this case would be correct in other circumstances not before this court.* (Emphasis in original.)[6]

Further, "As we said in *Green*, a school authority's remedial plan or a district court's remedial decree is to be judged by its *effectiveness.*" (Emphasis added.)[6a]

Effectiveness in doing what? Integrating? Increasing minority academic achievement? Reducing racial prejudice? All of the above?

Desegregation as Integration

Desegregation is the prohibition and elimination of racial separation that is the result of a law, provision or practice requiring isolation of the members of a particular race or ethnic group in separate units (segregation). Integration is the actual bringing together of individuals of different groups. Most of the orders in school desegregation cases actually mandate integration.

The phenomenon of "white flight" is too well documented to deny. In relation to school desegregation cases, white flight refers to the withdrawal

of white students from the public schools subject to busing. Pupils either go to private or parochial schools or entire families move from the community involved in busing. In school district after school district, busing plans have precipitated white flight, and eventual resegregation. Atlanta, Cleveland, Boston, Los Angeles, and Pasadena are examples of school systems that have been resegregated. In Los Angeles some minority receiving schools lost over 70 percent of their white students within 2 years.[7] The Atlanta system is now virtually all black. In Boston, a group of black plaintiffs is requesting the dismantling of the busing order.[8] Forthcoming studies of Wilmington will show significant white loss in those grades where white students are bused.[9]

Whites flee during the anticipatory year; flee in great numbers during the implementation years; and continue to flee after implementation. Even if, as some say, white flight after implementation falls to preanticipatory year levels, the same percentage loss is from a smaller base. Grade by grade and school by school studies show substantially more white flight for bused whites than for whites who remain in their neighborhood schools.

In dissent,[10] Justice Powell stated:

> It is increasingly evident that use of the busing remedy to achieve racial balance can conflict with the goals of equal educational opportunity and quality schools. In all too many cities, well-intentioned court decrees have had the primary effect of stimulating resegregation.

In Dallas, approximately 1,000 white high school students were ordered transported to formerly all black schools under the 1971 court order. Seven years later, only 50 whites attend these schools.[11] In one school district, a school designed to accommodate 1,330 students was attended by only 268. The anticipated black/ white ratio was 2:1; the actual ratio became 10:1.[12]

Research indicates that the whites most likely to "flee" from mandatorily integrated school districts are children whose parents have higher income and education levels than the parents of white children who don't withdraw.[13] This initial wave of middle-class white flight will lead to subsequent waves of middle-class flight, because as the percentage of middle-class whites drop, many of the remaining middle-class whites who are more receptive to sending their children to an integrated school, even if busing is involved, will choose to leave the cities because they perceive the city to be "in decline."[14]

Academic Achievement

At some point in the early 1960s school desegregation began to be defended or justified by scholars and others on a very narrow basis — that school integration would improve the achievement test scores of black students.[15] Over a quarter of a century has passed since the Court called for school desegregation "with all deliberate speed." Although there remain a great number of schools which do not have "racially balanced" enrollments, there has been an adequate amount of school integration to enable social scientists to attempt to determine whether racial balance alone results in higher black achievement.

"No persuasive evidence has been produced to show that mandatory transportation of students attains a principal remedial objective."

The only fair conclusion that can be reached after having digested a great number of these studies is that a conclusion cannot be confidently drawn. The results of the studies on the relationship of black academic achievement to school desegregation have been described as "mixed", "ambiguous" and based on "inadequate" methodology.[16] For every study claiming to show a relationship, one can be cited which asserts that there is no such relationship.

A number of "experts" have taken the position that no positive causal relationship between school integration and minority academic achievement can be determined.[17] Among these experts are Harold Gerard and Norman Miller, who conducted a 10-year study of the Riverside, California busing plan.

> While the achievement of Anglo children did not suffer, minority students showed no overall benefit... if there had been a beneficial effect of this particular desegregation program on achievement, it seems likely that we would have discovered it.

It is safest to say that studies on how school desegregation plans affect minority achievement are in sharp disagreement. Reputable social scientists have been unable to agree, although all arguing from seemingly objective data, some reaching opposite conclusions from the same data. One explanation given for this disparity of conclusions is that the data is not actually objective.

> Advocacy of any particular approach is not based so much upon its general acceptance in the scientific community as it is upon the predictions of researchers and policy makers.
>
> Researchers often have commitments based upon deeply ingrained social experiences that affect their understanding of how society functions. The natural consequence of these experiences encourages the social scientist to accept the evidence which reinforces his own experience and to be skeptical of that which does not.
>
> The agencies that support research are just as likely to select a researcher on the basis of his values as on his "scientific" competence.[18]

Gary Orfield, the author of the above, maintains that "under the right circumstances desegregation can produce major educational gains."[19] Orfield's use of "under the right circumstances" as a precondition for the attainment of "major educational gains" highlights a major problem in determining whether it was the integration of black students with white students which led to any significant gains in black test scores, or whether such gains could be traced to other factors. It is very difficult to isolate factors other than interracial contact.[20] Furthermore, integration is seldom completely random, so it is always hard to be sure how comparable two groups (bused black students and non-bused black students) really are.

It is difficult for social scientists to design studies with proper control groups. Statistical inconsistencies can be attributed to the proportion of minority and majority students in a

school district; the social class of the community; parental and community acceptance of busing; the extent of normal mobility and "middle-class flight" and "white flight"; the adequacy of pre-test and post-test data; the length of time over which the data have been gathered; the socio-economic status, number and age of the students involved in integration; the attitudes and behavior of the teachers and other children in the classroom, and whether the integration is voluntary, court ordered, or "natural." The question, "All things being equal, will school integration lead to an improvement in minority academic achievement?," is impossible to answer, because, as the preceding variables point out, all things are never equal. This would explain the approximately equal number of studies showing negative and positive effects from mandatory integration.

Some conclusions by social scientists have been made concerning the relationship of school integration to black academic achievement.

Nancy St. John (1975) — "Integration neither significantly raised nor lowered black learning levels. Adequate data do not exist to reveal a causal relation between racial composition of schools and academic achievement." Taking note of the political, moral and technical difficulties of studying the question, St. John doubted that all of the scientific techniques will ever be used to determine the actual impact of busing on minority learning.

Bradley and Bradley (1977) — "Each of the studies showing positive effects of school desegregation suffered from methodological deficiencies that weakened the validity of their findings . . . it is necessary to conclude, as did St. John (1975), that the data collected since 1959 regarding school desegregation has been inconsistent and inadequate."

Krol (1980) — "It is clear that desegregation in education is the law of the land, yet we have little or no research evidence that indicates positive effects of desegregation on achievement."

Scott (1981) — "Reluctantly, it must be concluded that not a single empirically strong and longitudinal study has yielded statistics which support the thesis that school integration, by itself, significantly raises minority learning."

Racial Tolerance

A raison d'etre of school integration is the expectation that the increased exposure of black children to white children and white children to black children will lead to a rise in the level of cross-race social contact and racial tolerance with an accompanying decrease in segregation and racial tension.

It is difficult to measure racial tolerance because of the number of variables to be considered, such as the school and classroom racial composition, the quality of the racial stimuli, the socioeconomic status of the students, and the length of time that the desegregation plan has been in effect.[21] However, researchers have largely concluded that there is no significant improvement in race relations as a result of school integration.[22]

This conclusion does not imply that school integration necessarily leads to an increase in racial tension or that there are no studies claiming an increase in racial tolerance and a decrease in racial prejudice in an integrated school.[23]

Time for a Reassessment

Today, a decade after *Swann*[24] there is ample reason for lower federal courts to heed the Supreme Court's implicit admonition to rely on experience in exercising equitable remedial powers.

All indications are that forced busing generally has been an ineffectual tool in achieving equal educational opportunity. Few issues have generated as much public anguish and resistance, and have deflected as much time and resources away from needed endeavors to enrich the educational environment of public schools as court-ordered busing. No persuasive evidence has yet been produced to show that mandatory transportation of students attains a principal remedial objective of both *Brown* and *Swann*; namely, establishment of an educational environment offering an equal opportunity for every school child, irrespective of race, to realize his or her achievement potential in accordance with individual industry and talent.

The country could and should have been spared this divisive and ultimately failed remedy called busing. In Justice Harlan's famous dissent in *Plessy v. Ferguson*,[25] he stated, "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." Yet federal judges are color-conscious. The original district court opinion in *Swann*[26] made it clear that the reason for mandating a color-conscious remedy (busing) was to insure a "dramatic improvement" in black performance by "transferring underprivileged black children from black schools into schools with 70 percent or more white students."[27] White children were implicitly considered a precious resource needed to improve black academic achievement. Evenhanded treatment of individuals gave way to differential treatment based on group identity. Children are bused or not bused and given access to one school or another on the basis of race. Equal treatment gives way to a vain attempt to insure equal results through massive judicial intrusion into the educational process. To be sure inputs are as equal as possible, the courts mandate compulsory integration. The evidence is in and the desired results have not been obtained. Outputs, defined as achievement scores, drop out rates, and other such indicia of student success are not equal.

The courts shifted the burden of righting past racial wrongs to the public schools which have very obviously not been up to the task despite renorming of achievement tests and incessant talk about the "success" of one mandatory plan or another. SAT scores have declined 19 of the past 20 years. More not fewer young blacks are out of work today than 30 years ago, both in absolute numbers and proportionally. Many school districts are as segregated now as ever and the gap between white and black achievement scores has not been appreciably narrowed.

If it is now clear that compulsory integration has little or no effect on achievement, why do we continue down ~~this~~ path? Can the judiciary really divorce themselves from the overall decline in American education over the past 20 years? Has the once perceived means (integration) to equal educational opportunity now become the end in itself?

Conclusion

Justice Felix Frankfurter observed that, "People have been taught to believe that when the Supreme Court speaks it is not they who speak but the Constitution, whereas, of course, in so many vital cases, it is *they* who

speak and *not* the Constitution. And I verily believe that this is what the country needs most to understand."[28]

Just as the court was charged with imposing its views based on the laissez-faire philosophy of Herbert Spencer in the judicial age of substantive due process, it is now charged with imposing its ideas of social justice on the country. It is particularly egregious when its decisions impose as a matter of constitutional law a particular theory, with concomitant remedies, supported only by then current social science wisdom. That wisdom changes but the principles animating the Constitution are presumed changeable only by amendment. The court will change course or will be forced to by the democratically elected representatives of the American people. It is, after all, the same Supreme Court that, in interpreting the same Constitution, found assignments based on race lawful,[29] unlawful[30] and now lawful.[31] □

Editor's Note: DELAWARE LAWYER expects that Mr. D'Agostino's article will provoke interest, discussion, and *reasoned* controversy. Accordingly, the editors encourage comments and replies. Space will be made for these in our next issue.

[1]347 U.S. 483 (1954).

[2]Ralph Scott, *Black Achievement and Desegregation: A Research Synthesis*, Alexandria, Va.: American Education Legal Defense Fund, 1981, p. 9.

[3]42 U.S.C.A. § 2000c(b) (1976).

[4]*Green v. County School Board of New Kent County*, 391 U.S. 430 (1968).

[5]See, *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1970).

[6]*Id.* at 25 n.9 (quoting from the District Court).

[6a]*Id.* at 25.

[7]J. Michael Ross, "The Effectiveness of Alternative Desegregation Strategies: The Issue of Voluntary Versus Mandatory Policies in Los Angeles," Los Angeles Unified School District (Preliminary Report, 1981).

[8]Recent article in *Newsweek* and the *New York Times*.

[9]Telephone interview with Professor J. Michael Ross, Ph.D. (Boston University).

[10]*Estes v. Metropolitan Branches, Dallas NAACP*, 444 U.S. 437, 438 (1979).

[11]*Tasby v. Estes*, 412 F. Supp. 1192 (N.D. Tex. 1976).

[12]*Adams v. Rankin County Board of Education*, 485 F.2d 324 (1973).

[13]Christine Rossell and Willis Hawley in *Effective School Desegregation*, "Understanding White Flight and Doing Something About It," ed., W. Hawley, Sage: Beverly Hills 1981.

[14]Willis Hawley, "Forward" in *Law and Contemporary Problems*, Vol. 39, Winter 1975.

[15]See, e.g., Walter Stephan, "School Desegregation: An Evaluation of Predictions made in *Brown v. Board of Education*" in *Psychological Bulletin*, Vol. 85(2), March 1978.

[16]See, e.g., David Armor, "The Evidence on Busing," in *Public Interest*, Vol. 28, Summer 1972, p. 90; Patricia Lines, "Race and Learning: A Perspective on the Research" in *Inequality in Education, No. 11*, March 1972, pp. 26-34; James Meier and Kay Maxwell, *Longitudinal Effects of Desegregation*, 1972-75, Dallas, Texas: Public Schools Department of Research, Evaluation and Information Systems, July 1975; Victor Miller, "The Emergent Patterns of Integration" in *Educational Leadership*, Vol. 36, February 1979, pp. 308-312; Daniel Sheehan and Mary Marcus, "Busing and Student Ethnicity: Effects on Achievement Test Scores" in *Urban Education*, Vol. 13, 1978, pp. 83-94; Barbara Sizemore, "Is there a Case for Separate Schools?" in *Phi Delta Kappa*, Vol. 53, January 1972, pp. 281-284; James Coleman, *School Desegregation and City Suburban Relations* in a Paper presented at Community

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[17]*Id.; see also* Henry Levin, "Eduation, Life Chances, and the Courts: The Role of Social Science Evidence" in *Law and Contemporary Problems, Vol. 39*, Spring 1975, p. 232.

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David Clayton Carrad

FAMILY LAW POTPOURRI:

PROFESSIONAL SKILLS FOR THE 1980s AND BEYOND

The invitation to survey family law for the inaugural issue of Delaware Lawyer *was too tempting to turn down, but I soon found the topic too large to handle. How can you encompass joint custody, equitable distribution of property, tax aspects of alimony, mandatory mediation at Family Court, professional degrees and licenses as "property", and the host of other issues in this field in less than a book? You can't.*

The result is this article, which focuses not so much on substantive developments in the family law as on the professional skills you and I need to handle domestic relations cases at least without being sued for malpractice, and, I hope, competently, efficiently, economically and enjoyably. And it's not as simple as you think to do that.

Claims that domestic relations is an intellectually difficult, complex and highly specialized field are usually met with skeptically raised eyebrows from the politer members of the bar, and rude noises or laughter from the rest. I hope to change your mind if you read on.

Historically divorce lawyers have been held in the same esteem by the rest of the legal profession and the general public as that held by proctologists in the medical profession. While the disappearance of any social stigma of being divorced and the effect of the rapidly rising divorce rate on our clients and their families have been discussed and analysed at great length, little or no attention has been paid to the revolutionary effect of no-fault divorce laws, equitable distribution of property and rehabilitative alimony on domestic relations attorneys. Yet the change in the skills required of the lawyer and the incredible rapidity of that change have had an impact on the legal profession perhaps more radical and more difficult to deal with than the impact of the same laws on our clients.

Twenty years is not a long time in the life of the law, but no-fault divorce, virtually unknown in the United States in 1962, is now the law in 48 of the 50 States, including Delaware. Equitable distribution of property in divorce, again unknown in 1962, has become the law in 39 States since then. Alimony, traditionally a vehicle for the secular punishment of sinners, is now regarded as a vehicle solely for the economic rehabilitation of former spouses who by marrying, have impaired their capacity to earn their own living and be self-supporting.

Under the traditional fault system, the spouse who did not want the divorce (or wanted it less intensely), rather than the Court, had the power to "give a divorce" or withhold it until his or her financial demands were met. The fundamental basis of negotiation was blackmail. In the exceptional case where one spouse could "win" a contested divorce, property was divided by the usually fortuitous circumstance of its title and alimony automatically denied the errant wife, or imposed as a penance on the guilty husband, without much regard for the financial means or needs of either. Under this old system a certain rough justice was often achieved by threats of scandal, public humiliation and years of protracted and unsuccessful litigation. Successful personal blackmail was followed by perjured testimony and the withdrawal of the contest to the divorce itself. But with the advent of no-fault divorce grounds — essentially divorce on the unilateral demand of either spouse, even over the strongest opposition of the other, and the abolition of virtually all defenses — it became clear that, with the removal of all of the objecting spouse's bargaining power, the law of

property division and alimony would have to be concurrently reformed to do economic justice to the objecting spouse, and, indeed, to both spouses.

The result? The expert witness on the value of pension plans has replaced the paramour as the key trial witness; the neighbors and family friends now testify, if at all, about the wife's contribution to the marriage as a homemaker or her use of her paycheck to put her ex-husband through medical school rather than her mental cruelty; the private detective testifies about hidden bank accounts rather than motel ledgers; and photographs of either party *in flagrante* are replaced by photocopies of the balance sheets of the husband's closely-held business.

The divorce lawyer today must concern himself, or herself, with issues unknown 20 years ago. The skills and knowledge demanded of today's domestic relations lawyer are as complex and sophisticated as those required by corporate and tax attorneys. In many cases, the skills are identical.

It is tempting to speculate about the future — what the 1980s and 1990s will see in family law. I can foresee the office (or portable) minicomputer becoming as widely used by bench and bar alike as the pocket calculator is today, particularly in calculating the tax effects of property divisions and alimony payments. I can foresee the Delaware bar joining the 15 or 16 other States which presently have formal programs for certification of lawyers as specialists in various substantive fields, including family law.

I can also foresee several malpractice verdicts against Delaware lawyers in this field in the next few years.

Why? Client complaints in domestic relations matters have historically been second in volume only to criminal law matters, perhaps because of the intense emotions involved, but that is not the sole basis for the malpractice projection.

Family law is a deceptively simple area on the surface. Many members of the bar, frankly, dislike it, but are reluctant to give up the 10% or 15% of their annual income which these matters generate. Many charge flat fees, rather than by the hour, for representation in a domestic relations matter. As a result of the fee structure and their general distaste for the field, they are reluctant to expend more time than is absolutely necessary to handle the matter, including time for legal research and education. Yet the potential legal and factual complexities in each case, however simple, can demand the expertise and dedication of an attorney's time, effort and energy comparable to that required to try an antitrust or patent case. Lawyers who would immediately refer such matters to a "specialist" because they are difficult areas of the law will accept an equally complex family law matter on the theory that they can handle the matter satisfactorily, on going to Family Court and yelling, without even a cursory glance at the appropriate statute, or that they can draft a satisfactory separation agreement by writing down what the client tells them and sprinkling the document with a few "heretofores" and an occasional "whereas".

"The divorce lawyer today must concern himself with issues unknown 20 years ago."

I am not advocating that all domestic relations matters be handled exclusively by specialists. I have every confidence that members of the Delaware bar can do competent, satisfactory work in this area if they will spend a few hundred dollars on books and periodicals and on improving and maintaining their professional skills. That effort, I am convinced, will come if, and only if, the bar recognizes the complexity of domestic relations law.

And the effort is worthwhile. A little study is rapidly repaid because a sensitivity to the issues makes you not only more likely to succeed in your cases, but also makes them more challenging, more interesting — and consequently more fun to handle.

The Delaware State Bar Association sponsors an annual Family Law CLE Seminar in January of each year. The American Bar Association and several private groups sponsor seminars each year in locations throughout the country. A good way to find out about such seminars is to join the ABA's Family Law Section ($15.00 per year), which also brings you their two helpful quarterly publications, listed at the end of this article. The list, by the way, includes basic books and periodicals which you should have in your library if you practice domestic relations law.

Are you comfortable with your present professional skills in this area? A short checklist may be helpful. Can you:

- Effectively cross-examine a child psychologist in a custody care?
- Effectively cross-examine a pension expert or small business appraiser?
- Advise your client about structuring a corporate redemption of marital stock under § 302 of the Internal Revenue Code?
- Calculate and present in a simple, intelligible form to the trial judge the tax consequences of your opponent's proposed property division?

Test yourself. Even the simplest domestic relations cases present significant tax issues. The following ten questions are neither arcane nor rare, like the issue of corporate redemptions mentioned above, but arise in almost every case. The answers are on page 45 but should also be on the tip of your tongue if you practice fairly extensively in this area.

1. "Husband shall pay to Wife for her support and maintenance, and for the support and maintenance of their three minor children, $600.00 per month, which shall be reduced by one-sixth as each of the children becomes emancipated and by one-half in the event of Wife's remarriage." How much of the $600 is taxable income to the Wife?

2. "Husband shall pay to Wife $500.00 per month, as alimony, for the next 8 years on the first day of each calendar month." How much of the $500 is deductible by Husband?

3. Husband properly takes the parties' only minor child as his dependent for federal and state income tax purposes. Wife pays all the child's medical expenses and $200 per month for child care to enable her to work. The child lives with Wife.

   A. May Wife file as head of household? Husband?
   B. May Wife deduct the medical expenses she pays for the child? Husband?
   C. Is Wife entitled to claim the child care credit?

4. Husband pays Wife's counsel fees of $2,500 in connection with their divorce, which includes $1,500 charged her for tax advice. May Husband deduct this $1,500? Wife?

5. Husband and Wife bought a home in joint names in 1975 during their marriage for $40,000. It is worth $60,000 today. The original mortgage balance was $30,000; today it is $28,000. In connection with their divorce, Husband signs the house over to Wife. It is their only significant asset. Does either party have a capital gains tax to pay? What is the amount of the gain?

6. Would your answer to question 5 be different if title had been held in Husband's name alone?

7. Husband bought 100 shares of Amalgamated Widget stock during the parties' marriage for $10,000; today it is worth $6,000. The parties are not yet divorced, but are negotiating a separation agreement. Husband wants to transfer the stock to Wife and claim a capital loss. May he do so? If not, how may he realize the loss?

8. Husband and Wife separated a year ago when he moved to an apartment. Their house has just been sold and he will receive 50% of the sales proceeds. If he immediately reinvests everything he receives in a new home for himself, can he defer recognition of any capital gain on the home? Can Wife?

9. Same facts as question 8, but Husband is 65 years old, and the parties have owned their home for 5 years.

A. Can Husband claim the § 121 capital gains exclusion?

B. How much can he claim if the parties are divorced?

C. How much can he claim if they are separated but not divorced?

10. Husband and Wife have no children. They separate, and Wife sues Husband for support under 13 *Del.C.* § 502 and is awarded $1,200 per month, but no one files for divorce. May Husband deduct the $1,200 per month as alimony?

For answers to these questions turn to page 45.

Conclusion

The conclusion is that there is none. As my favorite advertisement for jogging shoes puts it much more eloquently: "There is no finish line." Maintaining and upgrading professional skills is a never-ending process, like regularly exercising to stay physically fit. It doesn't take long to get out of shape if you stop exercising — but it doesn't take more than a few minutes each day to stay fit. Professional skills are no different.

There follows a bibliography of a few books and periodicals which are absolutely essential to anyone with even an occasional domestic relations case. All of them — especially the current periodicals — will help polish and maintain the expertise we all need in this field. Like this article, none of them will provide you with everything you will need to know, but at least they will supply a solid foundation on which first-class advocacy and representation of clients may be built.

(Continued)

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CHIEF JUSTICE WARREN E. BURGER

John T. Gandolfo, Jr.

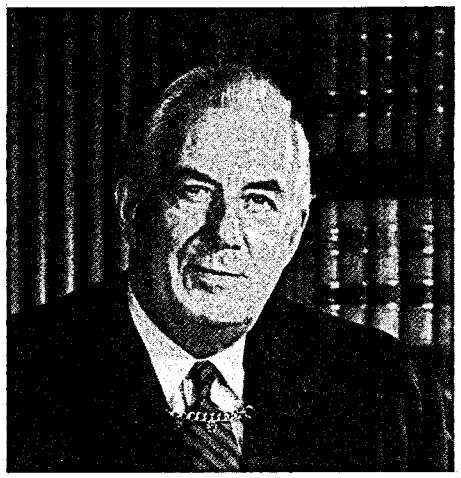
Chief Justice Burger will be the featured speaker at this year's Annual Joint Bench and Bar Conference, to be held June 2 at the John M. Clayton Conference Center at the University of Delaware. It will also be the Chief Justice's first visit to Delaware in his official capacity.

Warren E. Burger became the 15th Chief Justice of the United States on June 23, 1969. He is a graduate of the University of Minnesota and of St. Paul College of Law, which he attended while working full time. He graduated magna cum laude. He joined the faculty of that law school (now known as the William Mitchell College of Law) immediately upon graduation, and taught the law of contracts and trusts. He remained on the faculty until 1948, 17 years later. He is presently a Trustee Emeritus of the college. While teaching, Mr. Burger practised with a leading St. Paul law firm of which he became a partner. In 1953, he became Assistant Attorney General of the United States, supervising the Civil Division staff of 200 lawyers. Three years later, he was appointed Judge of the United States Court of Appeals in Washington, D.C., where he served until his appointment as Chief Justice.

Warren Burger has been the nation's leading advocate of professional court administration and management as a means of enabling judges better to perform their judicial functions. His efforts have led to the creation of the Institute for Court Management which trains court administrators nationwide, and the National Center for State Courts, which seeks to improve the administration of justice in state and local courts.

Since 1967, the Chief Justice has expressed thought-provoking, if not controversial, views on lawyer competency. He believes that one of the major reasons for congestion in the courts, apart from the need for better management, is the inadequate performance of many attorneys. He cites with approval the English system of training and apprenticeship of barristers. He has called upon the profession to repudiate the notion that every law school graduate is qualified, by virtue of admission to the Bar, to be a trial advocate. He continues to appeal for advocacy training in law schools and for certification of trial advocates.

The nation's criminal justice system has long concerned the Chief Justice. In his address to the American Bar Association at its 1981 meeting he asked: "Is a society redeemed if it provides massive safeguards for accused persons including pre-trial freedom for most crimes, defense lawyers at public expense, trials and appeals, retrials and more appeals — almost without end — and yet fails to provide elementary protection for its law-abiding citizens?" The Chief Justice believes deterrence to be the "primary core" of the battle against crime. To that end, he has called for stricter pre-trial release laws, trial within weeks of arrest, appellate review within eight weeks following trial, and subsequent judicial review limited to claims of miscarriage of justice.



The Chief Justice's concern for criminal justice is not limited to speedy adjudication. He has long criticized the American penal system for abdicating its responsibilities for rehabilitation. He believes ". . . when society places a person behind walls and bars, it has an obligation — a moral obligation to do whatever can reasonably be done to change that person before he or she goes back into the stream of society."[1] He calls for the building of prisons with factories, or "factories with fences," to improve inmates' self respect and to train them for reentry into society.

At the 1982 ABA Conference, the Chief Justice addressed the profession on the need for reform in the civil area. To reduce an enormous backlog of civil cases, he called for greater use of binding arbitration. He also urges law school training in the art of negotiation to avoid litigation. The Chief Justice's career has been distinguished by a profound concern for the efficient and fair administration of justice, both civil and criminal. With pleasure and pride Delaware lawyers welcome him to our annual conference. □

[1] Address at the University of Nebraska, December 16, 1981.

House Bill 200:

Workers' Compensati Reform In PRO

William G. Campbell and
Robert D. Graham

INTRODUCTION

As counsel to the Delaware Workmen's Compensation Study Commission, we were involved in drafting proposed legislation which was used as the framework for what is now known as House Bill 200 —"The Workers' Compensation Act." The editors of *DELAWARE LAWYER* have asked us to explain the changes proposed in House Bill 200; as we understand it, others have been asked to argue that those changes are unnecessary. Both groups have been challenged by the editors to state their positions in clear, straightforward language, without a lot of "legalese" or scholarly citations. For those of you who would like to know our sources, we'll be happy to supply them upon request.

Since HB200 runs some 60 pages, we don't propose to give you a section by section analysis. Instead, we'd like to tell you a little about the history of workers' compensation in general, how the Delaware system has evolved, and what HB200 was designed to do.

In addition, because this publication is about lawyers, we'd like to discuss the proper role for lawyers in the workers' compensation system. Under the existing Delaware compensation system, lawyer involvement in routine compensation cases has been the rule. While there will always be a role for lawyers, we think that if the system is functioning properly lawyer participation should be the exception and not the rule.

A. Workers' Compensation in general; development of a no fault system.

In recent years the term "no fault" has frequently been used to describe reforms in the statutes dealing with automobile accidents. The public perception of "no fault" is that of a streamlined procedure meant to reimburse losses without regard to which party might have caused the loss — a remedy available without complex litigation, extensive red tape, or an army of lawyers.

Most people would be surprised to learn that workers' compensation laws were the first widespread use of the no fault principle in this country. Building on the social insurance programs developed in Prussia and the rest of Western Europe in the late nineteenth century, many jurisdictions in the United States passed workers' compensation laws during the first two decades of this century.

These early workers' compensation laws were a simple and classic expression of the no fault principle: workers with job-related injuries were entitled to a percentage of wages lost as a result of those injuries, without

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)n  CON Delaware

John J. Schmittinger

In the past several years the insurance lobby has introduced three versions of an entirely new worker's compensation system for the State of Delaware. Originally introduced in 1980, Senate Bill 582 was the grandfather of these new Acts. Senate Bill 582 was defeated, and the following year the proponents of this new system introduced a new bill, House Bill 87, which was essentially identical to Senate Bill 582. After a series of public hearings, the proponents of House Bill 87 withdrew it under heavy fire and promised to come up with a new bill more palatable to the working man. Later in that same legislative session, House Bill 200 was introduced. It was essentially the same as its predecessors. That bill has passed the House of Representatives by a simple majority in an amended form and is now under consideration by the Delaware State Senate.[1]

The most dire aspect of House Bill 200 is that it reduces benefits to the injured worker. Although it is ostensibly modeled after Professor Arthur Larson's wage loss system which is meant to increase temporary total disability compensation for the loss of wages and reduce permanent partial disability and disfigurement compensation, the actual effect of House Bill 200 would be to reallocate funds (regardless how they are labeled) which are currently paid to an injured worker away from that injured worker and to insurance carriers. I do not intend to focus on the benefit structure of House Bill 200 except to say that although it raises benefits for wage loss to some employees, lower paid employees, those who most need wage loss benefits, will gain no total disability or wage loss increases under this bill.

Section 2221 of House Bill 200 sets total disability compensation at 66-2/3% of the weekly wages earned by the employee but not more than 125% of the Statewide Average Weekly Wage[2]. On its face, this provision would appear to increase total disability compensation. However, for a worker to qualify for what would have been the maximum in 1979 had the bill been in effect, $328.49 (125% x 262.79)[3], he would have had to gross almost $492.74 per week or $25,622.22 yearly (492.74 x 2/3 = 328.49). Not many injured workers would qualify for this new maximum.

The Industrial Accident Board (the "Board") has statistics which indicate the actual wages of those persons who were injured between May of 1979 and April of 1981. From those figures, it is obvious that only a small percentage of workers would gain from the new proposed wage loss structure. The Board's figures indicate that if House Bill 200 had been in effect during this period, 57% of injured persons would have received *no increase* in temporary total disability compensation. This is because 57% of those injured made less than the SAWW. Moreover, these figures indicate that only 6% of the sample of people would have qualified for House Bill 200's maximum. Of the other 37% of the people who would benefit from this wage loss provision, half of them made less than $327.00 per week and would realize a weekly increase of only approximately $40.00 per week. A statistical analysis of the sample of injured workers shows that, had House Bill 200 been in effect in 1979, the total increase in costs to the carriers for total disability compensation would have been 21%.

In contrast with this situation, the bill will save insurance carriers millions in permanent partial disability and disfigurement benefits. Many workers will be denied permanent partial disability benefits and disfigurement benefits altogether. For example, the bill restructures permanent partial disability benefits into a new "scheduled benefit" scheme in §2224. This new scheme is quite simple; although it allows some permanent partial disability benefits (much lower than under the present law), it permits such benefits *only* if the permanent partial disability is the result of an amputation or *100% loss of use of a member of the body*. Of course, a 100% loss of use is an extremely rare situation. In Senate Hearings several physicians testified as to the effect of

(continued on P. 33)

WORKERS' COMPENSATION

Campbell and Graham

(continued from P. 20)

regard to fault.

No longer would an injured worker have to allege and prove negligence on the part of his employer in order to collect a benefit. In exchange for a more stable and predictable system, employers gave up their common law defenses to compensation claims: the "fellow servant" rule, assumption of the risk, and contributory negligence. Both gained by this trade-off; while verdicts for workers were rare because of the common law defenses, they could be devastating to a small business and couldn't be planned for.

These early workers' compensation systems were based on two primary assumptions. The system was to be administered by a state agency, with a minimum of litigation, attorney involvement or controversy. And it was designed to deal with actual economic losses due to work-related injuries — not impairment or "pain and suffering".

The reason for the emphasis on little or no litigation and on simplified procedures is obvious. The amount of money available to pay for workers' compensation benefits is limited. When the cost of those benefits (whether funded through insurance premiums or borne directly by the business through self-insurance) exceeds reasonable limits, the businesses which bear them face a range of unpleasant options: go "bare" (don't insure), curtail expansion, reduce the work force, relocate or go out of business. When that reasonable limit is reached — as is the case in much of the country today — the pool of benefit dollars becomes finite. Money used to pay for conflict resolution (lawyers, doctors' testimony and the like), is not available to pay the benefits the system was designed to provide.

The most equitable way for a no fault workers' compensation system to reduce conflict (and the costs of resolving conflict) is to make replacement of lost wages —the wage-loss principle — the central compensation principle. Wages lost to injury are the best evidence of actual economic loss, are readily calculable and can be determined after the fact. This eliminates any controversy over the amount of compensation benefits actually due, and the need for most litigation. The money saved from reduced litigation can then be applied toward benefits.

To the extent that a workers compensation system strays from this central wage-loss principle, it invites controversy and litigation. That is what has gradually occurred in the United States over the last sixty years, with the introduction of the "schedule" principle. "Schedule" benefits include benefits for amputations, disfigurement and "permanent partial" awards.

The typical statutory schedule provides a list describing various members of the body and prescribes a fixed number of weeks compensation for their loss or loss of use. This benefit is payable even if wage-loss benefits are payable for the same injury. It was originally (and often still is) justified on the theory that this loss or loss of use will result in some impairment of future wage earning capacity.

"While there will always be a role for lawyers (in workers compensation), if the system is functioning properly, lawyer participation should be the exception and not the rule."

Suppose, for example, that a worker injures his arm on the job. He consults his lawyer, who then has the worker examined by a doctor. The doctor concludes after examination that the worker has a 45% loss of use of the arm, and the worker's lawyer files a claim for that loss of use.

The employer's lawyer then enters the picture. He has a company doctor examine the worker, who concludes that there is a 15% loss of use. Now today in Delaware one of two things occurs: the parties agree on a permanent partial benefit, or the Industrial Accident Board holds a hearing on the claim.

More often than not, after a full-scale hearing, the Board will render a Solomonic decision that the worker really suffers from a 30% loss of use. If either of the parties disagrees, the decision is appealed to the courts — and the injured worker most likely must wait for his benefits until all appeals are exhausted.

This process provides employment for lawyers, doctors and a variety of supporting players, but still results in a highly subjective and speculative award which has little to do with the injured worker's actual economic loss. Indeed, many workers return to work immediately after their injury, for the same wages, and still receive a schedule award. And the schedule award is made in a costly, inefficient manner which reduces the benefit dollars available for those with proven economic losses.

This is exactly the reverse of the result intended when the schedules were first introduced. For example, the Pennsylvania statute of 1912 provided for an extremely limited schedule covering only total loss of a hand, a foot, a leg, or an eye, or two or more of these. The Pennsylvania Industrial Accident Commission studied the 1912 law prior to its enactment, with the aid of one of the foremost workers' compensation experts of the time, Francis Bohlen of the University of Pennsylvania Law School. Professor Bohlen justified a limited schedule in the context of a no fault wage-loss law:

> The *determining consideration* was that by rendering the amount definite *litigation would be prevented and certainty attained*, since whenever a mutilation of this sort occurred there could be no question as to the *extent of disability* of the sufferer or *the amount payable to him*. (F. Bohlen, Workmen's Compensation: Address Before the Law Association of Philadelphia. Nov. 15, 1912, at 23; emphasis added)

Over the years, however, the schedules were expanded. Instead of compensating total loss of use only, the schedules were amended to apply to partial loss of use. Catchall provisions were added to make certain that any loss of use not specifically embraced in the language of the schedules would also be compensable. And litigation abounded.

There are, of course, many reasons for the apparent retreat from the wage loss principle and the growth and expansion of the schedule principle. Wage loss benefits in many jurisdictions (including Delaware) remained artificially low until the mid-1970's; the courts responded, as might be expected, by interpreting various provisions of the statutes (including the schedules) to increase the

total amount of compensation benefits available. In Delaware, for example, the system of concurrent payment of wage-loss and various schedule benefits (such as percentage loss of use and disfigurement) seems to have been a judicial response to serious injuries in the face of a maximum wage-loss benefit which even in the early 1970's amounted to only $75 per week.

The expansion of the schedule principle went relatively unnoticed for many years, however, because the overall costs of the workers' compensation system remained relatively low. Those costs were not very significant to employers, so they didn't concern themselves. The insurance industry simply passed on its costs to the employers and likewise didn't concern itself.

However, growing business awareness of the problems of the compensation system and legitimate labor discontent with low benefits spurred the formation of a National Commission on State Workmen's Compensation Laws. That commission, in 1972, issued a comprehensive series of recommendations aimed at all of the elements of the compensation system: benefits levels, administration, adjudication and the like.

Unfortunately, many states adopted the National Commission's recommendations to increase benefits without regard to their cost or their effect on other parts of the system. These benefit increases were simply added to a system already made inefficient and costly by the unchecked growth of the schedule principle and by inadequate staffing and funding of the state agencies administering that system. As a result, compensation costs —and the cost of insuring or self-insuring those costs — skyrocketed in most jurisdictions.

There is now a growing movement to restore the wage-loss principle as the linchpin of the compensation system. Two main motives underlie this movement: to reduce waste of the compensation dollar on nondisability (i.e., non-economic) losses, and to reduce waste of administrative, legal and judicial time and resources. Benefits would be allocated from those who quickly return to work at the same wage (and thus suffer little or no actual economic loss) toward adequate compensation for those with severe economic losses — and that compensation would get to them with a minimum of delay and red tape.

As we said above, the fund available for compensation benefits is limited. If, for example, 80% of the compensation dollar is spent on small schedule awards for conditions that are in no sense disabling (as has happened in New Jersey), the system lacks the necessary resources to do its real job — taking adequate care of the truly disabled.

Reducing litigation was one of the principal reasons for replacing common-law remedies with compensation statutes in the first place. Early on, it appeared that this goal was being accomplished:

> The enormous sums which were paid to an army of lawyers and witnesses on both sides of controversies between employers and [employees] over personal injury cases, are now being saved. The machinery of the courts is no longer clogged with such controversies... An accidental injury to an [employee] no longer creates a condition of guerilla warfare between the injured [employee] and his employer, with the corollary of sharp practice, perjury and recrimination. Injured [employees], and their dependents . . . are receiving, under compensation laws, assistance when they most need it, instead of waiting for years for the final determination of courts of last resort . . . .
> (H. Bradbury, *Workmen's Compensation Law* 2-3, 3d ed. 1917.)

And you will recall that the original purpose of the schedule (as stated so clearly by Professor Bohlen) was not merely to reduce, but to "prevent" litigation.

The best example of the recent movement to restore the centrality of the wage-loss principle is the 1979 set of amendments to the Florida compensation act. From 1970 to 1978, Florida workers' compensation insurance premiums increased 228%. In 1977 Florida was 6th highest in the nation in premium rates, but 36th in benefit levels (the rate at which benefits are paid). Permanent partial cases — schedule awards — were the biggest problem; 70% of these had attorney involvement. Litigation —Professor Bradbury's "guerilla warfare" — proliferated. During the Florida debates, permanent partial awards to workers who quickly returned to work

at the same wage were sometimes disparagingly referred to as "swimming pool money" —ready cash to build a pool or buy a new car. Fifty-eight percent of the compensation dollar went to 4% of injured workers. Almost nobody — except some lawyers — was satisfied with the Florida system.

The 1979 Florida amendments eliminated permanent partial awards — and the litigation they cause — and returned to a wage-loss system. A limited schedule (similar to the 1912 Pennsylvania schedule) is retained, but the principal compensation benefit is replacement of wage-loss due to injury.

The process of paying these benefits has been simplified. The direct payment system has been retained and extended to wage-loss payments. Payments must begin within 14 days of knowledge of the compensable wage loss (unless the claim is contested), and failure to pay carries penalties.

The amendments make sure that injured workers have sufficient notice and knowledge to help themselves through the system — and provide for sufficient state agency employees to assist them. The reasons for hearings have been reduced or eliminated, and the procedures tightened to further reduce unnecessary litigation. Rehabilitation provisions have been strengthened and incentives provided to get workers back to work.

The result? Premiums in Florida have been reduced approximately 50% since the new law took effect — from 6th highest to 23rd highest in the country. Benefit levels have increased from 36th to 20th highest. And litigation has been reduced to a trickle.

In a sense, the Florida amendments are the first fruits of the "back to basics" movement in workers' compensation, a return to first principles. Other states are now looking at the Florida experience to see if they can benefit from it. Delaware, with HB200, is one of those states.

B. The evolution of the Delaware system.

By 1911, ten states had enacted workers' compensation statutes; of these 9 were of the "pure" wage-loss type. Only one state, New Jersey, had any type of schedule when its statute was first enacted.

The Delaware General Assembly appears to have looked to New Jersey as a role model when enacting Delaware's first workers' compensation statute. "The Delaware Workmen's Compensation Law of 1917" provided three types of benefits: 1) a wage-loss benefit for total disability for work; 2) a wage-loss benefit for partial disability for work (that is, a benefit based on the difference between pre-injury and post-injury wages); and 3) a schedule benefit for total loss of a hand, an arm, a foot, a leg or an eye. (29 *Del. Laws* at pp. 767-769).

Two things about the early Delaware schedule are significant. First, the benefit was payable only for total loss (e.g. removal or amputation) of an eye, a limb or part of a limb. This was in keeping with Professor Bohlen's view that a limited schedule of obvious losses prevents litigation. It is also consistent with the underlying theory of the original schedules: in the early part of this century, when most labor was manual labor, a conclusive presumption of lost wages from loss of a limb was realistic.

The social developments which could rebut that presumption — "hire the handicapped" programs, laws preventing employment discrimination against the handicapped, and the creation of rehabilitation techniques, benefits and programs — had not yet occurred. As Professor Arthur Larson of Duke University has said:

> The presumption that a one-armed, or one legged worker would suffer eventual actual wage loss, then, was no fiction, nor was it a facade behind which to distribute payments for physical impairment.

Second, a schedule award in the 1917 Act was to be the *exclusive* benefit for that injured worker — he could not receive a total or partial wage loss benefit *and* a schedule award. If the injury was severe enough (e.g. loss of both arms). it "...shall constitute total disability for work, to be compensated according to the provisions of [the total disability wage-loss section]."

Over the years, statutory amendments and judicial interpretations took Delaware down the same path trod by the rest of the country. "Loss of use", as opposed to total loss, crept into the schedule in 1921 (no doubt following New Jersey's lead again). In 1951 the law was amended to change the exclusive "either-or" character of schedule awards: they were now to be

(continued on P. 46)

Each issue of DELAWARE LAWYER will bring you reports of more than ordinary interest to our readers, both lawyer and layman, on litigation in our courts: The sensible and unsurprising legal result in the controversy described below is not the reason for its presence in these pages. We publish Clark's discussion of Grynberg v. Burke *in the interest of entertainment. It has high adventure, derring-do, and fiscal romance! If you think business law a dull and musty discipline, prepare to change your mind upon meeting the fearless corporate vigilantes of Old Colorado who figure in this account.*

The Editors.

CASE NOTES

Clark W. Furlow

CORPORATE LAW: The Power to Execute a Section 228 Shareholders' Consent to Corporate Action is Limited to Record Shareholders

Grynberg v. Burke, Del. Ch., C. A. *Nos. 5198 and 6480 (August 13, 1981)*

In *Grynberg v. Burke* Vice Chancellor Brown confronted a battle for corporate control which had culminated in the plaintiffs' armed takeover of the defendant corporation's headquarters. Jack and Celeste Grynberg owned 75 percent of the defendant corporation's stock, but they had placed their shares in a voting trust and surrendered control of the company in order to appease its creditors. The legal issue was the effect to be given their attempt, after the expiration of the voting trust, to oust the directors elected by the voting trustees and to install their own by the simple expedient of signing a shareholders' written consent pursuant to 8 Del. C 228. The validity of the shareholders' consent was clouded because the plaintiffs' stock still appeared on the corporation's books in the names of the voting trustees.

The Vice Chancellor's decision ended a five-year struggle for control of Oceanic Exploration Company, a Delaware corporation. Its founder, Jack Grynberg, and his wife, Celeste, individually and as trustees for their children, owned 5.2 million shares, about 75 percent of the company's stock. The remaining shares were publicly held. Mr. Grynberg was a petroleum engineer who could find oil in places others had overlooked. He was also a man whose business scruples had been drawn in question. In the words of a Colorado bankruptcy judge, his business practices reflected "less than the highest standards of ethical and proper conduct." *In Re Grynberg*, Bankruptcy Court, D. Colo., Case No. 81B00821 (Memorandum Opinion, May 5, 1981).

The stage for corporate struggle was set by financial reverses suffered by the corporation during the mid-seventies. By 1976, despite vast oil holdings, Oceanic's cash flow had slowed to a trickle, and it flirted with bankruptcy. Creditors had lost faith and were unwilling to negotiate extensions on overdue loans.

To save the company, the board of directors sought to wrest Oceanic from Grynberg's control. Their solution was a voting trust. This agreement, signed in February and amended in June of 1976, allowed the Grynberg family continued beneficial ownership of their stock, but placed control of the company for a period of five years in the hands of three directors who were named as the voting trustees. The agreement also gave the company a five-year option to purchase the family's stock. Jack Grynberg was willing to agree to the stock option because he did not believe the virtually bankrupt corporation could afford to pay the option price.

The voting trustees then negotiated extensions of some of the loans and, by selling off assets, reduced the other obligations. In October, 1976, when it seemed they had steered the company through its financial straits, Jack Grynberg and his wife brought suit in Chancery Court to rescind the voting trust and the stock option, arguing that they had been induced by fraud.

Extensive, hard fought litigation ensued. The plaintiffs moved for and obtained the dismissal of Oceanic's out-of-state defense counsel before it had even filed an Answer. *Grynberg v. Burke*, Del. Ch., C. A. No. 5198 (Letter Opinion, December 16, 1976). There followed cross motions for summary judgment on the validity of both the option and voting trust. Both were denied. *Grynberg v. Burke*, Del. Ch., 378

A.2d 139 (1977). The Grynbergs moved a second time to invalidate the voting trust, and this time they prevailed. *Grynberg v. Burke*, Del. Ch., 410 A.2d 169 (1979). Oceanic appealed, and the Supreme Court reversed because a material question of fact precluded summary judgment. *Oceanic Exploration Co. v. Grynberg*, Del. Supr., 438 A.2d 1 (1981).

As the litigation dragged on, it became obvious to Oceanic's officers and directors that their employment would terminate if Jack Grynberg regained control of the company. Worse yet, the passage of time had begun to work against them. The voting trust, their source of power, and the stock option were due to expire on June 1, 1981. Jack Grynberg would resume control of the corporation, unless Oceanic could obtain financing to exercise the option.

The corporation searched for financing without success. Finally, in order to avoid a Grynberg takeover, management decided to sell the option to a company with which they could establish friendly relations. They chose as their white knight Cordillera Company. The deal was attractive to Cordillera because the price of Oceanic stock had risen, and the option price established back in 1976 now looked like a bargain.

Oceanic petitioned the Chancery Court for partial summary judgment on the validity of the assignment to Cordillera. On May 20, 1981, just twelve days before the option was due to expire, the Court upheld the validity of the assignment. *Grynberg v. Burke*, Del. Ch., C. A. No 5198, Memorandum Opinion (May 20, 1981).

The Grynbergs met with their advisors to determine how they would respond when Cordillera attempted to exercise the option. A major factor in their deliberations was the personal bankruptcy action which they had filed. Held liable for approximately six million dollars in an unrelated lawsuit, the Grynbergs had declared bankruptcy and placed their assets, including the Oceanic stock held in their individual capacities, under the jurisdiction of the bankruptcy court. They decided they would attempt to preserve their stockholdings by seeking an order from the bankruptcy court prohibiting transfer. This strategy would not protect the shares held in trust for their children, but the children's shares constituted less than a majority of Oceanic's stock, and it would prevent Cordillera from gaining control of the company.

On Tuesday, May 26, Cordillera gave formal notice of its intent to exercise the option. The option was due to expire on the following Monday. The Grynbergs waited until Friday, May 29, to petition the bankruptcy court for protection. Unable to hear the motion over the weekend, the bankruptcy court issued an order allowing the transaction to be closed, but prohibiting the actual transfer of stock and money.

On Monday, June 1, Cordillera demanded tender of all 5.2 million shares of the Grynberg stock. The Grynbergs refused, pointing to the order of the bankruptcy court, but they offered to tender the shares held in trust for their children. Cordillera declined because its financing was contingent on the purchase of all the Grynberg stock.

Following the aborted closing, Jack and Celeste Grynberg took the position that since the term of the voting trust had clearly expired, the power to vote the stock had reverted to them. They requested the company to transfer the stock from the names of the voting trustees to their names. Oceanic's management, faced with expulsion from office, refused, contending that Cordillera was the equitable owner of the stock.

Jack and Celeste decided to take matters into their own hands. On June 11 they went to their lawyer's office and executed a shareholders' consent to corporate action pursuant to Section 228 of the Delaware General Corporation Law. That section enables the holders of stock having at least the minimum number of votes required to exercise their power over the corporation by simply signing a written consent to the proposed shareholder action. Although the statute requires that notice of the consent be given promptly to the minority shareholders once action is taken, it does

CASE NOTES

not require *prior* notice or the formalities of a shareholders' meeting and a vote.

The shareholders' consent is an extremely flexible and speedy tool. Because it frees a corporation from procedural red tape, it has proven an attractive feature of Delaware's corporation law. It is said to have played a significant role in attracting many major corporations to Delaware. Folk, *The Delaware General Corporation Law*, p. 277 (1972).

The Section 228 consent signed by the Grynbergs contained only three paragraphs on a single sheet of paper. The first fired the board of directors, the second reduced the size of the board to three directors, and the third named three of Grynberg business associates to fill the vacant seats. Immediately thereafter, the three new directors issued an order replacing the corporation's officers.

On paper, Jack and Celeste Grynberg had taken control of Oceanic in less than ten minutes. It remained, however, to assume actual control of the company. The Grynbergs' first step was an action in Chancery to obtain judicial approval of the takeover by shareholder consent. Their second step, taken after a brief skirmish in the Colorado courts, was admirably direct. On Wednesday, June 23, they stationed armed security guards outside the corporation's headquarters and ordered them to keep the place under twenty-four hour surveillance.

The following day the new president of Oceanic handed letters to the company's incumbent officers informing them they had been fired and demanding that they turn over all keys, safe combinations and other information necessary for the new officers to obtain access to the company's premises and property. The new president also sent letters to Oceanic's bank and its securities broker (with whom it had kept its interest-bearing funds) informing them that the previous officers and directors had been ousted. He directed the financial houses to deal exclusively with the new regime. Faced with conflicting factions, both of whom claimed to be in charge of the corporation, the bank and the securities broker refused to release any cash until the matter was resolved by a court. Oceanic could not reach its operating funds.

"The shareholders' consent is an extremely flexible and speedy tool. Because it frees a corporation from procedural red tape, it has proven an attractive feature of Delaware's corporation law. It is said to have played a significant role in attracting many major corporations to Delaware."

That evening Jack Grynberg and the newly appointed president, with a retinue of armed security guards and off duty county sheriffs, attempted to break into Oceanic headquarters. A lone night watchman was able to hold them at bay until the local police arrived. The following morning, the Grynberg troops attempted to prevent some of Oceanic's employees from entering the office. They also turned away an accountant from an independent accounting firm conducting an audit of the company's affairs.

To guard its headquarters over the weekend Oceanic hired a security company. That company employed off duty policemen. Learning this, Jack Grynberg approached the precinct captain and, all sweet reason, persuaded him that his men should not become embroiled in this unseemly squabble. On Sunday afternoon the captain issued an order revoking the off duty officers' permission to guard Oceanic headquarters. By the time Oceanic learned of this, it was too late to hire replacements. The company headquarters were left unguarded, and Grynberg and his associates simply walked in and took charge of the corporation's papers, books, records, and, of course, its checkbooks. They also gained access to the litigation file chronicling the corporation's strategy in opposing the Grynbergs throughout the past five years of lawsuits.

The following morning the corporation brought a motion for an order

restraining the Grynberg from taking further actions to disrupt the corporation's business. The Vice Chancellor, noting that the motion had "placed the court in a position where, for all practical purposes, I may be deciding which fox to place in charge of the henhouse until the farmer gets back from town," refused to grant temporary relief, but scheduled a hearing to be held in two weeks' time to resolve once and for all the question of who should control the corporation. *Grynberg v. Burke*, Del. Ch. C. A. Nos. 5198 and 6480 (July 14, 1981).

The decision subject of this note followed that hearing. The Court held that the Grynbergs' attempt under the purported authority of Section 228 of the Delaware General Corporation Law to oust the existing board of directors was illegal. The Vice Chancellor began by observing that a Section 228 shareholders' consent must be "signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted." 8 *Del. C*§ 228(a). The signatories must be shareholders entitled to vote.

Whether a shareholder is entitled to vote is determined by the corporation's stock ledger. Section 219(c) of the corporation law provides that the stock ledger "shall be the only evidence as to who are shareholders entitled . . . to vote." This led the Vice Chancellor to conclude:

> Since Section 228 is obviously designed to facilitate shareholder action where the outcome is a foregone conclusion, and since it authorizes immediate shareholder action without prior notice to minority shareholders, it seems only a matter of common sense that it should be strictly construed so as to limit its power to record owners as opposed to non-record owners claiming various beneficial interests and voting rights. Memorandum Opinion, p. 14-15.

The proof of the proposition was illustrated by the struggle for control of Oceanic. Because the consent action was taken without prior notice, Oceanic was left with two competing boards of directors, both claiming office. Corporate affairs were left in complete disarray. Banks and customers did not know with whom to deal.

The decision hints that a device enabling majority stockholders to take action without prior notice to minority may be limited to noncontroversial actions in which the outcome is a foregone conclusion. In any event, it is now clear that a shareholders' consent cannot be used by non-record shareholders to facilitate a corporate takeover.

The proper procedure would have been to call for a shareholders' meeting at which challenge could have been made and a ruling given before confusion made its masterpiece.

The Vice Chancellor's decision went on to hold that Cordillera was entitled to specific performance of the option to purchase the Grynbergs' stock. Thus, Jack Grynberg's five-year fight to regain control of Oceanic was, in the final round, lost. Pursuant to Court order, Cordillera purchased the Grynbergs' 5.2 million shares of Oceanic stock for 22 million dollars. Under Cordillera control, incumbent management remained in charge of Oceanic Exploration Company.□

Clark Furlow joins the Board of Editors in inviting suggestions about cases of unusual interest for future discussion in the "Case Notes" department.

IN OUR NEXT ISSUE:

An article on the relationship between the legal profession and the General Assembly, a discussion of legal advertising, a biographical study of an engaging old sinner who was the first lawyer in Delaware, book reviews, and lots of indignant letters to the editors!

We also promise *not* to publish an unsolicited manuscript entitled "Livery of Seisin in Feudal Claymont."

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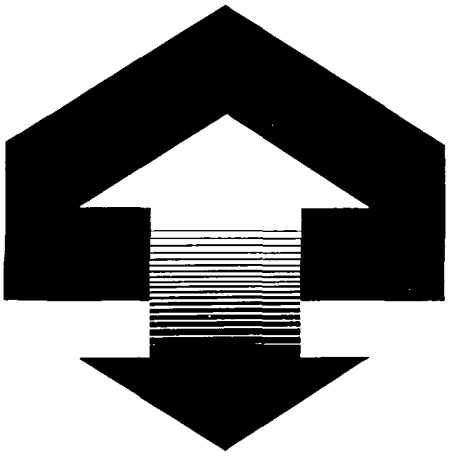

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Bruce M. Stargatt
President,
Delaware State Bar Association

RE: MOSTLY PUNCTUATION MARKS.

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

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

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

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

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

"Controversy is the fire which warms the lawyer's heart and fuels his hearth. Fearlessness in addressing important issues must be the hallmark of DELAWARE LAWYER."

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

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

(2) *Judges.* The semicolon may be used by a court whenever and wherever not prohibited by its rules under the doctrine — recognized by prudent lawyers — of judicial immunity from the strictures of style.

Further, please do not understand from what has been said about the semicolon that I am an antipunctuationist. To the contrary, I am a confirmed capitalist who delights in doodling "E. E. Cummings" during depositions. And I would have found *Ulysses* less a classroom drudgery if Bloom's thoughts came in periodic drops rather than unbroken streams.

I spend hours in Court musing on where we would be without the question mark. It is the rule in our law firm that no brief may be filed without underscoring our adversaries' *warped reasoning*. Quotation marks are unattractive but necessary. Parentheses are unnecessary, but their curves are pleasing to the eye. (I use them a lot.) I like apostrophes. Apart from conveying the idea of possession (which lawyers relish), they help shorten words. And asterisks are decorative and distinctive. The little spikes make them look like tiny thorn balls, or land mines, occasionally appropriate to the footnotes they signal.

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

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

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

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

WORKERS' COMPENSATION
J. Schmittinger

(continued from P. 21)

House Bill 200 on permanent partial disability benefits and unanimously concluded that this 100% disability threshold is medically unrealistic since if a member is still attached to the body, a physician will probably not be able to assign a 100% loss of use to it. Instead, a 90% to 95% loss of use to the member would be assigned on the reasoning that an arm could still be used as a paper weight so long as it is attached to the body. Because of these unrealistic threshold requirements, any permanent partial disability less than 100% would simply not be compensated under this bill.[4]

Obviously under these circumstances for the great majority of injured workers who have permanent partial disabilities, the total amount of worker's compensation benefits that they would receive, regardless of how their benefits are labeled, would be greatly reduced.

Although the proponents of House Bill 200 have stated that the scheduled benefit section of that bill is modeled after Arthur Larson's wage loss theory, it is interesting to note that the scheduled benefit section of Professor Larson's Model Act recognizes partial losses of use. In fact, Larson's Model Act provides in section 16(c):

> "(23) Partial loss or partial loss of use: Scheduled income benefits for permanent partial loss of use of a member shall be for a period proportionate to the period benefits are payable for total loss or total loss of use of the member as such partial loss bears to total loss." Larson's Workmen's Compensation Law; Model Act, Part III § 16.

More important, in its present form House Bill 200 provides *no* awards for permanent impairment to the back or neck, etc. Indeed, 19 *Del. C.* §2326(g) (non-scheduled permanent injuries) has no counterpart in House Bill 200. These losses, particularly injuries to the back, are by far the most common types of disabilities seen in work-related accidents, and the most debilitating. According to Board statistics, over 6,000 back injuries occurred between 1971 and 1979.

Although the substantive benefits aspects of House Bill 200 would rob the injured worker of much needed benefits, the bill also contains procedural provisions that are unconscionable in any enlightened and equitable workmen's compensation system. The synopsis of House Bill 200 provides that one of its purposes is to "provide for prompt, sure, and adequate administration of the Worker's Compensation Law." Actually, the procedural elements of House Bill 200 are an insidious attempt to separate the injured worker from his benefits by creating a complicated bureaucracy which will delay and frustrate him in his attempt to secure his benefits. As an additional procedural burden of this bill, the injured worker would have to deal with this complicated bureaucracy in all probability without the aid of an attorney.

Under the present Worker's Compensation Code, a worker has to deal with only three levels of government,

(continued on P. 43)

Cover Biographies

Our first cover portrays twelve former Delaware lawyers and judges as a reminder of past professional excellence and as a stimulus to sustaining that tradition. We believe this approach will help set the tone for our enterprise.

While we do not want our readers to get the impression that DELAWARE LAWYER is a kind of reverential paperback reprint of the Egyptian Book of the Dead, we do believe that these gentlemen, no longer among us, can provoke lively and endearing recollection.

George Read

(1732-1798)

Headline: "THE GENERAL ASSEMBLY OF DELAWARE IS ACCUSED OF NOT PAYING STATE JUDGES SALARIES ADEQUATE TO THE DUTIES AND TIME REQUIRED OF THEM IN PERFORMING THEIR JUDICIAL FUNCTIONS."

A recent headline? Not at all. Back in 1793, the second Chief Justice of a Delaware under its own government and the *first* under the Constitution of 1792, George Read of New Castle, accepted the appointment from the then governor, Joshua Clayton, with foreboding: *SALARY.*

Considering that he was then one of the most important men in Delaware, a member of the Congress before, during, and after the American Revolution, Read figured the $1,000 a year salary for Chief Justice was not adequate. So, in accepting appointment, Read wrote to Governor Clayton in August of 1793:

> "The annual compensation which the Legislature of the state made at their last session, I consider as inadequate to the service to be performed by a first judge. Therefore, as well as in duty to myself and any who may succeed therein, I make the declaration now, that I may not be thought concluded from asking for an increase of allowance futurely. Certainly if a person possessing professional knowledge, acquired by much application of time and considerable expense, doth employ that solely to the use of the public, the public should at least allow him his usual annual expenditures which the $1,000 will not be equal to. My annual average expenses of the 30 past years of my life hath exceeded that sum."

There is no record available that the General Assembly ever did increase the annual salary of the Chief Justice in those years, except that in 1796, he did petition the General Assembly for a raise. Apparently, the General Assembly did not honor Read's request, on the ground or excuse that in the 1790's "the value of the judicial system under the 1792 Constitution of the state had not been tested by experience."

Read once more asked the General Assembly for a salary increase in 1797, but again no beneficial result.

William Thompson Read, grandson of the Chief Justice, wrote in 1870:

> "The legislature of Delaware in 1793 erred in determining the salaries of judges by making them too small, as legislatures in our sister states have also erred. This mistake on the part of the legislators may be ascribed to several reasons, including the despicable demagoguery of men who sought popularity by paring down the expenses of government to the lowest amounts."

Nonetheless, Read, already in his 60's, fulfilled his role as Chief Justice with considerable patriotism to the state and with devotion to his profession, despite the hardships imposed upon judges who had to endure long, tedious travel up and down the state.

Many years later, U. S. District Judge Willard Hall of Wilmington, who knew Read, wrote to Read's grandson:

> "When I settled in Delaware in 1803, commencing my professional life, the name most fre-

quently mentioned in my hearing as of the highest authority in law, was that of your grandfather. In the estimation of the Delaware Bar, his decision established the law."

Of further historical interest is George Read's influence in establishing Delaware's Court of Chancery and his acceptance of appointment as Chief Justice. He replaced the aging William Killen who had been serving as the first Chief Justice under Delaware's Constitution of 1776.

At first, Governor Clayton offered Read, then a U.S. senator from Delaware, his choice: Chancellor or Chief Justice to replace Killen.

Read said he would accept the Chief Justiceship only if Killen was named Chancellor. Apparently Read did not want to appear as having shoved the elderly Killen out into the cold.

The late Dudley C. Lunt, author of *"Tales of the Delaware Bench and Bar"* wrote:

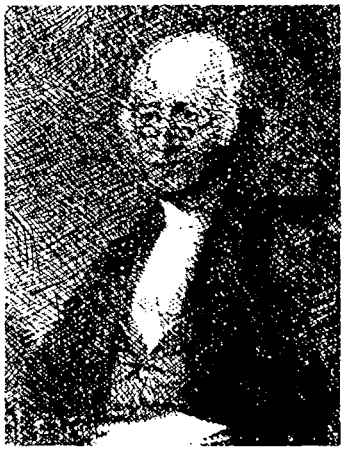
> "It is my suspicion that the creation of the office of Chancellor was quite simply another instance of the ancient and honorable political practice, commonly referred to, out of the sides of men's mouths, as 'taking care of old Bill.'"

Read has always been tagged as the Delawarean who refused to vote for the Declaration of Independence, hinting that he was, perhaps, not in favor of independence. The truth is he was *very much* in favor of independence. Had the British won the Revolutionary War, he would have been one of those hanged as traitors. He had not only served in the Revolutionary Congress but had also served as an American soldier.

But like his contemporary, John Dickinson, Read was a conservative who did not think July, 1776, was the time for a Declaration of Independence. And though he voted against its adoption, he later *did* sign the historic document. He also helped to write the U. S. Constitution and pushed for its early ratification by Delaware.

1982 is the 250th anniversary of George Read's birth. It might command some recognition by the Delaware Bar. His death came in 1798 and he was buried in the cemetery of Immanuel Episcopal Church, New Castle.

Nicholas Ridgely



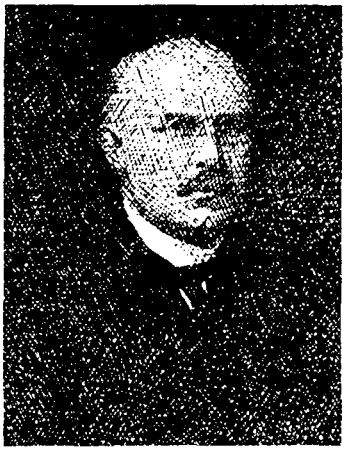
(1762-1830)

Nicholas Ridgely, who served as Chancellor longer than any man in Delaware history, was born in Dover in 1762. He was admitted to the Delaware bar at New Castle in 1787. Before he was 25 he was a delegate from Kent County to the State Convention that ratified the Federal Constitution. In October, 1788, he was elected to the legislative council for Kent County, and participated in the election of the first United States Senators from Delaware and of the electors who voted for George Washington as President. A leading member of the State's Constitutional Convention of 1792, he drafted the principal legislation required by changes brought about by the American Revolution and the then recently adopted Constitution. In 1801, Ridgely was appointed Chancellor. The entire course of equity procedure and practice was yet to be established under the new Court of Chancery. To this task he devoted himself in his methodical way with untiring vigor and industry until his death in 1830.

The Delaware Register (1838) described Chancellor Ridgely: he was about the common size; his voice was strong, sonorous and clear; he adhered strictly to the manners and customs and fashions of his youth. In speaking, he used the old mode of pronunciation, without regard to Walker's Dictionary, and in writing he used capital letters in the manner of Addison and Pope. The cut of his coat was the same for fifty years, and he always wore short breeches with kneebuckles and long fair-top boots.

Chancellor Ridgely belonged to a family which for generations has furnished Delaware with judges and lawyers of marked ability. DELAWARE LAWYER is happy to share with its readers this account, especially the Delaware Register's charming whiff of antiquity, reminding us that, while our nation is young in spirit, our traditions are old and excellent.

Victor Baynard Woolley



(1867-1945)

Victor Baynard Woolley was one of Delaware's most distinguished jurists.

Judge Woolley attended Wilmington schools and Delaware College. He studied law under Chief Justice Charles B. Lore and attended Harvard Law School. He was admitted to the Delaware Bar in 1890.

Judge Woolley's career included 24 years as a judge of the United States Third Circuit Court of Appeals to which he was appointed in 1914, five years as a member of the Superior Court and Supreme Court of Delaware to which he was appointed in 1909, and five years as Prothonotary for New Castle County from 1895 to 1900.

It has been written that "the integrity of the man, his innate fairness, his indefatigable industry, the soundness and clarity of his [opinions], all foreshadowed his appointment to the Supreme Court of his State". He was frequently honored by his fellow Delawareans for his judicial service; and he won national recognition as a judge, especially in patent cases.

Judge Woolley is remembered with admiration, too, for his career as a

teacher of the law. Commencing in 1901, he was lecturer on Delaware Practice at the University of Pennsylvania for 27 years. In 1906, out of his experience as Prothonotary and teacher, there emerged his now rare two-volume work "Woolley on Delaware Practice," which still remains the sole authority on those procedural aspects of the law which have withstood modernization. At a Delaware Bar Association ceremony honoring Judge Woolley, the Honorable Hugh M. Morris said:

> "By those volumes the author demonstrated that he possessed both an extensive knowledge of the law and of the means or steps by which it is put into effect. He demonstrated as well that he possessed the art of arrangement and of luminous, unmistakable statement of subject matter in clear, concise form. In those volumes no pedantic or lazy line is to be found."

Prior to the publication of "Woolley on Delaware Practice", there was no written treatise on the practice of the courts of Delaware. In his preface, Judge Woolley stated that he was prompted to write the work by the fact that younger members of the Delaware Bar were "dependent upon the knowledge and courtesy of older members of the bar for information and instruction in that part of the practice of the law courts of the State of Delaware". He stated that his object was not to write a treatise upon the subject of pleading and practice, "but rather to present it in some degree of order" so that "the student and young practitioner, for whose benefit this book is chiefly designed, may know where to find the answers to some of the questions that, in their efforts to master the subject, continually arise."

The spirit and caliber of Woolley, the man, the lawyer, and the judge, clearly emerge from the concluding words of the preface to his now famous work:

> "If students and young practitioners find in it the groundwork upon which to build a knowledge of the subjects treated, and if the older members of the profession find it useful as a reference and guide, the author will be compensated for his labor."

He lived to realize the full measure of that compensation.

Robert H. Richards, Sr.

(1873-1951)

Robert H. Richards, Sr., pre-eminent Delaware lawyer, and son, father, grandfather and great grandfather of Delaware lawyers. His long and useful life was marked by exceptional professional accomplishment

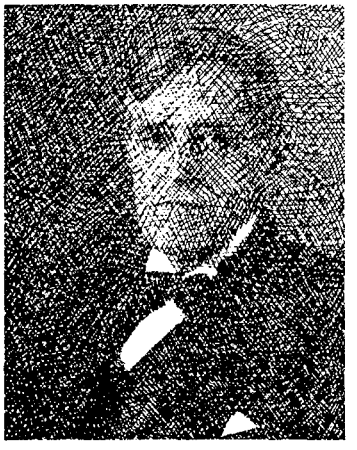
and public service. After reading law in his father's Georgetown office, Mr. Richards was admitted to the Bar in 1897, and a year later moved his practice to Wilmington. In 1905 he was elected Attorney General of Delaware. He represented Delaware in the original suit in the United States Supreme Court brought by the State of New Jersey to determine the common boundary between that state and Delaware. He represented Delaware on a commission that negotiated the boundary compact with our sister state.

Mr. Richards' private practice, especially in corporate matters, became legendary, and in 1929 that practice evolved into the Wilmington firm of Richards, Layton & Finger.

Robert Richards was a forceful advocate of reforms for Delaware's judicial system. He was instrumental in the establishment of our Supreme Court. He served as president of the Delaware State Bar Association from 1928 to 1930. In addition to his professional achievements, his wide-ranging interests made him a lifelong student of Delaware history. He served as a vice president of the Historical Society of Delaware, as a member of the American Historical Association, and as a governor of the Society of Colonial Wars in the State of Delaware. He was also a trustee of the University of Delaware and a member of the board of trustees of Dickinson College.

In addition to these varied activities, Robert Richards was deeply involved in the political process. A Republican, he served in the 1920's on the executive committee of the Sentinels of the Republic, a national organization prophetically ahead of its time in combatting centralization and bureaucracy in the federal government.

Josiah Oliver Wolcott



(1877-1938)

Josiah Oliver Wolcott, born in Dover in 1877, spent the greater part of his professional career in public service. Admitted to the bar in 1904, he was a deputy attorney general from 1908 until 1913 when he became Attorney General. He filled that office until January, 1917 when he took office as United States Senator. As Senator, he staunchly supported the League of Nations and voted against the proposed woman's suffrage amendment to the Constitution. In June, 1921, he was appointed Chancellor by Governor William D. Denny. The office of Chancellor, then the highest judicial office in the State of Delaware, was one which he had always aspired to. His father had been Chancellor before him from 1892 to 1895 and his son, Daniel F. Wolcott, became Chancellor in 1949. Josiah Wolcott held that office until November 11, 1938, when he died at the age of sixty-one.

Beyond his contribution as a jurist and in the public service, however, he loved the people part of life. He was reputed to be a superior storyteller, recounting tales and anecdotes with humor and detail, often with proper dialect and accent.

Chancellor Wolcott's legacy to the body of Delaware law and specifically its general corporation law is well set forth in 11 volumes of Delaware Chancery Reports and 88 volumes of the Atlantic Reporter. Those reports will show that the contribution he made to the general corporation law in Delaware and to general equity jurisprudence was substantial. His contribution as Chancellor was such that Governor C. Douglas Buck said in 1931 that he was largely responsible for the general success of the corporate laws of Delaware at that time.

Hugh Martin Morris

(1878-1966)

Hugh Martin Morris was born in 1878 in Greenwood, Sussex County, a seventh-generation Delawarean. He graduated in 1898 from Delaware College (now the University of Delaware). He read law under the Hon. Willard Saulsbury, the son of a former U.S. Senator and Chancellor, and subsequently himself a U.S. Senator. Morris was admitted to the Delaware Bar in 1903, when he established his own practice in Wilmington. In 1909, he rejoined Saulsbury in the firm of Saulsbury, Ponder and Morris, which became Saulsbury, Morris and Rodney in 1914, when Richard S. Rodney, later a distinguished Superior Court and U.S. District Court Judge, joined the firm. An active participant in politics, Morris was an early supporter of President Woodrow Wilson, who appointed him U.S. District Judge for Delaware in 1919, where he served with distinction until his resignation in 1930. His years on the bench coincided with the growth of Delaware corporation law. Judge Morris decided many then novel corporate issues, while also dealing extensively in the more traditional federal areas of patents and admiralty.

Re-establishing himself in 1930 as a single practitioner, he began a long and illustrious career as a trial lawyer, representing prominent clients in important patent, trademark, and corporate cases, particularly in the receiverships and reorganizations of the Great Depression. He attracted to his thriving practice some of the finest young legal talent available. His firm, now Morris, Nichols, Arsht & Tunnell, stands today as his legacy to the Delaware Bar.

Judge Morris's service for many years as President of the Board of Trustees of his alma mater, the University of Delaware, included the post-World War II era when the school developed from a small, local college into a large, nationally recognized university. Its library is named in his memory.

Judge Morris remained active as a lawyer and civic leader well into his eighties. He died in 1966.

James Miller Tunnell

(1879-1957)

James Tunnell, like Robert Richards, Sr., and Hugh Morris, was born and bred in Sussex County during the late 19th century. (Was ever a small rural place so fertile of ability?) He, too engaged in a varied and useful public service and was progenitor of a distinguished Delaware firm of lawyers, now known as Tunnell & Raysor. Like his Republican counterpart, Robert Richards, James Tunnell, a Democrat, engaged actively in politics. He eventually served as one of our United States Senators (1941-1947). He cultivated interests far broader than the law. He was an active banker, a Sussex county landowner of several thousand acres of farm and timberland, and an extremely active supporter of the Presbyterian church. He had a special concern for the quality of education in Delaware.

James Tunnell's path to the law *began* in education. As a young man he taught public school and swiftly advanced to the principalship of the Frankford and Ocean View Schools. His decision to turn to the law (he was admitted to the Bar in 1907) did not deflect his attention from the importance of quality in learning. For thirteen years (1919-1932) he was president of the Board of Education of the Georgetown Special School District.

James Tunnell found time for long service to his state by participation in the political process. Beginning in 1910 as chairman of the Democratic County Committee of Sussex County, he advanced to the position of chairman of the Democratic State Committee. He held this position during the 1928 and 1930 campaigns, and served as a member of the Democratic National Committee from 1931 to 1941. An unsuccessful nominee for election to the United States Senate in 1924, he ran for office again in 1940, prevailed, and ended a distinguished political career as United States Senator.

James Tunnell acquired great prominence as a public speaker both in Delaware and in the United States Senate. In 1944, his then fellow Senator, Harry Truman of Missouri, requested Tunnell to write his acceptance speech when Truman was nominated for election as Vice President of the United States, and Tunnell, of course, honored that request.

James Tunnell died at the age of 78, on November 14, 1957.

"If there is a common thread in these brief lives it is the high level of general culture, wide interests and sympathies transcending mere professional craft, that distinguish this group of gifted men."

William Prickett, Sr.

(1894-1964)

William Prickett, a Rhodes Scholar, received his legal education at Oxford University. World War I deferred his entrance into practice. Before the United States entered the conflict he served with the American Field Service in Serbia and France. Thereafter he served as an officer in the Field Artillery and later in the First Aero Squadron, during which service he was badly hurt in a plane crash.

Mr. Prickett began the practice of law in Wilmington in 1919, and swiftly acquired a national reputation for excellence in trial law. His distinction at the bar led to his chairmanship of the Delaware Section of the American Bar Association's Committee on the Administration of Justice, and to his election in 1944 as president of the Delaware State Bar Association.

If there is a common thread in these brief lives it is the high level of general culture, wide interests and sympathies transcending mere professional craft, that distinguish this group of gifted men. In William Prickett's case, this has been well stated by another, the strength of whose admiration is matched by the felicity of his expression. Shortly after William Prickett's death our present Chief Justice observed:

> "William Prickett was the true advocate. He possessed the essential quality of the true advocate — love of the spoken and written word.
>
> As a true advocate, he had an abiding interest in and knowledge of words, their meaning, their color, their use by the great masters, their associations.
>
> As a true advocate, William Prickett had the virtue of brevity. He not only possessed the quality of selecting the right words for the occasion but he also possessed the quality of putting them in the right order, briefly, logically and beautifully. As a true advocate, William Prickett was a man of letters as well as a man of law. He knew and demonstrated that a 'lawyer without history or without literature is a mere mechanic; but with these he may become a great architect'."

John Biggs, Jr.

(1895-1979)

The late Judge Biggs served with distinction for forty-two years on the United States Court of Appeals for the Third Circuit. He was celebrated for the high quality of his legal writing and the soundness of his judgments. His service on the Judicial Conference of the United States for a period of twenty-six years is perhaps a record tenure. His varied contributions to that reforming body prompted former Chief Justice Earl Warren to describe Biggs as a "one-man ministry of justice."

Judge Biggs' broad interests in general culture contributed to a life's work that was varied, elegant and wise. His useful role in F. Scott Fitzgerald's literary achievement (including that writer's very lively posthumous career) is well known. His membership in the American Philosophical Society is less frequently noted. Its members, including many Nobel prize winners, enjoy an awesome reputation for erudition and accomplishment (Thomas Jefferson is a former president of that society). The breadth of his interests and sympathies carried his pen beyond judicial writing to the composition of two novels and that searching study, "The Guilty Mind," for which he won the Isaac Ray Award of the American Psychiatric Association.

While Judge Biggs was very much a national figure, he was also very much a Delawarean, the son of a Delaware lawyer, the grandson of a Delaware governor, and a lifelong resident of our state.

Charles L. Terry, Jr.

(1900-1970)

Former Governor Terry pursued what is likely to remain the most versatile career of public service by a lawyer in the State of Delaware. In 1937 he became Secretary of State, a post he held for nearly two years before accepting appointment to our former Supreme Court. His tenure on that forum (later constitutionally transformed into the present Superior Court) lasted nearly twenty-four years. In 1957 he because President Judge of that court. In the summer of 1962 this genial and able judge bade farewell to the give and take of the trial court which he so enjoyed and accepted appointment as an associate justice of our highest court. A year later he became Chief Justice. In August 1964 he bowed to a draft by his party to seek election as governor of Delaware. His successful campaign followed what was probably the last true draft one is likely to see in Delaware politics.

During a quarter century of judicial service Charles Terry was instrumental in obtaining many judicial reforms,

including the creation of our present separate Supreme Court, the establishment of full-time Courts of Common Pleas in Kent and Sussex Counties, and substantial enlargement and improvement of the buildings in which our courts conduct their business.

His judicial experience served him well as Governor. Shortly after his election he secured needed reforms to the magistrate system. Originally, magistrates held court in houses or privately maintained offices. Their sole income was from costs assessed against those found guilty in criminal cases or found liable in civil suits, an arrangement not conducive to the impartial administration of justice. Today's system of salaried, full-time magistrates, adequately supervised, is the result of Charles Terry's efforts.

In 1969, after 32 years of uninterrupted public service, Charles Terry retired from public life and resumed the practice of law in Dover. This gracious and affable gentleman is remembered as one of the best-liked public figures of our profession, and deservedly so. Charles Terry is buried in Dover, not far from the grave of another distinguished son of Kent County, Caesar Rodney.

Paul Leahy

(1904-1966)

When DELAWARE LAWYER asked our brother at the Bar, Irving Morris, for some words on Judge Paul Leahy, for whom he had clerked in the early 1950s, Irv responded with typical generosity and professional thoroughness. His written tribute is worthy of the brilliant and charming man it memorializes. As a full dress article it would do honor to these pages. Limitations of space confine us to less than we should like to say. Irv's account and an illuminating speech to his former law clerks delivered by Judge Leahy in 1962 are on file with our records. We shall be happy to make both available to interested readers. The following is drawn from those sources.

Paul Leahy, during his 24 year tenure as a judge of our local United States District Court, delivered opinions of an excellence in style, substance, and professional craftsmanship that made his work a standard in his lifetime. He came to the Court in 1942 (on Groundhog Day, as he later pointed out with puckish amusement) and thereupon became our then sole district judge and the youngest federal district judge in the nation. While his decisions in many areas, then novel and important, are substantive landmarks, their more enduring merit is that they are also incorruptible monuments to eloquence, style, and humane good sense. Lawyers who consult Leahy's written work will do so with profit, but without the rich experience of knowing the man.

Perhaps the soundness of his judgment, inextricably bound in with his wit, derived from his recognition of the irrational and the fortuitous in shaping the events that lead to cold resolution in a court of law. "He was born with the gift of laughter and a sense that the world was mad" was perhaps his favorite quotation. With his assembled clerks on the occasion of his twentieth anniversary on the bench, he shared an insight: he had learned that a court "must, at times, make its judgments on instinct and an experience gained from other circumstances in life; for it is the facts of reality in our living world, rather than worn precedents, which created our faith and made us less fearful of all orthodoxies."

His liberality of spirit did not, however, lead him to suffer laxity in the performance of a *craft*, which at its best becomes an *art*. Aware that his talents were of the first order, Judge Leahy was capable of the true modesty that excludes the false. He knew that he was "good" and his work as a lawyer and a judge prove it. His excellence was contagious: the strict standards he imposed on himself he tacitly imposed on others by the example of his bearing. He earned our great respect because those of us who appeared before him wished to do well in his presence. That goad to excellence resulted frequently in what is our ultimate aesthetic and professional reward: the well tried case.

Richard F. Corroon

(1913-1978)

Richard F. Corroon was for several years before his death in 1978 the senior partner of the firm of Potter Anderson & Corroon. That firm has been engaged in the practice of law under that name and predecessor names for 150 years. Mr. Corroon was one of our pre-eminent practitioners engaged in litigation involving the Delaware General Corporation Law.

Mr. Corroon, born in Brooklyn, New York, in 1913, graduated from Yale in 1935. He received his law degree from Harvard Law School in 1938. Before his admission to the Delaware Bar he practiced in New York City with the firm of Miller Owen Otis & Bailey, predecessor of Willkie Farr & Gallagher.

In 1946, following naval service in World War II, Corroon became a Delawarean, and joined the Wilmington firm now known as Potter Anderson & Corroon. He became a partner in 1949.

In the course of a distinguished legal career advising Delaware corporations, Mr. Corroon represented litigants in all aspects of corporate law involving important industrial and financial institutions throughout the United States and abroad. The cases in which he appeared have added a substantial body of decisional law to what is now the premier American statute on corporate matters.

Despite an intensely busy career arising from the a great demand for his outstanding skills, Corroon found time to serve as a director of both public and private corporations. He

also served on the Wilmington Board of Education, and a wide variety of charitable organizations. His professional excellence was acknowledged by his election as President of the Delaware State Bar Assocation, his election as a fellow of the American Trial Lawyers Association, and his chairmanship for many years of the Corporation Law Committee of the Delaware State Bar Association. His influence on the present structure of that statute was profound, and, as that statute exercises pervasive national influence, his work is a part of that very large shadow cast by a small state.

The almost obituary flavor of these recitals should give precedence to a warmer appreciation of the man and what he meant to his brethren at the bar. His elegance of intellect and bearing, his unfailing courtesy to those with whom he engaged in honorable dispute, and the beauty of the English he wrote and spoke occasion pride in our profession and furnish a model of conduct for gentlemen adversaries. □

The biographies of the twelve lawyers and judges whose likenesses appear on the cover of DELAWARE LAWYER were prepared by the Board of Editors working in conjunction with local writers. Bill Frank of the News-Journal Company furnished the article on Chief Justice Read, Chief Justice Herrmann, the biography of Victor Woolley, and Dan Wolcott the study of his grandfather, Chancellor Wolcott. We are indebted to Dave Drexler for his brief life of Judge Morris, to Irving Morris for his words on Paul Leahy, and to Drew Moore for his appreciation of Governor Terry. The interesting account of Chancellor Ridgely is largely the work of his descendent, Henry Ridgely of Dover. The editors, working in conjunction with Jane Roth, Robert Tunnell, John Biggs III, Bill Prickett, Hugh Corroon and others, assume principal responsibility for the balance of these biographies.

"The law is the last result of human wisdom acting upon human experience for the benefit of the public."
— Samuel Johnson

WORKERS' COMPENSATION

J. Schmittinger

(continued from P. 33)

the Industrial Accident Board, the Superior Court, and the Supreme Court. House Bill 200 adds two more levels to the worker's compensation system, Coordinators (§2240) and Hearing Officers (§2241). Thus, the injured worker may be subjected to five levels of bureaucracy and countless court appearances. Failing a voluntary settlement, the first appearance required of the claimant is before a coordinator. The coordinator's purpose is to make recommendations to the parties regarding how the case should be settled. If either party disagrees, a hearing would then be held before the next bureaucrat in the system, a hearing officer. (This follows a pretrial conference). Section 2241 sets out the qualifications of the hearing officer as follows:

(1) Experience as a hearing officer of its equivalent for one year; or

(2) Three years of experience in the analysis or evaluation of industrial accident claims; or

(3) Admission to the practice of law for one year.

Obviously, as the position of hearing officer pays approximately $20,000.00 per year, most hearing officers will come from the insurance industry.

When there is a disagreement between the parties, the hearing officer holds a hearing similar to those now held before the Industrial Accident Board where evidence is taken on the record. The hearing officer receives evidence about the cause of the injury, duration of disability, etc. It should be mentioned that under the procedural structure of House Bill 200, the burden of proof will be at all times on the claimant to prove that he is not capable of even light duty work (§2221)[5]. Assuming both sides present expert medical evidence and assuming it is in equipose, the hearing officer has authority under §2242 to adjourn the hearing to get an independent medical opinion from still a third physician. Thus, the hearing will be adjourned until the hearing officer is able to arrange an independent medical examination and testimony of the independent examiner. This process might take up to four months. Such a continuance will result in additional delay and will require two more appearances by the Claimant — once for the independent medical examination and again at the resumed hearing following the examination. Even worse, the independent medical examiner's opinion is accorded weight not currently accorded any other testimony in our system of jurisprudence. Under §2228 of this Act such an examiner's testimony is "final and binding" unless excepted to. §2228(b)(5). Even when excepted to, the doctor's opinion still is presumed correct unless rebutted by substantial evidence at the hearing. §2228(b)(7)

At any rate, when the hearing officer is finally able to schedule all three physicians as well as to reschedule all of the other witnesses in the case, the resumed hearing will be held. Following that hearing an opinion will be rendered. That opinion is appealable to the Board which would review it *on the record* just as the Superior Court now reviews decisions from the Board. §2260(b)(1)

"The effect of House Bill 200 would be to reallocate funds currently paid to an injured worker to the insurance carrier."

It is also interesting to note that House Bill 200 provides for a motion practice to dismiss, with prejudice, claims that are technically defective (§2242). Section 2242 also delineates the wide range of powers and duties of the hearing officer. Under this section hearing officers are empowered to:

(1) Issue subpoenaes for witnesses;

(2) Administer oaths to witnesses;

(3) Exclude plainly irrelevant, insubstantial, cumulative or privileged evidence;

(4) Limit unduly repetitive proof, rebuttal and cross-examination;

(5) Cause interrogatories and requests for production to issue and depositions to be taken;

(6) Hold prehearing conferences for for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes and to regulate and expedite the course of the hearing; and

(7) Appoint an impartial health care provider to examine the injuries of the claimant; and

(8) Certify questions of contempt or perjury to the Superior Court, which shall "punish such person in the same manner and to the same extent as for contempt or perjury committed before the Court."

These provisions are important because they indicate that a discovery practice will develop and the claimant will probably not be represented by an attorney, since the avowed purpose of coordinators is to abrogate the need for attorneys. Inevitably, meritorious cases will be dismissed with prejudice because claimants failed to respond to discovery in a proper or timely fashion.

In addition, because of the new and unique attorney's fee provisions of House Bill 200 the hearing officer is required to hold a separate hearing devoted to the issue of attorneys' fees only, and after considering all the usual factors under the Lawyer's Code of Professional Conduct, he is limited in the award to the *least* of (1) 30% of the benefits secured, (2) a fee based on the time spent by the attorney as disclosed in his affidavit, (3) 20 times the Statewide Average Weekly Wage, even though the fee is contingent upon the outcome of the case. Under the present statute, the Board may award the claimant an attorney's fee of 30% of the amount recovered or $2,250.00, whichever is less. Clearly, under the new fee structure of House Bill 200, there will be very few attorneys willing to handle claimants' cases. This becomes obvious when one considers that the attorney will only be paid if the case is won, and even then is paid either an hourly rate or a percentage, whichever is less but in no event more than 20 times the statewide average weekly wage. Thus, on the whole, claimants will be unrepresented.

Similarly, the same attorney's fee provision sets $2,000.00 as the maximum an attorney can receive for appellate work. Attorneys practicing in this area will not be in a position economically to take appeals to the Superior Court or Supreme Court or to the Industrial Accident Board for that matter on the record and write briefs, all for $2,000.00. Unrepresented claimants handling appeals *pro se* will undoubtedly overtax the already overburdened court system.

Following all the required appearances up to the hearing officer level, a

decision is rendered, which is subject to review *on the record* before the Industrial Accident Board (which will function more or less as the Superior Court does under the present system), the Superior Court, and lastly the Supreme Court. It should be noted that not even the most important corporate law cases heard in our Courts are accorded *three* separate appeals on the record. It should also be noted that the new bill, in creating this new five level beauracracy, does not abolish the old judicial machinery of trial before the Board with appeal to the Superior and Supreme Courts. Instead the bill continues the two systems in parallel. In that regard, the State Department of Labor has estimated that it will cost an additional $484,000.00 annually for the new system.

The medical and rehabilitation sections of House Bill 200 also deserve mention. Section 2227(d)(3) of House Bill 200 limits rehabilitation services to 52 weeks although that period may be extended by the hearing officer. Similarly, the powers of the hearing officer over the claimant's medical treatment are very broad. Although subparagraph §2227(a) provides that "the employee shall be entitled, without limitation as to time or dollar amount, to all reasonable and necessary medical and hospital services, medicines and supplies which are required by the nature of his injury and which will relieve pain and promote and hasten his restoration to health and employment," the subparagraphs that follow limit the availability of such services. Under §2227(c), before a treating physician can change the course of treatment being rendered to an injured employee, he would have to appear before a coordinator to request a change. That coordinator, in turn, would make a written recommendation to the hearing officer, who, after a hearing, may order, pursuant to 2228(g), that such services are not needed even if the treating physician believes that continued medical treatment is necessary. As a result, for the first time since our Workers Compensation Law was enacted in 1917, medical services would not be unlimited, as the casual reader of §2227(a) would believe.

The National Commission on State Workers Compensation Laws stated as two of its 19 essential recommendations that:

> "There be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work related impairment"
>
> * * * *
>
> "The right to medical and physical rehabilitation benefits not terminate by the mere passage of time." See Essential Recommendations of the National Commission on State Workers Compensation Laws, R 4.2, R 4.4.

Moreover, Professor Larson's Model Act recognizes that the importance of continuing medical and rehabilitation services:

> "For any injury covered by this act, the employee shall be entitled, *without limitation as to time or dollar amount*, to all medical services and supplies which are required by the nature of this injury and which will relieve pain and promote and hasten his restoration to health and employment." Larson's Workmen's Compensation Law, Model Act Part II, §72. (Emphasis added).

Thus, the draftsmen of House Bill 200 have ignored both Larson's views and those of the National Commission on State Workers Compensation Laws by limiting both medical and rehabilitation treatment.

The proponents of House Bill 200 have argued that not only will the imposition of this new system result in lower worker's compensation insurance premiums[6] for the small businessman, but that it will also lead to increased and speedier benefits to the injured worker. As I have demonstrated, *this is simply not the case.* The typical claimant, after wading through this five-level bureaucracy, will ultimately obtain far less in benefits than under the present law. Such surely should not be the intent of any worker's compensation system. Clear ly, House Bill 200 is aimed at separating the injured worker from his rightful benefits and, if passed, obviously will fulfill its aims. □

[1]A constitutional cloud exists by reason of the fact that the bill did not receive 3/5 majority. Although House attorneys opined on the floor

that the bill required a 3/5 vote under the Delaware Constitution, Article VIII §11, the Speaker nevertheless declared that it had passed the House!

[2]Hereinafter "SAWW." The figure is compiled annually by the Secretary of Labor.

[3]$262.79 was the SAWW for 1979.

[4]Even if the claimant has undergone an amputation or can prove a 100% loss of use, the scheduled benefits section drastically reduces the amount of compensation available. For example, under the present law, compensation available for the loss of a hand under 19 *Del. C.* §2326 is 66-2/3% of the employees wages during 220 weeks. Assuming a wage of $250.00 per week this would result in an award of $36,666.66. If House Bill 200 had been in effect in 1979, compensation available for the loss of a hand under §2224 would be the SAWW ($262.79) x 90 weeks or $23,651.10. For the loss of a hand this represents a net loss to the employee and net gain to the insurance carrier of $13,015.56 or 35.4%. All of the other scheduled benefits under §2224 of House Bill 200 are similarly reduced and would result in a net loss to the claimant (and gain to the insurance carrier) of 30%-60%.

[5]This is true even if the insurance carrier has already paid benefits following the initial agreement because under Sections 2220(j) and 2250 agreements as to compensation are abolished and the payment of benefits is not an admission of liability. Hence a claimant may be paid benefits voluntarily for four years and then the carrier can terminate benefits, taking the position that the accident was not compensable. Under these circumstances the claimant would be required to fully prove his case even though the names and addresses of witnesses to the accident may now be lost to him. Thus, the claimant, who probably will appear without the aid of an attorney, must prove to the satisfaction of the hearing officer that he is incapable of even light duty work by reason of an industrial accident.

[6]The Insurance Department has estimated that House Bill 200 will cause a 5% decrease in workmen's compensation premiums.

FAMILY LAW POTPOURRI

D. Carrad

(continued from P. 17)

Answers to Tax Questions

1. All of it. *See U.S. V. Lester*, 366 U.S. 299 (1961); *Cf. Gotthelf v. Comm'r*, 2d Cir., 407 F.2d 491 (1969).

2. None of it. Fixed dollar payments payable for less than 121 months are not deductible by the payor or taxable income to the payee *unless* they are subject to the contingencies of either the remarriage of the payee, or the death or change in economic circumstances of either party. Internal Revenue Code § 71.

3. A. Yes, as long as the child lives with her, even though she does not or cannot take the child as her dependency exemption. Husband may not, because the child does not live with him.

B. No; under this arrangement neither party can. Medical expenses are deductible only by the person who actually pays them, and then only for that person or his or her dependency exemptions.

C. Yes; it does not matter that she cannot claim the child as her exemption.

4. Neither Husband nor Wife may deduct the $1,500. A taxpayer may claim a deduction for tax advice only if he or she pays the fee *and* the fee is for tax advice rendered to him or her. *U.S. v. Davis*, 370 U.S. 65 (1962). In this case, Husband should have paid extra alimony to Wife (deductible by him) and she should pay her counsel fees for tax advice (deductible by her).

5. Husband owes a capital gains tax on the transfer of his half-interest in the house to Wife. The amount of the taxable gain is the present fair market value of the house ($60,000) less its basis ($40,000) = $20,000 divided by 2 = $10,000 since he is transferring only his half interest. The amount of the mortgage is probably irrelevant; *cf. Crane v. Comm'r.*, 331 U.S. 1 (1947).

6. It shouldn't be; see 13 Del.C. § 1513 b); Rev.Rul. 74-347.

7. Not now. Section 267 of the Internal Revenue Code disallows recognition of losses or transfers of property between related taxpayers, including husbands and wives. To realize the loss, Husand may either (a) sell the stock to a third party and transfer the cash realized to Wife, or (b) wait until after the divorce to agree to transfer the stock to Wife, since ex-husbands and ex-wives are not considered to be "related" parties under § 267.

8. No, because under § 1034 of the Internal Revenue Code it is no longer his "principal residence". Wife, however, may still take advantage of § 1034's substantial benefits.

9. A. Yes; § 121 only requires that the property be the taxpayer's principal residence for 3 years of the past 5 years.

B. $125,000.

C. $62,500.

10. No, See *Rafal v. U.S.*, D.Del. 267 F.Supp. 61 (1967).

WORKERS' COMPENSATION
Campbell and Graham

(continued from P. 24)

paid in addition to total or partial wage loss benefits.

For years, the cost of the system was inconsequential — even if it was inefficient or inequitable, the system didn't cost enough to cause a great deal of concern to Delaware businesses or to the General Assembly. For example, the total disability wage loss benefit in 1917 was 50% of the employee's wages, with a minimum benefit of $4.00 per week and a maximum benefit of $10.00 per week, up to 272 weeks; thereafter the benefit was reduced to 20% of wages (with a range of $2.00 to $6.00). And even as recently as the early 1970s, the maximum wage-loss benefit for total disability was only $75.00 per week.

In the early 1970s Delaware, like many other states, succumbed to the recommendations of the National Commission on State Workmen's Compensation Laws and raised benefits. And like a lot of states, Delaware ignored the recommendations of the National Commission for improving the adminstration of the law. The result: the Insurance Commissioner last year testified that Delaware workers' compensation premiums during the period 1970 through 1978 increased 162.2%.

Rapidly escalating premiums focused attention on the system by the business community and then by the General Assembly. Two special commissions were established by the General Assembly to study the problem. The first, with no appropriation or staff, concluded that only a properly staffed and funded commission could get to the root of the problem.

A second commission, called the Delaware Workmen's Compensation Study Commission, was then established and provided with funds to hire staff and consultants. The study commission was composed of 9 members, 7 appointed by the governor and 1 each by the President of the Senate and the Speaker of the House. The study commission members included representatives of the business, labor and insurance communities, as well as representatives of the public at large.

The commission held a series of public hearings during late 1979 and early 1980. It conducted a thorough study of the compensation system in Delaware, as well as examining the way other states handled their systems. And because Florida had just revised its system, it met with Florida business, labor and governmental representatives.

It learned that, while Delaware has some unique problems with its system (such as concurrent payments of benefits), Delaware shared with Florida similar concerns. Permanent partial cases — schedule cases — consumed a great deal of system time and money, just as they did in Florida. About 41% of the compensation dollar in Delaware was going to only 11% of injured workers — not that different from Florida's experience where, before the new law was enacted, more than 50% of the compensation dollar was going to 4% of injured workers.

The commission also learned that almost no one — except a handful of lawyers — was satisfied with the compensation system in Delaware. Workers were concerned about the delays in payment caused by the prolonged and expensive hearing process. They didn't think they were receiving an adequate portion of the premium dollar. They were pressed to turn to

lawyers, because the state agency staff couldn't adequately advise them on how to file for benefits. Inflation was eating away at their benefits, and they were concerned about losing their jobs to states with lower compensation costs.

Employers were dissatisfied with the concurrent benefit system, the high cost of some of those benefits (such as disfigurement) and the use of the agreement system instead of a direct payment system. They naturally looked with distrust on the insurance industry because it was the insurance industry which collected the premiums and made the rating classifications that so disturbed them.

The insurance industry was dissatisfied with what it viewed as an unstable, unpredictable environment. Because of the delays inherent in an agreement system and the uncontrolled costs of a concurrent benefits system (with a heavy emphasis on permanent partial cases), the industry had a difficult time predicting losses. This led to inadequate premiums, and from there to underwriting losses. In addition, the insurance industry pointed to an inadequate agency staff, heavy litigation, and increased medical expenses as reasons for the costliness of the system.

C. The development of HB200.

As the commission members studied these problems, they become convinced that the problems could not be resolved merely by tinkering with the existing compensation act. What was needed was no less than a return to basic compensation principles. The declaration of policy in the commission draft (which has survived intact in House Bill 200) expressed the philosophy of the study commission:

> The purpose of this chapter is to enact a new workers' compensation law to:
>
> (1) Require and assist employers to maintain the workplace in a safe manner;
>
> (2) Reduce the financial, emotional and procedural burden on employees sustaining work-related injuries;
>
> (3) Restore injured employees to health and an early return to productive employment through the prompt, sure and adequate provision of medical services, rehabilitation and compensation for lost wages during periods of work-related disability;
>
> (4) Assure the continued ability of employers to secure payment for medical services, rehabilitation and compensation for work-related injuries and death by eliminating the external emotional and financial costs of the existing compensation award system through the establishment of a system of prompt, direct payments from employers to employees; and
>
> (5) Provide for a prompt, sure and adequate administration of the workers' compensation law to encourage informal resolution of claims for compensation and discourage costly, time-consuming litigation of such claims.

The commission drafted legislation which would accomplish these goals. The heart of the legislation was adoption of the wage-loss principle and elimination of percentage or partial loss of use claims from the schedule. The savings from elimination of claims for percentage loss of use (and elimination of the litigation over these claims) would be reallocated to a greatly increased wage loss benefit. The commission believed that it was more equitable to assure adequate replacement of lost wages, at the time injured workers need benefits most, than to continue a system of windfall awards to some workers at the expense of others.

In addition to this reallocation of benefits, the commission recommended abandonment of the agreement system and adoption of the direct payment system (now in use in over 40 states). Instead of waiting for the employer and his lawyer, the worker and his lawyer and the Industrial Accident Board to agree on the amount and duration of benefits (a process which often takes months) or for litigation to conclude, employers would now be required to begin benefit payments within 14 days of knowledge of the injury. Litigation would be all but eliminated, since the only major issues left to argue about are: 1) whether the injury was work-related and 2) whether the worker is still entitled to benefits.

As you would expect from the broad spectrum of interests represented on the study commission and the divergent views presented during commission hearings, the legislation drafted

by the commission represents a substantial compromise. And like any such agreement, each interest gave up something in the process of reaching that compromise.

The draft legislation proposed by the study commission was introduced in 1980 as Senate Bill 582. That bill was defeated in the Senate in June of 1980. In 1981, a revised version of the bill was introduced as House Bill 87. This bill was stricken by its sponsor, and with certain revisions was reintroduced as House Bill 200. House Bill 200, as amended, has passed the Delaware House of Representatives and at this writing is in the Senate Insurance and Elections Committee.

Professor Arthur Larson of Duke University is generally acknowledged as the leading American legal scholar in the field of workers' compensation. He has suggested a series of four points which every good workers' compensation law should address:

1. adequate compensation for lost wages;
2. streamlined administration to avoid litigation and other controversies unrelated to the goal of compensation;
3. coordination with other benefit systems; and
4. effective rehabilitation for injured workers.

These four points provide a useful tool to briefly describe what House Bill 200 does.

In the area of adequate compensation for lost wages, the bill makes wage-loss replacement the central mechanism of the compensation act. Maximum wage-loss benefits are almost doubled, from 66-2/3% to 125% of the statewide average weekly wage (SAWW). This means that almost every Delaware worker would receive 2/3 of his previous wages (tax-free), so long as he is unable to work. Those who are able to work, but at reduced wages, will be entitled (tax-free) to 2/3 of the difference between the wages they earn before and after the injury.

The bill goes much further than the Florida act in providing schedule benefits (independent of actual wage loss) for loss or total loss of a major member, although partial loss of use claims are eliminated. The remaining schedule awards are no longer dependent on the worker's own prior wages, but are now based upon the statewide average weekly wage. For example, for loss of an arm the bill calls for 100 times the statewide average weekly wage (or $29,000).

As for administration, the bill is designed to make it more likely than not an injured worker and his employer can make their way through the system without litigation or lawyers. Employers are required to post statements of workers' rights under the system at the workplace. A new position, called the "coordinator" is created — a sort of ombudsman who takes individual responsibility for particular cases, attempts to mediate disputes informally, and who is to be available to help the injured worker with his claim.

Many potential controversies are eliminated by a direct payment system, requiring an employer or carrier to begin payments within 14 days of knowledge of an injury, unless the claim is contested.

If a claim is not informally resolved, a hearing officer is provided to hear the claim. These hearing officers also have the authority to hold emergency hearings. (The direct payment provisions mandate that payments ordered by a hearing officer must continue even if appealed). Appeals lie to the Industrial Accident Board, the Superior Court and the Delaware Supreme Court. Strong incentives (in the form of fines, penalties, interest charges, criminal sanctions, license revocations, and suspensions) are provided to ensure employer compliance with the system.

The bill also coordinates workers' compensation benefits with other benefit systems, to avoid overlapping coverage and to avoid gaps in coverage. Finally, the bill requires employers to provide — and workers to accept — rehabilitation services. Trial work provisions enable injured workers to return to work for up to 90 days without risk of losing total disability benefits. And employers are encouraged, through assumption by the Second Injury Fund of costs for future injuries, to hire workers with pre-existing disabilities.

D. The role of lawyers in the workers' compensation system.

We've discussed the evolution of HB200 and what it is designed to do. The basic assumption of the bill is that a no-fault workers' compensation system should be an administrative system with a minimum of controversy and litigation — and therefore minimum lawyer involvement in the system.

We said earlier that lawyer involvement has become the rule, and that we believe it should be the exception. We don't mean to imply any criticism of those who presently practice workers' compensation law in Delaware. Lawyers in the Delaware system — as elsewhere — have filled the vacuum created by an inadequately funded administration of a neglected system. Out of genuine concern for injured workers who enter the maze of that system, these lawyers have acted as administrators by default.

But we believe that the system should be changed. With an efficient administration, a direct payment procedure and a return to the wage-loss principle, an injured worker in most cases should not need the services of a lawyer. And the dollars saved should go to *higher benefits for workers* and *lower premiums for employers.*

Where lawyers should be involved— for example, disputed liability or employer refusal to pay benefits to which the worker is entitled — HB200 encourages lawyer involvement and even increases attorneys' fees. But the law will no longer permit lawyers — for either side — to adminster the system by default.

Another compensation bill has recently been introduced in the Senate as Senate Bill 405. Drafted by claimants' attorneys, this bill increases maximum weekly benefits by 50%, but retains percentage loss of use cases, retains the agreement system and does not strengthen the administrative provisions of the Delaware act. It therefore assures that litigation will continue to be the hallmark of what was designed as a no fault system. And it provides an interesting framework for a philosophical discussion of the role of lawyers in the system.

If the goal of the workers' compensation system is more than replacement of economic losses without regard to fault, then something like SB405 may be appropriate. If the goal is to determine and compensate for non-economic losses — like pain and suffering — then some form of adversarial proceeding is probably necessary. But that is a departure from the original reasons for having a workers' compensation system.

Workers' compensation acts were originally designed to take work-related injuries out of the traditional tort litigation system, because that system resulted in inequitable treatment for both employers and workers. Since a worker had to prove employer negligence to collect, many injured workers were left without any compensation for lost wages. Employers could not predict the economic consequences of worker injuries, and were subject to the vagaries of jury verdicts.

As a result, workers' compensation acts were designed to replace lost wages without regard to fault. Payment for impairments independent of actual economic losses was not originally contemplated, and the development of the schedule principle was a departure from the original no fault wage-loss goal.

The public policy questions raised by this aberrant development are thorny, but not really complex. Without question, uncompensated pain and suffering offend our sense of common

humanity — particularly when we are lawyers, who are always searching for way to make people whole.

But if compensation for pain and suffering is a legitimate part of the workers' compensation system, unrelated to any true economic loss suffered by an injured worker, then surely the issue of fault is pertinent. If the injured worker's pain and suffering is caused by his own negligence (as in about 60% of industrial injuries) rather than by the negligence of the employer, should the employer — and ultimately the consumer — pay for it?

That question was answered in the negative when workers' compensation laws were first passed. The judgment then was that most workers — and most employers — will be better off if the limited dollar resources of the system are used to compensate actual economic losses. And there will be more money to compensate injured workers if every possible controversy — and thus the cost of litigation and lawyers — is eliminated from the system.

The Florida bar recently held a seminar entitled "Workers' Compensation — Is There Anything Left For the Practitioner?". That title speaks volumes about the reduction of litigation in Florida — and about the place of lawyers in a no fault compensation system.

Of course, Florida hasn't totally eliminated lawyers from their system — but they have limited the role of lawyers to those areas where the injured worker can't get the help he needs from the system. And the new Florida law has gone a long way toward making sure that most injured workers can help themselves through the system without a lawyer. We think that the same thing can happen in Delaware with the sort of changes in the system proposed by HB200.

Lawyers have a proper — and well compensated — role to play when that system breaks down (as where the employer contests liability). But if the primary goal of the system is prompt replacement of lost wages without regard to fault, the best role lawyers can play is to help workers when the system fails — and not to administer the system by litigation.□

Notes on Contributors

Robert J. D'Agostino is Deputy Assistant Attorney General of the United States Department of Justice, Civil Rights Division. Bob is on leave from the Delaware Law School of Widener University, where he was Associate Dean for Academic Affairs. He is a co-author with James William Moore of a casebook entitled *Debtor's Rights and Creditor's Remedies* and contributing author to *Collier on Bankruptcy* (15th edition).

Bob graduated from Columbia University with B.A. and M.A. degrees. He received his J.D. degree from Emory University. Bob attended Emory at night. During the day, he taught in public schools and worked as a social worker.

William G. Campbell and **Robert Graham** are attorneys with the firm of Bayard, Brill & Handelman, P.A. The firm served as counsel to the Delaware Workmen's Compensation Study Commission during 1979-80 and prepared the predecessor to House Bill 200 at the direction of the Commission. Since the Commission was disbanded in 1980, they have represented a coalition of insurance companies interested in reform of the workers' compensation system in Delaware.

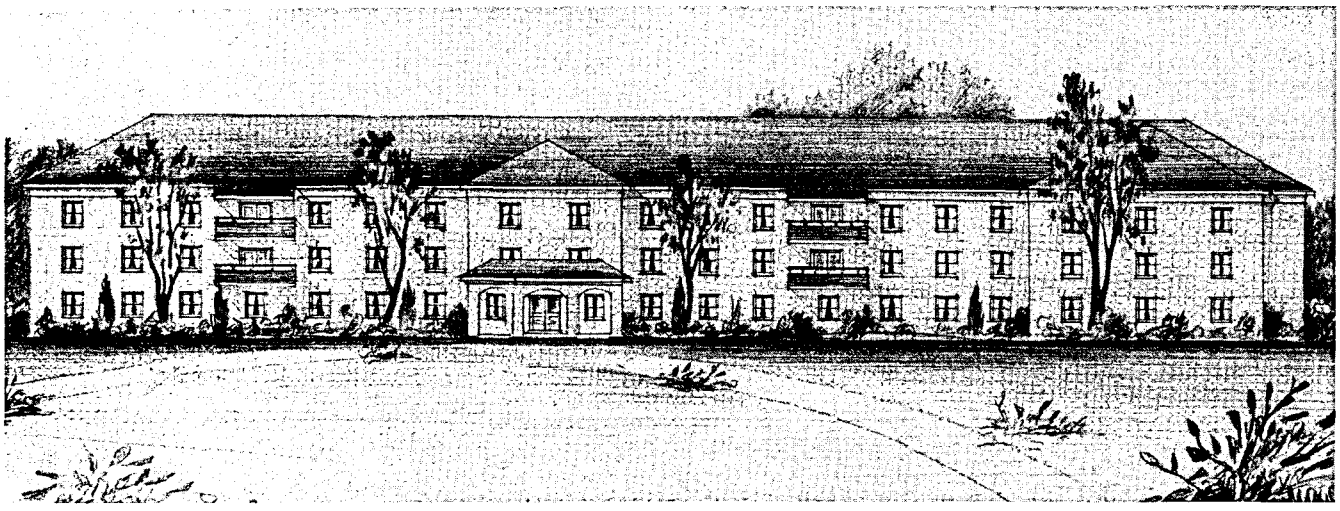
David Carrad graduated from Harvard Law School in 1972 and is a member of the Delaware and New York Bars. He conducts his own practice in Wilmington, concentrating in domestic relations. He is Chairman of the Family Law Committee of the Delaware State Bar Association and a Fellow of the American Academy of Matrimonial Lawyers. Dave's article is drawn from a book he is in the process of writing.

Clark W. Furlow, our case note editor, graduated from Boston University in 1973 with a degree in philosophy and received his law degree from Emory University in 1977, where he served as a member of the editorial board of the Emory Law School. He is associated with the Wilmington firm of Morris, James, Hitchens & Williams.

John T. Gandolfo, Jr. graduated from Villanova School of Law in 1977 and became a member of the Delaware Bar in that year. He was a Deputy Attorney General in the Criminal Division of the Department of Justice from November, 1977 until April, 1980. He was recently nominated for the position of Assistant Secretary and member of the Executive Committee of the Delaware State Bar Association. He is an associate engaged in general practice with the Wilmington firm of Lindh and Halberstadt.

John Schmittinger, a member of the firm of Schmittinger & Rodriguez, conducts an extensive practice in workmen's compensation matters. John was graduated from the University of Delaware in 1963 and from the law school of Temple University in 1966. For the past two years, he has been actively engaged in lobbying against the passage of House Bill 200.

To introduce **Bruce Stargatt**, our punctuational zealot, is an act of superfluous genuflection. We all know that he is the President of the Delaware State Bar Association and an exceptionally able lawyer. Bruce graduated from the University of Vermont in1951 and from the Yale Law School in 1954. He served as a judge advocate in the United States Air Force at Dover Air Base from 1954 to 1956. He is today a member of the firm that bears his name, Young, Conaway, Stargatt & Taylor. Bruce also serves as the Chairman of the Executive Committee for Girard Bank Delaware.□



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