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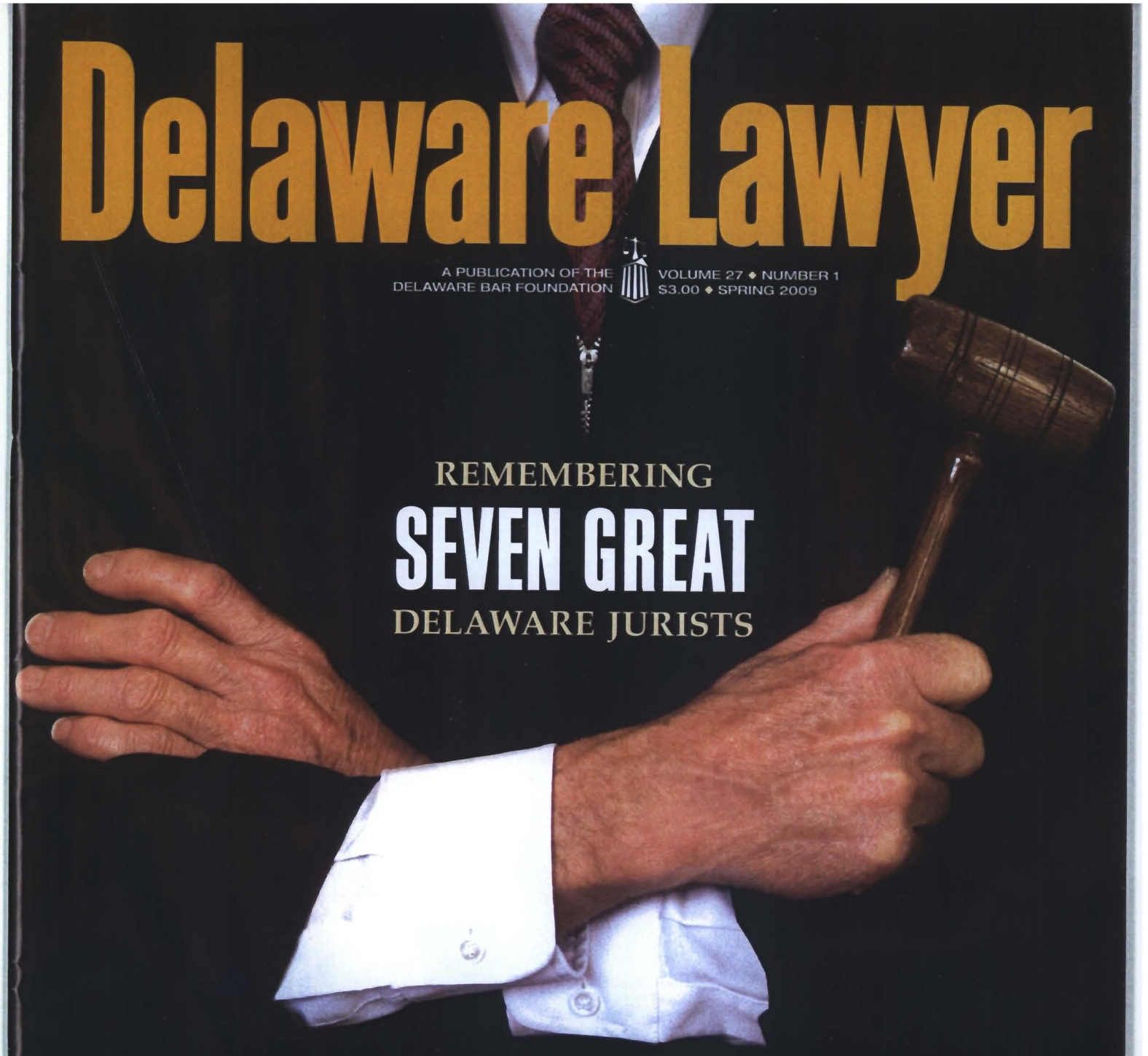

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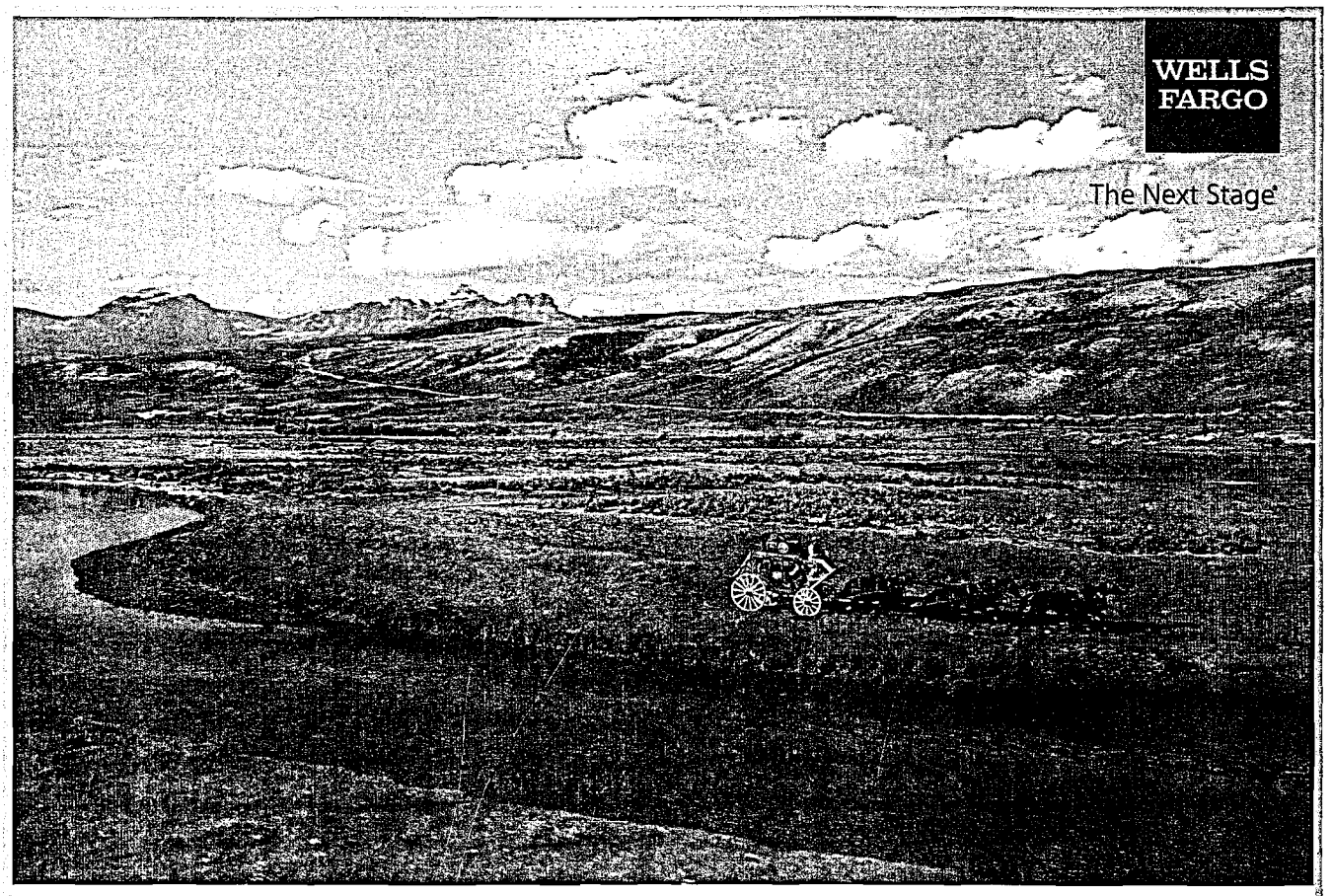

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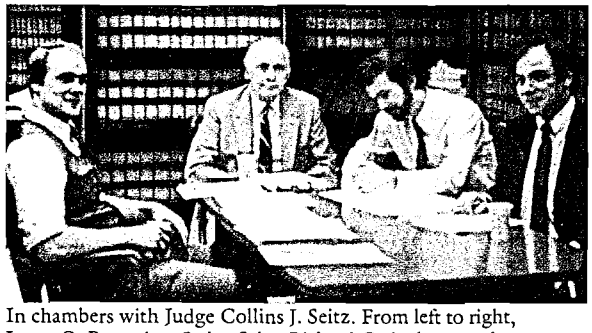
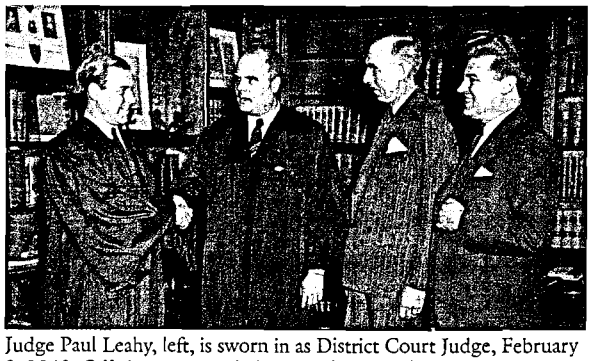
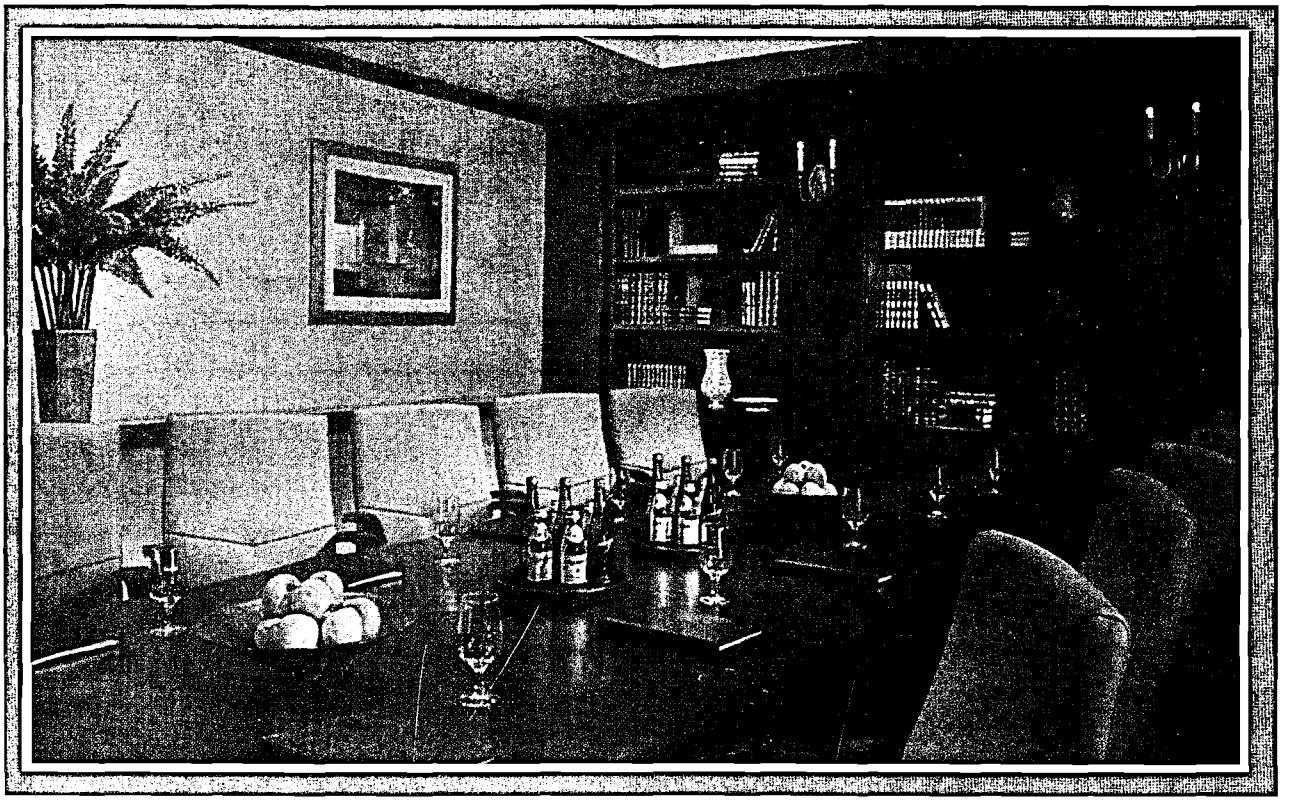
Chief Justice Daniel L. Herrmann.
Courtesy of the Herrmann family.



In chambers with Judge Collins J. Seitz. From left to right, James O. Browning, Judge Seitz, Richard G. Andrews and Mark A. Underberg.
Courtesy of Richard G. Andrews.



Judge Paul Leahy, left, is sworn in as District Court Judge, February 2, 1942. Offering congratulations are, left to right, Judge John Biggs, Jr.; Theodore M. Beauchamp, new chief deputy clerk of the court; and Edward G. Pollard, new clerk.
Courtesy of the Delaware Public Archives.



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EDITOR'S NOTE

Charles J. Durante

Delaware Courts in the 20th Century became the principal venue for resolving corporate law disputes. The federal District Court in Delaware became nationally known, among other reasons, for its handling of intellectual property issues.

Their reputation, deserved by any measure, rests with the judges of those Courts. This issue of *Delaware Lawyer* tells us of the more prominent of those judges. We recount their stories because time erases our memory of them, and they deserve better.

The judges we profile, in chronological order of their going on the bench, are Josiah Wolcott, Paul Leahy, Collins Seitz, Caleb Wright, Daniel Herrmann, William Duffy and James Latchum.

In each case save one, the author is someone who knew the judge personally and acquired that personal knowledge initially by being a clerk to the judge. Those relationships can be special, and you will no doubt conclude it was so in each instance here.

We end with an observation obvious at the outset. Each of the judges profiled was a white male. Our criteria for inclusion in this issue were principally two: the judges we include must have stood out among their peers (themselves nearly all white males) and be deceased.

The 20th Century in Delaware had little judicial diversity until near its end. The list of 21st-Century great jurists will no doubt be more diverse as our bench becomes ever more diverse.

Charles J. Durante

CONTRIBUTORS

Thomas L. Ambro

is a Judge on the United States Court of Appeals for the Third Circuit. Prior to being sworn in on June 19, 2000, Judge Ambro was a member of the firm of Richards, Layton & Finger, P.A., Wilmington, Delaware, having first joined the firm in 1976. Judge Ambro was the Chair of the Section of Business Law of the American Bar Association in 2001-02. Prior to that he was the Editor of *The Business Lawyer*. Judge Ambro was an original member of the Board of Editors of *Delaware Lawyer* in 1982, and continues as a Board member to this day.

Richard G. Andrews

has been State Prosecutor for two years, and was previously an Assistant United States Attorney. He clerked for the Honorable Collins J. Seitz in 1981-82. He is a graduate of Haverford College and Boalt Hall School of Law at the University of California at Berkeley.

Jack B. Jacobs

was appointed a Justice of the Delaware Supreme Court in 2003 after 18 years as Vice Chancellor. A graduate of the University of Chicago (where he was Phi Beta Kappa) and Harvard Law School, he began practicing business and corporate litigation in Wilmington in 1968. Justice Jacobs is an Adjunct Professor at New York University, Widener and Columbia Law Schools. He also is a member of the American Law Institute, where he is an Advisor to its Restatement (Third) of Restitution, and is a Fellow of the American Bar Foundation. He has served on the Committee on Corporate Laws of the Business Law Section of the American Bar Association.

Kent A. Jordan

was appointed in 2006 to serve as United States Circuit Judge for the Third Circuit, after four years as United States District Judge for the District of Delaware. Before taking the bench, he had been General Counsel of Corporation Service Company, litigation partner with Morris James Hitchens & Williams, and Assistant United States Attorney. Judge Jordan received his B.A. in 1981 from Brigham Young University and his J.D. in 1984 from the Georgetown University Law Center, where he was an Articles Editor for the Georgetown Law Journal. In 1984-85, Judge Jordan clerked for James L. Latchum, a Judge on the District Court where Judge Jordan later served. He is an Adjunct Professor of Law at the University of Pennsylvania, Vanderbilt University, and Widener University.

William T. Quillen

is Of Counsel in the Wilmington office of Drinker Biddle & Reath LLP. He has been Administrative Assistant to former Governor Charles Terry, Superior Court Judge, Chancellor, Justice of the Delaware Supreme Court, and Secretary of State of Delaware. He has been a Senior Vice President and Director of Wilmington Trust Company, Vice President and General Counsel of Howard Hughes Medical Institute, and Director of Delaware Trust Company. He has been a distinguished Visiting Professor of Law at Widener University School of Law, where he continues to teach constitutional law on an adjunct basis. Bill received the American Judicature Society's Herbert Harley Award in 1998.

Murray M. Schwartz

is Senior Judge of the United States District Court of the District of Delaware. He was appointed to the District Court in 1974. Previously he had served as Referee in Bankruptcy in the U.S. Bankruptcy Court of the District of Delaware. A graduate of The University of Pennsylvania's Wharton School and its Law School, he came to Wilmington in 1955 to clerk for Judge Caleb M. Wright of the U.S. District Court. He served as Chief Judge of the District Court from 1985 to 1989.

Joseph T. Walsh

is Of Counsel to McCarter & English, LLP. He served on all three Delaware Constitutional Courts. Appointed to the Superior Court in 1972, he became a Vice Chancellor in 1984 and a Justice on the Delaware Supreme Court in 1985, serving until 2003. An honors graduate of LaSalle College, he received his LL.B. degree from the Georgetown University Law Center, then clerked for U.S. District Court Chief Judge Paul Leahy.

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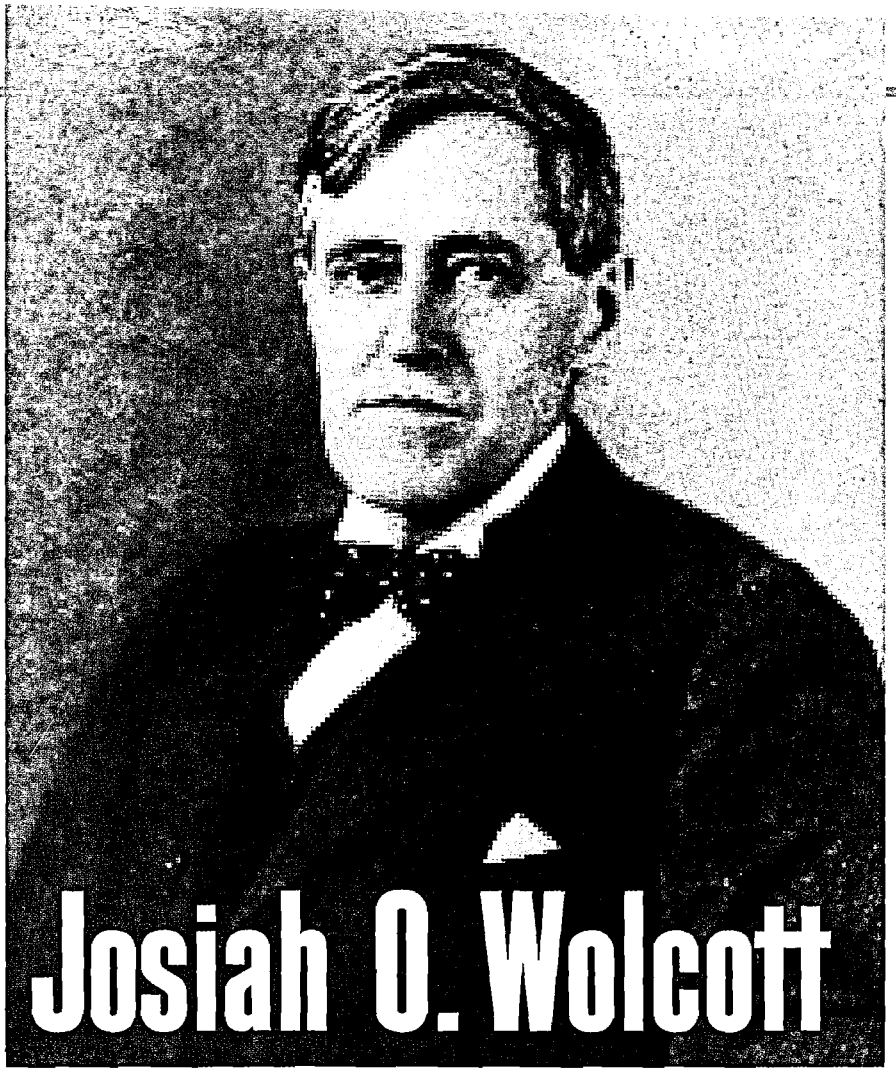


Chancellor Josiah O. Wolcott

Seven factors that helped make an outstanding judge.

What makes a great judge? Judge Thomas L. Ambro perhaps hit the mark when he said recently of Ned Carpenter, a lawyer not a judge, that he was "great" because he was "good." Perhaps the highest accolade for a judge should be "good"; somehow it seems to fit the office.

But there are judges who stand above the rest: Nicholas Ridgely (1762-1830, Chancellor 1801-1830); Collins Seitz (1914-1998, Vice Chancellor 1946-1951; Chancellor 1951-1966; Judge of the United States Court of Appeals for the Third Circuit 1966-1998, including 13 years as Chief Judge); and Josiah Oliver Wolcott (1877-1938, Chancellor 1921-1938), who put the Delaware Court of Chancery on the national stage in corporate law. They achieved "eminence." Each of the three was quite different. Robert Haven Richards, in a three-column letter to the editor written the day after Wolcott's death, opined "that Wolcott was the greatest judge Delaware has produced."

Our opening question here must become personal. What made Josiah Oliver Wolcott a great judge? What permitted him to become perhaps the most prominent judge in his time in the world of American business?

The bare bones of Josiah Wolcott's life are easy; three paragraphs of family history from a standard Delaware source (bracketed dates reflect other sources believed to be more reliable):

> ... Josiah Oliver Wolcott is the sixth generation of his family in Delaware. He was born at Dover, Delaware, on October 31, 1877... .
>
> He was given the best educational advantages[,] graduating from the public schools of Dover in 1893,

Wilmington Conference Academy, Dover in 1896, and Wesleyan University, Middletown, Connecticut[,] where he received the degree of Bachelor of Philosophy in 1901. After studying law under Edward Ridgely and Henry R. Johnson, he was admitted to the Delaware bar in [1903]. That same year he commenced the general practice of his profession in Wilmington, and in [1909] entered the firm of Marvel, Marvel and Wolcott. This association was continued for about [eight] years when public service[] rendered a separation necessary or at least advisable.

Following in the tradition established by his father, Josiah Oliver Wolcott entered politics, achieving a career of public service that long will be remembered and honored by the people of Delaware. In January, 1909, he was appointed Deputy Attorney General of the State. In 1912 he was elected Attorney General of Delaware, for a term of four years from January 1913. In the elections of 1916, he was elected United States Senator for a term of six years. In May 1921, however, he resigned from the Senate to accept the appointment of Chancellor of the State of Delaware. In so doing he retired from the Senate to assume the highest judicial post in the State. In the State of Delaware, and among the Bar at large, he earned and richly deserved repute as an eminent jurist. In May 1918, he moved from Wilmington to Dover. (The Wilmington house was sold in 1917 and the move to Dover probably completed in 1918).

But this and similar biographical sketches beg our question. Though human development does not proceed with exact mathematical precision, I suggest seven factors, some overlapping, made Wolcott a great judge.

1. A Sense of Heritage: While family members suggest some uncertainty about the pre-Delaware heritage of the Wolcotts, the Delaware family heritage dates from 1740 and now includes nine generations in Delaware. Josiah grew up in rural Kent County and he made the fifth generation shine. His lawyer father, James Lister Wolcott, was a great success in Kent County, made an unsuccessful effort to be a United States Senator in 1888, and served as Chancellor from 1893 to 1895.

Having law as a family business was, at the turn of the 20th Century, extremely helpful to an aspiring legal professional. Josiah grew up in the trade culture of the law.

Having law as a family business was, at the turn of the 20th Century, extremely helpful to an aspiring legal professional. Josiah grew up in the trade culture of the law and, from boyhood, he had ready-made contacts within the profession. Small-town home nurturing can also unduly reflect one's time and be limiting. (For example, Josiah as a United States Senator did not support women's suffrage in 1919, primarily because he did not believe, probably correctly, that the women he knew, rural and/or Victorian, desired the franchise. Indeed, Delaware in 1920 passed up a chance to be the decisive ratifying state and only limped aboard in 1923 when the franchise decision was long over.) But overall, lawyering as a Wolcott family business was a crucial ingredient for the man who would be Chancellor.

2. Valued Education: Josiah's father did not go to college. In a typical upward-bound move, Josiah not only had a good education through high school, but the opportunity to go to Wesleyan University in Connecticut, well away from home, where he acquired a cosmopolitan cultural boost which stuck. Wolcott was an avid reader with a healthy grasp for detail and unrelenting curiosity.

A 1916 *Wilmington Every Evening* biographical sketch described Wolcott's reading as "[s]ociology, the law, public matter, government, history, civics, constitutional questions and heaps and heaps of biography," plus "yearly pilgrimages through such old friends as Dickens, George Eliot, Thackeray and Robert Louis Stevenson." As it is with some cultured few, education to Wolcott was a life-time pursuit on a daily basis.

3. Personal Crises: Even a storybook life has personal crises. In Wolcott's case, two stand out. His lawyer, ex-Chancellor, father died at 56 in 1898 when Josiah was in his second year at Wesleyan. Josiah not only had to deal with his own family emotions, but also felt a money pinch. Rather than leave Wesleyan, Wolcott started an eating club and performed other work on campus to stay in and finish college. Sudden material need sobers.

A second crisis was played out in public and left both immediate hurt and a lasting impression. The Republican Governor decided he did not want to reappoint the Republican Chancellor (who was quite able) in 1921, and Democratic United States Senator Wolcott had ambitions to be Chancellor, then the chief judicial officer in the State. It was thought that with a Republican Senator federal patronage would come easier to the GOP. When

Wolcott's nomination was announced, all hell broke loose about a "dirty deal" and it continued to dominate the news for weeks.

Wolcott at one point wrote the Governor suggesting a withdrawal of the nomination but, after receiving further advice, Wolcott permitted the nomination to go forward and he was eventually confirmed by an 11-7 vote in the State Senate and became Chancellor. Having one's name associated with an alleged public scandal is at the least unforgettable.

The two crises could not but help toughen Wolcott to the ways of the world. Indeed they did.

4. Background Experience: When Wolcott assumed the Chancellorship in 1921, he was well seasoned. He had begun in 1904 in Wilmington as a solo practitioner for five years, then joined a respected Wilmington firm from 1909 to 1917 while serving as Deputy Attorney General and the elected Attorney General. His legal duties involved him deeply in the details of Prohibition via Delaware's local option law, and he knew the anti-saloon vote was gaining momentum and his Senate vote favoring the experiment of national prohibition was correctly anticipated.

He served as the first popularly elected United States Senator from 1917 to 1921, where he participated prominently in the debate on the Versailles Treaty and the League of Nations. He knew the courthouse from the ground up and he knew the clubhouse of the United States Senate. Indeed, his Senate speech on the Treaty was such a masterful brief that the Democratic National Committee ordered 100,000 copies printed for use in the 1920 campaign, and there was brief mention of the possibility of Wolcott being Vice President. Wolcott as a young man was a big deal in the Senate.

On the home front, Wolcott had married in 1906 and had four children by 1918 when he moved back to Dover. He also ended his Wilmington law partnership after his election to the United States Senate. In June 1921, he was 43 years old, free from entanglements, at the height of his profession and ready to be the chief judicial officer of Delaware.

5. Presence: What special quality did Josiah Wolcott have to achieve selection as the sole Deputy Attorney General for New Castle County at 31, statewide election as Attorney General at the age of 35, election as the first popularly elected United States Senator at 39, and appointment as Chancellor at 43? Colonel E. Ennals Berl in a 1940 Memorial Tribute captured one element well — presence:

> [H]is striking appearance...[,] not [just] the tall spare figure, the lean face, the shaggy black hair, inclined to be unkempt, the clear eye, the firm yet humorous mouth, nor even the jaw, which was probably his most dominating feature, that made him the striking figure that he was. These, together with a certain indefinable air and his personal characteristics, conveyed at once to the beholder the impression of distinction — an impression such as Taney must have made, or Eldon and some of the great legal and judicial figures of 17th and 18th Century England.

A 1916 biographical sketch in the *Baltimore Evening Sun* described Wolcott as standing "a fraction less than six feet," "[s]haggy of hair, long of jaw, weighing 127 pounds and 39 years old."

During his Senate days, Wolcott was a favorite subject of local and national cartoon artists; his appearance always grabbed attention and put him in the center of any conversation, and being a judge did not lessen the immediacy of his stature. He just looked as if he were in command and did not have to demand attention. He was polite but for rank he did not suffer awe.

Samual Arsht told of a trial wherein John W. Davis and Hugh M. Morris were opposing counsel. Davis, the 1924 Democratic Presidential nominee, called the first witness and, after a slight interlude, Judge Morris objected to a question. In a short time, there was another objection followed by some squabbling by counsel. Chancellor Wolcott intervened and pointedly suggested to counsel they were "acting like ordinary lawyers." The point was made and the trial proceeded in a more gentlemanly professional manner.

At the other end of the spectrum, Colonel Berl noted "his patience and kindness to the younger and less experienced members of the bar," noting that "[i]n Court his watchful protection overcame the deficiencies of their inexperience." No potted plant, Chancellor Josiah Wolcott. Presence, like

equity, was flexible to the occasion and one suspects that lawyers came away from encounters with Chancellor Wolcott with different impressions, but all favorable.

There is an institutional aspect of presence that helped make Wolcott a great judge. The key to greatness in judges generally is always good performance over time — perseverance and longevity. Wolcott chose to be Chancellor and there is no indication that he was tempted to do anything else. It was a given in his "indefinable air" that he would be there.

Nor should it be forgotten that he was Chancellor, not only the sole judge of the Court of Chancery, but the judge who presided over the Supreme Court and was the chief judicial officer of the State. In an era before a separate Supreme Court and as the last Chancellor to serve without Vice Chancellors, Chancellor Wolcott was the human embodiment of the Judiciary. Wolcott was reappointed in 1933 and was nationally known for being able to deal with cases involving large sums of money. He had become a fixture, a monument, a personification of the judicial system. That is presence.

6. A Love of Hard Work: Chancellor Wolcott held Court of Chancery hearings in all three counties, both in public courtrooms and in chambers. In addition, the Chancellor presided at most sessions of the Supreme Court, except in the relatively few appeals from Chancery. His Chancery opinions are included in 11 volumes of old official reports (13 Del. Ch. 1 through 23 Del. Ch. 191).

His last reported opinion is a case known to all students of corporate law, *Loft Inc. v. Guth*, 5 A.2d 225 (Del. Ch. 1938), *aff'd* 5 A.2d 503 (Del. 1939), a cornerstone of the law of fiduciary duty and corporate opportunity. "[E]quity is not beguiled by appearances." 5 A.2d at 231.

Wolcott brought his own poetry to a written opinion and demonstrated equity as art:

> ... That the sources of [majority] power is found in a statute ... supplies no reason for clothing it with a superior sanctity, or vesting it with the attributes of tyranny. When the power is sought to be used, therefore, it is competent for any one who conceives himself aggrieved thereby to invoke the processes of a court of equity for protection against its oppressive exercise.
>
> *Allied Chemical & Dye Corp. v. Steel and Tube Co. of America*, 14 Del. Ch. 1, 11-12 (Ch. 1923).

The Chancellor knew and loved his role in the legal system. It was his job to decide, to use discretion, and to exercise judgment, and he relished his role both in his eloquent, nationally renowned opinions and in his bench rulings. There was no rush to judgment. But Berl relates there was a practical equity applied in disposing of "this endless mass of work," such as making a legal judgment during trial that would eliminate days of testimony.

We should always remember that Wolcott chose to be Chancellor, giving up a much-sought-after position in Washington, where he had performed well. Mr. Richards wrote Wolcott was "conspicuous in the Senate, not as a seeker for notoriety but as a patriotic, eloquent and wise statesman." The harsh experience of the "dirty deal" publicity in 1921 could only make the burden of judicial performance more acute, but one suspects the quiet Wolcott internal pressure was just as great. It was not a burden but a duty, a duty of choice.

The Chancellor's work was not just professional, it was also hard labor. There was no entourage — no secretary, no keeper of the calendar, no law clerk, no baliff; Wolcott customarily wrote his opinions longhand and had his court reporter, Albert L. Massey (known as Mr. Chancery), type his opinions and letters. Berl reports the Chancellor would not "take summer vacations until every matter submitted to him for decision had been determined[,] with the consequence that vacations grew shorter and shorter." Duty includes discipline.

Part of the Chancellor's job was the elevation of the profession. When he spoke to new admittees to the Bar, he spoke of the profession as a "calling," of "justice ... as an attribute of divinity ... [,] the thing lawyers strive to secure among men." Law was God's work. From Berl's memorial tribute, Chancellor Wolcott would have liked one understated line in particular: "The good servant had discharged his stewardship to the State which had honored him with its highest office in his calling."

7. Humility, Simplicity, Security: A prominent New York lawyer arrived in Dover court early one day to get his bearings for an argument in Chancery. Finding the courthouse locked, the visitor was relieved when an informal man, presumably a county employee, appeared to open the door. When court began, the New York lawyer realized his rescuer was none other than the nationally renowned Chancellor Wolcott who had ascended the bench.

Humility is an overused word and it is sometimes hard to attach the word to prominent figures who are constantly in the limelight. In Wolcott's case, it suggests a freedom from arrogance, an unwillingness to promote self at the expense of others, a sense of fundamental equality among humankind, an acknowledgment that all jobs are worthwhile and none are beneath self. In this sense, and not in any sense of self deprecation, Wolcott had genuine humility.

Wolcott disliked the city, even Wilmington. He was already advantaged by his own family's accomplishment, and had independently demonstrated state-

wide his own separate value by 1917. His wife came from a prominent Laurel, Delaware, family, so it is not surprising he and his wife chose the informality of small-town life, which surely had some social limitations, but was less stratified, less congested and more familiar. They had no need or desire for grand social aspirations.

"Josiah Wolcott does three things in this life — works, reads and goes gunning," said a 1916 sketch. Another said Wolcott's "home life is simple to the last degree," he being "[o]n social life ['the butterfly stuff'] not keen". ... But he reportedly "likes real men and real women wherever he finds them, and is gregarious as any one could wish with them."

His fun was simple and captured by a wonderful word used by Berl when he said Wolcott "loitered" — a fair description of his fun in various venues — wonderful partly because we associate loitering with criminal prohibition and partly because loitering seems to conflict with the common view of the Wolcott work, read and hunt ethic, and partly because small-town loitering reflects dislike of the city by the peaceful Wolcott.

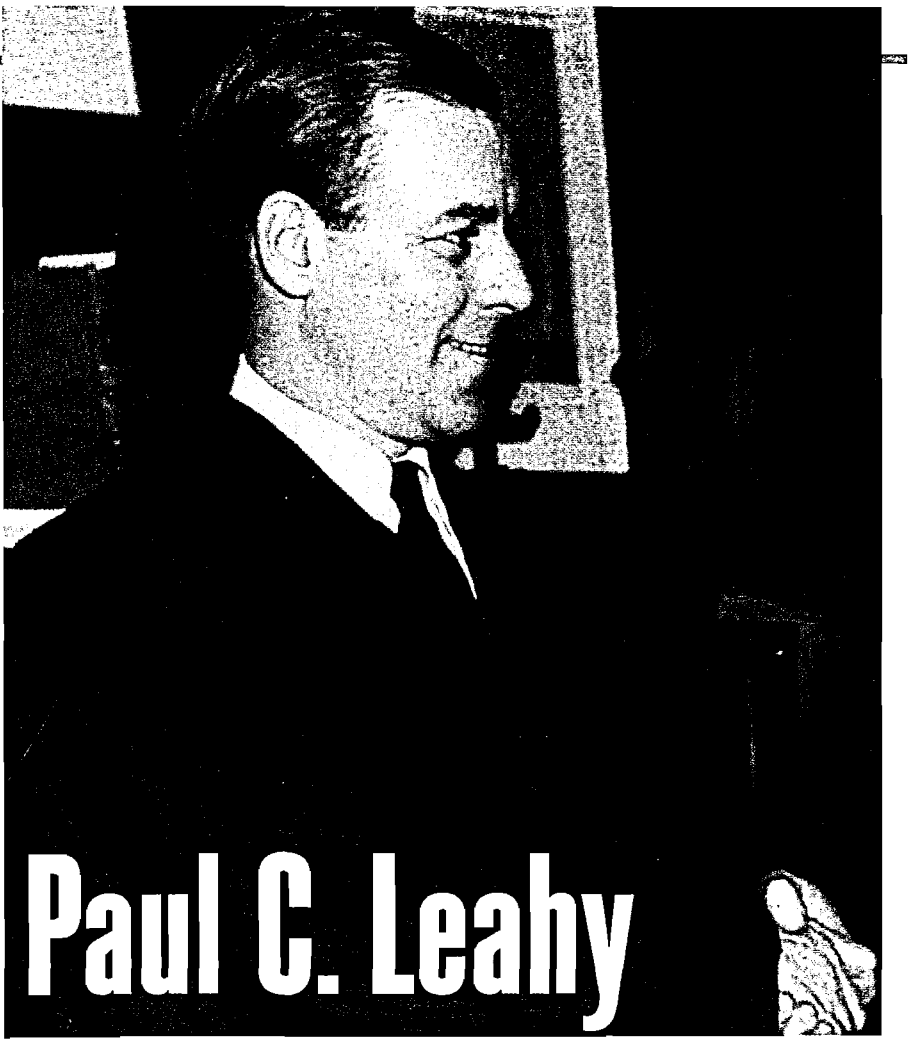
Josiah Wolcott was secure and comfortable with the life he chose and his own skin. Again, it is hard to improve Berl's language. Wolcott was born and died in Dover, had an "intense humanity," "loved people," and "loitered with them"; "[h]is humor was spontaneous and contagious," and "[a]s a raconteur he was without peer."

Wolcott successfully inherited his occupational interests from his father and he worked hard to justify the confidence that had been conferred on him. He knew who he was — "a country boy and man" who "loved the outdoors, to hunt, to fish and to play under the broad sky." Josiah Wolcott liked who he was and he did not want to be anyone else.

On Armistice Day 1938, Chancellor Wolcott, having had a recent birthday, was 61 years old. The Chancellor and Judge William Watson Harrington had conducted a Kent County canvas of the 1938 election the previous day. The Chancellor set out early in the morning on horseback and from his Dover home was joined by Judge Harrington in the woods for fox hunting.

After some time hunting, the Chancellor told Judge Harrington "he felt tired and thought he would return home." He arrived home about 11 a.m., saw his doctor and "complained of a pain in his chest." The doctor left to get some "restoratives" at the Kent General Hospital down the street. Chancellor Josiah Oliver Wolcott died before his doctor returned. ◆

Joseph T. Walsh



Judge Paul C. Leahy

A pioneering jurist with a flair for the dramatic.

Many fine jurists have graced the Bench of the United States District Court for the District of Delaware, achieving for that tribunal national recognition as a trial court disposing of complex litigation at a high level. Some members of the Delaware bar may have scant memory of a time when the caseload of that court was the responsibility of a single judge, Judge Paul C. Leahy. It is no exaggeration to state that the United States District Court for Delaware earned its early respect because of the work of that outstanding jurist.

Paul Leahy was a native Delawarean who graduated from Wilmington High School, the University of Delaware, and the University of Pennsylvania Law School (the last in 1929). Leahy was a natural writer with a gift for phrasing. During his college years, he served as a copy editor for a local newspaper, and reflective of that background, Leahy's writing style was direct and forceful. He also was an amateur thespian and never lost his love of the theatrical even within the strictures of judicial expression.

Fresh from admission to the Delaware Bar, Leahy joined the firm of Ward and Gray where he become a protégé of Ennals Berl. With Berl as his mentor, Leahy engaged in business and corporate litigation in state and federal courts, including a successful appearance in the United States Supreme Court in 1941. Leahy spent 13 years with the Ward and Gray firm, becoming a partner in 1934, when the firm changed its name to Southerland Berl Potter and Leahy.

In 1942, with the support and encouragement of Berl, Leahy was ap-

pointed by President Franklin Roosevelt as a Judge of the United States District Court for District of Delaware. Leahy was sworn in as a judge at the age of 37, certainly the youngest person to serve on the Court at that time and perhaps to this day. His appointment represented another milestone — the first Roman Catholic to serve on the District Court for Delaware.

When Judge Leahy began his judicial career in 1942, he assumed sole responsibility for a large docket of business and corporate cases as well as litigation spawned by wartime regulation of wage and price controls. He was the first Judge of the District Court to employ a law clerk. He also had the foresight to select as the Clerk of the Court Edward Pollard, who himself became a fixture of the Court for several decades to come. It was a wise choice. Although not legally trained, Pollard became an expert on federal procedure and local court rules. Many seasoned practitioners, as well as the judges themselves, would consult Pollard when questions of procedure arose.

In 1946, Judge Leahy's role as sole Judge on the District Court ended with the appointment of Judge Richard S. Rodney. Judge Rodney was a seasoned jurist, having served on the Delaware Superior Court since 1922. He was denied reappointment to a third term because of a political dispute between a Republican Governor and a Democratic Senate. This injustice was shortly remedied, however, and the State's loss became the federal judiciary's gain when Judge Rodney, after a brief hiatus in private practice, was appointed to the District Court.

In a multi-judge court, Judge Leahy now became a "Chief Judge," but the difference between the two judges was in name only. Judge Leahy had a deep respect for Judge Rodney. The two Judges formed a close and supportive relationship, coping with a docket of increasing volume and complexity following the end of World War II. With the addition of Judge Rodney, the reputation of the District Court continued to gain the respect not only of the local Bar but at the national level, particularly in securities and patent litigation.

Judge Leahy authored many decisions of national importance, but two best illustrate the breadth of his ability and work ethic. One was a precedent-making antitrust proceeding and the other a suit for damages arising from a fraudulent securities transaction.

Judge Leahy attached an appendix with the heading "Dramatis Personae," in which he listed the names of all parties to the litigation together with a description of the role each played.

In what has become known as the "Du Pont Cellophane Case," Judge Leahy was asked to decide whether The Du Pont Company's manufacturing and marketing of cellophane constituted a monopoly in violation of federal antitrust law. The Justice Department filed its antitrust action in 1947. Following extensive discovery, the trial lasted 16 months. Judge Leahy's opinion issued in 1953 covered 561 typewritten pages and is reported at 118 F. Supp. 41.

In detailing the voluminous record, Judge Leahy made 834 "Findings of Fact" and 21 "Conclusions of the Master Facts." In typical direct language, he begins his final dispositive paragraph with the sentence "The facts destroy the charges here made." *Id.* at 233. His ruling was ultimately affirmed by the United States Supreme Court. 351 U.S. 377 (1956).

Another case that attracted national attention and became an oft-cited decision in the field of federal securities law involved the financier L. M. Giannini, the founder of Bank of America. The case involved a suit by minority shareholders against a company controlled by Giannini. The plaintiffs claimed to have lost the value of their shares by reason of self-dealing and misleading disclosures.

Finding in favor of the minority shareholders, Judge Leahy's opinion was recognized as a significant precedent in federal securities jurisprudence as well as in the common law of fiduciary duties. True to his penchant for the theatrical, Judge Leahy attached an appendix to the opinion with the heading "Dramatis Personae," in which he listed the names of all parties to the litigation together with a description of the role each played. The decision, *Speed v. Transamerica Corp.*, is reported at 99 F. Supp. 808 (D. Del. 1951).

Paul Leahy's judging was not confined to the courtroom. He was a fancier and breeder of setters, particularly Irish setters, perhaps reflecting his Celtic heritage. He was much in demand as a judge of dog shows and frequently journeyed to New York City for such events.

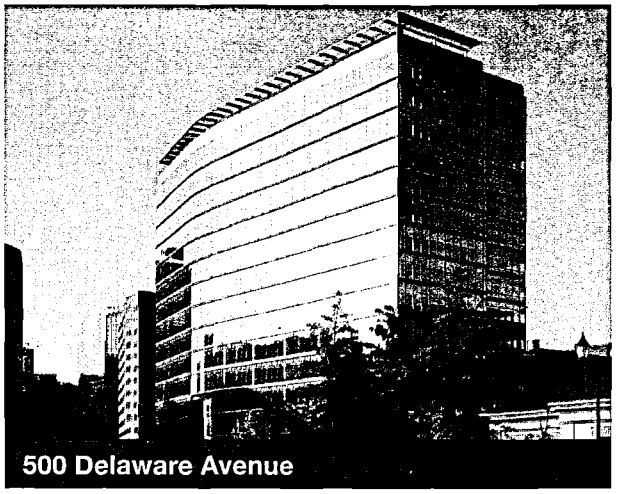
Judge Leahy and his wife were childless and he took a familial interest in his law clerks. He was an active mentor, correcting (and re-correcting) drafts of memoranda and decisions, with generous use of a red pencil. He believed in "going for the jugular," whether in writing or in argument, and encouraged his clerks to use clear

and forceful expression.

Judge Leahy assumed senior status in 1957 but continued to serve as a Judge in later years. In 1962, his law clerks gathered to celebrate his 20 years as a judge. Tom Malone, then a columnist for the *Wilmington News Journal* who regularly reported on Delaware court proceedings and personalities, wrote a column about that event. He noted that the dinner meeting to mark Judge Leahy's years of judicial service was "a gathering to honor one of their own" and "brings out the fraternalism in them and a love of The Law." These individuals, he wrote, "became friends only because they served the same judge; they keep in touch with him and each other. ... One thing these men have in common is the respect they show the language." Judge Leahy's law clerks would agree. We learned at the feet of the master.

The lawyers present at that meeting included (in order of their clerkships): Stephen E. Hamilton, Jr., Irving Morris, James P. Collins, Sr., Joseph T. Walsh, Harvey B. Rubenstein, William Weir, Stanley Sporkin and Floyd Abrams. Whatever professional success or accomplishments these individuals enjoyed, each would readily acknowedge, was attributed to a significant extent to the guidance and mentoring of an outstanding federal trial judge.

In a letter thanking his former clerks for being "The Guest" at the dinner, Judge Leahy wrote, "What I half-knew before I know full well now: there are good men on this planet and you are a pretty good representative group." To which one might respond: There are good judges on this planet and Judge Paul Leahy was a good representative. ◆



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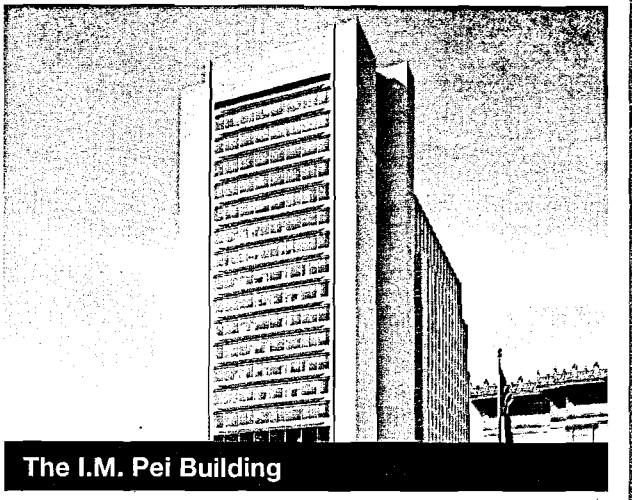

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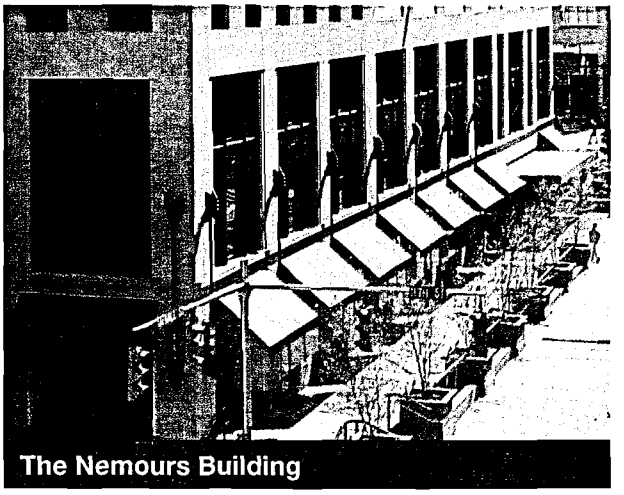

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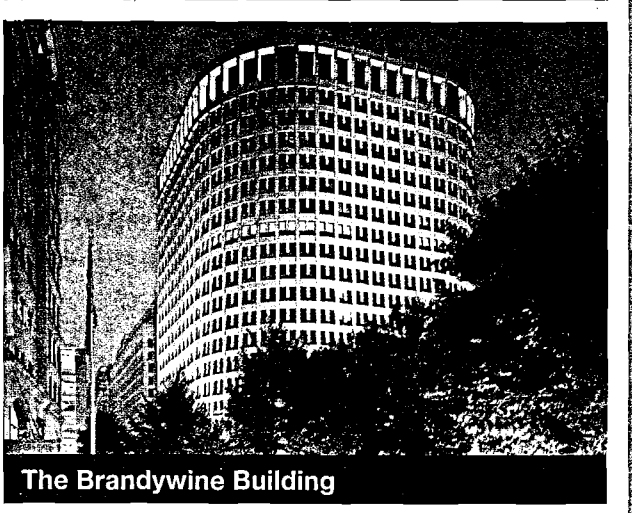

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FEATURE

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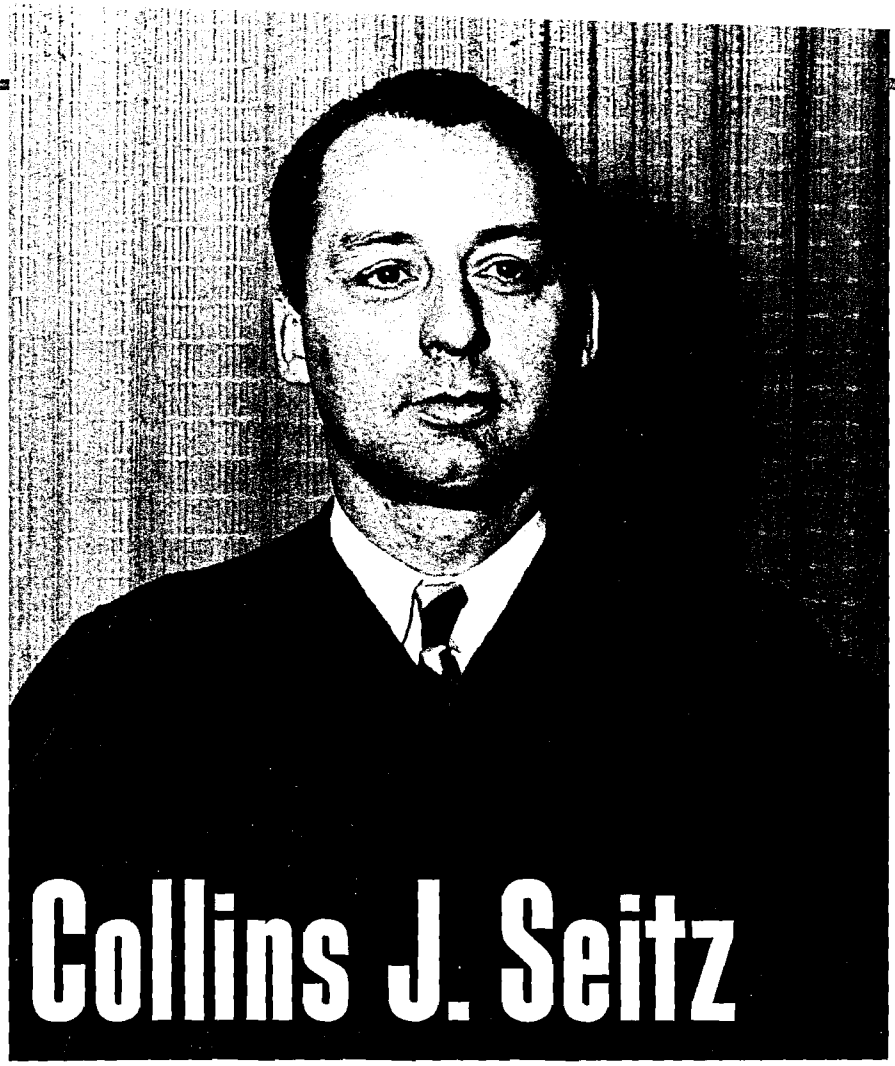


Judge Collins J. Seitz

In chambers with the great, groundbreaking Judge Seitz.

In the Spring of my second year of law school, I received a message that Judge "Sykes" had called in response to my application to be his law clerk. I soon thereafter went to Wilmington for an interview. As research methods were somewhat less accessible then, I was armed with only a few basic facts when I arrived at the interview. I knew that Judge "Sykes" was actually the Honorable Collins J. Seitz, had been a Court of Appeals Judge since 1966 (and therefore appointed by President Johnson), and was then Chief Judge of the Third Circuit.

My ace in the hole was that I remembered that there had been a handful of opinions in my Corporations casebook written by a Chancellor (or Vice-Chancellor) Seitz in the 1940s and 1950s, and I had made what I considered to be the logical deduction that Chancellor Seitz was probably Judge Seitz's father or uncle. So at an opportune time during the interview, I brought this up.

This nearly turned out badly, not because Judge Seitz thought my biographical research had been slipshod, but because he recalled the opinions much better than I did, and started asking me questions about them. In the end, I think my evident disbelief that he could have already been a judge for 35 years made up for my inability to make any intelligent remarks about the opinions.

Shortly after the interview, I received a letter offering me a clerkship. The only surprise in it was the requirement that I had to agree to live in Delaware during the clerkship. Judge Seitz was a Dela-

ware booster, but the residency requirement had a more prosaic purpose — to get more work out of the law clerks. I later learned that during the 1970s there had at times been sufficient snow and ice so that the Judge's Philadelphia-based law clerks did not make it into work as frequently as Judge Seitz liked.

I was the third to start of Judge Seitz's three 1981-82 law clerks. During the interview, I had not noticed that the Judge's chambers only had two law clerk offices. Third-come, third-served, and I worked for the year at the desk in the library. This had the advantage that when the Judge came to see the law clerks, I was usually the first one he would see.

Judge Seitz was not remote. Law clerks could walk into his office any time he was not on the phone. He rarely traveled on business except to Philadelphia for oral arguments, and I don't recall that he took any vacations. He ate lunch with us four days a week except for the weeks with oral argument. Judge Seitz wanted to know what the law clerks thought about things — the law, sports, and politics, probably in that order. He told us stories — stories about cases, stories about judges, and stories about lawyers.

The picture of Judge Seitz that emerged had a number of facets. He had a great memory. He was modest — and not a false modesty but a genuine modesty. He was even-tempered, and he was considerate of others. He was respectful of judges and lawyers. He was wise in the law, and curious about it, too. He was efficient.

Judge Seitz's modesty extended to even the most high-profile cases. Sometime well into the clerkship, I deduced from random bits of conversation that he had had some involvement with *Brown v. Board of Education*. I eventually pulled a book off a shelf and read *Belton v. Gebhart*, 87 A.2d 862 (Del. Ch. 1952). I do not remember which amazed me more — that Judge (then Chancellor) Seitz could have been involved in the 20th Century's most significant case, been the only lower court judge to reach the right result, and not have mentioned it for months, or that the opinion, written in simple declarative sentences, could have been so compelling.

The opinion also shows a judicial modesty — Chancellor Seitz could not overrule the U.S. Supreme Court's "separate but equal" jurisprudence (although he thought it was wrong), but he could find as a fact that the Delaware schools were separate and unequal.

Chancellor Seitz could not overrule the U.S. Supreme Court's "separate but equal" jurisprudence ... but he could find as a fact that the Delaware schools were separate and unequal.

Thirty years later, I saw the same modesty in an opinion (*Halderman v. Pennhurst State School & Hospital*, 673 F.2d 647, 662 (3d Cir. 1982)(en banc), *rev'd and remanded*, 405 U.S. 89 (1984)), where there was an Eleventh Amendment issue. Judge Seitz saw that the trend of the Supreme Court's Eleventh Amendment jurisprudence suggested one result, but that there were also two Supreme Court cases from 1917 that had the opposite result based on facts that could not be materially distinguished from the case under consideration.

Judge Seitz, in a separate three-paragraph opinion, only one of which dealt with the Eleventh Amendment issue, noted that the issue was "not without doubt," but that he did "not feel free to reach a contrary result in view of the United States Supreme Court authority." When the Supreme Court later reversed the Third Circuit's decision on the Eleventh Amendment issue (in a 5-to-4 decision), all nine Justices agreed that the Third Circuit's decision was consistent with the two cases, the only point of dispute being whether the 1917 cases were "implicit" (five votes) or "explicit" (four votes) in their Eleventh Amendment holding. The Supreme Court held, not surprisingly, that it could overrule its own implicit holdings.

Judge Seitz was respectful. During lunches at Gamiel's, a block from the Courthouse, the Judge used to tell stories about other judges. He abhorred arrogant behavior by judges, and had a disdain for careless errors that cause easy reversals. While Judge Seitz never backed away from a judicial problem, his sensitivity in dealing with each one was well received.

The Judge also used to tell stories about lawyers. One of the stories was about a lawyer who appeared in a Court of Chancery trial. At some point, Chancellor Seitz asked a witness a question. The lawyer then immediately asked for a recess, and when he came back, he had settled the case. The lawyer had seen something in the question that his opponent had not. Judge Seitz thought that this was the best lawyering he had ever seen. Most of the Judge's stories about lawyers put them in a good light. I believe that he thought that the vast majority of judges and lawyers were a credit to the profession.

One aspect of the Judge's respect for judges and lawyers is that he did not belittle them in opinions. He did not use sarcasm. At a time when an "unpublished" opinion meant that the opinion did not appear in the books or on the

Internet, Judge Seitz would most often write an unpublished opinion when it was necessary to reverse a judgment because a district judge had made an obvious error.

Judge Seitz was also efficient. There was a rhythm to the appeals work. When the Judge sat on a panel, it would hear oral arguments on Monday, Tuesday, Thursday and Friday. Chambers would receive the briefs for that sitting about four to six weeks in advance. The Judge's two long-serving secretaries, Marjorie Braxman (known to all as "Miss Braxman") and Margaret Gallucio (known as "Maggie"), would sort them into piles.

The Judge read them all first, mostly in the evening at home. He'd mark them as he read them — "J.O." or "Bench Memo." "J.O." could be used as a noun, a verb or an adjective. In this context, it meant a secretary should prepare a Judgment Order, which was a one-sentence order saying the case was affirmed. Such an order would then be filed the day the case was submitted. The law clerks never saw those cases.

The "Bench Memo" cases sometimes had an additional comment focusing the law clerk's attention on one aspect of the case, but for the most part "Bench Memo" was a direction to the law clerk to read the briefs and prepare a memo, usually about four single-spaced pages, discussing the case. The Judge encouraged the law clerks to state their opinion on the merits of the arguments. The clerks started preparing the bench memos about two weeks before the panel sat. Everyone read all the bench memos.

The Friday before the panel sat, the Judge and the three law clerks gathered around a small table to discuss the bench memo cases for Monday and Tuesday. There would be a similar discussion on Wednesday for the Thursday and Friday cases. These discussions were the educational highlight of the year for me. They lasted all day, and they exhausted me. They seemed to invigorate the Judge.

Judge Seitz did not think oral argument very important. He asked few questions at argument. He rarely held a different opinion after argument than the one he expressed before argument. After the panel sat, he would report to the law clerks the tentative decisions, and parcel out the opinions assigned to him, usually to the clerk who had written the bench memo. The Judge was always the senior member of the panels on which he sat, and therefore assigned the opinions. He certainly assigned himself a proportionate share of the mundane opinions.

The law clerks followed a few simple rules in drafting opinions. Keep them short! Set forth the jurisdiction at the beginning! Avoid footnotes! Decide as few issues as possible!

Judge Seitz was curious. His interest in "dubitante" opinions led one of my co-clerks and me on a bit of a snipe hunt. The Judge had long been intrigued by the Latin word "dubitante." It means doubtful. Appellate judges, when they do not agree with the majority opinion, might write a separate opinion, and label it "concurring," "dissenting," "concurring in the judgment," "concurring and dissenting," "dissenting in part," etc. Very occasionally, a judge would label the separate opinion as "dubitante." Judge Seitz did not think this was a responsible way for an appellate judge to label an opinion.

My co-clerk and I did not make any particular discoveries about the history of "dubitante" opinions, and the project was abandoned, but not until we had made the maximum use of what was then a new-fangled invention, the ability of a computer to find in a few seconds every federal opinion ever written that had the word "dubitante" in it. There were not many.

Judge Seitz was even-tempered. Most, but not all, law clerks love working for their judge. My contemporaries who worked as law clerks, with one exception (obviously not a clerk for Judge Seitz), enjoyed their experiences. There were a lot of reasons to treasure working for Judge Seitz, not the least of which was that, compared to what I saw working summers for large law firms in Washington, D.C., he was a humane boss. The only deadlines were real — the bench memos had to be done by a certain date.

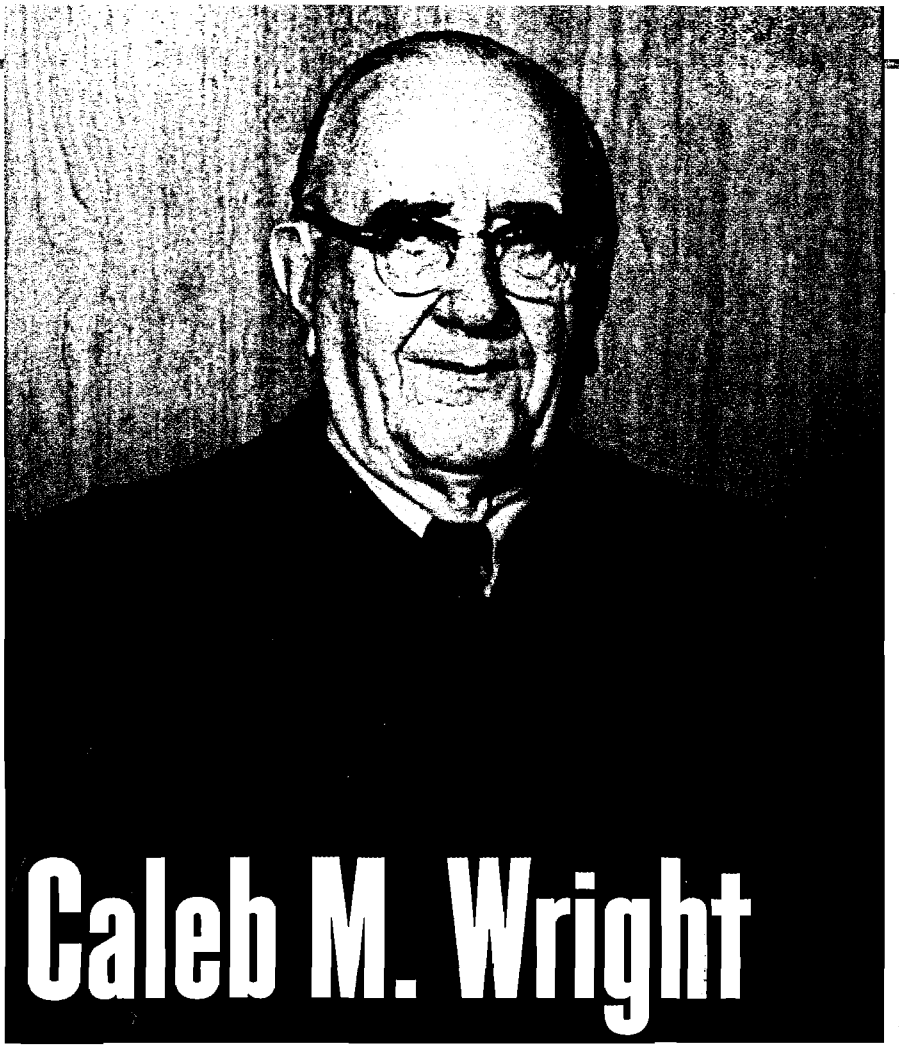
I recall only one time when I wasn't moving promptly enough. I had been assigned to draft an opinion in an NLRB case, which had at least two issues. I wrote the first part, and then put the opinion aside to work on bench memos. One day, I came to my desk, and there was the opinion, typed as far as I had gotten, but there were now about five or six sentences written in the Judge's unmistakable handwriting transitioning to the part that I hadn't written yet. I got the message, and promptly finished the draft.

I don't remember the Judge ever raising his voice or showing any anger toward his law clerks or his secretaries. Indeed, only once do I remember him showing any anger of any kind. I took a call from what turned out to be a lawyer on a pending appeal. The lawyer wanted to know when the opinion might be forthcoming, and whether its issuance couldn't be expedited. I think he told me how important the opinion would be. I related this call to Judge Seitz, who took a dim view of the lawyer's *ex parte* efforts to expedite the opinion.

Judge Seitz was not much of a sentimentalist. Many federal judges regularly have reunions of their law clerks every year, or every five years, or on some other frequent basis. After I left the Judge's service in 1982, he only had one reunion, which, if I recall correctly, was to celebrate his 50 years on the bench. A few years later he was gone.

I think Judge Seitz genuinely appreciated his law clerks. I know that his law clerks treasured the opportunity to have worked for, and to have known, this great and groundbreaking person. ◆

Murray M. Schwartz



Judge Caleb M. Wright

A teacher by example: remembering my friend and mentor.

Caleb M. Wright, born in 1908, attended the public schools of Georgetown, Delaware. Thereafter, he graduated from the University of Delaware and obtained his law degree from Yale University. He returned to Georgetown to practice law in heavily agrarian Sussex County. Among his clients was United States Senator John J. Williams. Senator Williams was disturbed that no resident of Sussex County had ever been appointed a judge on the Delaware Federal District Court.

Senator Williams submitted Caleb Wright's name to the Eisenhower Administration as his proposed nominee for a vacancy on the Delaware District Court bench. That submission triggered an upstate-downstate battle. The New Castle County Bar was aghast at the prospect of a rural country lawyer becoming a Federal District Court Judge. The New Castle County lawyers heavily favored Edwin D. Steele, Jr., a highly regarded corporate lawyer, as the nominee. They did not hesitate to voice their misgivings and opposition to Senator Williams and to all who would listen.

Predictably, the American Bar Association graded Wright as "not qualified" to be a federal judge. Given the ABA's position, the Eisenhower Administration initially declined to nominate Wright. Senator Williams, known nationally as "the conscience of the Senate," was furious. That anger translated into his advising the Eisenhower Administration that he would decline to campaign for any Republican candidate until Caleb Wright was nominated. The Administration relented, and Caleb Wright became a member of the Federal District Court

bench on August 4, 1955.

My first contact with the newly appointed Judge Wright was by phone. I requested an appointment with him, seeking to be his first law clerk. I did not know my 22-month clerkship would be spent with an extraordinary individual possessed of endearing character traits.

It did not take long for one to detect barely concealed covert hostility by some members of the upstate Bar. That attitude was especially obvious in chamber conferences. Unaware of the nomination history noted above and quickly becoming comfortable in my relationship with Judge Wright, I asked him why some of the lawyers projected underlying hostility. He detailed the nomination history and concluded with a prophetic statement. "If I do my job, they will come around."

Judge Wright was possessed of so many favorable character traits that his prophecy inevitably and rather quickly became fact. He possessed a keen intellect masked by a Sussex County drawl and a judicial temperament most judges could only hope to emulate. Civility and humility were paramount no matter the station in life of the person with whom he interacted. His lack of pretension and open warmth put all in his presence at ease.

Questions of law were invariably discussed at length. He always was in quest of the "right answer." In one instance, he foresaw a nettlesome upcoming legal issue in an area where the law was evolving. Ultimately he called a law school professor. After an extended discussion with the professor, he was satisfied he was correct as to his proposed resolution.

Judge Wright was also a caring person. The only deduction he could make about my finances was that I was living in the YMCA. About the third or fourth month into my clerkship, my paycheck from the Administrative Office of the United States Courts was larger than previous checks. I went to him and told him what occurred. He smiled and shared with me a letter he had written to the Administrative Office. It was a masterful letter, explaining why his law clerk was entitled to a raise.

Judge Wright had a sense of humor that occasionally was exercised at the expense of his law clerks. Then 48 years old, Judge Wright was lonely. He missed his wife, Katie, and three boys, who had not yet moved to New Castle County. Occasionally, he would invite me to join him for dinner in the Brandywine Room in the Hotel du Pont. Over dinner and out of the blue he asked how old a man should be before he has no more children. I was caught off guard. Worse, I had not yet learned he always had a reason when he asked a seemingly innocuous question. I answered 35. He then said, "Katie is pregnant." There was no place for me to hide!

Civility and humility were paramount no matter the station in life of the person with whom he interacted. His lack of pretension and open warmth put all in his presence at ease.

Another time he announced we were going to buy a baby bassinette. When he asked to see a bassinette, the storeowner replied something to the effect that the store had not carried bassinettes for a long time. With that comment, he wheeled around, slammed his fedora on his head, saying "I haven't been in the baby business for a long time," and walked out of the store with me in tow. I stole a backward glance at the storeowner, who was trying to suppress a laugh.

Another example of his humor (admittedly low key) was related by Judge Ralph Winter, a former Judge Wright law clerk. Judge Wright regarded Beefeater martinis "as the hallmark of an advanced society." Judge Winter remembers an occasion in the 1970s when *The Wall Street Journal* published a short article noting martinis were going out of style and had become, in the lexicon of today, "politically incorrect." He received a note from Judge Wright with a copy of the article declaring that this trend marked the end of civilization as we knew it. In the 1980s, *The Wall Street Journal* published a longer article suggesting martinis were making a comeback. Thereafter, Judge Winter received another note from Judge Wright optimistically declaring there was still hope for mankind.

Don Sparks tells about when he was literally caught napping. During his clerkship he and his wife had their first baby and were getting very little sleep. After lunch, he fell asleep at his desk. Upon discovering his law clerk sleeping, Judge Wright assembled as many law clerks, secretaries and court personnel as could be found and herded them into Don's small office. After photographs were taken, they woke him up. After the laughter ceased, Don relates, "The Judge's kindness of spirit and concern were evident in his gentle comment that babies generally started sleeping through the night when they could eat cereal and not just drink milk."

Judge Wright was capable of doing the unexpected. Judge Albert Maris, a much beloved Third Circuit Judge, had died and Judge Walter Stapleton was going to his Quaker memorial service in Philadelphia. He called Judge Wright and asked him if he cared to go. Judge Wright said yes. As they were riding to Philadelphia, Judge Stapleton said, "Now, Cale, this is a little different. This is a Quaker service and people will

simply sit until someone wants to speak and then he or she will stand up and speak." Judge Wright's response was, "That's strange."

The meeting house was large and packed. There was silence and then the first person spoke. A few minutes went by and, lo and behold, Judge Wright was on his feet explaining that he had been assigned to Philadelphia for his initial trial as a judge. Judge Maris had come to his borrowed chambers, reassured Judge Wright and spent 45 minutes with him, an act of kindness he would not forget. To say Judge Stapleton was surprised is a vast understatement.

Judge Wright one day declared we were going to tour Sussex County. At one point we came to a road and he volunteered we were not going down that road. He explained either Senator Williams' business or home (I do not recall which) was on the road. Judge Wright's car had a judicial license plate with the initials CMW. While never discussed, the only possible explanation was he was concerned Senator Williams might see him. Knowing the Senator well, Judge Wright knew the Senator would take a dim view of him not being in the courthouse on a weekday.

Toward the end of my clerkship it became obvious that Judge Wright was uncanny in his ability to get people to agree with him. This agreement occurred even though the other person was lukewarm or opposed to whatever the Judge wanted. His approach that led to so much success was to begin negotiating before the other party knew they were in a negotiation. He had elevated this tactic to an art form. As will be seen, one could know his method of achieving agreement and still end up submitting to his desired result even though opposed to it.

Judge Wright became Chief Judge in 1957, succeeding Chief Judge Paul Leahy who had become incapacitated. He served as Chief Judge until 1973. His administration of the Court was flawless. For example, three years after becoming Chief Judge he was faced with a potential administrative boiling cauldron. In 1957, Judge Caleb Layton, III, a Superior Court Judge in New Castle County, was appointed as a District Court Judge. In 1958, Edwin D. Steele, Jr., was appointed as a District Court Judge. Shortly thereafter and with Judge Wright's urging and encouragement, former Chief Judge Leahy resumed his duties as a Senior Judge along with Senior Judge Richard Rodney, also a New Castle County resident. The newly constituted bench consisted of a Chief Judge from Sussex County and four judges from New Castle County, one of whom had been a potential nominee for Judge Wright's position on the bench.

On the newly formed Court there was no underhandedness, backbiting or division into factions. Judge Wright's warmth, openness and personality quickly led to development of an exceptionally high degree of collegiality within the Court.

After completing my clerkship, Judge Wright became my mentor and I became his confidant on court administrative matters. If he wanted to discuss a matter, he would call, suggesting we get together for lunch. Those words meant that he wanted to talk. Over time, it developed that the distance from the designated restaurant to the courthouse varied directly with the seriousness of the subject. All discussions were in restaurants within the City of Wilmington until 1969. In that year he called and suggested going to lunch at the Chadds Ford Inn in Pennsylvania!

As we ate, Judge Wright told me he had to appoint a new Referee in Bankruptcy, then a part-time position (now Bankruptcy Judge and full-

time). We identified the lawyers that collectively he and I knew appeared in the Bankruptcy Court. He then said, "Let's talk about the strong points and weak points of each attorney." Both of us contributed, with him egging me on as to the weak points.

When we exhausted the names, he stared at me and said, "I know whom I want." I said, "Oh, no, you don't. I don't know anything about bankruptcy." He said, "You can learn." I capitulated and shortly thereafter he appointed me as a Referee in Bankruptcy. His approach was so disarming it was months later when I realized that I had been in negotiation and didn't know it.

Judge Wright developed an interest and expertise in patent litigation. This "country lawyer" "speedily acquired an amazing knowledge of the complex patent laws and an ability to understand and evaluate the seemingly incomprehensible technical jargon of some patent witnesses." *Delaware Lawyer* March 1989. Judge Wright's nationwide reputation in adjudicating patent cases single-handedly caused the District of Delaware to become a favored forum in which to file patent suits.

His brethren, both when he was active and later as a Senior Judge, were hardly distressed with his taking more than his fair share of patent cases. Judge Wright's sterling reputation as a patent judge also resulted in his appointment in 1975 to serve a two-year term on the Advisory Committee to the United States Patent and Trademark Office.

In addition to patent cases, Judge Wright also presided over the usual mix of criminal and civil litigation. When he knew a particular decision would alienate the public or personal friends, he did not flinch. For example, in a high-profile state criminal case three men had raped a woman. The Justices of the Delaware Supreme Court affirmed their convictions. The Justices were all friends of Judge Wright.

The defendants sought federal habeas corpus relief in the Delaware District Court. In the matter before Judge Wright it was obvious that law enforcement officers lied in the state trial court. They testified there was one confession while the defendants asserted there were two. Judge Wright found the effect was directly to undermine and discredit the credibility of the defendants. He granted the writ and ordered a new trial. To say the Delaware Supreme Court Justices were upset would be an understatement. Indeed, one of the Justices ranted about issuance of the writ at a Bar meeting.

On the civil side, Judge Wright was a member of a three-judge court hearing a high-profile desegregation case. The court consisted of Third Circuit Appellate Judge John Gibbons, Judge Wright and Judge Layton. A divided Court, with Judge Wright writing the majority decision joined by Judge Gibbons, concluded a constitutional violation had been committed by the State of Delaware. Judge Layton dissented. The decision was greeted with muted protests by public and state school and local authorities.

Judge Wright was a mentor to all of his law clerks. He taught by example. One came away with a thorough knowledge of what judges do and how they do it. Further, they learned that attention to detail was essential and high-quality briefing should be the standard. They also learned that during oral argument counsel should make no misstatement of fact or misciting of authority. If it occurred, Judge Wright, if he chose and with excruciating politeness, would ask a penetrating question that literally destroyed the lawyer's position.

They also learned anything other than civility in the courtroom would not be tolerated. Judge Winter recounts that during his clerkship year an out-of-state lawyer, while presenting his oral argument, passed far beyond the bounds of civility. Judge Wright declared a 10-minute recess, and whispered to the Clerk of the Court, Ed Pollard, something to the effect that the lawyer should be informed of how law is practiced in Delaware.

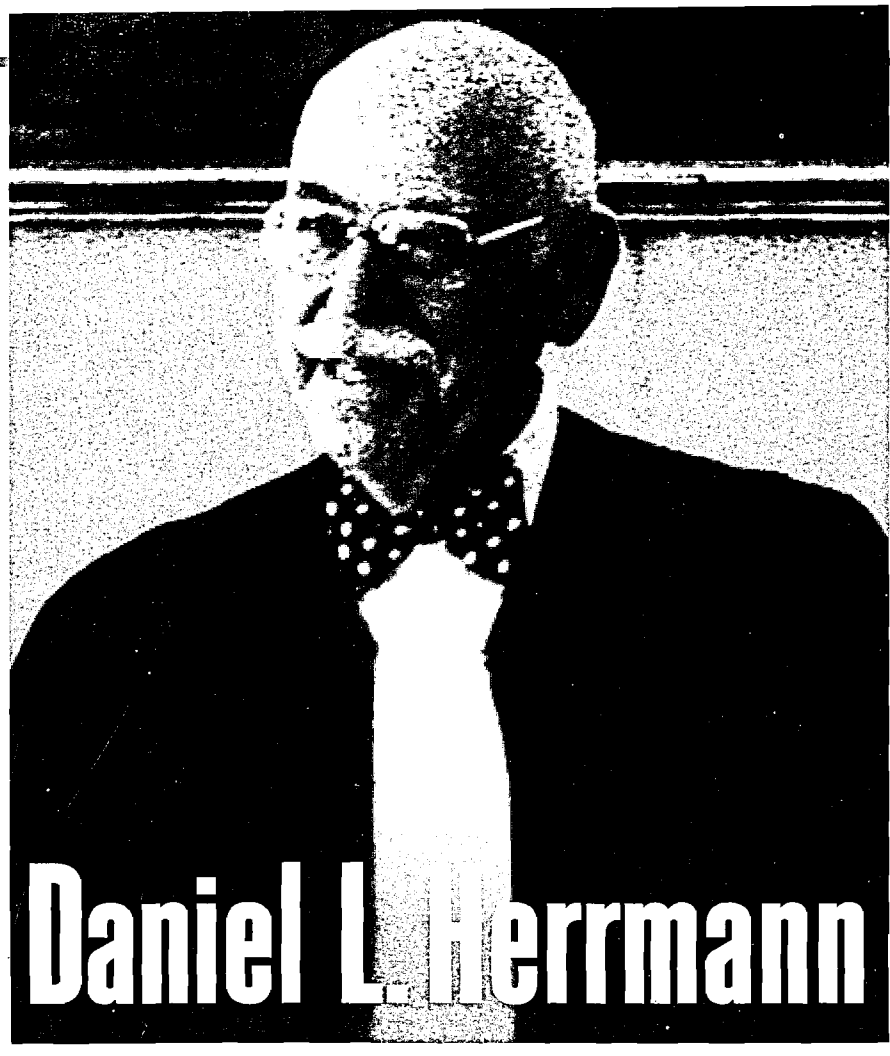
Judge Wright's mentoring and advice proved to be critical for me. Judge Wright had announced he was going on senior status, thereby creating a vacancy on the District Court. In due course, there appeared in the local newspaper a story that I was the front-runner for the position. I did not know what to do. I decided I would go to United States Senator William Roth and explain to him I had nothing to do with the article. But before I did, I wanted to discuss my intent with Judge Wright.

I called him and briefly stated what I planned to do. His instant response was "Come over to the office immediately." When I got there, I told him again what I felt I had to do. In a gruff voice he asked, "Do you want this job?" I said, "Yes." He then said, "You're too dumb in political things. Go back to your office and practice law." Those were his exact words.

I was initially hurt as I walked out of the Courthouse. However, before I reached my office, I reluctantly concluded he was correct. At the same time I was puzzled. I had never heard Judge Wright speak of another individual's abilities in negative terms. I then turned to why this gracious man chose this out-of-character language. I concluded, and I think correctly, that he wanted to be sure that I got the message and not get involved.

Judge Wright's first three law clerks became federal judges. I was the first. His second law clerk was Stanley Sporkin, who became a federal judge in the District of Columbia (since resigned). Ralph Winter, his third law clerk, became a judge on the Second Circuit Court of Appeals. The fact that we became federal judges is a tribute, in part, to the teaching and mentoring of Judge Wright. ◆

Thomas L. Ambro



Chief Justice Daniel L. Herrmann

A look back at his achievements and the lessons I learned as his clerk.

"Upon reflection . . . I am convinced that there is a window through which the legacy of his service and commitment will continue to influence the course of the Delaware courts toward an even fairer system of justice."

Anthony J. Santoro,
Tribute to Daniel L. Herrmann: Chief Administrator of Justice
10 Del. J. Corp. Law 367 (1985).

I knew Daniel L. Herrmann, former Chief Justice of the Delaware Supreme Court, as a clerk. Nearly three and one-half decades later, I still think of him that way. Having become my dream of being a judge, I can say safely that I learned the foundations of judging, and being a judge, from him.

The Chief Justice was straight from Central Casting for judges. With his bald head and mustache, he looked the twin of the depiction we would see on Lipton Tea. Indeed, we used to joke that the Chief had a good trademark infringement action.

Daniel Herrmann did not start out in Central Casting. He was born in June 1913 in New York City. His family moved to Wilmington when he was two. He graduated from Wilmington High School in 1931 and the University of Delaware in 1935. Four years later (he was a night student), he graduated from the Georgetown University Law Center. In 1940, he married Zelda Kluger, and had two sons, Stephen and Richard, both of whom still practice law in Wilmington.

After passing the Bar, Herrmann's first legal job was for Wilmington attorney (and later Superior Court Judge) Stewart Lynch. A piece of Delaware legal trivia is that his first office-mate was Collins Seitz, who

would become renowned as the first Judge in America to integrate public elementary and high schools. Herrmann stayed at this job until 1942, when he entered the United States Army (he did so despite having one leg significantly shorter than the other). He was discharged in 1946 as a Major.

After returning to private practice and three years as an Assistant U.S. Attorney in Delaware, Herrmann became a Judge on the Superior Court in 1951. He served seven years, leaving because the compensation was too low to pay for his sons' education. On leaving, he partnered in private practice with his later judicial colleague, William Duffy. When Duffy became a Superior Court Judge in 1961, Herrmann became a name partner at Herrmann, Bayard, Brill & Russell. During these years in private practice, Herrmann was the principal attorney representing the State in its condemnation of property that made way for Interstate 95.

Herrmann returned to the bench in 1965 as the nominee of then-Governor Elbert Carvel to the Delaware Supreme Court. In 1973 he became the State's Chief Justice. It was during this 12-year term that the Chief changed Delaware's judicial system. His accomplishments, if done in detail, would dwarf the space allotted to this tribute. Surface snippets must suffice:

- Establishing a State of the Judiciary Address by the Chief Justice;
- Setting the goal of beginning felony trials within 120 days of arrest;
- What was known as the Public Building becoming exclusively the Wilmington Courthouse;
- Expanding and renovating facilities for the Supreme Court and Court of Chancery in Kent County;
- New permanent chambers in Wilmington for justices residing there;
- New building for the Family Court in New Castle County;
- Enlarging the Family Court facility in Sussex County;
- Acquiring a site for a new Family Court facility in Kent County;
- Acquiring and implementing a computer-based information system for the State-court system;
- Expanding the Supreme Court from three to five justices;
- Creating an additional vice-chancellorship;
- Proposing two additional Superior Court judges;
- Expanding the Family Court by four judges;
- Increasing judicial compensation to make it comparable to that of neighboring states and, in the process, proposing what became the Delaware Compensation Commission;
- Including the judiciary in annual cost-of-living pay adjustments;
- Establishing the Long Range Courts Planning Committee;
- Establishing the Delaware Judicial Nominating Commission;
- Revising the rules of the Supreme Court;
- Amending the Superior Court discovery rules;
- Adopting new rules of evidence;
- Permitting third-year law students limited practice in certain courts;
- Establishing compulsory non-binding arbitration rules for the Superior Court;
- Producing an Appellate Handbook;
- Establishing a procedure for certification of legal issues to the Delaware Supreme Court;
- Establishing the Interest on Lawyers Trust Accounts (IOLTA) to fund legal services for indigent clients and other public interest programs;
- Adopting a new Code of Judicial Conduct and revising rules of the Court on the Judiciary;
- Restructuring the Board on Professional Responsibility, creating an Office of Disciplinary Counsel and revising the State Bar's disciplinary system;
- Organizing the Bar-Bench-Press Conference;
- Opening the Supreme Court to photographic and news coverage;
- Creating public education programs concerning Delaware's legal system;
- Dramatically expanding the State-court administrative personnel; and
- Restructuring procedures dealing with, among other things, procurement, dissemination of opinions and access to court records.

Even now, to recite these accomplishments (and, remember, the list is incomplete) is to numb our sense of awareness of the significance of each.

Few today recall Daniel Herrmann's decisions. Ironically, two of his decisions were my introduction to him. In my law school corporate law class I read *Lehrman v. Cohen*, 222 A.2d 800 (Del. 1966), and the oft-cited *Schnell v. Chris-Craft Industries*, 285 A.2d 437 (Del. 1971).

Lehrman involved whether equal owners of Giant Food, Inc., could create and issue a single share in a new class of stock for the purpose of electing a fifth director to break future deadlocks on the board. All went well until the first deadlock, resulting in a suit by the outvoted side. Writing for the Supreme Court, then-Justice Herrmann held, *inter alia*, that the arrangement was neither an illegal voting trust nor an illegal delegation of director duties in dealing with deadlocks. The case underscored the primary role of the Delaware General Corporation Law in resolving board stalemates in decision-making.

Schnell was remarkably short (less than two full pages of text) for saying so much (a lesson I confess I have unlearned). That brevity underscores the point of the opinion — strict compliance with the General Corporation Law

provisions to keep incumbent directors in place, while frustrating efforts of dissident shareholders seeking to unseat those directors by a proxy contest, may not stand – as "inequitable action does not become permissible simply because it is legally possible." 285 A.2d at 439.

The last opinion I note is one in which I had personal involvement — *Martin v. Ryder Truck Rental, Inc.*, 353 A.2d 581 (Del. 1976). It became nationally known in the products liability area. Ryder leased a truck to a company. While its employee was driving the truck, its brakes failed, resulting in the truck hitting one car and it in turn hit the car driven by Dorothy Martin. She sued Ryder for strict tort liability (that is, liability without proof of negligence).

Ryder's defense was that, if Delaware intended to extend strict tort liability to leases or bailments for hire (in effect, entrusting your property to another without changing ownership), its General Assembly would have done so when it enacted the Uniform Commercial Code. All that was available was UCC § 2-318, which extended the waiver of contractual privity only to persons who reasonably could be expected to use or be affected by the breach of a warranty. This provision, however, dealt with sales of property, and Martin's case involved but the lease of a truck.

Chief Justice Herrmann, writing for the Court, held that under Delaware's common law Martin could sue Ryder, though she had no contract with it, under a theory of strict tort liability. It was the first case in the country to allow such a theory of recovery to an injured person not a party to the lease of an item (the truck) that malfunctioned.

I clerked for Chief Justice Herrmann at the time *Ryder* was drafted and published. Some suggested that it was I who convinced the Chief to issue this groundbreaking opinion. I assure you the decision was his, and in any event he was the one who got his colleagues to go along with this result (though Justice Duffy concurred on a separate basis). As we were drafting the opinion on another track of analysis, the Chief requested that I give to him over the Christmas holidays treatises on strict tort liability. I did so. He returned with the statement that strict tort liability as a common law principle was the way to go, and that applying it in a non-sale case involving a third party made no difference.

Martin v. Ryder was among the many lessons I learned from the Chief:

Martin v. Ryder was among the many lessons I learned from the Chief: question the communal ruts made by others who go before always in the same way. Those others may be right, but ask why.

question the communal ruts made by others who go before always in the same way. Those others may be right, but ask why. If the answer comes up short, ask why not another way. If you go the other way, explain yourself.

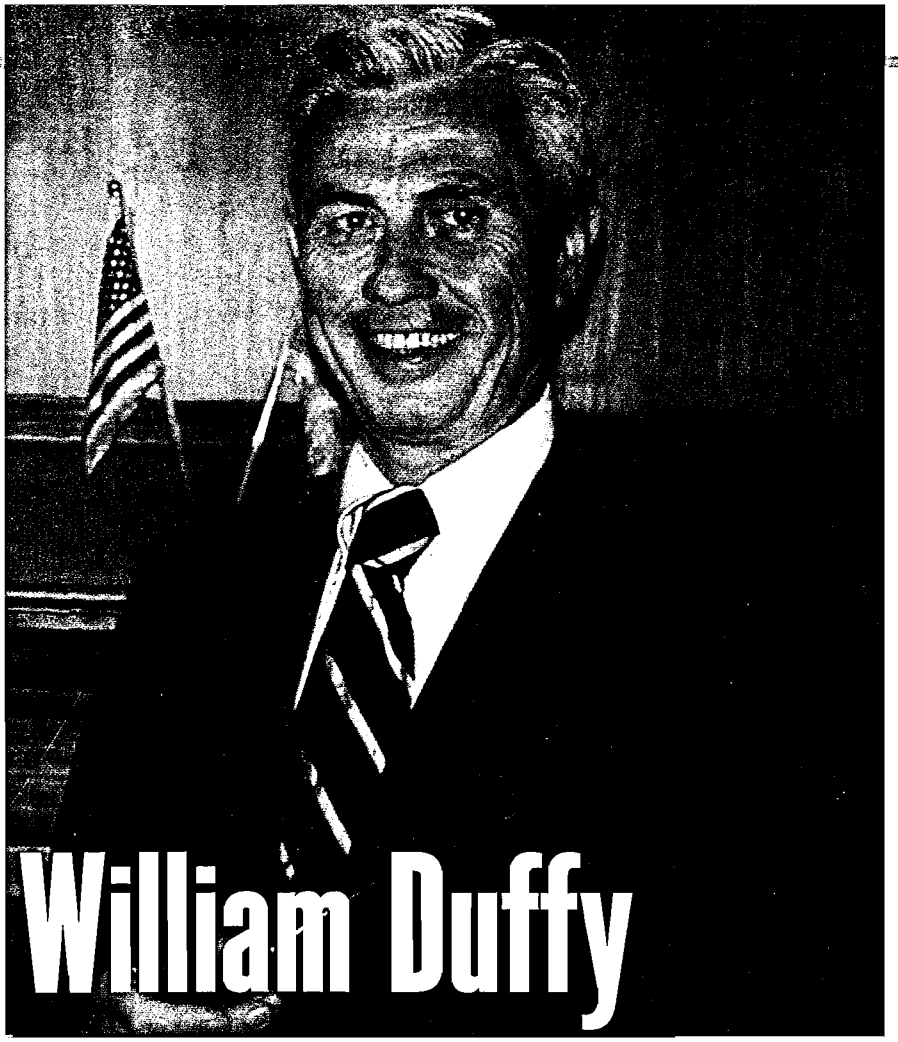
Looking back, other lessons learned come back with a startle. I did not come to them by my logic, but by experience. They continue (in no particular order) as follows:

- Always review the original text of a statute, agreement or court document carefully to be sure we understand the words in dispute. Indeed, never accept, sight unseen of the provision, the interpretation of another.
- Treat your colleagues with respect. You need them every bit as much as, or more than, they need you.
- The more power you have, the less you should need to use it. The respect is for the title.
- Make sure you measure up. Part of measuring up is not reminding people of that title, but rather that you as a person care and can be trusted to do what you believe is right in any particular dispute.
- No matter how good you think you have written something, it can be better. Last-minute changes not only should be tolerated, they should be expected.
- People perceive you by how you dress. If you want respect, start with the first thing people notice about you. No police officer would be out of uniform. No judge doing the business of a court should be either.

All of these lessons come from a man who was more comfortable giving you his opinion ("Here is what I might do in your position.") than advice ("Here is what you should do."). It also came with a sense of humor most have forgotten. (I have yet to have anyone comment on the Chief's sense of timing in telling a joke. Whether practiced or intuitive (or both), it was Bennyesque.)

In thinking back, I wish the Chief and I had more conversations. They were special. Maybe it was because we had the same interests (politics was surely one), perhaps it was that we both loved gossip (guys just don't admit it), it may have been the same approach to opinion writing, maybe we shared the same shortcomings and fears, but the chemistry was good. Indeed, that may have been the best lesson — share times with friends, especially those who give their best and in the process make us better. Thanks, Chief. ◆

Jack B. Jacobs



Justice William Duffy

An iconic judge whose personal touch left an enduring legacy.

There are many who knew William Duffy, and of those I am certain that some would be able to write about him in an objective way. But I am not one of them; for me to claim any objectivity about him would be disingenuous. During the decades that I was privileged to know Bill Duffy, first as mentor and later as personal friend, my regard for him never progressed beyond the hero worship stage. I say this at the outset lest any reader be tempted to find one iota of objectivity in these remarks.

The historical record, of course, does lend itself to objective reporting. During his professional life Bill Duffy served as a judge on all of Delaware's then-Constitutional courts: as Associate and later President Judge of the Superior Court, on which he served from 1961 to 1966; as Chancellor of the Court of Chancery, on which he served from 1966 to 1973; and as Justice of the Supreme Court, on which he served until 1982.

Before becoming a judge, Mr. Duffy was a lawyer and law partner of Daniel Herrmann, who later would become a Supreme Court Justice, Chief Justice, and Justice Duffy's colleague on that bench. After leaving the judiciary in 1982, Justice Duffy served for many years as a distinguished Professor of Law at Widener University Law School, and as a trustee of the Catholic Diocese Foundation.

William Duffy was a decorated war hero. After graduating from the University of Delaware in 1940, he served in World War II as a fighter pilot in the Army Air Corps. After graduating from the University of Pennsylvania Law School and going into private practice,

he again served in 1951-52, this time in Korea as a fighter pilot in the U.S. Air Force. For his service to our country he was decorated with the Distinguished Flying Cross with oak leaf clusters and with the Air Medal with four oak leaf clusters.

He was also a devoted husband, married for more than 48 years to Mary Louise Raskob (affectionately known to her friends and family as "Boo") and father of their four children: Kathleen, Eileen, Gerardine and Michael.

During his lifetime, Bill Duffy received many honors and awards. Among them were: the Lane Bryant Award in December 1951 for his work with the Interracial Council, a pioneering organization whose goal was to promote equal rights for, and better relations with, minorities; an honorary Doctor of Law degree from Villanova University Law School and an honorary member of that Law School's Order of the Coif; National Human Relations Citations by the National Conference of Christians and Jews; the Papal Award in 1965; the First State Distinguished Service Award in 1991; and the St. Thomas More Award in 1994.

But this only scratches the surface. These objective facts may describe the iconic Bill Duffy, but not the real person that we came to know, both on and off the bench. To capture a true sense of the man who richly deserved these many honors, titles and decorations, the story must be told in a different way. And, having only one perspective to share, that is the one that colors my portrayal of him.

I came to Delaware in 1967, a 25-year-old-law school graduate, to clerk for the Superior Court and the Court of Chancery. I served as a law clerk for Chancellor Duffy (nine months) and for Superior Court Judge (and later Chancellor and thereafter Justice) William T. Quillen (three months). I came with much trepidation, having grown up in Houston, Texas, without worldly or social background, and knowing no one in Delaware. In all candor, my law school record was less than stellar and I suffered from a world-class lack of confidence in my legal ability and my prospects for success as a lawyer.

Nonetheless, I was fortunate to be offered the clerkship position and, on my first trip to Delaware, to meet William Duffy, the Chancellor of Delaware, a man of exalted position and of considerable accomplishment and influence. For me, who was (as the saying goes) none of the above, I expected to be intimidated. But it was not for long. In short order, the Chancellor soon put those concerns to rest.

My first days on the job taught all of his law clerks that the Chancellor was a down-to-earth human being. Although reserved, he always had a twinkle in his eye and a big smile. And, he made it clear both by word and by deed that to him one's background and social position mattered not at all. What mattered was one's intrinsic worth as a person. What mattered also was that his law clerks bring to bear in performing their duties the same diligence, devotion, relentless discipline in the application of logic, and leavening sense of fairness that became Chancellor Duffy's unique professional hallmark in deciding cases and writing opinions.

He forced us to elevate ourselves to his seemingly unattainable professional standards, and in the process he made us feel worthy and to strive to do our best. He showed us (contrary to the now-anachronistic teachings of former Harvard Law School Dean Christopher Langdell) that law was not a science but an art, and that to him the crafting of judicial opinions was art of the highest intellectual and moral form. That pride of craft, I firmly believe, indelibly influenced my own aspiration, first as a practitioner and then as a judge, to perform at the highest level of our profession.

What an experience it was to read a Duffy opinion. One Delaware lawyer, Bill Wiggin, himself a talented writer, described a Duffy corporate decision as "like Little Nell ... [,] probably too pure to live, at least in all its celestial radiance." William T. Quillen and Michael Hanrahan, *A Short History of the Delaware Court of Chancery: 1792-1992* (published as a chapter in a book specially created in celebration of the Bicentennial of the Court of Chancery entitled *Court of Chancery of the State of Delaware: 1792-1992*), at 45.

True enough, but there is much more. Space limitations do not permit an extended analysis of Bill Duffy's jurisprudence. I do think it fair, though, to describe a Duffy opinion as having three signature characteristics. The first is utter simplicity of form, an almost Spartan reduction of the complex to the simple. A reader would never find in those opinions any verbosity, any legalese, any convoluted logic or expression. The second is an evenhanded, dispassionate way of stating the positions of each side on each issue, followed by an equally soft spoken, non-argumentative, sensitive resolution of that issue. And the third was an overriding sense of the judicial mission, namely, to achieve a just result by faithful application of the law or (in Chancery cases) principles of equity.

Without detracting from the high quality of any Duffy opinion, three that exemplify these qualities include: *Levien v. Sinclair Oil Corp.*, 261 A.2d 911 (Del. Ch. 1969); *aff'd in part, rev'd in part*, 280 A.2d 717 (Del. 1971); *Singer v. Magnavox*, 380 A.2d 969 (Del. 1977); and *Severns v. Wilmington Medical Center, Inc.*, 421 A.2d 1334 (Del. 1980). These signature qualities made his opinions a joy to read, but (for me at least) almost impossible to emulate.

I do not mean to suggest that my personal experience with the Chancellor was in any way unique. During his years on the bench, Bill Duffy touched his mentees and many others profoundly and in the same way. He was caring when he did not have to be. He communicated

his appreciation of the unique qualities of each person with whom he worked. He radiated a quiet, dignified affection that was unselfish and that was always reciprocated in abundance.

Over the years, and in my own periodic encounters with the Chancellor, after we would finish discussing whatever legal matter was at hand, he would always ask what was new in my personal and professional life, and with my family. Again, this was not unique to me, because every office conference between Chancellor Duffy and the members of our Bar would always involve some individual, personal encounter. This one-to-one relationship between Delaware judge and Delaware lawyer has always been one of the treasures of membership in our Delaware Bar, and Chancellor Duffy was its personification.

Is it any wonder, then, that a newcomer witnessing these encounters would quickly conclude what a marvelous place Delaware must be to practice law? That was a major reason why I decided to become a Delaware lawyer, as it was for many other clerks as well.

Even after retiring from the Bench, Bill Duffy was always available to preside over specific cases as a trial judge by special assignment, when other judges on that court were overwhelmed by their own caseloads. I vividly recall one such occasion. When I was on the Court of Chancery, he agreed to accept an appointment as acting Vice Chancellor to preside over the Pillsbury-takeover litigation. *Grand Metropolitan Public Ltd. v. The Pillsbury Company, et. al.*, 558 A.2d 1049 (Del. Ch. 1988). To assist him on that case, we assigned a law clerk to him full-time. One afternoon while the case was in progress, I spoke with that law clerk and asked how she enjoyed working with the former Chancellor. Her response was that the first time she saw him with his silvery hair and his quiet, reserved demeanor, she was positive that he was an actor sent over by Central Casting!

How true, but it was no act. He had that rare ability to do by instinct what was fair and right, and it was inevitable that those qualities would come to define him as a judge. He was by disposition made for the job. He personified equity, and not coincidentally his patron saint was Thomas More.

The *Severns* case, in particular, supports the view of many that Duffy was "born to be a Chancellor." In that case, the Court of Chancery was asked to appoint a guardian to consent to withdraw life support systems from a woman who, as a result of an automobile accident, was comatose and would not recover cognitive brain functions. As a Justice of the Supreme Court on a certified question from Chancery, he wrote:

> The situation in which Mr. Severns finds himself, then, is this: his wife has a constitutional right to accept or reject medical assistance; she is unconscious and, for that reason, she cannot assert that right; under the ruling made herein, he is the guardian of his wife's person, with standing to assert the right which she cannot voice; there is not a Delaware statute providing for the kind of relief he seeks; he cannot assert his wife's constitutional right in any law Court of this State. Of course the Court of Chancery will grant him relief under those circumstances, if he proves his right to it. That is what equity jurisprudence has been all about since its beginnings. 421 A.2d at 1347-48.

But while Justice Duffy was compassionate, when the situation so required he could be as hard as nails. Empathetic though he might be to the litigants before him, woe be to any who transgressed the command of the law, particularly fiduciaries who behaved inequitably or who were otherwise derelict in their duties to their beneficiaries. A sympathetic person he

was, but when the obligation to uphold standards of conduct was at stake, he demanded of all attorneys — including his former law clerks — adherence to the same exacting standards that he always imposed upon himself.

That said, Bill Duffy was always humble, and although he could have done so, he never displayed any ego. One example: in the late 1980s, his former and then-current law clerks organized a ceremonial dinner in his honor. The affair, an intimate gathering, was supposed to end very early because he had to go to work the next day. The formal part of the program was supposed to consist of a brief war story by each law clerk about his or her experience with Chancellor (or Justice) Duffy. However, the turnout was so large, and each person's expression of affection was so moving, that the affair did not end until late in the evening.

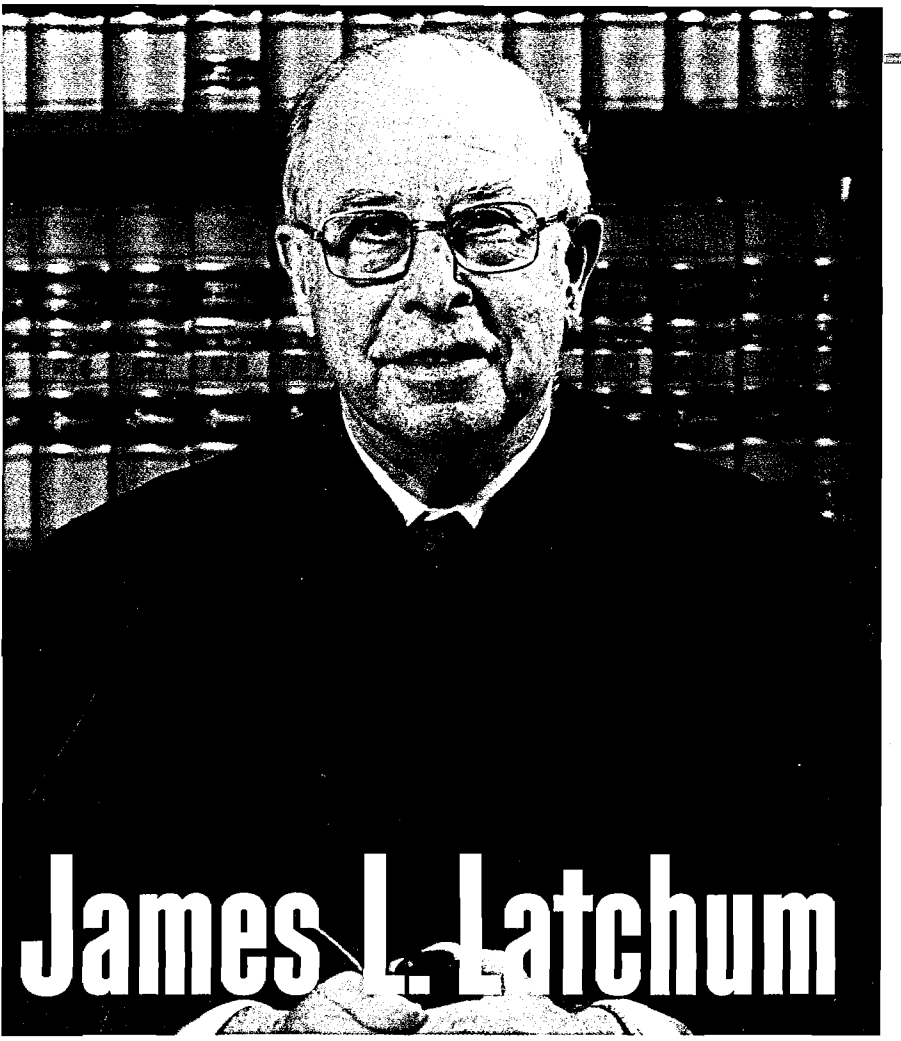
Needless to say, Bill Duffy – who was, above all else, a modest man — was grateful but embarrassed by the whole thing, and doubtlessly wondered why so many people would make such a fuss over him. Genuine humility was his hallmark.

Another hallmark was the relentless hospitality that he and his wife displayed. One cold weekend in Vermont several years ago, I took my family on a ski trip. Knowing that Justice Duffy had a home nearby, I decided to call him just to say a brief hello. The next thing we knew we were invited (actually, mandated) to visit and go skiing with them. So we did. What a wonderful time they showed us. The memories of Mrs. Duffy's hospitality — and of Bill Duffy driving us around his farm on that icy day in his 40-year-old green truck, and after that skiing circles around the Jacobs family, who were considerably younger — will always remain vivid.

As will his puckish sense of humor. Shortly before he contracted the illness that eventually became fatal, I became concerned about a periodical article that contained a reference to me, as a judge, that I thought was unflattering. I decided to show the article to him for his opinion. He looked at it, but made no comment. One week later, he sent a copy of it back to me with a one-sentence note that said simply: "Jack, the life of a Lord Chancellor is not always a happy one." That kind of good-humored wisdom, to which I can only aspire, put the whole non-issue into proper perspective.

These are only a few of the reasons why the Delaware Bar revered Bill Duffy, and that is why I make no claim of objectivity in writing about him. Undoubtedly, Judge, Chancellor, Justice Duffy, like the rest of us mortals, had his flaws. Undoubtedly his Creator and his wife were aware of them. But, to me and many of his admirers, they will be unknown. ◆

Kent A. Jordan



Judge James L. Latchum

Practical wisdom, practical jokes and a practically perfect mentor.

It is an honor to provide some reflections on United States District Judge James Levin Latchum, a great public servant and a legend in the Delaware legal community. The Judge was born on December 23, 1918, in Milford, Delaware, and though he had a superbly sharp intellect and sophisticated legal mind, he never lost his down-home accent or his appreciation for the common sense he saw all around in his hometown.

He took pride in his family's deep roots below the Canal. Latchums had lived in Milford since the 1770s, and the tobacco and confectionary store that his father owned and operated was a fixture of the town, having belonged first to his father's father.

Levin, as his family called him in his childhood, was the older of two boys born to James H. and Ida Mae Latchum. His father had a remarkable memory and was a gifted storyteller and natural politician. The influence he had on young Levin was enormous. In the personal history that Judge Latchum published, he described his father, and, in so doing, revealed the source of his own unquenchable interest in people:

> Without a doubt, dad knew by name every man, woman, and child in a 20-mile radius of Milford, and I said he could even recognize the cats and dogs and to whom they belonged. Dad had this phenomenal memory for people and their names and backgrounds. He had come into contact with so many people as county tax collector and constable for Kent County from 1909 to 1913, as operator of a retail business, and as city alderman and member of

city council from 1912 to 1920. Of course, all his life he had been actively involved in Democratic politics. In all these capacities he had met and served a good many people and he knew them by name and remembered them. He was always telling me who they were and reciting stories about them which I have remembered. (*Delaware History,* vol. XXIV, p. 269, Fall-Winter 1991-92.)

Remember them he did. Decades later, sitting in his chambers in Wilmington, the Judge could still recite the stories from his youth as if they'd happened yesterday, and his own career in politics and public service was a reflection of the lessons he learned at his father's side.

As a teenager, the Judge attended the prestigious Peddie School in central New Jersey. He then went to Princeton, where he graduated with honors in 1940 and moved on to the University of Virginia Law School. His legal education was interrupted by World War II, in which, like so many of his generation, he did not hesitate to serve. He mustered out of the Army as a Captain and remained in the Army Reserves until 1961, achieving the rank of Lieutenant Colonel. The educational delay caused by the War did not take the edge off his intellect. He graduated from U.Va. in 1946, second in his class, a member of the Editorial Board of the Law Review, and a member of the Order of the Coif.

While stationed at Fort Bragg, North Carolina, at the outset of the War, the Judge met and fell in love with Elizabeth Murray McArthur, who, to his great good fortune, agreed to marry him and stayed with him until the day he died. The Judge and Betty were blessed with two daughters, Su-Allan and Beth. Later came granddaughter Liz and then Liz's three children. The Judge was proud and protective of his family, and he worked hard to provide for their future.

From the late 1940s to the late 1960s, the Judge built a successful private practice at the law firm of Southerland, Berl & Potter, which later became Potter Anderson & Corroon. He also served as an Assistant United States Attorney from 1951 to 1953, which, in those days, was a part-time position. Then, following in his father's footsteps, he became an energetic Democratic Party organizer and supporter.

In 1968, when U.S. District Judge Caleb R. Layton stepped down from active service, Judge Latchum was presented with a long-hoped-for opportunity for judicial service. Characteristically, he wasted no time in seizing it. His partner and mentor Bill Potter, who was then the Democratic National Committeeman from Delaware, sent the Judge's name to President Johnson, who made the nomination on July 17, 1968. The Senate's confirmation vote and the Judge's swearing-in followed without delay. It was the beginning of a remarkable era for the District Court and all who appeared there.

The Judge's reputation was built upon his prodigious work ethic, the efficiency with which he ran his courtroom, his incisive mind and wit, the skill with which he managed the court as Chief Judge, the contribution he made to building the reputation of the District Court as a venue for resolving complex legal disputes, and his role as a remarkable mentor.

The Latchum work ethic was famous from his earliest days in practice. It may have been born of his naturally competitive nature. He liked to be first to the office, and when one of his partners, Bill Poole, would come in a few minutes before he did, the Judge would show up even earlier the next day. His work day usually began before 6 a.m. Even in semi-retirement, he still regularly arrived at the office by 6:30 in the morning.

Chancellor Bill Chandler recalled that "[a]ny clerk who went down to the cafeteria for coffee and a bagel had better bring back ... a fried egg sandwich or buttered toast and jelly for the Judge. The rule [made] perfect sense when one remembers that [the Judge] had already been in the office about three hours by the time the clerks arrived — long enough to need a mid-morning pick-me-up!"

Time in the office was spent with remarkable efficiency. Judge Latchum was able to read with speed and retention that was nothing less than awe-inspiring. The 37 men and women who were fortunate enough to serve as his law clerks can tell a number of stories in that vein. Dick Powers, who was a law clerk and later worked with the Judge as the District Court's Magistrate Judge, said that what is most memorable to him from his clerkship days was the Judge's "singular efficiency of effort in getting to the heart of a matter and quickly crafting an opinion, usually in the quiet hours of the morning before [the law clerks] even arrived at work."

And the Judge was as thorough as he was efficient. For many years, discovery requests and responses were filed with the Court, and Judge Latchum read them. Consequently, it was common for the Judge to know the entire case file and to have mastered the minutia of a matter better than the lawyers did, as he proved more than once by correcting a lawyer in oral argument with detailed citations to the discovery record or the briefs.

He not only demanded that lawyers be prepared and meet deadlines, he expected the same of himself and his staff. He was thoroughly convinced that justice delayed is justice denied, so he pushed to get cases decided promptly. One of the most common questions in chambers was, "Got that done yet?" The Judge would walk into a clerk's office, puffing his ever-present pipe; he'd stare out the window briefly, turn, glance down at the desk where a draft opinion lay, and ask the question: "Got

that done yet?" Every assignment came not with a specific deadline but with the expectation that it would be done with the greatest dispatch consistent with justice. Probably all of us who worked with him have caught ourselves at some time daydreaming and then recalled the Judge's voice, prompting us to get back to work with, "Got that done yet?"

He was also, not surprisingly, a stickler for punctuality. Kevin Brady, another clerk, once collected a series of rules learned while working with the Judge, the very first of which was, "If you arrive on time, you're late." Many an attorney found to his or her chagrin that, having barely walked through the courtroom door on time, the buzzer was sounding and the Judge was taking the bench. Time was never to be wasted.

The Judge was no drudge, though. He knew how to mix work and entertainment, which usually consisted of some practical joke. A recitation of his pranks would fill volumes, but a short sample will have to do. One of his favorite maneuvers was to call someone and disguise his voice as an old woman's. He was very adept at it. On Randy Herndon's first day clerking for the Judge, he received a telephone call from an irate elderly woman, demanding to speak with the Judge. As Randy tells it, she was

> babbling about some perceived injustice about the tax code. ... After I explained that the Judge was not available, "she" nevertheless demanded that her tax problem be solved immediately. Politely, I tried to explain that it was my first day in the chambers and could not help her, except that I could take her name and phone number. But she would not quit. She proceeded to chastise me and the Judge for not being able to assist her. Eventually, she worked herself into an emotional frenzy about "governmental inefficiencies and taxpayer waste." Finally, despite her protestations, I felt compelled to announce that I needed to end the telephone call — only then to hear "the laugh," best described as a downstate chuckle intertwined with a verbal utterance sounding like the word "Gotcha." Almost immediately afterwards, while in total confusion, I heard another voice say: "Welcome aboard."

Rob Hotz is another clerk who clearly remembers his rite of initiation in the Judge's chambers. One beautiful fall afternoon in October of 1992 and near the beginning of Rob's clerkship, the Judge told Rob and his co-clerk, Mary Watson, that he wanted to go for a ride. They all got into the Judge's car, with the Judge at the wheel, Rob sitting in the front passenger seat and Mary in the back. As he pulled out of the garage, the Judge said with a deadpan expression, "Now look, Rob, I'm having some trouble with my cataract in my one eye." Then he looked over at Rob, squinting, and said, "And I am having trouble telling colors on the traffic lights. So call them out to me as we drive."

Many an attorney found to his or her chagrin that, having barely walked through the courtroom door on time, the buzzer was sounding and the Judge was taking the bench.

For the next three blocks, Rob dutifully called out "green," "red," "green." After about the third traffic light, the Judge broke out laughing and Rob knew he'd been had. Still chuckling, the Judge asked, "How long were you going to keep doin' that?"

The Judge also had a gift for mimicking people's mannerisms and vocal tics. Judge Murray Schwartz, a colleague of the Judge's for many years, recalled that a highlight of their years together on the Court was the weekly judges' meeting. "I eagerly looked forward to those [Thursday morning] meetings," he said. "We got a lot done and built a strong sense of collegiality based upon respect and trust. At those meetings, [Judge Latchum's] humor and impersonations were the entertainment of the week. I am told [he did] a wonderful impersonation of me, but alas, [he] never shared it with me. Given [his] impersonation of others, I think I know why."

What Judge Schwartz understood is that, with a caricaturist's skill, Judge Latchum could pick out a distinctive trait in another's mannerisms and then exaggerate it to great comic effect. Judge Walter Stapleton, another colleague, remembered the effect that seeing one of the Judge's deft impersonations would have on him: "He'd pick something that I had not noticed before about his target, but as soon as he began to mimic the person, I'd realize, 'I know who he's doing there; yes, that's it exactly!' "

And the Judge could be unintentionally funny as well. For as smart as he was, he could mangle the pronunciation of a word, usually a name, like no one else. That proclivity was often in the spotlight because, as a rule, he wouldn't refer to the parties in a lawsuit simply as the Plaintiff and the Defendant. He thought that made it harder for a jury to follow what was going on and that it was less personal and respectful to the parties. So he would have his secretary type up each jury charge with the parties' names inserted wherever reference to a party was required.

In one case, he found himself

confronted with the name of a party of Eastern European extraction. He felt that his long-time, faithful secretary, Michaeline Dombroski, would have better luck sounding out the name than he would, so he had her write it down for him phonetically on a separate slip of paper. When the time came to give the charge, he would come across the challenging name and then try to refer to the slip of paper, but then he would lose his place when he moved back to reading the charge. Eventually he got so tied up and confused he ended up referring to the gentleman simply as "Mr. O." When the ordeal was over, Don Parsons, a Vice Chancellor now but a law clerk then, said to the Judge, "That was some charge; you said that man's name 42 times and never repeated yourself once."

Another clerk, Joanne Ceballos, once wondered if the Judge's wife, daughter, and granddaughter were all named "Elizabeth" just to spare him the trouble of having to deal with more than one name.

For someone who had trouble saying names, the Judge still had a politician's knack for remembering them, which accounts in part for his success in managing the Court when he was Chief Judge. He knew the people in the building and, as part of his tremendous respect for the District Court as an institution, he treated everyone with respect, as well as the affection reflected in his good-natured teasing.

As Judge Schwartz recalled, he met frequently with his colleagues on the Court, both formally and informally. Institutional issues were dealt with deftly because he was closely attuned to the needs of the individuals he led. He regularly took the time to walk around the building and greet the employees in the Clerk's Office, the law clerks, the librarians, the probation officers, the court reporters, the marshals and security officers, and the maintenance personnel. There was nothing forced about his rounds. He simply liked the people.

He appreciated all who shared in the work of administering fair and impartial justice, and his gift of humor eased even tense times. While he sometimes would stir things up just for fun, more often he would see the fun in things that were already stirred up. Jim Yacucci, the Chief Deputy Clerk in those days, remembers a time when the Judge went into the Clerk's Office upset that he could not find a case file. He soon had several deputy clerks looking frantically around, until one of them stopped and asked, "Wait. What are we looking for?" The absurdity of it brought a burst of laughter from everyone and added to his store of stories.

In contrast to his love of laughter, the Judge was most serious in his dedication to getting the Court's work done, work that often included tremendously complex cases. Bobby McKinstry, another clerk, recalled the example of the Judge's herculean efforts in the high-profile case of *National Ass'n for the Advancement of Colored People v. Wilmington Medical Center, Inc.*, 491 F.Supp. 290 (D. Del. 1980). The case produced nine published opinions, not to mention innumerable conferences, hearings, and bench rulings. The NAACP and others were suing to prevent the Wilmington Medical Center from implementing what the Medical Center called its "Plan Omega," which involved relocating hospital services out of Wilmington and into a new facility to be built in Stanton, Delaware. The plaintiffs alleged that Plan Omega violated federal anti-discrimination laws.

Everyone who has seen the Christiana Hospital complex in Stanton knows something of the outcome of the case, but few are likely to appreciate how pitched the battle was or how daunting the welter of statutes and regulations and practical problems were that stood in the way of a satisfactory resolution. Multiple versions of the plan were put forth before the case was over, and the Judge appreciated the hard work the parties and lawyers invested in trying to resolve their differences.

But he was also direct in his critique of unproductive legal positions. At one point, the Judge commented in frustration to his clerks, "I can rule that [a plan] is discriminatory, but not that it's just plain stupid." That kind of blunt talk was not reserved for chambers. It was never intended to offend, though it no doubt did at times. It was, rather, the Judge's nature to speak plainly. He employed that habit to great effect, with humor typically added to lighten the blow, when encouraging parties to talk about settlement and, failing that, to bring the issues honestly into focus so that the Court could decide them.

Judge Latchum did his work with what the late Chief Judge Edward R. Becker of the United States Court of Appeals for the Third Circuit called "judicial courage, fierce independence, and [a] scrupulous sense of fairness ... ." That independence manifested itself in some famous exchanges with the Court of Appeals. The first assignment I had from him began, as most did, with his handing me the briefs and saying, "I think it probably should come out this way, but tell me what you think." I drafted the opinion as he'd suggested, including several reasons for the outcome. When I got back the marked-up draft, all but two of the reasons were crossed out. Wanting to learn his approach to cases, I asked the Judge if he had found the additional reasons unpersuasive. "No," he replied, "they're all good, but we only need these two for now. I'll keep the others for later, in case I need to reverse the Third Circuit after a remand."

He did let the Third Circuit know what he thought, in no uncertain terms. Once, when that Court sent a case back to him with instructions to certify a question of law to the Delaware Supreme Court, the Judge pointedly

declined, reasoning that

> Delaware ... chose not to extend to federal appellate courts the opportunity to certify questions to its supreme court. It would be a contravention of that apparently purposeful decision of the state if this Court were to allow the United States Court of Appeals for the Third Circuit to do indirectly, through remand, what the Delaware constitution does not allow to be done directly. The State of Delaware, not this Court, will decide if and when certification from the Third Circuit should be permitted.
>
> *Federal Deposit Ins. Corp. v. Blue Rock Shopping Center, Inc.*, 599 F.Supp. 684, 687 (D. Del. 1984).

On another occasion, his vigor in trying to protect his view of Delaware corporate law led him to certify a question to the Delaware Supreme Court after the Third Circuit had ruled on the question. The Court of Appeals took the highly unusual step of granting a writ of mandamus against the Judge, with the observation that it was "manifest that the district court failed to 'implement both the letter and spirit of the mandate' ... , for it attempted to secure a *de facto* reversal of our decision by reference to the state court of an issue that we already had decided for purposes of future proceedings in the federal case." *Blasband v. Rales*, 979 F.2d 324, 328 (3d Cir. 1992). The Court went on to order Judge Latchum to "vacate the order ... certifying the question to the Delaware Supreme Court" and to "notify the Supreme Court that the request for certification has been withdrawn." *Id.* at 329.

The Judge knew he had to comply with the mandamus order, but he remained convinced that the Third Circuit had the law entirely wrong, or, as he would put it, "all balled up." He had one more move to play. The defendant asked him to certify a second question to the Delaware Supreme Court, one that would still give an opportunity for the Delaware court to comment on the vexing issue. The Judge was happy to oblige.

Though the Supreme Court ultimately declined to address that issue, it did answer the second question that he had posed, and the resulting opinion has become an important precedent on demand futility under Delaware corporate law. *Rales v. Blasband*, 634 A.2d 927 (Del. 1993). Ironically, one of the things noted in that opinion is that Delaware law has changed to allow certification of questions to the Delaware Supreme Court directly by the Third Circuit. *Id.* at 931 n. 5.

The "scrupulous sense of fairness" that Chief Judge Becker referred to was truly a hallmark of the Judge's approach to each case. I think it may have been the most impressive thing of all to me about Judge Latchum, because, unlike many of us, he recognized that he had biases and he worked deliberately to set them aside and decide each matter on its merits. He grew up in an era when ethnic, racial and religious prejudices were more overt and common than they are today. He was honest enough to know they could affect him but he would not tolerate a tilted playing field. I recall once when he began speaking about a party's background in stereotypical terms. He stopped himself in mid-sentence and said simply, "That's got nothing to do with this case," and moved to another topic. That kind of self-awareness and self-discipline were among the greatest attributes of this great Judge.

Finally, and perhaps of most lasting importance, Judge Latchum was a teacher par excellence. He turned out well-crafted legal opinions, more than 700 in all, but he was also intent on turning out well-tutored law clerks. As one of those fortunate clerks, I can attest that learning at the Judge's elbow was an extraordinary and wonderful experience, and I've no doubt that each of my fellow Latchum alumni would say the same thing.

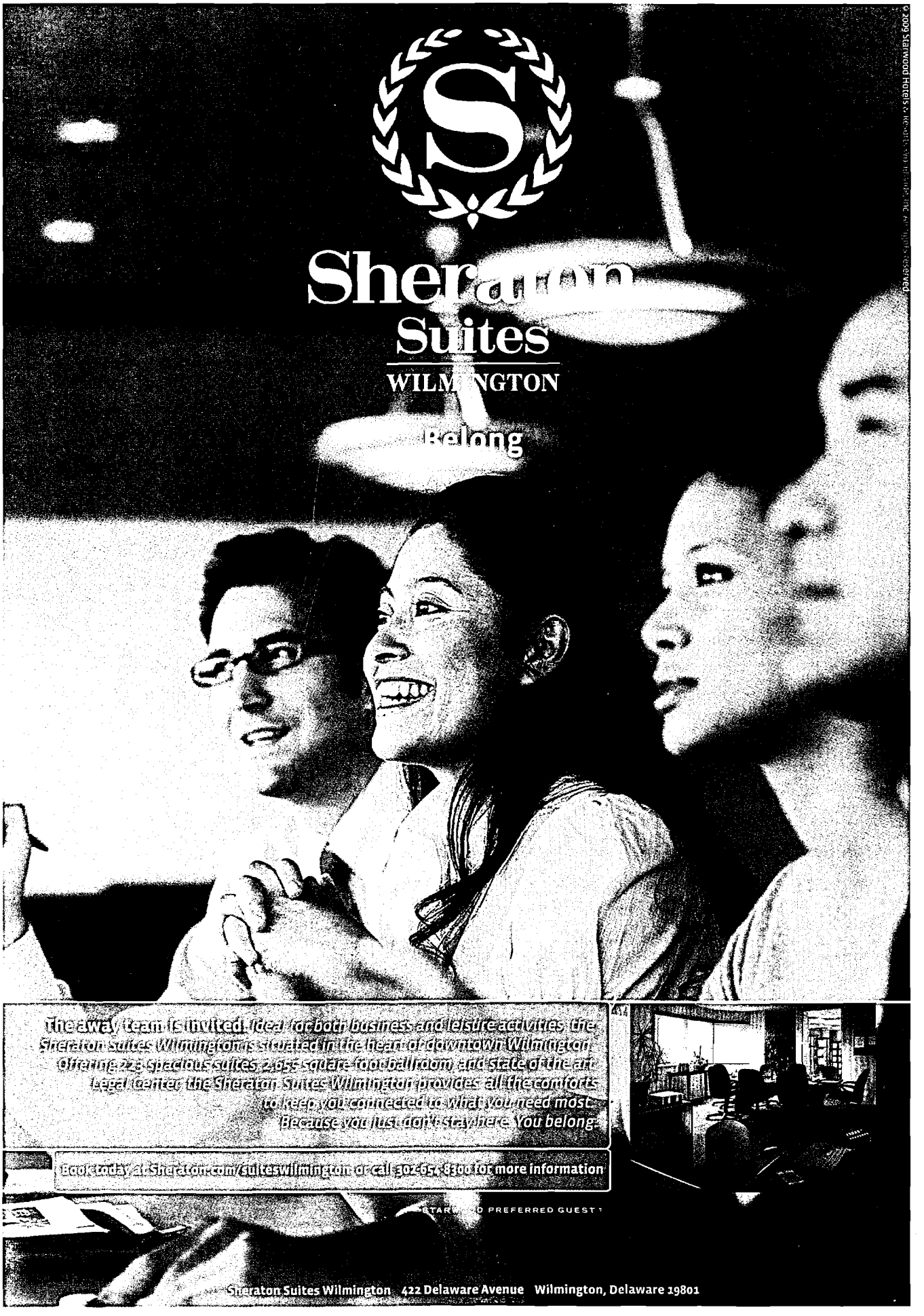
The Judge had no patience for arrogance, presumption or pretense. In the courtroom and in chambers he was not interested in oratory. He wanted mastery of the factual record and clear, logical thinking and expression, backed by basic fairness. The writing style he practiced and taught reflected his approach to life: do things with economy and precision.

Although he was not sentimental in the least, the Judge evoked the warmest of feelings from his clerks. He was, as one of us put it, "our beloved mentor." His own exacting standards and work ethic let him lead without preaching and made us want to do our very best work for him. And when a job was finally done to his satisfaction, he would say, "I think you got that just about right," which felt like high praise indeed.

One important way in which the Judge put his instinct for mentoring to enduring use was in his founding of the Richard S. Rodney chapter of the American Inns of Court. That institution was among the first of its kind in the country and the first of five Inns of Court now operating in Delaware.

The Judge's leadership has had a lasting effect in other ways, too. It is no coincidence that those who worked with him have contributed significantly to their profession and communities. They have held elected office, judicial appointments, and leadership positions in the organized bar and in non-profit organizations. They have become recognized experts in their fields of practice and have helped preserve the law as a profession of service for the public good. It is a remarkable legacy and a direct reflection of the Judge's example.

In a letter marking the Judge's 80th birthday a decade ago, Charlie Oberly summed up the feelings of all the Latchum clerks: "To this day, I thank you for providing me with the rare opportunity to work with a great judge, a wonderful man, and a caring, loving human being. You are the greatest." And so he was. ◆



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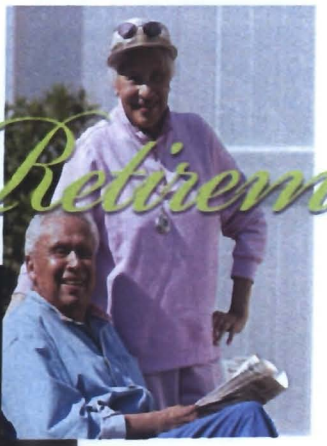

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