

Richard S. Rodney Inn of Court

REFLECTIONS ON OUR PREDECESSORS:

Some Judges and Lawyers Who Helped Make
the Delaware Bar and Bench What it is Today

January 14, 2015

INTRODUCTORY NOTE

The American Inns of Court seek to promote excellence, civility, professionalism and ethics in the legal profession by bringing together lawyers at various experience levels from junior associates to senior practitioners and judges. The Richard S. Rodney Inn of Court is one of Delaware's several chapters of the American Inns of Court.

In the 2014-2015 program year, each of Rodney Inn's pupilage groups was responsible for developing programming for one Inn meeting. The Tunnell and Woolley groups developed a concept proposed by Superior Court Resident Judge Richard R. Cooch of having respected judges and lawyers speak about some "greats" from Delaware's legal past. On January 14, 2015, the groups presented "Reflections on Our Predecessors: Some Judges and Lawyers Who Helped Make the Delaware Bar and Bench What it is Today" to the Rodney Inn membership at a dinner meeting held at University of Delaware's Arsh Hall. We were fortunate to attract a first-rate list of presenters: Third Circuit Judge Walter K. Stapleton, Third Circuit Judge Thomas L. Ambro, Retired Delaware Supreme Court Justice William T. Quillen, Delaware Supreme Court Justice Randy Holland, former Superior Court Judge Joshua W. Martin, III, Family Court Judge Barbara Crowell, and Richard A. Levine, Esquire. Many presenters knew the individual they were discussing personally. Each undertook significant efforts in preparing their remarks.

Members of the pupilage groups selected the individuals highlighted, provided research assistance to the presenters, organized the event, and coordinated with the presenters on preparation and collection of written versions of the presentations. The members of the 2014-2015 Tunnell and Woolley pupilage groups are listed below:

Meghan A. Adams	Mary Dugan	Garrett B. Moritz
Hon. Richard G. Andrews	Mark A. Denney, Jr.	Elena C. Norman
Daniel M. Attaway	Olufunke Fagbami	Oderah Nwaeze
Barzilai Axelrod	Anne Foster	Lindsay B. Orr
Neal C. Belgam	Kyle E. Gay	Joelle E. Polesky
Andrew D. Berni	Benjamin Gifford	Karl G. Randall
Sheridan T. Black	Laina M. Herbert	Sarah A. Roberts
Stephanie Blaisdell	William D. Johnston	Dorothy Shapiro
Laura C. Bower	Jason C. Jowers	S. Michael Sirkin
Steven L. Caponi	Jacob R. Kirkham	David C. Skoranski
Sam Closic	Hon. J. Travis Laster	Hon. Joseph R. Slights, III
Joseph B. Cicero	Hon. Abigail M. LeGrow	Hon. Paul R. Wallace
Hon. Richard R. Cooch	Martin S. Lessner	Lori Weaver Will
Douglas J. Cummings	John S. Malik	Patricia A. Winston
R. Montgomery Donaldson	Brett M. McCartney	Josiah R. Wolcott

After the program, the Rodney Inn determined that the presentations might be of broader interest. The Inn is therefore making the written versions publicly available with the gracious assistance of the Delaware State Bar Association. We hope these materials will be useful to lawyers, academics, and the broader public.

Richard R. Cooch
Garrett B. Moritz
June 2016

REFLECTIONS ON OUR PREDECESSORS:

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AMERICAN INNS OF COURT
TRIBUTE TO HON. JAMES L. LATCHUM

January 14, 2015

If it were not for the Honorable James L. Latchum, we might not be sitting here this evening. Before 1985, the Richard Rodney American Inn of Court did not exist and virtually no one in Delaware knew about American Inns of Court. However, when Judge Latchum learned about them, he dedicated himself to creating one for Delaware and spread his enthusiasm far and wide. He ultimately succeeded in getting enough support to found this Inn in 1985 and suggested that it be named the Richard S. Rodney Inn of Court. This is but one of many contributions Judge Latchum made to our Bench and Bar during his 36 years on the District Court. Those many contributions were recognized in 1995 when Judge Latchum received the First State Distinguished Service Award, the highest honor our Bar bestows.

When I joined Judge Latchum on the District Court, I was quite young and inexperienced. For several weeks he would have me join him whenever he was on the bench. He became my mentor and taught me about all I know about judging. It is not surprising that he was so enthusiastic about having an Inn of Court in Delaware. Judge Latchum was a very accomplished teacher – an accomplished teacher dedicated, like this Inn, to the preservation and nurture of the Delaware tradition of excellence in litigation.

In the courtroom, Judge Latchum was a no-nonsense, but imminently fair, presider. He invariably expected from every lawyer the very best in the way of professional performance. If a lawyer should ever fall short of that high standard, Judge Latchum just as invariably would respond with tolerance and patience, but always in a way that assured that the offender had learned how to do it right the next time.

Judge Latchum taught effectively, as well, in his opinions. They are what opinions should be – honest, thorough, insightful, and terse.

In addition to his teaching, Judge Latchum was also known for his sense of humor, his quick wit, his ability to imitate others, and his love for practical jokes. I enjoyed his wit and imitations every week and was often the subject of his practical jokes.

During the years of our joint service, the judges of the court met every Thursday morning to assign cases and discuss administrative matters. About every week Judge Latchum would imitate a lawyer who appeared before him during the preceding week. His audience of judges would immediately recognize the lawyer he was imitating and dissolve into gales of laughter. He was very good and extremely funny. So funny he could have had a TV career. As he, himself, acknowledged though, he did have an exceptional Bar to work with.

It was his regular practice to play a practical joke on new law clerks shortly after their arrival. I think he did this so that the clerks would be alert and would understand when he was playing practical jokes on others. He would, for example, invite a new clerk to lunch at a restaurant far enough away to require a ride. After taking the wheel, he would disclose that he was about to have cataract surgery and didn't see very well. He would then ask the clerk to advise him whether each light they came to was red or green. After the clerk had called two lights, Judge Latchum would advise that he was hard of hearing and the clerk needed to shout. Only after 6 lights would Judge Latchum come clean and advise the very nervous clerk that it was all just a joke.

While I was frequently the butt of Jim Latchum's practical jokes, I want to tell you as I close about one Latchum practical joke that backfired.

One morning I conducted a preliminary hearing for a member of the Pagan motorcycle gang. He was 6'4", 240 pounds, was bearded and was wearing cut-off jeans and a dirty teeshirt that said "Kill them all, let God sort it out." He was one scary dude and word of his presence in the courthouse spread through the building. I went down to the judge's garage to go home about 8:00 p.m. that night and noticed there was a note under my windshield wiper. In a child-like scrawl, it said "Kill them all, let God sort it out." Back then, the marshals brought prisoners in and out through the judge's garage, so while unlikely, it was possible that my Pagan friend had slipped it there while everyone was looking the other way. I stuck it in my pocket and drove home. My Pagan friend was safely in custody, and I really wasn't concerned about it. The next day, however, I was scheduled to go out of town and it occurred to me that I ought to at least mention the note to the marshals before leaving town. When I did, they and the F.B.I. arrived in my chambers in roughly thirty seconds. "Where's the note, Judge." "In my pocket." "Don't touch it, Judge." The F.B.I. agent then took the note out of my pocket with tweezers, put it in an envelope, and said "Don't worry, Judge, we'll get to the bottom of this in no time." A few minutes later, it occurred to me that I should also mention the note to the Chief Judge before I left town. So I went to Chief Judge Latchum's chambers and filled him in. The expression on his face noticeably changed as my story progressed, and it finally dawned on me for the first time that I had been a victim of a Latchum prank. I said "You didn't." He said "I did. But I didn't think you would do anything about it. Now, what are we going to tell the F.B.I.?" I replied "What's this 'we' business?"

Needless to say, I sorely miss my friend, Judge Latchum. He was a great judge and always fun to be with.

Judge Victor B. Woolley

Early Life and Education

Victor Woolley was born on March 29, 1867, in Wilmington, Delaware. He remained a resident of Wilmington until at least 1939, where his last known address was 1309 Rodney Street. He attended Delaware College (now known as the University of Delaware) and earned his B.S. in 1885.¹ Following his graduation from Delaware College, Judge Woolley briefly attended Harvard Law School. However, as was common at the time, he decided to leave Harvard and read law instead. He was admitted to the Delaware State Bar in 1890.

State-Court Career

Following his admission to the Delaware Bar, Woolley served as the Prothonotary to the Superior Court in New Castle County from July 8, 1895, until January 1, 1901. During this time, he also lectured on Delaware practice at the University of Pennsylvania Law School. Many believe he was the first law professor to focus on Delaware practice at any law school.

Woolley was appointed to the Delaware Superior Court as an Associate Judge at Large on June 15, 1909. He remained in this position until his appointment to the federal bench.

¹ According to the University of Delaware Archives Department, Judge Woolley majored in either the Scientific Course or the Classical Course.

Federal Judicial Appointment and Service

Judge Woolley was nominated by President Woodrow Wilson to serve as a judge on the United States Court of Appeals for the Third Circuit on August 7, 1914. The nomination was to fill the seat vacated by Judge George Gray (another Delawarean). Woolley's appointment was confirmed by the Senate on August 12, 1914, and he received his commission the same day. (Such speed stands on the plus side of "the good ole days.") After a long career on the federal bench, Judge Woolley assumed senior status on May 1, 1938, and remained on the bench until his death on February 22, 1945.

A constant role model for his fellow judges, Judge Woolley is said to have influenced Judge John Biggs' conduct during oral arguments. During a patent case in which Judge Woolley sat on the panel, he challenged the lawyer on one point of his argument. The exchange between the two quickly became more about arguing over technicalities rather than the merits of the case. Following this exchange, Judge Woolley felt he had embarrassed himself because he knew little about patents. In order to spare Judge Biggs the same kind of embarrassment, Judge Woolley placed a card in front of Judge Biggs' seat on the bench that read "[k]eep your mouth shut, you damned fool." Judge Biggs apparently took this advise because he was not known to be an active judge during oral arguments.

Publications

By far the most famous work of Judge Woolley is *Practice in Civil Actions and Proceedings in the Law Courts of the State of Delaware*, more commonly known as *Woolley on Delaware Practice*. Published in 1906, *Woolley on Delaware Practice* was

the first written work pertaining to the practice of law in Delaware. Much of Delaware practice theretofore was word of mouth passed down from lawyer to lawyer.

[Woolley's] object was not to write a treatise upon the subjects of pleading and practice, but rather to present in some degree of order . . . the reported and unreported practice of the law courts of the State, and so much pleading as may intimately relate thereto, so that the student and young practitioner, for whose benefit th[e] book was chiefly designed, may know where to find answers to some of the questions that, in their best efforts to master the subject, continually arise.

Victor B. Woolley, *PRACTICE IN CIVIL ACTIONS AND PROCEEDINGS IN THE LAW COURTS OF THE STATE OF DELAWARE* iv (1906).

Woolley on Delaware Practice has become a standby in Delaware. It has been cited in myriad opinions and orders of Delaware and federal courts (including the United States Supreme Court). The first known opinion to cite it was *Poole v. Greer*, 6 Penne. 220, 223 (Del. Super. 1907). Ironically, Richard S. Rodney (after whom the Richard S. Rodney Inn of Court in Delaware is named) and John H. Rodney served as co-counsel for the defendant in *Poole*.

The cites to the work continue. For but one recent example, see *Delmarva Auto Fin. Svcs. v. White*, 10 A.3d 1059 (Del. Super. Ct. 2014).

The Order of the Woolleys

The Order of the Woolleys is a secret society known by those members who are dedicated to the ideal that the practice of law must entail scholarship, dedication, and humor. Each year the Order meets and selects a member of the Delaware Bar whom it believes fits those criteria. The award, known as a Woolley, is a plump sheep mounted on a simulated meadow, which is made from a piece of green felt. The first recipient of

the Woolley was then-Judge Vincent J. Poppiti on July 18, 1985. An article titled *BAAA HUMBUG!* discussed the Order of the Woolleys in the *Delaware Lawyer* in the Spring 1994 edition.²

² In keeping with its covert nature, there is very little other evidence that discusses the Order of the Woolleys. Ironically, the same issue that mentioned the Order of the Woolleys also noted a new institution of the Delaware Bar: The Richard S. Rodney Inn of Court.

Rodney Inn of Court Tribute
on the Life of
Edmund N. Carpenter, II
(January 14, 2015)

by
Hon. Thomas L. Ambro

In June 1938, a 17-year old student at Lawrenceville School in New Jersey wrote an essay, entitled “Before I Die.” It read in part as follows:

It may seem very strange to the reader that one of my tender age should already be thinking about the inevitable end to which even the paths of glory lead. However, this essay is not really concerned with death, but rather with life, my future life. I have set down here the things which I, at this age, believe essential to happiness and complete enjoyment of life. Some of them will doubtless seem very odd to the reader; others will perhaps be completely in accord with his own wishes. At any rate, they compose a synopsis of the things which I sincerely desire to have done before I leave this world and pass on to the life hereafter or to oblivion.

Before I die I want to know that I have done something truly great, that I have accomplished some glorious achievement the credit for which belongs solely to me. I do not aspire to become as famous as a Napoleon and conquer many nations; but I do want, almost above all else, to feel that I have been an addition to this world of ours. I should like the world, or at least my native land, to be proud of me and to sit up and take notice when my name is pronounced and say, “There is a man who has done a great thing.” I do not want to have passed through life as just another speck of humanity, just another cog in a tremendous machine. I want to be something greater, far greater than that. . . . When I leave this world, I want to know that my life has not been in vain, but that I have, in the course of my existence, done something of which I am rightfully very proud.

That student was Edmund N. Carpenter, II, whom we knew as Ned. Ned was my partner at Richards, Layton & Finger. More importantly, he was one of my heroes. Thinking back to when I was 17, I recall thinking of my girlfriend, school, my girlfriend, basketball, my girlfriend, the Cleveland Browns, and my girlfriend . . . pretty much in that order.

Returning to Ned, after graduating from Lawrenceville in 1939 and Princeton in 1943, he became a war hero for, among other things, his efforts in World War II rescuing downed pilots in hostile territory in what is today Vietnam. Among the decorations Ned received were the Bronze Star, four Battle Stars, and the Chinese Order of the Flying Cloud. Interestingly enough, I never knew him to talk of his war exploits, and it was not until the memorial service after Ned's death in December 2008 that I first learned of his bravery. All I remember Ned ever saying was that, while he was in training at Fort Hood, Texas, a sergeant asked if anyone spoke French. As an accomplished speaker of French—and, in his words, thinking of “wine, women, and song” in then-liberated Paris—Ned immediately put up his hand. He was chagrined to learn that he would be sent to what was then known as French Indochina.

On returning to the United States and graduating from Harvard Law School in 1948, Ned joined Richards, Layton & Finger, where (save another stint in the Army during the Korean Conflict and time in the Delaware Attorney General's Office) he spent his entire professional career until he retired in 1991.

Ned was one of the best trial attorneys of his generation, and that recognition was not limited to Delaware. At trial he was no chameleon. He was himself – an elegant blend of technique, grace under pressure, and preparation. What he brought were finely honed and nuanced skills calibrated precisely to every task. In a word, Ned had presence, that magic something that assures us, and comforts us, even when the facts are bad. Because of this, he had credibility, the coin of the realm in advocacy. When Ned performed, you wanted a special seat in the room. Among Ned’s most well-known trials was his representation of Louis Redding on federal tax charges resulting in a not-guilty verdict.

I might more quickly recite the Litany of the Saints than list Ned’s roles of leadership and awards. Thus I note but a few. Ned was President of Richards, Layton & Finger, President of the American Judicature Society, President of the Delaware State Bar Association, Chair of the Delaware Bar Foundation, initial Chair of the Delaware Judicial Nominating Commission (indeed, many believe it was Ned’s idea), Delegate to the American Bar Association’s House of Delegates, Trustee of Princeton University, the University of Delaware, the Lawrenceville School, and the Wilmington Medical Center (now Christiana Care), and founding Board member of Stand Up for What’s Right and Just (which supports the abolition of mandatory minimum sentences). Ned’s awards included the First State Distinguished Service Award, the Josiah Marvel Cup Award of the Delaware State Chamber of Commerce, the Ben Franklin Award for Public Service

conferred by the American Philosophical Society, the Ministry of Caring's Award, and the Professionalism Award of the American Inns of Court.

Yet these surface snippets are but background to why Ned Carpenter is my hero. Perhaps what I feel is best book-ended by two scenes from among my favorite films. The first is *On the Waterfront* in 1954. Remember the famous taxicab scene. Terry Malloy, played by Marlon Brando, meets with his brother Charley (played by Rod Steiger), who was involved with organized crime. In looking back on being denied the chance to contend for a boxing championship when Charley told him to throw a fight, Terry laments, "I coulda been a contenda. I coulda had class, I coulda been somebody." When I first met Ned in 1974, I felt I was somebody. He was the fulfillment of all my youthful hopes and dreams¹.

But there was much more. Ned was a mentor and friend. He was open to listen, kind and courteous but never condescending, one who could disagree without ever being disagreeable, a person who wore his learning as effortlessly as he dressed, someone so generous he could be misperceived as indulgent, and so ethical we used to say at Richards, Layton & Finger never take a conflict question to Ned if you wanted a green light to represent a potential client. He taught us by example and quiet voice that the foundation of any good attorney was the military's admonition that proper planning prevents poor performance. Ned made

¹Paraphrased from General Douglas MacArthur's speech to Congress on April 19, 1951.

preparation a professional art form. And when we did the least thing well, he would say “Fabulous! Take the rest of the day off.” I am not sure I recall any praise more vividly.

It is harder to believe, even now, that all this came in a package of modesty so sincere you might mistake it as false. What am I describing? It is this. Ned Carpenter was Old World Class from central casting. He was what we aspire to be in our best moments.

Do others feel the same? Just listen.

To his peers at the Bar – he is a lawyer’s lawyer. To the members of the Judiciary – he is most often the Judge’s lawyer – whenever such need arises. To his antagonist in a law suit – he is always urbane, but with a slugger’s fist in the velvet glove. To his client, he is the learned, astute, compassionate counselor. And to our profession, he has brought fine legal talents motivated by an intense sense of public duty – always ready to contribute to the leadership and share the drudgery of practically every major project in which our profession has engaged in this State during his . . . years as a member of our Bar.

Former Chief Justice Daniel L. Herrmann

I cannot think of any man who comes closer to his great quality as a man or a lawyer.

Andrew Wyeth

I have encountered few people in my life who possess the strength of character, belief in our institutions of justice, and commitment to their community than Ned Carpenter does. He symbolizes all that is good about the legal profession. I can think of no one . . . who has given so much to every aspect of legal and community life in Delaware and in the Nation.

Vice President Joseph R. Biden, Jr.

As we grow older we look back, often I note, at the landmarks of our lives. Amidst the changes, clatter and confusion, these landmarks compass our journey. Ned Carpenter is a landmark for us. Indeed, in my era he is the closest to Atticus Finch I know. Thus I close with a scene from *To Kill a Mockingbird*. It is the courtroom scene in which Atticus, played by Gregory Peck, is collecting his papers after the conviction of Tom Robinson. The well of the courtroom is empty, but above, in the balcony, are members of the black community of this small southern town. With them are Atticus' two children – Jem and Scout (or Jean Louise), and their friend Dill. As Atticus leaves the courtroom, every person in the balcony stands save Scout. The leader of the black community puts his hand on her shoulder and says quietly, but firmly, “Stand up, Miss Jean Louise. Your father is passing.”

Ned Carpenter passed our way. We were—we continue to be—blessed by his being with us. He gave his best and he made us better. I ask you to stand up for what you believe is important and to do so with the same grace and courage as Ned Carpenter. And having done that well, take the rest of the day off.

REFLECTIONS ON OUR PREDECESSORS

January 14, 2015

GEORGE GRAY (1840 – 1925)

Preliminary Comment: As part of the celebration of the 175th anniversary of Potter Anderson & Corroon, I had the privilege of writing for the firm a history of the firm. Almost everything I said about George Gray on January 14, 2015, at the Rodney Inn of Court's "Reflections In Our Predecessors", is taken from the book (Quillen, Potter Anderson & Corroon, *An American Law Practice, The First 175 Years* © Potter Anderson & Corroon LLP 2001), much of it verbatim. It seems inappropriate to burden these few written thumbnail notes of an oral presentation with quotation marks and citations suggesting law review style and form for a single source. I hope it suffices to say that the material on George Gray comes from the PAC book on pages 13 – 23 (1840 – 1881, the early New Castle years), on pages 29 - 44 (1879 – 1914, the public years), and on pages 39 – 44, 55 – 57 (1898 – 1925, the closing Wilmington years). For further detail on sources, the reader is directed to the PAC book, Appendix A, pages 165 – 183. Potter Anderson & Corroon has approved the use of these written notes by the Rodney Inn of Court for the purposes of the Rodney Inn.

I thank the Rodney Inn of Court for the privilege of participation in the inaugural "Reflections On Our Predecessors". I hope it is the first of many.

Bill Quillen
January 30, 2015

Quillen Notes

January 14, 2015

Rodney Inn of Court

*Source: Quillen, Potter Anderson &
Corroon, An American Law Practice,
The First 175 Years*

(© Potter Anderson & Corroon LLP 2001)

GEORGE GRAY (1840 - 1925)

I. FORMAL RESUME: WHAT DID HE DO?

A. State and Federal Constitutional Office Held:

1. Lawyer 1863 - 1925 (over 62 years)

May 4, 1863 - Admitted to Bar in New Castle

August 7, 1925 - Died at Wilmington home
2. Delaware Attorney General 1879 - 1885 (over five years)

October 3, 1879 - Appointed by Democratic Governor John W.
Hall

1884 - Reappointed by Democratic Governor Charles Clark
Stockley

January 19, 1885 - resigned
3. United States Senator 1885 - 1899 (over 14 years)

January 18, 1885 - elected by Delaware General Assembly

Reelected unanimously in 1887 and 1893

Term ended March 4, 1899

4. United States Third Circuit Judge 1899 – 1914 (over 15 years)
March 5, 1899 – Appointed by Republican President William McKinley to the Court of Appeals for the Third Circuit
5. Retirement from bench June 1, 1914
Became Counsel at Ward and Gray (the second Andrew Caldwell Gray)
Gray and Ward first became Ward and Gray in 1899

B. Office of Arbitration – Many Presidential commissions including:

1. McKinley 1898: Peace Commission in Paris that concluded in treaty ending the Spanish-American War.
2. McKinley 1900: International Permanent Court of Arbitration at The Hague – Reappointed by Roosevelt in 1906, Taft in 1913, Wilson in 1920. Senior in service at his death in 1925 among 149 members.
3. Roosevelt in 1902: Chairman of Anthracite Coal Strike Commission, Nationwide impact; settled.
4. 1910: Arbitration Judge for the Permanent Court of International Arbitration at The Hague in the North American Fisheries Arbitration in which long-time disputes between the United States and Great Britain were resolved.

5. Wilson 1916: One of three commissioners appointed to resolve disputes over the Mexican raid in New Mexico and the American responses led by General Pershing; dispute sort of died with advent of World War I.
6. Wilson 1918: United States Examiner for the Shipbuilding Labor Adjustment Board for the Wilmington and Baltimore Districts, which required field work at shipbuilding facilities.

C. Charitable Offices

1. Original incorporator of the American Red Cross and on the Board till his death; President, Delaware Chapter.
2. For 35 years till death on Regents of the Smithsonian Institute, the last ten as Chairman of its Executive Committee.
3. Helped to form the American Society of International Law, served as Vice President and Executive Committee member; Society member till death.
4. Served as Vice President and Trustee of the Carnegie Endowment for International Peace.

II. PERSONAL RESUME: WHO WAS HE?

George was tall and strong and athletic, a commanding presence, just by being. He was the son of an extremely prominent lawyer (Andrew Caldwell Gray [1804-1885]) who was immersed in every important business – banks, railroads, both manufacturing and operating railroad firms, canals, operating in a small county seat river town in an era where United States Supreme Court Justices rode circuit and the local bar was a legal fraternity, both professionally and socially. Chief Justice Taney, Delaware Court Justice, was a visitor not only to the town but as an overnight guest of George’s Father in New Castle, where George remembers him “calling for a chew of tobacco and a glass of whiskey before breakfast.” New Castle, George’s own home, was important in an era of relative smallness when importance did not mask the individual presence of anyone.

Before she went through the childbirth years, Elizabeth Scofield Gray, George’s mother, was a school teacher, not bad training for the homeschooling of five children. And George’s Father sponsored an Institute in New Castle that George attended between 1852 and 1857, scoring perfectly on his final exams. George went to Princeton as a junior and graduated fourth in his class at age 19 in 1859. George came home to “read law” and then left for Harvard

Law School in 1862, attended one and a half terms (three terms necessary for L.L.B).

Tragedy struck twice in the 1860s: (1) During the time George was home from Harvard for Christmas, 1862, his frail younger sister Emily died. And (2) the Farmers Bank suffered some difficult financial times and with it so did Andrew Caldwell Gray. George's Harvard career ended perhaps prematurely, the spring of 1862, and George returned home to practice law. He was admitted to the Bar on May 12, 1863.

The Civil War (1861-1865), with its prologue and epilogue, dominated the second half of the nineteenth century. Shortly after Fort Sumter, in the spring of 1864, speaking at a public meeting in Dover, Andrew Caldwell Gray opposed War and favored peace, even if that policy meant secession of the confederate states, a point of view which probably best summarized the Delaware Democratic view, whether by conviction or necessity. Delaware and the Grays supported Southern Democrat John Breckinridge in 1860 and Democrat General George McClellan in 1864.

Scene 1 follows, there are six such scenes herein; hopefully each will conjure up in each reader's mind an appropriate newspaper-like editorial cartoon.

Scene 1: 1864 – George Gray’s Civil War (Scenes are reader editorial cartoons)

George, for his part, in 1864, helped organize the “McCrone’s Woods Picnic” at Hare’s Corner near New Castle, a benefit designed to collect food and clothing for Confederate prisoners at Fort Delaware. A detachment of Union troops from Ohio broke up the picnic and arrested 25 people. George had not arrived and was warned he might be on the arrest list. He did the natural thing for a husky river-town 24-year old: he got in a boat and rowed to New Jersey. In a few days, those arrested were released and the matter blew over and George came home. His humane Civil War was over.

At the age of 40 in 1880, George Gray had a career in rapid motion on three fronts:

1. Mature and respected lawyer with an active and diverse practice – spelled out in some detail in the Potter Anderson & Corroon book. At some point, it appears that George, the active courtroom practitioner, set up a separate office from the home office of his father, whose own legal practice was now largely non-litigation business officer, consulting and non-courtroom business law. Pursuant to 1879 legislation, the County seat was moved to Wilmington in 1881, George too moved his office and his home to Market Street in Wilmington. *Detailed coverage in the PAC book.*

2. With his appointment as Attorney general in 1879, for over five years he became a specific state office holder as Chief Legal Officer and Chief Prosecutor in all three counties. *Detail covered in the PAC book.*

3. Influential politician both in Delaware's dominant Democratic party, and in the nation.

And, of course, through all of his career, George had a competing family life in Victorian America.

Scene 2: George Gray Family Life – Younger Joy, Harsh Sorrow, Older Joy

George Gray, on June 27, 1870, at the age of thirty, married a fellow resident of New Castle, Harriet Lawrence Black, then twenty-three. They happily and quickly had five children, born between 1871 and 1877, the first being a second Andrew Caldwell Gray (1871-1929), future lawyer. Tragically, “Hattie” Gray died along with a stillborn sixth child on May 26, 1880. Harriet Black Gray’s older sister Margaret largely assumed the care of the five children and became an intimate part of the household. On August 8, 1882, George Gray married Margaret Janvier Black, a good marriage that was to last forty years until her death in 1922.

“Maggie” was forty-three years old at the time of the marriage, seven years older than her sister “Hattie” would have been, and a year older than George. The couple had no children.

Gray’s legislative election to Bayard’s U.S. Senate seat was hotly contested in 1885. He won the Democratic caucus by a single vote and then all Democrats voted for Gray in the legislative election vote. Without contest, he was unanimously re-elected in 1889 and 1893. Aside from his occupational interest in the Attorney General post, his political interest seemed to be at the highest national level. To the end, he never ran in a popular election.

Scene 3: George Gray, Politician

Attended six National Democratic Conventions

- 1876:** Delegate for Delaware Senator Thomas F. Bayard
Got to know John W. Hall, Kent County Delegate
Elected Governor in 1878
Appointed George AG in 1879
- 1880:** Made nominating speech for Senator Bayard
Convention Highlight
National attention given Attorney General George Gray
Bayard 2nd on 1st ballot but viewed as Southerner
Chose General Winfield Hancock as nominee; Garfield was elected
- 1884:** Made nominating speech for Senator Bayard
Bayard again 2nd on 1st ballot
Chose Grover Cleveland as nominee; Bayard became Secretary of State
Being prominent Bayard man helped Gray's 1885 legislative win as Senator Bayard's successor, a one-vote caucus victory; elected unanimously in 1887 and 1893.
- 1888:** Delegate Senator Gray for Cleveland's reelection (Harrison over Cleveland in general election)

1892: Delegate Senator Gray; helped lead fight against free silver; demurred when mentioned for President; supported Cleveland comeback

1896: Gold Democrat delegate against Bryan

1899: Appointed to Third Circuit

Nominated for President when 3rd Circuit Judge:

1904: Nominated for President – Parker chosen
Favorite Son nature (in retrospect maybe his best shot was 1904)

1908: Nominated for President; Bryan wanted him for Vice President, Gray declined

Gray was frequently offered cabinet positions and, in 1888, when he was without judicial experience and had just three years in the Senate, he was considered by Cleveland for Chief Justice, perhaps the only position he ever really wanted. A departing Cleveland also offered him a District Court judgeship in 1896, which Gray declined and to which the New York Times responded “Ingratitude, the name is Grover.” His ultimate appointment in 1899 by Republican President McKinley to a newly created judgeship on the Third Circuit was a tribute to Judge Gray by the President and his Senate colleagues. At age 59, it was enough; he had important judicial work to do.

Scene 4: Third Circuit Judge George Gray

Perhaps the best measure of Gray's success as a Third Circuit Judge (1899-1914) was the request of his judicial colleagues that, for the prestige of the Third Circuit, he not retire, and their offer to carry an increased individual workload to relieve Gray's if he would stay and elevate the Court by his "mere presence and attention to the arguments."

On August 7, 1925, Judge George Gray, aged eighty-five, died at home in the presence of four of his five children, with the fifth arriving shortly thereafter. His commanding presence in Delaware was akin to the presence of royalty in a constitutional democracy, a presiding, but not governing, figure whom the local papers called the "First Citizen of Delaware", the modern "Great Conciliator", the "sympathetic counselor", the "great man". But an earlier tribute might have captured him a little better.

Scene 5: Public Servant

Of his wartime service on the Shipbuilding Labor Adjustment Board, the *Evening Journal* wrote: “It would have brought the blush of shame to any slacker’s cheek to have seen a seventy-eight year old man on a hot summer afternoon crawling all over and even down into the holds of ships being reconstructed in local shipyards that he might learn firsthand all the details on which to base a decision on a wage rate affecting only a few men.

Good judges know, (1) there are no small cases; (2) every case should be decided on the evidence; and (3) public service is a privilege.

Scene 6: Home Again – Judge Gray’s Burial in New Castle

“Before the last bit of earth had been placed in the grave, an incident occurred bringing tears to the eyes of the few who had remained: an aged Negro, with hair cotton white, bent over the fast filling grave and mumbled a few words rising a few seconds later with tears streaming down his face. He said he knew Judge Gray when he was a boy and that he loved him. His name is Robert Fielding.” *Wilmington Morning News*, Tuesday, August 11, 1925, at p. 1.

“Before the last spade full of earth had been placed in the grave, a touching incident occurred. Robert Fielding, an aged colored man, whose hair is white as snow, appeared in the cemetery, and with tears streaming down his checks, delivered a short, low toned prayer. He said he had known and loved Judge Gray as a boy when the latter lived in New Castle.” *The Evening Journal*, Tuesday, August 11, 1925 at p. 8.

Quillen Notes
January 14, 2015
Rodney Inn of Court
Subsequently edited & expanded

COLLINS JACQUES SEITZ (1914 -1998)

Preliminary comment: When one is asked to give a ten-minute oral commentary on Collins Jacques Seitz's significant life, it seems to me the more honest response should be "No thank you." But I have been doing some work on Chancellor Seitz's life and I thought maybe a brief oral presentation, on limited subjects, followed up by a short expansion through permitted written material might make a modest contribution to the Rodney Inn's program. The oral presentation was made on January 14, 2015, and the following written material is hereby submitted.

I. BASIC BIOGRAPHICAL OUTLINE

Collins Jacques Seitz was born in Wilmington on June 20, 1914. He died in Wilmington, on October 16, 1998. He spent 52 of his 84 years as a judge, twenty in the State Court of Chancery, and thirty-two on the Federal Court of Appeals, over 60 percent of his life.

A Few Facts for Reference

5th and Last Boy of Catholic Family, 6th Child was the only girl

St. Ann's School through 8th grade, 1921-1929

Warner Jr. High School 9th grade, 1929-1930

Wilmington High School, 1930-1933

University of Delaware, 1933-1937

University of Virginia Law School, 1937-1940

Admitted to Delaware Bar, 1940

Practiced law with Stewart Lynch, 1940-43

Practiced law with Southerland Berl & Potter, 1943-1946

Vice Chancellor, 1946-1951

Chancellor, 1951-1966

Married Virginia Day Seitz 1955, four children

Judge for The U.S. Court of Appeal for the Third Circuit, 1966-1998

Chief Judge, 1971-1984

II. A FEW CASES NOTED

A few case highlights chosen and prepared by Patricia A. Winston, Esq., and Douglas J. Cummings, Jr., Esq, are briefly noted:

While on the Court of Chancery, Chancellor Seitz issued a number of precedential opinions affecting corporate law. Those opinions include: *Ringling v. Ringling Bros.-Barnum & Bailey Combined Shows, Inc.*, 49 A.2d 603 (Del. Ch. 1946) (holding the validity of a voting agreement among the stockholders of a Delaware corporation is a matter governed by Delaware law), *aff'd with modifications*, 53 A.2d 441(Del. 1947); *Campbell v. Loews's Inc.*, 1345 A.2d 852 (Del. Ch.1957) (holding that stockholders have the inherent power to remove corporate directors for cause and establishing the principle that corporate directors are entitled to procedural due process before removal by requiring service of specific charges, adequate notice, and full opportunity for director to meet accusations by a statement in company's proxy solicitation); and *Bata v. Hill*, 139 A.2d 159 (Del. Ch. 1958) (holding, after the longest trial in Court of Chancery history- 100 days -that under applicable Czech law, plaintiffs, as legal heirs of decedent, were beneficial owners of stock in question), *aff'd with modifications*,163 A.2d 493 (Del. 1960).

The significance of Chancellor Seitz's influence on the Court of Chancery, however, transcends the corporate realm, extending to develop the law in areas such as domestic relations and trusts. *See, e.g., DuPont v. DuPont*, 79 A.2d 680 (Del. Ch. 1951) (determining that the Court of Chancery had jurisdiction to award support to wife abandoned by her husband in a proceeding not involving divorce), *aff'd*, 85 A.2d

724 (Del. 1951); and *Security Trust Co. v. Sharp*, 77 A.2d 543 (Del. Ch. 1950) (upholding the validity of the assignment of trust income which ultimately added some fifty million dollars to the University of Delaware Endowment Fund).

Judge Seitz also authored numerous opinions of significance as a Third Circuit Judge. Judge Seitz broke Constitutional ground in *In re Japanese Elec. Prod. Antitrust Litig.*, 631 F.2d 1069 (3d Cir. 1980) (holding the Seventh Amendment of the U.S. Constitution does *not* guarantee the right to jury trial when lawsuit is so complex that jury will not be able to perform its task of rational decision making with a reasonable understanding of the evidence and the relevant legal rules). *Japanese Electronics*, in which Judge Seitz parted ways with case law from the Ninth Circuit that “the seventh amendment applies without regard to a lawsuit’s size or complexity” (*In re U.S. Fin. Sec. Litig.*, 609 F.2d 411 (9th Cir. 1979)), remains good Third Circuit law as it has neither been overturned nor overruled.³

Other significant federal decisions authored by Judge Seitz include: *Lindy Bros. Builders of Phila. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161 (3rd Cir. 1973) (*originating* the lodestar analysis, that is, reasonably expended hours multiplied by reasonable hourly rate for determining attorneys’ fee awards); and *C.I.R. v. Danielson*, 378 F.2d 771 (3d Cir. 1967) (adopting new rule of law that “a party can challenge the tax consequences of his agreement as construed by the

³ Some decisions have since declined to follow *Japanese Electronics*. See *Phillips v. Kaplus*, 764 F.2d 807, 814 (11th Cir. 1985) (declining to recognize complexity as a basis for denial of jury trial); *Kian v. Mirro Aluminum Co.*, 88 F.R.D. 351, 355 (E.D. Mich. 1980) (electing instead to follow Ninth Circuit reasoning that Seventh Amendment applies regardless of complexity).

Commissioner only by adducing proof which in an action between the parties to the agreement would be admissible to alter that construction or to show its unenforceability because of mistake, undue influence, fraud, duress, etc.”), *cert. denied*, 389 U.S. 858 (1967).⁴

Also, Judge Seitz persuaded the United States Supreme Court in its formation of a standard against which to analyze violations of certain Constitutional rights of the mentally retarded. *See Romeo v. Youngberg*, 644 F.2d 147, 154 (3d Cir.1980) (Seitz, C.J. concurring) (Articulating deviation from professional judgment as standard for liability for State actors operating mental hospital), *vacated*, 457 U.S. 307 (1982). On appeal, the U.S. Supreme Court rejected the competing standard issued by the Third Circuit and agreed with Chief Judge Seitz. *Youngberg v. Romeo*, 457 U.S. 307, 321(1982) (adopting “professional judgment” standard as “afford[ing] the necessary guidance and reflect[ing] the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints.”).⁵

⁴ Notably, Judge Seitz, very new on the Circuit Court, showed judicial courage by disagreeing with the sitting Chief Judge of the Third Circuit, whose dissenting opinion was not entertained by the U.S. Supreme Court on appeal.

⁵ Of related significance are Judge Seitz’s contributions to the *Halderman v. Pennhurst State Sch. & Hosp.* litigation, which regarded the rights of committed individuals at the same mental hospital as *Youngberg*. *Halderman* was before the Third Circuit twice and featured dissenting opinions from Judge Seitz. *See Halderman*, 612 F.2d 84, 116 (3d Cir. 1979) (Seitz, C.J. dissenting), *rev’d sub nom. Pennhurst State Sch. & Hosp. v. Halderman*, 451U.S. 1, (1981). *See also Halderman v. Pennhurst State Sch. & Hosp.*, 673 F.2d 647,662 (3d Cir.1982) (Seitz, C.J. dissenting in part), *rev’d sub nom. Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984).

III. DESEGREGATION

News Journal article written by William T. Quillen for the 60th anniversary of *Brown v. Board of Education* was the chief source of the oral comments. The on-line version of the article is attached.

The Delaware judge who changed America

William T. Quillen 4:32p.m. EDT May 12, 2014



(Photo: SUBMITTED)

Saturday marks the 60th anniversary of the U.S. Supreme Court decision known as "Brown v. Board of Education." It stands as one of the most important decisions in court history. We are still feeling the effects of it. Few people realize the role Delaware played in the decision. Today former Delaware Supreme Court Justice William Quillen takes a look at the life and work of Chancellor Collins Seitz, one of the most important figures in the case. Throughout the week we will take a look at others who played crucial roles in the decision.

May 17, 1954! The landmark desegregation opinion by the Supreme Court of the United States in Brown v. Board of Education actually covered five different appeals from four separate states. Three appeals came from United States District Courts in Kansas, South Carolina and Virginia, all of which had "denied relief to the plaintiffs under the so-called 'separate but equal' doctrine announced by the [Supreme Court of the United States] in Plessy v. Ferguson [in 1896]." Those three cases were ultimately all ordered reversed.

Delaware's state constitution and statutes also required school segregation by race. But the fourth case, the Delaware case, was different. The Delaware case was before the Supreme Court of the United States on a writ of certiorari to the Supreme Court of Delaware (a form of discretionary appeal). Our state Supreme Court had supported Chancellor Collins Jacques Seitz' finding that the "separate" schools involved in the Delaware litigation were not "equal." The Chancellor had ordered the plaintiffs' "immediate admission to schools previously attended only by white children, on the ground that the Negro schools were inferior with respect to teacher training, pupil-teacher ratio, extracurricular activities, physical plant, and time and distance involved in travel." That disposition had also been affirmed by our state Supreme Court and the defendants' school officials who had sought the writ, challenging the "immediate admission," were granted, by the Justices of the Supreme Court of the United States, the opportunity to be heard as part of the Brown appeal.

The Delaware case had originated as two Delaware Chancery cases, *Belton v. Gebhart* and *Bulah v. Gebhart*. The two cases were consolidated in Chancery. The plaintiffs in the consolidated case (usual umbrella designation is *Belton v. Gebhart*) included both elementary and high school students in two particular school districts. The defendants were Delaware school officials sued in their official capacities. Recently appointed as Chancellor, Collins Seitz heard the case in the non-jury Court of Chancery. Note the following about the Chancellor's handling of *Belton* at the trial level.

1. **The Record:** It is clear that Chancellor Seitz wanted to hold that state constitutional and statutory mandated school segregation by race was in itself a federal constitutional inequality under the equal protection clause of the 14th Amendment; that is, *Plessy v. Ferguson*, actually a railway passenger car case, should simply not apply in public education. He could not, however, bring himself to so rule due to the whole of United States Supreme Court precedent. But Chancellor Seitz did hear evidence on the *per se* argument and he helped the plaintiffs make a thorough factual record on the very point that he ultimately found not permitted by precedent. Instead, after the thorough factual inquiry, Chancellor Seitz ordered desegregation under the existing "separate but equal" standard.

2. **Immediate Relief:** In the past, even when the plaintiffs had won under the "separate but equal" standard, courts "had given the defendant school officials time to equalize the separate facilities." Not Chancellor Seitz. "[I]t was the first time that a court had ordered a segregated white public school to admit black children." See James T. Patterson, *Brown v. Board of Education* (Oxford University Press, 2001). The Chancellor saw the issue simply as court work involving litigants. Adjudication! It was not a governmental policy-making exercise. Individual student plaintiffs were seeking particular judicial equitable relief against their segregated school status, relief from a present, unconstitutional restraint. The student plaintiffs won. Seitz: "To postpone relief is to deny relief."

3. **Bold Fact Finding Dictum:** Dictum is defined in my Merriam-Webster's Collegiate Dictionary as "a judge's expression of opinion on a point other than the precise issue involved in determining a case." Because Chancellor Seitz decided to follow the *Plessy* "separate but equal" precedent, he did not have to say anything about mandated school segregation by race, standing alone. But, boy, did he! Taking a leaf out of Chief Justice John Marshall's *Marbury v. Madison* (1803) playbook, the Chancellor made a "factual conclusion" unnecessary under his own decree: "I conclude from the testimony that in our Delaware society, State-imposed segregation in education itself results in the Negro children, as a class, receiving educational opportunities which are substantially inferior to those available to white children otherwise similarly situated."

4. **Audacious Advocate:** The phrase, "Speak Truth to Power", has been used in various contexts, some more pleasant than others. There is a line between the judge's role as a fact finder and the lawyer's role as an advocate; a line also between courage and insolence, sometimes a thin line. In a hierarchy that can on occasion be pretty stuffy and haughty, the Chancellor ran the risk. "I believe that the 'separate but equal' doctrine in education should be rejected, but I also believe its rejection must come from [the United States Supreme Court] ... It is for that Court to re-examine its doctrine in the light of my finding of fact." Pretty good for a kid from the bricks of Wilmington, Delaware.

Collins Seitz was just 37 years old at the time he wrote his *Belton* opinion; he had been a state judge for just six years. And yet, in his opinion, he just seemed to assume that the United States Supreme Court would, in normal course, grant a discretionary appeal by way of a United States

Supreme Court writ of certiorari to the Delaware Supreme Court, and would reconsider established United States Supreme Court law "in the light of my finding of fact". Moreover, by his wording, he thereby boldly claimed for himself the traditional advantage of a deference customarily paid to the trial court. When the evidence has been warmly heard first-hand, and not read from a cold appellate record, there is a presumption that the trial judge, who saw and heard the witnesses, is the decisive voice on disputed factual matters. The Chancellor knew that procedural aspect of litigation and he claimed it. There were some favorable circumstances for the Seitz bold Belton gamble in 1952.

First, the time was long overdue for school desegregation. Two world wars had been fought; the world was changing. In reading about the deliberations of the United States Supreme Court leading up to the Brown decision, the word "inertia", as it relates to matter at rest, to me becomes descriptive. Plessy v. Ferguson (1896) was a 58-year way station in the forward movement in race relations from slavery to civil equality (personhood); to political equality (voting, jury service); to social equality (equal public treatment). No one seemed to note the obvious Plessy error: "social equality ... the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals" was hard to achieve when the law compelled segregation by race. The former slave race and the whites were both entitled to a broader liberty. Justice John Marshall Harlan in his sole Plessy dissent wrote in language of timeless principle: "If a white man and a black man choose to occupy the same public conveyance on a public highway, it is their right to do so, and no government, proceeding alone on grounds of race, can prevent it without infringing the personal liberty of each." Collins Seitz understood there was no longer time to be at rest. Principle, not precedent, had to be the guide to the future.

Second, once there was a societal focus on the ethical and moral aspect of unending segregation in public schools, the value of the human dignity of each individual child and the basic human decency of equality demanded the result. Rationality was on the plaintiffs' side. Collins Seitz, for one, could not believe that the government could treat a segment of its own citizenry in such a demeaning fashion.

Third, as noted at the memorial court session for Chancellor Seitz on January 29, 1999, "[Y]ou have to realize that Chancellor Seitz was the first person as a jurist, not as an advocate, to put it in writing why in 1952 that segregated schools were completely inconsistent with the American dream." This country's real founding document is the Declaration of Independence. It gave us birth and spirit as a nation. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The very purpose of our country is to secure the self-evident truth of human equality. It is America's reason for being. Collins Seitz understood that.

Chancellor Seitz had a very practical tactical purpose for his tone in the 1952 opinion. Since he felt the matter was headed to the United States Supreme Court, he wanted there to be one case which clearly said racial segregation in public school education is unconstitutional on its face. It was as if the legal profession, and particularly the legal profession in segregated Delaware, owed that to society and to the Supreme Court of the United States. And, as it turned out, the Warren Court listened. "Separate education facilities are inherently unequal." Courage won. Insolence lost. Immediate admission upheld. Delaware case affirmed.

Chief Justice Earl Warren delivered the opinion, and he recited the nature of the Delaware case (along with the others). And, in the Court's unanimous opinion, Warren pointedly noted: "The

Chancellor also found that segregation itself results in an inferior education for Negro children (citing Footnote 10), but did not rest his decision on that ground." Footnote 10 quoted the Chancellor's factual finding. The Chief Justice spoke for the Court. Others, including Justice Felix Frankfurter and Justice William Brennan, have spoken about the influence that the 1952 Belton opinion had on the Highest Court's 1954 opinion in *Brown v. Board of Education*.

Ten years ago, the Delaware Heritage Commission celebrated the fiftieth anniversary of the *Brown* opinion. I had the privilege to participate in the Commission's publication. Much of my language today is a reprise of what I wrote then. But, to my mind, Annette Woolard Provine, an historian contributor 10 years ago, played the lead role. She reminded us that Judge Leonard L. Williams had declared, "Collins Seitz is a hero." That title surely fits. But she pointedly added a telling sad note: "Yet outside of the legal profession, few Delawareans know about this local hero." Moreover, an annoyance to me is that several "Companions" to American History that I own do not mention Collins Seitz in relation to *Brown*. To me, to talk about *Brown* without mentioning Collins Seitz is like talking about the University of Virginia without mentioning Jefferson, the Constitution of the United States without mentioning Madison. Chancellor Seitz is the best of us and he deserves both the State's and the Nation's enduring honor. The number of people who knew him diminishes at a steady pace. But there should be no slight of this hero because time passes. Remembrances should be recorded.

I remember Collins Seitz as an unpretentious, modestly mannered, totally open human being with a passion for social justice and a cutting ability to distinguish right from wrong. His candor was disarming, but never mean spirited. To his judicial colleagues and contemporaries, he was "Collins" and he treated the most recent admittee to the Bar, or a teenager serving legal papers, just as he treated a United States Supreme Court Justice. Chancellor Seitz was a rare person, a person so quietly confident in his own being that social ego stroking was an obvious waste. Collins accepted you as an equal and he expected you to pay him the same courtesy.

Collins Seitz was born in Wilmington on June 20, 1914. He died in Wilmington on October 16, 1998. He spent 52 of his 84 years as a judge, twenty in the State Court of Chancery, and thirty-two on the Federal Court of Appeals, over 60 percent of his life. And so Vice Chancellor, Chancellor, Judge, Chief Judge, Senior Judge- we need to salute you. You are one of us and you made us proud. Thank you Collins! And Happy 100th Birthday!

William T. Quillen is a former Delaware Supreme Court Justice and Secretary of State.

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IV. NOTING A DELAWARE CONNECTION

This short note has two givens: Collins Jacques Seitz (1914 -1998) is the greatest judge in Delaware history; DuPont is the greatest industrial business enterprise in Delaware history. The “givens” are obviously the author’s opinion.

This short note has one purpose: to document the historic Delaware connection between the Seitz family and The Du Pont Company.

Introduction

A partial family tree for Collins Seitz is:

Great-Grandparents	Grandparents	Parents	
	Jacques Seitz (youngest child)	George Seitz, Sr. (oldest child)	6 siblings Collins Jacques Seitz (5th boy)
John Gibbons Catharine Dougherty	Anne (Annie) Gibbons (oldest child)		
		Margaret Jane Collins (oldest child)	Margaret Jane Seitz (6th child & only girl)

The late Dr. Margaret Jane Seitz is the Seitz Family Historian, and compiled for the family an unpublished genealogical book entitled “The Seitz Family”, which was distributed to family members. Quoted matters herein, edited cosmetically, are from handwritten comments in Margaret’s generally unpaginated book. My other chief source is Margaret M. Mulrooney’s published book, “Black Powder, White Lace - The DuPont Irish and Cultural History in Nineteenth Century America”, University of New Hampshire (2002), published by the University Press of New England (2003) (cited herein as “*Mulrooney at ___*”). In general, Margaret Jane Seitz’s research supplies the specific family history and Ms. Mulrooney supplies the general context in arranging

details, plus some valuable insights on Collins Seitz's direct ancestors. There is modest variation in some of the recorded dates.

“[Great grandfather] John Gibbons was recruited by duPont Co. in Ireland to come to USA to work in the powder yards along the Brandywine. He was 17 years old and came over on the Ship Medorain in February 1839...he worked his way up and was made foreman of the Hagley Yards in 1859 [maybe earlier], a position held till he died of pneumonia at age 63 in 1885. He lived in the ‘Foreman’s *House*’ on Black Smith Hill. This house has been restored and is now part of the Hagley Museum Tour. John Gibbons served in the Delaware Infantry Volunteers during the Civil War from August 20, 1864 to July 17, 1965. These troops were used to defend the du Pont Powder on the Brandywine.”

Mulrooney concludes that John Gibbons “was a convincing model of the self-made man” and she supports that conclusion in some abundant detail. *Mulrooney at 265, no.8*. Certainly any fair assessment of Judge Collins Seitz’s family tree should highlight the foundation rock of great grandfather John Gibbons, a notable success in powder with the du Pont Company.

“[Grandfather] Jacques Seitz came to USA at the end of the Franco-Prussian War of 1870. He was born in Lobsann, Alsace, France. Alsace was taken over by Germany and Jacques [involuntarily] became a German citizen. He had served in the French marines during the war. He did not want to live under the Kaiser so [in 1872] he came to work in du Pont powder mills on the Brandywine. He had worked in smokeless powder in Alsace, so he was a valuable recruit. Jacques worked at du Pont Co. under the

foreman John Gibbons. Jacques met [the boss's daughter] Annie Gibbons and proposed. John Gibbons was suspicious because Jacques came 'from the other side' and he could not be sure Jacques was an honorable man and free to marry. So John went up to the pastor of St. Joseph's on the Brandywine and had Father communicate with the pastor in Lobsann to get the history on Jacques. Everything was in order so Annie and Jacques were married in 1874."

One of the signs of upper mobility is, of course, the acquisition of property. Not only did John Gibbons leave an "estate of more than \$5,000, excluding real property", but "[i]n 1873, John borrowed from Sophie duPont \$500, which he put toward the purchase of a house at 1629 Lincoln Street in Wilmington", a house in which John Gibbons never lived. *Mulrooney at 265, n.8*. On Gibbons' death in 1885, the ownership of the house passed to his widow Catharine Dougherty Gibbons as a primary residence until her death in 1894. It evidently then passed to Catharine's spinster daughter, Margaret Gibbons, who had shared the house with her mother and who herself died in 1899. *See Mulrooney at 211-213*. From there the house ultimately made its way laterally to Annie Gibbons Seitz (sister of Margaret Gibbons) and to the Jacques Seitz-Annie Gibbons family.

In particular, when Gibbons' grandson, George H. Seitz, the first child of Jacques Seitz and Annie Gibbons, married in 1903, he and his wife Margaret Jane Collins, made their home in the 1629 Lincoln Street house, which had been purchased by John Gibbons thirty years earlier. Their fifth boy, Collins Jacques Seitz, was born there in 1914 and his home for his first five years was the Lincoln Street house. In 1919 the

family (six children total) moved to 411 Lore Avenue, Gordon Heights which home became sort of the family institutional home until Collins' Mother died in 1961. Until Family Historian Margaret died in 2008, the family home survived.

Tragically, Collins' father died in 1929 at the age of 54. His obituary in the Wilmington paper reported that he had been "born at Hagley" and burial was to be "in St. Joseph Cemetery on the Brandywine". He had been ill for five years. He too had worked for The DuPont Company, but as a civil engineer. "In that capacity he traveled all over the United States, Canada and Mexico and superintended the construction of several large chemical plants for The du Pont Company. He also perfected machines used in the manufacture of powder."

So there you have it. Great-grandfather John Gibbons (1839-1885), Grandfather Jacques Seitz (1872-1921), Father George Seitz, Sr. (1899-1929), one hundred and twenty-five years of service to The DuPont Company by three generations of Collins Seitz's direct ancestors. I think it is a really neat Delaware story. So far, no one else has. P.S.: As a teenager, Collins worked for DuPont as an office boy one summer, a self-described "insignificant figure", and there was some other modest Seitz DuPont history as well.

CLOSING

I remember Collins Seitz as an unpretentious, modestly mannered, totally open human being with a passion for social justice and a cutting ability to distinguish right from wrong. His candor was disarming, but never mean spirited. To his judicial colleagues and contemporaries, he was “Collins” and he treated the most recent admittee to the Bar, or a teenager serving legal papers, just as he treated a United States Supreme Court Justice. Chancellor Seitz was a rare person, a person so quietly confident in his own being that social ego stroking was an obvious waste. Collins accepted you as an equal and he expected you to pay him the same courtesy. He is a Delaware treasure.

James Miller Tunnell, Jr.

James Miller Tunnell, Jr., was born into an old Sussex County family on June 17, 1910, in Frankford, Delaware, and spent most of his youth in Georgetown. He attended high school at Mercersburg Academy and college at Princeton University, graduating *summa cum laude* in 1932. He exhibited a gift for oratory at an early age. In the National Oratorical Contest of 1927, he took first place in the Delaware and Mid-Atlantic competitions, finally finishing second at the national level.

He was awarded a Rhodes Scholarship and attended Exeter College, Oxford University, receiving a degree in Jurisprudence and a B.C.L. in Civil Law. In fact, it was Tunnell's degree from Oxford that prompted the Delaware bar to change its rules in order to allow admission of candidates with non-U.S. law degrees. The so-called "Tunnell exception" applied only to law degrees earned at Oxford or Cambridge Universities.

He was admitted to the Delaware bar in 1936. He practiced law in Georgetown with his father James M. Tunnell, Sr., and younger brother Robert. During those early years of practice in Sussex County, he developed into a highly skilled jury trial lawyer.

In 1951 Justice Tunnell was appointed to the newly created separate Delaware Supreme Court together with Chief Justice Clarence A. Southerland and then-Justice Daniel F. Wolcott. He wrote the first opinion that was issued by the separate Delaware Supreme Court. He resigned in 1954 to make an unsuccessful bid for the Democratic nomination for the United States Senate, a seat held by his father from 1941 to 1947. In 1966, in a second bid, Justice Tunnell did gain his party's nomination but lost in the general election.

In 1958 Justice Tunnell moved to Wilmington and joined the firm of Morris, Nichols, Arsht & Tunnell. During his twenty-two years of practice with that firm, he developed a national reputation as an advocate. He was renowned for his courtroom skills and respected for his willingness to defend unpopular causes. His verbal skills, combined with a warm sense of humor, made him a perennially popular public speaker.

Tunnell attracted high-profile cases such as that for the Associated Aviation Underwriters, an insurance company for many major airlines. In that regard, Tunnell worked on airplane-related litigation, such as a federal tort claims action resulting from the collision of an Air Force training jet from Nellis Air Force Base with United Airlines Flight #736, bound for Los Angeles from New York City. The planes plummeted into the desert just ten miles from Las Vegas on April 21,

1958, killing both Air Force members on the training mission and all forty-seven passengers and crew on United's DC-7.

It was a hard-fought, six week trial conducted before U.S. District Court Judge Caleb Wright. Walter K. Stapleton, a young attorney assisted Tunnell. "There were thousands and thousands of pages of depositions, just massive documents to be organized and theories of negligence to be fashioned," Stapleton remembered. He was impressed with Judge Tunnell, "a lawyer's lawyer," who kept a detailed notebook with him throughout the trial containing every point he wanted to make during direct or cross-examination.

Justice Tunnell was a mentor to young lawyers. Thomas Hunt joined Morris, Nichols, Arsht & Tunnell in 1972, and worked primarily with Tunnell, who proved a strong influence from the start. "When I first came to the firm I did what every young lawyer does," said Hunt, "which is create piles in your office of everything you're working on if you want it at your fingertips." But within a week Tunnell came into Hunt's office and said, "You can't work like that. You can only have one thing on your desk at a time."

Yet Tunnell could be very "hands off" once he acquired confidence in a young lawyer. In Tom Hunt's case, that came just a few years after he had arrived at the firm, when shipbuilder Falcon Tankers hired Morris, Nichols to conduct a lawsuit against Litton System Inc. over some oil pumps that had failed to operate

properly. Hunt was up against some “pretty formidable Delaware attorneys,” including some senior partners of Morris, Nichol’s major rivals. About a month before trial Tunnell came into Hunt’s office to tell him, “I was going to try this case with you, but my doctor just told me I have to have an operation. You’re going to have to try the case by yourself.”

Hunt confessed that he wasn’t sure he was up to it. “Naw, you’re up to it,” Tunnell reassured him. “But just to make sure, I’ll sit through the first couple of days with you.” On the morning of the third day of the trial before then Superior Court Judge (later Chief Justice) Andrew Christie, Hunt’s expert witness stumbled during cross-examination, saying the exact opposite of what Hunt had expected him to say. Like a boxing coach between rounds, Tunnell advised Hunt during a break, “Ok, when you get back up on the redirect, get him to repeat the incorrect answer. Then plead surprise and ask for permission to lead the witness.”

It was a very esoteric rule of law, one that Hunt thought most lawyers did not know about. Hunt later explained, “If you tell the judge, ‘My witness has just said something that comes as a complete surprise,’ you can request permission to use leading questions to find out what is going on.” At first Hunt was skeptical and told Tunnell he could just get the witness to straighten out the answer. But Tunnell insisted. “No, no, you have to do it this way.” Judge Christie looked at Hunt as if no one ever had made that request before, then granted permission.

When he had finished with the witness, Tunnell told him, “Well, now you know everything I know about trying cases. I’m leaving.” Hunt went on to win a million-dollar judgment for Falcon Tankers.

Justice Tunnell retired from his law practice in 1980. Then, for two years, he taught trial advocacy and professional responsibility as a distinguished senior professor at the Delaware Law School.

Justice Tunnell served with distinction in many roles during his long career. He was president of the Sussex County and Delaware State Bar Associations, a member of the American College of Trial Lawyers, the American Law Institute, and the American Judicature Society and was a fellow of the Foundation of the American Bar Association. He was a former chair of the Delaware Revised Code Commission and served on numerous state commissions and committees. He served as a trustee of the University of Delaware for twenty-eight years from 1954 until 1982, including ten years as chair of the board. He served for many years on the boards of Delmarva Power and Light Company and the Wilmington Trust Company. He was deeply involved in the Presbyterian Church and held several high lay positions in the church in Delaware. He also served for twenty-three years as a trustee of the Princeton Theological Seminary.

Delaware history was a lifelong enthusiasm for him. From his extensive research, he produced an encyclopedic family genealogy as well as many articles

for historical society publications. He was also a president of the Historical Society of Delaware, a founder and past president of the Friends of John Dickinson Mansion, a founder of the Foundation to Preserve Blackwater Church, and a friend of Old Drawyers and other historical and preservation groups.

Justice Tunnell died January 6, 1986, at the age of seventy-five. He was eulogized in the *Wilmington News-Journal* as “one of the best attorneys in Delaware, his style full of Sussex modesty and common sense but hardly pretentious.”

RODNEY INN OF COURT

LOUIS L. REDDING BIOGRAPHY

Redding, Louis L. (1901-1998). Lawyer Redding was born in Alexandria, Virginia. He grew up in Wilmington, Delaware and graduated from Howard High School in 1919. He was a member of a proud, black family that lived in a small black community within the City. Redding was the first graduate of Howard High School accepted into Brown University, where he founded the campus chapter of Alpha Phi Alpha Fraternity. Louis excelled academically at Brown and also won the University's prestigious Gaston Medal for distinguished oratory, an award that granted him the privilege of speaking at the commencement ceremony.¹

Although Redding went to Brown wanting to be a doctor, he was so impressed with the lifestyles of the several black lawyers he met from Providence and Boston that he became determined to be a lawyer. After a brief stint teaching in Florida and in Chicago, he decided to enter law school and was accepted at Harvard. In 1928, Louis Redding became just the second black student to earn a *Juris Doctorate* and the only African American in the 200 member graduating class.²

After graduation, this newly minted lawyer looked forward to a high powered, big law firm practice, akin to that enjoyed by the attorneys that he had met while an undergraduate at Brown. His father, Lewis Redding, had other ideas though and wanted him back in Delaware to break the color barrier at the Delaware Bar and devote his career to working for justice. Not one to disappoint his father, whom he respected immensely, Redding returned to Wilmington and prepared to take the bar examination.³

Prior to taking the bar examination, Redding had to find a preceptor, i.e., a Delaware lawyer who would agree to serve as a sponsor to oversee a clerkship where any bar applicant would learn the specifics of practicing law during the year prior to taking the examination. The inability to secure a preceptor had proven a final, insurmountable deterrent to other black candidates, but with the intervention of Redding's father, Lewis, Municipal Court Judge Daniel O. Hastings agreed to be Redding's preceptor.⁴

Louis completed his clerkship in February 1929 and successfully passed the bar examination later that year. Although rumors circulated among his supporters that he was given a more difficult examination, this was never substantiated. At his

swearing in ceremony, Chief Justice James Pennewill, in addressing the new group of lawyers singled Redding out and said patronizingly, “Young man, I hope that by your conduct as a lawyer, you will justify your admission today.”⁵ Louis Redding became the State of Delaware’s first African American attorney. It was twenty-six years before another African American was admitted to the practice of law in Delaware and during that period Mr. Redding single handedly provided his legal talents to all victims of segregation and racism, including black and white Delawareans.⁶ Years later Louis was asked if he were proud of this particular “Negro First”. He responded, “How can you boast about being the first when you realize it was the result of racism and antipathy?”⁷

Redding began his fight for equal justice for all citizens very early in his legal career by eliminating segregation in Delaware courtrooms. When he was a young attorney, the courtroom in the Wilmington Municipal Court was segregated: blacks were not permitted to sit in the same area of the audience as white members of the public

Although Lawyer Redding, as he was known, is recognized for handling civil rights cases in Delaware aimed at challenging segregation in education, he also handled cases aimed at ending discrimination in housing, employment and public accommodations. To appreciate Redding’s accomplishments in the State of Delaware, and the impact of those accomplishments throughout the nation, one must remember that at the time, the State of Delaware was completely segregated in every vestige of daily life; education, housing, employment, public accommodations, etc. For his first twenty years of practice, he was not even accepted as a member of the Delaware State Bar Association. He practiced law to a large degree in isolation and was considered a loner by his fellow professionals.⁸

Redding’s most significant cases were in the fields of public accommodations and education. In 1949, nine black students came to Redding after being denied admission to the University of Delaware, because of their race. He consulted with attorneys at the Legal Defense Fund, Inc. (LDEF), an arm of the N.A.A.C.P. then headed by Thurgood Marshall (later on, Justice Marshall) and Marshall’s Chief Assistant, Jack Greenberg, a white attorney from New York. The LDEF was organized to develop strategies and to take legal action to eradicate segregation by providing and insuring equal access for blacks in all aspects of American life.⁹ The matter ultimately came before Chancellor Collins J. Seitz, who found the vestiges of segregation that were practiced in Delaware abhorrent and ordered the admission of blacks to the University of Delaware (*Parker v. University of Delaware.*)¹²

Legal segregation in Delaware rested on the 1896 U.S. Supreme Court case, *Plessy v. Ferguson* and its holding establishing the “separate but equal doctrine”.¹¹ Seitz based his ruling for the plaintiffs on the grounds that Delaware provided separate but *not* equal facilities.¹² Seitz regretted that he did not have jurisdiction to overturn the *Plessy* doctrine, i.e., to find that “separate but equal” violated the Constitution, for only the Supreme Court could do that. This case, along with others in the 1950s, inspired the LDEF and its affiliated lawyers to redouble their efforts. Louis Redding found just such a vehicle, centered on Delaware’s public school system.¹³ He filed the suit *Bulah v. Gebhardt*, based on a public school in Hockessin, Delaware and a similar case, *Belton v. Gebhardt*, based on segregated schools in Claymont, Delaware. Redding’s clients prevailed in the state court action before Chancellor Seitz and these cases became the Delaware portion of *Brown v. Board of Education*. This Supreme Court decision desegregated public schools throughout the entire United States.¹⁴ Redding participated in the oral argument before the high court and his recital of the actual language in the Seitz opinion will forever remain a part of his achievement.¹⁵

Redding also argued and won a significant case involving the right of a black citizen to utilize public property in the City of Wilmington. The landmark case of *Burton v. Wilmington Parking Authority* was also a Chancery Court decision affirmed by the U.S. Supreme Court -- required reading for all law students studying constitutional law. In describing Redding, Jack Greenberg, then a law professor at Columbia University Law School, said, in referring to Redding:

“...that it wouldn’t have happened without him. Another lawyer might have said, ‘Okay, I’ll get you on the bus’, but Louis L. Redding said, ‘No, I’ll get you in the school’.”¹⁶

Redding, later in life, when reflecting on his life’s work said:

“What we were doing was not addressed in changing our lives at all. What we were trying to do was change the status, the experience and the lives of the minorities of American citizens who happen to be black. We’re not trying to change our lives--we’re trying to change our opportunities as American citizens.”¹⁷

Redding’s last venture in removing inequity was in the lawsuit involving *de facto* segregation in the public schools of Northern New Castle County, *Evans v. Buchanan*.

In analyzing the impact of Redding's efforts, one must recognize that there was much hostility throughout the State of Delaware as he traveled from one end of the state to another, determined to pursue what was right for all citizens. He had to deal with hostility from the white community on a continuing basis. This may explain why he seemed aloof to some, a very private person who was never fully accepted by his fellow lawyers in Delaware.

Having heard of Louis Redding prior to moving to Delaware in 1974, I was honored to have been invited to a black tie dinner by Mr. Redding and Judge Leonard Williams after I was admitted to the Delaware Bar in 1975. The dinner, which included our spouses, was to celebrate the 9th, 10th and 11th African Americans to be admitted to the Bar. The admission of Kester I. H. Crosse, Judge Charles H. Toliver, IV and me marked the first time three applicants of color had passed the bar examination and were admitted to practice in the history of this State. It was indeed a time for celebration. I believe that the restaurant where we had dinner was on the same site as the restaurant that was the basis for the *Burton v. Wilmington Parking Authority* case, which established the principle of state action under the 14th Amendment of the U.S. Constitution. Needless to say, it was a dinner that neither my colleagues nor I will ever forget. For three young lawyers to be honored in this way by Attorney Redding and Judge Williams was really special.

A particularly emotional moment for me occurred while I served on the Superior Court bench in the 1980s. It was at the call of the criminal calendar one morning in old Courtroom 301. Attorney Redding was in the twilight of his career and working as a deputy public defender representing criminal defendants. On this particular morning, as he stood before the bench and I began my colloquy, I suddenly looked at Mr. Redding and in an instant focused on what he had meant to this state, this country and me. This lawyer, small in height but giant in stature was a leader in the civil rights movement. As a young judge, I stand on the shoulders of this man who was referring to me as "your honor". It was Louis Redding who had fought against seemingly insurmountable odds to become a member of the esteemed Delaware Bar. This man had fought for his clients to be respected in our courtrooms, a symbol in this country where the rights of every person should be respected. He had represented clients when cash compensation was often an issue. He had understood that the "separate but equal doctrine"

was not only a myth, but also a national policy that had to be overturned if a substantial portion of our nations' citizens were ever going to have an opportunity to share in the American Dream. For just a moment, in a word, I was in "awe" of Louis L. Redding, as he stood there with his trademark reserve and dignity assisting his client. I thought, should not Attorney Redding be on this bench, in the finest state court in the country—and should not I, as a young lawyer who had been in Delaware only a few years, have been standing there representing a defendant? In a flash, I extricated myself from that feigned self-pity and got back to the business in front of me, which was to arraign Attorney Redding's client. This was for me though clearly a defining moment in the tenure of this then young Delaware judge.

I continued to see and interact with Attorney Redding, as we were members of the graduate chapter of the same social fraternity, Alpha Phi Alpha. It was the tradition at that time that monthly meetings rotated among the homes of the members. When his turn to host arrived, Mr. Redding entertained the brothers in his office in the old Farmers Bank Building at ninth and Market. Although we were a bit cramped in that law office, the ambience made up for it—at least from my perspective.

There was one encounter with Attorney Redding that helped define, for me, the significance of my tenure on the Superior Court bench. It was the practice during the 1980s for judges to have sentencing calendars of approximately 10 defendants on Fridays. On this particular Friday, I had just handled a double calendar and sentenced about 20 people. In addition to the defendants, when you consider all of the other people involved in a single sentencing, e.g., family members, employers, friends, victims, you realize the impact of each of your dispositions. As was my custom after completing this arduous work on a sentencing day and leaving the courthouse, I took a long walk, usually toward one of the rivers traversing the City of Wilmington. On this particular day, I had mentally just taken the afternoon off. I was returning from my walk down to the Christina River, when I encountered Attorney Redding. We exchanged pleasantries and he said, "Judge Martin, why aren't you on the bench?" My first reaction was to share with this man how interminably exhausted I was, after sentencing 20 defendants and addressing all of the vexatious issues associated with sentencing. However, in a flash, I reflected on all that this lawyer had meant to this community, this state and the country. I thought about his advocacy in opening up doors to education for people that were important to me. I

recalled the struggles, accommodations and even risks that he and so many others had made and taken just so I could become the first black judge on a Delaware constitutional court. My exhaustion suddenly paled in comparison as I then, in a burst of new found energy, responded simply to Mr. Redding as I walked away, “Thanks Mr. Redding—I’m on my way back to the Courthouse right now!”

I recall visiting Attorney Redding in Pennsylvania in his later years just to see how he was doing. My last visit was after he was moved to a nursing home in Pennsylvania to spend his final days. Alzheimer’s disease and the ravages of old age, which rendered him partially deaf, might have sapped the energy of this 96 year old man, but as I stood there with my friend Kester Crosse, I felt a mystical energy exude from his presence—which said to me, it’s time now for you, Josh Martin, to make your contribution, however small it may be.

To say it was a moving experience to have known Louis L. Redding would indeed be an understatement.

Joshua W. Martin III

End Notes.

1. ANNETTE WOOLARD-PROVINE, INTEGRATING DELAWARE: THE REDDINGS OF WILMINGTON 69 (2003).
2. *Id.* at 74.
3. *Id.* at 75.
4. *Id.* at 89.
5. *Id.* at 90; Bill Frank, *Historic Event at the Bar*, THE MORNING NEWS (WILMINGTON, DELAWARE), January 18, 1979, at 10.
6. Leonard L. Williams, *Louis L. Redding*, DELAWARE LAWYER, Summer 1998, at 10.
7. WOOLARD-PROVINE, *supra* note 1, at 91; [Author], [Title], SUNDAY BULLETIN (PHILADELPHIA), February 27, 1977, at [page number].
8. Williams, *supra* note 6, at 10.
9. *Id.* at 11.
10. *Id.* at 12.
11. WOOLARD-PROVINE, *supra* note 1, at 120.
12. *Id.* at 122.
13. *Id.*
14. Williams, *supra* note 6, at 10.
15. *Id.* at 12.
16. *Id.*
17. W. Curtis Riddle, et al., Editorial, *Lawyer Louis Redding Created Opportunity as a Civil Rights Pathfinder*, THE NEWS JOURNAL, October 1, 1998, at A18.

The Honorable Roxana C. Arsht – Biography

In 1915, Judge Arsht was born in Wilmington, DE to Samuel and Tillie Statnekoo Cannon. A gifted student, Judge Arsht excelled through Wilmington public schools before eventually enrolling at Goucher College. In 1935, Judge Arsht completed her undergraduate studies with a major in chemistry and a minor in mathematics. She then attended the University of Pennsylvania Law School, graduating in 1939. Despite becoming only the fifth woman to pass the Delaware bar (1941), Judge Arsht struggled to find suitable employment.

Although she was unable to find employment as a lawyer, the skills and knowledge that Judge Arsht gained through her legal education did not go to waste. At a time when contraception was illegal and the issue of abortion had yet to make its way to the forefront, Judge Arsht became a staunch proponent of women's rights, and was instrumental in developing the Delaware office of Planned Parenthood. In 1962, after raising two daughters, Judge Arsht began her formal legal career as a volunteer master in Delaware's Family Court. Nine years later, in 1971, Governor Russell W. Peterson appointed Roxana Arsht to the Family Court bench, making her the first woman to hold a judicial position in Delaware. Judge Arsht retired from the bench in 1983 in order to focus on her philanthropic endeavors.

Judge Arsht gave her time and financial support to numerous charities, including Planned Parenthood, Red Feather Agency, First Stage at Tower Hill School, the exhibition building at the Winterthur Museum, and the Visiting Nurse Association. She and her husband also provided the donations responsible for the S. Samuel and Roxana C. Arsht Hall at the University of Delaware Academy of Lifelong Learning, the Roxana Cannon Arsht Surgicenter, and the Arsht-Cannon Fund at the Delaware Community Foundation. In 1999, after her husband lost his battle with cancer, Judge Arsht became the founding member of the Cancer Care Connection.

The distinguished Judge Arsht was also the recipient of numerous awards, including the Trailblazer Award, the First State Distinguished Service Award, the Josiah Marvel Cup, and the annual award of recognition from the National Conference for Community and Justice. She was inducted into the Hall of Fame of Delaware Women in 1986.

Judge Arsht was married to Samuel Arsht, who many revere as one of the architects of modern Delaware General Corporation law. In 1965, twenty-five years after she passed the Delaware bar, Judge Arsht's daughter Adrienne became just the 11th woman to be admitted.

The Honorable Roxana C. Arsht – In Her Own Words⁶

On her greatest influences: *I think my mother and father, both. My father came to this country in 1905. He graduated from the University of Delaware in about 1917, with a B.A. degree, and from the University of Pennsylvania with a master's degree; neither one of which had any practical use at all. But he and my mother, it was playing chess, talking about world problems, getting up in the morning and going to work. It was not a pampering household – it was both parents active, involved.*

On when she knew she wanted to be an attorney: *When I couldn't get into medical school. That's the answer. I majored in chemistry and minored in math in college. And my brother and my uncle and my cousin and another cousin were all doctors, and I applied to Penn Med and couldn't get it. . . . And I knew from my parents that, you know, well you've got to do something. So, all right. Go to law school. So I applied to law school, Penn, and got in.*

On the practice of law: *I grew up with the idea that lawyers and judges were superior. I use the word "superior" in the sense that they have a greater obligation to contribute. They set the standard of how things should be. I always felt 'a man's word is his bond' was what lawyers epitomized.*

On her early days on the bench: *All I remember is it was a challenge, it was something that I wanted.*

On being a judge in her home State of Delaware: *One thing I love about Delaware – the fact that you either grew up, went to school with, or you have had some contact with, everyone, and you don't get lost in the crowd. You live with your own reputation. You can't get away with anything forever.*

On the benefit of diversity in the judiciary: *This Court deals with both sexes. With men and women and families. In your approach to handling families and their problems, the broader and the more varied approaches that can be considered, the better our cases are likely to come out. . . . I think the concerns and approaches women bring to problems can be beneficial, and they're frequently different from men's. And since we are dealing with men and women and families, I learn from the men. I think I've learned from the fact that I'm out of the house and working, and I can apply that experience. But I also know what it's like to be home and cook. I think that the age mix that we have on this Court is good. I'm the oldest. . . . I think this Court needs more than one woman on the bench, just as it would benefit by having blacks and Hispanics, reflecting the community mores and the entire population.*

On the human dimension of Family Court: *We deal with the emotionally charged issues – sex, money, and children! I try to remember that every man who comes in here is either my brother, my son or my father; and every woman is either my daughter, my sister or my mother. How would I want them to be treated? . . . I try to tell myself that there isn't a cure for every illness or*

⁶ See Pat Ciarrocchi, *O Pioneers!*, David Clayton Carrad, *An Interview with the Honorable Roxana C. Arsht – Part II*, DELAWARE LAWYER, Summer 1983, at 42; DELAWARE LAWYER, Fall 2001, at 28; David Clayton Carrad, *An Interview with the Honorable Roxana C. Arsht – Part I*, DELAWARE LAWYER, Winter/Spring 1983, at 24.

problem. I don't have the solution to every child's problems. . . . And it just tears you to bits at times. . . . My concern is that when somebody goes out the courtroom door, even if he lost the case at least he feels he got a fair and considerate hearing from me.

On being recognized as a trailblazer for women in Delaware: I think I am embarrassed about it. It's been a long time since – if – I was a trailblazer, but we have come a long way, so ... Enough!

**Written Remarks by Richard A. Levine for Richard S. Rodney Inn of Court Presentation
About H. Albert Young on January 14, 2015**

H. Albert Young began life on May 28, 1904 as Hyman Albert Yanowitz in Kiev, Russia.

His journey to become one of Delaware's finest trial lawyers of the 20th century, a Delaware Attorney General and thereby Delaware's first and happily trailblazing Jewish statewide elected official and subsequently the founding partner of what today is Delaware's second largest law firm is a tale about a great man and Delaware's good fortune.

Unlike most of you in the Inns of Court, I had the privilege to personally know H. Albert Young, at least for the final 11 years of his life. And it was a privilege. He hired me and we worked together on matters in the 1970s. Following his death in 1982 I worked at his desk until my retirement earlier this year. I will always remember him as a distinguished imposing figure, handsome, white haired and white mustached, always impeccably dressed and groomed, exuding both self-confidence and compassion. I will also always remember him as the tall man he appeared to be, but wasn't in inches, but was in stature.

I have spent three months trying to figure out how to tell the story of this great man in the five to ten minutes allotted for my talk and finally concluded I can't, but here goes my very best shot, but in writing.

I hope that my remarks will help bring Mr. Young to life for those of you here tonight and will show how Mr. Young contributed to the success and reputation of the Delaware Bar.

I will start with Mr. Young's own words looking back on his career in a 1978 oral history interview:

“I have had, since boyhood, indelibly impressed in my mind Robert Browning's verse ‘Ah, but a man's reach should exceed his grasp, or what's a heaven for?’

I tried from the very beginning of my professional career to be responsive to the needs of my community. I participated in many unpopular but just causes, some of which were worldwide known. In the end, I was able to witness the course I followed and the judgment I made was correct.

Mutual love and respect prevailed among the members of my family. My involvement in communal and philanthropic affairs and my striving for excellence in my chosen profession constituted the yeast which made up my standard of conduct.

I always felt there was more to life than mere survival and the accumulation of possessions. The recognition in many forms of my involvement by my colleagues in my chosen profession and by the community at large was my greatest reward. Material

success in itself was not my goal. It did come in some measure as a by-product which enabled me to give of my time and in some measure of my means to causes and institutions dedicated to the philosophy of equality and opportunity and human dignity among all people regardless of race, color or creed.”

In order to understand Mr. Young’s life and to measure his achievements against his own description, let’s now go back to his beginning.

As I already noted, Mr. Young was born as Hyman Albert Yanowitz in Kiev, Russia and immigrated as a one year old with his parents to avoid anti-Semitic riots in Kiev, and like thousands of other immigrants, especially Jews, ended up in Brooklyn, New York living in what he described as “tenement houses because very exclusive neighborhoods did not permit Jews to live there even in Brooklyn.” He recalled as a young boy looking with his mother to relocate and seeing signs saying “No dogs. No Jews.”

Although he had been accepted for high school at the prestigious Bronx High School of Science, Mr. Young moved with his family to Wilmington, Delaware before the start of high school and lived first with relatives at 2nd & Shipley Streets above a chicken store and subsequently above his parents’ grocery store, first at 3rd & Lombard Streets and later at 4th &

Walnut Streets. He attended the old Wilmington High School at Delaware Avenue and Adams Street for four years, working in the afternoons to deliver groceries in a push cart for his parents which he later, perhaps jokingly, described as “the reason for the double hernias that I got afterwards.” Even at that early stage, Mr. Young’s behavior showed his lifelong willingness to work hard, but also his sensitivity to the rights and dignity of individuals. He recalled his working days in high school as follows:

“ . . . I loved working in the store but the one thing that I felt was humiliating was when I would have to go outside the store and pump kerosene while some of my classmates, the girls and the boys would walk by and I was in shabby clothes pumping gasoline and also making deliveries in a push cart.”

Another of Mr. Young’s lifelong characteristics appeared during his high school years where he was president of the dramatic club and a renowned “jokester”.

After graduation from high school Mr. Young attended Delaware College at University of Delaware. There again, he faced anti-Semitism. In his words:

“When I came to the University of Delaware, a Jew was looked upon as some animal from some unknown country. We had no

fraternity and no Jew was invited to join a fraternity. In fact, it was considered quite an honor if you knew someone in one of the gentile fraternities to come in just . . . not to an affair, just to come in and walk through the threshold. When I think of it it burns me up even today.”

Mr. Young did not let this prejudice defeat him. Rather it energized him and together with a bunch of other Jewish students, he formed Sigma Tau Phi fraternity later to become Alpha Epsilon Pi. At the University, Mr. Young used his communication skills to become part of the general community as well. Because of his prior reputation as president of the dramatic club at Wilmington High School, Mr. Young was admitted during his freshman year into the Footlights Club, the University of Delaware’s Dramatic Society, the first Jew ever admitted to a club at University of Delaware. I could fill the rest of my allotted time this evening with stories about Mr. Young’s activities at the Footlights Club where he befriended future Judge Paul Leahy with whom he remained a great friend throughout their lives. The 1925-26 edition of University of Delaware’s yearbook, The Blue Hen, identifies Mr. Young as “Hyme” with the comment:

“Hyme Yanowitz was born for the footlights of a stage, not for the walks of us ordinary mortals . . . assumption of dramatic characters is natural and second, almost first, nature to Yanowitz. He has a

sense of propriety of the stage and natural intuition as to the reaction he is creating in the minds of the audience. He is humorous, witty. He laughs at you, then with you. He is the butt of his own pleasantries. He sees something worth a laugh in almost anything. He is an optimist. He is capable of a great deal of hard work, of acute reasoning, and of keen understanding. He does each thing that he undertakes thoroughly and well. He is unimpeachable as a friend, and he is a friend to all that know him.”

A newspaper review of the Footlights Club 1924 production of *The Night Cap* wrote “Hyman Yanowitz who had been given the measly role of the butler, ran off with the show and his acting was beyond reproach.” And a year later, writing about the 1925 *Smax and Crax* program at the Playhouse in the DuPont Building, the local newspaper wrote:

“Yanowitz or Yanni as his school-mates call him . . . possesses that rare gift, versatility, which is essential for all good curtain men. Aside from taking part in two of the feature skits in the show, . . . Yanni gives several of the cleverest impersonations of local notables that have ever been heard on this stage in Delaware.”

Mr. Young’s senior year at the University of Delaware was a mixed bag. The bad news was that his mother was dying of cancer and he often studied on the train going to Philadelphia where she was hospitalized. But the good news of that year for him was that he met the love of

his life, the sister of his friend and classmate, Phil Blank, Ann Blank, who first came to the University as a prom date for a classmate, but who Mr. Young subsequently courted and married and with whom he raised his three children, the recently deceased Delaware attorney and my former law partner, Stuart B. Young, H. Alan Young, a retired lawyer from Washington, DC and Ronell Young Douglass of nearby Philadelphia, who broke the family tradition and did not study law. I am pleased that Stuart's wife Toni, Alan and his wife Sharon, and Ronal and her husband Bill all joined us for the oral presentation of my remarks.

Following graduation from college in 1926, Mr. Young attended law school at the University of Pennsylvania, graduating in 1929. He worked his way through law school, working evenings moving heavy cases of pharmaceutical supplies in the pharmaceutical warehouse division of Wellons Drug Store in Philadelphia and also selling subscriptions to the Victoria Review as a door-to-door salesman for which he became one of the leading sales people in the country.

Upon graduation from law school in 1929, and at the suggestion of one of his law professors, Mr. Young changed his name from Hyman Yanowitz to H. Albert Young and took on the nickname "HY" which followed him the rest of his life . . . in Mr. Young's words, to have a

name “a client could easily remember.” The newly minted H. Albert Young next sought to begin a legal career in Wilmington, Delaware. Unlike the majority of today’s law school graduates, he did not attend on campus job interviews or a job fair. Rather, in his own words, “Well, I got out of law school in 1929 and I went from office to office to try to get . . . not a job because you couldn’t get a job but [someone to] permit me to hang my hat up and say I’m in the office of . . . whatever it might be, and it was very tough.”

Mr. Young did find a place to hang his hat. By written agreement dated November 25, 1929 with John Biggs, Mr. Young was:

“given a ‘desk’ for the purpose of his practicing law in the waiting room, on the door of which waiting room is marked the number 510, in the Equitable Building in said city, which room is now used as a waiting room and which is to be continued as a waiting room, by the said Biggs, Percy Warren Green and John Biggs, Jr. The said Young is to pay no rent for his occupancy of said waiting room, but he agrees to render the said John Biggs, the said Percy Warren Green and the said John Biggs, Jr., such assistance in the practice of law as they, or either of them, shall, from time to time, desire, without compensation to the said Young for his assistance.”

And the agreement concluded “In the event of the said John Biggs, Percy Warren Green and John Biggs, Jr. or either of them, desiring that the said Young shall move out of said waiting room, the said Young hereby agrees to do so, and to move out of the office occupied by the said John Biggs, Percy Warren Green and John Biggs, Jr., upon his receiving five days’ written notice from them or either of them.”

Now that was great job security! Mr. Young later described his “first office” as follows:

“The outside office looked like . . . like a latrine; shabby, dirty, crummy, but it had a desk in it and that was my office in consideration for which I was to do anything they required me to do with no compensation whatsoever and to be terminated on 30 days’ notice. . . When Biggs then, Jr., was a referee in bankruptcy, we had a meeting with all those lawyers that people involved in the bankruptcy proceedings to come in and of course the first thing they do was . . . nobody took their coat and there was no receptionist . . . they’d take their coats and throw it on my desk and put their hats on the desk. It was humiliating, frustrating.

Although he had his desk, Mr. Young still needed clients. So again, he put his communication skills to work to build a practice, walking along Market Street to introduce himself to its merchants and businessmen. In addition, to help support himself, he became a

part-time radio announcer on WILM radio and also solicited adds for WILM. In his own words

“And that’s how I made a living.”

But the newly admitted lawyer’s radio career soon ended as his legal practice developed, to the ultimate benefit of the bench and bar and citizens of Delaware. In the words of Pearl Herlihy nominating Mr. Young as the Republican candidate for Attorney General in 1950 describing Mr. Young’s early career:

“There is no time . . . I wish there were . . . to tell you of the many cases and the many clients who sought his counsel. Some of these were unpopular causes, too. But there is still a dictum in this state of ours that a man is innocent until proven guilty. This is the dictum that protects you and me. Every one of us wants our day in court . . . and when we have that day (in court) we want counsel who will be staunch, courageous, fearless – a lawyer who will stand up to the rights of individual to be heard and to have his case carried before juries in open court and tried by his peers. Big men and little men . . . men of wealth and men of poverty . . . have sought his counsel, and he has given his counsel according to his conscience.”

Mr. Young’s practice grew exponentially in the 1930’s and 1940’s when he was a prolific trial lawyer – trying both civil and criminal cases and representing clients both rich and poor and

Jewish and non-Jewish and black and white. He was also the subject of much attention in Wilmington's newspapers due to the nature of his cases and his colorful trial techniques.

Time does not permit much discussion of the specific cases but I believe I can convey the flavor of his emerging practice with a series of quotations and blurbs from Wilmington's newspapers about his cases during that period.

1932: Alonzo Alfred charged with stabbing at a dance

March 29, 1933: Louis Davis acquitted of bankruptcy fraud

June 5, 1933: Former state senator Joseph B. Green is charged in election law case

1933: H. Albert Young represents former city councilman Harry Sloan in an election recount battle

1933: Howard Witsil charged with manslaughter for a fatal bar brawl.

1933: Baffone Guilty of Manslaughter, Jury Decides
Baffone Given Four Year Term In Workhouse and
Trial judge declares "You have been ably defended by your
counsel and no one
could have done any more for you."

May 27, 1934: Elijah Becker a 36 year old Negro charged with murder of his wife and her alleged sweetheart represented by H. Albert Young

Unknown date 1934: Joseph Butler, a black man charged with criminal assault acquitted in 40 minutes in a case with Delaware's first black juror.

September 1936: Mr. Young represented five men charged with selling \$100,000.00 of illegal lottery tickets.

1936: Together with his future law partner James R. Morford represented A.W. Fund Company which was accused of fraud in connection with a contract to build an addition to Ceasar Rodney School.

Undated 1930s: Represented a house bomber.

Undated 1930s: Represented two gypsy women who robbed the Equitable Trust Bank at 3rd & Union Streets.

Undated 1930s: Represented a physician charged with illegal narcotic sales.

Undated 1930s: Obtained acquittal for an alleged wife beater.

March 19, 1936: Obtained acquittal for a man accused of a fatal attack in a fight over a parking space.

March 11, 1937: Obtained acquittal of Joseph Tollin, for "bookie" charges.

Undated 1937: Obtained acquittal of murder for Albert DiSalvo of Maryland for auto manslaughter.

Undated 1930s: Represented a woman charged with murder by hitting a man in the face with a brick.

In a 1930's case where Mr. Young defended a client reputed to have run an illegal gambling hall, Mr. Young was confronted by the testimony of two out of state undercover agents. The newspaper quoted his attacks on the testimony of the two "hired witnesses" as follows:

"There should be no convictions on the mere statements of paid hirelings, not sworn officers of the law, but admittedly transients, who in some mysterious way obtained employment for the sole purpose of securing convictions and justifying their employment. Their statements stand alone uncorroborated, by the officers not finding paraphernalia when they raided."

- 1936: Bail Allowed for Hawkins (homicide)
- Undated 1930's: Kruzinski Is Denied Bail As Wife Killer
- Undated 1930's At Mr. Young's request obliging Judge fixes fine so defendant may appeal (setting \$300 fine when \$101 would have been enough stating – "I had no idea that your generosity would be so unlimited.")

- Undated 1930's: Attorney tells some numbers game secrets
Negro Defendant is Dismissed (HAY presented a unique defense)
- Undated 1940's: Got bail reduced for \$1 million lottery ring which used an airplane
- 1942: Foote, 4 Others Freed by Jury of Vote Buying
(Judge Leahy's telephone call to HAY that "Mr. Young had delivered the finest address before a jury that he had ever heard.")
- In 1944: Mr. Young persuaded the United State Supreme Court to affirm a decision by District Court Judge Leahy that an indictment against his client under the Federal Denture Act must be dismissed since it was wrongly filed in the United States District Court for Delaware.
- Undated 1940's: Chambers Denies Murder Charges in Uncle's Death. Mr. Young suggests insanity defense.
- Undated 1940's Represented Joseph A. Kuhns, bookkeeper of Union National Bank charged with embezzling \$16,000.00.

I do want to say a few words about one particular criminal case which demonstrates not only Mr. Young's advocacy, but his dedication to the constitution and laws. In 1947 Mr. Young represented Ira F. Jones who, along with two others, was alleged to have attacked and sexually assaulted Jean Ingle, a DuPont employee, near the reservoir in Wilmington. This was a capital case and garnered amazing amounts of newspaper coverage, almost daily. While all three defendants were ultimately convicted, the sentence of death was not imposed and Mr. Young's trial tactic was credited with having the men "sentenced to prison instead the gallows." Speaking about the trial, Bob Kelly, the news director of WDEL, aired the following:

“The defense, which admittedly started the case with its side of the picture unfamiliar to the public had carried on a dogged fight. Mr. H. Albert Young is an inspiring orator, and pursues a point of law, however small, with great determination. His final plea to the jury was perhaps, as viewed in retrospect, the most moving address that those present at the trial heard throughout the entire proceedings.”

But there is another dimension to this trial worthy of discussion, namely that Mr. Young first challenged the indictment of Mr. Jones on the grounds that the Jury Commissioners had systematically failed to place any women on the jury panel from which the grand jury was drawn, thus violating Mr. Jones’ rights under the 14th Amendment of the United States Constitution. Mr. Young’s motion to quash the indictment was heard by the Delaware Supreme Court on December 19, 1947. The court rendered its decision a mere four days later, refusing to quash the indictment, saying in part that “The defendants in this case being all men, they are not members of the class which they claim were discriminated against, namely women by the Jury Commissioners . . . therefore we failed to see how they have been prejudiced by said action of the Jury Commissioners or should be allowed to take advantage thereof.” But Mr. Young had made his point and although he “lost the battle”, he “won the war” of the constitutional principle since despite denying relief to Mr. Jones, the Supreme Court went on to say the following:

“In view of the great change which has taken place in the activities of women in public life in this State as well as everywhere else, we think that the Jury Commissioners should not only recognize that they are liable to serve as jurors but should include them at all times on the jury panels from which the jurors are drawn for both grand and petit juries, in order that said juries may be truly representative of every class of citizens of the district or territory from which they are drawn.”

The following week, the January 5, 1948 Evening Journal reported in a headline “First Women are Appointed to Grand Jury.” And when the petit jury verdict was rendered in Mr. Jones’ case a month later, the jury foreman was Mrs. Isabelle Booth.

Mr. Young handled many civil cases as well. In early the 1930’s he successfully represented Arthur Soles who had left General Baking Company to sell baking products on his own in avoiding an injunction by General Baking Company. In 1933 he represented former city councilman Harvey Sloane in an election recount battle.

Another early civil case demonstrates how Mr. Young built his practice the “old fashioned way” by being a good lawyer and impressing an opponent. Sometime in the early 1930s, Mr. Young was handling a case in a small claims court against a Wilmington

businessman representing himself. At the conclusion of the case, the defeated defendant approached Mr. Young and said that any lawyer who could so vigorously argue even a small claims matter was a lawyer he wanted on his side and asked Mr. Young if he would represent the defendant's business in the future. That defendant was Frank W. Diver who then operated a Studebaker and Packard automobile dealership in Wilmington. That encounter began a personal and professional relationship that lasted the remainder of Mr. Young's career and beyond. Indeed, in my final years at Young Conaway, it was my honor to assist the now Diver Chevrolet dealership to expand its building on Pennsylvania Avenue and to develop an office building at its adjacent site.

In 1939 Mr. Young was hired to represent striking movie theatre workers who had picketed the Rialto Theatre on Market Street. The Chancellor issued a permanent injunction. Mr. Young appealed to the Delaware Supreme Court which in 1941 overruled the Chancellor and issued a landmark decision upholding the rights of workers to unionize and to peacefully demonstrate against their employer.

In 1949 he successfully defended Dr. Howard D. Gregg, the President of Delaware State College against termination on charges he had enriched himself from the school's poultry sales in yet another case which was the subject of great public interest and publicity.

Years later, in 1961 Mr. Young recovered what was reputed to be the largest civil verdict of its time when he obtained a jury verdict of \$130,228 for Marie DiFonzo in a slip and fall case on Market Street against the Robelen Piano Company. Mr. Young's closing argument to the jury exhibited his dramatic flair and communication skills. Recounting the evidence that one of Mrs. DiFonzo's legs was shorter than the other as a result of her fall, Mr. Young invoked Robert Browning's famous quote "Grow old along with me! The best is yet to be", but cautioned the jury that for Marie DiFonzo, the best may never come because her life would no longer be the same because she would be unable to take communion as she had done with her beloved husband each previous Sunday for years because of her inability to kneel from her injury. Mr. Young concluded his summation by reciting the "Hail Mary, full of grace _ _ _" prayer before the jury, vividly demonstrating to the jury what DiFonzo would have done had she still been able.

In 1966 he represented Ernest W. May in a case involving a dispute among the executors of the estate of Irene duPont.

Almost from the start, Mr. Young made involvement in politics part of his career. He explained why in his own words, “I wanted to be Assistant City Solicitor which paid something like \$1,200/year, \$1,400 a year. I didn’t get it because I didn’t have the influence or contact that others had, so then I became attorney for the legislature.” Mr. Young served as attorney for the legislature in each of 1935 and 1939. In 1934, he represented a legislative committee investigating Landrett L. Langston of Georgetown, a former Sussex County Relief Director represented by another Honoree this evening, Jim Tunnell. Around the same time he was appointed to the Industrial Accident Board.

The combination of Mr. Young’s much heralded trial work and political activities culminated in his recruitment to be the Republican candidate for Attorney General of the State of Delaware in 1950, an election he won, after what columnist Bill Frank described as a “very colorful exciting campaign,” remarkably carrying both Kent and Sussex Counties. As Attorney General, Mr. Young personally prosecuted each and every capital case. He also initiated the transition of the office of the Attorney General from a part-time position with a collection of part-time deputies into today’s modern Department of Justice. I will note, however, that Mr. Young’s part-time team include a list of stars, including tonight’s honoree Ned Carpenter, future

attorney general Vincent Theisen, future Judge Clarence W. Taylor, renowned lawyer Louis Finger and future Delaware Attorney General Januar D. Bove.

In nominating Mr. Young for Attorney General in 1950, Pearl Herlihy described him follows:

“I regard Mr. Young also as an attorney who is basically a human being, who believes in justice to all and privilege for none. As such he is a staunch defender of society, of the community and the individual. He believes in and he will always believe in and fight for justice for the individual no matter how lowly or humble.”

Mrs. Herlihy could hardly know how true her words would become. Rather than being a job, which Mr. Young described as “an ordinary position, underpaid routine things that you would expect of an Attorney General of a small state,” the confluence of future events and Mr. Young’s skills as a lawyer , commitment to the rule of law and respect for the rights of law and justice for all individuals regardless of race, creed or color landed him on the stage again in the early 1950’s, but this time not on the stage of the Playhouse, but on a national stage.

In 1952, another of this evening’s honorees, Louis Redding, initiated a legal challenge in the Delaware Court of Chancery to the Delaware practice of permitting separate but equal

schools for white and black students in Hockessin and Claymont. Yet another of tonight's honorees, then Chancellor Collins J. Seitz, determined that although there were inequalities between the white and black schools in Claymont and Hockessin that required them integrated, he also believed that segregation on the basis of race was unconstitutional, but it was only for the higher courts to say so. Although personally finding segregation to be socially unacceptable - remember Mr. Young had himself been the subject of anti-semitic prejudice from his early start - Mr. Young, since he considered it his duty as the chief enforcer of Delaware law, appealed the Chancellor's decision, first to the Delaware Supreme Court where it was upheld, and then to the United States Supreme Court where it was consolidated with cases from South Carolina, Kansas and Virginia, all cases where the segregation of schools had been upheld by those state's highest courts and became known as *Brown v. Topeka Board of Education* probably the most significant U.S. Supreme court case of the twentieth century. In Mr. Young's own words:

“It was my duty to obtain the last word from all of the courts in which the state had a right to present its case, and consequently, we appealed to the Supreme Court of the State of Delaware and to the U.S. Supreme Court. ... In presenting the case to the Courts of our state and to the U.S. Supreme Court, I gave obedience to the laws

of our state; I recognized my sworn duty as a constitutional officer and at the same time respected the opinion of that segment of our community which held fast to the concept of separate but equal education in our public school system.”

And Mr. Young did his job well. Because of his oratory skills and reputation as a great communicator, Mr. Young was selected by the party states to argue last. Two letters to Mr. Young following the oral argument before the Supreme Court tell it all. John W. Davis, a past president of the American Bar Association, the 1924 Democratic candidate for the President of the United States, a founding partner of the prestigious New York law firm Davis, Polk & Wardwell, and the man generally regarded as the greatest appellate lawyer of his era, wrote the following to Mr. Young:

“Dear Mr. Young,
I want to repeat what I said to you in Washington that I thought your closing argument of the series was most effective and just what I wished most to have said at the time. I renew my congratulations.”

In the same vein, Mr. Young received a letter from Robert McFigg, Jr., who had also represented the State of South Carolina, stating “I was sincere in telling you after you had concluded your

argument that I felt like standing up and cheering. As Mr. Davis said to me at the time, we could not have worked out a plan for a stronger and more fitting conclusion in presenting the matter than the presentation which you made.”

The Associated Press report of the Supreme Court oral argument recounted the following

“humorous moment” which occurred during the arguments:

“Justice Jackson told Attorney General Young that he should not have been required to answer the reargument questions pertaining to the intent of Congress when it approved the 14th Amendment. Justice Frankfurter then said to Mr. Young “then, Mr. Attorney General, we would not have had the pleasure of listening to your presentation.’ Mr. Young, thinking back to the many hours spent in preparing the answers to the five questions propounded by the Court answered’ it would have been much appreciated if the questions had not been sent to me.

The Associated Press went on to say “That was the only time during the arguments on the Delaware case that the relative quiet of the Court was broken by the laughter of the justices and of the spectators.”

I believe that two exchanges of letters which I found in Mr. Young’s files reflect best his conflicted state of mind at the time. On December 4, 1953, Mr. Young received a letter from

Mrs. Inez Burton of Millsboro, a black woman identified as Treasurer of the Sussex County

Women's Republican Club. Mrs. Burton wrote "Dear Mr. Young: I am disappointed in you as a

member of the Republican party because of the arguments you are presenting in regards to the

present Delaware school laws and the segregation practices that exist in this state." Mr. Young

responded to Mrs. Burton on December 15, 1953 as follows:

"I wish you would understand that the matter of my presentation is neither for nor against segregation in public schools. My chief argument is that it is a matter for the states to deal with and not for the courts. I feel that under the law, under the history and by reason of the Congressional intent of the Constitution, this is a matter for individual state legislatures and not for the courts.

I have done only what my duty requires, and I assure you that my personal regards for you and your people has been and always will be of the highest."

And in writing to one of his co-counsel from Georgia following the Supreme Court argument,

Mr. Young wrote on December 15, 1953:

"I believe that we were able to show the court that history, law, congressional intent and the Constitution itself were on our side. I

confess that the emotional appeal is something with which we could not cope.”

Chancellor Seitz’ belief and Mr. Young’s own premonition about the emotional appeal of arguments against the “separate but equal” doctrine turned out to be correct when on May 17, 1954, the United States Supreme Court handed down its landmark decision ending the reign of the “separate but equal” doctrine, and requiring that public schools in the United States be desegregated “with due deliberate speed.” That very same day Mr. Young received a telegram from Georgia Attorney General, Eugene Cook, inviting him to attend a meeting to “explore legal problems and possible legal courses of action that may be followed to preserve segregation in public schools in conformity with the state and federal constitutions.” Understanding that the United States Supreme Court had spoken unanimously to abolish segregation, Mr. Young declined the invitation advising Mr. Cook “I cannot see where such a meeting can serve any useful purpose.” Mr. Cook subsequently responded that there had been a “misunderstanding” and requested Mr. Young attend a reconvened meeting. Mr. Young replied that he would be “willing to attend any meeting that might assist the Supreme Court and make the task of eliminating segregation in the State of Delaware any easier.”

Speaking on the day after the *Brown v. Board of Education* decision, Mr. Young was quoted as saying “Delaware will fall right in line with the decision”, but he continued “There may be some difficulty with the decision in Kent and Sussex Counties where feelings run almost like in the south.” Well, Mr. Young’s words turned out to be an understatement. And the aftermath of the *Brown* decision in the State of Delaware became the subject of numerous newspaper and magazine articles and books.

As Attorney General, Mr. Young’s task changed from being the reluctant but dutiful defender of the “separate but equal” status quo to Delaware’s chief law enforcement officer whose responsibility it was to help implement the newly declared law of the land. He did so gladly and, together with Governor J. Caleb Boggs, led Delaware to become the first segregationist state to pursue public school desegregation. As events would prove, however, this was not to be an easy accomplishment.

As he vigorously pursued desegregation, Mr. Young came into conflict with individuals who sought to defy the Court’s ruling. The most bitter of all opponents was Bryant W. Bowles, the self-proclaimed leader of an organization known as the National Association for the Advancement of White People. Bowles and his group staged numerous protests during which

their racist and anti-semitic views were regularly displayed. Frequently Mr. Young became a personal target of Bowles' malice. When the gatherings reached such proportions in the Milford area that the school had to be closed, Mr. Young knew that he had to stabilize the situation and quiet the vitriolic Bowles. He first tried unsuccessfully to have the corporate charter of Mr. Bowles' organization cancelled. Subsequently he developed a solution whereby a warrant was issued for Bowles' arrest on charges of conspiracy to violate Delaware's school attendance laws. The state police were hesitant to act at first, but, with the visible participation of Mr. Young, the arrest was made and the Bowles situation eventually subsided.

This series of events led Mr. Young to reflect that:

“From 1952 to the end of my term as Attorney General of Delaware, I relived the antebellum and Reconstruction days of our history. I saw and heard the peddlers of hate. I saw and heard the efforts to destroy our institutions and our form of government.”

The fight to desegregate the Milford schools was a precursor to later incidents in Little Rock, Arkansas and elsewhere and brought national attention to Delaware and its Attorney General. Mr. Young's courageous efforts on behalf of ten negro children who were turned out of a Milford school were acknowledged in a cartoon and subsequent editorial in the Philadelphia

Inquirer in early October 1954 and in the October 25, 1954 issue of Time Magazine. Indeed Mr. Young's Supreme Court appearance and subsequent efforts to desegregate Delaware's schools were so renowned that a year later when, following a speech at Colgate University by Thurgood Marshall, the lead counsel for the plaintiffs in the *Brown v. Board of Education* case, then chief counsel to the NAACP, a future United States Solicitor General and subsequently the nation's first African American Supreme Court Justice, Mr. Young's son Alan introduced himself to Justice Marshall, Marshall told him "We sure do miss General Young. He is a man of courage."

In the same vein on the 50th anniversary of the *Brown vs. Board of Education* decision, Jack Greenberg, a professor at Columbia University School of Law who argued over forty cases before the Supreme Court and who argued the Brown case with Thurgood Marshall on behalf of the NAACP, as the keynote speaker at a symposium at the University of Delaware reflecting upon Mr. Young's courageous efforts to integrate the Milford School and to enforce the Supreme Court's edict to desegregate public schools with "due deliberate speed" told 700 persons assembled that "Attorney General H. Albert Young was a "heroic figure in the fight for racial justice."

In standing up to Bowles and all those supporting him who sought to deny Delaware black children the rights to equal education declared by the United States Supreme Court, Mr.

Young put himself and his family at risk. In Mr. Young's words:

“From then on I was accused that the reason I ruled that way was because I was a Jew and they referred to the name of my family, Yanowitz, . . . there were letters to the editor, vicious, scandalous letters. Letters at home, threats. My daughter got married in 1954. We had a garden wedding on Augustine Road and I had to have the police out there because I was threatened with stink bombs and violence and various other things . . . in my heart, I had lumps of stone because I knew what was going on and that sort of thing. But as the black people sing, I overcame and when I think of those horrendous days of what I went through, I get up in the morning and the children would yell from upstairs, they'd yell to me upstairs, “Daddy, there saying something else about you today in the newspaper,” and that sort of thing. Well, anyhow so I mean it was a nightmare.”

What Mr. Young failed to say was that the arrest of Mr. Bowles was on the same day as his daughter's wedding.

While the desegregation case and its aftermath publicly demonstrated Mr. Young's adherence to the rule of law as Attorney General, that same adherence to law was privately and humorously demonstrated the evening after his election at Brandywine Country Club, a social club that had been founded by Mr. Young and other prominent members of Delaware's Jewish community in 1946 at a time when they were not welcome by the established social clubs. As was not uncommon at that time, the club had maintained "one armed bandits" or slot machines in its basement for use by its members. Upon his arrival at the club's Concord Pike location, Mr. Young announced the "good news" of his election victory, but cautioned "the bad news" that the one armed bandits needed to go.

Following the expiration of his term as Attorney General at the end of 1954, Mr. Young, as was the custom of the day, did not seek a second term and resumed his successful private practice as a sole practitioner and soon thereafter embarked on what would be the next and final chapter of his legal career.

In 1956 Mr. Young's practice was joined by a young associate, Bruce M. Stargatt, who had worked as a JAG officer at the Dover Air Force Base and later clerked on a part-time basis for Judge Charles L. Terry, Jr., who later was to become Governor of the State of Delaware. In

late 1958, Mr. Young decided to form a law partnership with James R. Morford, a lawyer senior to Mr. Young, a former Wilmington Assistant City Solicitor, like Mr. Young, a previous Delaware Attorney General and like Mr. Young a trial lawyer of the highest order. In fact, Morford and Young had joined forces in several criminal cases during the 1930's.

By late 1958, Mr. Young together with Morford, Stargatt, H. James Conaway, Jr., William F. Taylor, Ernest S. Wilson and Edward A. McGovern were set to start a new law firm, and, despite Morford suffering a serious heart attack, the new firm opened for business on January 1, 1959 under the name of Morford Young & Conaway with a cable address "Mycon." Merely six months later, Morford suffered a fatal heart attack. Mr. Young received the news via the "Mycon" cable address while on a trip to Israel and promptly headed home to Wilmington. The excitement and anticipation that had attended the firm's establishment were overshadowed by feelings of grief and remorse. The loss had been personal and professional, and it would take time to regain the momentum that was just starting to take shape, but with customary courage and self-confidence, Mr. Young assumed the role of leader, and faced with the personal and professional crisis, determined that the firm should carry on, and it did, reconstituting itself five years later with Mr. Young's name as the lead as Young Conaway Stargatt & Taylor. As stated

so concisely by Samuel Block, the name partner of Chicago's venerable Jenner & Block in a letter to Mr. Young:

“You have always been first rank to those who knew and it is nice that you are now first on the letterhead.”

Creation of this law firm and his participation as its leader until his death in 1982 was the culmination of Mr. Young's professional career. Putting together a law firm that soon competed with the likes of much older established law firms like Richards Layton & Finger, Morris, Nichols, Arsht & Tunell, and Potter Anderson & Corroon was a great source of pride. Indeed, I am told that Mr. Young often told his family that creation of the law firm was his proudest moment.

Now I would like to say a few words about how Mr. Young gave back to the legal community, the Jewish community and the community at large by his participation in professional and community organizations, by making himself available as a speaker for organizations of which he was part or supported and by his personal philanthropy.

The list of Mr. Young's affiliations is not surprisingly long, but here is a summation.

Fellow, American College of Trial Lawyers

Fellow and director, International Academy of Trial Lawyers

Director, American Law Institute

Fellow, American Bar Foundation

Member, American Judicature Society

President, Delaware State Bar Association

Member and Vice Chair, Delaware Board of Bar Examiners

Chair, Delaware Uniform Commercial Code Drafting Committee

Chair, Delaware Supreme Court Advisory Committee for Implementation of
A.B.A. Standards of Criminal Law

Director, National Conference of Christians and Jews

Fellow, Hebrew University

Fellow, Brandeis University

Founding Member, Brandywine Country Club

President, Congregation Beth Shalom

Founding Board Member, Albert Einstein Academy, Delaware's Jewish day
school

Board Member and Vice President, the Milton and Hattie Kutz Home, Delaware's
Jewish home for the aged

At Jewish Federation of Delaware, Mr. Young served on the Board and also twice as
fundraising chair, first during critical fund raising campaign for the War for Israel Independence
in 1948, and again in 1965 when he cleverly brought screen star Joan Fontaine to a fundraising
event which sparked a one-third increase in pledges

The same communication skills that made Mr. Young such a success in court, also made
him a sought after public speaker. In the words of the late Chief Justice Daniel L. Hermann,

“Whenever a ceremonial occasion required special eloquence and
elegance, it is to [Mr. Young] that both Bench and Bar have so
often turned.”

Mr. Young maintained meticulous notes of his speeches. Based on my review of those notes and
other materials here is a partial list of the variety of speeches he presented.

As early as June 18, 1934 he was called upon to deliver a speech honoring James
Pennewell who was retiring as Delaware's Chief Justice.

In 1944 he spoke at the Annual Meeting of the Jewish Federation of Delaware.

On May 9, 1949 he spoke before the Elks Club.

On March 18, 1952 he spoke at the annual meeting of Alpha Epsilon Phi Fraternity.

In May 1954 Mr. Young addressed “ethics and business” before the 50th anniversary of the Maryland, Delaware and District of Columbia Jewelers’ Association meeting at the Hotel DuPont.

On February 22, 1955 he spoke before the Men’s Club of the Second Baptist Church.

On April 21, 1958 he was the speaker at the investiture of Edwin D. Steel to the United States District Court for the District of Delaware.

On March 5, 1959 he spoke before the Rotary Club.

On March 19, 1959 he spoke before the Lions Club.

On September 14, 1959 he spoke at the memorial service of Chancellor William Watson Harrington.

On May 13, 1964 he gave a speech to the 9th Ward Republicans.

Later in 1964 his nominating speech for David Buckson as the Republican candidate for Delaware Governor was described by tonight’s honoree, Jim Tunnell, as “the best political speech of the year.”

On April 30, 1965 he welcomed new citizens at Wilmington’s naturalization ceremony.

On March 2, 1969 he spoke at a testimonial dinner for former governor and then United States Senator J. Caleb Boggs.

On July 9, 1969 he was the keynote speaker at an awards dinner for the late Chief Justice Daniel L. Hermann at the Jewish Community Center.

On June 1, 1970 he spoke at a memorial to Judge Stewart Lynch.

On January 8, 1971 he spoke at the dedication the of the portrait of Judge Paul Leahy, a judge in the United States District Court from 1942 to 1966 and a lifelong friend of Mr. Young after they met in college.

On November 8, 1974 he was the master of ceremonies at his 45th law school reunion.

On November 18, 1975 he addressed that year's bar candidates about the code of professional responsibility and a month later he formally welcomed them to the Bar at their swearing-in ceremony.

On January 7, 1976 he spoke at a ceremony where the portrait of former Chief Justice Charles Terry, Jr. was presented.

In 1980 Mr. Young was chosen by the Jewish National Fund to present a Forest Plaque to then Senator Joseph Biden.

On January 27, 1981 he spoke at the 60th birthday celebration of tonight's honoree, Ned Carpenter, with whom he had maintained a friendship since their service together in the Attorney General's office.

Not only did Mr. Young speak at numerous awards events for other as already outlined, he was also the recipient of awards and recognitions too numerous to mention. The last award Mr. Young received, and one that he said was perhaps the most meaningful that he ever received, was the First State Distinguished Service Award recognizing his 52 years of legal service awarded in 1981 at a program which also honored tonight's honoree, Louis Redding, who had been Mr. Young's legal opponent in the desegregation cases and subsequently his ally after the U.S. Supreme Court's landmark decision in *Brown v. Board of Education*. Perhaps fittingly, the speaker who presided at the award ceremony was Ned Carpenter.

One final aspect of Mr. Young's biography should not be overlooked. I already mentioned Mr. Young's roles at Jewish Federation of Delaware and Congregation Beth Shalom. Not surprisingly, his personal philanthropy followed his involvement at other organizations.

Perhaps the philanthropic endeavor of which Mr. Young was most proud was the creation of the Ann B. Young Assistant Professorship in cancer research at the University of

Pennsylvania which funds research into the disease that caused him to lose his beloved wife and his mother before that.

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I would like to close my remarks the way I began them by quoting from Mr. Young himself. Speaking before the 15th Annual Meeting of the International Academy of Trial Lawyers in 1980, Mr. Young gave the following description of what it takes to be a trial lawyer:

“The trial lawyer must be specially equipped first with a complete knowledge of the law, the ability to properly frame his questions, both in direct and cross-examination, to stand under fire without faltering, to be quick in response, persuasive and articulate before the Court and jury. In the preparation of his case he must be as meticulous, precise and thorough as the manufacturer of an electronic conductor device. He must be able to overcome the frustrations he experiences in his daily practice, from difficult witnesses, deadlines, the anxiety in searching for legal precedent in support of his theory of either the case in chief or defense.

There is no greater feeling of satisfaction and accomplishment than the moment when you finish the last phrase of the last sentence of your brief or trial memorandum, oft times at two or three o'clock in the morning. Nor can anyone explain the anxiety you experience or the thoughts you entertain or the thrill

that runs through your very veins or the despondency that drains the blood out of your body at hearing the foreman announce the jury's findings.

He's a giant, a hero in the well of the courtroom. At home he's the guy who is asked to take out the garbage, walk the dog, put out the cat and upbraided for having forgotten to bring home some items requested of him by his wife upon his return from the office."

Yes, that surely sounds like a description of H. Albert Young.

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It has been a great personal honor for me to participate in tonight's proceedings. When I saw the list of honorees and noticed that Mr. Young was one of only three not a judge, I was humbled on his behalf. And when I noticed that I was the only presenter tonight who is not either a judge or a former judge, I was not only humbled, but scared to death. And three months later I still am, but hope that tonight I will enjoy a relaxed sleep. Thank you very much.