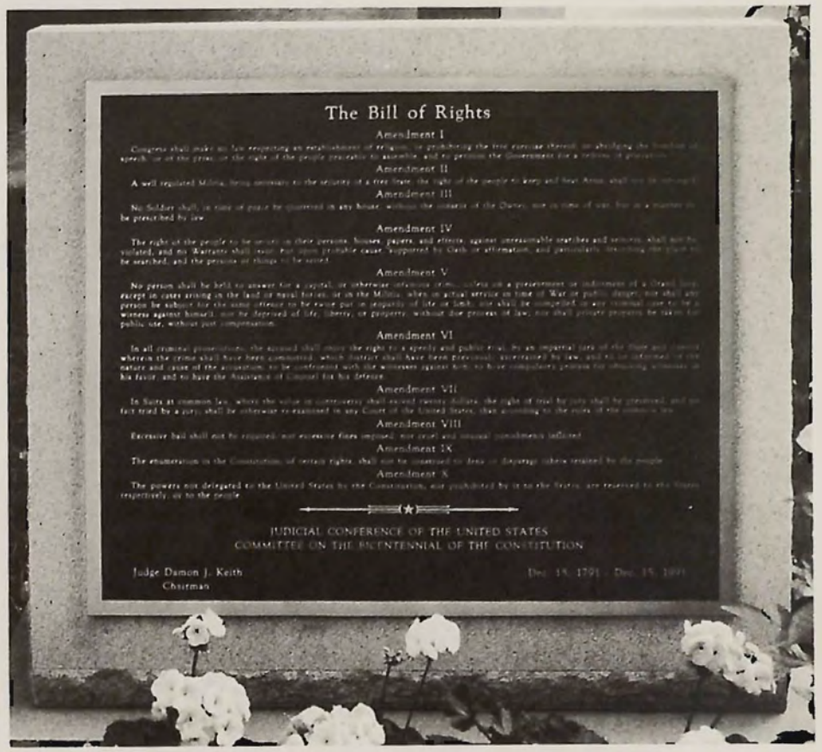
Federal Justice in the First State

A History of the United States District Court for the District of Delaware

Dr. Carol Hoffecker



This commemorative plaque depicting the Bill of Rights is lodged in front of the Federal Building in Wilmington. It was made available to the District Court for the District of Delaware by the Judicial Conference Committee on the Bicentennial of the Constitution and was dedicated on December 18, 1990.

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FEDERAL JUSTICE IN THE FIRST STATE

A HISTORY OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

DR. CAROL HOFFECKER

Carol E. Hoffecker

WITH AN INTRODUCTION
BY CHIEF JUDGE JOSEPH J. LONGOBARDI

DELAWARE PUBLIC ARCHIVES

Federal Justice in the First State
A History of the United States District Court for the District of Delaware

Commissioned by The Historical Society
For The United States District Court For The District of Delaware

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For The United States District Court For The District of Delaware

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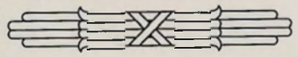

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ACKNOWLEDGEMENTS

THIS BOOK had its beginning in the mind of Chief Judge Joseph J. Longobardi. He then contacted Harvey Bernard Rubenstein, President of the Delaware State Bar Association, and Norman E. Levine, President of the Delaware Chapter of the Federal Bar Association. When I met with these three gentlemen in the winter of 1990-91, we discussed a variety of possible formats for a history of the United States District Court for the District of Delaware. We agreed that the best approach would be for a committee of interested attorneys to gather information about individual judges, but for me to write the text. This undertaking, therefore, has been a collaborative enterprise from its inception and has involved the work of numerous committees. A research committee, co-chaired by Richard R. Cooch and James T. McKinstry, organized a group of lawyers who undertook to supply information about the lives and the major judicial opinions of each of the nineteen judges who have served the District Court for Delaware. Without the considerable efforts of these attorneys the book could not have been written.

A mere list of the research participants cannot convey the degree of assistance that each played in bringing this book to fruition. Their conscientious and thorough work was truly invaluable. Several of the committee members who were assigned to do research about modern day judges consulted with other attorneys who knew the judges well. Although the names of these participants are not listed here, their contributions were important to the overall research effort. The names of the members of the

research committee are as follows:

The Honorable Gunning Bedford, Jr.—Charles M. Allmond, III
The Honorable John Fisher—Barbara D. Crowell
The Honorable Willard Hall—The Hon. William T. Quillen and Lewis H. Lazarus
The Honorable Edward Green Bradford—Richard Allen Paul
The Honorable Leonard Eugene Wales—Richard D. Levin
The Honorable Edward Green Bradford, II—Joseph H. Geoghegan
The Honorable Hugh Martin Morris—S. Samuel Arsht
The Honorable John P. Nields—William Poole
The Honorable Paul C. Leahy—Aubrey B. Lank
The Honorable Richard S. Rodney—Edward W. Cooch, Jr.
The Honorable Caleb M. Wright—Lewis S. Black, Jr.
The Honorable Caleb Rodney Layton, III—William E. Manning, Roderick R. McKelvie and Anthony G. Flynn
The Honorable Edwin DeHaven Steel, Jr.—Frederick W. Iobst
The Honorable James L. Latchum—John W. Noble
The Honorable Walter K. Stapleton—Karen L. Johnson
The Honorable Murray M. Schwartz—N. Richard Powers
The Honorable Joseph J. Longobardi—Anthony W. Clark and Daniel J. DeFranceschi
The Honorable Joseph J. Farnan—Luke W. Mette
The Honorable Jane R. Roth—William J. Wade and Frederick L. Cottrell, III

While the research participants were going about their work, I undertook to do my own research. I am grateful to the directors and staffs of several libraries and archives for their gracious and knowledgeable assistance to me. Robert Plowman, Director of the Philadelphia branch of the United States Archives, and his staff helped me to sort through the early records of the District Court for Delaware. Barbara E. Benson, Director of the Historical Society of Delaware, and the librarians of her staff, Constance J. Cooper, Ellen P. Rendle, and Kevin Kennard, assisted my research on several

of the judges whose papers are deposited at the Society and made available photographs from the Society's collection. The staff of the Morris Library of the University of Delaware's Special Collections, and the University of Delaware Archives gave me access to the Hugh M. Morris papers and the papers of Senator John J. Williams. The Hagley Museum and Library supplied photographs and background information about several important cases.

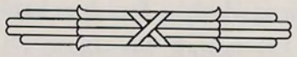
As I began to write the book it quickly became evident that I could not meet the deadline without the aid of an assistant who could check out odd bits of information necessary to give a more complete picture of the court's story. I was extremely fortunate to obtain the services of Jessica I. Elfenbein, a graduate student in the Department of History at the University of Delaware. Jessica Elfenbein's assistance and her suggestions for improvements to the volume have made this a far better book than it might otherwise be. I am also grateful to Mr. John R. McAllister, Clerk of the District Court for the District of Delaware, who supplied data about the court and arranged to have photographs made of the portraits of past judges. Finally, this manuscript could never have been completed so expeditiously without the assistance of Dianna DiLorenzo whose speedy fingers have typed the entire text with never an error.

The manuscript was carefully read and edited by an editorial committee consisting of Helen L. Winslow, David A. Drexler and Charles J. Durante, all of whom made excellent suggestions that have improved the quality of the final product. Jon McPheeters of the Miller Mauro Group worked with Chief Judge Longobardi and the other project leaders to design the book. A grant from the Delaware Heritage Commission insured that the final product would be handsome as well as learned.

In closing, this seems an appropriate time to acknowledge the descendants of Robert H. and Lydia Richards who have supported me in a variety of ways for nearly a decade. I am very proud to hold the chair in history at the University of Delaware that has been established in their name. The most important factor in my decision to write a history of the District Court for Delaware was to pay back a little of the debt of gratitude that I owe to the

Richards family. I hope that they, and all other readers and contributors to this volume, will find the book interesting and useful. I am aware that the limitations of time and space have forced me to leave out some information that individual contributors supplied to me. For that I am sorry. I take full responsibility for any mistakes of fact or interpretation that may be found in the book.

Carol E. Hoffecker
Richards Professor of History
September 1991



INTRODUCTION

A history of an institution is not a particularly novel idea, but one had never been undertaken in the 202-year existence of the Federal District Court of Delaware. Once the decision to embark on the project was made, its execution was easy. Add to the initiative a large portion of talent from the Delaware Bar as researchers and editors, a distinguished Professor of History from the University of Delaware as author, and the result is an outstanding tribute to the United States District Court for the District of Delaware.

This work would be significant if it were merely a recordation of events. But there is another purpose. It commemorates and pays tribute to a long string of people who have assumed, often at considerable personal sacrifice, the awesome responsibilities of public service.

This project grew out of a profound respect for the Court and what it has meant to the community. Two centuries of human effort and sacrifice had passed, for the most part, unattended, unchronicled and out of mind. It was my hope that not only would our author record for posterity the chronology of events and provide biographies of those involved, but would also place them in historical context. She has succeeded admirably.

This book is more than an elaborately written history, more than an awesome compendium of information from hundreds of volumes of Federal Reporters and Federal Supplements, from page after page of shorthand and stenographic notes, manuscribed and laser-printed pleadings and briefs, from rooms full of exhibits, from 200 years of bench rulings and jury charges

given and verdicts returned, from oral arguments by many of the best lawyers in Delaware, indeed the nation, and from testimony by seamen and confidence men, by scientists and schoolchildren.

The finished product is much more than a collection of raw data. It puts all of the pieces of the puzzle together into a mosaic of two centuries of legal endeavor in a real world setting, which breathes life and gives meaning to what might otherwise be considered a sterile, inanimate institution.

Professor Hoffecker has done the job magnificently. When she talks about President Washington nominating Gunning Bedford, Jr. as the first District Judge, one senses an immediate affiliation. It is our Judge Bedford. It is our District Court. How appropriate that one of the Framers, one of the architects of the checks and balances embodied in the Constitution, should receive the first commission from George Washington. There could have been no better individual to establish the essential independence of the Court—independence from the federal executive and legislative branches and independence from State interests. The theme of independence, indeed, the often lonely and maddeningly cruel responsibility of independence, was carried through in the life of John Fisher, who risked disfavor of family and friends in his rulings on admiralty matters.

One senses a feeling of perseverance from the biography of Willard Hall and his long years of service. One reads how Judges Edward Bradford, Leonard Wales and Edward Bradford II in the post-Civil War era oversaw the Court while the wounds from that conflict were healed. They saw the nation grow through waves of immigrants and they witnessed a change in the nature of the Court's jurisdiction brought about by the rapid industrialization of the age.

Hugh Morris, John Nields, Paul Leahy and Richard Rodney advanced the Court's reputation as an independent and fair forum for the resolution of disputes: those among business institutions and disputes between the Government and those businesses. Because of their efforts the Court became a venue of choice for such disputes out of proportion to Delaware's size. This renown was enhanced by Edwin Steel, a prominent corporate practitioner, and Caleb Layton, an eminent State court judge.

Walter Stapleton and Jane Roth left their individual marks and then were elevated to the Court of Appeals.

One revels in the biographies of my senior colleagues, Caleb Wright, James Latchum and Murray Schwartz. The first, undoubtedly a master of patent law, the second, a plain-speaking master of the burgeoning body of federal administrative law, and the third, a fiercely independent and courageous jurist. All contributed to the continuance of the pre-eminence of our Court. One also reads how Joseph Farnan in but a few years of service has made an important and lasting contribution to the Court.

Professor Hoffecker's story will make all Delawareans, but particularly Delaware lawyers, swell with pride. The traditions of this great Bar are not of recent vintage. Its roots are as old as this country.

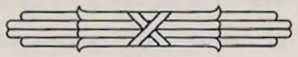
This work is no ordinary history. The intrigue of intricate familial relationships and the politics of friendship and enmity, keeps one reading at an anticipatory pace. In the great tradition of the American epoch, the nineteen judges chronicled in these pages were drawn from a cross-section of society—from families whose roots extend back hundreds of years to families in America for only a generation, from the wealthy to the not-so-wealthy. They constitute a roll of distinguished jurists who have kept alive the tradition of honor, service and dedication to the law.

The spirit of that tradition was demonstrated by those members of the Delaware Bar who participated in this effort. Their names, led by Richard R. Cooch, Esquire and James T. McKinstry, Esquire, are listed elsewhere, and I am most grateful for the contribution of all of them. Specific recognition is due to the inestimable contributions of Norman E. Levine, Esquire, President of the Federal Bar Association, Delaware Chapter, and Harvey Bernard Rubenstein, Esquire, President of the Delaware State Bar Association, who each gave unstintingly of his time and experience in seeing this project to conclusion, and a special acknowledgement goes to O. Francis Biondi, Esquire, my indefatigable and resourceful friend, whose fund-raising talents furnished the keystone for its success.

I conclude for now, perhaps another 200 years, with prayerful anticipation for the enlightened endurance of our Court and the continued

independence of our Article III Judges. Someday in that distant future, there will be another scholar who, although certainly not pen in hand, will resume the task of recording the Court's history. I expect that future author will have gotten a better perspective into the history of our State and the contributions of this Court by reason of this book. No matter what perspective evolves over the next 200 years, however, what must remain for posterity is the immense pride of purpose that went into establishing and sustaining this Court, this Court system and the undaunted spirit of those who have so honorably served.

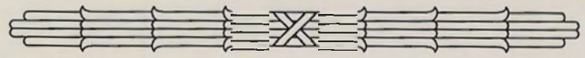
The Honorable Joseph J. Longobardi
Chief Judge,
United States District Court
for the District of Delaware



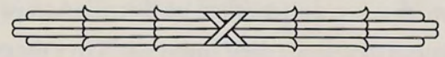
Federal Justice in the First State

A History of the United States District Court for the District of Delaware

CHAPTER I



THE COURT IN THE YOUNG REPUBLIC, 1787-1823



THE DELEGATES to the Federal Convention had been at work in the Pennsylvania State-House in Philadelphia for five weeks when they faced an impasse. The problem that now divided the states threatened to dissolve not only the convention but also the tenuous union that had bound the states together through a difficult war and an uncertain peace. The gentlemen from Virginia had come to the convention with a plan for a strong national government to be conducted on the principle that each state's power in the union would be determined by the size of its population. Delegates from the small states objected; they demanded equality among the states regardless of population size. On June 30, 1787, Gunning Bedford, Jr., one of Delaware's five delegates, raised his heavy frame from his windsor chair to join the debate. Bedford, a lawyer, was already well known among the delegates and was no stranger to disputation. James Madison, the author of the Virginia Plan, had been Bedford's college classmate at the College of New Jersey at Princeton, and others at the convention had encountered Bedford while serving in the Continental Congress or in the army during the Revolutionary War. The corpulent Delawarean sensed that delegates from the large states did not fully comprehend the small states' antipathy to the Virginia Plan. He reminded them that there could be no strong union without the cooperation of the small states. He intended to show the Virginians, the Pennsylvanians, and others from large states that their smaller neighbors were determined to resist and would not be bullied.

Gunning Bedford Jr., did not mince words. A contemporary de-

scribed him as "a bold and nervous speaker . . . commanding and striking in manner," adding, "he is warm and impetuous in his temper and precipitate in his judgment."[1] The Delaware delegate justified that characterization in his assault on the Virginia Plan. In common with the other Founding Fathers, Bedford believed that people are motivated by self-interest, primarily in the form of ambition and avarice. This being so, he argued, the small states could be sure that a union marked by distribution of power based on population was bound to subvert their interests. "Give the opportunity, and ambition will not fail to abuse it," he warned. The small states must demand that the proposed national government recognize their equality, otherwise the basis on which the confederation had been built would collapse. "The large states dare not dissolve the confederation. If they do the small ones will find some foreign ally of more honor and good faith, who will take them by the hand and do them justice."[2] Although no record exists of the other delegates' reaction to Bedford's threat, it must have produced a howl of protest, for he went on to caution that "he did not mean to intimidate or alarm," but only to anticipate a natural unfolding of events.

Bedford's college classmate, James Madison, attempted to reassure the small state delegates. He pointed out that the Virginia Plan gave only limited powers to the federal government, and that the proposed government would interfere little with the concept of state sovereignty. But Bedford was not persuaded. The large states, he said, proclaim that the federal government would act "for the good of the whole; and although the three great states form nearly a majority of the people of America, they never will hurt or injure the lesser states." Then, his voice rising for emphasis, Bedford declared, "*I do not, gentlemen, trust you.*" He told his fellow delegates that the only hope for accommodation lay in accepting the fact that the small states would never surrender their sovereignty. Once again, he threatened the specter of foreign alliances, saying, "sooner than be ruined, there are *foreign powers who will take us by the hand.*"[3]

Was Gunning Bedford, Jr.'s dramatic show of intransigence responsible for the subsequent Great Compromise whereby the small states secured equality of representation in the Upper House of the national legislature?

Certainly his outbursts played a part in convincing the large states that a compromise was inescapable. It is noteworthy that Bedford was chosen Delaware's delegate to the *ad hoc* committee that was charged to find grounds for an agreement. It was that committee that brought the Great Compromise concept to the floor of the convention. Gunning Bedford, Jr., the lawyer, had played a prominent role in winning the most important case of his career for his most distinguished clients: the small states among the United States of America.

Gunning Bedford, Jr., was born in Philadelphia in 1747, one of eleven children of a respected builder. Gunning Bedford, Sr., had come to Philadelphia from Cecil County, Maryland, to practice his profession in the fastest growing city in North America. He was well-connected within the circle of the city's skilled artisans and was an officer in the French and Indian War.

Much has been made of the propensity for the Bedford family to assign its male members the Christian name "Gunning." There have been no fewer than ten Gunning Bedfords. One of them, a cousin to the Constitutional Convention delegate and later judge, was a resident of New Castle who married into the family of George Read and was elected governor of Delaware in 1795. Readers should, therefore, be warned that the ability of Gunning Bedford, Jr. to bi-locate has been greatly exaggerated.

The future judge did not follow his namesake father into a skilled trade. Instead, he studied Latin and Greek in preparation for entering college. He matriculated at the College of New Jersey at Princeton in the late 1760s and completed his degree in 1771. The college was of recent origin, having grown out of a split within the Presbyterian Church over the relative importance of education and inspiration as prerequisites for the ministry. Princeton's founders, known as the "New Lights," emphasized inspiration, but by no means meant to neglect learning. The college required applicants to demonstrate competence in translating passages from the Latin authors Virgil and Cicero and from the Greek New Testament into English. The college curriculum emphasized reading ancient literature, mastering the rudiments of mathematics and science, and learning logic and moral philosophy. Since students were encouraged to use their knowledge in formal

oral disputations, their education was well designed to prepare them to enter those most verbal of professions: the ministry and the law.

The years when Gunning Bedford was at Princeton coincided with the period of growing tensions between the thirteen British North American colonies and their mother country. The animating spirit of the college regarding both religion and politics was one that elevated human liberty above arbitrary power and inherited privilege. The students and faculty members took great interest in the disputes between the colonies and Great Britain. Student orators and debaters sought out passages from the writings of classical authors to support their attacks on political tyranny. It was in this politically excited atmosphere that Gunning Bedford developed the debating skills and absorbed the attitudes that were to guide his career. We know that Bedford was an unusually gifted student as well as an able orator for he was chosen to be the Valedictorian of the class of 1771, the same class that produced James Madison.[4]

Bedford was somewhat older than the average college student. He was already twenty when he entered the college, and he married while still a student. His wife was Jane Parker, daughter of a New York printer and journalist who was a friend of Benjamin Franklin. The young Mrs. Bedford brought the couple's first baby to witness her husband's graduation. After college Gunning Bedford, Jr. entered the law office of Joseph Reed in Philadelphia to read for the law. Reed, then in the early stage of his career, was also a Princeton graduate. He had a distinction unusual among American attorneys of having studied law for a period of two years at the Middle Temple in London.[5]

The outbreak of war diverted Bedford from his professional studies. Men with Bedford's training and patriotic sentiments were at a premium and he served General George Washington's Army as Muster Master during 1776 and 1777. During the time of his military service Bedford made himself the center of a seemingly unprovoked dispute when he accused a Congressman of slandering him during a debate in the Congress. Bedford demanded the satisfaction of a duel. The intemperate young man refused to recognize that by his challenge he threatened freedom of debate in the Congress. The

duel did not take place and Bedford eventually apologized, but the incident drew attention to Bedford's rashness and cannot have helped his advancement.[6]

In 1778 and again in 1779 Bedford wrote to Caesar Rodney, then Delaware's chief executive, asking for the post of attorney general of the state.[7] The post was vacant, and it appears that Rodney could find no qualified Delawarean to whom he wished to give it. Rodney knew Bedford to be a capable man and a staunch patriot. He appointed Bedford to be Delaware's Attorney General in 1779. Bedford held the position for ten years until he was appointed federal judge. The Bedfords moved to Dover briefly before settling into a house at 606 Market Street in Wilmington. Their Wilmington home later belonged to another lawyer-politician, Louis McLane, and is presently a law office. In 1785 Bedford purchased a 250-acre farm on a hilltop overlooking Wilmington. He named the farm "Lombardy." In 1793 the Bedford family made the stone farm house their permanent residence. The building, which is now a National Historic Landmark, has been restored by The Lombardy Hall Foundation and contains a Masonic Museum. It is located along the Concord Pike, just north of a shopping center that is appropriately called "Independence Mall."

As Attorney General, Bedford prosecuted a variety of criminal cases. But his most interesting work arose from the prosecution of Loyalists charged with treason. The most notorious of these cases was that of the Kent County dissident Cheney Clow. In 1778 Clow gathered a small army of fellow loyalists at his fortified home near Kenton. The state militia put Clow's men to flight but failed to capture their leader until 1782. When he was apprehended Clow was wearing a British military uniform that made him a prisoner of war and prevented the enraged patriots from hanging him as a traitor. Clow was charged with the murder of one of his captors, and, although he was most likely innocent of the man's death, he was found guilty and was executed while still wearing the tattered uniform of King George.[8]

Among the family possessions that Gunning Bedford, Jr.'s daughter, Henrietta Bedford, gave to the Historical Society of Delaware in 1867 is a large, leather notebook in which her father made handwritten notes about

the law. At the top of each page, arranged in alphabetical order, are headings written in large letters that include topics such as "Attachment," "Chattels," "Bailment," and "Admiralty." Under each are notes about the subject. Bedford probably compiled these from books he consulted and from his experiences in court. He often mentions citations and gives examples or illustrations of cases. In some places he begins a statement by saying, "In Delaware..." For example, in the section labeled "Actions," he notes that in Delaware "where an action grounded on a tort is brought ag. several, one may be found guilty & the rest acquitted; but when the action is brought on a contract, all or none must be found debtors."[9] By methods such as these the lawyers and judges of the colonial and early national period mastered the English common law and began to create an American legal tradition.

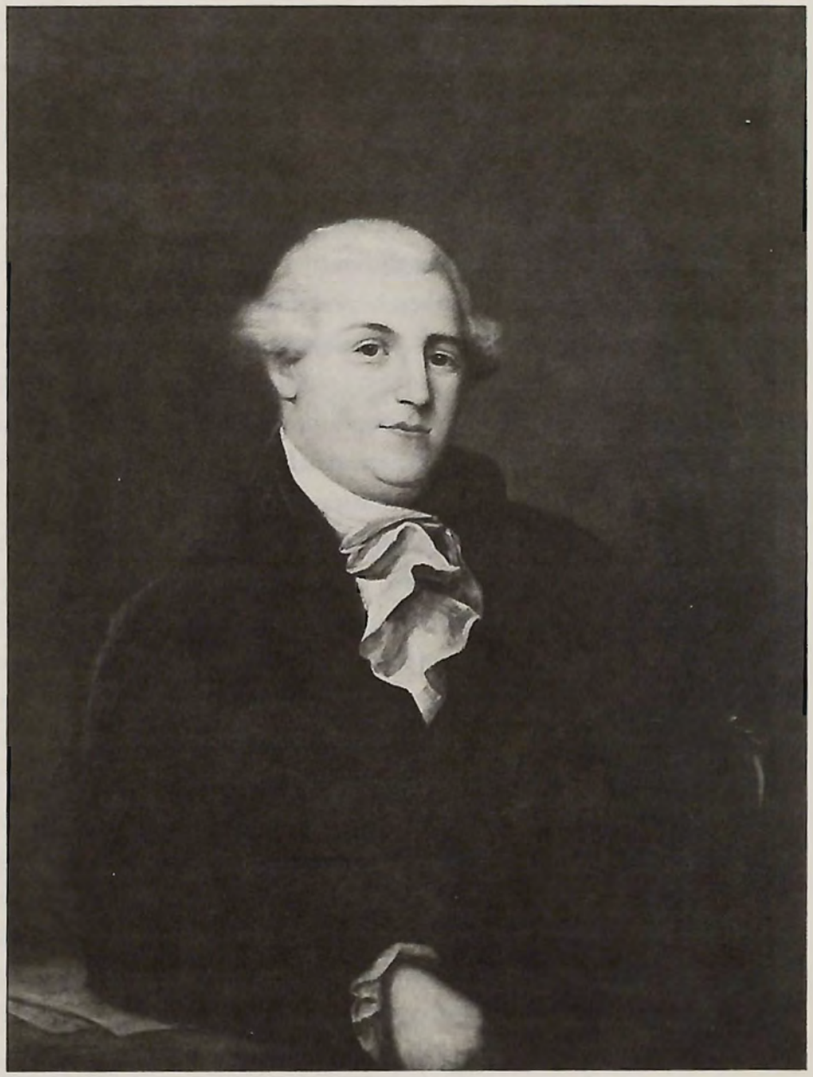
His work as attorney general did not disqualify or preclude Gunning Bedford from seeking elected office in his adopted state. He served in the Delaware General Assembly from 1784 until 1786 and served concurrently as a delegate to the United States Congress. From these associations Bedford observed firsthand the weaknesses of the Articles of Confederation, especially the inability of the national government to protect the interests of the small states. But he firmly supported the concept of equal sovereignty of each state as proclaimed in the Articles. Armed with these experiences and political principles, Gunning Bedford, Jr. set forth to do battle on behalf of the small states at the Constitutional Convention in the summer of 1787. When the convention had completed its work, he returned to Delaware and, together with fellow delegates George Read, Richard Bassett, Jacob Broom, and John Dickinson, urged Delawareans to adopt the proposed national constitution. The success of their arguments was manifest on December 7, 1787 when Delaware gained the distinction of becoming the first state to ratify.

The new national government came into existence in 1789. Following the directions prescribed in the Constitution the electoral college chose a president and vice president and in each of the states the people and their legislatures elected senators and representatives. Setting up the third branch of the government presented an as yet unaddressed challenge. Article III of the Constitution provided that "The judicial Power of the United States,

shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." The document thus gave to the Congress the power to determine the nature of the inferior courts. Among the earliest actions of the First Congress of the United States was the enactment of the Federal Judiciary Act of 1789. This act established a Federal District Court for each state to be headed by a judge selected by the President and confirmed by the Senate. The act also created three circuits, the Eastern, Southern, and Middle Circuits. In these larger areas designated justices of the Supreme Court held court together with judges of the district courts of the circuit.

In spite of his impetuous nature and sometimes intemperate verbal attacks, Gunning Bedford, Jr. must have made a favorable impression on the man who had presided over the Constitutional Convention, for George Washington selected him to be first judge of the Federal District Court for Delaware. The President was persuaded to support Bedford because of the Delaware lawyer's firm support for a strong central government and because Bedford's nomination had the support of the state's leading Federalist, George Read. President Washington's letter to Bedford, dated September 30, 1789, makes clear the importance of the courts in establishing the authority of the new national government. The President's letter read as follows:

> Sir
>
> I have the pleasure to enclose to you a commission as Judge of the United States for the District of Delaware, to which office I have nominated, and, by and with the advice and consent of the Senate have appointed you.
>
> In my nomination of persons to fill offices in the Judicial Department I have been guided by the importance of the object—considering it as of the first magnitude, and as the Pillar upon which our political fabric must rest, I have endeavored to bring into the high offices of its administration such characters as will give stability and dignity to our national government—and I persuade myself they will discover a due desire to promote the happiness of our country by a ready acceptance of their several appointments.



Oil portrait of The Honorable Gunning Bedford, Jr.
Courtesy of the United States District Court
for the District of Delaware.

The laws which have passed, relative to your office, accompany the communication.

I am Sir,
with very great esteem
your most obedient servant,

G. Washington[10]

The jurisdiction of the federal district courts was not as broad in the 1790s as it has since become, nor was the relationship between the district courts and the circuit courts defined by their present original and appellate jurisdictions. The Judiciary Act of 1789 established a district court and a circuit court in every state. Although both were courts of original jurisdiction, the circuit court had appellate jurisdiction over the district court's decisions. The district courts were primarily courts of admiralty while the circuit courts had original jurisdiction over cases concerning citizenship and over criminal acts and land disputes. The two courts were distinguished by their composition: whereas the district court had one judge, the circuit court consisted of that judge sitting with one or two Supreme Court justices who rode circuit twice a year.[11]

The District Court for Delaware met quarterly on the fourth Tuesday in November, February, May and August alternating between Dover and New Castle. The court also sat irregularly in special sessions when business was brought to it. These sittings invariably dealt with admiralty matters and took place in either the County Courthouse in New Castle or the Town Hall in Wilmington. The circuit court had scheduled meeting times in April and October, one each in Dover and New Castle. George Read, Jr., son of the signer of the Declaration of Independence and of the Constitution, was the first U. S. Attorney for Delaware and prosecuted cases before these courts.

Congress set the salary for each judge. Initially federal judges were paid from $800 to $1,800, depending on the size of their district and an estimate of the amount of work likely to come before each court. By these measures Delaware ranked thirteenth out of thirteen, and Judge Bedford,

who was awarded a salary of $800, was the lowest paid judge in the federal system. By contrast, the judges in New Jersey and Maryland were paid $1,000 and $1,500, respectively. In 1795 Judge Bedford successfully petitioned Congress for an additional $200, which brought his compensation to the level of six of his fellow federal judges. The Judiciary Act also prescribed the method of payment for district attorneys. These officers of the court were paid fees for handling cases on behalf of the United States. The fee schedules were set by each district court judge.[12]

In the early years the court had little business. Federal statutes were few, the population of the state was less than 60,000, and the court's jurisdiction was severely limited. The most common cases involved disputes concerning the ownership of vessels and their cargoes or violations of United States customs duties. When a ship owner failed to pay his crew, or another creditor demanded to be paid, Judge Bedford would assign a group of local merchants to assess the value of the owner's assets and the judge would make his ruling accordingly. The dockets are full of references to schooners and brigs, to ships' manifests, to "libels for seamen's wages," and to lists of imported goods such as bags of coffee, pairs of woolen stockings, and Spanish "segars."[13]

There were no precedents and few rules to guide the judges or litigants in the federal courts. As late as 1806 Gunning Bedford, Jr. wrote to Caesar A. Rodney, nephew of the Signer and a lawyer in Philadelphia, to discuss a request that he had received from Rodney's father, Thomas Rodney, for information about court procedures. Thomas Rodney had been appointed judge of the federal court in the Mississippi Territory and had written to Bedford as "an old acquaintance and friend" for "a copy of the rules & regulations adopted in our courts." "Unfortunately," the Delaware judge wrote, "we have never received any set of rules adopted by the circuit courts or the Supreme Court of the U.S. although Judge Chase has repeatedly promised them. As it is probable from the great extent of the business in the Circuit Court of the U.S. for Pennsylvania that a system of rules & regulations has been adopted—could you procure a copy and send them to him..."[14]

In 1798 the descendants of William Penn brought suit in the Circuit Court for Delaware to reclaim the lands in the state that the proprietary family had abandoned when the Revolution began. During the period when William Penn and his heirs had held title to Delaware, the proprietors had sold, granted, or confirmed previously held titles to most of the land, but some parcels of less valuable properties were still owned by the Penns when Delaware renounced its allegiance to the British crown. During the Revolution, Pennsylvania's legislature passed a law that divested the Penns of their land rights in that state. Because Delaware took no similar action to dissolve the proprietors' land rights, the Penns had hopes of retrieving their property in the First State and retained eminent Philadelphia lawyers to secure their land titles there. The Delaware legislature countered by employing the best legal talent in the state: James A. Bayard, Caesar Augustus Rodney, Nicholas Van Dyke, and George Read to defend the current owners of the land from the dead hand of past proprietary claims. A series of twenty-nine ejectment suits came before Associate Justice Samuel Chase and Judge Gunning Bedford, Jr., who constituted the Circuit Court. The cases were nonsuited on the technical ground that under the terms of the Judiciary Act of 1802 the Circuit Court lacked authority to act. With the court's action, the proprietors withdrew their claims and their relationship to Delaware sank into history.[15]

The presidencies of George Washington and John Adams coincided with the outbreak of war in Europe as France sought to sustain and expand her revolution and other nations attempted to quell the revolutionary flame. Great Britain, a leader among the conservative monarchies and the world's greatest maritime nation, engaged the French in a war at sea. President Washington and his successors attempted to keep the young republic at a safe distance from the war that preoccupied the nations of Europe for most of the time from 1790 until 1815. But neutrality proved to be impossible. The United States was a seafaring nation and conducted a large portion of the Atlantic carrying trade. American politics became supercharged with a spirit of faction that was exacerbated by the Europeans' ideological and nationalist conflict. The anti-French Federalists pushed through Congress a series of Alien and Sedition Acts that restricted immigration and made criticism of the

government a crime.

Thomas Jefferson, the leader of the Democrat-Republicans and a severe critic of these acts, was elected president in 1800. Jefferson and his friend and successor as president, James Madison, confronted serious threats to the stability of the federal government at home as well as threats to the peace from abroad. The Federalists, though defeated in their efforts to continue their control over the legislative and executive branches, clung to their power in the judicial branch. The U.S. Supreme Court's landmark decision in the case *Marbury v. Madison*, in which the court proclaimed itself the final arbiter of the Constitution, was but one episode among many memorable political incidents and judicial cases that arose during that intensely partisan era.

One case from that time demonstrated that Delawareans could not be frightened into surrendering the Bill of Rights. Among the Federalist justices, Supreme Court Justice Samuel Chase of Maryland was the most notorious for his harsh sentencing of those convicted under the Sedition Act. Justice Chase was assigned to sit with Judge Bedford on the circuit court in Delaware. In June 1800 when Chase was sitting with Bedford at a session of the circuit court in New Castle, he urged a grand jury to indict James Wilson, a Wilmington printer and newspaper publisher, for sedition. Wilson's offense had been to criticize Chase for the justice's attacks on free speech. Chase told the grand jurors that he was "determined to have these seditious printers prosecuted to the extremity of the law." Judge Bedford tried to moderate his colleague's harangue, but to no avail. The jurymen stubbornly refused to indict Wilson. Justice Chase acknowledged the obstinacy of Delaware juries for not bending to this controversial law when he remarked "that...he could not get a single man indicted in Delaware, while he could in every other place."[16]

In 1804 Justice Chase found himself in the role of defendant when articles of impeachment were brought against him in the House of Representatives. Caesar A. Rodney, a moderate Democrat of Delaware, was one of the managers of the impeachment proceedings in the Senate. Judge Bedford appeared before the Senate as a defense witness.[17] The defense contended that

Chase could only be removed from office for a criminal act. This argument convinced enough of the Senators to deny the Democrats their victory, and Chase remained a Supreme Court Justice.

The prevalence of partisan attacks on Federalist judges kept Judge Bedford careful of his actions. In a brief note to Caesar A. Rodney dated August 20, 1807, Bedford remarked that there was "no judge of the United States whose conduct is more narrowly watched than mine."[18] The Delaware judge had reason to believe that some among the Democrats would seize upon the slightest opportunity to remove him from office, or at least to embarrass him.

Throughout the first decade of the nineteenth century the political debates that preoccupied the young republic were exacerbated by the struggle in Europe between France and Great Britain. With the rise of Napoleon Bonaparte to imperial stature in France, the stakes for dominance were even greater. In their effort to destroy one another Britain and France abused American shipping with impunity. The Jefferson Administration, seeking a peaceful means to coerce the belligerants, imposed an embargo on all international shipping. When this strategy failed, the administration turned to one of non-intercourse with any country that failed to respect American neutrality and freedom of the seas. These acts increased the number of admiralty cases to be tried in the federal district courts. Captains and owners of ships that were caught in waters off the coast of Delaware attempting to evade the embargo found themselves facing Judge Bedford. In 1809, for example, the schooner *Mary* was apprehended with a cargo of coffee and tobacco. The captain claimed to have come from Spanish Cuba, but the judge believed that the *Mary* had sailed from an island in the French West Indies and confiscated over $24,000 in goods.[19]

In spite of his seriously failing health, Judge Bedford continued to hold court until his death on March 30, 1812. He was buried in the churchyard of the First Presbyterian Church in Wilmington, where he had long been a member. His daughter, Henrietta Jane Bedford, erected a large monument over her father's grave in 1858. When the church was relocated in 1921 to make way for the present Wilmington Institute Free Library,

Oil portrait of The Honorable John Fisher.
Courtesy of the United States District Court
for the District of Delaware.

Bedford's remains and the monument were removed to the grounds of the Masonic Home on Lancaster Pike outside of Wilmington. Gunning Bedford, Jr. had been the first Grand Master of the Masonic Lodge in Delaware and his Masonic brothers have continued to maintain the memory of this important founder.

The statesmen of Gunning Bedford, Jr.'s generation had made a revolution, had created a national Constitution and had breathed life into the new instrument of government that they had made. Bedford had personally participated in every step of the process of creating a nation. By attending college and reading law he had transcended the tradesman's world of his father and had entered into a gentleman's profession. His was a cosmopolitan world of scholarship and learned disputation. He lived well. After his death an announcement appeared in the Wilmington press concerning the sale of Lombardy Farm together with other of the late judge's possessions including "a large quantity of household and kitchen furniture, a valuable library of law books, carriages and horses, horned cattle, sheep, hogs, etc."[20]

The vacancy in the District Court judgeship occurred at a critical time when many Americans were clamoring for war against Great Britain. In June, 1812, shortly after a new judge was appointed, the United States declared war. For the next three years while the nation fought the world's premier naval power, the work of the Delaware court focused even more intently on admiralty matters.

The man selected to be the second judge of the Delaware District Court was John Fisher, an ardent Democratic lawyer from Dover. John Fisher was born in Lewes, Delaware in 1771, the youngest of six children. He was in the fifth generation of descent from an English Quaker, also named John Fisher, who had migrated to America on board William Penn's ship, *Welcome*. The original John Fisher settled as a planter in Sussex County. Subsequent generations of Fishers farmed near Lewes, held positions in the local government, and served in the colonial assembly.[21]

John Fisher, the future judge, had neither fortune nor auspicious prospects. When he lost his mother at age five and his father at fifteen he came under the care of his older brother, Thomas, a Revolutionary War officer.

Unlike Gunning Bedford, Jr., Fisher did not attend college, but he did receive a classical education from tutors and read for the law with his cousin, Joshua Fisher, who practiced law in Dover. He was admitted to the bar in 1791 in his twentieth year.[22]

In 1794 Fisher married Lavinia Rodney, the daughter of Thomas Rodney and Caesar Rodney's niece. Although the Rodney and Fisher families were distantly related, this connection did not meet with the immediate approval of Lavinia's brother, Caesar Augustus Rodney. Surviving letters reveal that Caesar A. Rodney suspected Fisher of marrying Lavinia in order to receive part of the inheritance from the late Caesar Rodney's estate. John Fisher denied that his marriage was based on "pecuniary motives," declaring that "my connection with her is upon the most virtuous of principles." The young husband went on to note that "If she, though, anterior to my marriage with her had any pecuniary rights, in justice to her and myself it is certainly *my* duty now to assert them."[23] The rift between Fisher and his brother-in-law, Caesar A. Rodney, was particularly painful to Fisher because, as he told his in-law, "I am conscious of having incurred the displeasure of a man whose philosophy and political character I excessively admire...on account of my contending with you in this claim of Mrs. Fisher's."[24] The disagreement over the distribution of the deceased statesman's estate lasted into the late spring of 1795. In May of that year Fisher wrote to Caesar A. Rodney from Dover, "Damn the dispute, I am tired of it—My future expectations are in some sort blasted, not being able to procure money enough by my practice to maintain my family and buy me a library, my youthful days will be whiled away in an awkward idleness...."[25]

Throughout his life John Fisher never acquired enough money to live at ease or to eliminate his financial worries. Furthermore, he never escaped from the shadow of his more prominent brother-in-law. In fact, the major activity in Fisher's life was that of local supporter for Caesar A. Rodney's national political career. The two men were reconciled because they shared faith in the principles of the Jeffersonian Democratic Party and they adhered to the code of family loyalty that governed the behavior of the gentry at that time. In his study of the Federalist era in Delaware, John A. Munroe

commented on the centrality of family ties in politics. He wrote that "Among the Delaware Federalists, and their opponents too, family connections played such an important part that the Delaware historian must be something of a genealogist."[26] The Fisher-Rodney connection affirms the truth of that observation.

Caesar Augustus Rodney, born in 1772, was the state's leading Jeffersonian Democrat. Although he never became a federal judge, his influence was felt in more than one appointment to the District Court for Delaware. Caesar A. Rodney's father, Thomas Rodney, brother of the more famous patriot Caesar Rodney, was a soldier in the Revolution and a figure in state politics. Because Caesar Rodney never married, he took the opportunity to assist his nephew and near namesake, and the boy learned about the principles and practices of government from both his father and his uncle. Caesar Rodney provided money in his will for Caesar Augustus to attend the University of Pennsylvania, from which he graduated in 1790. Caesar Augustus read for the law and was admitted to the Bar in 1793. Caesar A. Rodney was reputed to have been a good courtroom lawyer, but interspersed with his legal career he served in several important government posts. He was first elected to Congress in 1802. He spent four years as Attorney General of the United States from 1807 to 1811 under Presidents Jefferson and Madison. In 1817 President James Monroe sent him to South America to assess the newly independent nations there. In 1820 he was elected once more to the United States House of Representatives, and then in 1822, to the United States Senate. He resigned from the Senate a year later to accept a diplomatic appointment in Argentina, where he died in 1824.

For two decades Caesar A. Rodney's brother-in-law, John Fisher, earned a modest living practicing law in Dover while taking part in local politics. When the Democrat-Republicans rose to occupy some power in the state at the beginning of the new century, Fisher became clerk in both houses of the General Assembly and later served as Secretary of State in the administrations of Governor David Hall and Governor Joseph Haslet.

Fisher earned these appointments through his assiduous efforts on behalf of the party. In those years state-wide Democratic victories depended

largely upon the voters in New Castle County while Kent remained staunchly Federalist. Fisher, who possessed a sharp sense of humor, needed it to keep up his spirits. In one letter to Caesar A. Rodney he described a picnic put on by a candidate who "roasted a steer and a half dozen of sheep yesterday at his residence...as a kind of snack for his friends."[27] On another occasion he wrote his brother-in-law, "I am sorry to inform you that after every fair exertion on the part of the Republicans in this County, we have, as usual, been completely beaten."[28] Fisher so rejoiced when Caesar A. Rodney was elected to the House of Representatives in 1802 that he got drunk.

He later repented of his habit of drinking "ardent spirits" and asked God's assistance in giving up the habit.[29] His remorse was more likely associated with the onset of gout, from which he suffered greatly, than from any moral imperative. Like Bedford, Fisher was an unusually heavy man, weighing 240 pounds. He was religious, but not a Quaker. Somewhere among the generations of his family his branch had deserted the Society of Friends for the Episcopal Church. His diary contains numerous prayers asking God for assistance in providing for the needs of his large family. John Fisher fathered fourteen children, four by his first wife, Lavinia Rodney, and, after her early death, ten more by his second wife, Elizabeth Wilson, who was Lavinia's cousin.

John Fisher was appointed to the federal bench by President James Madison in May, 1812. Several letters exchanged between Fisher and U.S. Representative Henry M. Ridgely in April, 1812 shed light on the appointment process. When John Fisher had learned of Bedford's death he wrote letters of application to Ridgely and to Delaware's two Senators, also both Federalists, Outerbridge Horsey and James A. Bayard. Ignoring his own admonition that "a *personal* application for a judgeship was a matter of indelicacy and inconsistent with the modesty that a candidate ought to profess," Fisher presented himself as the most suitable candidate among those of the President's party. His reason for applying for the post was obvious and he made no effort to hide it, telling Ridgely that "such another opportunity of providing for my numerous and expensive family will never occur."[30]

Fisher put himself forward in the belief that his prominent brother-in-law, Caesar A. Rodney, who had been President Jefferson's Attorney General, would not accept the nomination were it offered to him. As Fisher feared, President Madison, irrespective of Rodney's likely rejection, insisted upon making the offer to Rodney. The situation caused Fisher much anxiety, but happily for Fisher, Rodney declined and the President turned to the eager John Fisher as his second choice.

Among the earliest cases that came before Judge Fisher was a complicated action brought against Stephen Girard, owner of the ship *Good Friends*, for violating the Non-Importation Act of 1809. The French-born Girard was the leading merchant of Philadelphia and one of the two or three richest men in America. The seizure of one of Girard's ships attracted national attention and tested the government's resolve to prohibit trade with the European belligerents.

The 246-ton vessel, *Good Friends*, was Girard's favorite among his merchant ships. He used her constantly in his extensive trade network that extended from Russia to Western Europe and South America. In 1811, in reaction to the increasing tensions on the European continent that preceded Napoleon's invasion of Russia, Girard withdrew his assets from several European countries and consolidated them under the control of Baring Brothers, his agents in London. He directed the Baring Brothers to convert those assets into British manufactured goods which were loaded onto the *Good Friends* at London with the intention of bringing them to Philadelphia. The cargo was valued at $300,000, a princely sum at that time. The only problem with the plan was the existence of the Non-Importation Act of 1809 which forbade Americans to import goods from either Britain or France so long as these belligerent nations refused to honor America's rights as a neutral power.

Girard hoped and indeed anticipated that the British were about to renounce their attempts to thwart American trade with France. If Britain took this step it would mean that trade between England and the United States could be resumed immediately. He, therefore, instructed the captain of the *Good Friends* to sail the ship to Spanish-owned Amelia Island, located

The Good Friends, owned by Philadelphia merchant Stephen Girard. This 246-ton vessel and its cargo were the subject of a case brought before Judge John Fisher in 1812. Courtesy of the Stephen Girard Collection, Girard College.

off the shore of the Spanish colony of Florida, but near the border of the United States. The captain was to hold the ship there in readiness to sail to Philadelphia as soon as the restrictions should be lifted. Girard also considered the possibility of sending the ship to Rio de Janeiro, but he abandoned that idea because of fears about the possibility of a hostile Portuguese response to receiving an American ship. Meanwhile, Girard was in correspondence with cabinet members of the Madison Administration asking their assistance to fulfill his plans.[31]

Events did not unfold as the merchant-financier had expected. The British did not remove their Orders in Council against neutral shipping, and the Non-Importation Act remained in force. Even more serious and unexpected was the raid on Amelia Island by a group of Americans from nearby Georgia, who called themselves the "Patriots." The raiders seized the island

in the name of the United States, thus putting the *Good Friends* under the protection of her own flag and in violation of the non-importation law. There now appeared to be no difference between the ship being at Amelia Island or at Girard's wharf in Philadelphia. General George Matthews, the Patriots' leader, met with the captain and supercargo of Girard's ship. The officers of *Good Friends* provided a bond promising not to unload any cargo until the ship had reached Philadelphia and had paid customs duties. Matthews in turn wrote a letter addressed to United States Customs officials explaining the circumstances that brought the hapless ship to the American city. The captain of *Good Friends* carried the letter on board as he sailed the ship toward its home port in April 1812. At about the same time that *Good Friends* entered Delaware waters, John Fisher was named judge of United States District Court for Delaware.

As the *Good Friends* proceeded up the Delaware River the ship once again encountered the unexpected. Allen McLane, the crusty, independent-minded old Revolutionary War hero whom George Washington had appointed Collector of Customs at Wilmington, seized the ship for violation of the federal law and brought it into port at New Castle. Upon learning of this, Stephen Girard wrote to McLane that he had "long ago informed Congress, the Secretary of State, and the Secretary of the Treasury, of the arrival of that ship at her last port of departure, also of the articles composing her cargo and the amount thereof. Consequently there could be no intention on my part to evade the laws of our country."[32]

Girard retained Caesar A. Rodney to defend his interests in District Court. The preliminary hearing of the case of *United States v. Good Friends* took place before Judge Fisher in May, 1812. After five days of argument the judge ordered that the ship be restored to its owner and that Girard pay the appropriate duties on the cargo. Girard planned to pay the duty at Wilmington without unloading the ship and then to proceed to Philadelphia, but McLane received an order from officials in Washington that the ship must be unloaded at the Delaware port. The federal officials also required that Girard pay penalties in addition to the customs duty based on the time the *Good Friends* had spent at Amelia Island. At about the same time an article

was published in *The National Intelligencer*, a pro-administration newspaper in Washington, that criticized the Delaware court for permitting Girard to import British goods when others were prohibited from doing so.[33]

In June, 1812, the same month in which the United States declared war against Great Britain, the federal government brought two suits against Girard. The trial took place in November and lasted for a week. Judge Fisher delivered his opinion in March, 1813. While the litigants were awaiting the judge's decree, Caesar A. Rodney, in a letter to Girard, assured his client that the judgment would go against the government. The attorney wrote, "I feel little apprehension as to the result. I think it improbable that a Court of Justice can sanction by its decision such an atrocious attempt on the part of government to rob and plunder an individual citizen whose whole life has been that of an honest, regular & fair trader."[34]

When the judicial decree came it was not at all what Rodney had expected from his kinsman. Judge Fisher declared that from its inception in London, the journey of the *Good Friends* had been intended to evade the non-importation law. He refused to accept the defendant's argument that either Amelia Island or Rio de Janeiro were seriously intended as ports of destination, noting that some of the cargo was intended for Girard's personal use and that it was "inconsistent with" Girard's "mercantile eminence and known acuteness" for him to have expected to sell the cargo to the handful of residents of tiny Amelia Island. Fisher likewise rejected the validity of the bond that Girard's agents had given to General Matthews on Amelia Island in which the agents promised to take the ship directly to Philadelphia. By the time that Judge Fisher heard the case the Patriots' raid had been repudiated by the American government, and Matthews's actions, including his agreement with the captain of the *Good Friends*, did not bind the government.

In writing his decision Judge Fisher must have been conscious that he was setting the tone for his judgeship and especially for his future dealings with Caesar A. Rodney. Fisher took the opportunity to emphasize his responsibility to render justice irrespective of the prominence of the defendant or of his own personal relationship with the defendant's counsel. He noted that if one member of the community is free to disregard the law then

all are injured because the government itself is so weakened that it can no longer protect its citizens. He further observed that the offender should look to the executive rather than to the judiciary for pardon, since the latter was bound to apply the letter of the law. Finally, he concluded with a statement that could only refer to Rodney:

> Were my judgment of this case to be formed according to my prepossessions which I have received of the claimants, very different indeed would it be from what it is. But I am bound by a tie which admits no personal partialities or animosities to mingle themselves in my decision. They can never form the grounds of my decrees. Let a decree of forfeiture be entered.[35]

On Rodney's advice, Girard did not contest the decision of the Delaware court. Although the case of *United States v. Good Friends* was at an end, the story of the ship and its owner continued to take unforeseen turns. After paying his fine and unloading his cargo, Girard sent the *Good Friends* on a perilous voyage to France. By then the United States and Britain were at war. British ships of war dogged the American merchantman across the Atlantic and finally captured her as she neared her destination of Nantes. The *Good Friends* was taken to England and her crew imprisoned. After much negotiation Girard ransomed the ship and crew. As the war progressed the Madison Administration exhausted the nation's modest treasury and appealed to Stephen Girard for help. The Philadelphia merchant obligingly provided a large loan to the government and financed the war effort from his private bank in Philadelphia.[36]

In his handling of the *Good Friends* case, Judge Fisher realized the republican goal of meting out justice impartially even to the nation's wealthiest financier, a man who soon thereafter saved the government's enfeebled credit. Fisher continued as judge of Delaware's federal court for more than a dozen years. The war with Great Britain brought him several admiralty cases in which he was called upon to assign assets found aboard British ships that had been captured by American privateers and brought to Delaware ports. Such cases would no doubt have been more frequent had not the British effectively blockaded the entrance to the Delaware Bay.

Fisher's judicial posture was to hew closeby to the wording of the law. In 1818, three years after the end of the war with Britain, he found against the United States in a case that involved the British sloop *Pitt*. No one disputed that the *Pitt* had violated an American navigation act. The act restricted British access to American markets in retaliation for similar treatment from the former mother country. The issue before the court was whether the sloop's captain should be permitted to post a bond for the value of the vessel, including its tackle, apparel, furniture, and cargo, or be made to turn the ship over to American customs agents. Because Fisher was the first federal judge to rule in such a case, his judgment set a precedent. After studying the law, together with past practice in both the United States and England, he concluded that the *Pitt* did have the right to post bond and ordered that the customs agents remit the sloop to her owner. He also dismissed the government's contention that the appraisal for the bond might prove defective, declaring that should the appraisal be in error the court would appoint new appraisers.[37]

In 1822 Caesar A. Rodney became the first Democrat United States Senator elected by the Delaware Legislature. The ailing judge rejoiced at the prospect of his longtime associate's success. Hearing that Rodney was ill Fisher wrote to him, "take care of yourself—good people are, every day, becoming scarce. The generation who are about to assume the management of this world's affairs, are monstrously behind their predecessors in the cardinal virtues. . ."[38] These despondent sentiments were typical of the judge in his last years. In 1822 he moved from his home of 33 years in Dover to a farm near Smyrna. In December of that year he wrote to Rodney to thank him for sending newspapers and in the same sentence both complained and rejoiced at his isolation from the world of politics and society.[39] A few months later, on April 22, 1823, he died.

The vacancy in the District Court occurred during the presidency of James Monroe, the last of the succession of Virginia Democrat presidents. According to established political practice, President Monroe was certain to depend on the advice of Delaware's Democratic Senator, Caesar A. Rodney, in choosing a successor to Judge Fisher. The Rodney Collection at the

Historical Society of Delaware contains only two letters of application for the position. The first letter is from George Read II. Read's father had secured the position of United States Attorney for his son in the 1790s. The younger Read, seeing the decline of the Federalist Party, joined the Democrat Party during the Jeffersonian era. His letter to Rodney gives a revealing glimpse of the personal politics of that time.

Read wrote to the senator on April 22, 1823, the day on which Fisher died. In the first paragraph of his letter Read said that he had just heard of the sudden death of the judge and expressed his willingness to assist the Fisher family in their time of distress. His second paragraph begins: "The office of judge having thus become vacant, I feel a desire if it meet your approbation to have my name mentioned to the President as one who would feel himself honoured by the appointment...." Read goes on to say that if he gets the appointment he will anonymously provide Mrs. Fisher with a stipend of $200 a year from the salary. "I shall do this as a small tribute of the respect I bear to the Judge's memory and as a return too—for a favour which I shall never forget."[40] Senator Rodney's reaction to the contents of this letter can only be surmised from his subsequent handling of the appointment; but it could not have escaped the notice of either the sender or the recipient of the letter that the second Mrs. Fisher was Senator Rodney's cousin.

A few days later the Senator received another letter, this one from Willard Hall, formerly a member of Congress and currently a state senator. Hall was also a potential replacement for Judge Fisher but his approach to Rodney was quite different from Read's. "Soon after the regretted death of Judge Fisher," Hall wrote, "the vacancy in the Office of District Judge, for the District, was suggested to me, but I had no expectation of the office until I learned...that you had mentioned the subject and that I might depend upon your friendly wishes and support." Hall then expressed his interest in the post, but noted:

> I am aware of the influence which will be exerted in another quarter; I know how crafty it is, and with what eager and untired perseverance it pursues its object. Without your countenance I should not entertain the slightest hope of competition; with it, I feel confident of success, or at least of

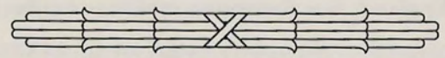
> a recommendation worthy to succeed. Whatever may be the event, your good offices will be remembered with gratitude.[41]

Senator Rodney recommended Willard Hall to the President, and Hall received the appointment. Neither the Senator nor the President could have had any idea just how long their decision would "be remembered with gratitude," for Willard Hall was destined to serve as Judge of the District Court for Delaware for a period of forty-eight years, from 1823 until 1871, that took his service through the Civil War years and into the presidency of U.S. Grant.

CHAPTER II

THE WILLARD HALL ERA,

1823-1871



WILLARD Hall was Massachusetts born and Harvard educated. When he moved to Delaware in 1803 he brought his New England conscience and his New England concept of public responsibility to his adopted state, and though he was to be a Delawarean for seventy-two years, he was always a New Englander at heart. He was born in the town of Westford, Massachusetts, on December 24, 1780. His father was a deacon in the Congregational Church; his grandfather, also named Willard Hall, was the Congregational minister in the town. On both sides of his family he was descended from forceful, pious, educated, and serious-minded people. From his early youth, the future judge demonstrated his capacity to follow in the intellectual and moral footsteps of his forbearers. He attended the academy at Westford established by his grandfather, entered Harvard College in 1795, and graduated in 1799. William Ellery Channing, the future religious leader, and Joseph Story, who was to be John Marshall's most influential colleague on the U.S. Supreme Court, were among his contemporaries there, and the president of Harvard College was Hall's kinsman, the Reverend Joseph Willard.[1]

Willard Hall must have contemplated the possibility of a career in the ministry, but he chose instead to study the law. In 1800 at the age of twenty he entered the law office of Samuel Dana and Timothy Bigelow, respected attorneys in Groton, Massachusetts to read for the law. Samuel Dana held various positions in the government of Massachusetts during his career. Hall later described Dana's partner, Timothy Bigelow, as "a man of great ability

and elevated moral and religious character." These characteristics and pursuits were also to be preeminent in Dana and Bigelow's student. In 1803 Willard Hall was admitted to the bar in Hillsborough, New Hampshire, the town where his mother had been born, and where the young attorney still had relatives who might assist him in establishing his career.

Everything in Willard Hall's background seemed to destine him to remain in New England. But the young man was not inclined to stay in a place that already had an oversupply of legal talent. In casting about for an alternative venue, Hall could have chosen to go west, as did many of his New England bred contemporaries. But Hall looked south to Delaware. Hall had been greatly impressed by a speech that United States Representative James A. Bayard of Delaware gave in Congress in which Bayard mentioned the merits of the Delaware Bar. The aspiring young attorney wrote a letter of introduction to Representative Bayard in October 1802. He told of his Harvard education and of the three years of legal studies he was about to complete in the office of Samuel Dana, Esq., "a gentleman with us eminent in his profession, probably to you unknown." He went on to describe his low prospects in his home region, noting that: "In this part of the country there are too many lawyers in proportion to the law business." He recalled Bayard's speech in Congress which, he said, induced him "to wish a settlement in the State of Delaware," and asked Bayard for information concerning the Bar in the First State. "You will thus assist a man to set out in life and confer a favor which may cost you a little trouble, but may do me great service. . ."[2]

Based on Representative Bayard's favorable reply, Willard Hall rode on horseback to Delaware shortly after he was admitted to the New Hampshire bar in the spring of 1803. Arriving in Wilmington, he discovered that Bayard had gone to Georgetown to attend court there. Hall promptly set out for the Sussex County Seat where he presented himself to Messrs. Bayard and Caesar A. Rodney. Shortly thereafter Hall was examined and admitted to the Delaware Bar. In May 1803 he moved to Dover and began the practice of his profession.

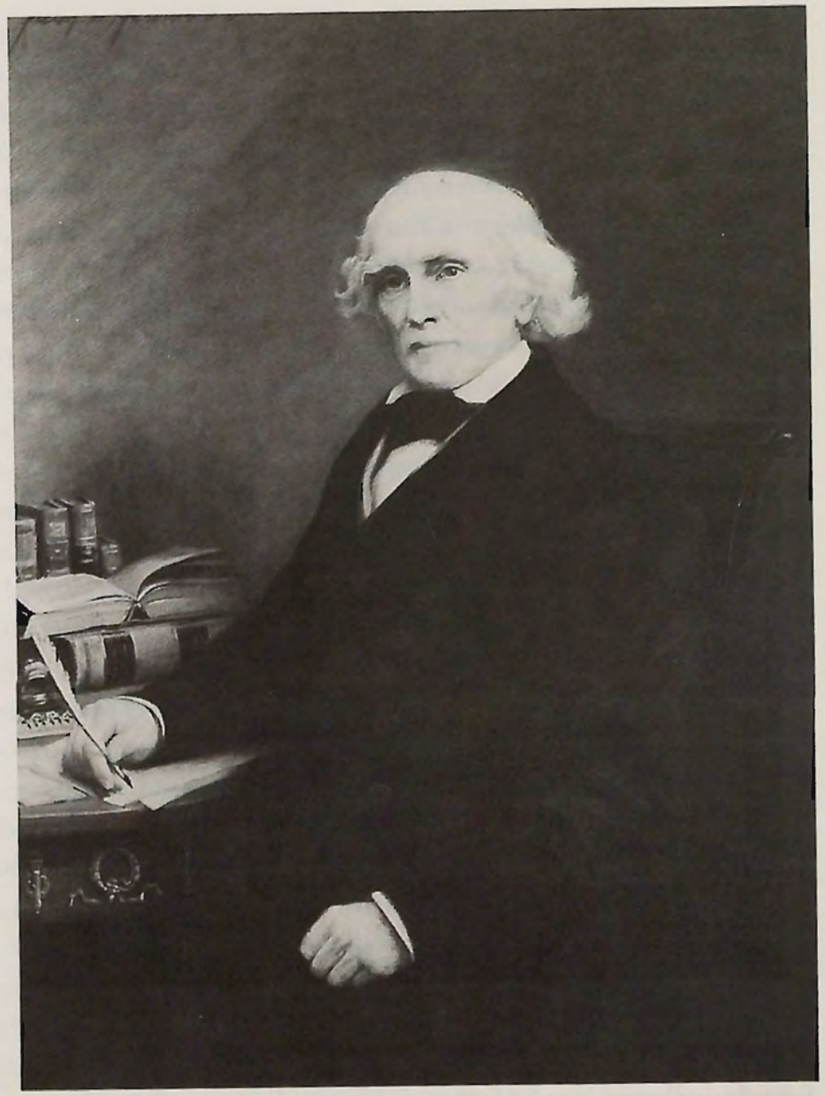
Although Hall was well-connected in Massachusetts, he lacked the ties of family, religion, and friendship that united the legal and political elite

of early nineteenth century Delaware.

He was a small, slightly built man who could not command attention by his appearance. His rise to prominence in his adopted state's government and within its legal fraternity was based on merit alone. He was careful, principled, learned, and trustworthy, and these character traits soon won for him the respect of his colleagues. One decade after coming to Delaware, Willard Hall was appointed Secretary of State to Governor Joseph Haslet. In 1816 he was elected to the first of two terms in Congress as a Democrat. He declined to run again for Congress, but accepted a call to serve as secretary of state under Governor Collins in 1821 and was elected to the state senate the next year.

Senator Caesar Augustus Rodney recognized the Massachusetts-born attorney's abilities. In 1822 when a bill was before Congress to abolish imprisonment for debt the Senator asked Hall for legal advice on the issue. Later that year Rodney requested Hall's opinion concerning the terms of a proposed treaty between France and the United States and the construction of a new federal judiciary act. Hall's views in all three cases were based upon conservative principles. Regarding the issue of imprisonment for debt, Hall emphasized the antiquity of the practice and noted that keeping the terms of a contract was an "elementary principle of society." He also said that the law was directed not at the poor, but at the rash. "The great source of insolvency in this country," he wrote, "is speculation." Hall's final statement on the topic is worthy of note in light of the fact that Rodney was soon to nominate him for the federal bench. "I do not look upon our modern notions of mercy as improvements. Let Justice be done—in mercy most certainly—but still let *Justice* be done in mercy. All mercy and no justice is not an orthodox creed."[3]

Willard Hall's letter to Rodney concerning proposals to alter the federal court system reveals Hall's confidence in the power of the courts to protect morality and to order society. The proposal that Rodney had asked Hall to comment upon would have given the Senate of the United States appellate jurisdiction over the Supreme Court. Hall strongly opposed any interference with the independence of the federal courts. National unity and the rule of law, not states rights and popular sovereignty, were his watch-



Oil portrait of The Honorable Willard Hall
by Frederic de Henewood.
Courtesy of the United States District Court
for the District of Delaware.

words. "The Supreme Court, I think, is the great power which must hold together the Union," he wrote to the Senator. Laws that command but a small majority must be implemented and state laws repugnant to the Constitution must be opposed. "These and all collisions must be settled by the Supreme Court of the United States, and their judgments, not the sword of the executive, must enforce the authority and power of the United States, must in fact preserve the Union."[4] Surely Senator Rodney knew from this reply to his question, and from a wealth of other evidence, that whatever vicissitudes the United States might confront in the future, the District Court for Delaware would be in the hands of a capable and conscientious man under Willard Hall.

Delawareans owe a great debt of gratitude to Willard Hall that transcends his near half century of work on the federal bench. In 1824 at the request of the state legislature, Judge Hall undertook to revise and digest the state code. This difficult task consumed six years of his time and resulted in a reduction of the state's laws from six ill-organized volumes to one orderly book that was to serve the needs of Delawareans for many years. The judge was also a member of the committee that rewrote the state constitution in 1831.

Willard Hall's most important contribution to his adopted state, however, was his advocacy for public education. Coming from Massachusetts where every town had its public school, Willard Hall began pressing Delaware's legislature to take responsibility for the education of the state's children when he served as secretary of state. Resistance came from poor rural areas that could neither afford nor see the reason for such a measure. Hall's persistence and willingness to compromise finally overcame Delawareans' apathy. In 1829 the state legislature enacted Delaware's first school law. Following passage of the law, Hall organized the Wilmington Board of Education and served as its president for eighteen years. He also advocated the creation of a state-chartered college, and when Delaware College was chartered in 1833, Willard Hall served on the institution's board of trustees. His contribution to education has not been forgotten for the building that houses the College of Education at the University of Delaware, the successor

to Delaware College, is named in his honor.

In addition to his work within the state government, and for education, Willard Hall was an equally significant figure in business, religion, and philanthropy. He was the primary founder of the Wilmington Savings Fund Society, which was designed to encourage thrift among people with small assets, and he served as the society's president for forty years. He was also a founder of and president of the Historical Society of Delaware, the Wilmington and Brandywine Cemetery Company, the Delaware State Bible Society, and the Wilmington Union Colonization Society, a group that encouraged the freeing of slaves and their colonization of Africa.

Since the Congregational Church with which he had been familiar in New England did not exist in Delaware, Willard Hall turned to the Presbyterians, a denomination that shared the Congregationalists' Calvinist heritage. He joined Hanover Street Presbyterian Church and became a mainstay of that evangelical church's life as a Sunday School teacher and ruling elder. He was also a leader among the state's Masons. Willard Hall helped to organize the Grand Lodge of Delaware in 1809 and subsequently held several high offices culminating in becoming Most Worshipful Grand Master of Delaware's Masons.

This myriad of activities might have appeared but a hodge-podge of unrelated exertions, but for Judge Hall these associations and responsibilities were parts of one great whole that joined the Divine Law with human responsibility. Christian theology and practice, the importance of education, and the interpretation and execution of the laws of the republic all arose from the same source and made up a seamless web of Truth that Willard Hall believed himself called to serve, interpret, and act upon. In common with many reformers of his generation, the judge believed that there could be no conflict between science and religion nor should there be conflict between the Law of God and the laws of men. In a democracy, he believed, the education of the citizenry was crucial to achieve right action. In a lecture delivered before a lyceum in 1839 he said, "The people have power, and they must be trained to the judicious use of it."[5] Hall believed in the inerrancy of the Bible and he looked to Divine Law to govern every aspect of life. Lawyers,

who by training were capable of reasoning through religious matters, should provide examples to others of how to live in a properly Christian manner. Self-improvement through commitment to acquiring knowledge was the responsibility of everyone and should be open to everyone. "We are arbiters of our own destiny...the mind of everyone should be enlightened, enlarged, purified, elevated, and strengthened by useful knowledge," he told a gathering of the Delaware Academy of Natural Sciences.[6] In short, Judge Hall, perhaps to a greater degree than any other Delawarean, exemplified the earnestness and faith that underlay the American reform movement from the 1820s through the Civil War.

Willard Hall's family life was characterized by quiet devotion. He met Junia Killen, daughter of State Chancellor William Killen, not long after he moved to Delaware and fell in love with her. Among the Bayard papers is an urgent letter written in 1803 from Hall then in Dover to James A. Bayard requesting an introduction to Junia's forbiddingly formal father. "For reasons to myself important" the young newcomer begins, "I wish to cultivate an acquaintance with William Killen Esq."[7] Hall asked Bayard to give him a good recommendation to the socially correct Chancellor, which Bayard apparently did. If any young lawyer could have satisfied Chancellor Killen's rigid sense of honor, Willard Hall was the man to do so, and he married Junia soon thereafter. Junia Killen's father, a Kent County jurist and farmer, was among the leaders in the foundation of the Democrat-Republican Party in Delaware.[8] We have no description of Junia excepting the traditional cliches that she was both beautiful and accomplished.[9] The marriage was brief, for she died in 1824. Junia left a baby daughter named Lucinda, who became the center of her mourning father's affections. Willard Hall remarried in 1826, but this second union produced no children. Hall remained deeply devoted to Lucinda throughout her life, and visited her daily even after her marriage. To some extent Willard Hall's unusually strong commitment to his church and community filled a need to be helpful to others that his small family with its modest demands could not supply. Hall provided fatherly counsel to numerous young men beginning careers in business or the law whom he met in his Sunday School classes or in the course

of his many other organizational activities.

During the forty-eight years that Willard Hall served on the federal bench in Delaware the work of the court increased. At the beginning of his tenure the work of the court was light. Admiralty cases still predominated. The court's modest schedule explains how Willard Hall found the time for his many non-judicial activities. But by the end of Hall's judicial career the court's business had expanded significantly. There were several reasons for this development. One factor was the increase in the population. When Judge Hall was appointed in 1823 there were about 73,000 Delawareans; by the end of his term their numbers had risen to over 125,000. A yet more significant factor lay in the expansion of federal statutory law that took place during the middle years of the nineteenth century. The increase in the size and complexity of the national economy, taken together with the rise of the slavery issue to the forefront of national politics and the Civil War that this issue provoked, resulted in increased activities for the federal courts.

Judging from the court records that have been preserved in the federal archives in Philadelphia, Judge Hall handled ninety-six admiralty cases and 104 criminal cases during his years on the bench. In the period of his judgeship from 1845 through 1863 thirty criminal cases came before the judge. Most of these cases resulted from mutinies at sea, stealing letters from the mail, and counterfeiting coins. During the Civil War the number of criminal cases increased dramatically to include offenses such as harboring and assisting army deserters, purchasing guns from soldiers, and aiding the rebellion. The passage of a federal statute to levy a tax on distilleries in 1868 produced an upsurge in the criminal caseload. There were thirty-seven distillery tax evasion cases prosecuted in the Delaware court in the last six years that Willard Hall served. Many of the successful prosecutions in these cases resulted from the testimony of informers who received compensation from the fines imposed by the court. Most criminal cases resulted in jury trials.

The admiralty cases reflected the changing nature of America's sea-borne commerce. Trans-Atlantic trade no longer predominated in the harbors of the Delaware Valley or on the dockets of its courts. Gone were the

privateers with their prizes and the constant infighting with Britain and France over customs regulation. In the place of these cases came others involving the rapidly increasing coastal trade and cases that involved the newly invented steamboats which quickly assumed a position of importance on the Delaware Bay and River.

While alleged customs violations remained a feature of the admiralty docket, cases of maritime salvage assumed greater significance during this period. An interesting coastal trade case in 1830 involved the schooner *Helen* of Saugatuck, Connecticut. The *Helen* was transporting a cargo of corn from a Southern port to New York City when she was caught in a violent storm off Cape Henlopen. The captain brought the schooner into the relative safety of the cape and anchored her near Cape May close by several other vessels that were also seeking shelter. When the *Helen*'s anchor chain became entangled with that of another ship, the *Helen*'s captain and crew left the schooner to try to free her. The *Helen* broke loose and started drifting out to sea. The captain secured a group of pilots from Lewes to go after the runaway schooner and bring her into port. The storm subsided and all would have been well except that the pilots refused to accept the $150 that the *Helen*'s captain offered to them. The pilots claimed that under the rules of the sea this sum was not adequate compensation for salvaging an unmanned ship.

The captain wanted to resume his voyage to New York, but the Lewes pilots demanded that the *Helen* be taken to New Castle where their salvage claim could be adjudicated. At New Castle the case came before Judge Hall, who ordered that the cargo be sold in that town. He further ordered that the schooner's owners pay the pilots $300 and that the owner of the cargo pay them $250.[10]

The key factor in determining the judge's ruling in the case was that the *Helen* had been abandoned when the pilots rescued her. The issue of abandonment arose again in 1833, when the brig *Clio*, loaded with cotton and bound from New Orleans to Philadelphia, sought refuge from a snow storm. Inside the capes the ship hit a shoal and was wrecked. In this case Judge Hall found that the ship was never abandoned, so the river pilots who came to help salvage her cargo were awarded smaller compensation.

No rule of law governed the award of compensation in salvage cases. The lack of such a rule troubled Judge Hall and led to differences of opinion among judges. In 1857 in the case of the brig *Caroline*, Judge Hall's award to a salvor was enlarged on appeal to Chief Justice Roger B. Taney of the United States Supreme Court, sitting as a circuit court judge. In his ruling on the *Caroline*, Hall discussed his quandary in awarding salvage claims.

> I have always had difficulty, and perplexity in fixing salvage compensation: trying to weigh every circumstance, and fairly apply the principles applicable: to determine how much the claimant ought to pay, and with what the salvers ought to be satisfied, and while liberal to the salvers according to the salvage merit of the case not to aggravate the loss of the claimant by exorbitant remuneration.[11]

Justice Taney found similar difficulties in satisfying claims fairly. In his opinion relating to the same case, the Chief Justice wrote,

> There is no rule of law, nor any fixed rule of judicial discretion, by which the compensation can be exactly measured. The principle is, that the salvor is entitled to adequate reward, according to the circumstances of the case. But the material circumstances in each case will be found, in some respects, peculiar to itself, and to differ from all others.[12]

The facts in the case of the *Caroline* were not in doubt. The brig had entered the mouth of the Delaware Bay in February 1857 bound for Philadelphia. In her hold was a cargo of hides, coffee, and pig lead. On her upper deck she carried numerous heavy hogsheads of bone dust. It was a hard winter and the river was frozen. The *Caroline* could not proceed to Philadelphia because large chunks of ice were drifting in the bay. The captain dropped anchor inside the breakwater to wait for safer sailing conditions. When the tide ebbed, ice floating out to sea hit the brig and damaged one of her starboard port holes. The pilot who had taken charge of her determined that she must be repaired immediately because the ice flow on the next ebb tide would sink her. The *Caroline*'s crew sought help from the Lewes pilots' steam tug *America*, which was lying nearby, to remove enough cargo to lift the damaged section above the waterline so that it might be repaired. The steam tug had a crew of eight and was especially equipped to assist ships in distress.

The crew of the tug worked with the *Caroline*'s smaller crew to salvage the cargo and assisted in holding a block of ice against the side of the stricken brig to provide a platform for the workmen while they made the necessary repairs. The *Caroline* was eventually towed to New Castle and the case of her salvage claim came before the District Court.

Judge Hall's ruling in this case was guided by his perception that the pilots had acted in accordance with their duty to assist ships in the bay and that they had conducted the salvage under conditions that did not place them in any peril. He determined that the pilots should receive one-third of the value of the cargo as recompense for their salvage effort.

The pilots, led by Henry Virden, a member of a premier family of pilots, appealed this decision to the circuit court, where Chief Justice Taney presided. Edward G. Bradford, a future District Court judge, represented the claimants. In determining to increase Judge Hall's award, Taney noted that the pilots had been responsible for removing the heaviest weight, the hogsheads of bone dust, and that this action had been critical to raising the vessel so that it could be repaired. The heavy hogsheads had been so covered with ice that the pilot tug had to make use of its especially powerful tackle equipment to pry them loose and heave them over the side into the bay. Judge Hall had taken the view that the tug's special capabilities for salvage work did not entitle its owners to make a large claim, but Justice Taney was of a contrary persuasion. Taney increased the salvage compensation to one-half of the value of the cargo, a percentage that was commonly applied under perilous conditions. Simply put, where Hall had emphasized the routine difficulty of what the salvagers had done given the nature of their resources, Taney concentrated on the effects of the salvagers' actions, which they could not have achieved without their special equipment.

Thirteen years later, in 1870, another salvage case came before Judge Hall. The captain of the sloop *Joseph P. Comegys*, a coaster sailing from Boston to Delaware, sighted the bark *Cayenne* bobbing like a derelict in heavy waters off the Delaware coast. On close examination the *Comegys*'s crew discovered that the bark had been abandoned and determined that, if left alone, the ship would drift into the coastal shoals and be destroyed. The

sloop's crew towed the *Cayenne* to a point near the entrance of the capes and paid the pilots' steam tug *America* $500 to tow both vessels up stream to New Castle. The question of the allowance to be awarded to the *Joseph P. Comegys* came before the District Court for Delaware.

It is clear from his written opinion that Judge Hall was still smarting from Chief Justice Taney's reversal of his decision in the *Caroline* case. Hall wrote that the allowance question made him anxious and distrustful of his judgment because "the most satisfactory judgment I ever formed, I mean the most satisfactory to myself, and which I trusted might be a precedent against extravagance preying upon the hard earnings of useful industry in misfortune, was reversed, and the allowance enhanced three-fold."[13] Hall grappled with the need to create principles by which salvage cases might be categorized according to numerous factors such as level of danger and effort expended to save a ship and her cargo. In the case of the *Cayenne* he concluded that the governing factors were the bark's abandonment and its imminent peril. Chastened by his earlier experience with the *Caroline*, he awarded the salvers one-half of the value of the bark and her cargo.

The claimants appealed the case to the Circuit Court on the ground that Judge Hall had been too generous to the salvers. The case came before Justice William Strong, who, ironically, revised Judge Hall's award downward following the same reasoning that Hall had applied in the *Caroline* case—that the danger to the salvers had been slight and, therefore, did not warrant a one-half share. One can only hope that Judge Hall greeted this second reversal of his salvage decisions with philosophical detachment. As he had observed in his opinion on the *Cayenne* with reference to the *Caroline*, "[t]his case...shows how judges differ, when they have no guide but their sound discretion."[14]

The most significant body of cases that came before the District Court and Circuit Court for Delaware in Judge Hall's period dealt with slavery, race relations, and the Civil War. Delawareans had an ambiguous attitude toward slavery. Although Delaware remained loyal to the Union when most other slave states seceded, the Diamond State did not renounce slavery. President Lincoln's Emancipation Proclamation did not touch Delaware because the

proclamation was directed only at the rebellious states. Delaware remained a slave state until the Thirteenth Amendment outlawed slavery throughout the United States in 1865. In 1860 on the eve of the Civil War, the slave population in Delaware was very small because many of the state's slaveholders had freed their slaves. At that time Delaware had the largest proportion of free blacks in its population of any state in the Union, and fewer than 2,000 of the state's more than 20,000 blacks were slaves.

The effects of the slavery controversy were strongly felt in Delaware, where the unfree labor system of the South collided with the abolitionist sentiments of the North. The "peculiar institution" did not have the hold on Delaware's laws or customs that characterized states further south. From the Revolutionary War period the importation of slaves and trading in slaves had been outlawed in the First State. Anti-slavery organizations proclaimed their doctrines freely in Delaware, and some successful politicians acknowledged their opposition to the institution. The state's free blacks, although they were strictly limited in their civil liberties, were free to form their own churches and to hold public meetings. Black leaders openly denounced slavery and rallied supporters for the cause of civil rights. But in spite of these signs of relative freedom for blacks, slavery proved to be a tenacious institution in Delaware, and several of the state's nationally prominent political leaders were among its defenders. To judge from the results of elections and the tone of most newspaper reporting in Delaware during the Civil War era, it would have been far easier to assemble a mob in support of slavery than in opposition to it.

The intensity of the slavery issue was reflected in the work of the federal courts in Delaware. Among the first criminal cases that came before Willard Hall was that of Hiram Gray, who was indicted June 17, 1845 for "Aiding in transportation of slaves from the coast of Africa." Although Congress prohibited the importation of slaves in 1807, slave smuggling into the United States was common. Captain Gray was not a smuggler, but he sold a brig called the *Agnes* to alleged smugglers in Rio de Janeiro. As the *Agnes* had formerly been the property of a Wilmington merchant, the federal government charged Captain Gray in Delaware. Captain Gray testified that he had

known nothing of the purposes for which the purchasers had intended to use the brig. The jury believed him and found him "not guilty" on August 28, 1845.[15]

A trial before the United States Circuit Court meeting in New Castle in 1848, at which Judge Hall and Chief Justice Taney presided, revealed several facets of the web of duplicity and contradiction that constituted legalized slavery in the otherwise free American republic. The case concerned the role of two Delaware abolitionists, both Quakers, Thomas Garrett and John Hunn, in assisting a black family to escape from slavery. Samuel Hawkins, the father of the family, was a free man, but his wife, Emeline, was a slave. Under the law, the status of children followed that of their mother. The couple's first two children were born while Emeline was a slave in the household of Mr. Glanding, who lived in Queen Anne's County on Maryland's Eastern Shore. These children remained Glanding's property after he sold Emeline to Elizabeth Turner, also of Queen Anne's County. During the time that Emeline belonged to Mrs. Turner the Hawkinses produced four more children, all of whom became Mrs. Turner's property at birth.

Although Elizabeth Turner permitted Emeline and her children to live separately from herself in a house with Samuel Hawkins, she provided no assistance to them. Samuel Hawkins chafed at the severe poverty and other constraints under which his family labored. He repeatedly asked Mrs. Turner to give him the opportunity to purchase the freedom of his wife and children, but she refused. Finally, in desperation, Hawkins decided to lead his family to freedom.

In December, 1845 the Hawkins family set out up the peninsula on a journey that took them first to Camden, Delaware. From there they traveled through a heavy snowstorm to the home of John Hunn in Middletown, Delaware. Hunn was well known within the underground railroad for his assistance to escaped slaves. His reputation not only attracted the Hawkins family but also a band of slave catchers who tracked the fugitives to Hunn's house and captured them.[16]

The Hawkinses were arrested and sent to the jail in New Castle. They

did not remain incarcerated for long, however, for Delaware's Chief Justice James Booth declared that the document on which they were being held was faulty and ordered their release. Meanwhile, John Hunn contacted Thomas Garrett, a Quaker iron merchant of Wilmington and the state's most dedicated and effective white abolitionist. Garrett came to the assistance of this cold, hungry, and friendless family. He put the Hawkinses in a wagon and transported them to the Pennsylvania border and freedom.

Elizabeth N. Turner and Charles W. Glanding retained James A. Bayard II to represent them in a civil action in the United States courts. John Wales, father of later District Judge Leonard E. Wales, represented John Hunn and Thomas Garrett. The case was heard in the Circuit Court in a jury trial before Justice Taney and Judge Hall. The trial took five days beginning May 24, 1848 and attracted a large crowd of spectators. Chief Justice Taney, a Maryland slaveholder, is primarily known to history as the justice who wrote the Dred Scott decision of 1856, that upheld the rights of slaveholders to retain their human property even in free U.S. territories. As the senior judge he gave the charge to the jury. "To entitle the plaintiff to a verdict in this case," the justice reminded them, "it is necessary for him to have proved property in the slaves."[17] He went on to note that it was also necessary to show that the defendants, Hunn and Garrett, harbored and aided the escape of persons whom they had reasonable grounds to suspect were slaves.

The jury found for the plaintiffs Glanding and Turner and awarded several thousand dollars to each. The settlement represented less than had been requested in the plaintiffs' suit, but it was still a large sum. John Hunn's portion of the accessment was $2,500, while Thomas Garrett's was $5,400. When the judges had left the courtroom Thomas Garrett addressed the crowd that had gathered there. He told them that, although he would be forced to sell his business to pay the fine, he pledged himself to redouble his efforts on behalf of slaves whatever the cost to himself. One wonders what Willard Hall, a member of the Colonization Society and a moderate abolitionist, thought of the proceedings and of the laws of slavery that he was obliged to enforce.

News of the outcome of the trial spread quickly down the Delmarva

Peninsula. Pro-slavery advocates rejoiced that Thomas Garrett, the notorious friend to runaway slaves, had been caught in the act and penalized. The *Delaware Gazette* published an article under the heading "Harboring Slaves—Heavy Penalties." The editors wrote:

> we would hope that this severe punishment would remove the rails from the 'underground railway.'[18]

Slave escapes could not be so easily checked, however, for morally-inspired abolitionists such as Garrett and Hunn were immune to fines.

In 1852, four years after the Hunn-Garrett trial, Harriet Beecher Stowe published her sensationally provocative novel, *Uncle Tom's Cabin*, which awakened millions of Americans in the free states to the evils of slavery. When critics of the book protested that Mrs. Stowe knew nothing of slavery from firsthand experience, she answered with another publication entitled *A Key to Uncle Tom's Cabin* which carried the explanative subtitle "Presenting The Original Facts and Documents Upon Which The Story Is Founded Together With Corroborative Statements Verifying The Truth of The Work." Mrs. Stowe wrote that many authentic incidents involving slaves and slavery had appeared in her novel in fictionalized form. One of these accounts was about the Hunn-Garrett trial, which, she said, had been the background for an incident in *Uncle Tom's Cabin* where a Quaker abolitionist, modeled on Thomas Garrett, was fined for assisting escaped slaves.[19]

The case that was to prove the capstone of Willard Hall's long career on the bench occurred in 1866 in the aftermath of the Civil War. The *United States v. Commandant of Fort Delaware* resulted from a request for a writ of *habeas corpus* to free four Southern civilians held captive in the fort on Pea Patch Island in the Delaware River. The southerners had been convicted by a military tribunal of murdering three U.S. soldiers. The circumstances that provoked this case, the advanced age and distinction of the presiding judge, and the courage and integrity that marked his decision combined to provide one of the most memorable scenes in the history of the District Court for Delaware.

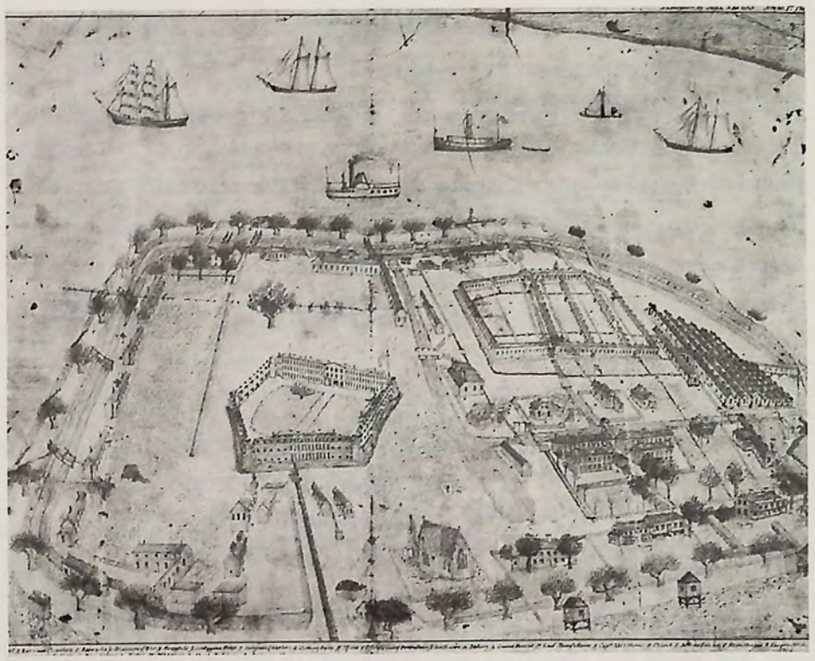
In 1866 Willard Hall was in his 86th year. He had served as judge of the federal court for forty-three years. Many of the attorneys who practiced

before him had known no other Delaware federal judge in their lifetimes. The personalities and political parties of the era when Hall had been appointed to the bench were long gone and had been superseded not once, but several times. The small elderly man with his old-fashioned manners and slightly accented speech was regarded as a venerable relic from a past time. Younger attorneys studied the awesome judge and a few recorded their observations. Daniel Bates found Hall's demeanor to be "at once grave and cheerful."[20] Alexander B. Cooper, a lawyer from New Castle, described the judge in his later years as

> quite bald on the top of his head, but on both sides of it and down the back, there flowed long, snowy white and silken hair. His face was free of whiskers or hair of any kind. The tear bags under his eyes were remarkably large and full, so much so as to attract immediate attention. His dress was neat and plain. He wore the old time turn over collar, with the old black stock around it.[21]

Always courteous, dignified, systematic, exact, and unfailingly punctual, the judge was identified with every sort of earnest endeavor toward improvement in the community. As the Civil War had approached he was also known to be strongly opposed to slavery and a supporter of the Union. The culminating case of Willard Hall's long career on the bench did not, however, occur during the war, but in the months that followed the war's conclusion.

The series of events that brought three South Carolinians and a Georgian into Judge Hall's courtroom in November 1866 grew out of the intense hatreds and the legal confusion that characterized the federal occupation of the former Confederacy. On October 8, 1865, six months after the Confederate surrender, three soldiers of the United States Army on guard at Brown's Ferry, South Carolina were shot and then drowned in the Savannah River. The commander of the district, General Dan Sickles, believed that the attack was not a random act of hostility against the army of occupation but that it was part of an organized conspiracy by an armed band. On the evidence of local freedmen four men were arrested and charged with conspiracy and murder. At the trial, which was conducted in a military court,



A sketch of Fort Delaware during the Civil War, showing the fort as it looked when the southern civilian prisoners involved in the *habeas corpus* case of 1866 were incarcerated there. Courtesy of the Historical Society of Delaware.

the accused men protested their innocence, but they were all found guilty of murder.

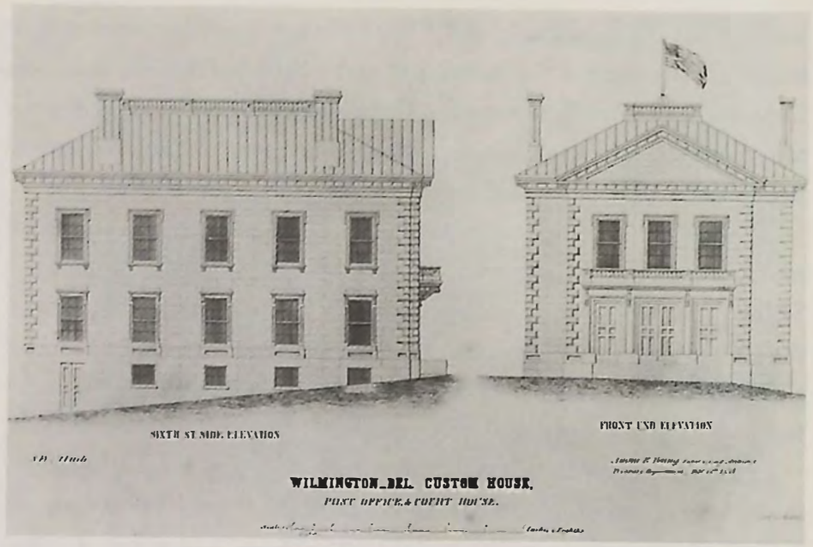
The prisoners were sentenced to be hanged and General Sickles had approved the military court's verdict and sentences, but the hangings did not take place. The prisoners were respected citizens in their community and someone approached President Andrew Johnson on their behalf. Johnson, a poor boy made good from Tennessee, hated the Southern slaveholding class but was susceptible to their blandishments. At the President's command the sentences of these men were commuted to life imprisonment. The prisoners were sent to a fort in Florida in preparation for their final destination, which

was to be the Dry Tortugas Islands. Once again someone intervened on their behalf, and Secretary of War Edwin Stanton ordered that they be sent to Fort Delaware. One can only surmise that the case that had been made against the four rested on weak evidence, or a strong-willed man of Stanton's radical Republican sentiments would never have commuted the sentences.

It was this strange succession of events that brought men accused of murdering soldiers in South Carolina into Judge Willard Hall's court in Wilmington, Delaware. The convicted men sought a writ of *habeas corpus* on the ground that the military court in which they had been tried and found guilty had no jurisdiction over civilians. The case had wide implications for federal policy in the South and it attracted the attention of the national press.

The case of *United States v. Commandant of Fort Delaware* was heard in the large courtroom on the second floor of the United States Customs Building, located on the southeast corner of Sixth and King streets. Thomas F. Bayard, one of two counselors for the petitioners, opened the arguments with a plea to discharge the prisoners. He pointed out that his clients had already endured the deprivations of imprisonment without benefit of due process of law and that their appearance before the military commission had not constituted a trial. The U. S. Attorney, J. L. Pratt, maintained that the military commission did have the authority to try and sentence the prisoners. The real verbal fireworks began when the prisoners' other counsel, Major H. Tomkins of Tennessee, began his argument. Tomkins asserted that the federal government had exercised more care in maintaining civil liberties while the country had been engaged in war than it was demonstrating in the post-war period. The military court that had tried the prisoners had not been constrained by accepted court procedures for hearing and evaluating evidence, and had no Constitutional authority to try civilians. The court had been "nothing more than a star chamber court," he said, drawing an unflattering analogy of the United States Army to the Stuart kings of seventeenth-century England that was well calculated to touch a chord with Judge Hall.[22] In his summation, Tomkins urged the federal court to assert the basic rights of citizens that the other branches of the federal government had so shamefully abandoned.

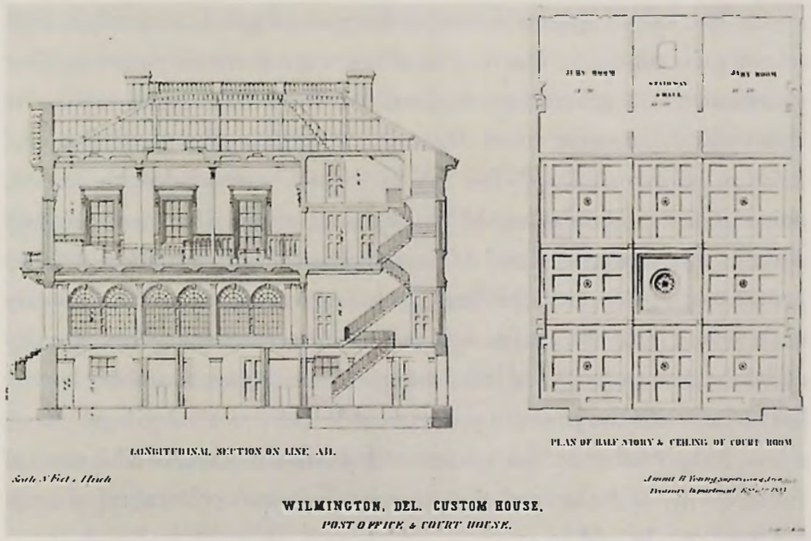
DELAWARE PUBLIC ARCHIVES



When the attorneys had completed their arguments Judge Hall thanked them with his usual courtesy and adjourned the court until the following Saturday at 4 p.m., when he promised to read his decision. Since the court had met on a Wednesday the octogenarian judge was giving himself only two full days and part of another day to draft his opinion.

When it came, the opinion was long, logical, and unmistakably clear. The government's case hinged on the argument that the military had authority to try offenders if the civil authority were not functioning. Judge Hall had examined the circumstances surrounding the trial of the four prisoners. He had discovered that President Johnson had restored a provisional governor to South Carolina who had appointed civil judges to the state courts before the military trial took place. He further noted that the United States Army had assumed jurisdiction in the case because soldiers had been the victims of the attack. Judge Hall wrote that,

> The assumption in the case is, that for alleged offenses by citizens against a military guard of the Army...it is competent to issue a Military Commission to arraign, try, and punish the offenders; the gist of the assumption being that for alleged offenses by citizens against soldiers in the regular discharge of their duty, soldiers should be the judges.



Architect's drawings for the Wilmington, Delaware Custom House, erected in 1857 at Sixth and King Streets. The Custom House was the first federal building constructed in Wilmington and the first permanent home of the United States District Court for the District of Delaware. The building cost $39,569 to build. The courtroom was located on the second floor front, two jury rooms were behind. The architect for this building, Ammi B. Young, was nationally known, especially for constructing government buildings in the then popular Greek revival style. The district court occupied this building for forty years from 1857 until 1897. Here Judge Willard Hall presided over the celebrated *habeas corpus* case of 1866. The building is currently occupied by Wilmington College. Courtesy of the Historical Society of Delaware.

> This ground and assumption appears to me neither logical nor legal. In so small a body comparatively, as the Army, associated and united so much in common, there must be an *esprit du corps*, that in cases of collisions with citizens will not allow us to expect impartial justice.

Hall concluded that "all sound principles of law are opposed to subjecting accused to the disadvantages of such a trial."

The judge's opinion reminded the younger generation with its war-related preoccupations, that the rule of law was supreme in America. "Our government is a government of laws" he wrote. "This is its distinctive character, the element of its freedom, constituting its excellence, and insuring its permanence." The Bill of Rights, he reminded his readers, required that no person would be "deprived of life, liberty, or property without due process of law." He noted that the jurisdiction of military commissions was limited to military personnel and pointed out that military trials did not insure accused persons of the same protections and impartiality as did the civil courts. "Trial for crime is a solemn matter; in nothing is more fully manifested the power of government."

Judge Hall ended his opinion with words that expressed his sense of the solemnity of the law and of its superior claim over political expediency. He had been, he said,

> anxiously solicitous to administer the law with impartial justice. I trust I have divested my mind of all influences diverting from truth and carefully examined the subject before me with a desire to form a right judgment. My convictions are clear, and my sense of duty constrains me to adjudge, that according to the law of the land, the prisoners ought not, and cannot be held under the commuted sentence of this Military Commission, and that they be discharged.[23]

Enthusiastic reactions to the judge's verdict came from the nation's Democratic press. A judge whom the Democrats suspected was a Republican, a man who had supported the war and the freeing of the slaves, and who was most likely sympathetic to the purpose of the military occupation of the South, had declared that the federal government with its mighty army and triumphant power was constrained by the law in its dealings with the former rebels. The *New York World* exclaimed, "this decision does honor to Judge Hall and to the State of Delaware, and we hail it with inexpressible satisfaction as the dawn of a new and better day."[24] The *Charleston Mercury* expressed its elation and hope that the decision signaled the restoration of civil authority in the South. "It will...be remembered to the eternal honor of Delaware, that a judge of one of her courts was the first to respect the

supremacy of the civil authority, and the inviolability of the rights of citizens as against the arbitrary license of military power."[25]

The *Delaware Gazette*'s headline on November 27, 1866 summed up this positive reaction with the words, "The Law Vindicated in Delaware." The *Gazette*'s editorial writer recognized the significance of the fact that Judge Hall was no Southern sympathizer. "Judge Hall, a Massachusetts man by birth, and by political sympathies, we believe, a Republican, is a magistrate venerable alike by his years, by the dignity and firmness with which he has, through a long career, administered his high office."[26] Willard Hall was not just an elderly District Court Judge who had struggled to bring forth an honest legal opinion in a difficult case during a time of national turmoil and bitterness. He had risen above the intense feelings of his time to become a symbol of the Rule of Law.

President Johnson, harassed by members of his own cabinet and facing impeachment in Congress, acquiesced in the Delaware Judge's decision. In December 1866, an article appeared in the *Charleston Mercury* suggesting that the federal government had decided to drop the case. According to the *Mercury*'s story, which its editor took from the Republican *New York Herald*, "the Congressional Committee in the case of the Union soldiers murdered in South Carolina will not proceed to Charleston to investigate the charges alleged, on the ground that they are not founded in fact."[27]

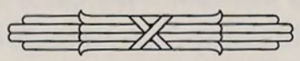
Judge Hall continued on the bench for five years following the *habeas corpus* decision that has been rightly described as the "crowning glory" of his judicial career. In his ninetieth year, his health, which had remained robust for so long, began to decline. He resigned from the District Court on December 7, 1871, the 84th anniversary of Delaware's ratification of the United States Constitution.

Many years later William C. Spruance, a member of the delegation from the Delaware Bar who carried resolutions of thanks to the judge, recalled the experience of visiting Judge Hall. The venerable judge met the lawyers on the doorstep of his home at 840 Market Street. He bowed low and said in an old time accent "Gentlemen, I am obliged to you.... This is another

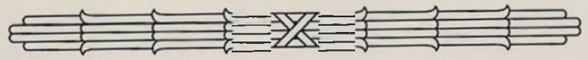
of the many acts of kindness I have received since I came to live in this state."[28] The judge recalled for his interested audience tales of his early career and of the judges and lawyers whom he had known who had died before any in the delegation had been born. "The impression left on my mind by the dignified appearance, the courteous bearing and the charming modesty of this remarkable man, as I saw him on that day thirty-seven years ago, abides with me among my most valuable memories," Spruance said.[29]

Daniel Bates wrote a life of Willard Hall in which he summarized the judge's character and the impact that Hall had made on members of the next generation. Bates quoted from a letter that Judge Hall had written shortly before he died to the librarian at Harvard, who was collecting information about graduates of the college. Asked about his accomplishments, Hall replied modestly, "I trust that I have done something for the good of others."[30] Bates, who had known Hall for more than forty years, recalled the judge's "calm serenity" and the "right balance of his intellectual and moral constitution." He was impressed also by the judge's ability in his later years to keep up with the times. "It was not his habit, either to dwell in memories of the past, or in visions of the future life so near him; but what remained of his powers he gave earnestly to the proper interests of the present."[31]

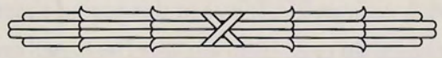
During the winter of 1874-75 Willard Hall suffered a serious decline in his health which the coming of spring failed to remedy. He died peacefully in his sleep May 10, 1875, midway through his ninety-fifth year of life. Daniel Bates summed up this remarkable man's life in one sentence. "A character such as we have now contemplated," Bates said, "if not brilliant, is far better—it is *beneficent*."[32]



CHAPTER III



THE REPUBLICANS TRIUMPHANT, 1871-1919



ULYSSES S. Grant had been President of the United States for three years when Judge Willard Hall resigned. The opportunity to appoint a federal judge in Delaware was in the hands of a Republican president for the first time. Grant's choice for the post was Edward Green Bradford of Wilmington. Bradford had served as United States District Attorney for the First State in the Lincoln and Johnson administrations and was a well known figure in Republican politics.

With the appointment of Judge Bradford the District Court for Delaware entered a new era in its history. The court's docket increased and its work shifted from admiralty to business-related cases. This period of transition lasted for almost fifty years from 1871 until 1920 through the judgeships of Bradford, Leonard Eugene Wales, and Edward Green Bradford, II. All three of these appointees were Republicans and all, but most especially the first two, were touched in important ways by the Civil War and the Reconstruction that followed. Changes in the district court's caseload came slowly in the final decades of the nineteenth century, but accelerated in the early twentieth century. By the end of the judgeship of the second Bradford a combination of new federal legislation together with the growth in size, number, and complexity of business enterprises with ties to Delaware resulted in a far busier court with a more varied caseload.

The late nineteenth century is often called "The Gilded Age," a reference to the gaudy display of rapidly-acquired wealth that both energized and repulsed contemporaries. From the end of the Civil War until the mid-

1870s the Reconstruction of the former Confederate states was the primary political and philosophical issue before the nation. Reconstruction defined American politics, creating a solidly Democratic South and a Republican Party whose adherents represented differing combinations of concern for the freedmen and eagerness to use the power of government to advance the nation's industrial growth. After the mid-1870s, issues related to industrialization dominated American life. It was in this period that the development of heavy industry based on coal, iron, and steel reshaped transportation and manufacturing. The owners of the railroads contested for control of vast territories and exercised towering influence over agriculture and industry alike.

Americans were inventive, and a large number of significant new patented inventions such as the telephone and the electric light bulb altered the way people lived and worked. Manufacturing enterprises grew in size and number, their smokestacks dominated urban landscapes and their advertisements screamed out from signs and newspaper columns. While politicians in the federal government worried about minor but symbolically significant shifts in the mixture of gold and silver currency, privately controlled New York banks controlled the flow of credit to business and to lesser regional banks. Cities expanded rapidly; farming invaded the plains; and immigration from many nations hitherto unrepresented in the American republic soared.

Although most of Delaware remained on the fringe of this vigorous activity, its people and communities could not escape altogether the dynamic economic and demographic changes that were reshaping American life. It was in these years that Wilmington made the transition from town to city. Wilmington's largest industrial firms employed hundreds of workers, many of them immigrants. These industrial firms were family-owned concerns or partnerships. They competed in a national market, and by the turn of the century several of them had been absorbed into major national corporations such as the American Car and Foundry Company, Bethlehem Steel Corporation, and the Allied Kid Company.

The Wilmington of the late nineteenth century retained aspects of its earlier town-like atmosphere. Henry Seidel Canby described the hometown

of his childhood in a nostalgic book, written in 1934 entitled *The Age of Confidence*. Canby focused on the decade of the 1890s, which he identified as "that last epoch of American stability."[1] He recalled particularly the lives, values, and world views of Wilmington's "comfortable, well-to-do class" to which his family and the judges of this period belonged. Business was the "dominating occupation and chief subject of thought in our community," he wrote, and the town's lawyers were closely tied to its businessmen and shared their values.[2] According to Canby, Wilmington's leaders in the 1890s were hardworking and dutiful but unimaginative, conventional, complacent, and confident. They looked on politics and politicians with a wary eye, distinguishing between "statesmen," such as Thomas F. Bayard, who served as Secretary of State and ambassador to Great Britain, and the men who hung around the courthouse and corrupted elections.

With a few notable exceptions, the town's upper class was Republican, and their political philosophy centered on the maintenance of high tariffs. In such a class-conscious society, the upper class assumed the responsibility for upholding standards of decorum, respectability, and dignity that they believed were unique to themselves. They little realized that in larger cities like New York and Chicago, great business moguls were destroying the foundations of the elite Wilmingtonians' confident world. Canby described this dynamic when he wrote, "individualists of unparalleled energy were killing individualism for the benefit of their private purses, reducing anarchy to order and chaos to form, in unwitting preparation for a new social order."[3]

One sign of the social and economic changes that were underway was the steady stream of immigrants who were entering the First State from nations previously unrepresented in Delaware's population. The nature of the immigrant stream is revealed in the records of petitions for naturalization that came before the district court. Administering induction into citizenship has been a responsibility of the district courts since the Constitution first went into effect. As early as 1802, the District Court for Delaware had sufficient petitions for naturalization to warrant the printing of forms labeled "Declaration of Intention to Become a United States Citizen." These forms are instructive in tracing the origins of immigrants to the state during

different periods. The earliest forms began with a blank where the petitioner's name was to be written followed by the printed statement, "a native of Ireland, subject to the King of the United Kingdom of Great Britain and Ireland." On those occasions when the petitioner was not Irish, as, for example, in the case of the French citizen Eleuthere Irenee du Pont, the printed statement was crossed out and the court clerk filled in by hand the petitioner's native country and type of citizenship.[4]

As the nineteenth century progressed the number of petitions increased, and the form became more elaborate. By 1840 the form called on the petitioner to "renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly to the Queen of the United Kingdom of Great Britain and Ireland, of whom he is now a subject." Not only does this wording reinforce our understanding of the primary source of immigration to Delaware at that time, it also reminds us that citizenship was restricted to men only. In the 1840s Germany became a second major source of new Delawareans. This development is readily observable in the frequency with which the court clerk crossed out the language pertaining to the Queen of the United Kingdom and substituted the words "king of Wurtenburg," or the titles of sovereigns of various other German principalities.

The great shift that took place in the source of immigrants during the late nineteenth century from northern and western Europe to southern and eastern Europe is also manifest in the Delaware District Court's petitions for naturalization. By the 1890s, while the printed forms still mention only the Queen of Great Britain as a specific sovereign, her name is crossed out on many forms and replaced by those of the Emperor of Germany, the King of Italy, the Emperor of Austria-Hungary, or the Czar of Russia. The form itself was changed early in the twentieth century to reflect the fears of Americans of old stock that the new immigrants represented a potential menace to the nation's moral and political health. The new wording included the statement, "I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein SO HELP

ME GOD." The early twentieth-century forms also added blanks for information respecting the age, town of birth, occupation, appearance, port of embarkation, and name of ship of every petitioner. Failure to supply any of this information resulted in cancellation of the citizenship proceedings. Women's names appeared on the citizenship forms for the first time after the enactment of the Nineteenth Amendment in 1920.

Nearly all immigrants to Delaware settled in and around the city of Wilmington, where industrial jobs were plentiful and where newcomers could join with others of their own nationality in ethnic communities and organizations. Wilmington was a major stopping place on the Philadelphia, Wilmington & Baltimore Railroad, later part of the Pennsylvania Railroad. The city boasted its leading role in a number of manufacturing and processing enterprises. After Philadelphia, Wilmington was the largest producer of kid leather in America. The city's foundries turned out railroad-car wheels and fabricated iron and steel for ships' hulls. Its principal employers were manufacturers of railroad and trolley cars, ferry boats, and river boats. Along the Brandywine River north of the city were textile mills, paper mills, and the powder mills of the Du Pont Company. The U.S. Census for 1920 reported that more than 16,000 of Wilmington's people were foreign born. These newcomers represented fifteen percent of Wilmington's total population of 110,168. The number of immigrants exceeded the number of blacks in the city's population by several thousand. The largest nationalities represented were those from Poland, Italy, Ireland, Germany, and Russia, with its many Jewish immigrants.[5]

The changes in social life, politics, and economic life, in the speed of travel, in the look of the landscape, and most particularly in the ethnic, religious, and cultural composition of the population provoked a variety of reactions from well-established Americans. While most old Americans delighted in their increased standard of living, many also regretted the passing of the more quiet, genteel, culturally homogenous society that, as Henry Seidel Canby attested, lingered on in Wilmington through the final decade of the nineteenth century. The big businesses that were squeezing out smaller firms, the immigrants from strange cultures, the rise of organized

labor all represented threats to these traditional values.

One way that descendants of old American families tried to maintain the values of the past and to reassert their place of importance in the society was through their study and preservation of American history and family genealogy. Typically these people formed patriotic societies to encourage genealogical research, historical preservation, and love of country. In the late nineteenth century Americans became more ethnically self-aware, and historians and social scientists associated especially meritorious democratic values with Anglo-Saxon ancestry. That preoccupation with origins is manifest in the biographical material that comes down to us concerning the three judges who served on the District Court for Delaware during this period. Contemporary biographers, sometimes encouraged by the subjects themselves, devoted as much attention to describing each judge's distinguished ancestry as they devoted to their subjects' accomplishments on the bench. Although it was never said directly, it is nonetheless clear that the leaders of both political parties regarded appropriate lineage as an important attribute in the appointment of men to the federal bench. Taken within this context, Delaware's District Court judges of this period presented excellent qualifications.

The shift from a social order characterized by independent towns with their small businesses and traditional values based on individualism, family ties, and the Bible toward a society dominated by large-scale industries that operated through bureaucratic, scientifically-derived principles of management had profound effects on every aspect of American life and thought. The verities that had connected religion, law, and society in the age of Willard Hall were being undermined by skeptics and scientists whose understanding of the world derived from pragmatic, rational premises. Leading the new thought were the controversial theories of the English naturalist Charles Darwin regarding the origin of humanity and the strategies by which species survive and evolve in a harshly competitive environment.

The revolution in perception that Darwin brought to natural science, Oliver Wendell Holmes, Jr., brought to the law. In a book written in 1881 entitled *The Common Law*, the lawyer son of the famous Massachusetts

physician-writer rejected the comfortable assumptions that had governed the legal profession in the past. Reasoning from a Darwinian perspective, Holmes argued that the law derives not from some great *a priori* source of Truth but from human experience in coping successfully with particular situations. In his most famous phrase Holmes wrote that "The life of the law has not been logic: it has been experience."[6] If the law derived from experience, Holmes argued, the most potent experiences shaping the law were those of judges. "The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed."[7] In Delaware the traditional intellectual views still prevailed. Only slowly did the impact of the new thought touch the courtrooms of the First State.

The first among the Republican District Court judges was Edward Green Bradford, who was born at Bohemia Manor, Cecil County, Maryland, on July 17, 1819. Bradford's father was Moses Bradford, a Massachusetts-born newspaper editor who traced his lineage back to William Bradford, the governor of the Pilgrims' Plymouth Colony. The judge's mother was Phoebe George Bradford, whose line of descent came through several Anglo-Irish barristers and Maryland planters. The family's home at Bohemia Manor stood on one of several Cecil County plantations that came to the Bradfords through Phoebe George's ancestors. Moses Bradford was much involved with politics. He had left New England for Wilmington in 1814 to take up printing a newspaper at the invitation of Louis McLane, son of the ardent Federalist Customs Collector Allen McLane. Louis McLane was a future United States Senator and Secretary of the Treasury. He wanted a newspaper that would carry his political banner throughout Delaware, and Moses Bradford's *Delaware Gazette and Peninsula Advertiser* filled that need. Bradford met Phoebe George shortly after he arrived in Wilmington. He married her in 1817 and gave up the newspaper business to become administrator of his wife's Maryland farms.[8]

The Bradfords had four children, all sons, of whom Edward Green

was the third. When Edward was five years old his parents moved to Wilmington, where his father edited another newspaper, the *Delaware State Journal*, which supported the presidential ambitions of John Quincy Adams in 1824. When the policies and personality of Adams's opponent, Andrew Jackson, created a new basis for partisan politics in America, the *Delaware State Journal* joined forces with the anti-Jacksonian Whigs. The Bradfords built a large stone house in Wilmington at Eleventh and Washington streets on the property that has been occupied by the Young Men's Christian Association since the 1920s. The Bradfords moved easily among Wilmington's most prominent families and were devout members of Trinity Episcopal Church.

Edward was sent to schools in Wilmington and then to Bristol College in Philadelphia, but he completed his college education at the newly chartered Delaware College in Newark, graduating in the class of 1839. He then entered the law office of Edward W. Gilpin to learn the legal profession. Gilpin, who was later to become Chief Justice of Delaware, was then Attorney General of the state, and he introduced young Bradford to the law through the perspective of the Attorney General's office. Edward G. Bradford was admitted to the bar in Sussex County in 1842, and was shortly thereafter appointed Deputy Attorney General. He held that post until 1850 when Gilpin's term in office ended. As Deputy Attorney General, Bradford tried many criminal cases in the state's courts.

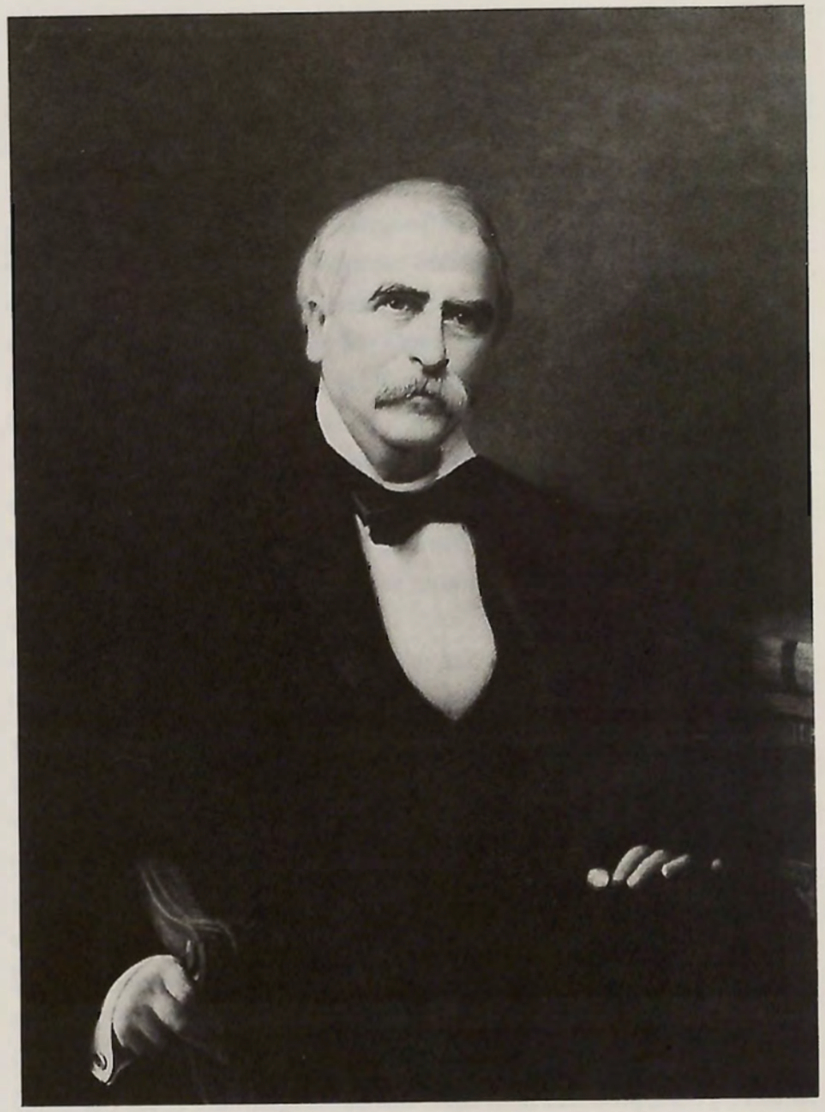
According to a contemporary account, Bradford was not particularly well read in the law, nor did he possess an outstanding intellect, but his forensic skills and energy made up for those deficiencies.[9] He honed his speaking style prosecuting criminal cases before juries, but his real gift was for political oratory. Bradford's initial political campaign was the colorful and exciting contest of 1840 between the incumbent Democratic President, Martin Van Buren, and the elderly Whig military hero, William Henry Harrison and his running mate John Tyler. Harrison's supporters played upon their candidate's victory over the Indians with the cry "Tippecanoe and Tyler Too," dragged model log cabins through the streets, and handed out samples of hard cider to symbolize their aristocratic candidate's fancifully

humble origins. The Whigs also made use of tree stumps as platforms from which to address crowds on the merits of their candidates and policies. It was as a stump speaker that the future judge, then still a law student, cut his political teeth.

Edward Green Bradford served briefly in the state legislature but declined his party's nomination for Congress. In the politically volatile 1850s he was among the first Delawareans to oppose southern demands for the expansion of slavery into United States territories. He spoke out bravely against slavery in a state that still condoned the institution, and he became one of the founders of the Republican Party in Delaware. He stumped for John C. Fremont, the Republicans' first presidential nominee, in 1856 and for Abraham Lincoln in 1860. Those services won him the gratitude of the Lincoln administration and an appointment to the position of United States District Attorney for Delaware. Working in this capacity, Bradford appeared frequently in Judge Hall's courtroom to plead cases for the federal government.

Before and during the Civil War Bradford vehemently attacked the institution of slavery and gave "bitter tirades against the doctrine of secession."[10] He believed that the Union should prosecute the war fully and relentlessly to destroy the Confederacy, and he made these beliefs public in numerous speeches. At the end of the war he allied himself with the Radical Republicans, who sought to change forever the Southern way of life. He staunchly supported the drive to give full citizenship, including the vote, to black males. He became so thoroughly disgusted with President Andrew Johnson's mild Reconstruction policies that he resigned from his post as district attorney.

Edward Green Bradford married twice. He and his first wife, Mary Alicia Heyward, produced three children, including Edward Green Bradford, II, who also was to serve as a federal judge. After the death of his first wife, he married Elizabeth Roberts Canby, whose ancestors had established Wilmington's prominence as a center for flour milling. This second union produced eight children. Their first child, named Elizabeth Canby Bradford, later married a son and namesake of Alexis I. du Pont, who was the youngest



Oil portrait of The Honorable Edward Green Bradford
by Frederic de Henewood.
Courtesy of the United States District Court
for the District of Delaware.

of Eleuthere Irenee du Pont's sons. The Bradfords lived at 1301 Delaware Avenue, not far from the judge's childhood home. Warmhearted, courteous, and friendly by nature and training, Edward G. Bradford participated in the community as city solicitor for Wilmington, vestryman at Trinity Episcopal Church, and long-time director of the Farmers Bank.

Bradford's elevation to judge of the District Court marked the fulfillment of a career that had been spent largely as a government lawyer. Contemporary accounts portray Edward Green Bradford as a competent if undistinguished lawyer and jurist. Alexander B. Cooper recalled Bradford as "a lawyer of fair ability" and said that "his strength as a lawyer was not the result of his erudition or of any profound knowledge that he had acquired of the law," but rather resulted from a combination of his personal qualities. "His pleasing address, his intuitive energy and perseverance and his ready gift of speech. He was not a deep thinker, nor a hard student. His talents were of a more superficial character. Quick to think and quick to act." Those were talents of greater value to a courtroom advocate than to a judge. Cooper observed situations in the courtroom where Judge Bradford appeared to him to be confused about fine points of law; but Cooper balanced his view with the observation that the judge was "conscientious and upright" and concluded that Bradford had "presided over the court with dignity, ability, and impartiality."[11]

J. Thomas Scharf published his monumental two-volume history of Delaware in 1888, only four years after death had removed Judge Bradford from the bench. With the judge's career so freshly before him, the historian summarized it as "highly creditable though uneventful."[12] Scharf noted that the number of cases to come before the court increased during Bradford's tenure and that "many important cases involving large interests were brought before him." The record of his opinions shows that admiralty cases and bankruptcies predominated. The civil rights issues that were so important to Edward G. Bradford the politician played no role in the work of Edward G. Bradford the judge. Toward the end of his tenure in office his health failed, and he died on January 16, 1884.

The vacancy in the court occurred during the presidency of Chester

A. Arthur, who had reached the nation's top executive position when an assassin killed President James A. Garfield.

Arthur's nominee, Leonard Eugene Wales, replaced Bradford on the court on March 20, 1884. Wales served until his death in 1897 when he was succeeded by Edward Green Bradford II, so that Wales's term was sandwiched by Bradfords.

Leonard E. Wales was born in Wilmington on November 26, 1823. He was the son of John Wales, a native of Connecticut and a graduate of Yale who had settled in Delaware, joined the Whig Party, and served as a United States Senator from his adopted state from 1849 through 1851. John Wales married Ann Patten, the daughter of Major John Patten, a Revolutionary War hero. Pride in his distinguished ancestry played an important role in Leonard E. Wales's life, and he devoted considerable time and effort to historical and genealogical studies.

Leonard Wales attended grammar school in New Haven and followed in his father's footsteps to Yale College, from which he graduated in 1845. He returned to Wilmington, read law in his father's office, and was admitted to the New Castle County Bar in 1848. Because his father was in declining health, the young man took over some of his cases, but he did not particularly like private practice and sought out government appointments. Judge Willard Hall appointed him clerk of the United States District Court and Circuit Court in 1849, and he held this office until 1864, when Governor William Cannon appointed him judge of the Delaware Superior Court.[13]

Being the son of a Whig father, it is not surprising that Leonard Wales joined that party. Like most northern Whigs, he made the transition to the Republican Party in the 1850s and worked to achieve a Union victory in the Civil War. Although at thirty-eight he was a bit old to endure the rigors of military life, he enlisted for three months in the First Regiment of Delaware Volunteers immediately following the outbreak of war. Wales was made a lieutenant, and his unit was assigned to guard the bridges of the Philadelphia, Wilmington, and Baltimore Railroad north of Baltimore. The railroad was a vital link connecting Washington D.C. with the North. Neither the Confederate Army nor its sympathizers attempted to destroy the Maryland

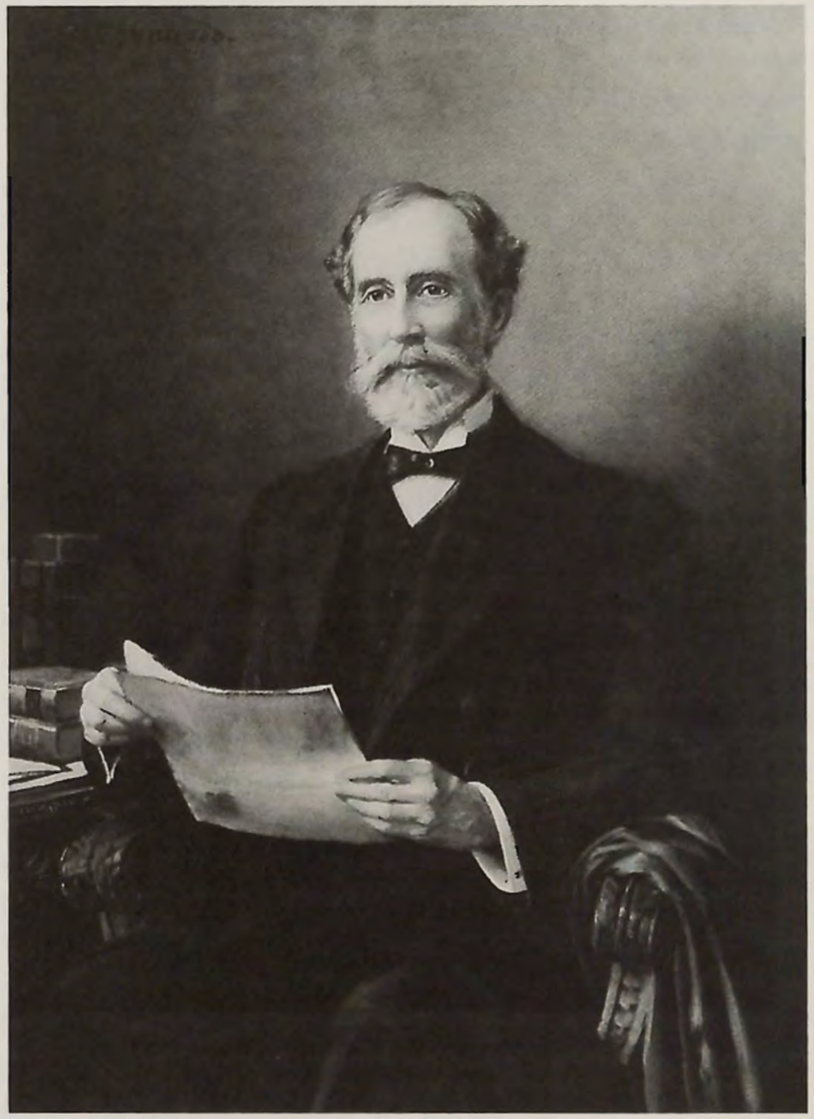
railroad bridges, so the First Delaware saw no military action before its men were mustered out in the summer of 1861. But the presence of the three-month soldiers from Delaware may have been instrumental in assuring the safety of the national capital.

Leonard Wales sat out the rest of the war in Wilmington, but he kept in close touch with his brother John, who was a physician serving with the Army of the Potomac. In 1863 when Congress enacted the first military draft in American history, Leonard Wales accepted the appointment to be the Commissioner of Enrollment for Delaware. This was a difficult assignment because many men looked for any excuse to evade the draft. By applying commonsense, a courteous manner, and fairness, Commissioner Wales made the draft work effectively in the First State.[14]

Leonard E. Wales sat on the bench of the District Court and the Circuit Court for Delaware for thirteen years, from 1884 through 1897. During some of those years he also served as a substitute for Judge John Thompson Nixon of the New Jersey District Court when that judge was incapacitated by a long illness. Although the cases that came before Judge Wales were more varied than those that had faced his predecessors, they were not sufficient in number to keep the court fully occupied. Dudley C. Lunt, author of *Tales of the Delaware Bench and Bar*, calculated that in his combined tenure as both a state and a federal judge Wales produced an average of four opinions a year.[15] This average figure is somewhat misleading, however, in that the judge was called upon to write more opinions annually as a federal judge than he had for the state court. Taken *in toto*, Judge Wales produced sixteen recorded opinions for the District Court and fifty-seven for the Circuit Court. This computes to a bit fewer than six opinions annually during his years as a federal judge.

A greater variety of cases came before Judge Leonard E. Wales than had appeared on the dockets of his predecessors. Admiralty cases remained a staple of the court's work, but they were superseded by new kinds of cases that concerned issues such as the infringement of patents, the dissolution of business partnerships, and the fulfillment of contracts in international trade.

Among the more interesting admiralty cases to come before Judge



Oil portrait of The Honorable Leonard Eugene Wales
by Frederic de Henewood.
Courtesy of the United States District Court
for the District of Delaware.

Wales was that of *Broux et al. v. The Ivy.* The case was brought to court by seventeen crewmen who sought compensation for the short rations that they allegedly received during a voyage from Vancouver, British Columbia, to Wilmington, Delaware. The captain of the *Ivy* testified that he had made an agreement with the crew whereby they were willing to accept substitutions for the provisions that were due to the men under the law. The seamen complained that they had been kept on short rations throughout the voyage and demanded compensation for the captain's cheapening of the ship's victuals.

Judge Wales agreed with the crew and ordered the owners of the *Ivy* to compensate each of the seamen at the rate of fifty cents a day. "It would be a dangerous precedent," the judge wrote, "for a court of admiralty to approve of any agreement of that kind between captain and crew. The captain was the monarch of the deck.... The contract was one-sided, without consideration, and therefore invalid." Wales went on to proclaim the court's responsibility to enforce laws that protect seamen. "Seamen have often been said to be the wards of admiralty, and it is the duty of the court to protect them."[16]

The judge's concern for the rights of workers, an attribute that textbook writers often assert was missing in judges of this period, was manifest also in an action for damages directed against the Pullman Palace Car Company. When an employee died due to the company's negligence, Judge Wales rejected the modest settlement that the company offered to the man's survivors because he thought it was too low. Wales wrote in his opinion that "[t]he life of an honest, industrious, and kind-hearted husband and father, exclusive of mere affection and sentiment, has for his wife a money value in addition to what he may be earning by his personal labor or business."[17]

United States v. Pena et al., a case that came before Judge Wales in 1895, pointed to the dilemmas that confronted the United States as a neutral nation during the Cubans' revolt against Spain. On a dark night in August, 1895 the tugboat *Taurus*, loaded with twenty-seven sealed boxes of freight, left the Market Street wharf in Wilmington and proceeded down the Christina River into the Delaware. One of the defendants ordered the tug's

captain to steam up and down the river between the mouth of the Christina and Gordon Heights. It was obvious to the captain that the men who had hired the tug were expecting to rendezvous with an ocean-going vessel from Philadelphia for the purpose of transferring the boxes. Somehow the plan went awry, for no ship appeared and eventually the conspirators were arrested.

The criminal case against Pena and his twenty accomplices was heard by a jury in Judge Wales's court. In his charge to the jury, the judge drew attention to the fact that although the United States government opposed aiding the insurrection from American shores, there was no proof that the defendants were involved in such an act. "The appearance of the defendants, their nationality, their silence under arrest, the fact of an existing insurrection in Cuba, and the belief that they are in sympathy with the insurrectionary party, unsupported by other evidence, would not be sufficient to warrant a verdict of guilty."[18] Under the instructions laid down by the judge the jury had no grounds for a finding of guilt.

The judge's statement in this case recalls the innocence of a time before the United States emerged as a recognized world power.

> A people struggling for freedom always attracts the admiration and awakens the ardent wishes for its success of the citizens of this republic, but thus far, in our history, it has been the policy of our government to abstain from rendering any active or material assistance to either party or faction in such contests, and the United States are bound by the most sacred obligations to prevent its own citizens or any other persons from making use of its territory for hostile operations against any government with which we are at peace.[19]

Another case that reverberates on modern ears was that of *Sellers v. Parvis & Williams Co.* The plaintiff sought a preliminary injunction to prevent the company, a fertilizer manufacturer, from producing obnoxious fumes that were polluting the air on the plaintiff's land and killing his fruit trees. Judge Wales sympathized with the plaintiff, but he did not grant the injunction because to do so would only temporarily stop a problem that required a long-term solution. The judge's opinion contained language that bears repeating today. "The right to pure air is incident to the land," he said,

"as much so as the right to the uninterrupted flow of a stream of pure water which runs through it,—and no one can be permitted to pollute either, to the injury and disadvantage of the owner."[20]

Another case from the Wales court illustrates the problems associated with the inception of modern technologically sophisticated business communications. In 1891 the Postal Telegraph Cable Company filed a petition for *mandamus* to compel the Delaware & Atlantic Telegraph & Telephone Company, which held a regional monopoly, to provide it with telephone service. The case was significant because it addressed the question of whether a patent holder in a common carrier industry had the right to withhold its services from selected potential customers. D&AT&T Co. claimed the right to deny service on the grounds that it was licensee to telephone patents under an agreement made in 1879 between its parent company, The National Bell Telephone Company, and the Western Union Telegraph Company. Judge Wales awarded the writ, citing a number of cases that relied on common law precedents, including the United States Supreme Court ruling in *Munn v. Illinois*, to show that a common carrier has a legally defined responsibility to be non-discriminatory in its sale of services to the public.

The decisions of Judge Wales reveal his generosity of spirit and his concern for the community interest. The judge never married. He shared the old Lovering mansion near Delaware Avenue with his sister, Catherine Brooks Wales. Leonard E. Wales died of bronchitis on February 8, 1897. His brother, Doctor John Wales, and his sister Catherine were with him when he died. His funeral was conducted at Rodney Street Presbyterian Church, now called Westminister Presbyterian Church, where he had been an active member.

The newspaper accounts that carried Judge Wales's obituary devoted more space to speculation about his successor than to the late judge's career. This unseemly urgency typified the intense political feeling that gripped the state and nation in the waning days of President Grover Cleveland's second term. The election campaign of 1896 had been the most exciting and intense since the nation had faced civil war thirty-six years before. The country had been in an economic depression for most of the decade, and the hard times

The United States Post Office Building on Ninth Street between Shipley Street and Orange Street was the site of the federal district court from 1897 until 1937. The fortress-like building cost $270,000. It contained a small, mahogany paneled courtroom which had a high ceiling. Memorable cases tried in this room included *du Pont v. du Pont*, the Chemical Foundation case, and the Weirton Steel case. The building was razed in the late 1930s and its site is now occupied by a parking garage. Courtesy of the Historical Society of Delaware

were severely felt among southern and western farmers. The Republicans' standard answer to economic problems was to raise the tariff on foreign manufactured goods. The Democrats, however, were split into two warring camps over the proposal to increase the money supply through the "free and unlimited coinage of silver at a ratio of 16:1." Grover Cleveland, the incumbent Democratic president, deeply opposed the silver policy which he feared would destabilize the economy, but the majority of delegates to the Democratic convention were convinced that the silver panacea would energize the economy. The convention renounced Cleveland in favor of an eloquent young man from Nebraska named William Jennings Bryan. Bryan and his "silver Democrats" put up a good fight against the Republican candidate, William McKinley; but the GOP's greater resources combined with the nagging fear that "Free Silver" was a sham allowed the Republican to prevail.

When Judge Wales died on February 8, 1897, Grover Cleveland was less than one month from surrendering the White House to McKinley. Democrats in Delaware urged the President to act promptly to secure the appointment for a member of their party. It was generally agreed that the most distinguished Democratic legal mind in the state belonged to United States Senator George Gray, and Senator Gray had made known his preference for the judicial over the legislative branch of the federal government. In the internal battles that afflicted the Democratic Party throughout the second Cleveland administration, Senator Gray of Delaware remained unswervingly committed to the President's conservative monetary policy and was the chief spokesman for the administration's policies in the Senate. It was surprising, therefore, that President Cleveland passed over Senator Gray three times when nominating candidates to the Supreme Court. According to a report in the press, on at least one of these occasions the Senator had personally solicited the President's support, only to be disappointed.[21]

Political observers and friends of the Senator speculated as to whether he would accept an appointment to the District Court for Delaware if it were offered.[22] The author of a special dispatch to the *New York Sun* purported to

know that Senator Gray resented his treatment by the President and would refuse the offer of such an obscure post. The New York paper wrote, "now it is proposed to give Senator Gray a little district courtship down in Delaware as a sort of reward of merit for his fidelity to Mr. Cleveland in the Senate. A district judgeship in Delaware is an honorable position, but it is not one that Senator Gray would seek or accept."[23] Whether Grover Cleveland offered the position to Senator Gray is not known; perhaps the Senator did refuse it. In any case, President Cleveland failed to nominate anyone for the post, and thereby transferred that opportunity to President McKinley. Senator Gray's talents were not ignored by the new Republican administration. President McKinley appointed Gray to serve on several important international commissions and brought Gray close to realizing his ambition to serve on the U. S. Supreme Court in 1899 by nominating him to a judgeship on the Circuit Court for the Third Circuit.

President McKinley's choice to fill the vacancy on the Delaware bench was Edward Green Bradford II, son of Judge Wales's predecessor. Recognizing that the younger Bradford bore his father's name, studied law in his father's office, and remained personally close to his father throughout the elder Bradford's life, it might be assumed that the two men were very much alike. Such an assumption is, however, mistaken. Where the elder Bradford was an enthralling orator who exhibited little stomach for the intricacies of the law, the son was of a taciturn and scholarly disposition.

Edward Green Bradford II was born in Wilmington on March 12, 1848. After an early education with the best private teachers that Wilmington had to offer, he attended Yale College, where he graduated in 1868. The younger Bradford eagerly embraced his father's profession and was admitted to the Delaware Bar in 1870. John Bassett Moore, who studied law in Bradford's office soon thereafter, has provided a description of his mentor in the early days of Bradford's legal practice. According to Moore, Bradford approached the law as an intellectual challenge. He prepared his cases meticulously and constructed his arguments upon careful analysis of the principles of law. It was not only his incisive mind or painstaking work habits that distinguished Edward G. Bradford II, but also his striking physiognomy.

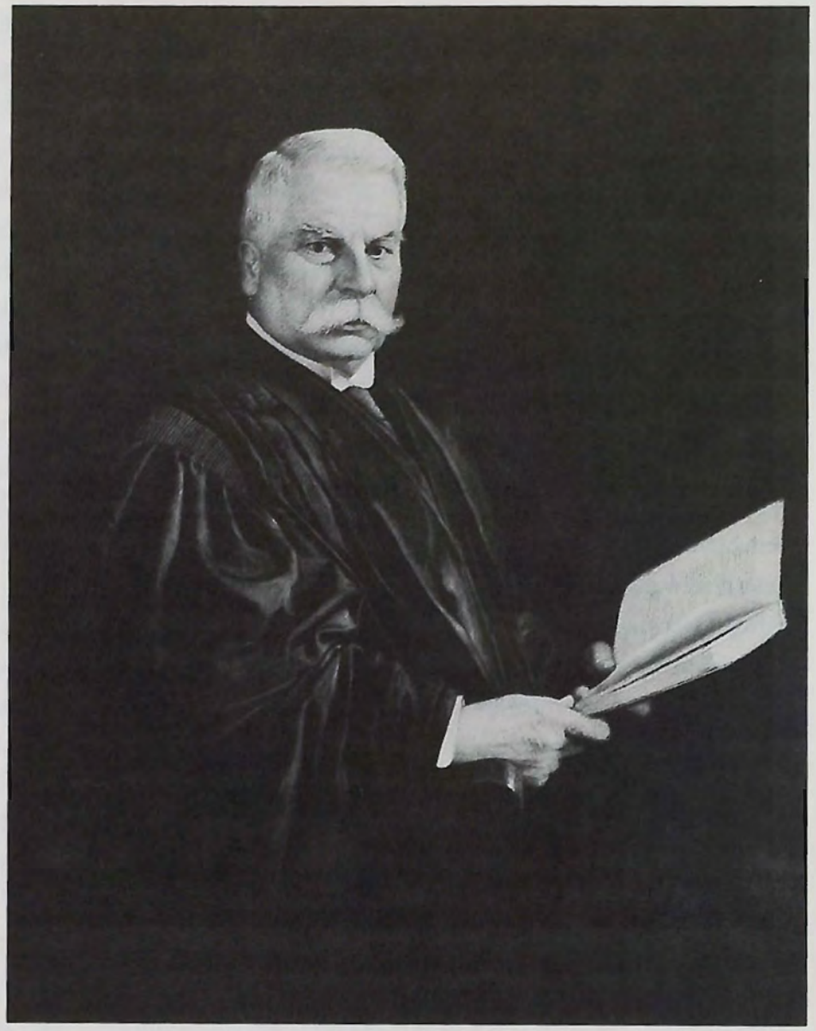
Colleagues called him "the Spaniard," for he presented an unusually reserved and dignified appearance with his black wavy hair, penetrating coal-black eyes, aquiline nose that jutted out from a pallid face, commanding voice, and square-set posture.[24]

Bradford demonstrated a high degree of professionalism and selected his cases with care. "Again and again," John B. Moore observed, "I have known him to refuse business, such as ordinary claims for the collection of debts, in which no contested principle was at stake; but I never knew him to refuse a case, no matter how slight the promise of pecuniary reward, in which there was involved an interesting legal question. In this way he was building up a professional business in which the scientific study of the law was constantly united with its practical application."[25]

The younger Bradford was not the political orator that his father had been, but he did play an active role in the Republican Party. He served a term in the state legislature and was chosen as a delegate to the convention that drafted Delaware's current constitution in 1897. In politics as in the law Bradford took the high moral ground. He vigorously advocated election reform and urged the imposition of heavy penalties to discourage election fraud.

In common with other New Castle County Republicans of his social class, Bradford was horrified and disgusted by the corrupt political tactics of Republican carpetbagger John Edward Addicks. Addicks was a Pennsylvania gas magnate known in Delaware as "The Napoleon of Gas, or Gas Addicks," whose open attempt to bribe the Delaware legislature into electing him to the United States Senate cast a pall on the political honor of the First State throughout the 1890s. In the course of his machinations, Addicks created a powerful political organization that attracted the support of many voters and made the Republicans the majority party in Delaware for the first time. Addicks eventually ran out of money and lost his political power base to his most potent rivals, the du Ponts, represented by Colonel Henry du Pont and Thomas Coleman du Pont, both of whom succeeded in their quests for seats in the United States Senate.

Edward G. Bradford II formed a close attachment to the du Pont



Oil portrait of The Honorable Edward Green Bradford, II
by Clawson S. Hammitt.
Courtesy of the United States District Court
for the District of Delaware.

family in 1872 when he married Eleuthera Paulina du Pont, daughter of Alexis I. du Pont and granddaughter of Eleuthere Irenee du Pont. Eleuthera Paulina was a sister of Alexis I. du Pont II who married Edward Bradford II's half sister, Elizabeth Canby Bradford. To complicate matters further, Edward and Eleuthera's eldest daughter, also named Eleuthera, married H. Belin du Pont, a brother of Du Pont Company presidents Pierre S., Irenee, and Lammot, while the Bradfords' second daughter, Alicia, scandalized both families when she left her husband, G. Amory Maddox, to marry the then once-wed Alfred I. du Pont in 1907.

Alfred I. du Pont's biographers have presented the story of Judge Bradford's bitter opposition to his daughter's marriage to du Pont. Their books portray the judge in a highly unflattering light. In his biography of Alfred I. du Pont, Joseph F. Wall described Judge Bradford as a "pompous, self-righteous martinet" whose stony heart was incapable of forgiving his daughter Alicia for her breach of society's moral standard. According to Wall,

> the Judge ruled over his family as he presided over his courtroom. The slightest act of disobedience became the major crime of lese majesty against his patriarchal authority and as such was appropriately punished. Both his children and his wife lived in terror of his judgment and were cowed into submissive acceptance of his rules.[26]

In Wall's view, Judge Bradford's authority, together with that of his friend and brother-in law, Delaware's Episcopal Bishop Leighton Coleman, extended beyond their own children to "impose a theocratic standard of conduct on the entire du Pont family."[27]

According to the accounts of Joseph Wall and Alfred I. du Pont's other biographer, Marquis James, Judge Bradford ostracized his daughter, Alicia, from the society of the Bradfords and the du Ponts. Edward Bradford's unsparing and ultimately ineffectual efforts to control the behavior of his most unconventional but interesting child began in the 1890s when Alicia was a high-spirited student at Miss Hebbs School in Wilmington and ended in bitter separation when she married Alfred I. du Pont in 1907. Judge Bradford's paternal wrath produced a breach within the du Pont family that far transcended Alicia and Alfred I. du Pont's home life. The animosity that

The wedding of Joanna Bradford and William Bush, 1905. Judge Edward G. Bradford, II dominates the picture standing beside his daughter, the bride. His brother-in-law, Bishop Leighton Coleman, is second from the right. Courtesy of the Hagley Museum and Library.

was generated between opponents and defenders of the marriage destroyed Alfred's relations with his cousins, T. Coleman and Pierre, who shared with Alfred the principal offices of the Du Pont Company. This loss of trust among the company's leaders led to an intra-family fight over the company's stock that is discussed later in this chapter. The most visible symbolic expression of Alfred and Alicia's personal reaction to the poisoned family relations was Alfred's construction of an extravagant mansion for his new wife on an estate just outside Wilmington. Alfred surrounded the estate, called Nemours, with a high stone wall topped with multi-colored jagged glass shards that, some said, were intended to keep out the couple's relatives.[28]

Judge Bradford's rigid sense of propriety, which brought injury to his wife and children, was more appropriate in the courtroom, where the judge earned a reputation for being stern but fair. The judge's friend and colleague, John B. Moore, deeply respected Bradford's unimpeachable integrity as a

judge. "That considerations of rank or of power should influence his decisions was inconceivable," he wrote.[29] Bradford studied each case that came before him with the same meticulous care that had characterized his work as an attorney, and he sometimes amazed lawyers appearing before him by adjudicating cases "upon reasons and authorities not suggested in the argument." In contrast to his father, who had occasionally appeared befuddled by intricate arguments, the second Judge Bradford was always firmly in control of what went on in his courtroom.

The low caseloads that had made the post of District Court Judge for Delaware something of a sinecure in earlier times began to change during Bradford's period on the court. The published record of cases that came before Judge Bradford during his twenty-one years on the federal bench includes 214 written opinions covering a wide range of topics. Of those opinions published in the *Federal Reporter*, sixty-five were cases heard in the District Court for Delaware and the remainder were cases that came before circuit courts on which the judge sat. While the types of cases varied considerably, most dealt with admiralty (19), patents and trademarks (67), bankruptcies and receiverships (31), criminal (10), corporate law and equitable remedies (11), and miscellaneous business law (53). Since routine cases and minor matters that come before the court do not appear in the *Federal Reporter*, the judge was doubtless busier than this list would suggest.

Changes in the federal law respecting the jurisdiction of the district and circuit courts contributed to the court's increased caseload. In the Judiciary Acts of 1869 and 1875, Congress recognized that the circuit riding system, so dear to the leaders of the early republic, wasted the time and energies of judges. In 1875 Congress enlarged the jurisdiction of the district courts to encompass the full range of powers allowed to them under the Constitution. The act diminished the responsibilities of the circuit courts that had burdened Supreme Court justices and district court judges alike. In 1891 Congress further reformed the federal judiciary when it adopted The Circuit Court of Appeals Act that redefined the circuit courts as the intermediate appellate courts that we know today. The 1891 law authorized three judges for each of the circuit courts of appeals and created a special class

of circuit court of appeals judges to share the responsibility for these courts with the district court judges and Supreme Court justices. In 1911 Congress established a Judicial Code that restructured the three-tiered system of federal courts in its present form. Stephen B. Presser, the author of several works about the Third Circuit of which Delaware is a part, has written concerning these legislative changes that

> Congress's structural renovation had a profound effect on the Third Circuit. The Code eliminated the Circuit's five circuit courts, and vested in its district courts exclusive original jurisdiction over most federal litigation. An additional circuit court judge was appointed to the Third Circuit Court of Appeals, whose members were relieved of the circuit riding duties they had performed, though sporadically, since 1869.[30]

The geographic areas encompassed by the circuits were adjusted by Congress several times in response to national expansion and population trends. Delaware was originally part of the Middle Circuit that also included Pennsylvania, New Jersey, Maryland, and Virginia. In 1802, when the circuits were redefined into smaller areas for the convenience of the Supreme Court justices, Delaware was assigned to the Fourth Circuit along with Maryland and Virginia. In 1866 Congress transferred the District of Delaware to the Third Circuit which encompassed Pennsylvania, New Jersey, and Delaware. When the United States acquired the Virgin Islands from Denmark in 1917, Congress provided that appeals from the local courts of this U.S. territory should come to the Third Circuit. In 1948 the U.S. Virgin Islands became part of the circuit.[31]

Edward G. Bradford II was appointed to the bench in the Spring of 1897 at a time when the United States was drawing close to war with Spain over the issue of Cuban independence. Although Congress had adopted a series of neutrality acts to keep Americans out of the colonial conflict, American opinion strongly favored the Cuban rebels. Clandestine efforts to assist the rebels from Delaware ports and waters, already noted in the 1895 case of *United States v. Pena et al.*, persisted until the American declaration of war. In 1898 the case of *United States v. Murphy* came before Judge

Bradford. The case involved gun smuggling by an old steamship named the *Laurada* that was normally engaged in the fruit trade. The *Laurada*, commanded by Captain Edward Murphy, left the Delaware Bay in the summer of 1896 for a rendezvous with another ship off the New Jersey coast. There the *Laurada* took on arms and volunteer soldiers and transported them to a Caribbean island, from which they were taken to Cuba. The indictment against Captain Murphy charged him with violating the neutrality statutes by assisting a military expedition bound for Cuba. As in most criminal cases, Murphy had a jury trial.

After hearing the evidence Judge Bradford directed the jury to consider closely whether the captain of the *Laurada* had participated in an organized military expedition or had merely transported a group of men and their cargo in the exercise of normal commerce. He spoke at length about the limited definition of a "military expedition" as described in the statutes and also defined the meaning of "reasonable doubt." He admonished the jurors to approach the facts of the case in a spirit of complete impartiality. "No public clamor, no sentiment of hostility or sympathy, no consideration of consequences which may result from your verdict, should be permitted in any manner to influence your deliberations."[32] Much to the joy of the throng that filled the courtroom, the jury returned a verdict of not guilty in just forty minutes.[33]

Judge Bradford's instructions to a jury in another criminal case, *United States v. Reid*, confirm the impression that he projected a judicial posture that exalted justice above mercy. The case involved a group of seamen who were charged with mutiny against the captain of the merchant ship on which they served. The seamen defended their action on the ground that the captain had treated them in an extremely rude and contemptuous manner. Judge Bradford reminded the jurors that

> We live in an age strongly characterized by mawkish sentimentality and disregard for law, when sound judgment and the sense of justice only too often yield to undeserved sympathy for those convicted or accused of grave crime; and it is important that juries and others charged with the administration of the criminal laws of the land should as far

as possible divest themselves of any such tendency....[34]

He noted that the captain of a ship should brook no insubordination and that mutiny could only be justified in circumstances where the lives of the crew were threatened. Not surprisingly, the jury returned a verdict of guilty.

Among the diverse and unusual cases that came before Judge Bradford two notable examples were a bankruptcy action in 1907, *In re H. L. Evans & Company*, and a dispute over the removal of grave markers and human remains from a cemetery, in *Chew v. The First Presbyterian Church of Wilmington*. The issue in the bankrupty case centered on the definition of the term "wearing apparel." Under the law the bankrupt party was not required to surrender wearing apparel to satisfy creditors; but did the exclusion extend to include jewelry, a pocket watch, or extra buttons that enhanced the beauty but not the functionality of a garment? In a lengthy opinion, Judge Bradford made a rather strained distinction between useful and ornamental jewels and finally satisfied himself that the bankrupt persons could keep their jewels and buttons but not their match boxes or cigar cutters.[35]

The disinternment case resulted from the decision in 1916 to build a new home for the Wilmington Institute Free Library on the site of the colonial First Presbyterian Church at Tenth and Market Streets. The church building had long since been converted to non-religious purposes and no one objected to its being moved to Brandywine Park. Some descendants of those buried in the churchyard opposed the removal of the graves of their ancestors. After losing their case in the Delaware Court of Chancery they sought a preliminary injunction from the district court to prevent the removals until they could exhaust other legal options. Judge Bradford granted the injunction,[36] but the petitioners failed in their ultimate quest for legal victory. The graves were moved and the library building was completed on the site in 1922.

In 1914 the national rivalries that divided Europe into heavily armed defensive alliances erupted into World War I. Initially, President Woodrow Wilson urged neutrality upon his fellow citizens, but repeated German attacks on American shipping impelled the President to seek a declaration of

war against the German Empire in April 1917. As the American government rushed to raise an army and send it into battle at the earliest possible moment, war hysteria and a wave of super-patriotism engulfed the United States. The emotionalism of the situation predisposed Americans to sanction violations of civil liberties, and egregious examples of unfairness were not uncommon.

Two war-related cases that came before Judge Bradford demonstrate that he maintained his Olympian posture above the jingoistic hysteria of the moment. In *United States v. Stephens* the judge was called upon to decide a case of an able-bodied man who refused to register for the draft. The defendant was the son of Frank Stephens, an artist and co-founder of the single-tax community of Arden, Delaware. In a coolly-reasoned opinion Judge Bradford dismissed the defendant's claim to Constitutional protection from conscription and upheld the government's right to draft its citizens in the interest of national self-protection. If the defendant's claim were to be upheld, Judge Bradford wrote, "the American nation would present a pitiable spectacle of emasculated sovereignty..."[37] While the Judge supported the government in this case, in another war-related case, *United States v. Stobo*, Judge Bradford sustained a demurrer in the indictment of a Wilmington resident accused of threatening the life of the President of the United States. According to the indictment, John Stobo spoke of his intention to kill the president on more than one occasion. After studying the wording of the indictment, Judge Bradford observed that the district attorney made no mention of these threats having been uttered within the hearing of others, and that since private statements could neither have been witnessed nor incite others, the government's case should be dismissed.[38]

In the first two decades of the twentieth century American politics centered on the issue of federal regulation of the national economy. The public and politicians alike feared the power of the huge aggregations of capital called "trusts" that were threatening to monopolize whole industries and might soon hold the nation in economic captivity. In 1890 Congress responded to this threat by adopting the Sherman Antitrust Act. But the executive branch did little to enforce this act until Theodore Roosevelt assumed the Presidency following the assassination of William McKinley.

President Roosevelt earned a reputation as a "trust buster" when, in 1903, he used the government's powers under the Sherman Antitrust Act to bring suit against a giant but rickety railroad combination called the Northern Securities Company.

For all his ringing phrases threatening retribution to business malefactors, Theodore Roosevelt did not seek to overthrow the business system, but only to prevent abuses of economic power. He recognized that bigness was not in itself evil. Champions of big business pointed to the fact that larger size brought greater efficiencies to the production and distribution of goods. To dismantle trusts and corporations in the name of freer competition, they argued, would destroy the cost-saving advantages that big companies could achieve through vertical and horizontal integration.

While the federal government was wrestling with policies designed to curb big business abuses, the individual states were free to develop their business laws in pursuit of different goals. The most important state power over business was the power to charter corporations. In the course of the nineteenth century the states adopted general incorporation acts to replace their old case by case special acts of incorporation. In 1896 New Jersey adopted an incorporation law that gave great powers to corporations chartered in that state. The framers of the New Jersey law hoped to attract business corporations to their state and to enhance the state's revenue with incorporation fees. They were not disappointed. The Delaware legislature, recognizing the advantages of this simple device for raising money without taxing the state's citizens, adopted a similar law in 1899. Soon thereafter New Jersey's governor, Woodrow Wilson, convinced the legislature to modify New Jersey's incorporation act. The business community was quick to recognize that the Delaware law now offered the broadest advantages and lowest fees, and the First State gained its reputation as a corporate haven.

Modern corporations are typically owned by many stockholders who purchase their stock as an investment. With so many owners there must be mechanisms to maintain a central authority that can direct the corporation. From the perspective of the corporations the most desirable benefits of Delaware's incorporation law are its provisions that give to majority stock-

holders and corporate managers great latitude in maintaining control. These same provisions have the obverse effect of minimizing the rights of minority stockholders.

The problems of balancing conflicting rights and values and of adjudicating between the regulations imposed by the federal government and the freedoms permitted by the state law have become a special responsibility of the federal courts and most especially of the United States District Court for Delaware. Stephen Presser, a scholar who has studied the Third Circuit's handling of business cases, writes concerning this balance that,

> the federal judges in Delaware can be seen to have had contradictory and somewhat irreconcilable responsibilities. First, they were required to make certain that the rights of all stockholders were protected against abuse of power. Only by maintaining some semblance of democratic shareholder control could the courts allay the 'vague and indescribable dread and suspicion' of corporate plutocracy that seemed to be gnawing at the public psyche.[39]

Judge Bradford had served on the federal bench but two years when the state legislature moved Delaware into national competition as a site for incorporation. Bradford's tenure in office coincided with the years when trust busting was at its height. Although the number of corporate cases that came before him was small compared to the later experience of the Delaware federal court, Bradford's rulings set the tone for the future. In *Wilmington City Railway Company et al. v. Taylor, et al., Board of Public Utility Commissioners of City of Wilmington* in 1912, Judge Bradford dealt with an issue that arose from the state's regulation of a private business. The case arose from an effort by the state utility commission to prevent the trolley car companies from raising fares. In the pre-automobile age, trolley cars were crucial to city dwellers, and the free-wheeling "public be dammed" attitudes that characterized some trolley company owners made them major targets of reformers. Some cities responded to the challenge by purchasing their trolley and cable-car companies and operating them as public utilities. In Delaware, the state government chose to create a regulatory commission. Wilmington's trolley-car companies sold individual trolley tickets for five cents but

customers could buy a block of six tickets for twenty-five cents. Shortly after the utility commission was formed in 1911, the companies announced that henceforth they would offer only the standard five cent fare. There was a public clamor, and, without consulting the railway companies, the utility commission refused to permit the change in policy. The railway companies exercised their option under the state law to appeal the commission's decision to the state Superior Court. That court had authority only to affirm or reverse the commission's decree, but it could not force the commission to meet with the companies. The companies claimed that they had been denied due process of law, and sought an injunction from the U.S. District Court.

Judge Bradford found in favor of the utility companies. In his opinion he noted that the commissioners, having had no background in the trolley industry, had reached an arbitrary judgment that was, in the Judge's words, "a travesty upon justice."[40] Bradford granted an injunction to prevent the commission's decree from going into effect pending a full examination of the circumstances that had led to the change in fare policy.

A case that exemplified Bradford's beliefs regarding the role of the courts in protecting the rights of stockholders came in his 1903 decision in *Jones v. Mutual Fidelity Company.* The defendant, a Delaware corporation, had sold deceptively worded "certificates of investment" to the plaintiffs that seemed to promise riches but in fact promised nothing. Judge Bradford found the company's fraudulent policies outrageous and overcame several legal technicalities in the plaintiffs' case to rule in favor of the plaintiffs. Regarding Judge Bradford's opinion in this case, Stephen Presser wrote that "decisions such as *Jones,* Bradford might have reasonably believed, would tend to assure the public that the federal judiciary would take all means at its disposal to make certain that corporation [sic] conducted their activities in a manner consistent with not only the law, but with basic principles of fairness." Presser adds that "It seems likely that Bradford's strong moral sensitivity must have reacted to Mutual Fidelity's methods of extracting money from gullible and weak investors."[41]

By far the most important corporate case to come before the Delaware District Court during Edward G. Bradford II's years as judge was that of

du Pont v. du Pont. Ironically, Judge Bradford had to remove himself from the bench in this memorable case because of his conflict of interest as a relative of both plaintiffs and defendants. His replacement on the bench was Judge J. Whitaker Thompson of the Eastern District of Pennsylvania. The case represented the culmination of an extraordinary series of disagreements, misunderstandings, rivalries, and personality differences that afflicted both the du Pont family and the management of the Du Pont Company. The full story of the events surrounding the case have been told many times, most notably in two biographies: *Pierre S. du Pont and the Making of Modern Corporation,* by Alfred D. Chandler and Stephen Salsbury and *Alfred I. du Pont, The Man and His Family,* by Joseph F. Wall. The titles of these books suggest what was perhaps the most vital underlying disagreement: the conflict between loyalty to family and loyalty to the more impersonal goals of a modern corporation. The outcome of the case was of enormous significance to the du Ponts and to the development of the Du Pont Company. Its significance in the evolution of the District Court for Delaware lay in Judge Thompson's powerful assertion of the responsibilities that corporate officers bear toward their companies and stockholders.

Since 1902 the Du Pont Company had been governed by a triumvirate of cousins, T. Coleman, Pierre S., and Alfred I., each of whom owned large blocks of the company's stock. In 1914 T. Coleman, the company president and its largest single stockholder, announced his intention to leave the company. T. Coleman wished to sell his stock to finance other business and political interests. At the time that T. Coleman made this decision, the Great War in Europe had just begun and the war's enormous impact on the Du Pont Company's earnings was not as yet felt. Pierre acted as T. Coleman's intermediary to negotiate a plan with the company's Executive Committee whereby T. Coleman might sell his stock back to the company. The stock would then be offered to Du Pont executives as a reward for their contributions to the company's success. Under this plan, neither Pierre nor Alfred, the remaining major stockholders, would increase his power as a stockholder in the company. Through a series of misunderstandings it appeared that T. Coleman and the Executive Committee could not reach accord on the price.

Pierre, who had conducted the negotiations, used this opportunity to acquire T. Coleman's stock for himself and for his immediate family and close business associates.

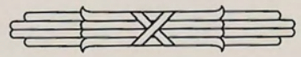
Alfred I. du Pont and some of his du Pont relatives were convinced that Pierre had acted deceitfully, a claim that Pierre strenuously denied. Alfred and his supporters retained as their principal counsel John G. Johnson, America's most notable corporate attorney. Johnson was then seventy-four and at the end of a career in which he had defended corporate giants such as Standard Oil, American Tobacco and Northern Securities against government anti-trust actions. Johnson was an excellent courtroom lawyer whose effective cross examinations of witnesses and brilliant oratorical style prevailed over judges and juries alike. He confided to Alfred that having spent his career defending trusts and corporations he was pleased that in this, his final case, he could defend the rights of minority stockholders.[42]

The trial was played out against the background of the Du Pont Company's sudden gigantic war-time profits from the sale of powder and explosives in Europe. After weeks of testimony and a lengthy wait while Judge Thompson considered the reams of testimony, the judge announced his opinion on April 12, 1917. The verdict vindicated Alfred's assertions that Pierre had misused his position as middleman to his own advantage in the negotiations with T. Coleman. The court decreed that the company's stockholders, as constituted prior to Pierre's purchase of T. Coleman's stock, must vote to decide whether the company should acquire that stock. Unlike the litigants, whose concerns were directed toward more narrow personal and corporate goals, Judge Thompson was primarily concerned about the larger issues of stockholders' rights and the behavior of corporate managers. The judge wrote that a corporate officer has a fiduciary responsibility that "requires him to exercise the utmost good faith in managing the business affairs of the company with a view to promote not his own interests, but the common interests, and he cannot directly or indirectly derive any personal benefit or advantage by reason of his position distinct from the co-shareholders."[43]

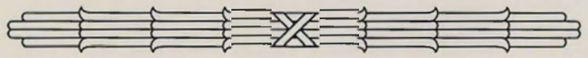
Stephen Presser notes that "Thompson's comments on the fiduciary

duties of corporate officers were to make this a leading opinion of corporation law."[44] But while Judge Thompson's opinion in the case established a standard by which the officers of a corporation should be judged, it did not alter the effects of Pierre's actions. Judge Thompson ruled that the disposition of T. Coleman's stock should be a "question of business policy...not one for the determination of the court."[45] The stockholders voted to reject the offer of T. Coleman's stock to the company thus leaving Pierre the master of the company. This outcome is generally believed to have been in the best interests of the Du Pont Company because Pierre was a capable leader. At Pierre's direction Du Pont efficiently supplied the allied powers, England and France, and later the United States, with the munitions needed to win the war in Europe. After the war, Pierre, his brothers, and his associates led the Du Pont Company into a new age of diversified production of a broad range of chemically-based products. As Pierre's biographers point out, "surely the E. I. du Pont de Nemours Powder Company would have had great difficulty in meeting the greatest challenge of its history...without the services of the most competent and best-trained managers in the industry."[46]

One year after Judge Thompson's decree in the *Du Pont* case, Judge Edward G. Bradford II retired from the District Court. The judge had reached the age of 70, and unlike Judge Hall, chose not to remain in active service past that age. No doubt the burden of the court's rapidly expanding business influenced his decision. Bradford lived on for ten more years and died quite suddenly on March 30, 1928, while visiting his daughter Mrs. H. Belin du Pont at her home in Clifton Heights, Pennsylvania.

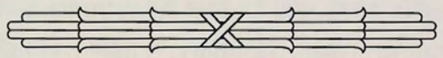


CHAPTER IV



THE ERA OF BIG BUSINESS,

1919-1930



ALTHOUGH Hugh M. Morris was to serve as judge of the United States District for Delaware for a relatively brief span of time, the Morris years were pivotal in the process by which the Delaware court emerged from its parochial past to become one of the premier federal courts in the United States. This transformation was in large measure the product of the unique role that Delaware achieved in American business life, but it would be a mistake to discount the significance of the role that Judge Morris played in adding to the stature of the court. His reputation for intelligence, courtesy, vision, and fairness encouraged litigants who had the opportunity to bring actions in several different states to choose Delaware's federal court. Among modern members of the Delaware Bar, Morris's prominence as a judge is generally associated with his adjudication of patent cases, but he was also known nationally for his handling of defendants under the prohibition law and for his efforts to assist immigrants to become citizens of the United States.

In light of the quality and importance of Hugh Morris's judgeship it is interesting to note that he was no one's first choice for the job, least of all his own. When Judge Bradford resigned from the bench in 1918, Woodrow Wilson was in his second term as President of the United States. Both of Delaware's Senators, Josiah O. Wolcott and Willard Saulsbury, were Democrats like the President, and, according to the rules of Senatorial courtesy, both had a right to advise the President on selecting Bradford's successor. The problem was that Wolcott and Saulsbury supported different men. Willard

Saulsbury's choice was his law partner, Richard Rodney of New Castle, while Josiah Wolcott pressed for the appointment of his law partner, James H. Hughes of Dover.[1] Since neither Senator would accept the other's choice, the judgeship remained unfilled for over eight months while the two Senators, the U.S. Attorney General, and the leaders of the Delaware Bar searched for a compromise candidate.

On January 8, 1919, the United States Attorney General Thomas Watt Gregory wrote to Senator Saulsbury, "I have very carefully considered all the men whose names have been mentioned in connection with the appointment. I have reached the conclusion that Mr. Hugh M. Morris of Wilmington, is, on the whole, the best of these men for the place and I am disposed to recommend his appointment to the President." The Attorney General was eager to expedite the appointment quickly because "the business of the district is in such condition that I feel the place should be filled with as little additional delay as possible." Barring any unforeseen difficulties with Delaware's Senators, Attorney General Gregory intended to wire the President at the Versailles peace treaty negotiations to seek his approval.[2]

The man who emerged to become the seventh judge of the District Court for Delaware, Hugh M. Morris, was a native of Sussex County and a rising corporate lawyer in Wilmington. Morris accepted the appointment reluctantly. He was disappointed that his law partner, Richard Rodney, who was eager to become a judge, had been denied the appointment, and he was sorry to give up the practice of law. But, reluctant though Morris may have been, there was during his judgeship a sense of the coming of age of the U.S. District Court for Delaware. A court that had been described by the New York press in 1897 as an inconsequential backwater of parochial jurisprudence emerged in Judge Morris's era as among the most important and most closely watched district courts in the nation.

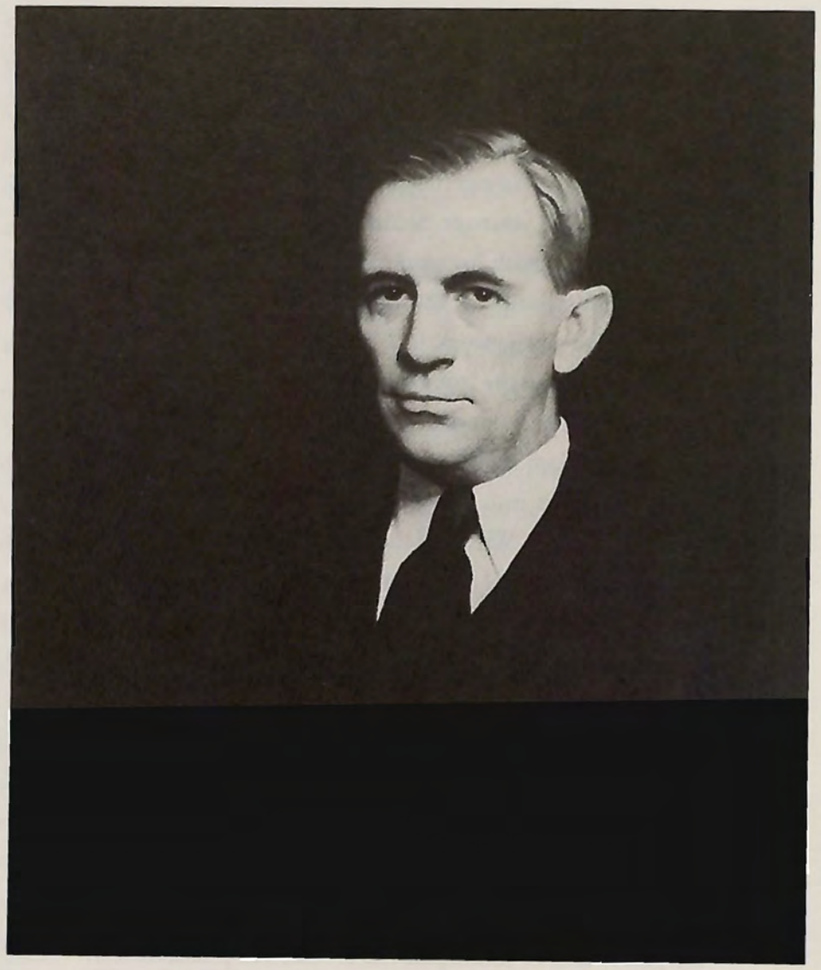
Hugh Martin Morris was born on April 9, 1878, at "Morris' Pleasure," a farm near Greenwood, Delaware, the Sussex County farm that had been the home of his ancestors since colonial times. His father, William Wilkinson Morris, was active in Democratic Party politics in Delaware and served in the General Assembly through the decade in which Hugh was born.

After attending school in Greenwood, Hugh Morris entered Delaware College from which he graduated in 1898 with a bachelor of arts degree. In 1900 he entered the law office of Willard Saulsbury, scion of one of Delaware's most powerful Democratic families, to read the law. Willard Saulsbury was the son of a former Senator and State Chancellor also named Willard Saulsbury. The younger Saulsbury had moved from southern Delaware to practice law with his legal mentor, Victor du Pont. Their firm lasted until du Pont's death in 1888. Since Willard Saulsbury handled important clients and cases, work in his office provided Morris with an excellent introduction into the law. In 1903 Morris was admitted to the bar and practiced independently until 1909 when he accepted an invitation to join his preceptor Willard Saulsbury in a joint practice. A few years later, Richard S. Rodney came into the firm, which was then styled Saulsbury, Morris and Rodney. When Willard Saulsbury was elected to the U.S. Senate in 1912, he diminished but did not dissolve his connection with the law firm.

A letter of support for Morris's appointment from a Wilmington lawyer to Senator Josiah O. Wolcott, written just before Hugh M. Morris was named to the federal bench in January 1919, expresses a view of the man that was no doubt widely shared among members of the bar and later vindicated by Morris's actions as a judge. "Hugh is young and a fine fellow" the lawyer wrote.

> His integrity is of the very highest, his devotion to the study of law is unsurpassed, and he is one of the leaders of this Bar. His experience in a very wide range of cases will be of very great value to him upon the Bench. He possesses that balance in judgment which will make him an able judge. He also possesses that courtesy and kindness to his fellow members of the Bar which will make it a pleasure to try a case before him.[3]

The public announcement of Morris's selection on January 23, 1919 moved a number of Delawareans to write congratulatory letters to the new judge. One writer said, "I had hoped that Dick Rodney would finally be agreed upon, in which I feel you join me, but I consider your appointment the best solution of the situation."[4] To this remark Morris replied, "You are



Oil portrait of The Honorable Hugh Martin Morris.
Courtesy of the United States District Court
for the District of Delaware.

not mistaken in your thought that I had hoped that Dick Rodney would be finally agreed upon. I had hoped this for two reasons, first, because I wanted to see Dick appointed as I believe that he would make a most competent and courteous judge, and also because my personal inclination was to continue in the practice of the law."[5] To Senator Wolcott's telegram offering his assistance "in expediting the confirmation,"[6] Morris replied, "I hope that I shall find the duties so pleasant that I will soon forget my present reluctance and unhappiness in leaving the practice of law which I have greatly enjoyed."[7] President Samuel C. Mitchell of Morris's alma mater, Delaware College, sent his congratulations and called Morris "an inspiring example to our student body and faculty."[8] The Republican state judge and historian Henry C. Conrad wrote that in his 44 years in the Delaware Bar "I have known no instance where an appointment has met with a more hearty or more general accord than in your case."[9] R. R. M. Carpenter, a high ranking Du Pont Company executive, offered a wry comment: "As the chief amusement of some people seems to be suing the Powder Co. directors, this may be our last meeting on real familiar terms, but I want you to know how pleased I am at your appointment."[10] Morris's papers also include a copy of a letter that the newly appointed Judge wrote to Messrs. Cottrell and Leonard of Albany, New York, suppliers of "academic caps, gowns and hoods, rich robes for pulpit and bench for samples and prices."[11]

The judgeship that Hugh M. Morris was entering presented several dimensions, some of which were unique to the decade in which he served. Most memorable, of course, would be the corporate and patent cases that came before Delaware's District Court. But of nearly equal significance were the many cases that arose under the prohibition act as well as the court's continuing responsibility for the naturalization of new United States citizens. Judge Morris's term on the court coincided with the introduction of the immigrant quota system in 1924 that sharply reduced the flow of newcomers to America. But a great many earlier immigrants were still moving from resident alien to citizenship status.

Like Judge Bradford before him, Judge Morris took pains to make the District Court's role in the naturalization process as memorable and mean-

ingful as possible. Delaware naturalization programs offered a model for the country, and Judge Morris was often sought out by other judges for advice in this work.[12] During the 1920s an organization funded by Pierre S. du Pont called Service Citizens of Delaware spent large sums to improve Delaware's public schools and to encourage good citizenship, especially among the state's immigrant population. Service Citizens provided classes where foreign-born people of all ages could learn the English language together with American history and customs. The classes stressed patriotic themes and culminated in impressive graduation ceremonies where people dressed in the native costumes of their many nations joined together under the red, white, and blue banners of their new country.

The final act in this impressive naturalization process was the immigrants' appearance in the U.S. District Court to take the oath of allegiance as new American citizens. The District Court and its judge represented the great republic that was offering them citizenship. After administering the oath of allegiance, Judge Morris addressed the new citizens with stirring words designed to impress upon them the awesome duties and privileges of citizenship and to pay tribute to the contributions that they brought to their adopted nation. In his final naturalization ceremony he told thirty-three new Americans, "I see America, to which you are bringing a widened horizon and a great tolerance, marching to a glorious destiny because of an ever increasing opportunity and influence to guide, through kinship and understanding and affection, the feet of the people of every land into the way of peace."[13] As the judge completed his remarks a color guard marched into the courtroom, and everyone present stood to salute the flag that was now their flag and to sing their National Anthem. A reporter who was present at one of Judge Morris's naturalization ceremonies wrote, "I believe you could almost hear a pin drop as the melody of the National Anthem comes floating in the door."[14]

The Eighteenth Amendment to the U.S. Constitution, known as the prohibition amendment, was ratified January 29, 1919, just one week after Hugh Morris's nomination to the court was made public. Later that same year, Congress passed the Volstead Act to carry out the amendment's prohibition of "the manufacture, sale, or transportation of intoxicating

liquors" in the United States. Prohibition brought the federal courts into the realm of criminal law to a much greater extent than ever before. The ideal of a liquor-free America particularly appealed to rural Protestant Americans. As a Protestant native of Sussex County, Judge Morris might have been expected to applaud the new law, but he did not. From the first, he believed that Prohibition represented a dangerous and unenforceable assault on civil liberties. He came close to saying as much in his speech at his first naturalization ceremony. He told a group of seventy-four new citizens that citizenship required not only obeying the law but also safeguarding the nation from bad laws and bad amendments that destroy freedoms and destroy the balance of federal and state powers. The new law could not, he said, "bring into being an advance in the moral or religious standards of a whole people." Judge Morris feared mass disobedience to the law and the expansion of a national police power. In his view, the federal law was a false start and a short cut to address problems that had deeper roots. "The pathway to progress is clear. It starts at the family fireside. It passes into the school house and the holy temples. Only from there does it lead to the legislative halls."[15]

In keeping with his publicly stated opposition to the prohibition law, Judge Morris enforced that law in the least oppressive fashion consistent with maintaining his legal responsibilities. In case after case he proscribed light sentences for Delawareans found guilty of violations of the Volstead Act. "Mercy Tempers Justice, Asserts Federal Jurist" read a typical newspaper headline. The story that followed described the case of a man who was found guilty of having eighty-five gallons of liquor in his chicken yard. The chicken farmer claimed ignorance of the law and Judge Morris fined him only $225. The judge then looked down from his bench at the U. S. Attorney, who had urged a stiffer sentence, and said, "I must make the sentences in this court and it is the most difficult and distasteful duty that I have to do in this court." Noting that death sentences had formerly been meted out to pickpockets in England without eliminating that crime, he said, "I do not believe in making sentences severer and severer for repeated crime. Criminal history shows us that severe sentences are of very questionable value."[16]

Judge Morris took advantage of every possible opportunity to voice his belief that the enforcers of the Volstead Act singled out poor people while ignoring the violations of the rich. Unequal administration of the law troubled him very much and provided another justification for his light sentences. Most of the violators who appeared before Judge Morris were poor, frightened first offenders. The judge believed that lenient treatment was the best means to lead them to lawful behavior. In 1925 Morris told a Wilmington Rotary Club audience that the more well-to-do people who bought and consumed illegal liquor knowing that they were violating the law were guilty of a higher crime than were those who sold it to them.[17] He was quoted by an editorial writer in the Wilmington *Evening Journal* in 1928 as saying,

> the national prohibition act, as it now stands and as it is now enforced, seems to have degenerated into class legislation, pure and simple. Most of the cases which have appeared before me have involved only very poor and comparatively ignorant persons; and unless the fine is graduated according to the ability of the man to pay, then there is no equality in the law . . . [18]

Judge Morris was not only lenient with poor, ill-informed violators of the Volstead Act, but with other minor criminal malefactors. In 1929 a 22-year old Canadian man charged with entering the United States illegally and stealing a car near Glasgow, Delaware came before Judge Morris. Instead of sending the young man to the federal penitentiary, the judge put him on parole with the stipulation that he write to the judge weekly for five years about his life and hopes. This sentence so surprised the press that it was reported in the New York *Times*.[19] On another occasion, a boy came before him for the crime of stealing letters from mailboxes. The judge, noticing that the boy's tonsils and adenoids were swollen, ordered that he be taken to the hospital to have these diseased organs removed. The boy was most grateful and remorseful.[20] When another young man found guilty of embezzling $1,000 from a Wilmington bank faced the judge for sentencing he was given parole and admonished "you have two roads, one to parole and freedom and a chance to renew your life, and the other to Atlanta or at least imprisonment.

It is up for vote as to which course you will take, and you are the only voter."[21]

Hugh M. Morris was the first District Court judge for Delaware to confront a large number of criminal cases, and his compassionate approach to sentencing set a standard for his successors. "In the administration of justice," he wrote, "a judge must use two things: his heart and his mind, and until I am convinced I am wrong, I shall continue to use both. I shall not impose sentences for vengeance . . . the defendants brought before me must feel that the Federal Government is not an oppressor but a government that wants her citizens to feel that they must obey the law."[22]

If Prohibition and Big Business defined the "Jazz Age," or "New Era" as the Twenties are often called, then the District Court for Delaware was close to the decade's center of gravity. The decade began with disillusionment and depression following the European war that President Wilson had promised would "end all wars." Wilson's earnest campaign to secure ratification of the Treaty of Versailles ended in defeat for the treaty and for the Democratic Party in the 1920 elections. The new Republican administration of Warren G. Harding promised to return the country to a state of "normalcy," which meant an end to Progressivism and the beginning of an era that exalted the private sector over public regulation.

During the Twenties several technical marvels created by inventors in earlier years, particularly the radio, the automobile, and the refrigerator, became mass consumer goods. Inspired by these successes and by the possibility of immense profits inventors and manufacturing innovators produced numerous new patented inventions. Disputes over patents are clearly reflected in the work of the District Court for Delaware where one half of Judge Morris's reported opinions dealt with patent infringement of products as diverse as light bulbs, vacuum tubes, billiard balls, and petroleum cracking apparatus. Perhaps the most famous and far reaching decision to come from the court was one that affected the development of the American chemical industry.

To understand the circumstances that led up to the chemical patent case it is necessary to examine the political climate of the post war period. Wartime propaganda and post-war economic instability combined to create

a public mood characterized by fears of conspiracies of all kinds. When a bomb exploded in front of the Washington residence of A. Mitchell Palmer, President Wilson's Attorney General, in 1919, Palmer was convinced that the incident marked the vanguard of a communist conspiracy to seize control of the country. The Attorney General responded with his famous "Palmer raids" in which all known aliens suspected of leftist political sentiments were arrested and deported. The attorney general's concerns for America's safety were not confined to Reds; he also feared a resurgent Germany. While President Wilson was campaigning for incorporation of his Fourteen Points into the peace treaty as the best means to prevent future wars, Palmer concentrated on strengthening the United States against its potential foes, most particularly Germany.

The First World War had demonstrated the importance of scientific and technological superiority to achieve victory. Attorney General Palmer's understanding of this was essential to the background for one of the most important cases ever to come before the U.S. District Court for Delaware, *United States v. Chemical Foundation.* When the United States entered the war in 1917, Congress passed the Trading With the Enemy Act. This act empowered the President to seize and hold all German property in the United States and established the position of Enemy Property Custodian. President Wilson appointed Palmer to this post. In 1918 the Trading With the Enemy Act was amended to empower the custodian to dispose of the enemy property in his care if he judged that action to be in the best interests of the United States.

There were two types of German property that most concerned A. Mitchell Palmer: pharmaceuticals and dyes. In both of these product lines the Germans had near worldwide monopolies, and numerous German-owned producers operated in the United States. German scientific and technical patents and processes constituted the enemy's most valuable assets in the United States. German drug patents included the only known cure for syphilis, but it was the German dye patents that were most important, not only because the Germans dominated a lucrative consumer market, but because the chemistry of dye making was closely related to the chemistry of

making explosives and poison gas. Dyes came from the processing of organic substances from coal tar and commercially useful organic chemistry was woefully undeveloped in the United States. A nation without a strong dye industry could not develop the chemical infrastructure to support modern military power.

Palmer was convinced that the future security of the United States depended upon the acquisition of the German dye patents that he had seized under the Trading With the Enemy Act. He wrestled with the question of finding the best mechanism whereby these patents could be turned over to American industrial producers. He feared that if the government sold the patents directly to the highest bidder the patents might inadvertently fall into German hands. He also feared that sales to the highest bidder would result in the creation of an American monopoly, which would be anathema to the Wilson administration. After much thought and consultation, the attorney general conceived of the idea of creating a semi-public corporation. The corporation would be owned by the American dye industry and its officers would be a combination of employees of the custodian's office and representatives from American chemical companies. The government would sell the patents to the corporation at cheap prices and the corporation would relicense these rights on a non-exclusive basis to American companies. The Chemical Foundation, created by President Wilson's executive order and chartered as a corporation in Delaware in 1919, realized Palmer's idea. The foundation was charged to grant non-exclusive licenses "upon equal time and a royalty basis, to any bona fide American individual or corporation."[23]

In March 1921, Warren G. Harding became President. The new President and the men in his administration believed that their predecessors had exaggerated America's vulnerability to foreign aggressors. In their eagerness to dismantle and discredit the work of the Wilsonians, Harding's administrators fixed upon the Chemical Foundation as an example of an ominous kind of conspiracy—not by left-wing radicals, nor the German dye cartel, but by the Wilson administration with its co-conspirators, the American chemical industry. According to this point of view the Wilson administration had conspired to distribute valuable information about

commercial processes at less than its true value. In September 1922 Harry M. Daugherty, Harding's Attorney general, filed suit against the Chemical Foundation. In a bill of complaint which ran seventy-three pages the government challenged the constitutionality of the Trading With the Enemy Act and asked the District Court for Delaware to invalidate the transfer of 4,700 patents that the Enemy Property Custodian had made to the Chemical Foundation. The words "conspiracy" and "scheme" appeared frequently throughout the bill of complaint. The government alleged that by giving up the German dye patents for such nominal fees A. Mitchell Palmer had used his position as Enemy Property Custodian to defraud the government. Attorney General Daugherty's aim was to recapture these patents and to sell them to the highest bidder, even if that should mean returning them to their original German owners.

The case was the most complex and most publicized to come before the Delaware District Court up to that time. Millions of dollars in potential profits, the creation of an important American industry, and the legality of the federal government's wartime actions were all at stake. The trial began June 4, 1923 and ended July 23, 1923, the testimony filled 9,000 pages. Recognizing the gravity of the case, Judge Morris suspended the usual court rules to permit both sides to produce whatever evidence they wished to introduce. The only exception that he made to this ruling was to protect the secret processes used for manufacturing organic chemicals.

On one level the trial was about rival conspiracy theories, but on another level it was about how much power the federal government could exercise in time of war. The evidence presented on behalf of the Chemical Foundation focused on the underhanded methods that the German dye cartel had used before the war to prevent American chemical producers from developing organic chemistry on a commercial basis. The Chemical Foundation's lawyers portrayed the foundation as a patriotic device whereby the ominous threat posed by the German chemical cartel had been thwarted. In contrast, the government's case rested on its contention that A. Mitchell Palmer and his associates in the Wilson administration had conspired to turn over a valuable government asset to a small group of American businessmen

for a pittance. The government also disputed Palmer's interpretation of the 1918 amendment to the Trading With the Enemy Act under which the transfer of the patents had taken place.

On January 3, 1924 Judge Morris filed his sixty-two page opinion in the case and on February 18 he entered a decree dismissing every contention in the government's bill of complaint. Morris upheld the constitutionality of the powers that Congress gave to the President under the Trading With the Enemy Act and he affirmed the President's use of those powers to dispose of the enemy patents to the Chemical Foundation. "Courts," he said, "may inquire whether an act passed by Congress is within the scope of its constitutional power. Beyond that they may not go."[24] He struck down the government's claim that the foundation had sold the patents too cheaply and declared that the commercial value of the patents was "of a highly speculative character" and could only be realized through great private investment.[25] Everyone who had been involved in these transactions, including the President, had acted in good faith according to their understanding of the national interest, Morris said.

Judge Morris's decision made the front page of newspapers throughout the United States. Accounts generally noted that if his ruling stood the Harding administration would be unable to pursue its intention to return the patents to their original German owners. American chemical producers were elated. Dr. Charles L. Reese, President of the American Institute of Chemical Engineers and Director of Research at the Du Pont Company, told the press, "It is needless to say that the chemical industry as a whole is delighted with the decision of Judge Morris in the Chemical Foundation suit."[26]

Attorney General Daugherty immediately announced his intention to appeal the decision and told the press that the government regarded the dye and chemicals patent case as one of the most important civil actions to be brought in the nation's courts in many years. He expected the Circuit Court of Appeals to reverse Judge Morris' decision. Daugherty did not remain in the Attorney General's office long enough to direct the case. In March 1924 he resigned to avoid indictment in connection with a bribery scandal. In March 1925 the Circuit Court of Appeals affirmed Judge Morris'

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decision on every point. The government pressed its case to the U.S. Supreme Court. In October 1926 in a unanimous decision the justices of the Supreme Court sustained the District Court and Circuit Court rulings. The New York *Times* reported that "...the Supreme Court brushed away the persistent allegations that sinister and greedy motives entered into operations of the Chemical Foundation."[27] The courts' rulings in this case gave a great boost to the creation of an organic chemical industry in the United States which has led to American preeminence in such products as plastics and synthetic materials.

The vindication of Judge Morris's ruling in the Chemical Foundation case focused attention on the Delaware District Court as one in which patent cases were treated fairly and knowledgeably. Judge Morris had employed a chemist to assist him to understand the significance of the technical testimony. This precaution against making errors of judgment in a complicated, arcane field of knowledge demonstrated to lawyers and executives of Delaware-based corporations that Judge Morris would approach patent cases with sophisticated understanding.

In the 1920s radio was an exciting, rapidly-developing new technology. At the beginning of the decade buffs were making crystal sets in their basements. The early radio receivers relied on dry cell batteries to bring in weak signals from scattered broadcasts. By the end of the decade large companies were selling powerful radio sets that made use of vacuum tubes and plugged into electrical sockets to pick up broadcasts from established radio networks. Dramatic technical and organizational developments in such a publicly accessible medium was fertile ground for arguments between inventors and radio manufacturers over the ownership of patents. In 1929 Judge Morris was called upon to decide such a case, *Dubilier Condenser Corp. et al. v. Radio Corporation of America.*

When the Radio Corporation of America (RCA) was created in 1919, radios operated on batteries because the alternating current in household electricity caused a permanent humming sound that interfered with radio reception. In the early 1920s three employees of the United States Bureau of Standards named Dubilier, Dunmore, and Powell invented a mechanism

whereby radio units could be plugged into regular home electric outlets and receive broadcasts without the hum. They patented their invention in 1924 but the Radio Corporation of America, then the nation's largest producer of radios, refused to recognize the patent and proceeded to produce radios equipped with socket power units without paying royalties on the invention. In 1927 the three inventors sued the radio giant for infringement of their patent and for the recovery of royalties.

RCA's defense rested on two points: (1) that since the plaintiff inventors had done their work at the U.S. Bureau of Standards the United States had a better claim to the patents than did the plaintiffs, and (2) that RCA employed a mechanism in their radios that was similar to, but not exactly like, the creation of the inventors. Judge Morris dismissed both of these contentions. Regarding the defense's first point he noted that the federal government had made no claim to ownership of the inventions and had not chosen to be party to the suit. Respecting the second point, the judge included in his opinion a detailed description of the scientific and technological components of radio reception including the invention in question. After noting that RCA had made some changes in the plaintiff's invention, Judge Morris wrote that "a variation is, of course, no defense, if the substance or principle of the patent is employed."[28] Judge Morris ruled in favor of the inventors and awarded them $20,000,000. The decision affected not only RCA but all radio manufacturers.[29] The judge's careful analysis of the technology employed in the plaintiffs' patent and his statement of the principle of equity in this and similar cases sent a clear message to patent holders. The result was a remarkable increase in patent work that came before the court.

Judge Morris's reputation for skillful handling of commercial disputes matched his reputed skill in patent cases. The case of *The Coca-Cola Bottling Company v. The Coca-Cola Co.* was among his most memorable corporate cases. The judge explained the matter at issue in a letter to Senator Josiah O. Wolcott written March 1, 1921. "The Coca-Cola Co. manufactures the syrup from which both the fountain drink and the bottled drink are made," Morris explained.

> This company supplies the fountains direct but for bottling purposes it makes the sale to two companies, Coca-Cola Bottling Co. and The Coca-Cola Bottling Co., under a contract made some years ago. Difficulties arose as to the meaning of the contract and The Coca-Cola Co. declined any longer to supply syrup to the bottling companies, whereupon they instituted suit in the nature of a bill for specific performance.[30]

Morris was telling Senator Wolcott these details because he wanted Wolcott to agree to serve as master for the court to determine a fair price for the syrup. The judge expected that the work would take about two weeks of the Senator's time taking testimony in Atlanta and then a few days more to write a report. He noted that the job must be undertaken as rapidly as possible as the difference between the two prices demanded by the litigants was worth $5,000 per day.

The dispute arose in the wake of a change in leadership at Coca-Cola. In 1919, Asa Chandler, who had built the company and made its product into the household word for soft drinks, turned over control of the company to Ernest Woodruff. Under Chandler the Coca-Cola Company had entered into a long-term relationship with two bottling companies which licensed the many Coca-Cola bottling companies scattered throughout the United States. This arrangement went back to 1899 when two inventors in Chattanooga, Tennessee, discovered a process whereby Coke syrup and carbonated water could be injected into bottles and hold their mixture. The inventors were the founders of the parent bottling companies that opposed the syrup manufacturer in the suit. When Ernest Woodruff took control of Coca-Cola, he reorganized the company, moved its corporate charter from Georgia to Delaware and raised the price of Coke syrup. His decision to charge more for the syrup stemmed from the postwar inflation in the price of sugar. The price increase did not upset the bottlers so much as did Woodruff's intention to change the terms of the contracts between The Coca-Cola Company and the bottlers so that either party could terminate the contract upon notice. The bottlers would not agree to a further price increase unless The Coca-Cola Company assured them a perpetual contract. The Coca-Cola Company

refused and terminated the contract May 1, 1920.

The bottlers sued The Coca-Cola Company seeking an injunction to prevent Coca-Cola from abrogating the contract. Both parties had a vital stake in the outcome because the bottlers absorbed forty percent of the Coke syrup produced at that time. In the district court, Coca-Cola's lawyers argued that the contract language said nothing about perpetuity. The bottlers, however, contended that the very nature of the contract presumed a perpetual relationship. The dispute ended in a compromise. Judge Morris said that the original 1899 contract had implied a long-term relationship that benefitted both The Coca-Cola Company and the inventors of the bottling process. He also noted that The Coca-Cola Company's argument that such a close connection between that company and the two parent bottling firms might be construed as monopolistic was disproved by the fact that no contract would lead to an even greater monopoly for The Coca-Cola Company.[31] While an appeal from Judge Morris's decision was pending, the parties reached a settlement of the controversy. The bottlers won the right to a perpetual contract, but The Coca-Cola Company won the right to increase the price of the syrup at any time in response to rising costs of the ingredients, principally sugar.[32] The consent decrees that Judge Morris ordered as a result of this case remained in effect for almost sixty years.

Although he found his work on the federal bench absorbing, Judge Morris longed to resume his career as an attorney. On June 5, 1930 he wrote a brief letter to President Herbert Hoover that stated, "Sir: In order that I may return to the practice of the law, I hereby tender to you my resignation as United States District Judge for the District of Delaware to take effect upon the adjournment of Court on June 30, 1930."[33]

Hugh M. Morris had been 41 years old when he became a federal judge. His resignation at age 52 left him with many years to serve on the opposite side of the bench. Morris was not a wealthy man and the opportunity to earn substantially more income than the $10,000 annual salary of a federal judge no doubt contributed to his decision, but for him, the love of practicing law was the principal inducement.

Morris opened a law office which represented both the reestablish-

ment of the old Saulsbury, Morris, and Rodney firm of Morris's pre-judge days, and the establishment of a new entity that was to grow into the present firm of Morris, Nichols, Arsht and Tunnell.[34] Judge Morris had earned the respect of leading businessmen and lawyers whose companies were incorporated in Delaware. Among his clients were The Coca-Cola Company and Warner Bros. Pictures, Inc. As an attorney he tried, or participated in trying, cases in the courts of twenty-two states, the U.S. Supreme Court, and the Court of Custom and Patent Appeals in Washington, D.C.[35] In addition, he served as a director and officer of the Wilmington Trust Company from 1930 until 1965, a manager of the Wilmington Savings Fund Society, and was a director of Delaware Power and Light Company from 1933 until 1963. In common with his predecessors on the federal bench in Delaware, Judge Morris participated in and supported numerous state and community organizations, particularly those that had patriotic and historical missions. But by far his most significant community service was that of trustee of the University of Delaware.

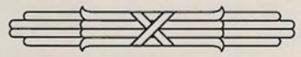
Delaware College, the men's college from which Hugh M. Morris had graduated in 1898, joined together with its sister institution, Women's College, founded in 1914, to create the University of Delaware in 1921. Hugh M. Morris was elected to the University's Board of Trustees in 1929. In 1939 he became president of the board and served in that capacity until 1959. In the opinion of John A. Munroe, historian of the University, Morris was "one of the most influential board presidents in Delaware's history."[36] In his twenty years of board leadership Morris oversaw extensive development of the institution's size and its scope of activities. In 1963, only three years before he died, the University constructed a new Library building which was named in his honor, the Hugh M. Morris Library.

Morris married Emma Carter Smith on October 10, 1908. The couple had one daughter, Mary Smith Morris, who was born in 1912. Both his wife and his daughter predeceased the judge. During the years that Morris served as judge, his family lived in Wilmington at 1506 North Broom Street. In 1934 he purchased a farm property on Polly Drummond Hill near Newark called Chestnut Hill farm. He restored the stone colonial house on

the property and established gardens; but his greatest interest in the farm property was reserved for the stable.

Aside from community service, Judge Morris's chief recreation was horseback riding. In the 1930s shortly after moving to Chestnut Hill the judge acquired two horses, a larger chestnut called "Easter" and a smaller dappled grey horse that he received as payment from a client. On weekends the judge would ride for many hours. He often took a companion on these strenuous journeys, sometimes an attorney from his office or the president of the University. Thus he could combine business discussions with the pleasures of traversing the wooded hills and fields of northwestern Delaware.[37] When the judge died in 1966, he left the Chestnut Hill farm and the bulk of his estate to the University of Delaware.

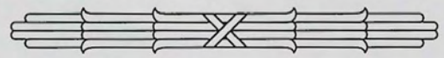
Judge Morris's remains were buried at Barratt's Chapel, a colonial church near Frederica, Delaware. The Right Reverend Arthur R. McKinstry, Episcopal Bishop of Delaware conducted the service. In the course of such a long and useful life, the eleven years that Hugh M. Morris served as judge of the U.S. District Court for Delaware occupied but a modest amount of time, but those years were marked by significant developments both in the work of the court and in the life of the man who was its judge. Under Morris, the District Court for Delaware became a premier court in the federal system; and a native Delawarean from rural Sussex County showed that he could master legal disputes of the nation's largest corporations and the most advanced scientific thought just as he mastered his horses.



CHAPTER V

THE ERA OF GOVERNMENT REGULATION,

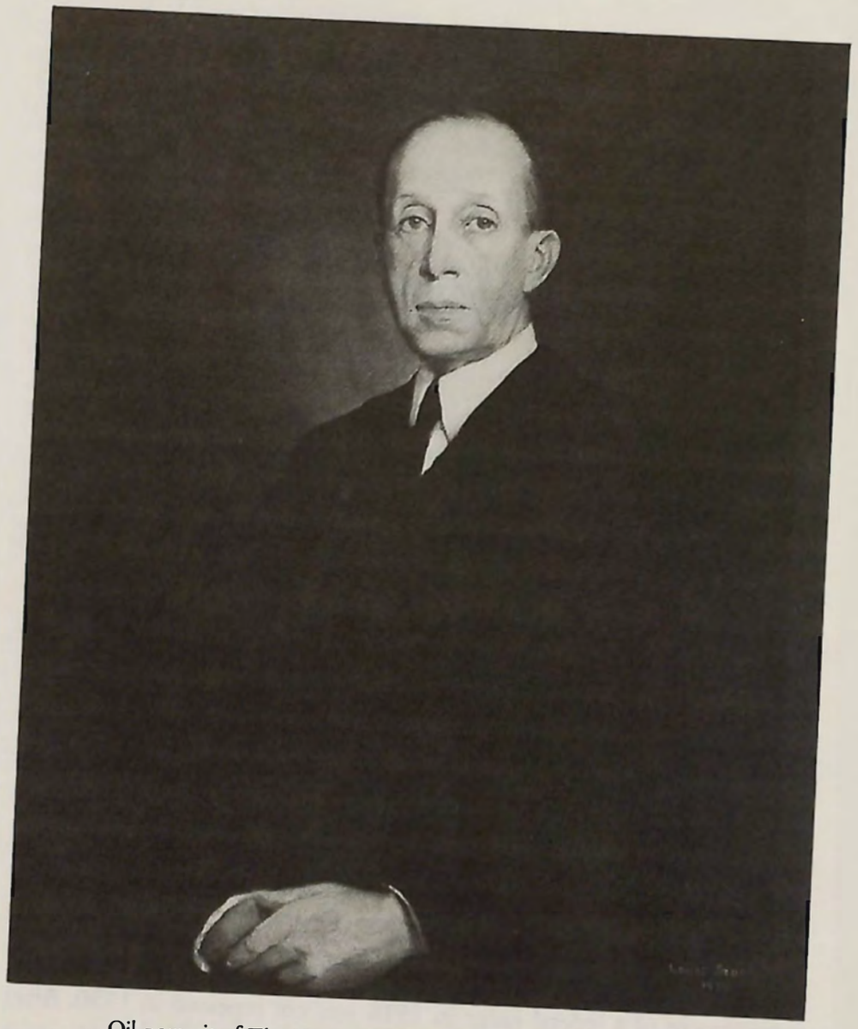
1930-1963



THE STOCK market crash of 1929 and the Depression that followed ushered in a new era of intensified government regulation of the market place. President Franklin Delano Roosevelt was arguably the most activist president in American history. His administration sponsored a host of new laws, some intended to provide temporary relief, while others were designed as permanent economic reforms. Two of the New Deal laws that made a particular impact on the work of the District Court for Delaware were the National Industrial Recovery Act of 1933 and the Securities Exchange Act of 1934. During the 1930s the district court continued to hear many corporate and patent cases, but the Depression and the New Deal left their marks upon the court as well. The three judges who served the court during this era of intensified government regulation were John Percy Nields, Paul Leahy and Richard Seymour Rodney.

The disagreement between Delaware's senators that had delayed the appointment of a federal judge in 1918 was not repeated in 1930. After consulting with the Delaware Bar Association, Senators Daniel O. Hastings and John J. Townsend, both Republicans, forwarded the name of John Percy Nields to President Herbert Hoover. On June 20, 1930 the President nominated Nields, and on July 3, just three days after Morris's resignation became effective, John P. Nields was confirmed as District Judge by the United States Senate.

John P. Nields was descended from English Quakers who came to Penn's town of Philadelphia in the 1600s. Judge Nields's father, Colonel



Oil portrait of The Honorable John P. Nields by Louis Szanto.
Courtesy of the United States District Court
for the District of Delaware.

Benjamin Nields, organized and commanded an artillery unit during the Civil War. After the war Colonel Nields returned to Wilmington where he became a prominent attorney and member of the Republican Party. His son, John, born in 1868, attended Rugby Academy in Wilmington and then spent three years at Haverford College before transferring to Harvard where he earned a bachelor of arts degree in 1889.

John P. Nields was the first judge of the U.S. District Court for Delaware to attend law school. He studied at the Harvard Law School where he served as an editor of the Harvard Law Review and was awarded an LL.B. degree in 1892. Nields returned to Wilmington, passed the Delaware bar, and joined his father's law firm. During the presidencies of Republicans Theodore Roosevelt and William Howard Taft, Nields served as U.S. Attorney for the District of Delaware, a position that allowed some time for his law practice and acquainted him with the work of the district court. He won praise from Judge Edward G. Bradford, II for his high ideals and careful preparation of prosecutions. When the United States was preparing for war with Germany in 1915, Nields, then forty-seven years old, attended the United States Army's officers training camp at Plattsburg, New York. In July 1918 he was commissioned captain in the ordnance section of the Officer Reserve Corps of the Army of the United States where he was assigned to the legal department.

Following World War I Nields resumed the practice of law in Wilmington. Among his clients was P. S. du Pont's Service Citizens organization for whom Nields handled the legal work involved in purchasing properties on which public schools would be constructed. Nields devoted his spare time to the study of history, focusing particularly on Delaware's colonial past, and he gained a reputation as a speaker on historical topics. In his capacity as a director of the Historical Society of Delaware he played a major role in the restoration of Old Town Hall which became the society's headquarters in 1927. He served as president of the Board of Trustees of the Wilmington Institute Free Library from 1916 until a few months before his death. His community associations also included the Boys Club of Wilmington, the Wilmington Community Chorus and several patriotic societies.

Judge Nields was an unusually dignified and shy man who, despite his numerous community interests, struck some people as aloof and unapproachable. He was a man of steady habits. Each day he walked to his chambers in the Post Office Building at Ninth and Shipley Streets from the home that he shared with his wife and daughter at 1401 North Broom Street; and he regularly ate lunch at the counter of the Federal Bakery on Market Street where he welcomed the company of attorneys who had no business pending before the court.

Judge Nields maintained strict decorum in his courtroom and took most seriously his oath to render justice fairly to the poor as well as the rich. On one occasion a black man was on trial accused of bootlegging but he had no attorney to represent him. A federal agent testified to having seen the man at a still and claimed that he could recognize him by the scar on his leg. When the district attorney asked the defendant to raise his pant leg so that the scar might be seen, Judge Nields intervened to advise the defendant of his constitutional right against self-incrimination, and, for want of certain identification, the case was dismissed.[1]

John P. Nields served as judge of the District Court for Delaware from July 1930 until his retirement on September 30, 1941. His term covered the worst years of the Depression, the New Deal period of Franklin D. Roosevelt's presidency, and ended as the United States was bracing for World War II. It was a busy period for a court that attracted many business-related cases. In his eleven years on the bench, Judge Nields wrote 259 opinions that are printed in the *Federal Reporter*. Like his predecessor he adjudicated numerous disputes over patents and trademarks, but the Depression brought a number of corporate reorganization proceedings to the Delaware District Court, among them reorganizations affecting the Standard Gas and Electric Company and National Department Stores.

At the time of Judge Nields's appointment, a large antitrust case was pending before the court that involved the nation's largest producers of radios. In 1930 the Department of Justice had instituted a suit against the Radio Corporation of America, General Electric, and Westinghouse alleging violation of federal antitrust statutes. The three defendant companies

controlled more than 4,000 radio patents that they licensed to other radio manufacturers. According to the government, this monopoly on important patents allowed the big three to "dictate by agreement among themselves the terms upon which any competitor or potential competitor may use the patents."[2] After many months of negotiations General Electric and Westinghouse agreed to dispose of their ownership and control of RCA and to make the licensing arrangements non-exclusive. The Justice Department was satisfied with this outcome and Judge Nields granted a consent decree in November 1932.

Perhaps the most important case to come before Judge Nields was that of *United States v. Weirton Steel Company*, an action based upon the New Deal's National Industrial Recovery Act of 1933. In his opinion in this closely watched case, Judge Nields became the first federal judge to proclaim the unconstitutionality of the NIRA, a finding that was confirmed only three months later in May 1935 in the U.S. Supreme Court's ruling in *Schecter v. United States*.

The *Weirton Steel* case had all the elements of good drama: a management described by some as paternalistic and by others as "hardnosed" that was trying to adjust to a rapidly changing political and economic culture, a work force composed of many non-English speaking foreigners torn by allegiance to contending labor unions, a militant labor movement that sought a confrontational relationship with management, and a federal law that attempted to do too much, too fast to achieve its multipurpose goals, and was in the end declared unconstitutional. Weirton Steel was a middle-sized company founded by two brothers named Weir in the 1890s in the Ohio River Valley. In 1910 the Weirs built Weirton, West Virginia, a company town that they equipped with schools, water and sewer service and other amenities for the benefit of the 10,000 workers whom the company employed in nearby tin and steel mills. Weirton Steel, which also operated mills in two other towns in the Ohio Valley, became part of the National Steel Corporation, a holding company incorporated in Delaware.

The primary goal of the National Industrial Recovery Act was to get the economy moving forward. Toward this end the act called on producers

in each sector of the economy to create and adhere to codes of fair business practices. The act also included Section 7(a) which endorsed collective bargaining between labor and management. This section of the act was open to differing interpretations. Some New Dealers, including President Roosevelt himself, viewed this section as a means to reduce tensions between workers and bosses and prevent strikes that would delay recovery. In the labor movement, however, Section 7(a) was proclaimed to be labor's Magna Carta that provided government protection for union organizing regardless of disruptive short term economic effects.[3]

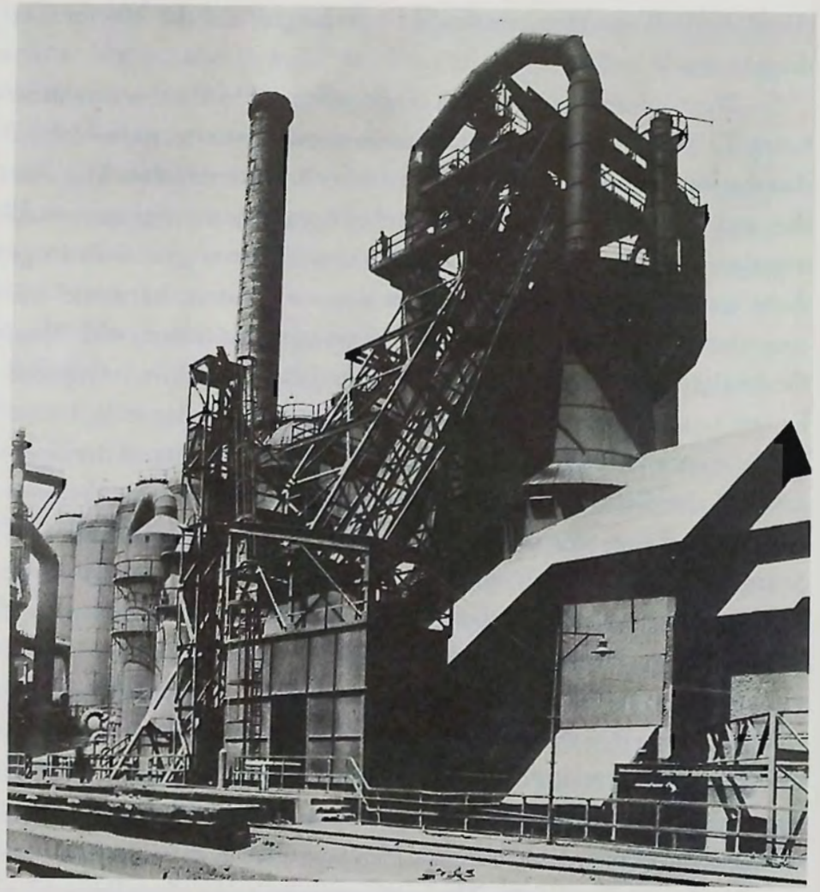
Before the NIRA was adopted there were few union men in the iron and steel industry, and the adoption of the law led to a spate of company unions that sprang up throughout the industry. When news of the impending N.I.R.A. legislation reached Weirton Steel, the president and chairman of the board, both founders of the company, took action to bring the company into compliance with the proposed legislation. Section 7(a) of the NIRA required manufacturers to allow employees to choose representatives to engage in collective bargaining over wages and other conditions of employment. Weirton's president and chairman interpreted this section to mean that their employees should form an organization, and the elected leaders of that organization would represent the workers in negotiating a work contract. The managers set about creating a company union that would serve this purpose.

The company's union plan went forward until two union organizers representing the Amalgamated Association of Iron, Steel and Tin Workers of North America, a Pittsburgh-based union, appeared at Weirton and began agitating the workers. The Amalgamated leaders told Weirton's employees that their company union did not comply with the requirements of the National Industrial Recovery Act, that Weirton's wage scale was below the industry standard, and that President Roosevelt wanted them to join a real union, which was, of course, the Amalgamated Association. Some Weirton workers signed a pledge card to join the Amalgamated union and paid the $3 initiation dues. The union men spread the word that once Amalgamated had become the bargaining unit for the workers, Weirton Steel would become a

closed shop, all non-members would be discharged, and the dues for foot draggers would be $50.

Weirton's management was caught off guard by these occurrences. Ernest T. Weir, the chairman of the board, met with workers and told them that they were paid as well or better than other American steel workers, that they were free to join the union of their choice, and that the company would negotiate with that union. But, he said that he would never agree to discharge those employees who refused to join a union, that is, he would not countenance a closed shop. Without attempting to deal directly with Weir, the Amalgamated Association called a strike and its few members, unimpeded by any counter force from the company, closed down the mills. Union officials contacted U.S. Senator Robert F. Wagner, chairman of the newly created Labor Relations Board in Washington, and charged that the company was refusing to recognize their union. Weirton officials met with Senator Wagner in Washington and agreed to hold an election to be supervised by the National Labor Relations Board. The company's workers would select the men who would bargain on their behalf. Weir interpreted this agreement to mean that the election would be conducted under the company union plan and that while the names of Amalgamated Association members could be on the ballot, the name of the union could not. This was not Senator Wagner's interpretation of their meeting.[4] When the election was held Amalgamated Association leaders boycotted it, charging that it was rigged in the company's favor. The company union's slate of candidates won a conclusive victory and began representing the workers.[5]

The suit arose from the contention of the United States government that in failing to recognize the Amalgamated Association as the legitimate bargaining agent for the company's employees, Weirton Steel had violated both Section 7(a) of the NIRA and the Code of Fair Competition for the Iron and Steel Industry that the nation's iron and steel manufacturers had agreed to under the NIRA. The United States came to the District Court for Delaware seeking an injunction to prevent Weirton Steel from representing its company union as an effective bargaining agent on behalf of its employees. In May 1934 Judge Nields denied the government's request for a preliminary



A furnace at the Weirton Steel Company works in Weirton, West Virginia, July 1930. In 1935 Weirton Steel became the subject of a major challenge to the National Industrial Recovery Act's Section 7A which gave workers the right to collective bargaining. The case was the most important to come before the United States District Court for the District of Delaware during the New Deal era. Courtesy of the Hagley Museum and Library.

injunction.[6] Several months later the trial began in his court.

The *Weirton* case consumed many weeks of testimony from 283 witnesses, most of them employees of Weirton Steel. In a lengthy opinion

filed February 27, 1935, Judge Nields once again refused to grant the injunction sought by the government. The judge found the "Weirton Plan," or company union, to be free of management control or coercion. He was satisfied that the workers' representatives chosen under the plan had been "fearless and independent" negotiators in their representation of their fellow workers' demands. As proof of this contention he noted that the company had agreed to raise wages by ten percent, that the company had made adjustments in working conditions in response to grievances, and that the workers showed every sign of supporting the "Weirton Plan" union. "By a clear preponderance of evidence," he wrote, "this court finds that the plan of employee representation in effect among the employees of the defendant affords a lawful and effective organization of the employees for collective bargaining through representatives of their own choosing; that in all respects it complies with the provisions of Section 7(a) of the National Industrial Recovery Act..."[7] In Judge Nields's view, if the purpose of the NIRA was to get the mills making steel again, than the "Weirton Plan" had demonstrated its success in accomplishing that goal.

Judge Nields's opinion did not stop there, however. He next turned to the chief legal concern of the day: the constitutionality of the National Industrial Recovery Act. He noted that the act relied on the Commerce Clause in Article I of the Constitution. Under that clause Congress had adopted legislation dealing with labor relations in the railroad industry that had stood the test of constitutionality. The problem in accepting the Constitutionality of the NIRA lay not in the fact that Congress was legislating labor relations, for the railroad acts had done that, but in the act's interpretation of commerce to include manufacturing. On several occasions the United States Supreme Court had struck down laws that attempted to regulate manufacturers under the Commerce Clause. The industrial codes created under the NIRA covered "the entire economic life of the country," Judge Nields said, and in his view the law exceeded the Supreme Court's oft-repeated definition of interstate commerce. Nields concluded that "Section 7(a) as applied to the defendant and its business is unconstitutional and void."[8] The *Weirton* case was on appeal when the U.S. Supreme Court

announced its decision in the *Schecter* "sick chicken" case on May 26, 1935. Like Judge Nields, the Supreme Court found that the NIRA exceeded their interpretation of the Commerce Clause to justify broad-based federal regulation.

As the first federal judge to declare the NIRA unconstitutional, Judge Nields attracted attention and controversy which may have contributed to later allegations that threatened to tarnish his reputation. The work of the District Court was very heavy during the Depression era. Judge Nields's previous law practice may not have prepared him for the pace that it demanded. This factor, together with the judge's distant manner, combined to produce the suspicion that too much of the court's authority was being exercised by the court clerk, Harry Mahaffy. Judge Nields had no law clerk, and Mahaffy's service as court clerk long antedated Nields's appointment as judge. Mahaffy insulated the judge from lawyers and from the press. Newspaper reporter William P. (Bill) Frank recalled that reporters were kept away from the judge. "We dealt chiefly with the almighty clerk of the court and...woe to any reporter who went behind Mahaffy's back."[9]

Harry Mahaffy created the impression that he was running the court and he did control the non-judicial aspects of the court's operations. At that time the district court did not employ its own stenographer. The proceedings were recorded by an independent stenographer whose compensation came from selling copies of his work to both the litigants and to the court. Among the responsibilities of the court clerk was that of hiring a stenographer and Mahaffy invariably employed his friend William Smart in this capacity. This practice led to trouble. On one occasion a lawyer from another state complained that he had not been permitted to employ a reporter of his choice. On another occasion Mahaffy asked Judge Nields's intervention to encourage a Wilmington law firm to buy more copies of the proceedings of a case than the firm wished to purchase.[10] The allegation was also made that Mahaffy was receiving gifts from William Smart.

On August 29, 1940 Harry Mahaffy was put on a leave of absence of indefinite duration. Less than a year later Mahaffy resigned. Investigators from Washington came to Wilmington to search for evidence that might

The United States Post Office, Court House and Custom House, facing Rodney Square, was completed in 1937 at a cost of $1,400,000. Two local architectural firms, Brown & Whiteside and Robinson, Stanhope & Manning combined to produce the design which was in the classical Roman style preferred in the New Deal era. The lobby of the building was decorated by murals depicting industrial themes. The district courtroom had a mural illustrating a historical theme, the landing of the Swedes along the Christina River. A second courtroom was added in the 1950s when the court acquired two judges. The court met here from 1937 until 1973. The building is presently occupied by the Wilmington Trust Company. Courtesy of the Historical Society of Delaware.

implicate Judge Nields, but in spite of their assiduous efforts they found nothing to indicate that the judge had known of any improprieties. Judge Nields's daughter remembers that when the investigators left, their comment was that "perhaps this investigation was politically motivated."[11] Although he was vindicated, the discomfort that this incident caused to Judge Nields probably contributed to his decision to retire from the court in 1941. It was unfortunate that a man so rightfully proud of his integrity should have been embarrassed by irregularities committed by his clerk.

Judge Nields's successor was Paul Leahy, the first Roman Catholic

and second law school graduate to be judge of the District Court for Delaware. Leahy, a Democrat, was appointed by President Franklin D. Roosevelt. He served as judge until his death in 1966, but because of ill health he relegated himself to senior status in 1957 which reduced his participation in the court's work during the last nine years of his life.

Judge Leahy was born in Wilmington February 9, 1904, the son of Michael Joseph and Ellen (Conway) Leahy. His father, a Wilmington native who was in the insurance business, rose to be assistant superintendent of the Prudential Insurance Company's Wilmington branch.[12] Paul Leahy attended parochial schools, graduated from Wilmington High School, and earned a bachelor of science degree from the University of Delaware in 1926. While he was a student at Delaware, Leahy developed his talents as an actor and as a writer through his extracurricular participation in the Footlights Club, a drama group, and as associate editor of the student newspaper, the *Review* and the *Blue Hen* yearbook. He was also active in the Student Council. He was attracted to a career in journalism and worked as a copy reader and reporter for the Wilmington *Sunday Star* and as editor of the *Newark Post.* This interest in journalism did not deflect him from pursuing a career in the law, for he graduated from the University of Pennsylvania Law School in 1929 and passed the bar examination in Delaware that same year.

Leahy joined the law firm of Ward and Gray which in 1929 consisted of Andrew G. Gray, Clarence H. Southerland, James H. Hughes, Jr., E. Ennalls Berl, Herbert H. Ward, Jr., and William S. Potter. He specialized in corporate law and was made a partner in 1940. One year later, at the youthful age of 37, he was nominated to the federal bench and was sworn into office on February 2, 1942. As radio and television reporters never fail to remind us, February 2 is Groundhog Day. The date of Leahy's installation so amused the judge and his friends that someone presented him with a stuffed groundhog which he kept on display in his chambers.

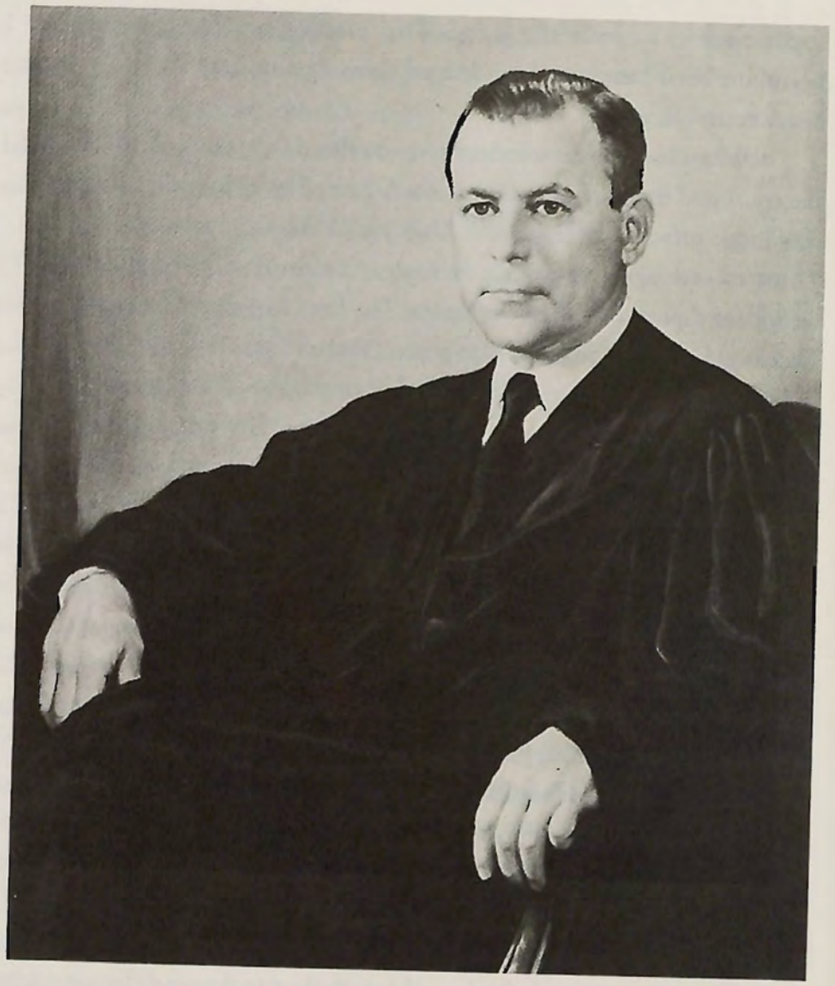
When Judge Leahy was appointed to the court he was permitted to hire one person to help him in his office as a combination secretary and law clerk. This marked the beginning of the practice whereby district court judges in Delaware employ recent law school graduates, usually for one year

appointments, to assist the judge. This practice benefits attorneys just beginning their careers and has helped the judges to keep abreast of their heavy court calendars.

When Leahy became judge there was already a backlog of work before the court and the pace never diminished. Several cases that confronted the new judge grew out of the Public Utility Holding Company Act of 1935. This act was designed to assist in the reorganization of utility companies that went bankrupt during the Depression. The law charged the Securities and Exchange Commission (S.E.C.) to protect the interests of stockholders when utility companies reorganized. Under the law the U.S. District Courts were responsible for overseeing the reorganization of utility companies in their districts. Since many utility companies were incorporated in Delaware, Judge Leahy's court was kept busy attending to this responsibility. A survey completed in 1947 showed that of the more than thirty reorganization plans submitted under the terms of the Public Utility Holding Company Act, all but three came to the Delaware Court for Judge Leahy's review.

Complex cases involving government regulation of corporations frequently occupied his attention and produced his most memorable opinions. He delighted in using his skill as a writer. He consistently clarified the obtuse arguments produced by attorneys in patent or S.E.C. proceedings into tightly-framed opinions that any reader could understand. His prose reflected a witty sense of humor as well. In an opinion concerning a trademark dispute between two rival beverage companies, Royal Crown and Royal Punch, he wrote, "Both trademarks are applied to goods of the same descriptive properties, soft drinks—although the two flavors differ so widely the most careless fancier of the carbonated beverage would at first sip be startled by the consternation of a palate, prepared for a cola but supplied with grape."[13]

Judge Leahy's best known opinion came in 1953 in the case of *United States v. E. I. du Pont de Nemours & Co.* In this civil antitrust suit filed in 1947, the government charged that the Du Pont Company had illegally monopolized the market in cellophane. The trial lasted almost sixteen months and a total of seventy-seven trial days. As the proceedings dragged on, Judge



Oil portrait of The Honorable Paul C. Leahy by B. Egeli.
Courtesy of the United States District Court
for the District of Delaware.

Leahy's quips from the bench helped to sustain everyone's good humor. On one occasion when a government attorney asked to read a lengthy report into the record, the judge remarked, "I have developed an oriental fatalism about this case, you may proceed."[14]

The case required Judge Leahy to define the nature of a monopoly and to apply that definition to the marketing of a particular packaging material, cellophane. Judge Leahy filed an opinion on December 14, 1953 that, even in the hands of this terse writer, ran 561 typewritten pages. The judge held that the government had failed to prove the existence of a monopoly. Although Du Pont alone produced cellophane, the judge pointed out that the product competed in the market with other flexible packaging products such as aluminum foil. The government appealed Judge Leahy's ruling on the grounds that the substitute materials in competition with cellophane were more expensive and lacked cellophane's unique characteristics. The District Court's ruling was ultimately upheld in the United States Supreme Court by a vote of 4 to 3.[15]

Another significant case that earned Judge Leahy the respect of attorneys and judges nationally was *Speed v. TransAmerica Corp.* TransAmerica, an investment company, was created by a legendary figure in the world of finance, L. M. Giannini, the man who built a small ethnically-oriented bank in California called the Bank of Italy into the mammoth Bank of America. In 1941-42 TransAmerica held the majority of stock in the Axton-Fisher Tobacco Company of Louisville, Kentucky. The investment firm knew that the cash value of Axton-Fisher's tobacco inventory far exceeded the book value of the tobacco company as reported in its most recent annual report. On November 12, 1942 TransAmerica sent a letter to the minority stockholders offering to purchase their shares at a price one third higher than its current market value. William S. Speed, a Louisville businessman, was among the minority stockholders who sold their shares to TransAmerica on the terms stated in the November 12 letter. After the California-based investment firm bought off the minority stockholders, Giannini directed Axton-Fisher to sell some of the tobacco. He then ordered the distribution of the tobacco to the remaining stockholders by means of

warehouse receipts and then dissolved the company. By this means TransAmerica realized a large profit that was not subject to capital gains taxes. William S. Speed sued TransAmerica for fraud, claiming that in making its stock purchase offer the investment company had deliberately deceived the minority stockholders as to the true value of the company's assets and had hidden its intention to dissolve the company.

In reaching an opinion Judge Leahy was called upon to decide if TransAmerica had planned to liquidate Axton-Fisher at the time that it made its stock purchase offer to the minority stockholders. More important, however, was the issue of whether such action constituted an infringement of the stock sale regulations required by the Securities Exchange Act of 1934. The defense, led by former District Court Judge Hugh M. Morris, argued that TransAmerica's action did not violate any of the specific prohibitions in the law. Judge Leahy disagreed. In his interpretation, the law imposed a duty on the majority stockholders to disclose insider information. "The duty of disclosure," he wrote, "stems from the necessity of preventing a corporate insider from utilizing his position to take unfair advantage of the uninformed minority stockholders. It [the language of the law] is an attempt to provide some degree of equalization of bargaining position in order that the minority may exercise an informed judgment in any such transaction." The judge concluded with the statement that "[o]ne of the primary purposes of the Securities Exchange Act of 1934, was to outlaw the use of inside information by corporate officers and principal stockholders for their own financial advantage to the detriment of uninformed public security holders."[16] Judge Leahy's interpretation of the 1934 securities law has since been cited by Professor Louis Loss in his book *Fundamentals of Security Regulations.*[17]

Professor Loss drew attention to Judge Leahy's refusal to be pinned down to a narrow interpretation of the individual securities rules. The Delaware judge's view that these regulations constitute a mutually reinforcing statement of the law has become the standard interpretation.

In the 1950s Judge Leahy suffered bouts of ill health which caused him to request senior status in the court in 1957. In spite of continuing poor health he maintained active participation in the work of the court until his

death in 1966. As a senior judge he delighted in gathering the law clerks into his chambers at noon to give them advice on taking the bar examination. He was known for his Gaelic humor and sense of the absurd, but also for the strictness of his courtroom and the clarity of his legal opinions. One of his former law clerks reminiscing about his experiences with Leahy wrote,

> Perhaps the soundness of his judgment, inextricably bound in with his wit, derived from his recognition of the irrational and the fortuitous in shaping the events that lead to cold resolution in a court of law. His excellence was contagious: the strict standards he imposed on himself he tacitly imposed on others by the example of his bearing. He earned our great respect because those of us who appear before him wish to do well in his presence.[18]

For nearly 160 years the District Court for Delaware had but one judge. During that period while the state's population grew fivefold from 60,000 to about 300,000, the range and magnitude of the court's business increased at an even greater rate. Whereas it might have taken two or three days to try an important admiralty case in the early nineteenth century, the complex patent and business-related cases of the mid-twentieth century could absorb a month or more of the court's time. Swift justice, once a hallmark of the court, became but a wistful memory from past times. Finally, in 1946, in response to a plea from U.S. Senator James M. Tunnell, Jr., the United States Congress added a second judge to the Delaware court.

To understand more fully the circumstances that led to the appointment of a judge to serve concurrently with Judge Leahy it is necessary to delve into the highly charged partisanship of that period. It should be recalled that in 1919 when President Wilson was about to appoint a judge to Delaware's federal court, Senator Willard Saulsbury had unsuccessfully suggested the name of Richard S. Rodney for the post. A few years later in 1924, Rodney fulfilled his ambition to became a judge when Governor Denney appointed him to a term as Associate Judge of the Superior Court of the state of Delaware. At that time Delaware's Supreme Court included Superior Court judges, so that as Associate Judge, Rodney also sat on the State Supreme Court to hear appeals. Governor C. Douglass Buck reappointed Rodney to

a second term on the state court that was due to expire in January, 1946. Judge Rodney's reappointment would have been almost automatic had it not been for a political struggle concerning the state courts.

In July of 1945 the term of Delaware's Chief Justice, Daniel J. Layton, a Republican of Georgetown, expired and Governor Walter W. Bacon, also a Republican, renominated Layton for an additional term. Senate confirmation of renominated jurists was usually routine and the majority of the state's Senators were of the governor's party. But in spite of the fact that the governor had the power to enforce his recommendation, there was serious opposition to the reappointment.

Several highly respected people charged Chief Justice Layton with nepotism and conflict of interest. The Chief Justice had a brother and two sons, all of whom practiced law in Delaware and tried and won cases in Justice Layton's court. In such a small state, where inter-related families such as the Rodneys, Reads, Bayards, Saulsburys, and others had long produced prominent attorneys and jurists, the sight of an attorney appearing in a case in which a relative was judge was not unusual. What made this case different from the others was not only the extreme closeness of the family tie of father and son but also the perception of favoritism. In past times the family connection problem might have attracted relatively little attention, but by the 1940s, Delaware's state courts, like its federal court, were the center of important corporate litigation, often with millions of dollars at stake. This litigation was responsible for encouraging the growth of a vigorous and prosperous state bar. The maintenance of the state's preeminence and the bar's prosperity rested on the integrity and impartiality of Delaware's judges.

The leader in the opposition to Layton's reappointment was former Judge Hugh M. Morris. Morris had been appalled by an incident that threatened the state's reputation for fair court proceedings. A suit had been tried in the Delaware Court of Chancery regarding conflicting claims to the Coca-Cola stockholdings of a major stockholder who was recently deceased. Morris represented Coca-Cola in the proceedings. The parties in contention for the stock were represented by the firms of Richards, Layton, and Finger and Ward and Gray (presently Potter, Anderson and Corroon). When the

client of the former firm won the suit in Chancery, the opposing party decided to appeal the decision to the State Supreme Court. A great deal of money was at stake. Before facing Chief Justice Layton for a final disposition of the case, the party that sought the appeal spoke to Delaware's U.S. Senator Daniel O. Hastings. Senator Hastings advised the claimant to drop the Ward and Gray firm in favor of his own firm because one of Layton's relatives practiced law with him. The inference was that legal talent was not as important as family connections in winning the case before the Chief Justice.[19]

Judge Morris, a Democrat, and former U.S. Representative Robert Houston, a Republican, appeared before the State Senate to urge the Senators to reject the reappointment of Chief Justice Layton. The issue attracted considerable public attention. Then Lieutenant-Governor Elbert Carvel witnessed the drama from his position as presiding officer on the dais. He later recalled that the governor's renomination request failed to pass the first two times that it was brought before the Senate in spite of the fact that the Republicans enjoyed a comfortable majority in the Upper House. On the third vote gubernatorial pressure persuaded two senators to change their votes. "As the two Senators changed their votes from against, to for confirmation, they seemed to do so in a shamefaced manner," Lieutenant-Governor Carvel wrote. "This was truly a power struggle of the political giants of Delaware both Republican and Democratic."[20] Governor Walter Bacon recognized the necessity of compromise and substituted the name of Charles S. Richards, Resident Judge of the Superior Court for Sussex County, for that of Daniel J. Layton for the Chief Justice's position. The compromise was acceptable to all sides and won the Senate's unanimous approval.

Governor Bacon took his revenge for this embarrassing political defeat up several months later when Judge Richard S. Rodney's second term on the Superior Court came to a close. The Governor refused to reappoint Rodney. Lawyers, journalists and others who were familiar with the high quality of Rodney's work on the court were incensed. The Republican *Journal-Every Evening* published an editorial admonishing the Governor for

Oil portrait of The Honorable Richard S. Rodney
by William F. Draper.
Courtesy of the United States District Court
for the District of Delaware.

ignoring "the clear right of Richard S. Rodney to reappointment." The newspaper said that Governor Bacon's rebuff of Rodney "not only ran against the desires of the great majority of the people but was directly contrary to the judgments expressed by the three Delaware bar associations."[21]

For the next few months Judge Rodney returned to the practice of law in the firm of his former partner Hugh M. Morris. His friends knew that Rodney preferred the work of a judge to that of an attorney and they sought for some way to put him back into the judicial sphere that he loved. During the struggle over the Layton nomination a number of leading political figures from Chief Justice Layton's native Sussex County had opposed his renomination. One of Layton's Sussex County opponents had been U.S. Senator James M. Tunnell, a Democrat. In 1946 the Republicans controlled the executive and legislative branches of Delaware's government, but the Democrats were still in charge in Washington. Senator Tunnell took the initiative to create a new judgeship in the United States District Court and, having accomplished that, he persuaded President Harry S. Truman to appoint Richard S. Rodney to fill the post.

Richard Seymour Rodney was born October 10, 1882 in New Castle, Delaware. He was descended from a distinguished family of Delawareans that traced their ancestry back to medieval England. William Rodney, who emigrated to Kent County in 1681, was the founder of the American family. One of William's sons, named Caesar Rodney, was the father of Caesar Rodney the Revolutionary patriot, and the grandfather of Caesar Augustus Rodney who played a prominent role in the political life of the early republic. Another son of William the emigrant, also named William Rodney, was the forebearer of the judge. In addition to his Rodney connection, Richard S. Rodney was also descended from George Read, who represented Delaware in the Continental Congress and the Constitutional Convention.

The judge grew to manhood in New Castle and was steeped in the town's historical aura. He lived for most of his life in a three-story brick house that had been built by his grandfather, U.S. Representative George B. Rodney, in 1831. From the front windows of his house, the future judge could look out over the town common to see New Castle's colonial

courthouse, scene of many state and federal trials in earlier days, and Immanuel Episcopal Church with its graceful spire and its graveyard where his ancestors had been laid to rest. These ancient buildings were surrounded by equally old and well-maintained eighteenth century and early nineteenth century houses, stores, and churches built alongside the massive expanse of the Delaware River. Everything in the town and in his family's illustrious past infused Richard S. Rodney with a sense of historical connectedness that was at the center of his personality and directed his life. Rodney was not only a communicant at Immanuel Church, but a vestryman there for fifty-six years. He was a longtime trustee of the New Castle Common, a founder of the New Castle Historical Society, and a three-term Mayor of New Castle. He was also an active member of the Historical Society of Delaware, where he presided over the Board of Trustees and established the Society's semi-annual periodical *Delaware History*. His many writings on the history of early Delaware and New Castle are deeply researched and carefully constructed. His article entitled "The End of the Penns' Claim to Delaware" provided useful background for the first chapter of this book.

Richard S. Rodney was educated in the New Castle public schools and attended Delaware College. Although he did not complete his degree, he developed such close ties to the college that he was later chosen to serve on its Board of Trustees and as a member of the Executive Committee of the Board. After leaving college he read law with his father, John H. Rodney, and was admitted to the Delaware Bar in 1906. He practiced law with his father for several years in New Castle before moving his law office to Wilmington, where the county court had relocated in 1881. In 1917 he married Eliza Cochran Green of Middletown, Delaware. The Rodneys had two daughters, both of whom married lawyers from prominent Delaware families. Eliza Cochran Rodney married Daniel F. Wolcott, who became Chief Justice of Delaware, and Sarah Duval Rodney married Edward W. Cooch, Jr., whose colonial family estate was the site of the only Revolutionary War battle fought in Delaware.

In addition to his deep love of Delaware and of its history, the judge was also known for his sense of humor. A memorable story that illustrates this

latter trait involves an incident that occurred just after the conclusion of Judge Leahy's trial of *United States v. Du Pont Co.* in 1953. While walking across the intersection of 11th and Market Streets, Judge Rodney was accidentally hit by a car driven by the wife of a Du Pont Company executive. The judge was rushed to the emergency room of the Delaware Hospital where Judge Leahy found him while Rodney was waiting to see a doctor. When Judge Leahy saw his colleague he was quite apprehensive because Rodney's face bore a look of extreme seriousness. The stricken judge motioned to Leahy to come over to him for a private word. "Paul, there is something I must tell you," Rodney said. Judge Leahy, thinking that he was about to hear his colleague's last words, or perhaps a request to change his will, approached Rodney hesitantly. Rodney motioned again impatiently, "Paul, there is something that I must tell you." When Judge Leahy got to the bed, Rodney said, "Paul, bend down, I don't want anyone to hear this." Leahy, now very concerned, complied with this request. Then, tongue in cheek, Judge Rodney quietly said, "Paul, you know that case you decided the other day against the Du Pont Company? The women who hit me has connections to Du Pont. She hit the wrong judge."[22]

As a state judge Richard S. Rodney had dealt with a great variety of cases ranging from crimes to the interpretation of wills, condemnation proceedings, application of the mechanics lien law, land titles, and many others. Rodney's written opinions reflected his intense interest in historical documents and his sense of the continuity of life through the generations. For example, in 1922 in the case of *Armstrong & Latta Co. v. Wilmington Sugar Refining Co. et al.*,[23] which concerned the payment of the contractors who had been hired to construct a sugar refinery, Rodney enlightened the court with a history of the mechanics lien law in Delaware. In 1940 the judge incorporated a treatise on the colonial establishment of Delaware's border with New Jersey into his opinion in *Conard v. State*,[24] a case concerning the failure of a boatman to pay a fishing license. Similarly, readers who may wish to research the history of eminent domain legislation in Delaware would do well to look at Judge Rodney's opinion in *United States v. 1010.8 Acres, More or Less, In Sussex County, Delaware*,[25] a case that he heard as a federal court

judge.

Among the more important and complicated cases that came before Judge Rodney on the federal bench was that of *William Whitman Co., Inc. v. Universal Oil Products Co.* in 1954. The case concerned an agreement made between two oil companies in 1937 over the use of patents. The plaintiff charged that the defendant, to whom Whitman was paying royalties for the use of certain patents, had committed fraud and had thereby lost the right to charge royalties. The accusation of fraud was indeed true, for the defendant, Universal Oil, had bribed a Third Circuit Court judge in connection with a different but related case. After this shocking discovery was made, the Chief Justice of the United States Supreme Court had intervened to appoint a panel of Circuit Court judges from other circuits to complete that trial. The most exasperating aspect of the *Whitman* case lay in the fact that it involved not one lawsuit in one court but an ongoing series of lawsuits in various courts including the District Court for Delaware, the Circuit Court, and the District Court in Kansas. To complicate things further the plaintiff argued that the matter should be resolved according to the contract laws of Ohio while the defendant insisted on resolving the conflict under the laws of Illinois. It was no easy task for Judge Rodney to discover the heart of the issue under these tangled issues. "This case contains many complex questions of law and of fact," he wrote. "There are so many facets involved in the case at bar it is difficult to determine as to which phase I am requested to examine the law of a particular jurisdiction."

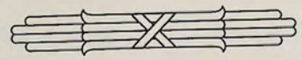
Judge Rodney first determined that under Delaware's choice of law principle the Illinois's law of contract should prevail because the original contract between the parties had been made in that state. He then took up the complex problem of deciding what significance, if any, to assign to the defendant's acts of bribery and corruption. He wrote

> Agreeing with the plaintiff in the extreme character of a fraud involving the corruption and bribery of a judge in a case then pending before him, I still must remember that as a court of equity I must insist that equity, insofar as possible, is done. I have heretofore pointed out that the plaintiff is here neither the avenger nor protector of public rights but a seeker after redress for a private wrong; that its rights do not spring from a corruption of the official but from a subsequent and substantive use of a fraudulently acquired judgment.

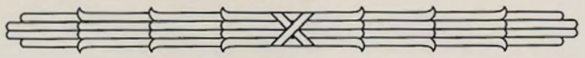
He ruled to rescind the 1937 contract. He said, however, that the plaintiff was entitled to receive back the royalties that it had paid only from the period since 1946 when the case had been filed.[26]

Judge Rodney once told his son-in-law, Edward W. Cooch, Jr., "that he gave each case before him his best effort, and never worried about the possibility of reversal."[27] Rodney loved his work and, although toward the end of his tenure on the federal court he put himself on senior status, he continued to go to his chambers daily until his death at the age of 81 on December 22, 1963. He was buried in the churchyard of his beloved Immanuel Church, New Castle. On January 31, 1964 the Supreme Court of the State of Delaware held a special session dedicated to the memory of Judge Richard Seymour Rodney. William S. Potter, chairman of the Resolutions Committee of the State Bar Association eulogized the judge in words that echoed the sentiments of his fellow judges and members of the Bar. "His quick and incisive mind, his deep human understanding, his superb sense of justice, left an enduring imprint on the product of his Court," Potter said. "Over and beyond these qualities were the integrity, gentleness and compassion with which he discharged his judicial duties."[28]

Judge Rodney was a small man, but he had made a big impact on his state. The combination of his personal qualities with his contributions as a jurist and historian left an indelible mark. Judge Rodney epitomized a quality that had been present in every federal court judge at least since Willard Hall in his devotion to history as the most essential guide post to the law and to life itself. As Chief Judge John Biggs, Jr., of the United States Court of Appeals for the Third Circuit remarked at the memorial service, "All departed judges belong to the past. Only a few—a very few of them—belong to posterity. Judge Rodney was one of that small group."[29]

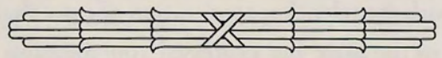


CHAPTER VI



THE COURT THAT JOHN WILLIAMS MADE,

1955-1973



BETWEEN 1954 and 1957 three vacancies occurred on Delaware's District Court. In every case Senator John J. Williams, a Republican from Millsboro, Delaware, was the person most responsible for filling the appointment. The court that emerged can truly be called the court that John Williams made. The concept that underlay Williams's recommendations was one of balance. It was a balance that took into account geographical distribution as well as variety of legal experience. Because the concept of a balanced court has continued to be invoked in making subsequent appointments it is important to understand how Senator Williams shaped the District Court for Delaware.

The election of Dwight D. Eisenhower to the American Presidency ended twenty years of Democratic control over the executive branch of the United States government. During Eisenhower's presidency, John J. Williams of Sussex County was Delaware's ranking Republican Senator. Senator Williams gained a national reputation for his unshakable integrity. His courageous assaults on tax evaders and on other wrongdoers earned him the reputation as "the conscience of the Senate" that gave him great influence both within the government and among Americans generally. His popularity among Delawareans was unassailable. During the decade of the 1950s, Senator Williams was presented with three opportunities to influence presidential appointments to the United States District Court for Delaware. In responding to these opportunities, he had to consider the conflicting desires among Delaware's Republicans as well as the views of the Department

of Justice in the Eisenhower administration. The interaction among these elements tells the story of the three appointments to the court during the 1950s.

By the beginning of 1954 Delaware's federal court was approaching a crisis. Neither Judge Rodney, who at seventy-two was spry but looking fatigued, nor Judge Leahy, who was often incapacitated with illnesses, was able to keep up with the relentless acceleration of cases that came before the court. Members of the State Bar expressed apprehension that if no action were taken to increase the court's productivity the state would lose its enviable reputation as a national center for corporate litigation. Responding to this problem Congress passed a bill to increase the number of judges in the Delaware Court to three, and President Eisenhower signed the bill into law in February, 1954. The ink from the President's pen was hardly dry before Senator Williams's constituents began offering their advice on candidates who might fill the new judicial seat. The selection process revealed the inner workings of the state Republican Party, the spirit of professional reform that motivated the U.S. Department of Justice, and the character and values of Delaware's popular Republican Senator.

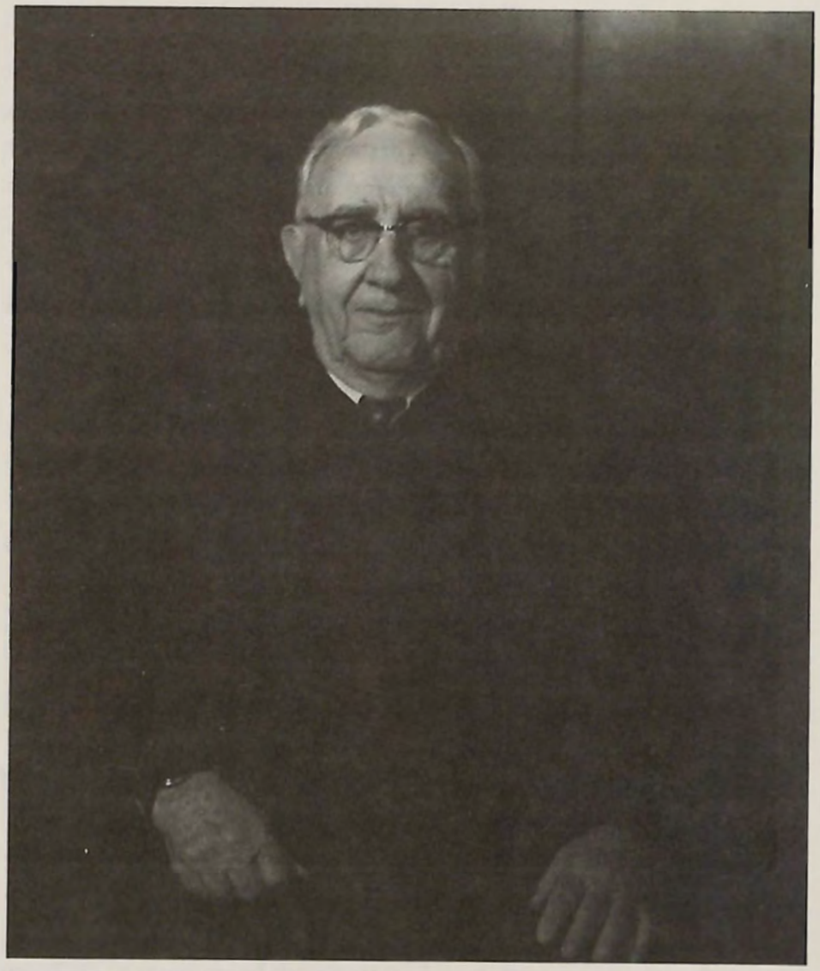
Senator Williams was eager to nominate a Republican judge who might begin to balance the court of two sitting Democratic judges. But beyond politics he was also mindful of the imbalance of a court that had been dominated by New Castle County appointees since the appointment of Judge Edward Green Bradford in 1871. With these considerations in mind Senator Williams contacted the Delaware State Bar Association and asked its members to recommend three potential candidates, one from each county, and to provide a ranking of the candidates. It soon became apparent that the lawyers of Kent and Sussex counties could not agree with their colleagues in New Castle County on an order of ranking. Instead of receiving a ranked list of three candidates as he had requested, Senator Williams was presented with the names of two candidates: Caleb M. Wright of Georgetown, who received the endorsement of the bars in the two southern counties, and Edwin D. Steel, who was the choice of the New Castle County Bar. The potential nominees reflected the upstate-downstate struggle that has long marked

Delaware's politics and society.

Caleb M. Wright, born in Georgetown in 1908, had deep roots in the farming communities of Sussex County. His father, William Elwood Wright, was a justice of the peace and an officer of the Georgetown Water and Supply Company and the Georgetown Building and Loan Association. Caleb Wright was educated in the Georgetown public schools and graduated from the University of Delaware in 1930 where he majored in History. After earning an LL.B. at Yale University Law School in 1933 he returned to Georgetown, gained admittance to the Delaware Bar and commenced the practice of law. Like his father and grandfather, Caleb Wright became actively involved in the Republican Party. He was appointed a deputy to the state attorney general in 1933 and served in that capacity until 1938. He later served as attorney for the state General Assembly. Wright's law practice was general in nature. He represented many Sussex County businessmen who owned and managed retailing and wholesaling operations in the state's most heavily agricultural region. Senator John J. Williams, who owned a chicken feed company, was among his clients.

By contrast, Edwin D. Steel was a corporate lawyer in the firm of Morris, Steel, Nichols and Arsht. Steel was born and reared in Philadelphia. He graduated from Germantown High School in 1922, earned a bachelor of arts degree at Dartmouth College, where he was elected to the academic honor society Phi Beta Kappa, and received an LL.B. from Yale Law School. In 1932, shortly after Judge Hugh M. Morris resigned from the District Court to resume the practice of law, Edwin D. Steel joined Judge Morris's firm where he served the legal needs of the firm's corporate clients. Morris, who greatly admired Steel's ability, assigned him to handle important cases. In time Steel became second in command in the firm and his responsibilities continued to expand as Judge Morris aged.

The dissimilarities in the careers and spheres of these two men did not, however, mean that they had nothing in common. Edwin Steel, the Philadelphian, had close ties to Sussex County because his mother was a member of a prominent family from that county. Edwin Steel and Caleb Wright had met when Steel, then just graduated from Dartmouth, came to



Portrait of The Honorable Caleb M. Wright.
Courtesy of the United States District Court
for the District of Delaware.

Newark, Delaware, where Wright was in college. Steel's first job after college was to manage the Newark Lumber Company, which was owned by his maternal uncle, Isaac D. "Dol" Short. The friendship between Caleb Wright and Edwin Steel grew in the years that followed when both were students at Yale Law School. The contention that emerged in 1954 was not between these two men, who liked and respected one another, but between the city and the county, upstate and downstate, small business and big business. According to his law partner S. Samuel Arsht, Edwin Steel "was relieved and genuinely pleased" when his old friend, rather than he, was appointed to the court.[1]

Senator Williams was acutely aware that Sussex County had always been overlooked in making appointments to the federal court. When he received the reports from the state's three bar associations, two of which supported Caleb Wright, he sent Wright's name on to United States Attorney General Herbert Brownell, Jr. The Attorney General and his chief assistant, William P. Rogers, represented the legal part of the Eisenhower administration's effort to fulfill their President's campaign promise to "clean up the mess in Washington." To Republicans "the mess" was epitomized by twenty years of Democratic political appointments. Cleaning up "the mess" meant not only appointing Republicans, but appointing Republicans who met strict standards of professional competence. To insure that the federal judiciary would conform to these high professional standards, Attorney General Brownell submitted all potential judicial nominations to the American Bar Association for its review. Candidates were also screened by the Federal Bureau of Investigation. Caleb Wright easily passed the F.B.I. check. His integrity, patriotism and honor were not in doubt. But his legal career in rural Delaware did not match the profile for a federal judge that lawyers at the A.B.A. expected. Brownell and Rogers deferred to the A.B.A.'s professional judgment. The attorney general informed Senator Williams that he would not submit Wright's name to President Eisenhower.

Senator Williams was stunned and incensed by this rejection. Girding for battle to overturn the attorney general's decision, he sent a five page single spaced letter to Attorney General Herbert Brownell, Jr. In his letter Senator

Williams told Brownell that southern Delaware had been too long neglected in making appointments to the federal judiciary. He pointed to the principle of geographic representation that underlay American government, and he noted that two of the three county bar associations in his state had supported Wright's nomination. He was particularly indignant that the attorney general placed more trust in the judgment of an American Bar Association committee that knew little about Delaware than in the judgment of the state's Bar and its Republican Senator.[2]

The Attorney General Brownell refused to budge and so did Senator Williams. Meanwhile, back in Wilmington, important litigation was being postponed because Judge Leahy was hospitalized. Lawyers who practiced before the court were embarrassed, litigants were annoyed, and people under criminal indictments were denied their constitutional right to a speedy trial. At the beginning of June, 1955 Senator Williams decided to make an all-out effort to secure the nomination for Caleb Wright. He wrote about the matter directly to Sherman Adams, President Eisenhower's Chief of Staff. He also telephoned Adams and Vice President Richard M. Nixon to discuss the appointment. Williams told Senator Barry Goldwater, chairman of the Senatorial Campaign Committee, that if the attorney general took over the appointment the Republicans could not count on Williams to campaign on their behalf in the next election.[3] Perhaps it was the last threat that finally got the administration's attention. Senator Williams was a valuable asset to his party and not one to make incessant demands on the executive branch. Having recognized just how important this judicial appointment was to the Delaware Senator, President Eisenhower gave his written approval to Caleb Wright's nomination on June 30, 1955. On July 19, 1955 the Senate unanimously confirmed Wright's nomination. A year and a half after Congress had expanded the seats on the federal court in Delaware to three, the District Court had three sitting judges.

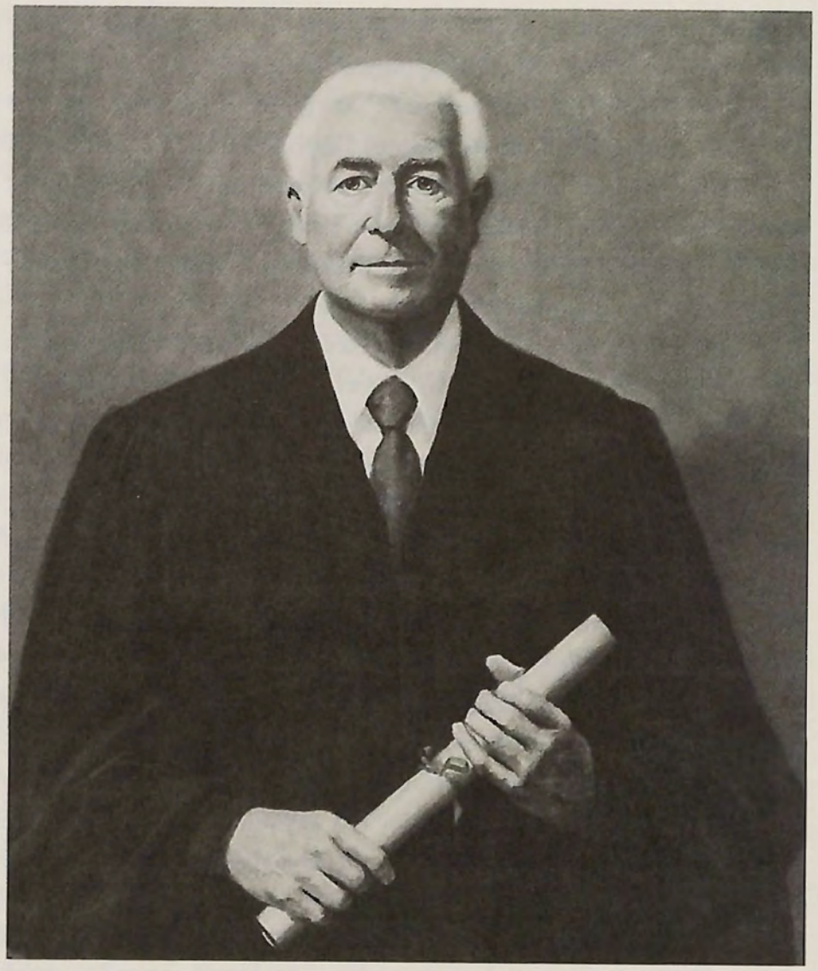
Two of those judges, Rodney and Leahy, were close to retirement. In 1956 Judge Rodney announced his intention to move to senior status at the end of that year. On this occasion the selection of a replacement was far less tempestuous. Although many potential candidates were mentioned and the

State Bar Association supplied the Senator with five names, most of those who wrote to Senator Williams supported the appointment of Caleb R. Layton, III, Judge of the State Superior Court for New Castle County. The only other candidate to receive widespread support was C. Edward Duffy, who was the choice of the state's Republican leadership. Senator Williams rejected his party's nominee and sent Layton's name to the Attorney General. Caleb R. Layton, III received President Eisenhower's nomination and the Senate's unanimous approval in March, 1957.

Although Judge Layton had most recently served on a state court in New Castle County, his roots were in Sussex County where he was descended from a long line of jurists and political leaders. His father, Daniel J. Layton, was Delaware's Chief Justice from 1933 until 1945 when his reappointment caused a political debate that was described in an earlier chapter. The federal judge's grandfather, Dr. Caleb Rodney Layton, edited a Republican newspaper and served two terms in the United States House of Representatives. His more remote ancestors included Caleb Rodney who was governor of Delaware in the 1820s.

Judge Layton was born on Independence Day, July 4, 1907 in Georgetown, Delaware. He prepared for college at Phillips Andover Academy and graduated from Princeton University in 1930. He studied law at the University of Pennsylvania Law School and was admitted to the Delaware Bar in 1933. As a young man, Caleb Layton played baseball and was an avid jazz musician. He played in jazz bands throughout his life, but in his adult years his athletic interests turned from baseball to golf. After practicing law in Georgetown for several years, Layton moved to Wilmington in 1936 where he joined the firm of Republican Senator Daniel O. Hastings, which became Hastings, Stockly and Layton.

Following in the footsteps of his ancestors, Caleb R. Layton, III became an active Republican. In 1947 Governor Walter Bacon, having been defeated in his effort to reappoint Caleb R. Layton's father as Chief Justice of the state, appointed the younger Layton Resident Judge of the Superior Court for New Castle County. At that time the duties of the Resident Judge transcended the normal round of presiding at trials and making judicial



Portrait of The Honorable Caleb Rodney Layton, III by Ewing.
Courtesy of the United States District Court
for the District of Delaware.

decisions. The Resident Judge was also responsible for appointing public school boards throughout the county and for appointing members to various other public boards. Through these activities Judge Layton played an important role in shaping public education during the decade of rapid population growth in New Castle County that followed the end of World War II. As a judge, Layton earned a reputation as a hard worker who handled a heavier caseload than any other state judge. His capacity for maintaining a steady pace in a busy court, together with his reputation for being a tough but fair judge, fulfilled the requirement for a "judicial temperament" that was considered necessary for appointment to the federal bench.

In the same year that Judge Layton replaced Judge Rodney on the District Court, Judge Leahy retired to senior status. Once again letter writers besieged Senator Williams with their opinions concerning the judicial appointment. The recent memory of Senator Williams's exertions on behalf of Caleb Wright emboldened Republicans from throughout Delaware to expect that the popular senator could control the appointment should he wish to do so. Whereas the contest of 1954-1955 had been primarily between upstate and downstate, the contests of 1957-1958 were between different interest groups within the Republican party in New Castle County. The name of Edwin D. Steel, Jr. was mentioned prominently as the choice of the corporate law establishment. Edwin Steel was well known for his vast capacity for work and for his love of the intellectual challenges of the law. Lawyers from Wilmington's major firms whose practices focused on issues such as patent infringements, corporate control, and government antitrust actions argued for the appointment of Edwin Steel because they respected his expertise, his thoroughness, and his ingenuity in these important areas of the court's work. As before, another group of the senator's constituents, composed primarily of loyal Republicans from Brandywine Hundred, a middle class suburb located north of Wilmington, supported the candidacy of C. Edward Duffy, the popular and hardworking Republican state chairman.[4] Although there is nothing in Senator Williams's papers to explain why the senator supported Steel's nomination, it is reasonable to conclude that his decision was based on the importance of corporate law to the state bar. The

Oil portrait of The Honorable Edwin DeHaven Steel, Jr. by Peter Egeli.
Courtesy of the United States District Court
for the District of Delaware.

Justice Department quickly concurred in the nomination. President Eisenhower nominated Edwin D. Steel, Jr. on April 23, 1958 and his appointment was unanimously confirmed by the United States Senate on June 9, 1958.

With the appointment of Judge Steel in 1958, the composition of the U.S. District Court for Delaware was set for a decade. The retirement of Judge Leahy in 1957 had elevated Judge Caleb M. Wright to the position of Chief Judge, a position which he held until 1973 when he moved to senior status. The position of Chief Judge had become a fixture of the Delaware Court when Judge Rodney joined Judge Leahy on the bench in 1947, but the position became more significant under Wright. Chief Judge Wright administered a court that consisted of not two but five judges since the senior judges, Leahy and Rodney, continued to hear cases. The fact that the court passed through this significant change so flawlessly and efficiently attested to Judge Wright's skill as an administrator. He was well-suited to the role. By nature hard working and diligent, yet possessing an unassuming manner and good humor, he willingly accepted the duties of management and melded the differing egos and styles of his fellow judges. Judge Wright was in the enviable position of having colleagues who were his longtime friends. His friendship with Judge Steel has already been mentioned, and he had known Judge Layton since their boyhood days in Georgetown.

Although no judge was absolved from handling cases that represented the variety that came before the court, during the period of Judge Wright's administration a certain amount of specialization evolved among the judges. This development flowed quite naturally from the differing experience and expertise of the judges. The balance in backgrounds that Senator Williams had sought to achieve among the judges was, in fact, realized, and has become a principle that continues to influence judicial appointments.

The first major case to confront Judge Caleb M. Wright when he joined the court was that of *Curran v. State of Delaware*. This was an emotion-laden case that concerned three men who had been convicted of rape in the state courts in 1948. The convicted men claimed that a police officer had committed perjury at their trial when he testified that each of the defendants

had signed one statement following their arrest. The defendants swore that they had signed two statements. Years after the trial evidence was found that corroborated the convicted men's testimony and they petitioned the district court for a writ of *habeas corpus*. Judge Wright demonstrated his mettle as an interpreter of the U.S. Constitution when he issued the writ. The existence of the second statements was unlikely to demonstrate that the petitioners were innocent of the crime for which they stood convicted, but the new evidence did have a potential bearing on the outcome, Judge Wright said. "Whenever a defendant takes the stand in a criminal trial his credibility is put in issue," Wright wrote, and he went on to note that "the concept that the use of perjured testimony is a denial of due process" was a well established rule of jurisprudence. Therefore, the judge reasoned that the conduct of the petitioners' trial had denied them their right to due process and that this "fundamental unfairness" must be redressed by a new trial.[5]

None of the three new judges had experience in the important area of patent litigation. Judge Wright, who had never tried a patent case, elected to develop expertise in this complicated, demanding, and often arcane area of the law. According to two of Delaware's leading patent attorneys, Judge Wright "speedily acquired an amazing knowledge of the complex patent laws and an ability to understand and evaluate the seemingly incomprehensible technical jargon of some patent witnesses."[6] In thirty years on the bench Judge Wright adjudicated more than one hundred patent cases, and his clearly articulated opinions were seldom overruled. His patent decisions have dealt with a myriad of inventions from household objects like wet-strength paper towels, Corning Ware and freeze-dried coffee to complex chemical catalysts for plastics. In recognition of his expertise in this field he was appointed in 1975 to serve a two-year term on the Advisory Committee to the United States Patent and Trademark Office.

Patent cases often result in protracted litigation that involves many motions for discovery, reams of paper, and inevitable appeals. Judicial patience can be sorely tried by these proceedings. Perhaps the most notorious case to come before Judge Wright was *Devex Corp. v. General Motors Corp.*, a case that had its origin in 1956 and was still in litigation in 1988. In the

course of this seemingly endless dispute over an alleged infringement of a patent for cold-forming automobile bumpers, Judge Wright issued nine separate opinions. The case originated in a federal court in Chicago, Illinois which found in favor of the defendant but was overturned by the Seventh Circuit. In 1965 the case moved to Delaware. After a long trial before Judge Wright, the case was appealed yet again. The infringement issue was finally settled in favor of the plaintiff and Judge Wright appointed a Master to assess damages. Judge Wright reviewed and affirmed most of the Master's decisions and entered a final judgment in 1986. His decree was later affirmed by the Third Circuit, but still the case would not die. The parties continued to wrangle over the amount of prejudgment and postjudgment interest that was due. By this time Judge Wright's heroic patience was wearing thin. He refused to accept further litigation saying that the case "threatens to outlast all human participants."[7] The case did outlive one of its non-human participants, because Devex is now called Technograph.

Involvement with cases such as *Devex* convinced Judge Wright that patent litigation must be streamlined. A common tactic used by attorneys in patent cases was to file motions for discovery in broad areas. Such motions delay trials and produce huge files of often unrelated material. As a delaying tactic, discovery motions discouraged all but the most wealthy and determined from seeking redress in the courts for presumed patent infringements. Judge Wright sought to curb abuses of this expensive habit by narrowing the area for discovery. His approach is now incorporated into the District Court Local Rules.

Judge Wright's skill in handling the demands of patent cases enhanced the Delaware District Court's reputation as a recognized forum for resolving patent disputes. In the case, *Hercules, Inc. v. Exxon Corp.*, Judge Wright authored a seminal opinion regarding what sorts of information can and cannot remain privileged between an attorney and client. His enunciation of the attorney-client privilege doctrine is illustrative of Judge Wright's ability to create principles by combining his knowledge of general legal principles with the specific nature of patent law. According to patent lawyers, his principles in patent litigation continue to provide "the analytical frame-

work for resolving most patent-related privilege issues in this District."[8]

While Judge Wright concentrated on patent infringement cases, Judge Caleb R. Layton preferred to handle cases that could be settled more quickly. Criminal cases appealed to him because they usually lasted only a few days and because, as a former Superior Court Judge, he had more experience with the criminal law than did either of his two colleagues. Judge Layton earned the reputation as a tough sentencing judge whose blunt statements to convicted offenders expressed his conservative political and social philosophy. Unlike others of his brethren, he expressed no sympathy for prison inmates incarcerated in Delaware's overcrowded jails. When, in 1972, inmates filed a petition in the federal court claiming that the prison conditions represented a violation of their civil rights, Judge Layton dismissed their claim as "frivolous" and "wholly without substance."[9]

One of the greatest tests that Judge Layton ever faced on the bench came as the result of an especially brutal, vicious crime that was committed in the judge's native Sussex County. On the night of January 31, 1964, Norman B. Parson broke into a home in rural Sussex and attempted to rape Kathleen Rae Maull, a fifteen year old girl, who was babysitting for an infant. When Kathleen Maull resisted her attacker, Parson beat her to death with a hammer, landing blows so hard that he smashed in her front teeth. He then stabbed her several times with a kitchen knife, and dragged her nude body to a ditch some miles from her home. Parson was apprehended only a few hours later. He confessed his crime to the police and took them to the place where he had dumped Kathleen Maull's body. His guilt in the commission of murder was never in doubt.

The crime caused a sensation throughout Sussex County, and indeed Delaware. Kathleen Maull was the daughter of a prominent family, and the sheer brutality of Parson's actions evoked shock and horror. Norman Parson was tried in Superior Court, convicted of first degree murder and sentenced to hang.

Before the trial Parson's lawyer had his client examined by two psychiatrists, and the state had him examined by a third for the purpose of determining whether he could distinguish between right and wrong. The

psychiatrists reported that, although Parson showed signs of mental illness, he knew right from wrong. On the basis of this report the trial was allowed to proceed and Parson's attorney did not raise the defense of insanity on behalf of his client. After the conviction, however, Parson's behavior raised doubts as to whether his mental state might have descended into insanity by the time of the trial. In spite of these growing doubts, the Delaware Supreme Court affirmed the conviction, and the United States Supreme Court refused to grant a writ of *certiorari* to examine the case.[10]

While Parson sat on death row, his lawyer filed a petition in federal court on Parson's behalf for a writ of *habeas corpus*. The petition cited five alleged constitutional defects in Parson's trial and conviction. Parson's lawyer also requested the District Court for Delaware to order another psychiatrist's report to determine if Parson needed a guardian to participate in the federal proceedings.

Judge Layton presided over the district court in this case. The judgment that he was called upon to make regarding Norman Parson, a convicted murderer and molester of a young girl, was the most agonizing of his life. The decision that Caleb Layton faced in the Parson case in 1967 had but one parallel in the history of the Delaware District Court. Just 101 years before, only months after the end of the Civil War, Judge Willard Hall had granted a writ of *habeas corpus* that invalidated a military court's conviction of several southerners for the murder of United States soldiers. Now, once again, a federal judge in Delaware had to decide whether the Constitution's guarantee of due process of law protected an individual who had undoubtedly committed a heinous act. As in the situation that confronted Judge Hall a century before, the decision was particularly difficult because the judge was so personally repulsed by the crime and because lay people throughout the state were likely to misinterpret his defense of constitutional principle as judicial softness in dealing with a convicted criminal. The Parson case exacerbated Caleb Layton's painful ulcer and preyed on his mind night and day. But, like Judge Hall before him, Judge Layton put the Bill of Rights ahead of his private feelings. His opinion in the Parson case should rightly be viewed as an act of personal courage on behalf of the Constitution that he had

sworn to defend.

After examining the evidence, Judge Layton concluded that there was sufficient reason to believe that Parson was mentally incompetent before trial. If this was so, Parson was entitled to have a preliminary determination of that issue that might lead to a second trial. The judge wrote that "the principle that an insane person cannot be tried or convicted of a crime has been imbedded in the law of English speaking people for over two centuries." He, therefore, granted the writ of *habeas corpus* and ordered that the question of Parson's mental fitness to stand trial be referred back to the Superior Court of Delaware. He confessed

> The decision to direct a remand of this case after a full trial in the Superior Court and careful review by the Supreme Court of Delaware has not been an easy one. However, the result must be measured, not by the atrocity of the crime, but, rather, the clear constitutional guarantee of two centuries standing that the question of a defendant's mental competence to stand trial, where in doubt, as here, must be determined before trial."[11]

Judge Layton's work on the District Court extended well beyond criminal cases. On one occasion, for example, he served as the judge in one of the most tragic admiralty cases ever to come before the Delaware court. On a clear night in March, 1957 the S. S. *Elna II*, an old cargo ship flying under the Liberian flag, had completed discharging her cargo of wood pulp at Wilmington's marine terminal and begun her journey down the Delaware River. Just below the town of New Castle the *Elna*'s navigator spotted a large tanker steaming up river toward them in the middle of the narrow channel that cuts through a sweeping bend in the river. The *Elna* sounded its horn in the expectation that the tanker would shift its position to prevent a collision of the two ships. The tanker ignored the horn and continued to maneuver in an unorthodox manner at full speed toward the *Elna*. Again *Elna* blew its horn, but to no effect. By now the ponderous vessels were dangerously near to one another. *Elna*'s officers hesitated to take further defensive action. They expected the tanker to reposition itself, but the tanker kept steaming on. In a final desperate attempt to avoid a collision, the *Elna*'s

crew threw her engines into reverse, but the cargo ship's momentum and the unchecked forward motion of the tanker brought the ships together in a terrific crash. Seconds later two huge explosions ripped through the midsection of the tanker killing several of her crew including the navigating officers and pilot on the ship's bridge. The reason for their suicidal handling of the vessel died with them. The tanker broke in two and quickly sank.

The tanker was the U.S.N.S. *Mission San Francisco*. She was owned by the United States Military Sea Transport Service, but operated by a private company. The *Mission San Francisco* was en route from Newark, New Jersey on the Atlantic coast, where she had discharged a cargo of aircraft turbine and jet fuel. She was bound for Paulsboro, another New Jersey port on the Delaware River, when the tragic accident occurred.

It fell to Judge Layton to determine the liability of the owners and operators of each vessel for the disaster. The reckless behavior of the *Mission San Francisco* was easily demonstrable, but Judge Layton concluded that the officers of the *Elna* also bore some measure of responsibility for the collision. Had the crew of the *Elna* taken defensive measures sooner, the judge reasoned, her navigators could have prevented the collision.

Judge Layton's most significant finding concerned not the collision, but the explosions that followed. The explosions were caused by the residue of jet fuel that remained in the tanker's hold. The residue produced a volatile vapor gas which, when mixed with air and impacted by the collision, exploded with a force greater than that of T.N.T. The explosions, not the collision, sank the *Mission San Francisco* and killed members of her crew. The tanker was equipped with ten Butterworth machines for scrubbing its tanks, but since five of these were broken and the journey from Newark to Paulsboro was viewed as a brief one, no one had bothered to scrub the tanks. Judge Layton was highly critical of the failure to clean the vessel's tanks. "[T]he evidence raises most serious implications concerning the practice of the tanker trade in permitting ships to leave port with their tanks in a dangerously combustible state," the judge wrote. He found the shortness of the voyage to be no excuse. "The slogan that 'time is money' may have its place in business but is unacceptable where human safety is involved," he wrote.[12]

Judge Layton's holding that the owner of the tanker could be denied limitation of liability because of negligence for not scrubbing the empty oil tanks represented a significant extension of admiralty law principles. His decision made it much more likely that operators of tankers would keep their scrubbing machines in order and take the time to use them before even the briefest of voyages. After Judge Layton's opinion was announced the tanker industry intervened in the case to argue for a reversal on the issue of liability for failure to scrub, or "Butterworth," a vessel. Judge Layton denied a motion for their intervention and his novel findings and conclusions were upheld by the Court of Appeals.

The third of the Eisenhower appointees to Delaware's District Court, Judge Edwin D. Steel, Jr., came to the court with an impressive background in corporate law, and it was in this area that he made his most significant marks on federal jurisprudence. Judge Steel possessed intense powers of concentration and prodigious work habits. He could sift through the highly technical and complicated materials that were presented to him and uncover the relevant precedents and principles on which to base his decision. Attorneys who practiced before him recall the careful, firm, and fair manner in which Judge Steel controlled the development of a case, attributes which were congruent with his stern manner and high professional standards.

Among his 183 published opinions, several cases stand out as illustrations of Edwin Steel's jurisprudence. In 1965, Judge Steel presided over the first action brought by the United States Department of Justice under the Sherman and Clayton antitrust laws to prevent a joint venture between two independent corporations. The targets of the government's suit were the Olin Mathieson Chemical Corporation and the Pennsalt Chemical Corporation. These two companies had jointly created the Penn-Olin Chemical Company in 1960 for the purpose of constructing and operating a sodium chlorate plant in Tennessee. Sodium chlorate had applications in the paper industry and in the manufacture of missile fuel. The Penn-Olin plant was designed to supply the chemical throughout the southeastern United States.

The Justice Department contended that the joint venture would result in a monopoly for Penn-Olin in the southeastern United States. The

government argued that, but for the joint venture, either Pennsalt or Olin Mathieson would have entered the market there and that the other would have been likely to follow if it saw a competitive advantage in doing so. On the first hearing of the case Judge Steel dismissed the government's complaint,[13] but the U.S. Supreme Court vacated the judgment and remanded the case for further proceedings.[14]

In writing his opinion following the second hearing, Judge Steel focused on the issue of whether the government had proved that, but for the joint venture, one or the other of the cooperating companies would have entered the sodium chlorate market in the southeast. After a careful review of the actions of both companies leading up to the joint venture, he concluded that no such contention could be proved. The government's case rested on the fact that Olin's Research and Development Department was eager to go forward with the project regardless of the joint venture. But, as Judge Steel pointed out, the sodium chlorate plant was but one of several possible capital investment opportunities that the company was considering and "no intelligent forecast can be made as to the likelihood of its approval by the Board of Directors who had the final say."[15] Furthermore, both Olin and Pennsalt were reluctant to risk their capital singly on the venture after 1961 when the Pittsburgh Plate Glass Company announced plans to construct a sodium chlorate plant in Louisiana. Based on these considerations, Judge Steel dismissed the government's complaint.

Securities cases represented another area in which Judge Steel excelled. One of the most significant stockholders' suits that he tried was *Voege v. American Sumatra Tobacco Corp.*, a case in which Judge Steel extended the meaning of the language of the Securities Exchange Act of 1934 to cover corporate mergers.

Ida May Voege purchased 450 shares of American Sumatra Tobacco stock in 1945. In 1960 the majority stockholders in the company, who were also the corporate officers, formed a new company and merged the old and new companies into one. The majority stockholders sent letters to minority stockholders to announce the dissolution of the old company and required the minority stockholders to surrender their stock at the price of $17 a share.

Ms. Voege recognized that this price was grossly less than the true value of the stock and brought suit. She claimed that the company's officers had used manipulative and deceptive tactics to effect the sale of the minority stockholders' securities.

The defendant corporation did not deny Voege's allegations, but they argued that the federal court was not the appropriate forum for deciding the suit. According to the defendant, the 1934 federal securities act dealt with "selling" stock and the minority stockholders had not "sold" their stock but merely surrendered it for a fixed price as part of a corporate merger. Judge Steel disagreed. "Defendant's contention that plaintiff is not a purchaser or seller of securities, and that even if she is the wrongs alleged do not relate to the purchase or sale, will not withstand analysis," he said.[16] When Voege bought the stock in 1945 she did so under the terms of Delaware's corporation law which gave her the right of an appraisal proceeding should a merger occur. In failing to provide her with this opportunity the defendant tobacco corporation violated her rights under both the state law and the federal securities law. Judge Steel ruled that she was entitled to redress and dismissed the defendant's motion to dismiss the case.

In addition to corporate and securities cases, Judge Steel was also called upon to adjudicate patent infringement cases. Among the most troublesome of these was the case of an inventor named Nickerson who claimed to have discovered a means to affix white sidewalls to automobile tires. The inventor, acting as his own attorney, alleged that his patent was being violated by numerous companies and filed a plethora of suits in many states. In a case against the Bearfoot Sole Company of Chicago that went to the Sixth Circuit Court of Appeals, Nickerson's patent was declared invalid, but the intrepid inventor pressed on with other suits including two in Delaware, *Nickerson v. Pep Boys—Manny, Moe & Jack*, and *Nickerson v. Kutschera.*

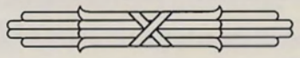
The question before Judge Steel was whether he could dismiss the plaintiff's suit by collateral estoppel. Under an earlier Supreme Court ruling in the case of *Triplett v. Lowell*,[17] it appeared that Nickerson could continue to sue alleged patent infringers so long as the multiple defendants were not

conspiring together to deprive him of his rights as a patent holder. Nickerson also claimed to have new evidence that had not been introduced in his trial in the Sixth Circuit and which precluded estoppel. Judge Steel permitted the plaintiff to submit his new evidence but declared that it was insufficient to prevent an estoppel. The plaintiff appealed Judge Steel's dismissal of the case, and the Third Circuit Court of Appeals remanded the case to Judge Steel. At this point in the proceedings, the U.S. Supreme Court issued a new rule that reversed its *Triplett* decision. The Supreme Court's new ruling permitted estoppel of a charge of infringement if the underlying patent had once been declared invalid.[18] The new Supreme Court doctrine followed the same reasoning that had guided Judge Steel in the Nickerson case. Seizing upon this new interpretation from the nation's highest court, Judge Steel finally extricated himself from the case of Nickerson and his sidewall tires.[19]

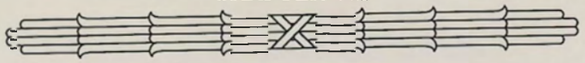
Judges Wright, Layton, and Steel, who all began their service on the District Court within a two-year period, spaced their retirements to senior status over a period of five years. Caleb R. Layton was the first to go, retiring on disability in April 1968. Two years later in 1970 Judge Edwin Steel elected to assume senior status. Judge Caleb Wright remained Chief Judge until 1973 when he too became a senior judge. Judge Wright continues to participate in the life of the court to this day.

One of the most important aspects of Judge Wright's work on the district court has been his role as mentor to his law clerks. Some judges are more successful teachers than are others. Judge Wright has taken the responsibility for the development of his law clerks most seriously and three of them are now federal judges.[20] Before Judge Wright reaches an opinion in a case he talks out the issues with his clerks in sessions where he encourages each clerk in turn to play devil's advocate. Judge Wright's easy relationships with his clerks include introductions to his family and trips to visit the judge's home ground of Sussex County. Former clerks testify to Judge Wright's sense of humor and they particularly admire his humble dignity in dealing with people from all walks of life. These characteristics have made him a model judge for his younger colleagues on the court. Senator John J. Williams knew what he was about when he demanded that this unknown lawyer from

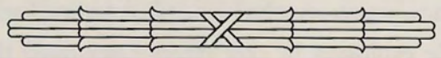
Georgetown be named to the District Court for Delaware.



CHAPTER VII



THE CIVIL RIGHTS REVOLUTION



THE WORK of the District Court for Delaware has undergone several transformations in the course of its two hundred year history. During the nation's first century under the Constitution the federal government imposed few regulations on American society. The preponderance of cases that came before the court in that era dealt with admiralty law. Beginning with the Sherman Antitrust Act of 1890 and accelerating during the New Deal, the United States Congress took responsibility for regulating the American economy. As we have seen, this development, coupled with Delaware's unique advantages as a legal home for corporations, made the District Court for Delaware a national focal point for the resolution of disputes concerning corporations, securities, and patents.

In the 1950s, however, new foci of federal legislation and federal jurisprudence emerged. Civil rights, an area little explored by the federal judiciary in past eras, became a significant judicial issue beginning with the U.S. Supreme Court's landmark decision in the school desegregation case *Brown v. Board of Education of Topeka, et al.* in 1954. The *Brown* decision contributed significantly to the great national crusade for racial equality during the 1960s. The atmosphere of national self-criticism that pervaded the 1960s also led to federal legislation in heretofore neglected areas such as environmental pollution, health care, and women's rights. This same drive to bring greater equality to American life also brought renewed attention to the Bill of Rights and the Fourteenth Amendment to the Constitution.

Many factors produced the civil rights revolution in American society.

This national movement did not happen overnight. The public's attention was drawn to the rallies, speeches, demonstrations, and marches that made up the most obvious aspect of the movement. These activities often took place in the teeth of opposition from local police who used dogs, clubs, and water hoses to beat back demonstrators. Meanwhile, within the quieter surroundings of legislative halls and courthouses the civil rights revolution gained the legal acceptance that has created its lasting legacy.

A veritable explosion in civil rights cases filled the docket of the District Court for Delaware during the 1970s. For example, in the beginning of that decade few of the state's prisoners complained of civil rights violations. By the end of the decade the court was inundated by suits filed by incarcerated persons who alleged that they suffered unconstitutional abuse, overcrowding, or other violations of their civil liberties. Meanwhile, in the work world, women, minorities, and older workers filed anti-discrimination suits against their employers. Another category of civil rights-related cases emerged from disputes in which whole classes of individuals sought redress from alleged discriminatory acts. In Delaware the best examples of these cases were the desegregation case, *Evans v. Buchanan,* and the hospital relocation case, *NAACP v. Wilmington Medical Center.*

The court's growing responsibility for resolving civil rights cases was not accompanied by an appreciable reduction in the corporate, securities, and patent cases that had dominated its work in earlier eras. During the 1970s, takeover tender offers became the most dynamic force in corporate life and a number of the resulting disputes were adjudicated in Delaware's District Court. The O.P.E.C. oil embargo in the early years of the 1970s and the U.S. government's pricing regulations that followed also produced an intense struggle within the petroleum industry. Since most of the nation's oil companies are incorporated in Delaware, much of the litigation that emerged from the Department of Energy's hastily conceived price controls following the embargo came to the Delaware Court. But important as these economic cases were, they were overshadowed by the giant civil rights struggles that absorbed Delawareans and the state's federal court in the 1960s and 1970s.

Delaware, with its heritage of slavery, was a state where racial

segregation had been imposed in law and custom since the first Africans were brought here in the seventeenth century to work the lands of the European settlers. Desegregation has not come readily or easily to the First State. But, unlike other segregated states where the civil rights struggle centered on the words and deeds of recalcitrant governors, the inspiring actions of civil rights crusaders, or the organization of mass demonstrations, in quiet Delaware the focus of the civil rights revolution has been the courts, and most particularly the U.S. District Court.

In 1954, when the Supreme Court proclaimed the inherent inequality of racially separate schools in *Brown v. Board,* the state of Delaware maintained a segregated system of public schools. In fact, one of the several cases subsumed under *Brown* came from New Castle County. News of the Supreme Court's decision in *Brown* met with a mixed, but predominantly hostile, reception among white Delawareans. At the northern end of the state the Wilmington Board of Education moved almost immediately to desegregate the city's schools, but in southern Delaware white power groups including the Ku Klux Klan threatened violence should desegregation occur. Outside of Wilmington, neither the state legislature nor the State Board of Education took steps to implement the Supreme Court's ruling.

In 1957 a group of black parents from Delaware's rural towns, including Brenda Evans of Clayton, Delaware, filed a class action suit in federal court to require the state's school districts to admit black students or to submit desegregation plans to the State Board of Education. Judge Paul Leahy heard the plaintiffs' case against the members of the State School Board, the first of whom alphabetically was Madelyn Buchanan. Judge Leahy issued a permanent injunction that mandated nondiscriminatory enrollment and directed the State Board to submit a comprehensive integration plan that would be put into effect the following school year.[1] Judge Leahy's decision was later affirmed by the Third Circuit.

Two years passed before the State Board filed its desegregation plan with the District Court. Judge Caleb R. Layton conducted a hearing on the proposed plan in March, 1959. The plan called for desegregation to be introduced in all of the state's public school districts over a twelve year period,

beginning with the first grade in the fall term of 1959. Along with this tepid plan, the State Board proposed a variety of delaying mechanisms designed to minimize integration. Judge Layton was very sensitive to community feeling in southern Delaware and tried to find a means that would satisfy the constitutional requirements for integration as proclaimed by the Supreme Court in the least disruptive way. He, therefore, upheld the gradual "grade-by-grade" concept. But he rejected the Board's other efforts to postpone full integration, noting that "the power to delay, resting in unfriendly hands, is tantamount to the power to defer interminably or to defeat altogether."[2]

In 1960 by a vote of two to one the Third Circuit Court reversed Judge Layton. Chief Judge John Biggs, a Delaware native who wrote the appellate court decision, found Judge Layton's acceptance of the gradual approach too slow and predicted that Delawareans would accept integration calmly. "We believe that the people of Delaware will perform the duties imposed on them by their own laws and their own courts and will not prove fickle to our democratic way of life and to our republican form of government," the Third Circuit majority said.[3] In 1961 the District Court approved the School Board's revised plan. Still the State Board engaged in foot-dragging, and it was not until 1965, eleven years after the first *Brown* decision, that Delaware's segregated school system was finally replaced.

At the time it appeared as if the *Evans* lawsuit had been resolved. Throughout the rural towns of Delaware formerly segregated schools were either integrated or closed and school populations came to reflect the racial composition of the rural population at large, which was approximately 80 percent white and 20 percent black.

In northern New Castle County, however, a different demographic dynamic was at work. Wilmington was the education center for much of New Castle County. Until the mid to late 1950s, many white students from the area surrounding Wilmington attended high school in the city. All black students in the county also attended a black high school located in Wilmington. During the affluent 1950s and 1960s, however, suburban developments sprang up around the city of Wilmington. These new or enlarged suburban school districts built high schools rivaling the schools in Wilmington. Many

white city dwellers relocated in the suburbs and, by the late 1960s the racial composition of Wilmington's integrated schools had become predominantly black. In some city schools the percentage of black students was nearly 100 percent, but in others whites still predominated. When city parents of either race attempted to transfer their children to schools in the suburbs that were perceived to be more academically challenging, the suburban districts refused to take them, in spite of the fact that only a few years earlier Wilmington's schools had welcomed suburban children. The frustration of these Wilmington parents seeking to transfer their children was exacerbated by the Delaware legislature's enactment of the Educational Advancement Act of 1968. This law was designed to consolidate school districts, but it explicitly excluded the Wilmington School District from consolidation with other districts. The law had the effect of locking the Wilmington School District off from the suburban districts even more firmly.

In 1971 a group of Wilmington parents reopened the *Evans v. Buchanan* case. The plaintiffs in this class action desegregation suit alleged that the Wilmington District was segregated and that the Educational Advancement Act of 1968 had imposed an unconstitutional barrier to integration. Because the plaintiffs challenged the constitutionality of a state law, a three-judge panel was assembled to hear the case. Two of the judges, Caleb M. Wright and Caleb R. Layton, were from the District Court for Delaware, the third, John J. Gibbons, was a Third Circuit Judge from New Jersey. Wright and Layton were on senior status when the case began. Both had been involved in the *Evans* case in its earlier proceedings, and both possessed considerable knowledge about public education and public sentiment in Delaware. The plaintiffs received experienced legal counsel from the NAACP Legal Defense Fund and the Wilmington Branch of the American Civil Liberties Union. The defendant State Board of Education was also well represented. The three judges were appalled to learn that the trial was expected to last for several weeks.[4] Had they known the full extent of time and effort that would be absorbed into the case, they would have been truly shocked.

The issues at stake in this case transcended the original intentions of

the parents who began it. The plaintiffs' attorneys saw the Wilmington case as an opportunity to go beyond the remedy of permitting individual transfers of students from Wilmington to suburban districts. They wanted to dismantle the existing school districts of northern New Castle County and remake them in a way that would integrate city children and suburban children in the same schools. The plaintiffs introduced a parade of witnesses, including government officials, real estate agents, middle class blacks, and school administrators. The testimony of these varied people not only demonstrated the depth of racial segregation in the Wilmington area, it also showed that state policies had promoted segregation.

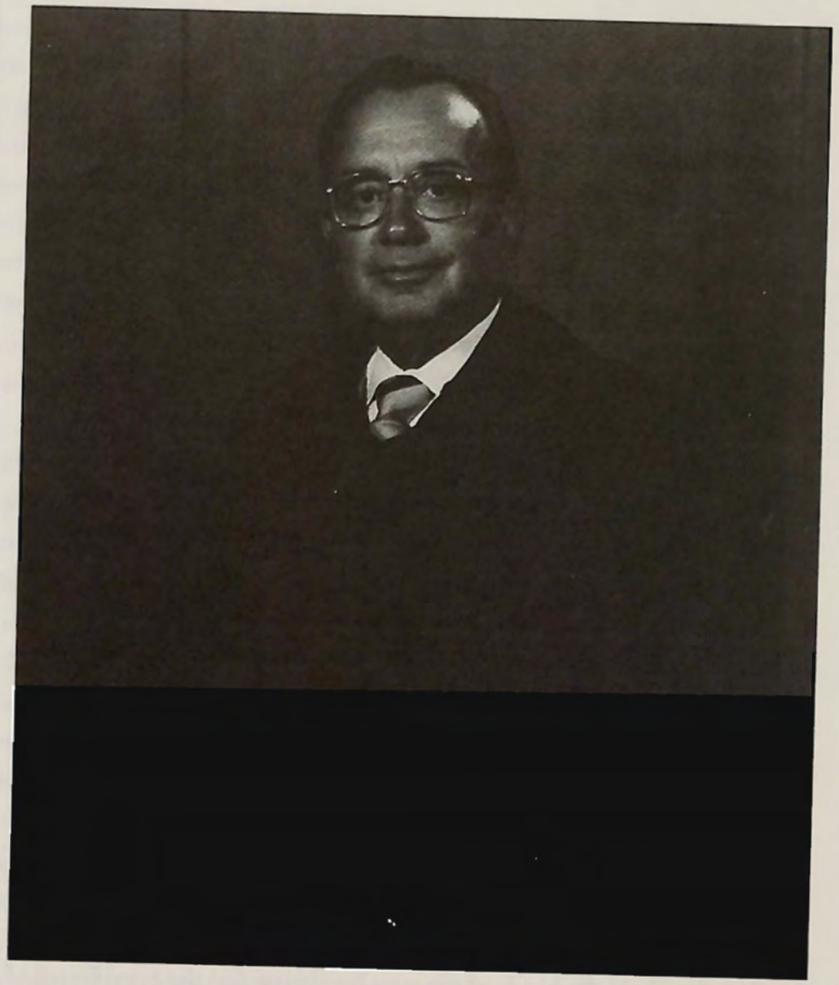
In 1974 Judge Layton, speaking for a majority of the panel of judges, called upon the city of Wilmington to fully desegregate schools within the city.[5] Although Judge Gibbons believed that a proper remedy to achieve racial balance in the city's schools would require the intermingling of suburban and city children, the two Delaware judges were not as yet prepared to accept an interdistrict remedy. While *Evans v. Buchanan* was in litigation in Delaware, a case from Detroit, Michigan, with many similarities to the Wilmington case, *Milliken v. Bradley*, was before the United States Supreme Court. Two weeks after Judge Layton issued his opinion, the Supreme Court ruled on the *Milliken* case. The nation's highest court said that where city-suburban segregation occurred, no interdistrict remedy could be imposed by a federal court unless "there has been a constitutional violation within one district that produces a significant segregative effect in another district."[6]

The *Milliken* decision spurred the three-judge panel to consider whether such a "constitutional violation" had occurred in Delaware. On this point the judges disagreed. Judge Gibbons and Judge Wright found that the Educational Advancement Act of 1968 represented an effort by government to discourage integration by excluding the Wilmington school district, with its concentration of blacks, from the opportunity to consolidate with other districts. They pointed also to the Delaware legislature's history of hostility to other mechanisms for integration, especially the legislature's repeated refusal to enact open housing legislation. In addition, the judges noted that the suburbs had persistently blocked efforts to build public housing outside

the city. From these facts Judges Wright and Gibbons concluded that the state bore responsibility for maintaining segregated patterns of housing.[7] Judge Layton dissented from this conclusion. In a detailed opinion he argued that the pattern of segregated housing in New Castle County was more a function of freely-made decisions by both blacks and whites than it was caused by government action. Over the vigorous dissent of Mr. Justice Rehnquist, joined by Chief Justice Burger and Justice Powell, the United States Supreme Court summarily affirmed the panel majority's decision.[8]

Having established that a constitutional violation existed in the arrangement of Delaware's school districts, the three-judge panel next entered the remedy stage of the litigation. The court invited the eleven suburban school districts to enter the suit. In another two to one decision to which Judge Layton dissented, the three-judge panel held that an interdistrict remedy was both necessary and justified under the Supreme Court's *Milliken* doctrine. Judge Wright, who wrote the majority opinion, rejected several alternatives such as magnet schools and voluntary transfers, concluding that the appropriate remedy required consolidation of the city and suburban schools into one racially integrated educational district.[9] Judge Layton again objected to the necessity for such heroic measures. He opposed dissolving the existing school districts and busing several thousand children. Again the majority's decision was appealed to the Supreme Court, only to be dismissed.

Judges Wright and Gibbons had laid out the basic requirements that would constitute an acceptable remedy. The judges hoped that the district court could now bow out of the case and place the construction of a more detailed remedy in the hands of the state legislature and the State Board of Education. If the judges thought that politicians or school administrators would take up the challenge of constructing a busing plan they deceived themselves. Public opinion throughout the suburbs was uniformly hostile to "forced busing." Busing had no champions among elected officials and each of the suburban school districts was maneuvering to minimize its involvement in any busing plan.[10] In May 1976 Judges Wright and Gibbons rejected the self-serving plans presented to them by the suburban school districts and named an interim school board that was charged with creating an interdistrict



Portrait of The Honorable Murray M. Schwartz.
Courtesy of the United States District Court
for the District of Delaware.

plan. Following that action the three-judge panel disbanded so that a single judge could oversee the implementation of the district plan. The judge who assumed this onerous task was Murray M. Schwartz, then the most junior judge on Delaware's District Court.

Murray M. Schwartz was born in 1931 and spent his boyhood in Ephrata, Pennsylvania, where his father operated a dry goods business. He was educated in the local public schools and the Wharton School of the University of Pennsylvania. While Murray Schwartz was attending college his father died, and the future judge assumed responsibility for his father's business. In spite of the rigors of maintaining both the dry goods store and his college work he graduated from the Wharton School on schedule in 1952. Undergraduate courses in government directed his interest toward a career in government service and led him to enroll in the University of Pennsylvania Law School, from which he graduated in 1955. Like other young American men of that time he expected to enter the United States Army, but he was turned down because he was partially deaf. In light of this unexpected development, Schwartz cast about to find a last-minute opportunity to serve as a law clerk. Fortunately for him, a clerkship was available with a newly appointed federal judge in Delaware named Caleb M. Wright. Thus, due to a quirk of fate, Murray Schwartz came to Wilmington, became a protege of Judge Wright, and began an association with the district court over which he would later preside first as a judge and later as Chief Judge.

After completing his year as a law clerk, Murray Schwartz entered private practice in Wilmington, but he continued to maintain close ties to Chief Judge Wright. In 1959 Judge Wright asked his former law clerk to take charge of the chaotic Bankruptcy Court. Schwartz soon had the court running smoothly and was about to resign from this part-time post in 1971 when Lammot du Pont Copeland, Jr. filed for the biggest Chapter 11 individual bankruptcy in American history up to that time. As referee in the exceedingly complex proceedings that followed, which included more than one hundred creditors' law suits and attracted much media publicity, Murray Schwartz impressed Wilmington's corporate lawyers as a remarkably capable and careful judge. These perceptions, coupled with support from a Repub-

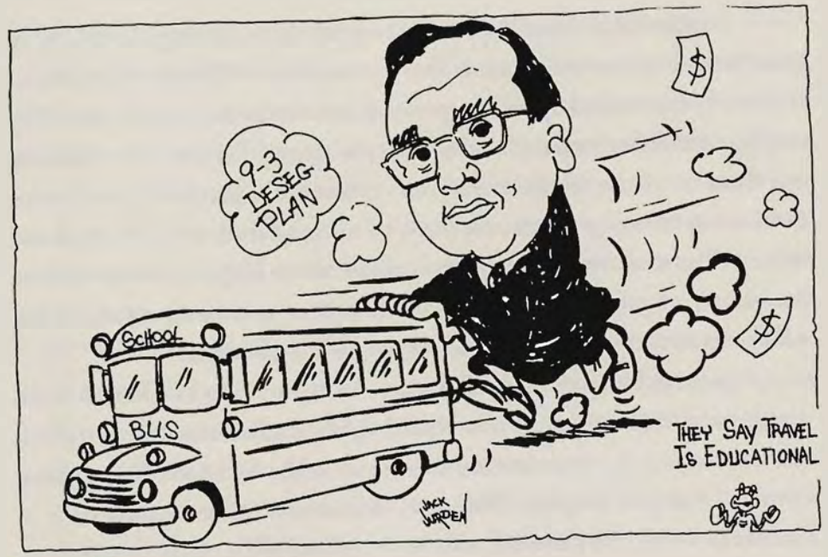
lican Committee person, gained the attention of Delaware's Republican Senator William V. Roth. Senator Roth proposed Schwartz's name to replace Judge Wright, who took senior status in 1973. Schwartz was then nominated by President Richard M. Nixon, confirmed by the United States Senate, and became a judge May 2, 1974.

Murray M. Schwartz was the first Jewish judge of Delaware's District Court. A scholarly and meticulously thorough man, his appointment was, according to one observer, "as close to a merit appointment as one is likely to get in an inherently political process."[11] On being a judge, Murray Schwartz has said, "What better job can there be than to be reasonably well paid for doing what is right."[12]

Throughout the state of Delaware the name of Judge Murray Schwartz will be forever linked to the case *Evans v. Buchanan.* Although the three-judge panel had laid down the necessity for interdistrict busing, it was Judge Schwartz whom the public perceived to be the author of the busing remedy.

The key issue that Judge Schwartz was called upon to resolve was how to achieve school integration. The State Board of Education and representatives of white-controlled groups generally wanted to bus city children to suburban schools. Representatives of the plaintiffs rejected this remedy because it would impose the burden of busing on the black children who were the victims of discrimination. In a letter addressed to Judge Schwartz in the summer of 1977, the plaintiffs' counselors wrote that their clients did not want "to go to a white school." What the plaintiffs wanted was "an equitable transition to racially nondiscriminatory schooling—not 'black schools' or 'white schools' but just schools."[13]

Judge Schwartz recognized the validity of the plaintiffs' goal, but he also knew that suburban parents would not tolerate busing their children into the city for more than a few years. In January 1978 the judge rejected a plan proposed by the Board to bus city children to the suburbs for ten years of their schooling and to bus suburban children to the city for two years. Beyond the unfairness of such a plan, he also noted that it would under-utilize the city's schools. He chose instead a 9-3 plan, and when representatives of the school districts affirmed that such a plan would work, he made it the centerpiece of



Cartoon by Wilmington *News Journal* artist Jack Jurden depicting Judge Schwartz pushing a school bus to symbolize his 1978 implementation of inter-district desegregation in the case, *Evans v. Buchanan.* Courtesy of The Honorable Murray M. Schwartz.

interdistrict busing in Wilmington and its suburbs.[14]

To say that Judge Schwartz's desegregation plan aroused great furor throughout New Castle County would be an understatement. And yet, when the suburban and city districts were dissolved into one and the buses began rolling in the fall of 1978, the public accepted the court's decree with resignation and without the violence that marked desegregation efforts elsewhere. This relatively calm acceptance resulted in large part from careful preparation by community leaders and educational administrators.[15] It also demonstrated Delawareans' fundamental respect for the rule of law and for the district court that had imposed the order. Judge Schwartz paid a high personal price for having accepted responsibility for implementing the busing order. Not only was his own life threatened, his children were also subjected to insults at school. For a time the judge and his family lived with the constant danger of some hostile act.

Implementation of the busing remedy did not bring an end to the court's involvement in education. In the years since 1978 Judge Schwartz has frequently been called upon to approve alterations in the original plan. The one big district has been replaced by four pie-shaped districts, each widening out from its center in the city. Court ordered desegregation and busing continue to be unpopular among many parents and students, both black and white.[16] The most discouraging aspect of the case to Judge Schwartz has been the refusal of political and educational leaders to assume responsibility without constant intercession and cajoling from the bench.

Judge Schwartz has handled a broad range of cases in addition to his desegregation rulings. In the area of civil rights he adjudicated an important case concerning the overcrowded conditions at the Delaware Correctional Center (DCC) in Smyrna. The case, *Anderson v. Redman*, was tried in December 1976. The plaintiffs, who were inmates of the correctional center, were represented by the Community Legal Aid Society. The case shone the powerful light of publicity onto the wretched world of Delaware's major corrections facility. The officers in charge of the facility did not refute the grizzly description of life in the DCC that emerged from testimony. The prison was designed to hold approximately 500 inmates, but in 1976, only five years after it opened, the DCC held nearly 1,200 men. Many prisoners were living under conditions that, as Judge Schwartz wrote, "can only be described as barbaric." Filthy mattresses were strewn about; there were not enough places to sit down; there was no privacy, men practically had to step on one another to use the toilet; vermin, strong smells, and a relentless din of noise permeated the environment. The cells were so crowded that overflow prisoners had to sleep body against body in hallways and service rooms. As Judge Schwartz explained, these conditions had serious consequences. "Cramped and suffocating quarters increase tension, hostility and aggression," he wrote. Fights were common and homosexual rapes frequent. The overburdened staff could not control these assaults much less provide psychological counseling, educational opportunities, or activities to occupy the men who were supposed to be "corrected" in the institution. Judge Schwartz characterized the DCC as "a ticking time bomb."

After wrestling with the problem of finding a solution that would correct the worst aspects of the conditions in the prison and at the same time protect the public, he concluded that it would be best to release some of the prisoners under a carefully supervised program. He reasoned that the dangers inherent in this choice were less than risking the likelihood of a riot and mass breakout. He also pointed out that the state, not the federal court, must decide whether to build more prisons or develop means of correction other than incarceration.[17] As a result of Judge Schwartz's decision, the population at DCC was dramatically reduced and the state has since built an additional corrections facility at Gander Hill east of Wilmington. The most egregious problems of prison life at DCC have been alleviated, but the basic problems confronting corrections reformers remain with us.

Another important case that came before Judge Schwartz was *Norfolk Southern Corp. v. Oberly*. The Norfolk Southern Corporation wanted permission to construct a coal transfer facility at Big Stone Anchorage in the Delaware Bay. Big Stone Anchorage is the only naturally protected anchorage between Maine and Mexico deep enough to handle modern supertankers and supercolliers. During the 1960s oil companies began using the Big Stone Anchorage as a transfer point to remove oil from large tankers by piping it to smaller lightering vessels. In 1971 the State of Delaware, fearful that its environmentally important coastal wetlands would be destroyed by proposed oil refineries, adopted the Coastal Zoning Act (CZA). The CZA permitted existing oil lightering to continue but banned new industrial development in the state's coastal area.

In the early 1980s Norfolk Southern turned its attention to the Delaware Bay. In 1984 the coal company applied to the U.S. Department of Natural Resources and Environmental Control for permission to build a coal transfer facility at Big Stone Anchorage. The federal agency gave its permission, but the state of Delaware refused. Norfolk Southern filed suit against Delaware's Attorney General Charles M. Oberly III. The company contended that in attempting to prevent its proposed coal distribution plan the state was violating the Commerce Clause in the U.S. Constitution.

Judge Schwartz examined the company's claim in the light of federal

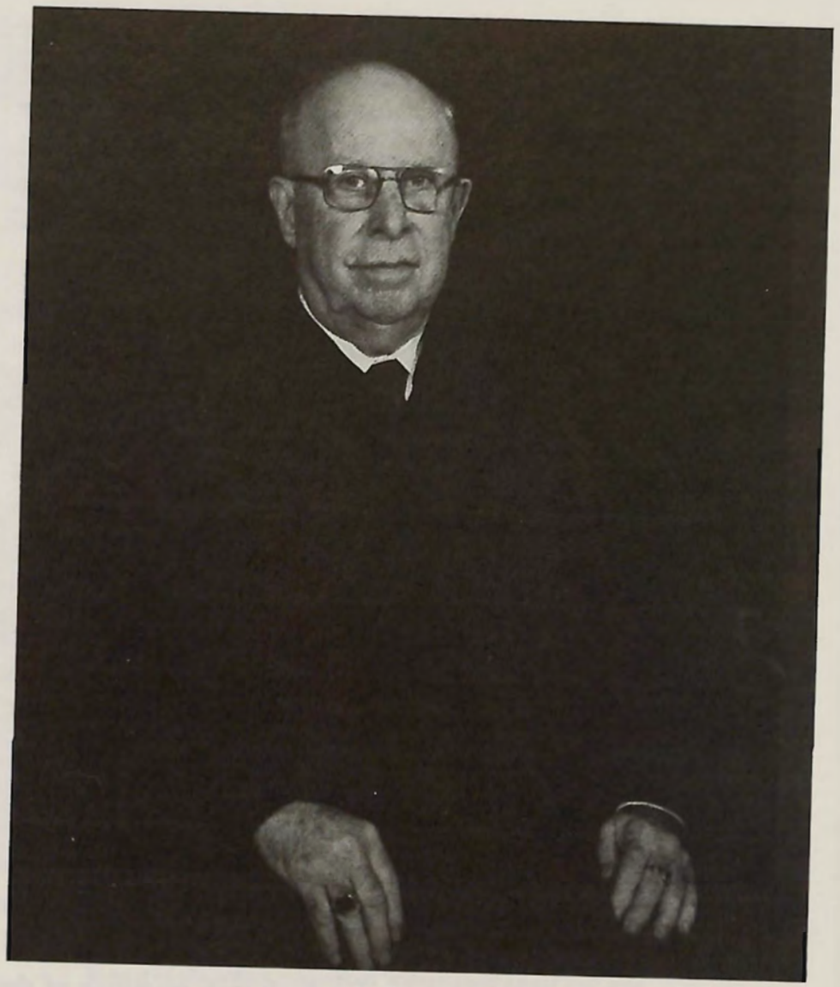
The J. Caleb Boggs Federal Building was constructed between 1971 and 1973 on the southeast corner of 9th and King Streets as part of the urban renewal of Wilmington's near east side. In keeping with the increased number of federal judges, the building was designed to include six federal courtrooms, as well as chambers for six judges.

case law. He noted that where there is no guiding federal statute, federal courts must balance conflicting state and federal powers over interstate commerce. Federal courts have established several standards by which to adjudicate such cases. He decided that, in the case before him, the state's

authority should be given relatively broad latitude. He also noted the importance of the federal Coastal Zone Management Act to this case. This law was adopted by Congress in 1972 to protect the nation's coastlands. The act required coastal states to formulate coastal zone management programs. Delaware's pioneering Coastal Zone Act, enacted one year before the federal statute, became the centerpiece of the state's compliance and received the imprimatur of the Secretary of Commerce. On the basis of those factors, Judge Schwartz found in favor of the defendant, the State of Delaware.[18]

In his conclusion to the *Norfolk Southern v. Oberly* opinion Judge Schwartz wrote that "[i]n the event there should be a remand, the appellate court will have the benefit of this Court's views on a tangled area of Commerce Clause law."[19] The entanglements of rival legal principles, conflicting state and federal jurisdiction, and differing judgments by administrative agencies that made adjudication of the coastal zone case difficult paled in comparison to the entangling complexities of *Rose Hall, Ltd. v. Chase Manhattan Overseas Banking Corp.* Briefly stated, this dispute centered on the value of Rose Hall, a hotel in Jamaica owned by Delaware entrepreneur John W. Rollins, Sr., and leased to Holiday Inns. Rollins took out a mortgage from the Bank of Nova Scotia to build the hotel. Later, in 1974, he borrowed additional money from the Jamaica branch of the Chase Manhattan Bank. The hotel and its grounds constituted the collateral for that loan. Shortly after Rollins got the loan from Chase Manhattan, the socialist government of Michael Manley came to power in Jamaica. American capital and tourists were frightened away and hotel business slumped. The hotel defaulted on paying its debt to Chase Manhattan. The bank took possession of the property and negotiated a sale at a price substantially lower than what John Rollins believed it was worth.

This knotty dispute spawned several lawsuits, one in Jamaica that went on appeal to the Privy Council in London, England, another in the state of Georgia, and finally the case brought in the District Court for Delaware. The *Rose Hall* case was the last case tried before Judge Edwin Steel. The seventy-nine year old judge and a jury endured eighty-one days of testimony, following which the jury deliberated for seven and one-half days before



Portrait of The Honorable James L. Latchum.
Courtesy of the United States District Court
for the District of Delaware.

reaching its decision. One day after the jury returned its verdict, Judge Steel suffered a massive stroke from which he never recovered. Judge Schwartz was assigned to complete the case. His first task was to enter a judgment on the verdict. He then confronted a barrage of motions for retrial and for changes in his judgment order. Judge Schwartz read through the record of the trial during the summer of 1983 and issued his decision in August. To the surprise of all and consternation of some, he set aside the jury's finding of liability of Chase to Rose Hall.[20] The Third Circuit affirmed Judge Schwartz in a one sentence order.[21] At the Third Circuit Judicial Conference held the following year, Judge A. Leon Higginbotham singled out Judge Schwartz's *Rose Hall* opinion as a model of thoroughness and clarity of reasoning.

During the years when the desegregation issue focused public attention on federal justice in Delaware, the district court underwent several important changes. In 1968 Judge Caleb R. Layton retired to senior status and Judge James L. Latchum was chosen to replace him. In 1970 when Judge Edwin D. Steel, Jr., retired, Judge Walter K. Stapleton was appointed to the court. Four years later Judge Murray M. Schwartz filled the seat relinquished by Chief Judge Caleb M. Wright. In 1973 the court moved from its New Deal era courthouse facing Rodney Square at Eleventh and Market Streets to quarters in the newly constructed Caleb Boggs Federal Building located at Ninth and French Streets.

Like his predecessor, Caleb R. Layton, Judge James L. Latchum came from a long-established southern Delaware family. Judge Latchum was born December 23, 1918, in Milford, Delaware, where Latchums have lived since the 1770s. The judge's grandfather owned a tobacco and confectionery store, which the judge's father inherited. Judge Latchum's father, James H. Latchum, was an ardent Democrat and, in addition to keeping store, he served in the state legislature from 1925 through 1934. The future judge grew up in an environment rich with the human diversity of small town life. Adjacent to the Latchum home was a hotel. The hotel owner kept a menagerie of unusual pets, including bears, a wolf, and a baboon. Whenever any of the animals misbehaved, they wound up on the hotel's menu. As a boy James Latchum enjoyed rural pleasures such as fox hunting on foot in the

piney woods behind Rehoboth Bay. Among his most cherished childhood memories was that of attending Franklin D. Roosevelt's first inauguration with his father. His father also took him to visit the courts in Dover and Georgetown, and they sometimes called on his father's friend, Judge Richard Rodney.[22]

After attending Milford's public schools, James L. Latchum spent two years at the Peddie School in Hightstown, New Jersey, before entering Princeton University. He graduated from Princeton in 1940 and entered law school at the University of Virginia. His education in the law was interrupted by World War II. He served in the United States Army throughout the war and thereafter continued his military service in the National Guard, retiring with the rank of lieutenant colonel in 1961. In 1946 he completed the requirements for the LL.B. degree at the University of Virginia, graduating second in a class of thirty-two.

James Latchum went to Wilmington, where he joined the firm of Southerland, Berl & Potter, now Potter, Anderson & Corroon. This same firm, founded by United States Senator and Circuit Court Judge George Gray, produced Judge Paul Leahy as well as several prominent state judges. He became active in Democratic politics and was elected party chairman in both Wilmington and New Castle County. He served a term as Assistant United States Attorney for Delaware from 1951 through 1953, gaining first-hand experience with criminal law. In private practice he concentrated on representing state agencies and private businesses in a variety of corporate and civil law cases. He was also an active member of Hanover Presbyterian Church, where he served as superintendent of the Sunday School, the same congregation and position once held by Judge Willard Hall.

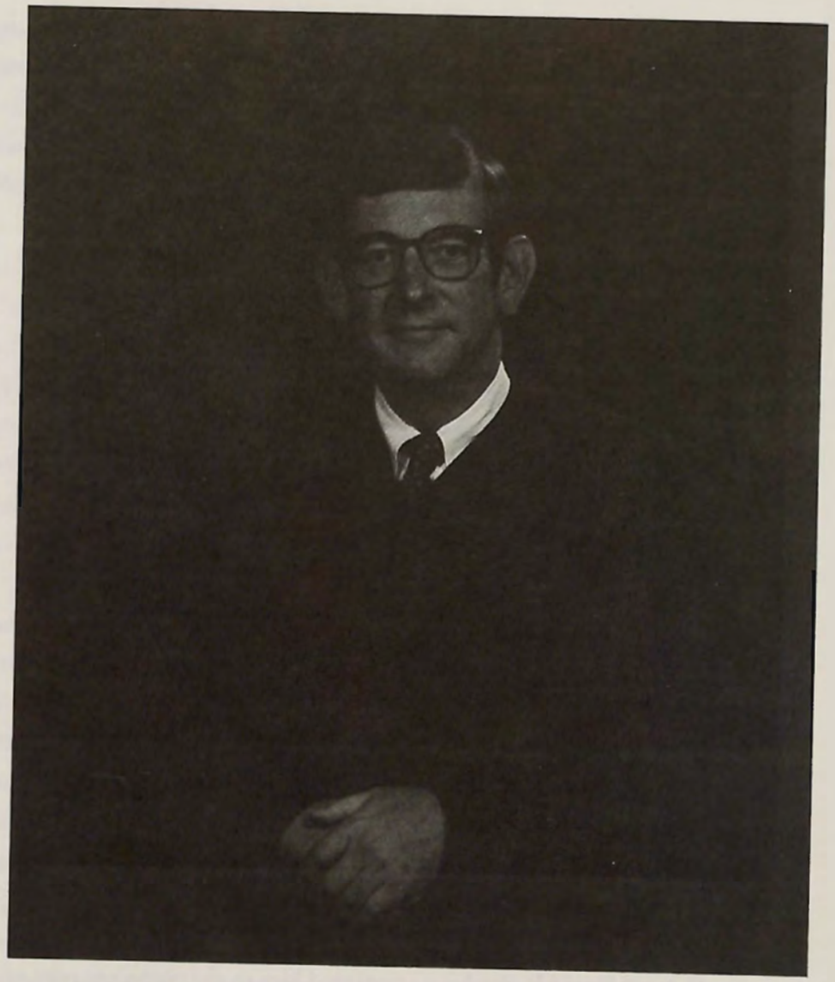
When failing health forced Judge Layton to retire in 1968, Delaware's two Senators were John J. Williams and J. Caleb Boggs, both Republicans. The President was a Democrat, Lyndon B. Johnson. The long-time Democratic National Committeeman from Delaware was William S. Potter, a senior partner in Potter, Anderson & Corroon. Potter knew that Latchum was interested in the judgeship and after checking to make sure that the nomination would be acceptable to state leaders of both parties he wrote to

President Johnson's special counsel concerning Latchum. President Johnson personally called Delaware's Democratic Governor, Charles L. Terry, to make certain that the nomination had his support. Both of Delaware's senators were pleased with the quality of this nomination, as were Wilmington's corporate lawyers of both parties. Judge Latchum's appointment was confirmed by the United States Senate in August, 1968.

Walter King Stapleton, born in Cuthbert, Georgia, June 2, 1934, and appointed to the district court at the age of thirty-six, was the youngest among the cohort of judges appointed between 1968 and 1974. Judge Stapleton's father, T. Newton Stapleton, worked for the Federal Bureau of Investigation and later for the Du Pont Company. During World War II the elder Stapleton was in charge of protection at Du Pont's Hanford Engineering Works, where the atomic bomb was produced. The future judge spent most of his youth in Wilmington, where he attended Alexis I. du Pont School and Wilmington Friends School. Like Judge Latchum, he received his undergraduate degree from Princeton University. After graduating from Princeton *cum laude* in 1956, he entered Harvard Law School, where he earned an LL.B. degree, also *cum laude*, in 1959. He returned to Wilmington, passed the state bar examination, and joined the law firm of Morris, Nichols, Arsht & Tunnell, the same firm that produced his predecessor on the court, Judge Edwin D. Steel. His law practice dealt primarily with business litigation, especially corporate reorganizations, contracts, and securities.

Stapleton became active in the Republican party and was elected president of the Active Young Republicans of New Castle County. In 1963 Attorney General David P. Buckson appointed him to the part-time post of Deputy Attorney General, which exposed him to the criminal law. Later service on the staff of the Delaware Corporation Law Revision Commission and as a member of the Corporation Law Committee of the Delaware Bar Association enhanced his expertise in the field of corporate law. He also authored several treatises on the Delaware corporation law.

When Judge Steel retired to senior status in 1970, Delaware's Senators John J. Williams and J. Caleb Boggs conferred with leading Delaware attorneys concerning a replacement. The Stapleton appointment



Portrait of The Honorable Walter K. Stapleton.
Courtesy of the United States District Court
for the District of Delaware.

proved to be Senator Williams's last, and as senior Senator he was determined to control it. In a letter to Attorney General John A. Mitchell the two Senators announced their choice. "While there were several worthy members of the Bar mentioned, we are recommending that Mr. Walter K. Stapleton be nominated to fill this vacancy."[23] In September 1970 President Richard M. Nixon announced his approval of Stapleton's nomination, and the United States Senate confirmed the appointment in November 1970.

Judges Latchum, Stapleton and Schwartz brought roughly similar experiences to their work on the court, and once there, all three took on the full range of cases that came before them. Considering that the volume of the court's work tripled between 1968 and 1990 and that its variety has expanded with every new federal regulation and national law, the judges had to become conversant with many laws and capable of maintaining a heavy flow of work.

Among the cases that Judge James L. Latchum has tried, several stand out as representative of the breadth of his jurisprudence. Some of these were cases involving the complex area of administrative law. During the early 1970s Judge Latchum heard a series of cases involving the Federal Food, Drug and Cosmetics Act. In one of those cases, *Pharmaceutical Manufacturers Association v. Finch*,[24] the plaintiff manufacturers association sought injunctive relief to restrain Robert H. Finch, Secretary of Health, Education, and Welfare, from enforcing new standards for approving the marketing of drugs.

The federal government's regulation of the drug industry has become ever stricter. In 1938 Congress passed the Food, Drug and Cosmetics Act, which established premarketing clearance procedures to insure the safety of consumer products. In 1962 the law was amended to require that products be not only safe but effective. In 1966 the Federal Drug Administration entered into a contract with the National Academy of Sciences—National Research Council to review the effectiveness of some 2,800 drug products. Disputes concerning the outcomes of those tests led the FDA to promulgate yet another set of regulations called the "September Regulations," which were the cause of the plaintiff's complaint.

Judge Latchum concluded that the FDA had exceeded its authority

and had behaved arbitrarily in refusing to retest some drugs that it had found to be ineffective and ordered off the market. He also concurred with the plaintiff's contention that the FDA had violated the Administrative Procedure Act in not subjecting its latest regulations to prior notice and opportunity for comment. "The considerable confusion and controversy in this proceeding in regard to the feasibility, impact, and basic validity of the September regulations," Judge Latchum said, "indicate that affording notice and opportunity for comment would have been especially appropriate."[25]

In another case involving administrative procedures, a number of television manufacturers, each acting separately, sued the Consumer Products Safety Commission for disseminating information regarding potential fire hazards in television sets. The manufacturers argued that the information in question was confidential, misleading, and inaccurate. The commission cited the Freedom of Information Act as a justification for its action and noted that the manufacturers had refused to cooperate with the commission's request for the safety history of their products. Judge Latchum agreed with the plaintiff, GTE Sylvania Inc., that the release of data gathered so haphazardly would provide no rational basis on which the public could decide the relative safety of various manufacturers' products. He granted an injunction to prohibit the release of this flawed data, noting that "it is difficult to perceive how the public interest would be harmed by enjoining the disclosure of information of dubious accuracy."[26] The judge did, however, permit a limited number of Consumer Product Safety Commission personnel the opportunity to use the fire hazard data for the purpose of developing better safety standards.[27] The commission then filed to move the case from the Delaware District Court to that of Washington, D.C. Judge Latchum denied the request for change of venue.[28] The commission appealed those judgments to the Third Circuit Court of Appeals, which affirmed Judge Latchum.[29] The case was then appealed to the U.S. Supreme Court, which also affirmed Judge Latchum's decision.

In 1970, Congress adopted the Organized Crime Control Act, which contained Title IX, the Racketeer Influenced and Corrupt Organization Act (RICO). This law brought many criminal acts that had heretofore been

handled at the state level under the police power of the federal governments. RICO in particular was intended to help eradicate criminal infiltration of legitimate businesses. A series of cases growing out of alleged violations of this law subsumed under the title *United States v. Boffa* came before Judge Latchum between 1980 and 1983. The seven defendants in this case were associates in an enterprise headed by Eugene Boffa that was involved in the leasing of labor and motor vehicles. The "Enterprise," as Judge Latchum dubbed it, dealt with a number of labor unions, including the International Brotherhood of Teamsters. One of the defendants, Francis Sheeran, president of the Teamsters Local 326, received pay-offs from the Enterprise. Sheeran used his post to assist the Enterprise while it defrauded the members of the local. The racket worked like a shell game. An Enterprise-controlled corporation would supply truck drivers for legitimate corporations, then terminate the contract and recommend another company that could supply drivers. The second company was also controlled by the Enterprise. The drivers employed by the second company were not informed about the collective bargaining contract negotiated by the first company and were systematically defrauded of some of their contracted wages and benefits, which went to the Enterprise.

Part of the defendants' strategy was to submit a plethora of pre-trial motions that attacked the constitutionality of RICO, the validity of the indictment, and the methods used to gather evidence against them. Judge Latchum wrote a 126-page opinion dismissing each of these motions, which he variously described as "woefully unfocused and imprecise" and as "baseless allegations."[30] The defendants then attempted to remove Judge Latchum from the case because he had sat as fact finder in an unrelated case that had involved the Teamster local. Again the judge dismissed the motion, noting that the defendants' claim was untimely since they had not raised this objection earlier. Judge Latchum said that the impressions he might have gained in the earlier case did not prejudice him in this case.[31] He also dismissed a motion that alleged government intrusion into the attorney-client relationship of one of the defendants.[32] The defendants were finally brought to trial and a jury found them guilty on several charges. This finding

was affirmed on appeal to the Third Circuit.[33]

Of the many cases tried by Judge Latchum, the one that attracted the greatest public attention and publicity was *National Association For the Advancement of Colored People (NAACP) v. The Wilmington Medical Center (WMC).* This case grew out of an effort by the NAACP, the City of Wilmington, and Wilmington United Neighborhoods, a grassroots organization of city dwellers, to prevent the Medical Center, a privately-owned health care organization, from relocating its major hospital to the suburbs. The new hospital plan, called Plan Omega, was designed to replace two of WMC's three urban hospitals. The plaintiffs charged that the hospital's relocation would discriminate against the poor and against those in greatest need of medical care. They alleged that the proposed hospital relocation violated sections of the Civil Rights Act of 1964 and of the Rehabilitation Act of 1973. The plaintiffs initially hoped that the United States Department of Health, Education and Welfare (HEW) would invalidate the hospital board's decision to move. When HEW approved the hospital consolidation plan, the plaintiffs amended their complaint in the district court and named HEW as a co-defendant.

Judge Latchum filed nine separate opinions concerning this litigation between January 1977 and September 1982. Resolution of this case required Judge Latchum to work his way through the thicket of legal entanglements represented by various federal statutes. The plaintiffs argued that although the hospital was privately owned and the new construction would be privately funded, it nonetheless fell under the authority of the federal government because it received federal funds from Social Security and similar federal programs as payment for patient services. Judge Latchum rejected this contention saying that "the plaintiffs are urging upon the Court a new doctrine that would make federal the actions of most hospitals and many other entities that have traditionally been viewed as non-federal. The power which Congress has chosen to exercise over the WMC is not sufficient to make Plan Omega a federal project."[34]

Throughout this lengthy and hard-fought legal battle, Judge Latchum sought to limit the district court's involvement. He emphasized the intention

of Congress to make federal agencies of the executive branch responsible rather than the courts in insuring compliance with civil rights and health care statutes. In keeping with this concept, he ordered HEW to investigate the plaintiff's allegations. As a result of this investigation, HEW required the WMC to sign a "contract of assurance," which Judge Latchum wrote was "intended to ensure that WMC fulfills its affirmative duty to eliminate Plan Omega's potential disproportionate impact upon urban minorities." In Latchum's view, HEW had driven a hard bargain, one "that WMC may one day come to regret" to secure the interests of the plaintiffs. Judge Latchum decided that the law had been satisfied and he refused to expand upon those arrangements.[35]

In 1982 the Third Circuit denied the plaintiffs' motion for a rehearing.[36] WMC, finally rid of the legal challenge to Plan Omega, was free to go forward with the construction of its new hospital in suburban Stanton, Delaware.

The mixed caseload that challenged the mind and energies of Judge James L. Latchum also characterized the work of Judge Walter K. Stapleton. Like Judge Latchum, Judge Stapleton had come to the court with a strong background in corporate law. Much of his caseload consisted of the court's traditional patent cases and corporate cases, especially takeovers. But he too dealt with many of the newer types of litigation such as disputes relating to burgeoning government regulation of the environment, the price of oil, and other challenges to policies imposed by federal administrative agencies. Judge Stapleton also handled his share of prisoners' rights suits and employee discrimination suits. His most widely publicized cases, however, dealt with a challenge to a Delaware State Lottery game brought by the National Football League and a suit for defamation of character brought by a priest who had been acquitted on charges of robbery in a state court.

The lottery case, *National Football League (NFL) v. Governor of the State of Delaware*, stemmed from the Delaware State Lottery's creation of a game called "Scoreboard" based on guessing future NFL football scores. The NFL challenged this game and sought an injunction to stop the lottery. The trial took place near the end of the Fall of 1976 and resulted in a verdict in

favor of the state. Judge Stapleton did, however, require the state to clarify its disassociation with the NFL in all Scoreboard materials, but he dismissed the plaintiff's central claim that the lottery had created a "forced association with gambling" for the NFL.[37]

The case of Father Bernard R. Pagano, the priest who was arrested in 1979 and charged with armed robbery, attracted widespread public attention. It was alleged that Father Pagano was the mysterious "gentleman bandit" who had perpetrated a series of armed robberies in New Castle County. The priest was exonerated quite melodramatically when another person came into the courtroom and confessed to the crimes. More than two years later Father Pagano brought suit for defamation of character and violation of his civil rights against the policemen who had arrested him. Judge Stapleton dismissed the priest's charges under Delaware's two-year statute of limitations.[38]

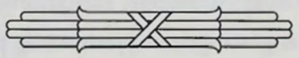
Among the employment discrimination cases adjudicated by Judge Stapleton a significant example was *The Equal Employment Opportunity Commission (EEOC) v. E. I. du Pont de Nemours & Co.* EEOC charged that Du Pont had violated Title VII of the Civil Rights Act of 1964 in its hiring and promotion policies at the Chestnut Run and Christiana Textile Research Laboratories. The government's case relied upon statistical evidence that was purported to reveal discriminatory patterns in the racial composition of the Du Pont laboratories' work force, and testimony from black employees who claimed to have experienced discrimination. Judge Stapleton failed to find evidence of the discriminatory practices asserted by the EEOC. The Du Pont Company acknowledged that it had practiced racial discrimination in the period before 1960, but the judge was persuaded that the company had moved decisively to hire and promote blacks after that date. Statistical data showing that black employees remained more heavily represented at the lower end of job categories several years after the enactment of the Civil Rights Act could be explained by Du Pont's seniority system, the Judge said, and did not constitute an effort to evade or ignore the law. In reaching his conclusion, Judge Stapleton took into account the U.S. Supreme Court's ruling in several related cases that liability under the civil rights law could not

extend to employment practices of the prelaw period. "The evidence presented in this case demonstrates that the effects of the past sins of our society against its black citizens are not easily eradicated and that some of those effects are still with us," Stapleton observed.[39]

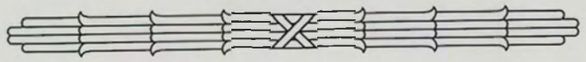
In the EEOC's case against Du Pont, a large government agency acted for plaintiffs who had allegedly experienced discrimination, but in the case of *Jackson v. H.U.D. and Wilmington Housing Authority*, government agencies were charged with discriminatory practices that threatened the lives of public housing residents. Ima Jean Jackson, a black single parent with a minimum wage job, lived in a public housing project owned and operated by the Wilmington Housing Authority. Her young son, Stephen, acquired severe disabilities from ingesting lead paint while playing on the porch of their home. Mrs. Jackson urged that the project be repainted so that other children would not be harmed, but W.H.A. ignored her pleas. She told her story to lawyers at the Community Legal Aid Society, and received encouragement to file a suit in federal court under the Civil Rights Act of 1871, the Fourteenth Amendment, and the Lead-Based Paint Poisoning Prevention Act of 1973. The case was assigned to Judge Stapleton in 1984.

When the *Jackson* case first came before Judge Stapleton, W.H.A. argued that it was already taking appropriate measures to comply with the law. Based on this testimony, Judge Stapleton ordered the W.H.A. to comply with the law, but denied the plaintiff's request for an injunction to force W.H.A. to inspect its buildings and to eliminate the paint promptly. In spite of W.H.A.'s assertions to the contrary at trial, Mrs. Jackson and the staff at Legal Aid knew that lead paint pervaded Wilmington's housing projects. Judge Stapleton had left the door open for the plaintiff to demonstrate the need for more decisive court action, but to do so would require a thorough investigation of paint samples from W.H.A.'s 1636 housing units. Utilizing the services of the plaintiff's counsel's family and friends of Legal Aid, including two volunteers who were homeless men from the Emmanuel Dining Room, Ima Jean Jackson and the lawyers at Legal Aid set out to secure samples and check them. When they returned to court they were armed with convincing evidence that there was poisonous lead paint throughout W.H.A.'s

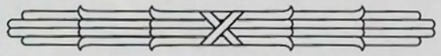
buildings. Judge Stapleton believed the evidence. He met with officials of W.H.A. and HUD and worked out a consent decree by which HUD agreed to supply several million dollars to permit W.H.A. to repaint immediately. This was the first case in the United States to litigate the application of the Lead-Based Poisoning Prevent Act to public housing. This remarkable victory for a poor person against a large government institution gives meaning to our judiciary's aspiration to provide "equal justice under law."[40]



CHAPTER VIII



THE COURT AT AGE 200



THE COURT of the 1960s and 1970s consisting of Judges Latchum, Stapleton and Schwartz was transformed during the mid-1980s. In 1984 Judge Latchum retired to senior status. Judge Stapleton was elevated to the Third Circuit Court of Appeals in 1985. That same year the efforts of the Delaware Bar and Delaware's Senator Joseph Biden were rewarded with the creation of a fourth active judgeship for the Delaware District. The people appointed to fill these three seats, together with senior judges Caleb M. Wright and James L. Latchum, constituted the District Court for Delaware when the court reached the end of its second century in 1989.

President Ronald Reagan, who came to office in 1981, believed that many of the sitting federal judges had transcended the written law and the Constitution to make law from the bench. He and his attorneys general, William French Smith and Edwin Meese III, were determined to appoint individuals to the federal courts who would exercise judicial restraint in interpreting the laws. The Reagan Justice Department strategy was to fill the courts with relatively young judges so that the Reagan legacy would be preserved far into the future.[1]

The first opportunity for President Reagan to appoint a judge to the Delaware District Court came with the retirement of Judge Latchum in 1984. Senator William V. Roth, the state's senior and only Republican senator, forwarded the name of Joseph J. Longobardi for the post. Longobardi was an active Republican and an experienced state judge. Among state prosecutors and convicted felons he was known as "long-time Longobardi"

Portrait of The Honorable Joseph J. Longobardi.
Courtesy of the United States District Court
for the District of Delaware.

because he meted out stiff sentences. The most interesting aspect of this appointment, however, was not Judge Longobardi's judicial philosophy or attitude toward crime, but rather his rise from a working class immigrant family to the federal court bench.

Joseph J. Longobardi was born in 1930 in Wilmington, the son of an Italian immigrant father who had begun life in a village east of Naples, and an American-born mother. The future judge's father immigrated to America at age fourteen and eventually settled in Wilmington where he learned the trade of shoemaking. He opened a shop at Seventh and King Streets where he employed up to ten people making and repairing shoes. As a youth, Judge Longobardi took his place at a cobbler's bench on weekends and during vacations. Calvin Jones, a black minister who worked alongside young Longobardi in the shoe shop, later recalled that "when he repaired shoes, it had to be just so, 100 percent exact. That's the kind of kid he was. He grew up like that. His daddy was like that."[2]

Joseph J. Longobardi attended Catholic schools in Wilmington and graduated from Archmere Academy. He entered Washington College in Chestertown, Maryland and graduated with a major in economics in 1952. Longobardi then began a short-lived career managing a family restaurant and selling insurance. Searching for a more appealing career he applied to Temple University Law School and was accepted. He commuted to Philadelphia by train daily to attend classes while holding a part-time job to support himself. In spite of these obstacles he was appointed associate editor of the *Temple Law Quarterly* and won the Emily Shull Award for Excellence in Research and Writing.

After graduating from Temple in 1957, Longobardi opened a legal practice in Wilmington. He also became a part-time prosecutor in the State Attorney General's office. In 1961 he formed a partnership with another young attorney, Murray M. Schwartz. In 1974 when Murray Schwartz was appointed to the federal bench, Governor Sherman W. Tribbitt, a Democrat, chose Joseph Longobardi to fill a position in the State Superior Court. In 1982 Governor Pierre S. du Pont IV, a Republican, appointed him Vice Chancellor of Delaware's Court of Chancery, a court of equity that decides

many important corporate cases. Judge Longobardi's appointment to the District Court for Delaware came two years later. In each case his nomination was unanimously confirmed by the state Senate or the United States Senate. With the retirement of Judge Murray M. Schwartz to senior status on July 1, 1989, Joseph J. Longobardi became Chief Judge of the District Court. Chief Judge Longobardi is the only person in the history of Delaware to serve as judge in all three of the major trial courts in the state, the Superior Court, the Court of Chancery, and the United States District Court.

Since 1973, Wilmington's federal building, in which the district court offices and courtrooms are located, has stood at Ninth and King Streets, a short two blocks north from the location of the shoe shop where Judge Longobardi once labored under his father's critical eye. In 1914 when Judge Longobardi's father came to America, Edward Green Bradford, II presided over the District Court for Delaware. In those days only people from an elite, old American background could aspire to such an honored position as judge of the district court. America has traveled a long way toward a more inclusive society since 1914.

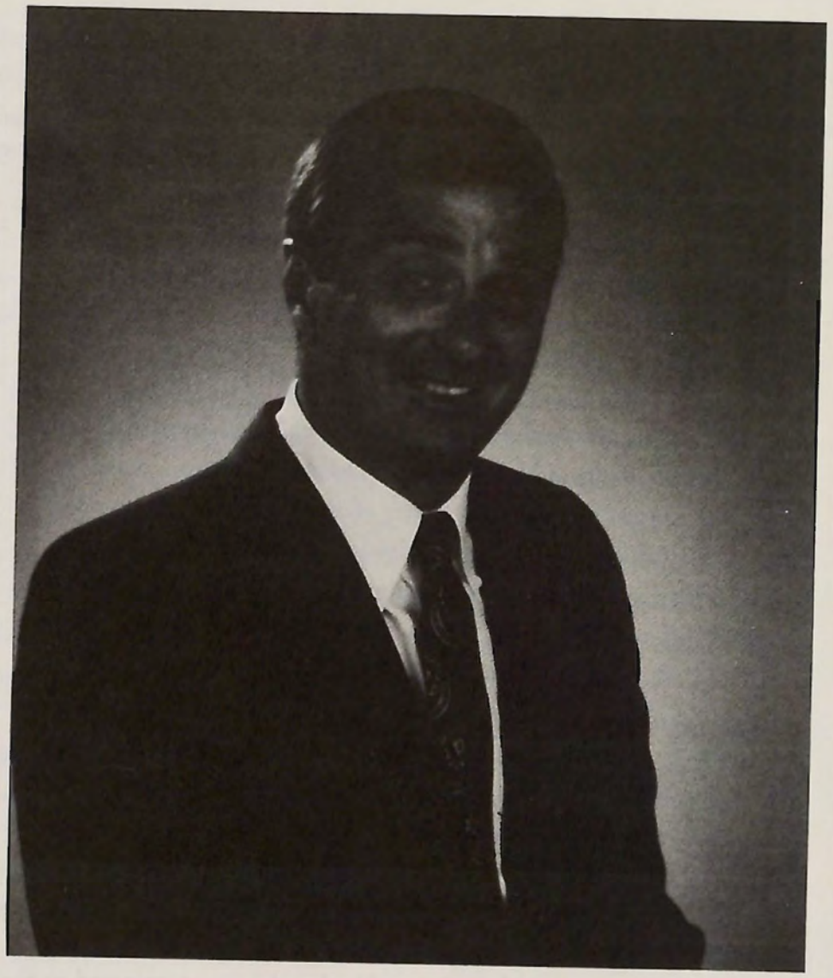
Joseph J. Farnan, Jr. who was appointed in 1985 to the newly created fourth seat on the court, came from a working class background similar to Longobardi's. Farnan was born in Philadelphia on June 15, 1945, the son of a truck driver father and a mother who, having survived polio in her childhood, became a factory seamstress in Philadelphia's garment district. When Joseph Farnan was a boy his family moved to Westville, New Jersey. Joseph attended Catholic schools in New Jersey before going to King's College in Wilkes Barre, Pennsylvania. He earned a bachelor of arts degree with a major in government in 1967. He then entered the University of Toledo College of Law where he was the top student in his classes in constitutional law and administrative law. After graduating with a J.D. degree in 1970 Joseph Farnan returned briefly to New Jersey before coming to Delaware to practice law in 1972. After passing the Delaware Bar he joined the firm of Sullivan, Hurley, Farnan & Falasca where he worked in the areas of civil, criminal, and real estate law.

The most important career step that the young lawyer made was to

become involved in state and local government in ever-increasing areas of responsibility. From 1972 until 1975 Joseph Farnan served as Assistant Public Defender; in 1976 New Castle County Executive Mary Jornlin named him County Attorney for New Castle County; in 1979 he became Chief Deputy Attorney General for the state. Finally in 1981, just nine years after he had moved to Delaware, Joseph Farnan was appointed U.S. Attorney for the District of Delaware. During these years he also taught courses in political science and criminal justice at Wilmington College, Delaware Technical & Community College and Delaware Law School.

Joseph Farnan was U.S. Attorney during the early 1980s when national attention was focused on the scourge of illegal drugs in American society. Senator William V. Roth, Jr. of Delaware chaired a Senate select committee to investigate the involvement of organized crime and motorcycle gangs in the distribution of drugs. Delaware's Democratic Senator, Joseph R. Biden, Jr., then a senior member of the Senate Judiciary Committee, was also interested in this problem. Senator Biden conducted hearings in Dover, Delaware at which U. S. Attorney Farnan testified about his successful efforts to prosecute members of New Castle County's Pagan Motorcycle Club. Farnan's spirited prosecution of the Pagans earned him the respect of both of Delaware's senators. When Senator Roth called Joseph Farnan to his Wilmington office in 1985 and asked the U. S. Attorney if he would be interested in a federal judgeship it was only the second time that the two men had met. Farnan's nomination, like Longobardi's, resulted from his proven ability to fight crime in the courts.

Joseph Farnan was forty years old when he was nominated to the District Court. His relative youth, strong record as a criminal prosecutor, and active involvement in the Republican party appealed to the Reagan administration. He was easily confirmed and sworn in on July 26, 1985. The new judge presented an unpretentious image to the public. "Still same old Joe," said a headline in the Wilmington *Morning News*.[3] A photograph accompanying the article pictured Judge Farnan surrounded by his five children and wife, Candy, a real estate agent. Farnan was quoted as saying that although he had never contemplated becoming a judge, he was greatly honored by the



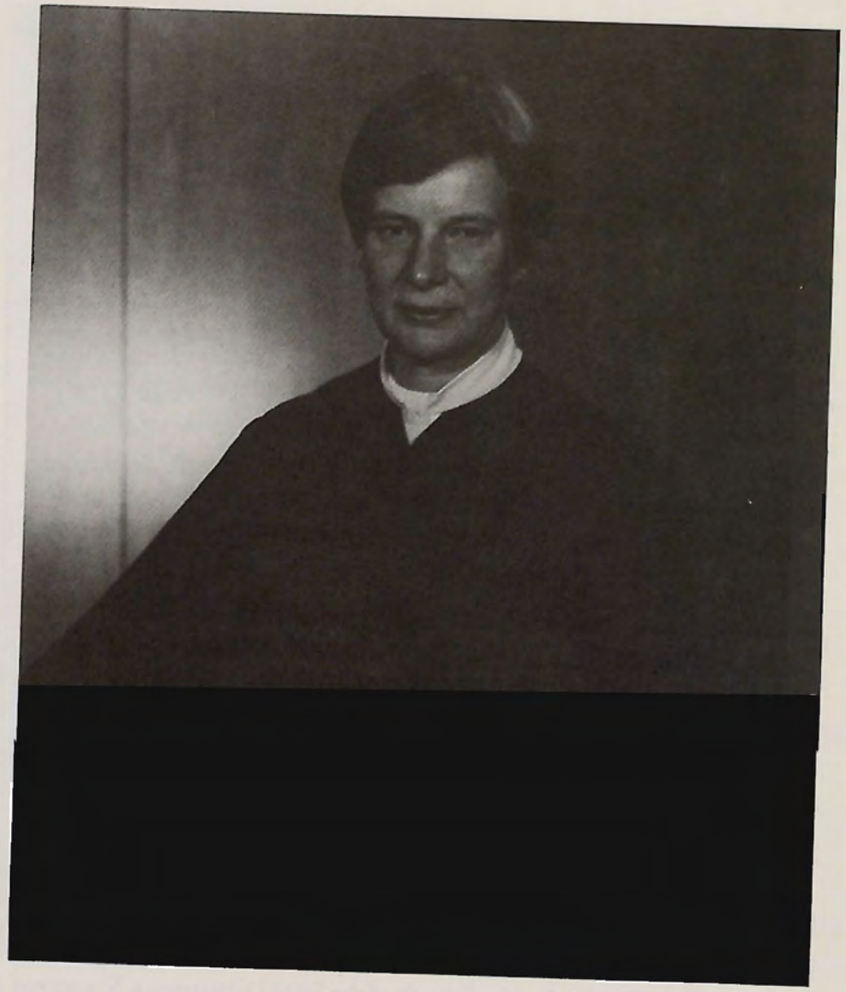
Portrait of The Honorable Joseph J. Farnan.
Courtesy of the United States District Court
for the District of Delaware.

opportunity. "I never knew any attorney who would turn down a chance to be a federal judge. If you like the law, and you like dealing with the public sector, that's the best place for a lawyer to be."[4]

The third new appointment to the court during the 1980s also represented a departure from tradition and an opening of opportunities for formerly excluded groups, but in a different way. Whereas Judges Longobardi and Farnan came from working class backgrounds, attended non-elite colleges and law schools, and began their legal practice in small general practice law firms, Jane Richards Roth's background represented the older tradition of the court. Her appointment was unusual in two ways, however: she was female, and she was the first wife of a United States Senator to be appointed to the federal bench. In 1985 this latter characteristic represented a far greater obstacle to her selection than did the former.

Jane Richards was born on June 16, 1935 in Philadelphia, Pennsylvania. She is the daughter of Robert H. Richards, Jr. and the granddaughter of Robert H. Richards, Sr., founder of Richards, Layton & Finger, one of Delaware's big three corporate law firms. It is interesting to note that although several lawyers from the other two major corporate firms, Morris, Nichols, Arsht & Tunnell, and Potter, Anderson & Corroon, have served as judges in the federal court, Jane R. Roth is the first representative of her grandfather's firm to do so.

Although she grew up surrounded by male family members who were lawyers, Jane Richards did not immediately gravitate toward a career in the law. She majored in Art History at Smith College and after graduating in 1956 joined the Foreign Service Branch of the State Department. She served as a secretary and administrative assistant in U.S. embassies in Rhodesia, the Republic of Congo, and Iran. Few women of her generation sought out such experiences, and fewer still made the decision that she made to become a lawyer. Jane Richards entered Harvard Law School and completed an LL.B. degree *cum laude* in 1965. Returning to Wilmington she married fellow Harvard Law graduate William V. Roth, Jr. and began to practice law at Richards, Layton & Finger. As an attorney, Jane R. Roth focused on defending physicians and health care facilities in medical malpractice suits.



Portrait of The Honorable Jane Richards Roth.
Courtesy of the United States District Court
for the District of Delaware.

In the 1960s women were rare in the Delaware Bar. As late as 1982 only 8.2 percent of the state's lawyers were women. Women were even more rare in Wilmington's top corporate law firms. Most women lawyers worked for government agencies, had single practices, or were members of small firms.[5] Set against this background, Jane Roth was in the vanguard of women lawyers in Delaware even before she was appointed to the federal bench. Her capability as a trial lawyer brought her a steady stream of physician clients who placed their confidence in her legal acumen.

As the wife of Senator William V. Roth, Jr., Jane R. Roth's ambition to become a federal judge was complicated by unique difficulties. The federal anti-nepotism law prohibits a public official from appointing or advocating the appointment of a relative for a position over which that official has influence. Since her husband was Delaware's Republican senator, this law precluded the Roths from following the normal course to an appointment. As Jeffrey Hazard, a Yale law school professor and expert on legal ethics commented in the *Washington Post*, Jane Roth's nomination by her husband would have constituted "the quintessence of the appearance of impropriety." Those who were familiar with the Roths recognized, however, that Jane Roth would be taking a substantial salary reduction to trade her law practice for a judgeship. She was also widely respected as a lawyer who possessed the "judicial temperament" that is sought after in judges. Her aptitude for the position saved the Roths from reproach.

Jane Roth had supported the Reagan-Bush candidacy and knew Vice President George Bush personally. She asked the vice president for a meeting at which she discussed various possible governmental appointments, including that of a federal judgeship. Vice President Bush, believing that Jane Roth would make a good judge, passed her name on to the Justice Department. President Reagan called Senator Roth to ask him to forego his privilege as senior senator to permit the President to nominate Jane R. Roth directly. When the President announced his nomination on October 11, 1985, Delaware's other senator, Joseph R. Biden, Jr., the ranking Democratic member of the Senate Judiciary Committee, was enthusiastically supportive. Biden described Jane Roth as a "bright, well-educated, competent person

who has had trial experience—which is one of the things usually lacking in a lot of nominees sent up."[6] Jane R. Roth's nomination was confirmed by the United States Senate on November 1, 1985 and she was invested on November 18, 1985, the nineteenth judge to serve in the District Court for Delaware, and the first woman.

In 1989, the year of the bicentennial of the beginning of the United States government under the Constitution, the District Court for Delaware underwent yet another change when Judge Murray M. Schwartz retired to senior status and Judge Joseph J. Longobardi became Chief Judge. Longobardi was well prepared to take over the administration of the court. As a state judge he had devised and implemented a system for more expeditious handling of the Superior Court's heavy criminal caseload. His study of caseflow management entitled *One Court Shares Its Method For Unclogging Caseflow* earned national recognition in the form of an award from the National Center for State Courts. Efficiency-mindedness has recently transformed some aspects of the District Court as well. The recent introduction of personal computers and electronic mail have given the judges and their staffs tools comparable to those long since available to most lawyers in private practice.

The increased number of cases coming before the court puts a premium on good administration. When compared to her larger neighbors in the Third Circuit, Pennsylvania and New Jersey, the District of Delaware generates a relatively modest number of cases. For example, in the twelve month period ending June 30, 1990, the total number of civil cases commenced in the Delaware court was 779. At the same time more than 5,000 civil cases were commenced in New Jersey and nearly 9,000 in just the eastern section of Pennsylvania. But compared to other less populous states such as Maine, Rhode Island, New Hampshire, and Vermont, the Delaware court is busier.[7] The total number of criminal cases commenced in Delaware's federal court during that same twelve month period was 135. Here again this figure looks relatively small when compared to New Jersey's 679 and eastern Pennsylvania's 515, but it transcends the number in the federal courts of several of the New England states.

Another way to look at the caseload of the Delaware court is to

compare these statistics for 1990 with statistics for earlier years. Going back to 1950 the U.S. courts' statistician recorded that 109 civil cases were begun in the Delaware District in that year along with forty criminal cases. By 1960 the number of civil cases had grown to 138 while criminal cases had increased to sixty. This steady increase continued through 1970 when 192 civil cases were commenced in the court together with sixty-eight criminal cases. The number of criminal cases went up to eighty-eight in 1980.[8] During the 1980s while the number of civil cases, including patents, corporate, and securities matters, remained stable, criminal cases increased substantially. This increase resulted from the federal government's initiative in prosecuting drug dealers as part of its well publicized "war on drugs."

During the late 1980s the District Court for Delaware continued to attract a disproportionate share of corporate and patent cases. Cases arising from government regulations, which had become a major new emphasis during the decade before, remained a significant part of the court's work. Criminal prosecutions and prisoners' petitions constituted a third major focus.

None of the court's newly appointed judges had previously been involved in patent litigation, but since becoming federal judges all three have adjudicated cases in this complex field. In 1987 Judge Longobardi presided over the trial of *Phillips Petroleum Co. v. United States Steel Corp.*, which involved the alleged infringement of a patent for crystalline polypropylene. The plaintiff, Phillips Petroleum, had patented this chemical compound in 1953. The defendant, U.S. Steel, claimed that its new polypropylenes were so far superior to the 1953 patented product as to be another substance. The case revolved around the exposition of highly technical organic chemistry. Judge Longobardi concluded that however improved the U.S. Steel product might be, it still derived from Phillip's patent. Reducing 186 pages of written opinion to one single concept, the judge wrote, "if one could escape a finding of infringement merely by pointing to the fact that his product is better, the granting of a patent would be rendered almost meaningless."[9]

In 1988 Judge Joseph Farnan tried a similarly complex patent infringement case, *RCA Corp. v. Data General Corp.* The issue before the

court was whether Data General had infringed upon a patented device created by an RCA engineer that could display computer messages onto television screens. The defense contended that RCA had violated its claim to exclusive patent rights to the device when it offered the invention to the Federal Aviation Administration more than one year before filing an application for a patent. Judge Farnan concurred in Data General's assertion that this offer had constituted putting the device "on sale" and ruled for the defendant.[10]

Judge Jane Roth has decided a number of patent infringement cases, many in jury trials. Diverse examples of these cases are *Read Corp. v. Portec and United Sweetener USA Inc. v. NutraSweet Co.* The former case was brought by an inventor who had designed a screening device called the "screen-all" to separate excavated dirt according to its degree of coarseness. A payloader tractor could dump its load into one end of the screen-all and the machine would separate it into three piles as dirt, stones, and unusable debris such as tree stumps. The screen-all replaced a more cumbersome method of dirt separation that required two devices with the memorable names of the "grizzly" and the "dinosaur." After Read had patented his device, Portec, a major manufacturer of dinosaurs, began manufacturing its version of the screen-all machine. Judge Roth found that Portec had infringed on Read's patent and brushed aside the defendant's efforts to obfuscate the validity of this finding as so much "syntactic quibbling."[11]

Judge Roth began her opinion in the Nutrasweet case with the observation that "patent litigation, while not as intriguing as homicide investigation, often has high stakes and interesting twists and turns." Her remark could be applied to any of the patent cases discussed in this book. More than any other form of litigation, patent cases provide insight into the creative process of invention and discovery as well as into business strategies by which these discoveries are marketed. In addition to hearing testimony from scientists and inventors about their research and discoveries, the court is usually also enlightened by testimony from business people who shape corporate strategies around these inventions.

The Nutrasweet suit resulted from Dutch-owned United Sweetener

USA's plan to introduce to America a new sugar-substitute product called "Sweetmatch." The case was more complicated than most patent disputes because while the case was being tried, a reexamination of the patent in question was pending in the office of the Commissioner of Patents. The major questions raised in the case before Judge Roth rested upon subtle nuances of wordings. Nutrasweet was trying to block the introduction of its rival's product. As part of its defense strategy, Nutrasweet questioned the federal court's jurisdiction. To settle this nettlesome issue Judge Roth undertook what she called "a little jurisprudential archeology" to demonstrate that the relevant federal rule gave the district court jurisdiction over the case. Although her opinion is replete with complex organic chemical formulae, the judge's decision rests upon the proper meaning of the single phrase "effective amount" when applied to the manufacture of Sweetmatch.[12]

Administrative law plays a major role in the modern federal court. Significant complications arise in litigation when federal regulatory agencies as well as the litigants are involved. Agencies have their review procedures that to some extent parallel the responsibilities of the courts. Frequently a federal agency is the plaintiff in litigation before the court on behalf of persons who have allegedly been denied some legal or constitutional right. The opposite situation, where a plaintiff seeks the court's intervention to make a federal agency supply a service to them, is also common. During the late 1980s a great many of the major cases that came before the District Court for Delaware expressed one or another of these conditions.

A federal agency's refusal to provide a service was the issue in *Malloy v. Eichler*, a case that came before Judge Joseph Longobardi in 1986. Brenda Malloy was one of a group of welfare mothers who were declared ineligible for further payments from Medicaid. The Delaware Department of Health and Social Services denied Brenda Malloy this support because a family member had moved into her home whose earnings raised the household's income slightly above the standard set by the DDHSS and the United States Department of Health and Human Services. At the trial the plaintiffs' attorneys provided evidence that in spite of the presence of a grandparent or sibling in each of the plaintiffs' households, these families were unable to

afford necessary medical care. The state and federal health and welfare agencies countered that the plaintiffs could seek assistance from private charity.

Judge Longobardi sympathized with the hardships of the plaintiffs and with their plight in dealing with labyrinthine and resistant bureaucracies. The resolution of the case depended on interpretation of government regulations. Judge Longobardi's understanding of the Supreme Court's ruling in a similar case favored the plaintiffs and was at variance with the interpretation of that same ruling by the government's administrator of Medicaid. Judge Longobardi concluded his opinion with the observation that

> defendants are asking this court to find that plaintiffs will not suffer irreparable harm to their health on the fortuitous possibility that a charitable program which offers limited services...will continue to exist. This we cannot do. Plaintiffs are...categorically entitled to free medical care. To require that they seek care at a facility which they may not be able to afford or to reach, and which may not offer the help that they need, is to expose them to a considerable risk of irreparable injury.[13]

An example of a case where a federal agency brought suit on behalf of people who allegedly had been denied their legal rights by a state agency was that of *EEOC v. State of Delaware Department of Health and Social Services.* This case, which came before Judge Roth in 1987, resulted from an employee relations complaint filed by nurses who were employed by a state agency. The EEOC argued that the state health agency had violated the Equal Pay Act by classifying the group of female public health nurses in a lower pay category than the category assigned to the agency's one male physician's assistant. The defendant, Department of Health and Social Services, contended that the pay categories had been assigned according to an objective standard of job difficulty. EEOC disputed the state agency's claim and introduced evidence to show that the nurses' duties were the equivalent of those performed by the physician's assistant. The jury found in favor of the EEOC but Judge Roth granted a motion for a new trial. Although the jury believed that sex bias had been proven, Judge Roth found no evidence that sex had been a factor in

assigning the pay categories. The case was appealed to the Third Circuit where the jury's verdict was affirmed.[14]

Another case that grew out of governmental efforts to create fair employment practices was *Krupa v. New Castle County.* The plaintiffs were white police officers who challenged the New Castle County Police Department's promotion standards. They alleged that the standards were rigged to give unfair advantages to black officers. The plaintiffs' case rested on the fact that a black policeman who scored much lower than did some of the whites who took the test was promoted and the whites were not. This case came before Judge Longobardi in 1990, one year after the U.S. Supreme Court had established in *City of Richmond v. J. A. Crosson* that the Equal Protection Clause of the Fourteenth Amendment requires affirmative action policies to protect the rights of racial majorities as well as minorities. Judge Longobardi found that the county's police promotion system did not meet the strict scrutiny standard as enunciated by the Supreme Court. He pointed out that the county had successfully recruited a higher percentage of black officers onto the police force than the percentage of blacks in the county's population as a whole and noted that a more race-neutral promotion policy could still insure that some blacks would be promoted to higher positions. "Our goal," the judge said "is to attain a society free of the prejudices and bigotry which marked, indeed marred, the early centuries of this republic." He declared the county's plan unconstitutional in that it violated the plaintiffs' equal protection of the laws.[15]

The expansion of administrative and civil rights litigation has not signaled a diminution of corporate litigation. In the 1980s, for example, the case from the 1920s that pitted The Coca-Cola Co. which manufactured syrup against the Coca-Cola bottlers was back in the Delaware court. In a series of cases involving The Coca-Cola Company Judges Murray Schwartz and Joseph Farnan dealt with the complications that arose in the pricing agreement when non-sugar sweeteners were introduced into the syrup formula.[16] But while this old litigation was being revisited in its modern form, the court was also called upon to adjudicate cases that grew out of the new 1980s style of corporate expansion, the hostile takeover or forced

merger.

In 1988 Black & Decker Corp. brought suit in Delaware's federal court against American Standard, Inc., a company that it was attempting to acquire. Black & Decker sought an injunction to prevent American Standard from putting into action a "poison pill" plan to recapitalize its stock so as to frustrate Black & Decker's acquisition effort. After a thorough examination of the statutes and court rulings that were pertinent to this situation, Judge Longobardi found that no matter what defensive action American Standard chose to take, it was in fact up for sale and must proceed according to Delaware's corporate law. Based on these considerations, the judge granted the injunctive relief sought by the plaintiff, Black & Decker.[17]

Another takeover case, *City Capital Associates Ltd. v. Interco, Inc.*, challenged the constitutionality of Delaware's 1988 anti-takeover law, the Business Combinations Statute. The statute was designed to restrict the ability of a stockholder in a target corporation to merge with, sell, lease or enter into other combinations for the purpose of assisting a hostile takeover plan for a period of three years. Judge Joseph Farnan upheld the constitutionality of the Delaware statute against the claims of City Capital Associates.[18]

Perhaps the most legally complex of the recent corporate cases to come before the District Court is that of *Phoenix Canada Oil Co. v. Texaco, Inc.* In the early 1960s predecessor companies to Phoenix established oil exploration rights in a section of Ecuador on the east, or inland, side of the Andes mountains. Oil was later discovered on this land and Phoenix's predecessors entered into an agreement with a consortium consisting of Gulf Oil and Texaco to exploit this resource. Under the terms of this agreement, Phoenix was to receive two percent of the income from the oil produced. The consortium sank wells and built a pipeline at great expense from the oil fields across the mountains to the Pacific Coast. In 1972 a military junta took over the government of Ecuador. The new government proclaimed that the oil rights belonged to the people of Ecuador. In a series of laws of increasing severity, Ecuador's government raised the taxes on foreign oil companies. Faced with these conditions, Gulf Oil withdrew from the consortium and Texaco negotiated to sell a portion of its production to an agency of the

Ecuadorian government. The agreement by which the consortium was to pay Phoenix two percent of its earnings had not been negotiated in the contemplation of such altered conditions. Differing interpretations of that agreement brought Phoenix and Texaco into the federal court.

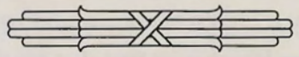
The case came before Judge Jane Roth, whose earlier experience in the State Department was a useful background for untangling the conflicting requirements of Ecuadorian law and American contract law. Judge Roth entered a judgment for Texaco on the oil production rights but accepted Phoenix's argument that a breach of contract had occurred. She, therefore, required that Texaco pay Phoenix its past due royalties.[19]

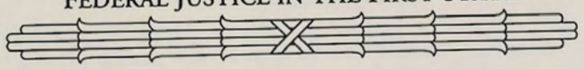
On July 22, 1991, Jane Richards Roth was installed as United States Circuit Judge for the U.S. Court of Appeals for the Third Circuit. In her remarks that day Judge Roth drew attention to how much she had learned through her service on the District Court. She recalled that as an attorney her experience of the court had been one-dimensional because she saw only those aspects of the court that touched upon her practice. To see the court from a judge's perspective was to see the wide range of matters that come before it. Federal court judges spend as much as ten percent of their time reviewing prisoners' petitions. They adjudicate complex administrative and patent cases. They must know civil rights law and corporate law. They conduct ceremonies for the naturalization of new American citizens. The list of responsibilities of a modern federal judge far transcends those of their predecessors two hundred, one hundred, or even fifty years ago.

Jane Roth's elevation to the Court of Appeals represents but one more step in the ongoing evolution of Delaware's District Court. The court's two vacancies will shortly be filled and the institution will enter a new era in its history. By American standards and by the standards of most of the world, the history of the United States District Court for Delaware is now very old. Delaware, the First State to ratify the Constitution, was among the first federal judicial districts established by Congress. But old though it may be, the court is still evolving and adapting to ever changing times.

Throughout its history the District Court for Delaware has been served by judges who have placed the Constitution above their personal

feelings or the vagaries of popular sentiment. The strength of character of these judges, together with their ability to interpret the law and to apply the law, has been essential to maintaining our constitutional government, our personal freedoms, and our economic system.





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[13] *Malloy v. Eichler*, 628 F. Supp. 582 (D. Del. 1986).

[14] *EEOC v. State of Delaware Department of Health and Social Services*, 667 F. Supp. 1057 (D. Del. 1987).

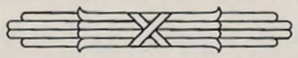
[15] *Krupa v. New Castle County*, 732 F. Supp. 497 (D. Del. 1990).

[16] *Coca-Cola Bottling Co. of Shreveport, Inc. v. The Coca-Cola Co.*, 107 F.R.D. 288 (August 20, 1988 and 110 F.R.D. 363 (May 23, 1986).

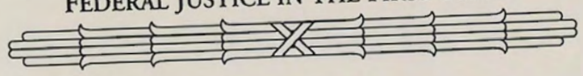
[17] *Black & Decker Corp. v. American Standard, Inc.*, 682 F. Supp. 772 (D. Del. 1988).

[18] *City Capital Associates, Ltd. v. Interco, Inc.*, 696 F. Supp. 1551 (D. Del. 1988).

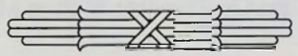
[19] *Phoenix Canada Oil Co. v. Texaco, Inc.*, 658 F. Supp. 1061 (D. Del. 1987).



FEDERAL JUSTICE IN THE FIRST STATE



APPENDICES



JUDGES

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

The Honorable Gunning Bedford, Jr.

Served: September 30, 1789 to April 15, 1812
Appointed by President George Washington

The Honorable John Fisher

Served: April 23, 1812 to April 23, 1823
Appointed by President James Madison

The Honorable Willard Hall

Served: May 6, 1823 to December 7, 1871
Appointed by President James Monroe

The Honorable Edward Green Bradford

Served: December 7, 1871 to January 16, 1884
Appointed by President Ulysses S. Grant

The Honorable Leonard Eugene Wales
Served: March 20, 1884 to February 8, 1897
Appointed by President Chester A. Arthur

The Honorable Edward Green Bradford, II
Served: May 21, 1897 to May 20, 1918
Appointed by President William McKinley

The Honorable Hugh Martin Morris
Served: March 1, 1919 to June 30, 1930
Appointed by President Woodrow Wilson

The Honorable John P. Nields
Served: July 14, 1930 to August 26, 1943
Appointed by President Herbert C. Hoover

The Honorable Paul C. Leahy
Served: February 2, 1942 to July 3, 1966
Appointed by President Franklin D. Roosevelt

The Honorable Richard S. Rodney
Served: August 7, 1946 to December 22, 1963
Appointed by President Harry S Truman

The Honorable Caleb M. Wright
Served: August 4, 1955 to
Appointed by President Dwight D. Eisenhower

The Honorable Caleb Rodney Layton, III
Served: April 29, 1957 to May 6, 1988
Appointed by President Dwight D. Eisenhower

The Honorable Edwin DeHaven Steel, Jr.
Served: June 9, 1958 to July 26, 1986
Appointed by President Dwight D. Eisenhower

The Honorable James L. Latchum
Served: August 22, 1968 to
Appointed by President Lyndon B. Johnson

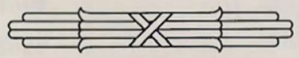
The Honorable Walter K. Stapleton
Served: November 30, 1970 to May 7, 1985
Appointed by President Richard M. Nixon

The Honorable Murray M. Schwartz
Served: May 2, 1974 to
Appointed by President Richard M. Nixon

The Honorable Joseph J. Longobardi
Served: June 14, 1984 to
Appointed by President Ronald W. Reagan

The Honorable Joseph J. Farnan
Served: July 26, 1985 to
Appointed by President Ronald W. Reagan

The Honorable Jane R. Roth
Served: November 18, 1985 to July 22, 1991
Appointed by President Ronald W. Reagan



LAW CLERKS

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

The Honorable Paul C. Leahy*

Robert Barab	1942	To	1942
Stephen Hamilton	1943	To	1950
Irving Morris	1951	To	1952
James P. Collins, Sr.	1952	To	1953
Justice Joseph T. Walsh	1954	To	1955
Harvey Bernard Rubenstein	1955	To	1957
Hon. Stanley Sporkin	1960	To	1960
William J. Wier, Jr.	1960	To	1961
Floyd Abrams	1961	To	1963

The Honorable Richard S. Rodney

H. James Conaway, Jr.	1947	To	1949
Henry Van der Goes	1950	To	1951
Aubrey B. Lank	1951	To	1952

*Note—It does not appear that any District Judge prior to Judge Leahy was served by law clerks. Because no records of law clerks were maintained prior to recent years, there may be inadvertent omissions or errors.

The Honorable Richard S. Rodney (Continued)

Thomas S. Lodge	1952	To	1954
Alan S. Ward	1955	To	1956
F. Alton Tybout	1956	To	1957
Donald C. Taylor	1957	To	1959
William C. Mammarella	1959	To	1961
Charles S. Crompton, Jr.	1961	To	1962
Robert E. Daley	1962	To	1963
Martin A. Schagrin	1963	To	1963

The Honorable Caleb M. Wright

Hon. Murray M. Schwartz	1955	To	1957
Hon. Stanley Sporkin	1957	To	1960
Hon. Ralph K. Winter, Jr.	1960	To	1961
William M. Dreyer	1961	To	1962
Gerald H. Abrams	1962	To	1963
Lewis S. Black, Jr.	1963	To	1965
Allen E. Ertel	1965	To	1966
Howard A. Knight	1966	To	1967
Lawrence S. Jackier	1967	To	1968
Frederick M. Lowther	1968	To	1969
William W. Taylor, III	1969	To	1970
Michael G. Egger	1970	To	1971
Elam (lee) M. Hitchner	1971	To	1973
David M. Cohen	1973	To	1975
Stephen B. Shear	1974	To	1976
Charles A. Patrizia	1975	To	1976
Barbara B. Price	1976	To	1977
Leslie D. Michelson	1976	To	1977
Carolyn F. Corwin	1977	To	1978
Richard Kornblith	1977	To	1979
Jon Anderson	1978	To	1980
Joshua Katsen	1979	To	1980

The Honorable Caleb M. Wright (Continued)

Arlene Bender	1980	To	1981
James Snipes	1980	To	1981
Kevin McKenna	1981	To	1982
Philip Bartz	1982	To	1983
Jonathan Young	1982	To	1983
John B. Reynolds, III	1983	To	1984
W. Donald Sparks, II	1983	To	1984
Peter B. Marrs	1983	To	1984
Joseph A. Franco	1984	To	1985
Thomas R. Webb	1984	To	1985
Timothy C. O'Rourke	1985	To	1986
James A. Huttenhower	1985	To	1986
Daniel J. Goldstein	1986	To	1987
Carl J. Mayer	1986	To	1987
Janet Letson	1987	To	1988
David Korn	1987	To	1988
John Corenswet	1988	To	1989
Jeffrey E. Fleming	1988	To	1989
Frances Ratner	1989	To	1990
Matthew P. Blischak	1989	To	1990
Gretchen Bender	1990	To	1991
Colleen Hagy	1990	To	
Caryl Carlson	1991	To	

The Honorable Caleb R. Layton, III

Marvin D. Forman	1957	To	1959
Warren B. Burt	1959	To	1960
Louis S. Deluca	1960	To	1961
Stoddard D. Platt	1961	To	1962
Jerold G. Klevit	1962	To	1963
Harold Jacobs	1963	To	1964
John H. Wolf	1964	To	1965

The Honorable Caleb R. Layton, III (Continued)

John A. Wilson	1965	To	1966
Richard N. Matties	1966	To	1967
Michael Evan Jaffe	1967	To	1969
Richard A. Kraemer	1969	To	1970
Frank Thomas Howard	1970	To	1971
Bruce L. Thall	1971	To	1972
Thomas Harlan Young	1972	To	1973
Roderick R. McKelvie	1973	To	1974
Robert Steven Schwartz	1974	To	1975
Thomas Gary	1975	To	1976
William E. Manning	1976	To	1977
Anthony G. Flynn	1977	To	1979
Clark J. Davis	1979	To	1981
Arlene Isaacson	1981	To	1982

The Honorable Edwin D. Steel, Jr.

David A. Drexler	1958	To	1959
Paul Renne	1959	To	1960
Richard L. Sutton	1960	To	1961
J. Joel Woodey	1961	To	1962
Donald Berman	1962	To	1963
Henry F. Miller	1963	To	1964
Joel M. Walker	1964	To	1965
Louis W. Ricker	1965	To	1966
Lewis D. Solomon	1966	To	1967
Joel M. Miller	1967	To	1968
John A. Hodges	1968	To	1969
Noreen C. Sweeney	1969	To	1970
William Erkelenz	1970	To	1971
Richard J. Masiello	1971	To	1972
Frederick W. Iobst	1972	To	1974
Francis G. Fleming	1974	To	1975

The Honorable Edwin D. Steel, Jr. (Continued)

Jeff L. Lewin	1975	To	1976
Frode Jensen, III	1976	To	1977
Helen L. Winslow	1977	To	1978
Howard Sobel	1978	To	1979
Gregory M. Kunycky	1979	To	1980
Jeffrey W. Golan	1980	To	1981
James Brian Boyle	1981	To	1982
Barbara Maczynski	1982	To	1983

The Honorable James L. Latchum

Robert F. Stewart, Jr.	1968	To	1969
David B. Rigney	1969	To	1970
J. Randolph Smith, Jr.	1970	To	1971
Charles M. Oberly, III	1971	To	1972
Hon. N. Richard Powers	1972	To	1974
John M. Romary	1973	To	1975
Jonathan Eisenberg	1974	To	1976
John W. Noble	1975	To	1977
Vice Chancellor William B. Chandler, III	1976	To	1978
Donald F. Parsons, Jr.	1977	To	1979
Donald E. Reid	1978	To	1980
Robert B. McKinstry, Jr.	1979	To	1981
Antonia B. Ianniello	1980	To	1982
Randolph K. Herndon	1981	To	1983
Henry J. Kupperman	1982	To	1984
Kevin F. Brady	1983	To	1985
Kent A. Jordan	1984	To	1985
James T. McDermott	1985	To	1986
Alexander C. Dill	1985	To	1986
Michael J. McLaughlin	1986	To	1987
Kenneth W. Willman	1986	To	1987

The Honorable James L. Latchum (Continued)

Gary M. Tocci	1987	To	1988
Brian D. Doerner	1987	To	1988
Robert J. Kriner, Jr.	1988	To	1989
Carl J. Riley	1988	To	1989
Laura B. Aldir	1989	To	1990
Eric A. Tilles	1989	To	1990
Joanne Ceballos	1990	To	1991
John F. Gullace	1990	To	1991
Pamela J. Rypkema	1991	To	
Douglas W. Stearn	1991	To	

The Honorable Walter K. Stapleton

William E. Wright	1971	To	1971
Jerome S. Cohen	1971	To	1971
L. Marc Durant	1971	To	1972
Chancellor William T. Allen	1972	To	1974
Robert M. Sussman	1973	To	1974
Arthur B. Spitzer	1974	To	1975
William C. Repsher	1974	To	1976
Margery F. Baker-Banks	1975	To	1977
Mary Anne Sullivan	1976	To	1977
Jack B. Blumenfeld	1977	To	1979
Leroy B. Allen, Jr.	1977	To	1978
Helen L. Winslow	1978	To	1979
Bruce Berman	1979	To	1980
Katherine H. Wheatley	1979	To	1980
Mark Friedman	1980	To	1981
Lawrence Starfield	1980	To	1981
David A. Reiser	1981	To	1982
Joshua M. Spielberg	1981	To	1982
Mary B. Graham	1982	To	1983
Karen L. Johnson	1982	To	1983

The Honorable Walter K. Stapleton (Continued)

David Harris	1983	To	1984
Annette Richter	1983	To	1984
Paul Carroll	1984	To	1985
Michael M. Meloy	1984	To	1985

The Honorable Murray M. Schwartz

William L. Martin, III	1974	To	1975
Lonnie Von Renner	1974	To	1975
Peter J. Eglick	1975	To	1976
Dennis Arnold	1975	To	1976
A. Richard Metzger	1976	To	1977
Maury Mechanick	1976	To	1977
Samuel Forstein	1977	To	1978
Mary Lawler	1977	To	1978
Peggy Browning	1978	To	1979
Helen Torelli	1978	To	1979
Michael Ossip	1979	To	1980
George Mernick	1979	To	1980
Richard Cleary	1980	To	1981
Margaret Alexander	1980	To	1981
Catherine J. Lanctot	1981	To	1982
Jeffrey Messing	1981	To	1982
Jeffrey Carr	1982	To	1983
Donald Bendernagel	1982	To	1983
Mark Katz	1983	To	1984
David Rosenbaum	1983	To	1984
Rhonda Teitelbaum	1984	To	1985
David Walk	1984	To	1985
Noreen Stehlik	1985	To	1986
Mark Kmetz	1985	To	1986
Jeffrey Berman	1986	To	1987
Peter Henning	1986	To	1987

The Honorable Murray M. Schwartz (Continued)

Elizabeth Warner	1987	To	1988
Jana Gill	1987	To	1988
Kenneth Gross	1988	To	1989
George Bilicic	1988	To	1989
Ellen Dixon Law	1989	To	1990
Stefania Daliani	1989	To	1991
Michael Aldrich	1990	To	1991
Lisa Levinson	1991	To	
James Flynn	1991	To	

The Honorable Joseph J. Longobardi

Nancy McCann	1984	To	1985
Alan Tawshunsky	1984	To	1985
Jeffrey Butvinik	1985	To	1986
Joseph Leccese	1985	To	1986
Gregory Zimmerman	1986	To	1987
Richard Mills	1986	To	1987
Nancy Ameen	1987	To	1988
Ralph Voltmere	1987	To	1988
Joseph Avanzato	1988	To	1989
Stephen Godek	1988	To	1989
Jonathan Mothner	1989	To	1990
Daniel DeFranceschi	1989	To	1990
Mary Maloney-Huss	1990	To	1991
Stephen Palmer	1990	To	1991
Carol B. Trask	1991	To	
Marguerite C. Gaultieri	1991	To	

The Honorable Joseph J. Farnan, Jr.

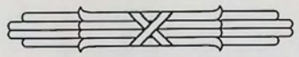
Joan Kreider Bradwell	1985	To	1986
John P. Sholar	1985	To	1986
Cherrie M. Black	1986	To	1987

The Honorable Joseph J. Farnan, Jr. (Continued)

Asher M. Leids	1986	To	1987
Penny J. Rezet	1987	To	1988
Michael F. McTaggart	1987	To	1988
Katharine R. Stollman	1988	To	1989
Luke W. Mette	1988	To	1989
Natalie Finkelman	1989	To	1990
Thomas J. McGuire	1989	To	1990
Caryl L. Carlson	1990	To	1991
Christine L. Czarnecki	1990	To	1991
Trina M. Bragdon	1991	To	
Deborah G. Musiker	1991	To	

The Honorable Jane R. Roth

Barbara Rowland	1985	To	1986
Michael P. Morton	1985	To	1986
Jane H. Hollingsworth	1986	To	1987
Frank E. Noyes	1986	To	1987
M. Erin Kelly	1987	To	1988
Scott Senecal	1987	To	1988
Jeffery A. Tomasevich	1988	To	1989
Charles S. Crompton, III	1988	To	1989
Justin K. Miller	1989	To	1990
Christopher C. Fennell	1989	To	1990
Paul B. Bech	1990	To	1991
Sharon Bradford Franklin	1990	To	1991



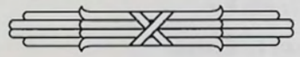
CLERKS OF THE COURT*

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

Matthew Pearce	1791	To	1792
Thomas Duff, Jr.	1794	To	1798
John Conway	1797	To	1798
Thomas Witherspoon	1799	To	1834
Thomas Stockton	1801	To	1801
William L. Mendenhall	1835	To	1839
Thomas Booth Roberts	1839	To	1849
Leonard E. Wales	1849	To	1864
Hanson Harmon	1864	To	1869
Charles G. Rumford	1869	To	1873
S. Rodmond Smith	1873	To	1903
William G. Mahaffy	1903	To	1921
Henry C. Mahaffy, Jr.	1921	To	1941
Frances G. Bakey	1941	To	1942
Edward G. Pollard	1942	To	1973
Evan L. Barney	1973	To	1978

*Note—The information in this Appendix comes from a list of clerks maintained by Henry Sholoy, who served as deputy clerk for the United States District Court for the District of Delaware for many years.

William S. Anderson, Jr.	1979	To	1980
John R. McAllister, Jr.	1980	To	



THE HISTORICAL SOCIETY

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

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The Honorable Joseph J. Longobardi

President

Norman E. Levine

Vice President

Stanley C. Lowicki

Treasurer

John P. Anderson

Secretary

Helen L. Winslow

Directors

John P. Anderson	Stanley C. Lowicki
O. Francis Biondi	James T. McKinstry
Richard R. Cooch	Harvey Bernard Rubenstein
John F. Lawless	Helen L. Winslow
Norman E. Levine	

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Research

Richard R. Cooch

James T. McKinstry

Liaison with Dr. Hoffecker

Norman E. Levine

Manuscript Review

Helen L. Winslow

Publication Design

Harvey Bernard Rubenstein

Distribution

Stanley C. Lowicki

Solicitation

O. Francis Biondi