

TRIBUTE TO DANIEL L. HERRMANN CHIEF ADMINISTRATOR OF JUSTICE

*Remarks by Dean Anthony J. Santoro**

When Chief Justice Daniel L. Herrmann first announced to me his intention to retire from the bench, I received the news with the same sense of loss as did, I suppose, all lawyers and citizens of Delaware. I feared that, though he served for almost thirty years as a strong voice and guiding hand in the equitable administration of justice for Delaware, we still needed his help. Upon reflection, however, I am convinced that there is a window through which the legacy of his service and commitment will continue to influence the course of the Delaware courts toward an even fairer system of justice.

The more so because Chief Justice Herrmann is continuing his efforts to improve the administration of justice. Chief Justice Herrmann is now Distinguished Professor of Law Herrmann at the Delaware Law School of Widener University. He has left the bench he served so well to continue his efforts toward improving justice by teaching law students how justice can be served through alternatives to the judicial resolution of disputes.

I am sure that through his efforts countless students will leave this law school and turn to the practice of law with a keen awareness that they are responsible, in part, for making sure that justice is not delayed—for to do so is to deny justice. Indeed, it may well be true that Daniel L. Herrmann's service to the administration of justice has taken a new turn which promises to have an even more far-reaching impact than his service on the bench.

Once again he is on the cutting edge of reform. Once again he is demonstrating his commitment of fundamental fairness in the administration of justice.

When I undertook to write this tribute to Dan Herrmann, I knew it would be a prodigious task. First, because he has been a

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very close friend since my arrival in Delaware only two short years ago. Second, because of the inevitable constraints of space. Third, and most importantly, because of my limited ability to verbalize testimony to such a long and distinguished career and to such a warm and human individual.

Therefore, I borrow testimony from Daniel Webster's tribute to Justice Joseph Story, for if ever those words were an apt encomium for someone who has labored in the law, they are an apt encomium for Chief Justice Daniel L. Herrmann.

And whoever labors on this edifice, with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself, in name, in fame, and character, with that which is and must be as durable as the frame of human society.

*Remarks of The Honorable Andrew D. Christie**

Chief Justice Daniel L. Herrmann's well organized and carefully drawn legal opinions have been consistently marked by thoroughness, scholarship, and care for the rights of others. His concern has been not only for the proper application of the law to the case at hand but also for the consistency of the law and the orderly evolution of legal principles. Although his special duties as Chief Justice have been extremely time consuming, he has consistently written a very significant percentage of the court's opinions.

During his entire twenty years on the Delaware Supreme Court and especially during the last twelve years as our Chief Justice, he has played a leading role in the expansion and modernization of the judicial branch of our state government.

It has been an honor and a personal pleasure to have worked with the Chief Justice. I can testify from first-hand knowledge that his contributions to the law and to judicial administration have earned him a leading place in the record books among Delaware's most outstanding jurists.

* Associate Justice (now Chief Justice) of the Supreme Court of Delaware.

*Remarks of The Honorable Andrew G. T. Moore II**

Chief Justice Herrmann's tenure on the bench has witnessed numerous far-reaching changes in the judicial process—and many were his personal inspiration or achievement. Although the Federal Rules of Civil Procedure took effect in 1938, Delaware retained the antiquated and trap-filled Common Law system of pleading for ten more years. When young Judge Herrmann was appointed to the old superior court in 1951, he had already been a leader of the bar, helping the Delaware courts shake off the “shackles of medieval scholasticism”¹ by the adoption of new rules modeled on the federal system. Amazingly, even by 1948 less than ten states had done the same. Delaware was in the vanguard of those leading the change. However, it was not without a sense of pride and irony that he observed how far Delaware had gone to reach that point. Although England had greatly improved practice and procedure in its courts during the nineteenth century, until 1948 Delaware still functioned under the Statutes of 27 Elizabeth c.5 and 4 Anne c.16. Thus, for generations one learned the rules of pleading in Delaware by word of mouth, trial, error, and combat!

Superior Court Judge Herrmann, whose vision extended well beyond Delaware's boundaries, authored a classic article on Delaware procedure after Delaware's adoption of the Federal Rules.² There, he spoke to the national legal profession of Delaware's experience, in the hope that it would be of “some aid to those . . . working toward procedural reform elsewhere.”³ This led to his rather dry observation to the faint-hearted that, considering the state of practice and procedure in Delaware up to 1948, “[n]o other American jurisdiction, contemplating procedural change, could possibly have farther to go.”⁴ The impact of this scholarly exposition became an immediate matter of pride to the Delaware legal community, and, for years it was, and still should be, “must” reading for those preparing themselves for admission to the bar.

But that was just prelude. Many other reforms followed under Judge Herrmann's leadership or prodding before he resigned in 1958

* Associate Justice of the Supreme Court of Delaware.

1. Herrmann, *The New Rules of Procedure in Delaware*, 18 F.R.D. 327, 327 (1956).

2. *See id.*

3. *Id.*

4. *Id.* at 337 n.16.

to return to the practice of law. However, his years as a private citizen were filled with his public contributions to the state: chairman of the State Goals Commission and the State Planning Commission, president of the Legal Aid Society, member of the Wilmington Board of Public Education, trusteeships of the University of Delaware and the Wilmington Medical Center, and others too numerous to mention.

In 1965 Daniel L. Herrmann returned to the bench as a member of the supreme court, serving until his appointment as Chief Justice in 1973. His scholarship and continuing concern for the administration of justice have been sources of pride and provided a sense of direction to all of us. Who can forget his ringing words that "inequitable action does not become permissible simply because it is legally possible"?⁵ This is not the place to catalog Chief Justice Herrmann's jurisprudence, but any study of that subject will disclose a man of intellect, warmth, and understanding irrespective of a party's status in life. Before Chief Justice Herrmann, justice truly was blind.

So it was that in 1982 I had the honor and privilege to become his colleague. It has been a stimulating three years of daily association. His leadership, great good humor, and constant regard for the court system will have a lasting effect on all of us who have worked with him.

Our great joy is knowing that even in retirement he remains of service to the court system. We look forward to that continued warmth of association which he worked so hard to make a part of our lives as his colleagues. But above all, it is a pleasure to salute this good man we call friend.

*Remarks by O. Francis Biondi**

The improvement of the administration of justice has been one of the most important themes of Chief Justice Herrmann's career. Even a brief review of his accomplishments in this area will dem-

5. Schnell v. Chris-Craft Indus., Inc., 285 A.2d 437, 439 (Del. 1971).

* Immediate Past President, Delaware State Bar Association.

onstrate that this distinguished jurist and scholar will be forever remembered as Delaware's first true Chief Administrator of Justice. He has over the years "*pointed with pride and viewed with alarm*" and taught us all that "*court reform is not for the short-winded or the faint-hearted.*" With his strong leadership, historic progress has been made in the administration of justice. Improved court facilities, expanded judicial manpower with increased compensation, long-range planning, computerized information systems, common administrative policies, an effective disciplinary system—these are merely a few of the highlights. The record is too thick with achievements for adequate summary. And all was accomplished in a spirit of collegiality and with full participation of the judiciary, the Bar, and the community. With little administrative support, he literally fashioned for the work of court reform a staff of hundreds, commonly known as the Delaware Bar.

I. A BRIEF HISTORICAL NOTE

The responsibilities and duties of the Chief Justice of the Delaware Supreme Court have, throughout Delaware's history, been remarkably diverse.¹ George Read was the first Chief Justice appointed after the adoption of the Constitution of 1792 and, while he and many of his successors were lawyers, it was not until the adoption of the Constitution in 1897 that all justices of the Supreme Court were required to be "trained in the law."² Little has been written about the administrative responsibilities of the Chief Justice. However, under the Constitution of 1831, the Chief Justice sat on so many courts located throughout the state³ that it is doubtful whether he had much time to devote to administrative tasks. It was not until 1951 that the Delaware Supreme Court was established as a separate court with its own judges. Prior to that time, the court's membership, made up of judges from lower courts, varied from case to case.⁴ Moreover, it was not until the 118th General Assembly in 1958

1. See generally 1 DELAWARE: A HISTORY OF THE FIRST STATE, chs. 12-14 (H. Clay Reed ed. 1957) [hereinafter cited as 1 DELAWARE].

2. Compare DEL. CONST. OF 1831 art. VI with DEL. CONST. OF 1897 art. IV, § 2.

3. The Chief Justice was a member of the superior court, the Court of General Summons of the Peace and Jail Delivery, the Court of Oyer and Terminer, and the Court of Errors and Appeals. See DEL. CONST. OF 1831 art. XI, §§ 3-4, 6-7.

4. 1 DELAWARE, *supra* note 1, at 333.

approved a constitutional amendment that the Chief Justice of the Supreme Court was explicitly recognized as the chief administrator of the state's courts. That amendment provided, in part, that "the Chief Justice . . . shall be the administrative head of all of the Courts of the State and shall have administrative responsibilities and supervisory powers over the Courts."⁵ While the Chief Justices have had this administrative responsibility since 1958, it was not until Chief Justice Herrmann was appointed Chief Justice in 1973, a date roughly coincident with the explosive growth of both numbers of lawyers practicing in Delaware and cases filed, that the full and vigorous utilization of this authority to improve the administration of justice in this state became a central focus on the office of Chief Justice.

II. STATE OF THE JUDICIARY ADDRESS - 1974

It should have been apparent to those members of the Bar who attended the 9th Annual Joint Bench-Bar Conference on June 5, 1974, that Chief Herrmann's tenure as Chief Justice would forever change the public perception of that office. It was on that occasion that Chief Justice Herrmann presented Delaware's inaugural State of the Judiciary Address, in which he outlined the needs of the Delaware judicial system. The mere fact that he delivered such an address served notice to the bench, Bar, and public that court reform was one of his paramount objectives.

The Chief Justice opened his remarks by stating: "We must face squarely the proposition that the increasing volume of business, criminal and civil, pouring into our courts annually, will become too great to handle as this system is now constituted and equipped, unless we do something soon about modernizing the system and making it more effective." He then went on to address specifically some goals, needs, and objectives. There is no better tribute to the Chief Justice's contributions as the first Chief Administrator of Justice than to compare the concerns discussed by the Chief Justice in his 1974 address with the status of each of those areas today.

III. CRIMINAL JUSTICE

Recognizing that "Justice delayed is Justice denied" for both defendants charged with the commission of crimes and the public,

5. DEL. CONST. OF 1897 art. IV, § 13.

and that public confidence in the judicial system was at stake, Chief Justice Herrmann declared in 1974 that the Delaware state courts would give priority to disposition of criminal cases.⁶ In order to implement that priority, the Chief Justice established for all of the courts of this state a goal of 120-days as the maximum period between arrest and trial in felony cases and 30 days as the maximum time period between arrest and trial in misdemeanor cases. To date, the 120-day standard has been substantially met in the trial of felonies in the superior court (although with increasing difficulty). In fiscal year 1984, over 73% of the felony cases were tried before the expiration of the 120-day period.

However, the impact of the growing criminal and civil case load in the superior court can be seen in the gradual decline in compliance with the 120-day standard from 85.2% in 1981 to 77.3% in 1982 to 74.7% in 1983, and to 73.4% in 1984. Foreseeing the difficulty of maintaining compliance with the standard without bringing about an untenable backlog of civil cases, the Chief Justice also called for the expansion of the superior court. This call was not finally answered until June 1985, when the General Assembly enacted legislation providing for two additional superior court judges.

IV. COURT FACILITIES

Adequate court facilities are an operational necessity if respect for the law is to be fostered. In 1974, Chief Justice Herrmann called attention to the fact that all of the courts in Delaware lacked sufficient space and facilities. He urged that the so-called "corridor project," in what was then known as the Wilmington Public Building, be completed and that that facility become exclusively a court house. In line with this goal, in 1980 the Wilmington Court House began a multi-million dollar renovation project. Funding for the project's completion is on the current agenda of the General Assembly. With the relocation of the City of Wilmington and New Castle County governmental offices to a new city/county building, the chancery court, superior court, court of common pleas, municipal court of the City of Wilmington, and court-related offices and facilities now

6. The late Chief Justice Daniel F. Wolcott recognized the problem and in May 1973 directed that criminal cases be disposed of (from information or indictment through sentencing) within three months by the court of common pleas and municipal court and six months by the superior court, and established a procedure for monitoring compliance with his direction.

occupy nearly the entire building. Although this "renovated" senior citizen on Rodney Square continues to behave on occasion as if it had received an artificial heart transplant, it is now truly a hall of justice.

Expansion of the facilities of the superior court and court of chancery in Kent County was completed in 1983. A program of modernization and capital expenditures for justice of the peace courts throughout the state continues today. The supreme court building in Dover has been renovated and now includes conference rooms for lawyers, chambers for the resident justice in Kent County, and three offices for other justices. Impressive permanent chambers for the court now exist in the Carvel State Office Building in Wilmington. The family court in Wilmington, formerly housed in the old Delaware Power & Light Building without even a library, has a new building located at Ninth and French Streets, which was completed in 1980. The family court facilities in Georgetown have been enlarged, and a site has been acquired for the new family court building in Kent County. While there is still room for progress, the physical facilities of the courts of this state have been vastly improved during Chief Justice Herrmann's tenure.

V. COMPUTER-BASED INFORMATION SYSTEMS

Citing the lack of timely and accurate operational and management information in useful form as a principal obstacle to improve management of the judicial system, particularly the criminal justice system, Chief Justice Herrmann called in 1974 for the acquisition and implementation of a sophisticated computer-based information system for the courts.

As chairman of the former Criminal Justice "Roundtable," the Chief Justice, together with directors of criminal justice agencies, commissioned a massive and in-depth analysis of the information needs of the criminal justice system which resulted in the development of what is now known as the *Information System Plan of the Criminal Justice System of the State of Delaware* (commonly referred to as the "Criminal BSP") and which is soon to be implemented. Recognizing that civil case information needs are of equal importance in managing the courts he has commissioned a civil case processing study which is scheduled for completion in June 1985. These efforts represent major accomplishments which place Delaware in the leadership among the states in modern case management techniques.

In May 1978, the state received a grant of nearly \$200,000

from the Law Enforcement Assistance Administration which was used to purchase a mainframe computer for the Delaware State Judicial Information System. This computer, located in the Wilmington Court house, supports applications for scheduling, calendaring, docketing, and notification activities for the superior court, the court of common pleas, the family court, the Wilmington Municipal Court, the Department of Justice, and the Public Defender's Office. The system is also an important component of the Delaware Justice Information System which was established to insure the timely and accurate communication of criminal history information in support of the state's criminal justice system.

Since the acquisition of this first computer in 1978, the volume of data being processed has outgrown its capabilities. With Chief Justice Herrmann's support, the acquisition of a new and much larger computer became a reality approximately six months ago and soon the implementation of the courts' portion of the *Criminal Information Systems Plan* will be underway.

VI. JUDICIAL MANPOWER AND COMPENSATION

Two interrelated goals were stressed by the Chief Justice in his 1974 address: judicial compensation and judicial manpower. At that time, there were only three supreme court justices, the number originally established in 1951 by the constitutional amendment creating the court, making Delaware the last state with fewer than five justices on its highest court. Chancery, the superior court, and family court were in need of additional judges as well. The Chief Justice had little assistance in providing the justices of the peace with administrative leadership and guidance in the law. In addition, service on the bench was being penalized by inadequate salaries for all judges which, in 1974, had not been increased in over four years. These two related concerns have been repeatedly emphasized by the Chief Justice in his State of the Judiciary addresses in subsequent years. Indeed, he directed his entire addresses in 1983 and 1984 to the crises in judicial manpower in the court of chancery and the superior court and to the need for substantial judicial salary increases throughout the system.⁷

7. The Chief Justice's continuing reminders to the members of the bench and bar of the needs in these areas calls to mind his warning in 1974 that "court reform is not for the short-winded or the faint-hearted."

Persistence has in large part been rewarded. In August 1978, the 129th General Assembly approved a constitutional amendment increasing the number of supreme court justices from three to five.⁸ A third vice-chancellor was provided by the 132nd General Assembly in 1983, the first addition to chancery court since 1961, notwithstanding a surging case load and legislative imposition of significant new jurisdictional burdens on the court. Since 1974 four new judge-ships have been created for the family court, and the General Assembly has supplied the justice of the peace system with a chief magistrate, a lawyer who serves as chief judge, day-to-day administrative director, legal adviser to the J.P.s, and teacher of the law in a continuing education program.

Significant increases in judicial salaries became effective February 1, 1985. These increases, which have brought the compensation of Delaware judges to levels which compare favorably with neighboring states, should allow the state to continue to attract well-qualified members of the bar to serve on the bench. Chief Justice Herrmann's leadership was critical to this effort.

At his request, the Business Roundtable in 1981 initiated a comprehensive study of judicial compensation in Delaware. Its report, recommending, *inter alia*, significant increases, was later that year adopted by the Governor's Compensation Commission appointed by Governor Pierre S. duPont IV. Inclusion of the judiciary in annual cost of living increases granted public employees, creation by the 132nd General Assembly of the Delaware Compensation Commission, and acceptance of its report by the 133rd General Assembly, all flowed from the Chief Justice's effort to add the voices of the community as a whole, particularly business leaders, to those of the bench and Bar, in proclaiming the public interest in a competent, adequately compensated judiciary.

VII. FUNDING, PLANNING, ADMINISTRATION, AND ETHICS

While several of the goals articulated by the Chief Justice in 1974 have yet to be attained, the highlights of his accomplishments

8. This increase in the number of supreme court justices has had the expected improvement in the ability of the supreme court to operate in an efficient and timely manner. This year, the supreme court expects once again to attain goals which it has met several times before of being able to hear oral arguments or accept submissions of briefs in all cases which were at issue and waiting submission as of the fifteenth day of the previous month and to have no appeal under advisement

are not limited to the needs he addressed in 1974. Annually, there has been the competition for limited public funds. In 1973, of the state's total operating budget of almost \$318 million, less than 1.7% of the whole or \$6 million was spent for the judicial system. The governor's recommended budget for 1986 totals \$883.3 million, of which 2.7% or \$23.6 million will be for court operations, a significant though not wholly adequate increase.

Planning is required in addition to funding. Through the mechanism of the Long Range Courts Planning Committee, the Chief Justice has been effective in securing constitutional amendments and statutory changes touching many areas beyond the enlargement of the courts previously cited. Noteworthy are the constitutional provisions permitting service by retired judges, enabling judges to continue to serve pending reappointment, establishing a procedure for certification of questions of law to the Delaware Supreme Court from the United States district court, and reforming grand jury composition (second leg pending). Significant pending legislation includes the addition of two superior court judges and the revision of family court appellate procedures.

Much reform can be accomplished within the court system and the Chief Justice has actively pursued internal reform through rule changes and administrative directives. The Rules of the Supreme Court have been revised and modernized; superior court discovery rules have been amended to reduce delay and expense in litigation; new rules of evidence have been adopted; and third-year law students have been permitted limited practice in certain courts.

A long-time advocate of alternate dispute resolution, Chief Justice Herrmann's direction brought about, in 1984, compulsory non-binding arbitration procedures in the superior court. He marshalled the bench and Bar to produce an Appellate Handbook to aid the practitioner and reduce procedural error. In 1983 the Chief Justice placed Delaware in the forefront of the states utilizing Interest On Lawyers Trust Accounts (IOLTA) to fund legal services to the poor and other public interest programs.

The Chief Justice has issued over fifty Administrative Directives imposing common policies and procedures in many areas of admin-

for more than 90 days. Other factors have contributed to the attainment of this goal, including the constitutional amendment passed in 1978 which permitted the supreme court to sit in panels of three, the increase in staff and the improvement in the court's facilities.

istration within the court system. There is, through his efforts, a uniform policy for the procurement of material and award of contracts within the court system; a uniform case-designation system throughout the criminal justice system; a uniform, state-wide policy covering access to court litigation records by the news media; an equal opportunity affirmative action program; a uniform procedure for budget transfers; zero-based budgeting; a continuous monitoring of each matter awaiting decision for over ninety days by each judge of the court of chancery and the superior court, and for more than thirty days by each judge of the family court, the court of common pleas, the municipal court, and the justice of the peace courts; a program for bringing to the attention of the Legislative Council all published opinions noting legal problems of possible concern to the General Assembly; procedures for the coordination of court-initiated legislation; and a uniform personnel system for the nonjudicial personnel of the supreme court, court of chancery, superior court, court of common pleas, and court-related administrative agencies (not otherwise governed by the state merit system). The Chief Justice has also utilized his administrative authority to order the revision of the cash management and accounting procedures of the courts. Attempting to make the best of inadequate manpower, he has imposed mandatory rotation among the superior court judges. This work has been facilitated by an enlarged, but still inadequate supreme court staff, which has been strengthened during his tenure by the addition of a court administrator, a part-time executive assistant, a chief deputy clerk, and the upgrading of the clerk's position to a clerk/staff attorney position.

His focus upon court reform and the improvement of the administration of justice has not led the Chief Justice to overlook the need to maintain public confidence in the integrity of the judiciary and the bar. A new Code of Judicial Conduct was adopted in 1974 and the rules of the court on the judiciary were revised in 1983. In 1984 the disciplinary system governing the bar was revised and the Board on Professional Responsibility restructured. There is now an office of disciplinary counsel, with a full-time staff attorney, and the board itself has nonlawyer members. The court is considering, and will no doubt soon direct, the adoption of the ABA recommended "Model Rules on Professional Conduct" to replace the existing Disciplinary Code as well as an unprecedented rule relating to professional liability insurance.

VIII. THE PUBLIC, THE BENCH, AND THE BAR

The public's misperception of what lawyers and judges do has concerned the Chief Justice. His efforts to create a greater awareness of the profession's activities among the general public have been varied. A noteworthy few are the inclusion of laymen on the Board of Professional Responsibility, the opening of the supreme court to photographic and electronic news coverage, the organization of the Bar-Bench-Press Conference in 1975, his State of the Judiciary Addresses, the convening of the Delaware Citizen's Conference on the Administration of Justice in 1982, and the creation of a law-related public education program. Under his leadership, educators, judges, and lawyers cooperated in producing, for the public schools, teaching materials addressed to the understanding of the administration of justice in Delaware. In September, 1983, this program, entitled "3Rs of Law: Rights, Responsibilities and Redress," became a part of the public school curriculum from kindergarten through grade twelve. It made Delaware a model for the creation of regular law-related courses in the public schools.

Court reform and improvement in the administration of justice require the dedication and cooperation of the judges in whose courts the law is administered. Delaware has been blessed with a judiciary which, while overworked and until recently underpaid, has responded to the Chief Justice's initiatives with imagination and total effort, a tribute both to him and to them.

By the appointment of members of the bar to both permanent committees of the supreme court, such as the Long Range Courts Planning Committee, and at least fifteen ad hoc committees which have addressed specific problems, the Chief Justice has made the bar a full participant in the improvement of the administration of justice. This bond between bench and bar is unsurpassed in strength in any other jurisdiction. The bar is grateful to the Chief Justice, whose accomplishments for the profession have raised the quality of professional life in Delaware.

IX. CONCLUSION

The bench, the bar, and the citizens of Delaware are deeply indebted to Chief Justice Herrmann for his unprecedented attention to all facets of the administration of justice. The warmth, compassion, and good humor of this special citizen have made these past twelve years not only productive, but enjoyable as well. He will be forever remembered as Delaware's first true Chief Administrator of Justice.

*Remarks of Irving S. Shapiro**

The melancholy news for the bar that Chief Justice Daniel L. Herrmann is retiring in August from active service is brightened somewhat by his expressed willingness to sit from time to time in the trial courts, in which he spent his early years and honed and developed his judicial skills. The possibility of continued judicial service also gives promise that we are not seeing the last of the contribution of his bright and varied judicial career. That career, which I will only briefly address, is one of the most significant in the history of our state and its product is likely to endure as long as our legal system, to act as a guide for future generations of lawyers, judges, and laymen.

The public may be most familiar with the Chief Justice's tireless efforts to improve the administration of justice. As far back as 1948, when a superior court judge, Chief Justice Herrmann led Delaware's effort to modernize and simplify its civil procedures by adopting the Federal Rules for use in our courts. His efforts to improve the administration of justice did not start there and have continued unabated to this day. In 1982, for example, the Chief Justice organized and chaired the Delaware Citizens' Conference on the Administration of Justice, which focused the diverse perspectives of judges, lawyers, and lay persons on common problems in the area. Any comprehensive discussion of Chief Justice Herrmann's contributions to the administration of justice would more than double the size of this paper. My principal purpose here, however, is to review a few of his opinions in three selected areas—corporate law, property law, and tort law—and to find in those opinions some of the aspects of Daniel L. Herrmann, the jurist, who has left a permanent and penetrating mark on the fabric of our law. The cases, although not selected at random, should not lead us to overlook the fact that he has sat on and decided literally thousands of cases in every possible area of the law in his twenty-eight years of service on the bench.

I start with the modern classic, *Schnell v. Chris-Craft Industries*.¹In *Schnell*, the defendant corporation had advanced the date of its annual stockholders' meeting through a bylaw amendment technically permitted by a recently enacted provision of the General Corporation Law. The effect and, as found by the court, the intent as well, of

* Partner, Skadden, Arps, Slate, Meagher & Flom.
1. 285 A.2d 437 (Del. 1971).

that change were to thwart the efforts to dissident stockholders in their effort to replace management. Although admitting its distaste for the procedure, the court of chancery had felt compelled by the letter of the law to allow the change. The supreme court, per then Justice Herrmann reversed and, in doing so, made a significant addition to the maxims of equity: "Management contends that it has complied strictly with the provisions of the new Delaware Corporation Law in changing the by-law [sic] date. The answer to that contention, of course, is that inequitable action does not become permissible simply because it is legally possible."²

That language, now known to every serious practitioner of corporation law either here or elsewhere, reintroduced into Delaware corporate law a consciousness of what we now call "the doctrine of equitable limitations." Corporate machinery may not be manipulated under color of law for an inequitable purpose. The *Schnell* case provides no "bright line" or black and white standard, but *Schnell's* impact has been profound. When lawyers give advice in matters of corporate governance, litigation then being no more than a possibility, there is, as a result of *Schnell*, an awareness that the letter of the Corporation Law may not be followed without consideration for equity and the principles of corporate democracy. Thus, *Schnell* not only guides the courts but is "followed" constantly outside the courts in the practical world of corporate management. *Schnell* has probably prevented far more litigation from arising in the first place than its precedential force has caused to be resolved in a judicial judgment.

Chief Justice Herrmann's rich and varied judicial work shows uncommon understanding of the role of law in society. As a working judge, he did not have the luxury of specialization. He has decided important cases in nearly every field of civil and criminal law. Yet there is a common thread to be found. Time and again, the Chief Justice has demonstrated his view that those legal rules are the most sound which are grounded in historical development and consensus as well as in logic and a reading of precedent. *State ex rel. Buckson v. Pennsylvania Railroad*³ is a good example. In that case, the state and the Pennsylvania Railroad both claimed ownership of the area of Delaware River shoreline between the high and low water marks. The supreme court held for the railroad, affirming a superior court ruling that under settled decisional law, a riparian owner in Delaware

2. *Id.* at 439.

3. 267 A.2d 455 (Del. 1969).

holds title to the mean low water mark. On that issue, since there was prior authority on the point, a summary affirmance would have been possible, but Justice Herrmann explicitly rejected the contention that *stare decisis* alone was sufficient to affirm.

The issue had been determined by three lower Delaware courts in the 1800s. The state challenged the authority of those cases, presenting technical legal arguments and referring to a different rule of other jurisdictions. The Chief Justice declined to consider the early cases controlling on the supreme court but, nevertheless, over the state's challenge, accepted the rule they set forth:

We are impelled to endorse the rule of the cited cases because it has become a recognized rule of property, long adhered to in this State, affecting land transactions and land titles for over a century. The rule has been accepted by the Bar and Bench of this State, without criticism or challenge, and extensive property rights and land titles have been settled in dependence upon it.⁴

In Justice Herrmann's view, the force of the rule concerning riparian ownership lay not simply in the fact that three previous courts had stated it. He gave equal credence to years of usage and the acceptance by the bar, the bench, and the general public. The state's challenge was considered and rejected but only after a review of the entire circumstances and the need to enforce the long accepted consensus of practice and public acceptance.

In *Phillips v. State*,⁵ the court faced an even older question of property law: whether Delaware land held by William Penn's heirs passed to the state upon the separation from Great Britain in 1776. The chancellor had held that the land in question belonged to the state because Penn's ownership was bound up with his sovereign power and, therefore, had been transferred to the state by sovereign succession. The supreme court affirmed and, writing for the court, Chief Justice Herrmann examined deeply into historical developments, placing them above words in the original grant to Penn and *dictum* in case law that could have been read to indicate that title had not passed to the state. His discussion begins with a passage quoted from Chief Justice Taney in *Martin v. Lessee of Waddell*:⁶

4. *Id.* at 458.

5. 330 A.2d 136 (Del. 1974).

6. 41 U.S. (16 Pet.) 367 (1842).

[I]n deciding a question like this, we must not look merely to the strict technical meaning of the words of the [grant]. The laws and institutions of England, the history of the times, the object of the charter, the contemporaneous construction given to it, and the usages under it, for the century and more which has since elapsed, are all entitled to consideration and weight.⁷

In *Phillips*, Justice Herrmann makes historical analysis seem fresh; the opinion analyzes the substance of the original grant and the treatment of Penn lands in Delaware since the separation from England and concludes that the common understanding is too settled to be upset: "In the absence of a showing of strong public policy to the contrary, we will not disturb a principle so accepted that it must be deemed to have crystallized into a rule of property."⁸

By recognizing the public and consensual nature of law, Chief Justice Herrmann has not overlooked the fact that settled rules must sometimes change. He has not ignored the traditional need for courts to create a remedy for injuries, even when traditional rules would have afforded none. In *Martin v. Ryder Truck Rental, Inc.*,⁹ for example, the supreme court adopted for Delaware the rule of strict tort liability for injury caused by defective leased or bailed motor vehicles. The Chief Justice examined the "step-by-step" development of strict liability for product torts and expressed the court's view with classic simplicity: "[T]he common law must grow to fulfill the requirements of justice as dictated by changing times and conditions."¹⁰

In *Robb v. Pennsylvania Railroad Co.*,¹¹ the supreme court held that a plaintiff may recover in tort for physical injury proximately caused by negligence even though there had been no physical impact. The Chief Justice carefully analyzed the reasons offered for the traditional "impact" rule, to which many jurisdictions adhere, and found that the sole support for that doctrine was administrative expediency. Those courts had declined to grant the remedy for fear that their dockets would be drowned with fraudulent claims. The expediency argument was not persuasive to the Chief Justice. His words bear repetition:

7. *Phillips*, 330 A.2d at 140 (quoting *Martin*, 41 U.S. (16 Pct.) at 411).

8. *Id.* at 143.

9. 353 A.2d 581 (Del. 1976).

10. *Id.* at 587.

11. 210 A.2d 709 (Del. 1965).

We are unwilling to accept a rule, or an expediency argument in support thereof, which results in the denial of a logical legal right and remedy in all cases because in some a fictitious injury may be urged or a difficult problem of the proof or disproof of speculative damage may be presented. Justice is not best served, we think, when compensation is denied to one who has suffered injury through the negligence of another merely because of the possibility of encouraging fictitious claims or speculative damages in other cases. Public policy requires the courts, with the aid of the legal and medical professions, to find ways and means to solve satisfactorily the problems thus presented—not expedient ways to avoid them.¹²

The *Martin* and *Robb* cases are not the work of a judicial radical eager to establish new areas of liability;¹³ rather they reflect Chief Justice Herrmann's conservative awareness that, to remain an effective force for order in society, the law must respond to the changing developments and needs of the world.

As his career is examined, we see that Chief Justice Herrmann's work to improve the administration of justice is "of a piece" with his efforts on the bench to interpret and shape the law and make it an effective force for public order. Like that of all truly great judges, Chief Justice Herrmann's work on the bench has put into practice his belief that the law and the administration of justice must develop organically and together.

* * * * *

As we salute a native son of Delaware who has established a national reputation as a jurist, it is well to remember that long before his judicial reputation was established, he was an active citizen involved with community affairs and even, on occasion, with a bit of political advice to key public officials. He has been a doer throughout his life, and there is reason to expect that quality to continue as he undertakes the next stage of his bountiful career.

Those who have encountered the Chief Justice as opposing

12. *Id.* at 714.

13. *Compare* *Cline v. Prowler Indus.*, 418 A.2d 968 (Del. 1980). Justice Herrmann, writing for the court *en banc*, held that it could not adopt strict product liability for sales, because the legislature had preempted the field with the adoption of article 2 of the Uniform Commercial Code.

counsel or on the bench probably should be reminded that in his youth he led a jazz band and was known to indulge in a game of chance when his skills brought rewards, at a time when money was a scarce commodity.

All through the years, Daniel L. Herrmann has brought to us a warm sense of humor and an ability to articulate in simple terms complex problems. We who have been privileged to know him and work with him have been the beneficiaries. The public probably never will fully appreciate the magnitude of his contribution, but he will know and so will some of us, as we salute a unique and gifted public man.

The following is from the dinner celebrating the judicial career of Daniel L. Herrmann on May 16, 1985.

NED CARPENTER: It is my pleasure and privilege to call upon an old and close friend of Chief Justice Herrmann's family to present the invocation, Rabbi Drooz. Will you all please rise.

RABBI DROOZ: Oh Lord thy throne rests with thy righteousness and justice. Our Delaware suffers a special heartfelt wrench as thy dedicated servant Chief Justice Herrmann prepares to depart the bench. Just as justice thou shalt pursue is thine ancient man, how beholden we are to our Chief Justice, who in that pursuit has there been prepared and ready to take this stand. Yea, oh Lord, thou save unto him myriad blessings, that is our hope and our prayer. Even as his vision and labors have blessed us all to a high quality of justice here in Delaware. Amen.

NED CARPENTER: Good evening. My name is Ned Carpenter and my role in this program is principally to say good evening, friends of Chief Justice Herrmann, and to introduce a few speakers, none of whom needs introduction from me at all. We are gathered here to celebrate the great work of a person who is not only a great man but also a compassionate and warm friend, and I see here nothing but acres and acres of friends of his. I'm going to have the assignment of keeping the speakers within their allotted time. [ap-

plause] If you'll look at the program, you'll see that my job is somewhat like trying to get a drink of water from a fire hydrant. I'm not going to be introducing the head table members because there is no head table. You are all distinguished guests. But I'm going to make this one exception. We have the very distinct pleasure this evening of having with us Chief Justice Herrmann's new bride of just a few days, and I want you all to meet her. Mitzi, won't you stand up and be recognized. [applause]

Before we start with any speakers, we're going to lead off with a secret and unannounced part of the program which was prepared by Chief Justice Herrmann's son.

RICHARD HERRMANN: Your Chief Justiceship. [laughter] Your excellency, ladies and gentlemen, good evening. I wish to spend the next ten minutes, [laughter] really, and share with you a tribute to the Chief Justice. I direct your attention to the screen and ask you to turn your chairs comfortably in that direction.

Just like other mortals, the Chief Justice retires too. And he puts on his pants one leg at a time, like Burger and Rehnquist do. [laughter] But there is one thing that sets him apart from the other judicial tops; he's the only jurist in the world known as the immortal "Chiefy Pops." Since the beginning of time, great men have been immortalized. Some by the images they have created themselves; some by the images created by others. [laughter] There is no formula for knowing when this greatness occurs; however, it cannot be denied that it is innate. A truly great man has this distinction from the moment it occurs. [laughter] It was not until I began this laborious but loving task of discovering your history among these photographs that I realized your judicial destiny was known early in life. [laughter] As a child you even looked the part. [laughter] During your adolescent years you developed your traits of wit, suaveness, sophistication. Few people know that it was because of you the term "Dapper Dan" was coined. [laughter] Your leadership took you into the military. You have described over the years as you bounced us on your knee that you served in World War II, the big one, on an island. [laughter] It was not until recently that we learned this god forsaken piece of ground was named Manhattan. [laughter] But that is of no moment. You have always been our ideal, our model. It is obvious that every child has an image of his father as a hero and with us it was no different. To us you were taller than any man, stronger and quicker on the draw. But you didn't need a gun or a horse. You created a family, a living unit of love, respect, and affection that is unsurmountable. And with that family you traveled

by land [laughter], by sea, and by air [laughter] to all parts of the world. As you travelled, you learned to live with the natives. [laughter] And as you grew, with the support of our mother, you took care of business at home. You raised two sons who learned early in life to share themselves for the public's good, each in his own way. [laughter, applause] Of course, all great men are in need of time to relax. And you took yours with friends, as well as time to yourself. [laughter] You've taken time to set the tone of life. [laughter] And you have stopped to listen to the music. A child's admiration and respect for his father as a great man can be called subjective. But in your case, there is no subjectiveness about him. When the citizens of this great state heard of your intentions to retire, the reaction was universal. Man, woman, and child alike [laughter], all races, creeds, and nationalities [laughter]. Your contributions have been felt by all. Over the years, there is no question that you have been quoted, cited, and written about as much as any man in Delaware history, and not without controversy. To be sure, there have been times when certain individuals would have liked to compromise your position [laughter], but you could not be compromised. And that is because of the maxim that you taught us and lived by each day: never do anything you don't want to see on the front page of the paper. [laughter] Your decisions, opinions, and contributions to this state cannot be measured. You have been honored time and time again, with award after award, by those who want you to appreciate their feelings. Your involvement and achievements in the development of this community have been awesome and unparalleled. You have built buildings, and you have created institutions. You have established rules, customs, and procedures for others to follow. You are an institution, the epitome of good, an endless seeker for the truth and justice. And the thousands of opinions that you have written and the thousands of speeches which you have made will leave their impression on the multitudes whom you have touched. There is no more satisfying opportunity a son can have than to share these feelings with you and with those assembled here tonight, because throughout my life I have always felt that my father is the best. And this greatness will live on long after all of us here tonight are gone. It will be relived in the volumes of pages which you have written and in the goals and values which you have established. If only I could find the words and chisel them in granite so that all who know what greatness is while we live upon this planet, I would chisel but a single word. Just one, I need no more. And then they'd all remember just what you left before them. The word is in heart's

endearment yet respect for firm belief, and I can think of not a better term than the singular word, "Chief." This word's my tribute, Dad, and all present here tonight can share that tribute with me by calling you Chief on sight. Thank you all for your indulgence. I now take my relief. But before I do, please stand with me and raise your glass to Chief. [applause]

NED CARPENTER: By your applause, you've already thanked him. But I want to say that that was a memorable tribute and I'm glad that it's going to be part of a permanent record for this evening. Before I introduce any of our speakers on the program, I want to especially recognize the hard work done by a committee headed by Justice Duffy, who made these arrangements for us this evening, and particularly the work of Bill Wiggin, who set up all of these plans and made our evening the happy evening that has already begun. Would you two please rise so that we can thank you? Justice Duffy and Bill Wiggin. [applause]

Frank Biondi, outstanding lawyer, consummate politician in the best sense of that word, superb Bar president, surpassing community leader, and most important, a friend of our honoree this evening, Chief Justice Herrmann. Frank, we owe so much to you for all of your effort on behalf of the judiciary, on behalf of the bar, on behalf of the administration of justice, your superb job in improving and upgrading the work on Professional Responsibility, your job in re-codifying the Canons of Ethics. How can we begin to thank you? But I want to call on you one more time to say a few words about the Chief.

FRANK BIONDI: Thank you, Ned. I was stunned by that introduction. Not by the content of it, but by the fact that Ned was in Wilmington tonight. He was in Wilmington all day on May 1. I didn't know he could visit in this state two days in one month on a regular basis.

Chief Justice Herrmann, Governor Castle. He sits me across the table from Governor Castle and calls me a consummate politician. Governor Castle, Senator Heflin, distinguished members of the bench and bar, Rabbi Drooz, friends of the Chief Justice. First of all I want to say how happy Eda and I are to join with all of you on this happy occasion, and especially with Chiefy Pops and Mitzi, Steve, and Richard, and the other members of the Herrmann family, and all of their friends.

I had been looking forward for some time to speaking on behalf of the bar at a retirement party for Chief Justice Herrmann. [laughter] Now, let's be clear about it. I did not say that I had been looking

forward to his retirement, as I have been unjustly accused of by Mr. Chief Justice, by you. I originally thought it would be a good occasion to tell some great stories about the Chief Justice tonight, but then I remembered that he still has several months left in office.

When the president of the Bar speaks on an occasion in honor of the Chief Justice, the question immediately comes to mind of the relationship between the Bar and the Chief Justice. I had recently attended a national conference at which this was the subject of discussion, and I was sitting next to a fellow from a southern state, not Alabama, Senator. This fellow indicated that the chief justice of his state had not sat down with the bar association for over ten years. And that upon becoming chief justice he wrote him a letter and he was thrilled by the fact that he gotten a response. In fact, the chief justice gave him an appointment, and he went in to see him. And the Chief Justice sat there and listened to him for about fifteen minutes, while he talked about the necessity for bench-bar communication. The Chief Justice then kind of smiled, grunted, stood up and said, "That's all very interesting." And left. And he hasn't heard from him since. I was sitting next to this fellow and the chairman of the meeting looked at me and said, "Do you have that problem in Delaware?" I said, "Hell, no. We can't get the guy to leave us alone anymore." [laughter] But thankfully the Chief Justice has not let us alone, and we have been privileged to share in his work.

I want to say just a few brief words here tonight about the Chief Justice's contribution to the administration of justice. The improvement in the administration of justice and court reform has been the most important scene in his life. I suggest that even a brief listing of his accomplishments in this area would demonstrate that he will be forever remembered as Delaware's first true chief administrator of justice. He has over the years pointed with pride and viewed with alarm. And he has taught us all that court reform is not for the short winded or the faint hearted, and he has been knighted. With his strong leadership, the story of progress has been made in the administration of justice. And this has been accomplished in the spirit of collegiality and with full participation of the judiciary, the bar, and the community. With very little administrative support, the Chief Justice literally fashioned, for the work of court reform, a staff of hundreds, commonly known as the Delaware Bar.

Mr. Chief Justice, as a spokesman for the Bar I must emphasize what I consider to be your most important accomplishment. You have institutionalized the full participation of the Bar in the work

for court reform. As I have stated, you proceeded with your own small staff and a cast of hundreds by appointment of members of this bar's permanent committees of the supreme court and, at least by my own casually complete count, fifteen ad hoc committees. You have made the Bar full participants, partners in the work of court reform in the administration of justice. I am confident that this bond between bench and bar is not surpassed in any other jurisdiction. The Bar is grateful to you. We will miss you. We are confident that your legatee will continue, and that this bond between bench and bar will continue and grow stronger. Your accomplishments for the profession in this state have raised the quality of professional life in Delaware for all of us. But I want to make one note, that is, that we are not prepared to support a constitutional amendment which would authorize retired chief justices to appoint committees to serve. [laughter] In closing, let me say that the bench and the Bar in Delaware are deeply indebted to you, Mr. Chief Justice, for your unprecedented leadership in court reform. I am also happy to say that your warmth, compassion, and good humor have made these last twelve years not only productive but most enjoyable as well. It was a great time to practice in Delaware. You will be forever remembered as Delaware's first true chief administrator of justice, and a genuinely good fellow to practice law with. We wish you many happy years of continued achievements, and, Mr. Chairman, I waive the rest of my time. Thank you. [applause]

NED CARPENTER: Thank you very much Frank. As to our next speaker, what can I say about Governor Castle that all of you, all of you members of the bar particularly who know him, do not already know. He's come home to us for this family affair this evening. We're glad to welcome him. I will tell you one little nugget. Did you know he was a basketball star at Tower Hill? And at Hamilton college? You do know, of course, already, that he served with distinction in our General Assembly, both as a representative and as a senator, that he was our illustrious Lieutenant Governor and now he's our Governor with, if anything, an embellishment of riches in Delaware's new found prosperity. Mike, won't you say hello and tell us about the Chief Justice?

GOVERNOR MIKE CASTLE: Thank you very much, Ned. Mr. Chief Justice, Mrs. Chief Justice Herrmann, members of the Herrmann family; I enjoyed your pictures immensely here tonight. Rabbi Drooz; members of the federal and state judiciary, all of whom seem to have turned out here tonight; Governor Carvel; Governor Boggs; Senator Heflin, who I think we're all going to enjoy a great

deal; ladies and gentlemen, friends all of Chief Justice Herrmann: I was pleased, flattered, to be asked to address this distinguished audience honoring Chief Justice Herrmann. I owe the Chief Justice several debts of gratitude, not the least among them is that he swore me in as Governor and as Lieutenant Governor of the State of Delaware.

When I was asked to make some remarks tonight, it was suggested that I talk about what Chief Justice Herrmann has meant to the administration of justice in Delaware. The laundry list of his accomplishments is a long one. Chief Justice Herrmann has been unfailing in his pursuit of the resources necessary to permit our courts to do their jobs. He lobbied long, hard, and successfully for the expansion of the supreme court from three justices to five and for the expansion of the court of chancery from three to four judges. He has pushed for two new judges on the over-burdened superior court; and he may well see that goal accomplished before he retires in August. His tireless advocacy for adequate judicial compensation finally bore fruit in the enactment of the Delaware Compensation Commission last year which has resulted in substantial salary increases for all judges which we hope will enable us to recruit and retain the highest quality judges on our state court bench. The Chief Justice established the Long-Range Courts Planning Committee and the Commission on Litigation Ethics and pushed for the establishment of a counsel for the administration of justice and the court in the judiciary. He oversaw the implementation of the board of professional responsibility, including the establishment of a full time office of disciplinary counsel. And it is fair to say that Chief Justice Herrmann brought our court system into the computer age, a fact I've come to appreciate in our budget process, even though I've only been in office four months. In short, I think it's fair to say that Chief Justice Herrmann has done more for the administration of the judicial system in Delaware than any chief justice in this century.

But we are gathered here tonight because the Chief Justice is retiring, and I am faced with the task of nominating his successor in a few short months. So I want to discuss a little bit of what I am looking for in a Chief Justice. I think we need a Chief Justice with presence, someone who can command respect not only of lawyers and litigants but also of his or her peers on the bench. We need a Chief Justice whose demeanor on and off the bench will sustain the credibility of the supreme court and the entire court system. We need a scholar, if there are any left; perhaps a successful private practitioner willing to make a personal, financial sacrifice for the

sake of public service. Dan represents all of these things, and he is going to be tough to replace.

But in addition to these qualifications, let me suggest a few others which we also can see in Chief Justice Herrmann. First of all, of course, I want to make sure our new Chief Justice has the right legal training. Chief Justice Herrmann took his law degree from Georgetown Law School, my alma mater. I hope I am not being biased when I say I can think of no better school for our new Chief Justice to have attended. [laughter] Secondly, like Chief Justice Herrmann, I think we need someone who, if he has any vices, indulges them with an appropriate sense of tradition. If he drinks, he should drink scotch [laughter], a civilized whiskey. Should he gamble, he should have tested well his poker players of the first rank. Third, we need a Chief Justice who, like Dan Herrmann, has a good sense of humor. Only Chief Justice Herrmann would describe his engagement in terms of tender offers [laughter] and golden parachutes. Or as Richard has stated, be known by the affectionate name of Chiefy Pops to his grandchildren. And since the Chief Justice has to make a lot of speeches, and we as lawyers have to listen to them, I think the nominee, again, like Chief Justice Herrmann, ought to punctuate his annual state of the judiciary addresses with periodic statements recounting how many minutes he has spoken and how many minutes he has left to speak. [laughter] This is tantamount consideration for an audience. Needless to say, he should look like a Chief Justice. For this I may need some help from central casting, because I'm not sure there's anyone else in Delaware who looks as much like the Chief Justice as the Chief Justice. [laughter] And finally, we need a Chief Justice who has a good sense of perspective and appreciation of what is really important in this life. According to Chief Magistrate Norm Barron, in the state building parking garage a few weeks ago, for example, Chief Justice Herrmann asked Judge Barron whether he had compared his Cadillac to that of the Chief Justice. And then he added, before Norm Barron could say anything, "Well, I have," the Chief Justice noted, "and mine's longer." Mr. Chief Justice, I wish you and your family a long and happy retirement. We're going to miss you. Thank you very much. [applause]

NED CARPENTER: Thank you very much Governor Castle. The other day on the occasion of the swearing in of Judge Stapleton as Judge of the United States Court of Appeals for the Fifth Circuit, former Chief Judge and still Judge of the Court of Appeals, Collins Seitz, was there, and was referred to frequently by the speakers as

Chancellor Seitz. I think we all want to use that term to remind him and to remind ourselves that we consider him a true Delaware product even though he's gone on since those days as chancellor to a national reputation upon the United States Court of Appeals for the Third Circuit. Chancellor Seitz's record with Chief Justice Herrmann goes back to the days when they were practicing law together, long before either of them had an opportunity to begin judicial service. Since then they've gone on to very similar, but very different, careers. And as you know, Chancellor Seitz went on to become Chief Judge of the United States Court of Appeals, and, I'm thinking, generally regarded as one of the most scholarly judges in this country today. It gives me great pleasure to introduce Judge Seitz. [applause]

JUDGE SEITZ: My friend, Dan Herrmann, and all of his friends, and so many distinguished individuals here tonight that I would not want to slight anybody by naming them. Yes, Ned, I love Delaware. It was a great loss to me personally when I left the court of chancery after twenty years to join the court of appeals. And that loss is still very much a part of me because I was one of those very strange people who love corporate disputes. And most of my colleagues couldn't understand that I could see as much sex appeal in a corporate takeover case as others can see in a dispute over a criminal matter.

Ned reminded me that I don't have long to speak. It takes me back many years to when I spoke in this same room to a luncheon club, and I asked the chairman how long he would like me to speak. He said, "Well, you're free to speak as long as you like. But we all leave at 1:30." [laughter] I'll keep that in mind.

You know, a long time ago a Greek philosopher said, in capturing the whole concept of change, "we never step in the same river twice." Chief Justice Herrmann's outward career is a testimonial to the accuracy of that observation. I can testify about our honored guest from personal knowledge. Not too many go back as far as we do, Dan. But I want to assure Dan tonight that despite all of the things I know about him that I will confine my remarks to those that will pass muster here this evening. He and I were associated in Stewart Lynch's law office, a very small firm. We were admitted to the bar and commenced the practice of law in Wilmington in 1940. However, the future Chief Justice was admitted to the Delaware Bar a few months before I was. You will soon see why I emphasize that fact. Candor compels me to say that Dan took full advantage of his seniority. He and I shared the very same small

office. We also shared one very small desk. But Dan had the knee hole side of that desk. [laughter] In those days that was a very real status symbol. When a client came to see Dan, I was banished from the room. So I spent a great deal of my time over in the public law library. I seem to recall that Dan had quite a varied clientele. Some of his clients paid him in kind, and on occasion that made for a very distinctive odor in our office. [laughter] Dan, do you remember the time your client paid you in a dismembered chicken? [laughter] And you put it out on the fire escape to keep it from spoiling? So you can see the experiences we had together. I can tell you about a lot of other burdens of juniority that I suffered. But they are really lost in the tribulations and the joys that we shared over those years as young striving lawyers.

I suppose it was inevitable that our paths should diverge, but of one thing I was certain in those days, given Dan's legal ability, his personality, and indefatigable work habits. I knew he would become a leader of the bar, and I thought that in due course he would become one of our public judiciary. My expectations became a reality, and Dan soon came to the court and ultimately as Chief Justice of the highest court of this great state. I think Dan will agree with me as we sit here tonight that in those early days of our practice of law, we could never have imagined in our wildest dreams that he would become a member of the Delaware judiciary, that I would become a member of the Delaware judiciary, that he would become Chief Justice of Delaware, and that I would become Chief Judge of the Third Circuit. You know my office is on the fifth floor on the French Street side of the Federal Building. Some years after I moved in there, Dan moved into the State Office Building across the street, on French Street, and he moved into the eleventh floor of that building. And Dan on several occasions since then has reminded me with no absence of glee that he as Chief Justice now looks down on the Chief Judge of the Third Circuit. [laughter] I think that's carrying federalism a little far.

Others have spoken, or will speak, of Dan's fine judicial accomplishments and his administrative leadership, to say nothing of his long commitment to the public freedom. I speak of Dan tonight with the affection that comes from our common experiences and long personal association with him and his fine family. In addition, I trust my objectivity will not be challenged when I say that Daniel L. Herrmann has brought and continues to bring to the office of Chief Justice the learning, the dignity, and the demeanor that makes each Delawarean proud to say that he is the Chief Justice of Delaware.

Our presence tonight shows our esteem and affection for the Chief Justice. While not even he has been able to step in the same river twice, by his many accomplishments he has contributed immeasurably to its flow. We in Delaware are indeed most fortunate and I personally am most gratified indeed that Dan Herrmann decided to come our way. Thank you. [applause]

NED CARPENTER: Thank you very much Judge Seitz. We've heard from one person who practiced law with Dan Herrmann, now I'm going to call on a former partner of his, who was not only a partner who practiced law, but later a colleague with him on the Supreme Court of Delaware. I've already referred to Justice Duffy's role in organizing this evening for us. Justice Duffy has held positions of eminence in the court of chancery, on the superior court, and in the supreme court. And it was in the latter position that he was a long time colleague of Chief Justice Herrmann, whom we honor this evening. It gives me great pleasure once again to call on you, Justice Duffy. [applause]

JUSTICE DUFFY: Thank you Ned. Mr. Chief Justice, Mrs. Herrmann, Governor Castle, Senator Heflin, and family and friends of Chief Justice Herrmann.

It's a very special honor to speak on this occasion, when we celebrate our Chief Justice and his judicial service to the people of Delaware. My relationship with Dan Herrmann goes back not as long as Howard Seitz's does, but goes back thirty or more years. It began when he was a superior court judge and I was a relatively inexperienced lawyer. A difficulty arose with a client, and I concluded that I had to get off the case. But I was uncertain as to one very important matter—could I collect a fee. So, specifically, should I accept payment for a settlement that I agreed to. Without identifying the client, I consulted Judge Herrmann. He listened and then he said, "Take the money." [laughter] I knew then that he was my kind of judge. [laughter]

In 1958 Dan resigned from the superior court and we joined in the two man law firm which lasted until I went on the bench in 1961. Our motto was, "Come one. Come all. No case too big. No case too small." [laughter] And most of those who came, unfortunately, were small cases. Then in 1965 he became a member of the supreme court. And in 1973 I administered the oath of office to Dan as our Chief Justice. That was my last act as chancellor, and his first act as Chief Justice was to administer the oath of office to me as a justice of the supreme court. And so we became colleagues again. And it's been a very special privilege for me to share with

him both the beginning and the end of his term as Chief Justice, the alpha and the omega of those twelve years.

When Dan became Chief Justice in 1973, I told him that I thought he was beginning a golden age for the Delaware judiciary and the administration of justice, and so it's been. With all due respect and with much personal affection for Dan's predecessors, the administration of the judicial system had been at minimum. But Chief Justice Herrmann has been both a jurist and a very active Chief of our judicial system. As a judge he's written for the court some of the most significant cases ranging from constitutionality of the death sentence to the most complex of corporate disputes. His opinions are clear in language, scholarly in content, and analytical in resolving issues. In some ways, the dominant quality of his opinions is strength. Once his mind has settled on the results or a point of view, his writing reflects the power of his conviction. And that is a thing, a quality which he shares with other great judges. Under our constitution, a Chief Justice is the administrative head of all the courts in the state and has general administrative and supervisory power over all the courts. As Chief Justice of the judicial system, Dan Herrmann has pushed, pulled, dragged, and sometimes kicked the system into the twentieth century. Indeed, if the momentum he has started continues under the next Chief Justice, we'll be ready for the twenty-first century when it comes.

The vast leadership of our judicial branch of government is founded on one personal quality. He cares about the system. He cares very much about it. He cared, for example, when as a superior court judge, he established Delaware's first presentence office. Before Dan Herrmann joined the court, a sentencing judge would simply listen to counsel, look up at the lights on the ceiling, and at the wall, and then pronounce sentence. As Chief Justice, his care has been demonstrated in the insistence of the right of the judicial branch of government not merely to be separate from other branches but to be separate and equal. His persistence and pursuit of excellence in the administration of justice has led to more judges, fairer salaries for judges, enlargement of the courthouse, additional administrative personnel, and putting in place an internal uniformity which helps bind the system together.

The Chief Justice has also been an innovator. Recently, he's been pushing two ideas. One, an intermediate court of appeals for Delaware and appellate review of sentences. Neither one is popular. I doubt that anyone, except him, gives either a chance to become law. But Dan Herrmann, like his hero Winston Churchill, is per-

sistent. He never gives up. So let me tell you this. When we do have an intermediate court of appeal [laughter] and when we do have appellate review of sentences, let it be known that these two ideas originated first with Dan Herrmann.

Dan is fond of quoting Daniel Webster, who once said, in tribute to Justice Story, that "justice is the great interest of man on earth." Outside of his family, the pursuit of justice has been Dan Herrmann's great interest in life, and we are all the better for it, particularly our judges. So for them, for myself, I say to you, Chief Justice Herrmann, thank you for all that you are and for all that you've done for Delaware and our judicial system. And to you and Mrs. Herrmann, from all of us, a full toast. Amen. [applause]

NED CARPENTER: Thank you very much, Justice Duffy. Senator Heflin, our final speaker this evening, is a Renaissance man of many parts. A lawyer, a justice, indeed, Chief Justice of the Supreme Court of Alabama, and now a distinguished United States Senator in Washington, providing leadership on the Judiciary Committee and on many other committees. He has been a friend of Chief Justice Herrmann since they met together in various organizations composed of chief justices. And since they served together as directors of the American Judicature Society, he has interrupted an unbelievably demanding schedule, which I won't tell you about, but it involves his going from here to Canada at the crack of dawn tomorrow morning, in order to be here with his friend and to tell us something about him. It gives me great pleasure to introduce to you Senator Howell Heflin of Alabama. [applause]

SENATOR HOWELL HEFLIN: Well, I sense an atmosphere here that we are one big family, and we are really here to honor a dear friend of everyone present. And it's just a warm family feeling that I can sense since being here. I don't think anybody has ever been as loved as Chief Justice Herrmann has by bar and bench, and the people of Delaware. It's such a delight to be here. I appreciated Ned Carpenter's phoning me. Ned and I have been friends for many years. We've worked on the American Judicature Society. He served, of course, as the president and did a great job in that capacity. Your two United States Senators are dear friends of mine. Joe Biden is on the Judiciary Committee with me and Bill Roth is a good friend. Both told me to extend to you, Chief Justice Herrmann, their warmest feelings and to wish you well in your retirement. You have a number of friends all over the United States, as they join this retirement party with the sending of messages.

I happened to phone today a friend of yours in Alabama. Dan

Herrmann has been in Alabama so many times trying to help us with our judicial system that he's known by all the lawyers down there. There's one fellow down there that took to him back in the '50s when he came down to help with the new rules. We didn't call them the federal rules. If we'd called them the federal rules, they'd been horribly received. [laughter] But this fellow lawyer, a fellow named Hawkins, Jim Hawkins, is unusual, he doesn't wear a necktie. And he has the nickname of No-Tie Hawkins. [laughter] He wanted to extend to you his finest congratulations. No-Tie is quite a lawyer, as some of you may have heard me say at one time, but he lives in the small town of Russellville, Alabama. And he practices law. He doesn't wear a necktie. He never had a necktie on in the courthouse at all and he's been quite successful. He's known as an ear lawyer rather than an eye lawyer; he practices law by what he hears rather than what he reads. Anyway he's a character. He's a philosopher. He'll rear back—he doesn't wear a belt—he'll pull out his suspenders and philosophize. Give you an opinion on each and every subject that might come along . . . he's one of those real characters. When I was a Chief Justice of the Supreme Court, he tried a case in Russellville and lost it. And they told him that he was going to have to take his appeal to the Supreme Court of Alabama. And they said, "You go down there before those nine justices (we happen to have nine on our court) and if you don't wear a necktie you're going to lose your case." He said, "I tell you sir, I'm just going to take that chance." He says, "I've been quite successful without wearing a necktie." So he came down and he argued his case without a necktie. A few of my old dignified colleagues, some of them looked as dignified as Justice Duffy, gave him a few hard looks, but they didn't say anything. He went away and in a few weeks he received his opinion and saw that he lost his case. And he ran into me a few days after that and he said, "All my friends tell me the reason I lost the case was because I didn't wear a necktie." And I tried to assure him that the Supreme Court of Alabama in its wisdom would never let an extraneous matter like that creep into its opinions and decision-making; that they decided the case purely on law and facts. Well, that didn't satisfy him. He said, "Well, I want to tell you this, he said, "if that had been the reason, it would have been a damn sight better than the one you gave." [laughter]

Good ole No-Tie. He had a country home. He saw some nuns traveling from Memphis to Birmingham who had gotten lost looking for Russellville, Alabama, and they got out into the rural section

and ran out of gas. And they didn't know what to do and one of them noticed down the road around a curve there was a filling station and so they walked down there and said, "We're out of gas a couple of hundred yards back up the road. We'd like to borrow a gas can and take it back to the car and then we'll return it and buy some more gas and be on our way." Well, they looked around, and they couldn't find a gas can. People had borrowed them and they hadn't brought them back. They had to find some sort of container that would carry gas back to the automobile. And they hunted and the only container that they could find was an old bed pan. So they filled up the old bed pan full of gasoline and went back to the automobile and here one of the nuns was pouring the gasoline from the bed pan into the tank of the automobile when down the road driving a '62 Ford automobile comes No-Tie. [laughter] No-Tie sees what's going on and he comes to a stop. He says, "I know one thing. [laughter] If that car cranks, and it runs, I'm trading cars and switching churches." [laughter]

Robert Frost, not dead but more than twenty years, left us with many eloquent words and phrases. He spoke from the heart and the soul of America and for all mankind. In the 1940s he published a poem entitled "The Lesson of Today." And he ended it thusly: "And were an epitaph to be my story, I'd have a short one ready for my own. I would have written of me on my stone 'I had a lovers quarrel with the world.'" This poem and metaphor has always attracted me as an appropriate slogan to use as a guide by which to live our lives. Quarrels between lovers do not necessarily start at an even diminished level. They may strengthen it provided the dominant factor is always love. Any such quarrel must be motivated by a desire for an improvement, not destruction. Many of the most quarrelsome and criticized of systems, values and ideals that have been most influential in improving man's stature in this life and in this world. There have been many in the past who have improved man's lot by quarreling with the world—Socrates, Milton, Jefferson. When I think of Chief Justice Daniel L. Herrmann, I would paraphrase the last line of Robert Frost's poem and state that Chief Justice Herrmann had a lover's quarrel with the justice system. In America there have been only a few who have devoted decades towards vastly improving the administration of justice. There have been many who have been discontent with our system of justice but only a few could devote their very lifetime towards improving the system. Many of our presidents, both in the national and state organizations, have been active for a few years, but few have sustained

activity for a number of years. Roscoe Pound, the famous Harvard law professor, is well known for his speech on the popular dissatisfactions with the administration of justice. Not only in his speech, but his entire life was devoted towards improving our system of justice. Chief Justice Arthur Vanderbilt of New Jersey, through his deanship, his bar presidency, and as Chief Justice of the Supreme Court of New Jersey, is recognized as one of the leaders in improving the administration of justice. Warren Burger, the present Chief Justice of the United States, has encouraged improvement in both the state and the federal systems now for many years. And to this list we must add the name of Chief Justice Daniel L. Herrmann. These great leaders were not content with the justice system. They did not want to destroy it, but rather they worked within its framework to improve it.

I've known Dan Herrmann for almost two decades and was closely associated with him for eight of those years. I first met him at a state and federal justice institute in Washington, D.C. Our paths crossed many times thereafter. He was a frequent lecturer at seminars of institutes designed to improve court systems. He's been an active leader in the National Conference of Chief Justices and the national center of state courts. He has actively supported all organizations designed to improve judicial education. His impact on the system improvement was tremendous wherever he spoke or whenever his written word was read. His innovative thinking was followed by many chief justices and others interested in court systems. He came to Alabama and shared with our citizens, conferences on courts, his progressive ideas and practical approaches. I personally know his ideas are of an immense value to the Alabama court system.

There have been times in Chief Justice Herrmann's life when his responsibility, his professional priorities, had to take a temporary backseat to his family's responsibilities. For about eight years he served as a trial judge. He would probably be described by those who appeared before him in those days as knowledgeable, able, and above all, equitable. For this was at a time in his life when he realized that he had to do something to provide peaceful income in order for his family to be able to meet their needs and to educate his children. So he left the bench to join in private practice with his friend and colleague, the now Justice William Duffy. But in 1965, Governor Charles Terry called upon him to return to the Supreme Court of Delaware. It was a tough decision for him to make. Dan and his wonderful wife Zelda were faced with a difficult task. Judge Herrmann's firm had been very successful and leaving

private practice would mean a sacrifice for the entire family. So he and Zelda took a weekend to go to New York to discuss their decision, and they discussed it all one day Saturday and then on a Sunday they reached the decision to rejoin the bench. They were quite happy about that decision and so they decided to celebrate by going to a Chinese restaurant called Lum's Garden, which they often visited while they were in New York. And when he broke open his fortune cookie, his fortune read, "Decisions made on Sunday are sound and should be followed." That Sunday decision proved to be sound for this nation and particularly for the state of Delaware. Since that time he has served as a member of the Delaware Supreme Court and has served as Chief Justice since 1973. The Delaware judicial system owes a debt of gratitude to Dan Herrmann that can never be repaid. Dan Herrmann in his service on the court has rendered not only well-reasoned and superbly written decisions, but common sense decisions. He is a jurist in the purest sense of the word, but that is not his only accolade, for he is also one of the best court administrators that I have ever had the privilege of working with.

Time doesn't allow, nor could we do justice to, all that Chief Justice Herrmann has contributed to the Delaware court system. But there are several programs that I feel that I must mention. Dan Herrmann has a strong commitment to provide fairness to the most reasonable settlements of disputes as possible. He's been instrumental in establishing an alternate dispute resolution program where civil cases of less than \$30,000 can be settled outside of the judicial courtroom setting. Always aware of the public perception of the judicial system, he has instituted citizens' conferences on the administration of justice where everyone affected by the system had an opportunity to express their opinions and formulate consensus on the needs of the judicial system of Delaware. The Judicial Proprieties Committee is also evidence of his sensitivity to individual problems faced by judges. This is not a disciplinary committee, but rather an opportunity where a judge can receive an opinion appropriate to potential ethical problems. Under Chief Justice Herrmann's tenure the supreme court was expanded, from three to five members. And he's been a staunch advocate for upgrading judicial salaries. Not because it meant something to him, but he felt that we must not deter individuals of ability from judicial service. One of his colleagues said of Justice Herrmann, that he had contributed more to the administration of justice than any person in the history of the state of Delaware. And that's quite an accomplishment.

But there's another side to Dan Herrmann that his colleagues

also know. If you could try to describe in one word the public side of Dan Herrmann, that word might be dignified. And dignified he is. His appearance, in particular his well trimmed and well molded moustache, seem to create an atmosphere of dignity wherever he goes. In fact, he is so dignified that he is one of the few individuals that I have ever known who could strut sitting down. [laughter] He is truly the epitome of dignity, and a judicial system needs the dignity the public perception demands. But if you want to describe the private side of Dan Herrmann, the word would be caring. And I think that Justice Duffy has already mentioned that, and I think that he has evidenced the greatest sense of caring. He is a caring friend. He cares for the unfortunate, the underprivileged, and he is always caring to be on the lookout to see that no injustice is done. He is also a caring family man. I happen to have known Zelda quite well and I know how kind he was to her, and what a caring husband he was. He was caring with his children. I remember when we first met him, Stephen came over to the institute, we were there, and he was then in law school, and he and his father went out with one another, and I was impressed with the fact of what a caring family man he was at that time. And Mitzi, I'm sure that you will find that he'll be very caring. It's evident that you have already brought much joy to him, and we wish you well as both of you walk together. Your life together will be many things in the future.

Chief Justice Herrmann has worked hard to achieve a sense of collegiality on the supreme court in Delaware, and his colleagues have respected and admired him for his leadership, ability, and character. I'm not familiar with all of the legal opinions rendered by Chief Justice Herrmann, but I'm told that one of which he is most proud is an opinion that he authored in 1971 in the case of *Schnell v. Chris-Craft Industries*, involving a fight over control of Chris-Craft between stockholders and its management. In his decision Justice Herrmann made a statement that has been quoted extensively, and it is a reflection not only of Dan Herrmann the judge, but of also Dan Herrmann the man. "Inequitable action does not become permissible simply because it is legally possible." Dignified, caring, equitable, progressive, modern-minded yet conservative, all of these words in turn are descriptive of this great jurist. But to these must be added the highest qualities of integrity, intelligence, and industry.

I'm proud to be a part of this occasion. I've learned much from Dan Herrmann's counseling; I've benefitted from his guidance; and I treasure his friendship. Dan Herrmann was a leader in the field of judicial modernization, which came at a time when many were

discontent with our system of justice. He dared to be different. He quarreled with the administration of justice. He demanded an improvement in excellence but he always quarreled as a lover.

I quoted Frost at the beginning and again let me use some of his beautiful language. "I shall be telling this with a sigh, Somewhere ages and ages hence: Two roads diverged in a wood, and I—I took the one less traveled by, And that has made all the difference." Dan Herrmann has taken the less traveled road and had a lover's quarrel with the administration of justice. Delaware has benefitted. Our family has benefitted. All America now has a better system of justice. We must not be satisfied. We need more like Daniel L. Herrmann.

In closing, Chief Justice Herrmann, I know that I speak for everyone here when I quote or paraphrase rather, the words of an old Irish prayer that goes something like this: "May the road rise to meet you. May the wind always be at your back. May the sunshine warm your face. The rains fall soft on your feet. And during the remainder of your days, may the good Lord hold you in the palm of his hand." [applause]

NED CARPENTER: Thank you so much, Senator Heflin, for those moving words. I'll now just call again on Frank Biondi. I believe you have a presentation to make.

FRANK BIONDI: Thank you, thank you Ned. I just want to note for the record that the Chief Justice has ordered that I submit the balance of my remarks in writing by ten o'clock tomorrow morning. One of the qualities of the Chief Justice that we all recognize is his great generosity. As I look around this room I don't think I see a lawyer who hasn't been taken to lunch by the Chief Justice and for whom the Chief Justice hasn't picked up the tab. Of course, it'd probably cost you about on the average of 200 billable hours after that. He has been very, very generous to all members of the bar, and we'd like to show him our generosity at this time. Chief Justice Herrmann, would you come forward please? If my wife had any idea of what was in this box, she wouldn't let me within ten yards of it. Would you open this for us, Mr. Chief Justice? I have a written memorandum from Bill Wiggin saying, "This is fragile. Be careful." Very carefully. [opening box] Chief Justice, that's a symbol of patriotism and sword of excellence. [applause] I will also note that when I appointed Justice Duffy as chairman of this committee I knew there would be infinite attention to detail and if you'll look carefully, Mr. Chief Justice, you'll see that it's a bald male. [laughter] We have one more present for you, Mr. Chief Justice. This may be the last thing on which a republican governor will be

working. [laughter] Well, this is a beautiful piece of cabinetmaking and it's inscribed, "Presented to Chief Justice Daniel L. Herrmann by the Delaware State Bar Association in deep appreciation for long and distinguished judicial service to the state of Delaware and its citizens, May 16, 1985." There are three drawers, if you will. The first is the invitation to the dinner which has been preserved in acrylic, and the second drawer is a copy of the program which has been preserved in acrylic, and in the third drawer is a blank videotape which we will swap with you in a week for the complete videotape of these proceedings occurring here tonight. [applause]

CHIEF JUSTICE DANIEL L. HERRMANN: Thank you very much, friends. Ladies and gentleman, honored guests, including family, friends, colleagues. It seems that the most thrilling moments of our lives almost always find us without adequate words. I'm deeply moved, and touched by what has been said here this evening, and by the handclaps which I've received during the session. I shall never forget this evening. I simply want you to know, each and every one of you, colleagues, friends, family, that by your presence here this evening and by your expressions of affirmation and good wishes, you have made this event one of the most memorable occasions of my life, and for that I extend my heartfelt appreciation to you one and all. Thank you very, very much indeed. Senator from Alabama, friends, and colleagues who have spoken here with such terms that are so meaningful to me, so repetitious I know, but I could sit here and listen to them all night. As I leave the office of Chief Justice, it is the affirmation of those assembled here tonight that is for me the most meaningful recognition of all. I close by thanking you for the occasion, thanking you for the memory, and I hope that in my retirement time, the friendships and mutual affection that many of us have formed for each other will continue, and that our paths will cross many, many times. This has been one of the great evenings of my life, and I am deeply grateful. [applause]

NED CARPENTER: Would you all please remain standing for the benediction by Rabbi Drooz.

RABBI DROOZ: Oh Lord of justice and righteousness, compassion and truth, bless us as we go forth. Touch our eyes that we may see mankind's need of excellence. Touch our lips that we may sing that harmony which only truth with justice can at long last bring. Yea, touch our hearts with thy hopes and visions, that our troubles subside and be healed by our plea and decisions. Amen.