

## OPENING REMARKS

BY WILLIAM T. QUILLEN\*

CHANCELLOR QUILLEN: Ladies and gentlemen, good morning. I usually feel somewhat uncomfortable in positions of public spotlight, but it occurred to me on the way here this morning that the job of welcoming you is one that I'm on paper at least qualified to do. I am a corporate officer of two Delaware corporations, one family and one not. I am a member of the Delaware Bar Association and a member of the Executive Committee to that Bar Association. I am an adjunct member of the faculty at the Delaware Law School and a member of the Advisory Committee to the Delaware Law School, and if you have any questions about the Bar Association or the Law School during the course of the conference, I and the others here would be happy to try and answer those questions.

I think it is particularly appropriate that the American Society of Corporate Secretaries has joined in the sponsorship of this conference. It obviously has given the conference a geographic and occupational breadth of attendance that it would probably not otherwise have achieved and I, for one, am grateful for that sponsorship and particularly to Don Pease of the Du Pont Company and the American Society of Corporate Secretaries for the work that he did to put this conference together. It has taken a lot of work and Don has undertaken a large part of the burden.

We are in the land of Du Pont this morning. As usual, it's a pleasant place to be and Delawareans generally relish that favorable atmosphere. Secondly, on behalf of the Bar Association and particularly that tight little club that Professor Cary affectionately calls the Delaware Corporate Bar, it's a pleasure to welcome you on their behalf as well. I don't want to sound too much like a huckster up here this morning in a welcoming address or misuse that privilege but I would say that the tight little club is performing here with no fees and I think you will find that performance of high quality and one that will bring great reward to you. That does have a detriment, however. You will find that during the course of the conference not all the panelists will be here all the time because of other obligations.

On behalf of the Delaware Law School of Widener College and particularly the *Delaware Journal of Corporate Law* it's a pleasure to

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welcome you. The Delaware Law School is a new law school. It's about to be relocated at a campus that's approximately two miles, I suppose, from here on Route 202 — a campus ideally situated to service not only Delaware but New Jersey and Pennsylvania and Maryland and New York as well. I think the Delaware Law School is on its way. I think it's going to be in a very short time one of the finest law schools in this area. The *Delaware Journal of Corporate Law* is the law review of the Delaware Law School. You will receive in your materials a special seminar issue of that law review. I hope that you will read it and become familiar with the publication. The publication is good and it's getting better. It is one of the reasons that some of us have been so active in our support for the law school. A law school means a lot to a state. It means a good law library. It means the ability to support conferences such as this and it means some critical comment on legal developments. I think you will find that the *Delaware Journal of Corporate Law* is serving that function in a very satisfactory manner.

It's hard to know where to start today to introduce a conference on corporate law but perhaps the less said the better. Two quotes occurred to me as I was thinking about these remarks this morning. One is from a law review article written in 1899 shortly after the Delaware General Corporation Statute was passed entitled "Little Delaware Makes a Bid for the Organization of Trusts."<sup>1</sup> Delaware was therein described as a little community of truck farmers and clamdiggers determined to get her little, tiny, sweet, round, baby hand into the grab bag of sweet things before it's too late. That has certainly been echoed in some articles that you've read recently. The other thing that occurred to me, to put that in perspective, it seemed to me not only in corporate law but generally the way we at least view ourselves which is a biased view. This is a good state. It's a small state and it relishes its smallness. One of the University of Delaware's best teachers, John Monroe, the H. Rodney Sharp Professor of History has said, "Delaware is a comfortable state, so small, and to Delawareans adjectives like small and little are very pleasant connoting warmth and value."<sup>2</sup> And it seems to me that's the ultimate question. The United States Supreme Court has ruled recently that there is a vital role for state corporation law in the corporate scheme of things.<sup>3</sup> The ultimate question is not whether it is litigated in Delaware Court of Chancery or in some securities court in Washington, D.C. The ultimate question is how well is Delaware

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1. 39 AM. L. REV. 418 (1899).

2. J. MONROE, FEDERALIST DELAWARE, 1775-1815 Jacket flyleaf (1954).

3. Santa Fe Indus., Inc. v. Green, 430 U.S. 462, 478-79 (1977).

serving that function and is there something of value here. I think those of us who have been associated with the Delaware Corporation Law in various capacities feel there is something of value here, and without trying to toot our own horn too much we think it's something we do very well and we hope that this conference will air what we do and give everyone an opportunity to make that valuation for himself.

## HOW AND WHY OF INCORPORATION IN DELAWARE

BY S. SAMUEL ARSHT\*

CHANCELLOR QUILLEN: The initial topic is *How and Why of Delaware Corporation Law*. Sam Arsht is a well-known Delaware corporate practitioner and probably has been in the public limelight in corporate discussions more than any other practitioner in this state. I spoke to both Sam and Lou Finger this morning on the way in and asked who was going to handle the topic and I told Lou a story. I said, "You know Sam sometimes has a little hesitancy in his speech." I commented on that to another corporate practitioner one day and he said, "Well don't you know that's because when you get him on the telephone, he pauses, you talk and he listens, and by the time the conversation is over he knows everything about your case and you know nothing about his." I suspect that's an art he has mastered very well. Lou Finger said he called him up about the presentation this morning and that's exactly what Sam did. He said, "What are you going to say?" And Lou told him what he thought he ought to say and Sam listened. As I arrived here this morning, I found that Sam is going to talk. It's a great pleasure to introduce Sam Arsht.

MR. ARSHT: Rather than take up the time of this group this morning telling you how to form a Delaware corporation, and what to put in corporate charters and corporate by-laws and what to avoid, I would like to address the question of why Delaware incorporation is so popular. It has to be conceded, and its critics continue to impress upon us the fact, that it is very popular. I attribute this popularity to Delaware's well deserved reputation, which it has worked to develop and to preserve now for about eighty years of having the best corporation law in the world.

The best corporation law, in my view, is one that enables a number of persons, be they few or many, to pool their capital in a venture, in an enterprise, to be conducted in their common interests for their mutual profit with only those restraints, be they procedural or substantive, that most people would regard as proper and reasonable and even desirable, with such additional restraints as the investors themselves choose to impose upon the managers whom they select or designate to manage their pool of capital. But the

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