

JUSTICE JOSEPH WALSH: SCHOLAR, QUINTESSENTIAL
PROFESSIONAL, AND CHAMPION OF JUSTICE FOR ALL

Where does one begin when one undertakes a short piece about the life and legacy of Justice Joseph T. Walsh, who passed away at the age of 84 on August 15, 2014? Like a precious gem, his life and his legacy have so many sparkling facets that anything short of a formal biography would necessarily leave out much rich material.

So, one must discretely focus. And, in doing so, I have selected just three of those sparkling facets: his scholarship, professionalism, and championing of equal access to justice.

The Walsh Legacy of Scholarship

Although *his* distinguished legal career did not begin with his work as a judge, I would like to begin *my* discussion of his scholarship by looking back forty-two years ago when, in 1972, he was newly appointed by Governor Russell W. Peterson to become a judge on the Superior Court, Delaware's outstanding general jurisdiction trial court. He would go on to serve with great distinction on all three of Delaware's Constitutional Courts (Superior, Chancery, and Supreme Court).

During his eighteen-year service on the Supreme Court (1985-2003), he authored over 300 opinions for the Court, spanning a broad spectrum of subjects, including corporate and other areas of civil law, criminal law, and ethics. However, I would like to mention only one sample of the pre-Supreme Court phase of his judicial career.

In 1985, then-Vice Chancellor Walsh authored two landmark corporate opinions, *Moran* (validating the "poison pill")¹ and *Revlon* (establishing the doctrine that stockholders must receive the highest price obtainable when corporate control is sold).²

The year 1985 was a watershed year in Delaware corporate law, primarily because of four Supreme Court opinions: *Smith v. Van Gorkom* (establishing potential liability for directors who violate their

¹*Moran v. Household Int'l, Inc.*, 490 A.2d 1059 (Del. Ch.), *aff'd*, 500 A.2d 1346 (Del. 1985).

²*MacAndrews & Forbes Holdings, Inc. v. Revlon, Inc.*, 501 A.2d 1239 (Del. Ch. 1985), *aff'd*, 506 A.2d 173 (Del. 1986).

duties of care);³ *Unocal Corp. v. Mesa Petroleum Co.* (holding that directors who mount obstacles to corporate takeovers must reasonably perceive a threat to the corporation and may respond only in a manner that is reasonable in relation to the threat);⁴ as well as the two Supreme Court opinions affirming Vice Chancellor Walsh in *Moran* and *Revlon*.⁵

These jurisprudential developments came at the height of the hostile takeover phenomena of the 1980s and would frame the analysis of fiduciary duty law for decades to come, even to this day! In many of those later Supreme Court cases, Justice Walsh was the author of, or concurred in, seminal opinions of the Court—so many, that it is not practical here to cite them, let alone to write an analysis of them.

These superb contributions that he made to corporate law constitute only the "tip of the iceberg" when one goes about tapping into his achievements in scholarship over the years. For example, there is a particularly remarkable aspect of his scholarship that may be little known to many of his colleagues and friends. His obituary mentions that he was a former director of the Einstein Institute for Science, Health and the Courts. I don't personally know anything about the Institute, but I understand that it is (or was) a high-level think tank for the studies that its name implies. Further exemplifying his scientific scholarship, Justice Walsh authored, without fanfare, many scholarly articles⁶ and lectured on the legal implications of genetic science.

In short, his scholarship was multidimensional, ranging from brilliant judicial opinions, regular and faithful teaching (including long service as an adjunct professor at the Widener University School of Law where he was awarded an honorary Doctor of Laws degree in 1997), erudite articles of broad scope, and lectures to sophisticated audiences on many significant and timely subjects.

³488 A.2d 858 (Del. 1985).

⁴493 A.2d 946 (Del. 1985).

⁵See *supra* notes 1-2. *Moran* was decided by Vice Chancellor Walsh in less than forty days from submission, and he decided *Revlon* in less than a week from submission! This speed of handling expedited matters is remarkable and is characteristic of the Delaware courts.

⁶See, e.g., Joseph T. Walsh, *The Evolving Standards of Admissibility of Scientific Evidence*, 36 JUDGES' J. 33 (1997); Joseph T. Walsh, *Keeping the Gate: The evolving role of the judiciary in admitting scientific evidence*, 83 JUDICATURE 140 (1999); Joseph T. Walsh, *Courts and Science: The Challenge and Burden of Technology*, 1 CT. HEALTH SCI. & L. 156 (1990); Joseph T. Walsh, Franklin M. Zweig & Daniel M. Freeman, *Courts and the Challenges of Adjudicating Genetic Testing's Secrets*, in GENETIC SECRETS: PROTECTING PRIVACY AND CONFIDENTIALITY IN THE GENETIC ERA 332 (Professor Mark A. Rothstein ed., Yale Univ. Press 1997) (1996).

The Walsh Legacy of Professionalism

In Delaware the judiciary places a high value on professionalism, including not only lawyers' and judges' faithful adherence to ethical rules and canons, but also the expectation that these professionals and officers of the court will conduct themselves at all times with civility and respect for others.⁷ Professionalism likewise embraces excellence, skill, integrity, intellectual honesty, and mentoring of younger professionals to achieve the zenith of the legal profession in all respects.⁸

Joseph Walsh lived and breathed these principles. He was, in my view, the wise, quintessential, mature professional. I have the singular honor to have known him since the 1950s, when he married my beloved step-sister, Madeline. He and I have been good friends and colleagues throughout his distinguished career, culminating in the years 1992-2003 when we served side-by-side on the Supreme Court. Although we did not always agree on the merits of every case before the Supreme Court, we had the quality of mutual respect that judicial colleagues should have, even when they have differing views on how the law in a given case should be applied.

We lawyers and judges tend to think first of Justice Walsh as what many have rightly said: he was a "lawyer's lawyer" and a "judge's judge." Or, as our Supreme Court colleague, Justice Randy Holland, aptly put it—he was "the gold standard" for lawyers and judges.

He carried out the mission of professionalism in his daily life, whether it was his demeanor on the bench; his writings; or his interaction with his judicial colleagues, members of the Bar, litigants appearing before him, jurors, judicial clerks, interns, court staff, or members of the public. He was instrumental throughout his judicial and practicing-lawyer careers to teach ethics and professionalism in regular, continuing legal education sessions of the Delaware Bench and Bar as well as in the various Inns of Court.

⁷See *Principles of Professionalism for Delaware Judges*, DEL. R. ANN. 281 (2014 ed.); *Principles of Professionalism for Delaware Lawyers*, DEL. R. ANN. 311; *Paramount Commc'ns, Inc. v. QVC Network, Inc.*, 637 A.2d 34, 52 (Del. 1994) (finding a Texas lawyer's misconduct in a deposition to be unprofessional, and warning all lawyers appearing in any aspect of a Delaware proceeding that such conduct is unacceptable.)

⁸Justice Walsh was very active in various Delaware chapters of the American Inns of Court. The mission and vision of the Inns is to encourage exemplary service in the areas of legal excellence, professionalism, and ethics as well as to honor those who share the organization's vision of legal service as a distinguished profession.

He had an illustrious beginning to his professional career in Delaware as a lawyer before his elevation to the Bench in 1972 and in his early judicial career. In his law practice, he not only represented private clients superbly but also served public institutions, including service as Chief Counsel for the Delaware Public Service Commission. In addition, he was the chair of a committee, and through its driving force, recommended reforms to Delaware's antiquated magistrate system. Those reforms were ultimately implemented by all three branches of Delaware's government. Then in 1972-1973, as a newly appointed Superior Court Judge, he shepherded an entirely new Delaware Criminal Code through various revisions and approvals, including the ultimate approvals by the General Assembly and the Governor.⁹

While his professionalism on and off the Bench is well known, not much has been said or written about his post-judicial, professional career as a practicing lawyer. Here, I will refer to only a few events in the period when he returned to practice and became Special Counsel to the Wilmington office of the firm of McCarter & English, LLP, where he served with distinction from his 2003 Supreme Court retirement until his 2010 firm retirement at the age of 80.

He was very active during this period, serving as an arbitrator; mediator; special master; expert witness in foreign and United States Courts; "judge" in mock trials; mentor to young lawyers; and counselor, among "other activities." Those other activities include services that I do not know enough about. But, here are some notable examples about which I have heard:

- He was appointed by the Court of Chancery to be a receiver or trustee (I am not sure which) for a large number of shopping center properties in various parts of the country; he managed and sold those properties as a skilled businessperson and lawyer.
- He served as guardian *ad litem* for minors, unborn children, or others with disabilities to represent their interests in estate and trust matters; he negotiated efficiently, skillfully, and

⁹This was a monumental undertaking in which I had the honor to participate. The history of the work on the code, and its 550-page text, is printed in an official 1973 volume, titled *The Delaware Criminal Code with Commentary*, with the introduction authored by then-Superior Court Judge Joseph T. Walsh, chairman of the supervising committee. See generally FRANK B. BALDWIN, III, DELAWARE CRIMINAL CODE: WITH COMMENTARY (1973).

successfully the resolution of important and financially substantial matters in the best interests of his wards.

- I was reminded by an August 25, 2014, letter to *The News Journal* editor from Ben T. Castle, Esquire, and Bruce L. Hudson, Esquire, of his pivotal role in resolving delicate and substantial issues in the Dr. Earl Bradley child abuse matter. They wrote:

In the several tributes to Justice Joseph Walsh, we have not seen any mention of his crucial role in resolution of the Bradley child abuse class action lawsuit. In what might have been his last contribution of professional service, Justice Walsh used his deep reservoir of strengths to bring about a successful conclusion of a tragic situation involving over a thousand victims, dozens of lawyers, insurance representatives and hospital executives.

Over two years, his experience, legal acumen, wisdom, patience, dignity, practicality, and forcefulness resulted in an agreed settlement. It is hard to imagine that another single individual in Delaware could have accomplished the same result.¹⁰

I could go on and on about the examples of his professionalism, but it is time now to segue to the third focus of this piece on his legacies.

The Walsh Legacy in Promoting Access to Justice for All

Joseph Walsh is known and remembered for his many noble efforts and accomplishments. They all stand out. There is no one thing that is my "favorite." If I had to name the trait that comes first to mind, it is the manifestation of his humanity in serving, and causing people and institutions to serve, those of our citizens who are either indigent or otherwise less fortunate than we.

There are two "bookends" of his professional life that demonstrate this trait. In the early years of his practice, from 1959-1963, he was Chief Attorney for the Legal Aid Society, which was the precursor to the

¹⁰Ben T. Castle, Esq. & Bruce L. Hudson, Esq., *Walsh's Role in Bradley Case*, THE NEWS JOURNAL, August 25, 2014, archived at <http://perma.cc/CZ3U-LLKH>.

modern institution, known as Community Legal Aid Society, Inc. The other "bookend" is his co-founding in the 21st Century, along with the late Ned Carpenter, the Carpenter-Walsh Delaware Pro Bono American Inn of Courts. His obituary aptly and succinctly refers to his overarching vision of the importance of pro bono work as follows:

He believed that all lawyers should give back to the community and spoke to countless young lawyers as part of the admission process on the importance of pro bono work and other charitable work.¹¹

Access to justice is—and should be—a principal mission of the Bench and Bar. Some lawyers and judges honor it more in the breach than in the observance. Not Joe Walsh! He was a generous human being, who had the milk of human kindness coursing through his veins. Mike Kelly, his good friend and law firm colleague, told me that Justice Walsh's devout life of service to the Catholic Church and many charitable causes was defined by what Walsh saw as his "duty" to serve others, often anonymously, with humility and kindness. He did the deeds that made him who he was, not to trumpet his self-importance, but solely because he was dedicated to doing the right thing for his fellow man or woman.

In a 1984 published newspaper interview when he was sworn in as Vice Chancellor, he noted that he was attracted to the law as a form of public service. He concluded that interview by expressing his philosophy that "judicial work requires a recognition that there are certain standards . . . [and] a religious background provides an understanding of why standards and values are important."

Conclusion

I had the distinct honor, privilege, and pleasure to present to him, in 2002, the Delaware State Bar Association's First State Distinguished Service Award. This Award is presented each year to a Delaware judge or lawyer who has demonstrated "exemplary leadership and service dedicated to the cause of good citizenship in civic and humanitarian service." The recipient must, over a period of many years, "have maintained the integrity and honored recognition of the legal profession in community affairs and . . . unceasingly advanced the ideals of citizen

¹¹*The Honorable Joseph T. Walsh Obituary*, THE NEWS JOURNAL, archived at <http://perma.cc/8DQ4-Z4DV>.

participation and community accomplishment." The person chosen by the Association to receive the award must be "an outstanding Delawarean" who reflects "high honor on both country and profession." Joseph Walsh exemplified these qualities perfectly.

He was a Democrat who was appointed and re-appointed to his various positions on our three Constitutional Courts by four governors, three Republicans and one Democrat, in that order. On the occasion of the presentation of the First State Distinguished Service Award, each of those four governors offered his own tribute with phrases like: "You have contributed in an exemplary way to building the outstanding Judiciary that we Delawareans admire and respect." (Governor Russell W. Peterson). "Your long and distinguished service to Delaware has been a success story worth repeating to young lawyers everywhere . . ." (Governor Pete du Pont). "Your compassion, commonsense and ability to understand and communicate with people make all who know you value and respect you." (Governor Michael N. Castle). "Our judges should be of unimpeachable integrity . . . [and] should possess work ethics that are large and egos that are small. . . . No one better personifies [those standards] than Justice Joseph T. Walsh." (Governor Thomas R. Carper).

Finally, I am particularly fond of a letter written on that occasion by one of his former law clerks, who wrote the following note:

I witnessed firsthand Justice Walsh's commitment to treating all lawyers who appeared before him with dignity and respect, while insisting that they meet the highest professional standards. But more than that, Justice Walsh took time throughout that year to pay special attention to new lawyers at the bar, teaching them, largely by example, the traditions of the Delaware bar—civility, professionalism, and equal justice for all. His example was so powerful it convinced me to abandon plans for practicing in New York City in favor of taking the Delaware bar and practicing here.

So, here was a remarkable man—an outstanding scholar, lawyer, and judge—forging a superb professional career while at the same time being a quiet champion for the underprivileged and for all things good.

*Former Chief Justice E. Norman Veasey
Supreme Court of Delaware*

TRIBUTE TO JUSTICE JOSEPH T. WALSH

I was honored and flattered to be asked to contribute a short recollection for the dedication of this law review to Justice Walsh. I was fortunate to meet Justice Walsh as a first-year lawyer when I was asked to be a founding member of the Saint Thomas More Society of the Catholic Diocese of Wilmington. I later succeeded Justice Walsh as President of that group. As a young lawyer, I was impressed by the humble manner of Justice Walsh, who treated me with the same respect that he treated more senior members of the Bar. I was also lucky to share meals with Justice Walsh at the annual retreat he attended at Saint Joseph's-in-the-Hills, also referred to as the Malvern Retreat House, which he attended with his sons.

I knew Justice Walsh based on our interaction in professional organizations as compared to appearing before him in court, but that provided a closer perspective to learn by example from the quintessential representative of the Delaware judiciary. Even after reaching the pinnacle of his profession, he remained soft-spoken, low key and friendly.

Despite his many achievements and distinguished awards, he was always willing to engage in conversation with those he encountered regardless of their social standing. Others will write about his many professional accomplishments and his exemplary contributions to the legal profession and the community at large, as well as his demonstrated devotion to his family and his church. I observed those qualities from first-hand experience, and he deserves praise and recognition for his unparalleled attainments. Of equal or greater importance, however, was his exemplary character outside of the courtroom and the manner by which he treated those both within and outside the legal profession—with equal dignity and humility regardless of their station in life.

Justice Walsh was a paradigm of virtue that we can all only hope to emulate. May he rest in peace.

Francis G.X. Pileggi

JUSTICE JOSEPH T. WALSH: TEACHER

Like many great figures in Delaware's legal community, Joseph T. Walsh wore many hats. A young lawyer when I first encountered him, I was impressed by his attentiveness and diligence as a member of the Court of Chancery and honored by the unsolicited praise from him for a brief I had written on some arcane matter of corporate law. How many judges would have gone out of their way to give a new lawyer positive feedback for no apparent personal motivation?

As our careers progressed, I observed him as Justice Walsh, presiding over appellate arguments on corporate and other matters great and small always with the same studiousness and patience. His humility may have denied him the principal spotlight in the great Delaware Supreme Court takeover opinions of the 1980s, but he authored at least three corporate law opinions on that Court that have stood the test of time and emerged as precedential beacons in the field.¹

Much later in our careers, we encountered each other wearing different hats—as opposing expert witnesses in litigation in another jurisdiction but involving Delaware corporate law. Unlike many experts, Justice Walsh's report exhibited the same dispassionate, modest, yet methodical quality that characterized his judicial work: derision and sarcasm were not his style, and he was all the more effective for that.

Where we most overlapped, however, was at the Widener University School of Law, where he taught as an adjunct professor for close to twenty years, both after but largely during his tenure on the bench. Regularly teaching seminars on appellate practice and procedure and advanced corporate law, he was astonishingly generous with his time and energy as a teacher. On top of that, he would come to the Law School almost every year to serve as a judge in the final round of oral arguments in the Law School's annual corporate moot court competition. Unfailingly gracious to the student advocates and diligently attentive to what was just a hypothetical case—unlike the real cases that awaited him back in chambers—Justice Walsh contributed importantly to the competition as an opportunity for students to learn not only corporate law but also the meaning of professionalism in advocacy. After his passing, when I marveled to members of his family about Justice Walsh's

¹See *Anadarko Petroleum Corp. v. Panhandle E. Corp.*, 545 A.2d 1171 (Del. 1988); *Barkan v. Amsted Indus., Inc.*, 567 A.2d 1279 (Del. 1989); *Cavalier Oil Corp. v. Harnett*, 564 A.2d 1137 (Del. 1989). There are surely others, in corporate law and other fields, of equal stature.

devotion to his work at the Law School, their response was always the same: it was no surprise, he simply loved doing it.

What unites these disparate elements of my encounters with Justice Walsh? One word: teacher. A good teacher patiently nurtures the learner, models desirable behavior, and rewards achievement—the way then-Vice Chancellor Walsh treated me as a young lawyer. A good teacher writes clearly, insightfully, and persuasively, just as Justice Walsh did in his opinions. A good teacher teaches with analytical care, not with haughtiness, just as Justice Walsh exhibited as an expert witness. A good teacher devotes untold hours preparing for sessions with students, with no great compensation except the joy of doing it—a joy that Justice Walsh must have felt since he devoted so much of his valuable time teaching our students at the Law School.

In short, Justice Walsh was an incomparable, irreplaceable resource for Widener Law School and for the students who were fortunate enough to have had the benefit of his teaching. May his memory serve as a blessing and inspiration to those of us who carry on his role as teacher.

Professor Lawrence A. Hamermesh

TRIBUTE TO JUSTICE JOSEPH T. WALSH

I am humbled to have the opportunity to contribute to the dedication of this volume of the *Delaware Journal of Corporate Law* to the memory of Justice Joseph T. Walsh. Since his passing on August 15, 2014, many have appropriately shared the tremendous quality of character that Justice Walsh exhibited throughout his life—his deep faith, his distinguished legal career, and his commitment to the needs of those less fortunate. I witnessed all of those qualities, and more, as Justice Walsh's last law clerk before his retirement from the Delaware Supreme Court. While I have many fond memories of my clerkship with Justice Walsh, I am especially moved to share the impact he has had on my life and the role he played in my early development as a lawyer.

Justice Walsh was an outstanding teacher. He set high standards and clear expectations and then granted me the intellectual room to grapple with complex legal questions and formulate my own reasoning. As a new lawyer, I certainly had periods of self-doubt and constantly questioned whether I had properly considered every angle and could clearly articulate my analysis. Notwithstanding my insecurities, Justice Walsh demonstrated a quiet confidence in me and, by doing so, helped me gain confidence in my abilities as a lawyer.

One of the unique experiences I had during my clerkship was the opportunity to spend uninterrupted time with Justice Walsh on the long drives from Wilmington to Dover (and back) on the days the Court heard oral argument. It was Justice Walsh's practice not to discuss the briefs or any of the legal issues in a particular case until after oral argument. Therefore, our trips to Dover presented an opportunity to discuss a variety of topics outside of the law: from sports, to history, to current events. It was during these drives that I got to know the man, and not simply the judge. I learned about his great love for his family and heard him laugh as he shared stories from his past. These conversations allowed us to develop a friendship that would endure well after my clerkship ended.

During the many drives back to Wilmington, after hearing oral argument, we would discuss the cases that came before the Court on a particular day. Rather than tell me what he thought or how the Court would rule, he would first ask me what I thought about each case. What arguments did I find persuasive? What elements of a lawyer's style did I find effective (or not)? While never losing sight of the task at hand, Justice Walsh was kind enough to grant me the opportunity to ask questions and share my thoughts before he told me how the Court would

decide a particular case and the law underlying its decision. These conversations helped me refine my thinking as an apprentice under a brilliant lawyer and judge.

One case stands out as a good example of Justice Walsh's style as a teacher. It was an important corporate law case on appeal from the Court of Chancery. It was the type of case I had hoped for when I accepted my clerkship. As I did with every case, I prepared a memorandum that summarized the briefs and included my legal research, analysis and conclusions on the questions presented. Following oral argument, Justice Walsh and I met in his chambers and discussed the case. He asked tough questions and challenged my thinking and conclusions. After significant discussion on each of the questions presented, he finally explained his own analysis and, ultimately, the opinion of a majority of the Court. He then graciously allowed me to ask additional questions and learn as much as I could about the majority's interpretation of the law and the reasoning underlying its holding. I was then able to work with him on the drafts of what would become the majority opinion in that case. Through that experience, Justice Walsh taught me the importance of being able to defend one's legal analysis, as well as the value of being able to fully understand and articulate the opposing view.

Justice Walsh and I remained close after his retirement from the Court. We would occasionally speak on the phone and meet for lunch. During those times together, he delighted in sharing the latest family news and he beamed when he spoke of his grandchildren. He took a keen interest in the development of my legal career and in the growth of my own family. He seemed to truly enjoy his practice with McCarter & English, and the opportunity to work closely with his partner and friend, Michael Kelly. Guided by his faith, he also continued to serve the needs of those less fortunate to the very end.

Justice Walsh embodied all that a lawyer should aspire to be and, despite all of his accomplishments, he maintained humility and grace in every interaction. Justice Walsh leaves a legacy as a brilliant lawyer and judge who served the State of Delaware with great distinction. Personally, I will always remember him as a treasured teacher and friend. I am thankful that I had the opportunity to serve Justice Walsh and I will cherish my memories of him for as long as I live.

Charles T. Williams, III