

## Chapter Five



## TRANSFORMATION AND TRADITION, 2001-2008

Even in the twenty-first century, the Circle in Georgetown, Delaware appeared little changed from its quiet Victorian past. With its elegant brick buildings and shade trees, the townscape would have seemed familiar to Robert H. Richards. On one side of the Circle stood the courthouse; on another, the stately home where Richards had grown up and first practiced law. But it was not nostalgia that drew Jesse Finkelstein, Greg Williams, Anne C. Foster, and a team from the firm that Richards founded to the Circle in October 2004. Behind the traditional exterior there was playing out a cutting-edge case on the frontier of corporate law.

The new century for the firm had begun with verve and enthusiasm. New hires had raised the number of lawyers at Richards, Layton & Finger to more than 110—practitioners who made advances in intellectual property law, worked diligently on mergers and acquisitions, created alternative entities, and handled the intricate details of bankruptcy. It began with shifts in the kinds of opinions the attorneys were writing and with new balances in the professional and personal lives of those at the firm. It began, too, with record participation by the lawyers and staff in community service and pro bono work, and with a growing diversity among the firm's more than

280 employees. But the fundamentals had not changed since the founders' day: the firm still enjoyed a national reputation and a stellar record in corporate law. It was that reputation and that record that brought the firm's lawyers back to Georgetown.

The case at hand began with a shareholders' suit that charged board members of the Walt Disney Company with mismanagement and sought \$140 million in damages.<sup>1</sup> Georgetown may have seemed to be an odd venue for such a trial, but Chancellor William B. Chandler III had good reasons to choose it. This was, after all, where the new Chancery Courthouse had been recently constructed. Furthermore, the Chancellor hoped that the remote setting might serve as a catalyst to settlement. Instead, there was a media melee and a two-and-a-half-month trial. The streets outside the courthouse were jammed with lawyers and limousines, and the surrounding brick sidewalks bulged with sightseers eager to glimpse entertainment executives and movie stars.

What played out in Georgetown was a plotline worthy of Hollywood. In August 1995, Disney chief executive officer Michael Eisner had persuaded long-time friend Michael Ovitz to sign a five-year contract to become the company's president. Even before starting

## Notable Disney Witnesses



Between a big-screen star and small-town charm, Anne Foster walks to the Disney trial in Georgetown, Delaware along with actor/director Sidney Poitier.

Anne Foster examined Sidney Poitier, who had first favored hiring Ovitz. "I thought it was a good idea," Poitier said. "This was a very, very powerful man in the business; he understood the film business; he was an innovator." Still, Poitier came to realize a "mismatch between what the culture of the company was and Mr. Ovitz's style." Poitier made a compelling witness. When he

recounted his rise as the son of a Bahamian tomato farmer to renowned actor, plaintiffs' counsel objected—and was overruled. "I'm not going to stop you," the chancellor told Poitier. "This is marvelously entertaining."<sup>34</sup>

Greg Williams questioned board member Thomas S. Murphy, chairman and CEO of the media conglomerate Capital Cities/ABC, which Disney had purchased. Murphy was also chairman of Save the Children, a program to aid needy children, and from the stand, Murphy described travels around the world to lift the spirits of Save the Children workers. As he ended his testimony, he asked all "rich" attorneys in the courtroom to donate to the cause—a request endorsed by the chancellor. More to the point, Murphy testified that Ovitz's tenure as president was "like a cancer in the organization."<sup>35</sup> Reverend Leo O'Donovan, S.J., former president of Georgetown University and a Disney board member, bolstered Murphy's testimony, telling the court that because of their strained relationship Eisner had not only the right to fire Ovitz "but the obligation to make that decision" with no need for a board vote.<sup>36</sup>

work, Ovitz was in trouble. Both Disney's general counsel and its chief financial officer said that they would not report to Ovitz.<sup>2</sup> Only weeks after Ovitz began work on October 1, 1995, Eisner was raising doubts in the media about his abilities, and while Ovitz assumed that he and Eisner would work together as a team, Eisner apparently saw his friend as a mere assistant. After more than a year of intrigue and frustrations, Eisner fired Ovitz.

Shareholders had not been pleased with the turmoil at Disney, and they were livid about how it ended—with a sweet \$130 million no-fault severance package for Ovitz after just 14 months' work. Disney shareholders brought a derivative action lawsuit in the Delaware Court of Chancery in January 1997, charging Ovitz with fiduciary and contractual breaches and the board of directors with breaches of fiduciary duty and waste of assets. Richards, Layton & Finger represented most of the directors. Following seven years of preliminary skirmishing, the case finally went to trial.<sup>3</sup>

Expected to last a month, the Disney trial dragged on for 10 weeks. Georgetown was a community with fewer than 5,000 residents, ill suited to hosting a media spectacle, so the Richards, Layton & Finger team, along with attorneys from a dozen other firms, lodged in the seaside resort town of Rehoboth Beach. At the Bellmoor, defense attorneys created a war room complete with computers, office equipment, files, and a closed-circuit, televised feed

from the courtroom.<sup>4</sup> Each night the defense team ate in a private dining room, with meals catered by local restaurants. Dinner on one evening was particularly memorable: a burner used to warm the food ignited the window curtains. Another occasion was enjoyed by all when three Georgetown women who sat through the trial invited attorneys to a home-cooked meal.<sup>5</sup>

“The trial was a spectacle,” Williams remembered. On the first day, the attorneys stepped from their van in front of the courthouse and came face to face with a dozen or more shutter-snapping photographers. For weeks there were paparazzi posted at every entry and exit to the courthouse. The trial was one of the first broadcast in its entirety over the internet, and, for the benefit of newspapers, sketch artists often were in the courtroom.

In August 2005, after a lengthy trial, Chancellor Chandler issued a 174-page opinion determining that “the director defendants did not breach their fiduciary duties or commit waste.” Chandler added, however, “There are many aspects of defendants’ conduct that fell significantly short of the best practices of ideal corporate governance.” Chancellor Chandler called attention to “the protean nature of ideal corporate governance practices, particularly over an era that has included the Enron and WorldCom debacles,” noted that the actions that led to the suit had taken place 10 years before, and maintained that “applying 21st century notions of best practices in analyzing



Greg Williams and Thomas Murphy at the Disney trial in Georgetown, Delaware.

whether those decisions were actionable would be misplaced.” He found that Eisner’s hasty hiring and firing of Ovitz were “protected business judgments” made without any violations of fiduciary duty. The decision clarified an important point in corporate governance: that directors might be negligent in their judgments without acting in bad faith.<sup>6</sup>

Then came the appeal. The day before the argument in January 2006, 20 or so attorneys representing the defendant board members met in the Richards, Layton & Finger boardroom and exchanged ideas and suggestions. The argument was moved from the Supreme Court’s courtroom to the more commodious Kent County Courthouse in Dover to accommodate the large crowds and the media. There, Greg Williams delivered the defendants’ case before the five Supreme Court judges, and their decision in June 2006 affirmed the Chancery verdict.<sup>7</sup> Chambers USA, international analysts of the law and lawyers, called the trial “a cautionary tale” and noted that henceforth “boards should be more informed about the companies they direct, and think more deeply about their actions.”<sup>8</sup>



The Chancery Courthouse in Georgetown, Delaware, early one morning in October 2004.

The *Disney* case was notable for its celebrity and its reassurance to independent directors, but in the opening years of the twenty-first century, Richards, Layton & Finger attorneys also took on less glamorous but equally influential corporate governance cases. There was, for example, a new kind of poison pill to consider in a contest between two computer software giants. In 2003, Allen Terrell, Daniel A. Dreisbach, and Brock E. Czeschin represented Oracle Corporation in the Court of Chancery for what became one of the longest and most heated takeover battles in the history of the Delaware courts. When



Richards, Layton & Finger represented Oracle in its ultimately successful hostile tender offer for PeopleSoft Corporation.

Oracle announced its hostile tender offer for PeopleSoft Corporation, PeopleSoft's board countered by employing extraordinary defensive maneuvers. In a novel tactic, PeopleSoft created a "customers' poison pill," entitling PeopleSoft's customers to substantial payments if Oracle succeeded in buying the company. PeopleSoft also tried to prompt antitrust suits against Oracle by lobbying the U.S. Congress and the Justice Department, as well as state attorneys general, but none of those efforts succeeded. The case finally went to trial a year and a half after Oracle had filed its complaint, and after Oracle had raised its offer several times. The Chancery Court found that PeopleSoft had breached its fiduciary duties, but before the court could hold a hearing on an appropriate remedy, PeopleSoft agreed to the takeover.<sup>9</sup>

Another precedent-setting decision resulted from Gregory Varallo's representation of petroleum refiner Frontier Oil Corporation in 2004 in a case that determined what a "material adverse effect" clause meant under Delaware law.<sup>10</sup> In 2007, Varallo and C. Malcolm Cochran IV represented the communications firm Teleglobe USA, Incorporated, in what the U.S. Court of Appeals for the Third Circuit called "a classic corporate divorce." Cochran's argument revolved around the withholding of documents in court proceedings. The case defined parent-subsidary relationships, especially for issues of

attorney-client privilege.<sup>11</sup>

Some of the most groundbreaking cases handled by Richards, Layton & Finger during these years involved intellectual property rights. Several developments gave rise to increased intellectual property litigation in the 1990s. First, many companies came to recognize that their intellectual property was a valuable asset, comparable to physical and financial holdings. Second, businesses and speculators consequently began buying up patents, often with the idea that they could then earn quick profits by bringing infringement suits to enforce them. Finally, the U.S. Court of Appeals for the Federal Circuit, created in Washington, D.C., in the 1980s, offered a specialized venue for patent appeals from the federal district courts. Because this new court seemed to take a favorable view toward patent holders, lawsuits proliferated. In this context, Delaware attracted patent litigation because lawyers could easily gain jurisdiction over the many companies incorporated there, and because the judges came to specialize in—and welcome—patent trials. As intellectual property litigation grew, the United States District Court for the District of Delaware soon became a popular place to resolve these disputes. Delaware’s share of patent trials far outpaced that of other federal jurisdictions.

These developments positioned Richards, Layton & Finger to specialize in both transactional and trial work, drafting motions, dealing with judges, and arguing cases as co-counsel to national law



Fred Cottrell (left) and Jeff Moyer handle much of the firm’s booming patent and intellectual property business.

firms who represented companies holding disputed patents. “We, and the Delaware courts, became victims of our own success,” said Frederick L. Cottrell III. He and Jeffrey L. Moyer soon each found themselves handling as many as “30 cases a year.”<sup>12</sup> In 2005, Richards, Layton & Finger joined what may become the largest civil suit in U.S. history, representing the microprocessor maker AMD against Intel Corporation in an antitrust case expected to take years to resolve.<sup>13</sup>

These patent cases were one branch of a broader area of intellectual property litigation that ranged even beyond the federal bench, as Delaware’s courts increasingly dealt with the results of the many federal rulings and settlements. These trials—in the Superior Court or the Court of Chancery—involved technology licensing disputes. In one such case, for example, Richards, Layton & Finger was co-counsel to the world’s largest cell phone manufacturer, Nokia Corporation, against cell phone chip maker Qualcomm, Inc. in a licensing dispute that held worldwide implications. (*Business Week* called it the “longest-running, highest-stakes poker game in the history of the mobile industry.”) The two companies fell out over terms of a

### Client Service, Administrative Support

Back in the 1950s and 1960s, when Richards, Layton & Finger was a small firm, there were only four people providing administrative support. All accounting and billing was handled by one person, a bookkeeper; there was Emily Watson and then Ruth Russell. Secretaries were supervised by Trudy Parkinson, Aaron Finger's secretary, but Russell, a former Marine sergeant, assumed that function until she was succeeded by Jim Smith, the firm's first office manager. The hand-operated telephonic switchboard was handled by Naomi Lally, and Elaine Rutherford acted as copy person, messenger, food person, file clerk, and librarian. Each attorney had his own secretary, and major management decisions were made by a committee of partners.

Today, the Administration Department has 70 employees. The Accounting Department is headed by a controller and has 10 people to handle receipts, disbursements, billing, escrow, payroll, and all related financial information. The secretaries are supervised by the HR support services manager. A sophisticated telephone and voicemail system has replaced most of the duties Naomi Lally performed so well, while the firm's receptionists handle client calls and visitors. Elaine Rutherford's job is now handled by several departments. The firm's secretaries now work with anywhere from two to five attorneys. With this expanded and valued administrative support, the attorneys have more time to provide services for the benefit of the firm's clients.

15-year licensing agreement they had struck in 1992, and in 2006 the firm went to Chancery Court for Nokia. Underpinning this case were questions about the power of standard-setting bodies—the industry or government groups—that determine which technologies would dominate in particular markets. This case raised a key legal issue: whether parties to a standard-setting body were basically agreeing to an implied license when they submitted their patents to that body.<sup>14</sup>

On a scorching July day in 2008, when the case was to go to trial, the parties announced a settlement that would end litigation and create a new 15-year licensing agreement. This outcome came thanks to weeks of behind-the-scenes negotiations by Richards, Layton &

Finger attorneys, with principals for the two companies meeting at the firm, in hotels, and in restaurants around Wilmington. The lead attorneys for the firm were Jeff Moyer, Lisa A. Schmidt, Thomas A. Beck, and Steven J. Fineman, plus a dozen colleagues helping with document review and research.<sup>15</sup>

Beyond these endeavors, Richards, Layton & Finger remained active along a broad front of more established practices, including mergers and acquisitions and corporate and alternative entity finance. The firm continued to rank first among Delaware firms in merger and acquisition transactions through this period. Among others, the firm played an important role in connection with the merger of brewery giants Molson and Coors in 2005, represented the Reader's Digest Association in a multibillion-dollar buy-out in 2006, and helped the Blackstone Group—the country's largest private-equity firm—to arrange an initial public offering in 2007.<sup>16</sup> Jim Leyden, working with leading law firms in the country and rating agencies, helped develop a structure utilizing Delaware LLCs and limited partnerships that has been used to finance office towers, hotels, casinos, sports stadiums, shopping malls, and private-equity acquisition transactions, sometimes in the billions of dollars.<sup>17</sup> As a result of the efforts of Leyden and others, Richards, Layton & Finger has become known as “the firm that wrote the book on Delaware's single purpose entities.”<sup>18</sup> Paul Altman provides legal opinions on many of the largest private-

Mark D. Collins helped build up the bankruptcy practice in the 1990s. His work on the Teleglobe bankruptcy and other cases in the 2000s made the firm a leading practitioner nationwide.



equity formation and financing transactions.

Eric Mazie was able to help a client deal with the 2007 credit crisis by assisting with its purchase of a majority interest in a major U.S. manufacturing company. The multibillion-dollar purchase involved establishing a dozen structured credit facilities all backed by the company's lease and installment sale contracts. In his role as Delaware counsel, Mazie assisted in forming many Delaware statutory trusts and limited liability companies, as well as providing legal opinions on a variety of matters.<sup>19</sup> The deal was wrapped up even during a time when the subprime-loan crisis and the credit crunch it created were causing other financing transactions to unravel.

When companies themselves began to unravel, they increasingly turned to Richards, Layton & Finger for help in tying up legal loose ends. When it emerged as the nation's favorite venue for bankruptcy in the 1990s, Delaware had only one bankruptcy judge. By 2008, six judges sat on the bankruptcy court, ensuring more than ever that companies in trouble would get a prompt and expert hearing in Delaware. The growing Delaware bankruptcy practice has resulted, since the late 1990s, in more than a dozen national law firms opening Wilmington offices.<sup>20</sup>

As leading practitioners in the venue of choice, Richards, Layton & Finger's bankruptcy practice boomed. In 2002, Mark Collins, who had assumed responsibility for the practice two years earlier, took

on one of the biggest bankruptcy cases in history as lead counsel to Teleglobe Communications Corporation. At the time, Teleglobe was among the world's largest long-distance telephone providers, and Collins assembled a team of attorneys to arrange for the network's sale. He and the team also helped the company confirm its reorganization plan, which—quite serendipitously—created new work for Richards, Layton & Finger's corporate lawyers because the plan prompted a wave of lawsuits against the company for breach of fiduciary duty.

The bankruptcy practice numbered Collins and 10 associates in the year 2000. It has since grown to include seven partners, twelve associates, and seven paralegals. In 2008, the weekly business news magazine *The Deal* rated Richards, Layton & Finger as the most active firm in the country representing bankruptcy debtors, by the number of its representations as Delaware counsel, co-counsel, and lead counsel. "We handle more chapter 11 work on behalf of companies than any other firm," Collins noted. On large bankruptcies, Richards, Layton & Finger still works closely with long-time partner Weil, Gotshal & Manges, and it routinely assists other national firms, including Jones Day and Kirkland & Ellis. Recent clients have ranged from investment firms such as the Goldman Sachs Group and Morgan Stanley to



Eric Mazie (left) and Steve Bigler, current president of the firm (second from right), are pictured at a “barn party” with Suzanne Bigler (second from left) and Jeannie Fenton (right).

corporate giants Kaiser Aluminum and Burlington Industries.<sup>21</sup> Richards, Layton & Finger also assisted with bankruptcy filings by Tower Records in 2006 and Linens ’n Things and Washington Mutual in 2008.<sup>22</sup>

This record showcases one of the attributes of the bankruptcy practice that has made it an essential part of the firm’s foundation—its counter-cyclical nature. Thus, as corporate business began to suffer during the economic downturn that began in 2007, the Restructuring and Bankruptcy Group had its busiest year ever. It is also notable—and gratifying to its practitioners—that bankruptcy law provides the kind of working experience long since lost to specialization. “It’s the last bastion of being a generalist,” Collins said. “You litigate, you negotiate sales, you take depositions, you have to understand labor and tax and real estate; in effect, you’re the general counsel to a company.”<sup>23</sup>

More specialized counsel—that of providing legal opinions—remains an important practice for Richards, Layton & Finger. In the corporate area, these opinions traditionally advised clients how a planned action, such as starting or merging a business, might be interpreted under Delaware corporate, LLC, and partnership laws.<sup>24</sup>

Richards, Layton & Finger has also been engaged in establishing customary practice when rendering legal opinions. For example, Tom Ambro was a member of the prestigious New York based TriBar Opinion Committee. As part of the TriBar Opinion Committee, Ambro was part of the core drafting group that wrote a seminal report that was published in 1998 relating to third-party closing opinions. Jim Leyden, another member of the TriBar Opinion Committee, is the co-reporter of the TriBar LLC Report that was published in 2006, and Steve Bigler assisted the TriBar Opinion Committee in the preparation of the TriBar Preferred Stock Report that was published in 2008.<sup>25</sup>

At the same time, observed former partner and former chief justice of the Delaware Supreme Court E. Norman Veasey, Delaware has increasingly set the standard for conduct by directors and their counselors thanks to the state courts’ continued refinement of such corporate governance concepts as “business judgment” and “good faith.” In particular, Veasey noted the enduring authority of the Court of Chancery in corporate affairs, where most decisions are not appealed because of respect for the first judgment.<sup>26</sup>

There can be no doubt that Delaware’s preeminence in corporate law has been threatened to some extent by federal corporate governance measures taken in the wake of the Enron and WorldCom scandals. But despite this “federal encroachment,” insists Veasey, the



Chief Justice E. Norman Veasey and the Delaware Supreme Court in 2003. From left, Justice Myron T. Steele, Justice Randy J. Holland, Veasey, Justice Carolyn Berger, and Justice Jack B. Jacobs.

state's law of internal corporate affairs remains strong.<sup>27</sup>

As external business conditions changed in the new century, the internal administration of Richards, Layton & Finger grew stronger. The traditional term “secretaries” survives at the firm, but support staff duties have broadened to include much more than “typing and doing time sheets,” as Wayne Stanford put it. And while directors—through formal management committees—have taken an ever-greater role in making decisions and implementing programs such as benefits, technical support, and finance, they have continued to depend on chief operating officer Stanford and his staff. “The biggest challenge of managing a law firm,” Stanford acknowledges, “is that unlike a corporation there are 40 to 60 ‘bosses’ instead of two or three.”<sup>28</sup>

The adjustment that the firm showed to the challenges of

administration and an ever-changing competitive landscape was equaled by its continuous commitment to community service. In a departure from their business and corporate practice, John Parkins and Mike Cochran represented parents and the City of Wilmington in a 2007 challenge to a sweeping reorganization plan by Delaware’s Christina School District. The plan was to close four elementary schools and all of the district’s middle schools and high schools in the city, and to bus city students to the surrounding suburbs instead. The Court of Chancery found in the plaintiffs’ favor and issued an injunction against the plan. As a result of this decision and several months’ negotiations by the firm, the district developed an alternate plan that kept open all its City of Wilmington elementary schools and even added a new middle school.<sup>29</sup>

Work done strictly on a pro bono basis also flourished. Attorneys

at Richards, Layton & Finger had been encouraged to conduct such work since the firm's earliest days, some devoting months to

particular clients and cases. But for years a tension persisted between time spent on billable hours and time spent on pro bono work. That tension was formally resolved in the 1990s with the provision that attorneys could count time spent on such work as billable hours.

Much of the pro bono work has involved traditional lawyering. By 2008, more than 25 Richards, Layton & Finger lawyers had been trained to assist impoverished individuals in drafting wills and living wills, often for clients identified by Delaware Volunteer Legal Services, Inc.<sup>30</sup> Members of the firm have participated on the Federal Civil Panel, handling prisoner cases brought in the federal court; others have provided employment advice to local nonprofit service agencies, secured tax-exempt status for nonprofits, or provided them with legal advice. In general, associates have been encouraged to join the boards of nonprofit organizations as a way to broaden their experience and to benefit Delaware.

What benefits the community inevitably benefits the members of the firm as well. Indeed, for most of the firm's attorneys, working



Students mentored by staff pose during a tour of the firm's office.

as part of a team has been the preferred way to conduct pro bono activities. One such team organized some 40 attorneys to serve as

guardians for children involved in child-welfare proceedings. The attorneys represented the interests of minor children when both parents were incarcerated or otherwise unavailable. Some team members had to represent several children of the same parents in custody proceedings. Another pro bono team assisted victims of domestic violence by securing protection-from-abuse orders in Delaware's Family Court and instructing other lawyers on how to use photographic evidence in child-abuse cases. Most teams include both directors and associates, offer training, and meet periodically so that members can share personal experiences. The work has also benefitted the firm by giving attorneys the chance to work with colleagues from different departments and practice areas. These cumulative efforts earned the firm the Delaware State Bar Association's Pro Bono Leadership Award in 2006.

By 2008, the firm expected its attorneys to do 20 to 40 hours of pro bono work a year and encouraged staff members to volunteer as well. One initiative taken that year provided counseling to mothers

and children with AIDS in developing countries and involved both staff and attorneys. Working with a law firm in South Africa, Catherine G. Dearlove incorporated a holding company for the international consortium mothers2mothers. Sixteen Richards, Layton & Finger employees—including directors, associates, and staff members—participated in the program, helping with tax issues, funding agreements, and internal governance for the project that had already reached 160 sites in Africa. “This reflects an effort by the firm to get involved in more national and international pro bono efforts,” Dearlove concluded.<sup>31</sup>

Just as the current decade has brought an increase in pro bono work, it has also brought a furthering of earlier efforts to create a more inclusive, flexible, and accommodating workplace at Richards, Layton & Finger. As part of this expanding effort, a Diversity Committee was created in 2006 to develop ways of furthering this goal both within the firm and in the community. Extending this commitment to diversity beyond the firm to corporate governance, Richards, Layton & Finger was an early sponsor of “DirectWomen,” an American Bar Association program to identify and train women lawyers to serve on corporate boards.

As things changed, in part as a result of diversity, in one important aspect they remained the same. The fundamentals of the firm remain as they always were: Richards, Layton & Finger has

## Barbara Wheeler



Barbara Wheeler (far left) joins other members of the Richards, Layton & Finger office staff at a luncheon in 2004.

In 1966, Barbara Wheeler was hired as legal secretary to Rodney Layton, and in this capacity she became an expert in both the Christiana Care and the Wilmington Trust work at the firm.

Her dedication and professionalism were exemplary for both Layton and for Bill Wade, his successor on these two important accounts. “Clients would rather get Barb on the phone than me,” Wade recalled. “She was very professional with everyone.” Wheeler served as secretarial coordinator when Norm Veasey was managing director, putting her in charge of hiring, firing, disciplining, and mentoring the clerical staff. She also coordinated and recorded the Richards, Layton & Finger attorneys’ continuing legal education requirements for the Delaware bar, “at times with a gentle nudge,” Wade recalled, as reporting deadlines approached.

When she died suddenly of a brain aneurism in 2006, the firm created an annual Barbara Wheeler Award for employees with more than 20 years of service who exemplify dedication and professionalism. The first recipient of the Barbara Wheeler Award was legal secretary coordinator Susan MacNab. The second recipient was N. Douglas Wallace, a senior member of the firm’s General Services Department, and the third was Dorothy McCourry, a senior member of the Accounting Department.<sup>37</sup>

built its reputation and its practice on the intelligence and integrity of its workforce and the quality of its work. Robert H. Richards absorbed those high standards when he practiced law with his father in Georgetown and then made them cornerstones of his practice in Wilmington. High standards and hard work are not, of course, ends

## Leaders of the Firm

In every law firm, including Richards, Layton & Finger, there has always been one or two partners or directors who have served as the firm's leaders. Originally, Robert H. Richards ran the law firm. He was succeeded by his son, Robert H. Richards, Jr., who would sometimes consult with his brother Charles F. Richards, Henry Canby, or Louis Finger before making a decision. By the 1960s and early 1970s a committee of partners ran the firm, with Norm Veasey acting as managing partner under the watchful eye of Uncle Robert.

The firm was incorporated in 1978, with Louis Finger serving as president of the firm until 1982. He was succeeded by Ned Carpenter, who served from 1982 to 1985. Norm Veasey ran the firm from 1985 to 1988. He was succeeded as president by Charlie Richards, who served from 1988 to 1991. Tom Sweeney served for three years, 1991-1994, and he was succeeded by Wendell Fenton, 1994-1997. Allen Terrell was elected president in 1997 and served through 2000. Steve Herrmann followed Allen, and he served from 2000 to 2003. Jesse Finkelstein served from 2003 to 2005, and Greg Williams served as acting president in 2005 and president from 2006 to 2008. Steve Bigler is currently president of the firm. The president works with the Executive Committee and the chief operating officer to manage the overall operations of the firm. Directors have an opportunity to serve on the Executive Committee or one of the many other standing committees that aid in the firm's operations.

in themselves. Ultimately Richards, Layton & Finger has succeeded because it has understood that the best practitioners are lawyers who love their work. Ned Carpenter liked to emphasize this by greeting summer interns with a quote from Robert Louis Stevenson: "The man who finds the work he loves, the gods have smiled on him."<sup>32</sup>

Love of the law has characterized the firm throughout the years and helped impart a tradition of excellence. But "the gods have smiled" on Richards, Layton & Finger also because it has kept a



Displaying the Delaware State Bar Association's 2006 Pro Bono Leadership Award are John Miller, Michael Romanczuk, Megan Greenberg, and Mike Cochran.

steadfast focus throughout the changes of the years. "It is safe to say that Richards, Layton & Finger has been a significant player in almost every major corporate battle of the last half century," noted University of Delaware Professor Charles M. Elson in 2008.<sup>33</sup> Traditionally, Richards, Layton & Finger's fitness for battle has been assured by the training, support, and camaraderie it provides its lawyers, its place as "a significant player" secured by a determination to temper risk taking with reliability and quantity of business with quality of work.

It has been more than a century since Robert H. Richards expectantly mounted the platform at the Georgetown railroad station. Although he could hardly have suspected that his trip would influence the development of Delaware law, Richards may well have hoped that it would transform his life. For Georgetown was too small a stage for a lawyer of Richards's ambition: he believed himself to be equal to bigger challenges and ready for greater responsibilities. That personal decision launched a collective journey of more than 100 years—one that has seen the firm Richards founded transformed from a modest partnership into the largest law firm in Delaware. Today, Richards, Layton & Finger remains open to transformation, yet guided by tradition. On strong underpinnings laid by the founders, an impressive structure has been raised by new generations as intent upon meeting bigger challenges and fulfilling greater responsibilities as Richards was on one spring day in 1899.



Wilmington today. The city's promotional slogans, "a place to be somebody" and "in the middle of it all," aptly describe the work of Richards, Layton & Finger.

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RICHARDS  
LAYTON &  
FINGER



# Notes

## Chapter One

- 1 From William J. Wade, *Sixteen Miles from Anywhere: a History of Georgetown, Delaware* (Georgetown, DE: Countian Press, 1975).
- 2 H. Clay Reed, ed., *Delaware: A History of the First State*, in collaboration with Marion Bjornson Reed (New York: Lewis Historical Publishing Company, 1947), 45, 309.
- 3 Helen C. Winslow, Anne E. Bookout, and Patricia C. Hannigan, eds., *The Delaware Bar in the Twentieth Century* (Wilmington: The Delaware State Bar Association, 1994), 585.
- 4 Wilmington trolleys were no longer horse drawn—they were electrified after 1887. See John A. Munroe, *History of Delaware* (Newark: University of Delaware Press, 1979), 162.
- 5 Reed, *First State*, 45, 309. Reed's *First State* records that Robert H. Richards moved to Wilmington to practice law in November 1898. See also James T. McKinstry memo, April 25, 1996, Hagley Library Acc. 392, Robert H. Richards letter press books, no. 1, March 24, 1899–November 15, 1900. It is not clear just when Robert H. Richards moved to Wilmington. While Reed and obituaries mention November 1898 as the date, Richards's own records show his first legal work beginning in March 1899.
- 6 Hagley Library Acc. 1545, #17, *Day Book* December 12, 1898–March 11, 1911, 5.
- 7 *Wilmington City Directory 1901*, 1<sup>st</sup> page inset advertisement, 304, 339. Robert H. Richards's home was listed as 500 W 11<sup>th</sup> Street, a building owned by Celestine Miller, widow of John F. Miller. *Wilmington City Directory 1900*, 143, 675.
- 8 *Wilmington City Directory 1905*, 800. According to the *Wilmington City Directory*, Richards's offices were at 837 Market in 1899 (Browne, Richards & Garrett), 501-503 Ford Building in 1900-1901, and 923½ Market in 1902-1907. In 1908, Richards had the Ford Building as his professional listing but was at 923½ Market in the street directory (address-by-address listing). Richards was at 409 Ford Building in 1909-1912 and at 418 DuPont Building in 1913.
- 9 Richard B. Carter, *Clearing New Ground: The Life of John G. Townsend, Jr.* (Wilmington: Delaware Heritage Press, 2001), 78-79, 80, fn., 101, 121.
- 10 Robert H. Richards to L. H. Ball, October 2, 1900, Hagley Library Acc. 392, #1, 486.
- 11 Robert H. Richards to Dr. C. R. Layton, October 30, 1900, Hagley Library Acc. 392, #1, 492.
- 12 *American Leaders, 1789-1987* (Washington, DC: Congressional Quarterly, Inc., 1987), 134.
- 13 Although from 1895 to 1906 the Republican Party was badly split internally, this does not seem to have hindered Richards's political progress, probably because it came early in his career and before his influence in state politics was very wide.

- 14 Winslow et al., *Delaware Bar*, 459.
- 15 Carol E. Hoffecker, *Corporate Capital: Wilmington in the Twentieth Century* (Philadelphia: Temple University Press, 1983), 35.
- 16 *Court of Chancery of the State of Delaware 1792–1992* (Wilmington: Delaware Court of Chancery, 1992), 22.
- 17 The Court of Chancery has jurisdiction to hear and determine all matters and causes in equity. The general equity jurisdiction of the court is measured in terms of the general equity jurisdiction of the High Court of Chancery of Great Britain as it existed prior to the separation of the American colonies. The General Assembly may confer upon the Court of Chancery additional statutory jurisdiction. In today’s practice, the litigation in the Court of Chancery consists largely of corporate matters, trusts, estates, and other fiduciary matters, disputes involving the purchase and sale of land, questions of title to real estate, and commercial and contractual matters where equitable remedies are sought.
- 18 Richards opposed this arrangement and led reform efforts for decades.
- 19 Hagley Library Acc. 1545, #17, *Day Book* December 12, 1898–March 11, 1911, 3 ff.
- 20 Ward & Gray evolved into today’s Potter Anderson & Corroon. The third major participant in pre-1920 corporate practice was Saulsbury, Ponder & Morris, which evolved into today’s Morris, Nichols, Arsht & Tunnell. Winslow et al., *Delaware Bar*, 588.
- 21 *Court of Chancery of the State of Delaware 1792-1992*, Court of Chancery, 1992, 36-37; see *American Leaders 1789–1987* (Washington, D.C.: Congressional Quarterly Inc., 1987), 357-58.
- 22 Charles F. Richards, Jr., interview by William Lanouette, November 27, 2007, 16.
- 23 See Winslow et al., *Delaware Bar*, 358.
- 24 Board members included Robert H. Richards, Robert H. Richards, Jr., Rodney M. Layton, and Thomas P. Sweeney. Thomas P. Sweeney, interview by William Lanouette, November 15, 2007, 6; Wilmington Trust website, “A Century of Milestones - 1900s,” [http://www.wilmingtontrust.com/repositories/wtc\\_sitecontent/PopUp\\_Content/au-centurymile01.html](http://www.wilmingtontrust.com/repositories/wtc_sitecontent/PopUp_Content/au-centurymile01.html).
- 25 Herbert H. Ward served as attorney general from 1901 to 1905 and founded Ward & Gray. Winslow et al., *Delaware Bar*, 100. For Robert H. Richards’s appointment to deputy attorney general, see Reed, *First State*, 309.
- 26 *Wilmington Evening Journal*, August 27, 1951, 1; Reed, *First State*, 309; Obituary, *Wilmington Morning News*, August 28, 1951.
- 27 Edmund N. Carpenter II, “Brief History,” September 14, 1998, 2; Winslow et al., *Delaware Bar*, 175; Teresa Mason, Delaware Department of Justice, to William Lanouette, June 19, 2008.
- 28 Marriage Certificate No. 130-13, June 26, 1901, Cumberland County, PA; Reed, *First State*, 309.
- 29 “Table of Contents of Volumes of Briefs and Records” of Robert H. Richards and Richards, Layton & Finger, Hagley Library Acc. 1306, call number KF228 (hereafter “B&R”).

- 30 *Richards v. Richman*, 64 A. 238 (Del. Super. Ct. 1905); *Lewis v. Pawnee Bill's Wild West Co.*, 66 A. 471 (Del. Super. Ct. 1907).
- 31 Hagley Library Acc. 392, #146, 469, 485-86, Attorney General File January 5, 1906–April 5, 1907, Delaware Historical Society.
- 32 Robert H. Richards to President Theodore Roosevelt, May 29, 1905, Hagley Library Acc. 392, #146, 183.
- 33 William E. Wiggin to E. Norman Veasey RE: Firm History, February 12, 1987, 2.
- 34 *New Jersey v. Delaware*, 205 U.S. 550 (1907). The first action was settled by a compact the two states approved in 1905 and Congress ratified in 1907. See *New Jersey v. Delaware*, 205 U.S. 550 (*New Jersey v. Delaware I*). The 1905 compact addressed fishing rights but did not define the interstate boundary line. Two provisions of the compact sowed the seeds for further litigation. Article VII provided: “Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature.” But Article VII added: “Nothing herein . . . shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth.” The second action, resolved by the U.S. Supreme Court in 1934, conclusively determined the location of the interstate boundary: Delaware owned “the river and the subaqueous soil” within a 12-mile circle centered on New Castle, Delaware, “up to [the] low water mark on the easterly or New Jersey side”; south of the 12-mile circle, the middle of the river’s main ship channel marked the boundary. *New Jersey v. Delaware*, 291 U.S. 361 (1934) (*New Jersey v. Delaware II*). A third Supreme Court ruling in 2008 granted Delaware the right to block construction of a pier on the New Jersey shore for receiving shipments of liquefied natural gas. See *New Jersey v. Delaware*, 2008 U.S. LEXIS 3088 (Mar. 31, 2008).
- 35 Robert H. Richards to Thomas N. Rawlins, State Treasurer, June 5, 1908, in Richards, Layton & Finger library “Firm History” files; “Attorney General Richards Recovers from the Government Large Sum in Settlement of Old War of 1812 Claim,” n.d., Delaware Historical Society, Richards Ms Collection MS 6514.
- 36 *Wilmington City Directory 1909*, 795.
- 37 It is unclear just how Richards first met Aaron Finger. One former partner believed that Finger’s father was a mailman and, delivering to the law firm one day, asked Richards to employ his son. Other accounts credit the du Ponts—either T. Coleman or Pierre—with hiring Finger, who made the jump to Richards, Layton & Finger from there. Others posit that DuPont executives encouraged Finger to become a stenographer and secretary rather than remain a “runner.” See Roundtable, 11, 15 and McKinstry notes July 2, 2001 and July 5, 2001. There were two staff roundtables held at Richards, Layton & Finger. Former partners E. Norman Veasey, Max S. Bell, Jr., Edmund N. Carpenter II, Louis J. Finger, and James T. McKinstry met for lunch at Richards, Layton & Finger and shared their recollections in a videotaped roundtable discussion [DVD and transcript] (hereafter Roundtable).
- 38 David L. Finger to William Lanouette, March 10, 2008.
- 39 Accounts differ as to which of the du Ponts introduced Finger to Richards—Charles Richards and Jane Roth favoring T. Coleman, and Louis Finger favoring Pierre.

- 40 “New City Judge Is Aaron Finger,” *Wilmington News*, March 3, 1917.
- 41 *Wilmington City Directory 1912*, 52, 385.
- 42 Louis J. Finger, Roundtable, 15.
- 43 A second Jewish applicant, Emile Topkis, was admitted in 1914. Still, some Jewish applicants, including two Harvard Law School graduates, were denied admission. By the early 1950s, however, Jewish lawyers made up about one-fifth of the Delaware bar. Winslow et al., *Delaware Bar*, 637.
- 44 Edmund N. Carpenter II, “A Brief History of a Law Firm,” September 5, 2001, 4; Winslow et al., *Delaware Bar*, 590.
- 45 Richards first occupied Room 418, expanding to 420 in a few years. *Wilmington City Directory 1913*, 866; *Wilmington City Directory 1917*, 301.
- 46 W. Emerson Wilson, “One du Pont’s Highway, Another’s Bridge,” *Wilmington News-Journal*, February 2, 1980; see also John B. Rae, “Coleman DuPont and His Road,” *Delaware History* 16, no. 3 (Spring-Summer 1975): 171-83.
- 47 Quotation from Wilson, “One du Pont’s Highway.” The challenge to the du Pont road went to the U.S. Supreme Court but was dropped. See “Du Pont to Start Boulevard,” *New York Times*, April 11, 1915.
- 48 See, e.g., *Appenzellar v. Conrad*, 99 A. 31 (Del. 1916).
- 49 Robert H. Richards to T. Coleman du Pont, January 3, 1913, Hagley Library Acc. 392, #28, 24; Robert H. Richards to T. Coleman du Pont, January 30, 1913, Hagley Library Acc. 392, #28, 26.
- 50 Hoffecker, *Corporate Capital*, 45.
- 51 Adrian Kinnane, *DuPont: From the Banks of the Brandywine to Miracles of Science* (Wilmington: E. I. du Pont de Nemours and Company, 2002), 75-76; William E. Wiggin to E. Norman Veasey RE: Firm History, February 12, 1987.
- 52 There were a few exceptions. In 1916, Richards performed a few services for the DuPont Company itself, and that year he represented the Hercules Powder Co. of Wilmington. See, for example, Robert H. Richards, et al., Memorandum of the *Hercules Powder Company for Munition Manufacturer’s Tax*, Hagley Library Acc. 1306, B&R vol. 4, 12; June 8, 1916, “To prof services in suit of M Neely v. duPont,” Hagley Library Acc. 1545, #20, *Attorneys Ledger* 1933–37, 34; and September 28, 1916, “To prof. services in re War Munitions Tax of the U.S. Revenue Bill” from Hercules Powder Co., Hagley Library Acc. 1545, #20, *Attorneys Ledger* 1933–37, 53.
- 53 Hagley Library Acc. 1545, #18, *Day Book* 5 Jan 1916–31 July 1919, 42, 85.
- 54 See Joseph Frazier Wall, *Alfred I. du Pont: The Man & His Family* (New York: Oxford University Press, 1990), 398.
- 55 See newsclipping and correspondence in personal collection of Richard G. Elliott, Jr..

- 56 See William H. A. Carr, *The du Ponts of Delaware* (New York: Dodd, Mead & Company, 1964), 285. In 1978, shortly after Christiana Securities was merged into the DuPont Corporation, the company was sold to the Gannett chain. In 1989, the two newspapers were merged to become the *News Journal*.
- 57 Carol E. Hoffecker, *Delaware: A Bicentennial History* (New York: W.W. Norton, 1977), 199.
- 58 Finger was first credited on a brief for *Harry Cohen v. Simon Tuff*, *B&R* vol. 3, 6-8.
- 59 Dorothy and David Finger, interview by William Lanouette, December 19-20, 2007, 18 (hereafter Dorothy & David Finger Oral History).
- 60 “New City Judge Is Aaron Finger,” *Wilmington News*, March 3, 1917.
- 61 Dorothy & David Finger Oral History, 15; Robert H. Richards to Aaron Finger, December 18, 1918, copy courtesy of David Finger.
- 62 Reed, *First State*, 293; David Finger to William Lanouette, June 30, 2008.
- 63 “Att’y General-Elect Names Judge Finger as His Chief Deputy,” *Wilmington News*, November 7, 1920.
- 64 James T. McKinstry to File, April 29, 1996, May 1 and 6, 1996, 2; *Wilmington Evening Journal*, January 7, 1930, 1.
- 65 See ledger books in Hagley Library Acc. 1545; See also James T. McKinstry to File RE: Review of Richards, Layton & Finger Documents at the Hagley Library, March 29, 1996, 4. Richards, Layton & Finger identifier: RLF2-575809-1.
- 66 Aaron Finger and Robert H. Richards were listed in the *Wilmington City Directory 1920* as working at 4060 DuPont Building. *Wilmington City Directory 1920-21*, 273, 497.
- 67 *Johnston v. Dir. Gen. of Railroads*, 109 A. 581 (Del. Super. Ct. 1920); *Dir. Gen. of Railroads v. Johnston*, 114 A. 759 (Del. 1921).
- 68 *Coca Cola Bottling Co. v. Coca-Cola Co.* (U.S. District Court, No. 388, In Equity) [*B&R* vol. 7, 1-2] and *Coca Cola Bottling Co. v. Coca-Cola Co.*, (U.S. District Court, No. 389, In Equity) [*B&R* vol. 7, 3-8]; *Coca Cola Bottling Co. v. Coca-Cola* (two suits) (U.S.C.C.A.) Nos. 2650 and 2651, Mar. T. 1921 [*B&R* vols. 8-10].
- 69 *New York Times*, November 9, 1920. In 1991, Edmund N. Carpenter II and Charles F. Richards successfully represented the Coca-Cola Bottling Company of Elizabethtown, Inc. in the U.S. District Court for the District of Delaware, gaining a pass-through of savings from a change in the sweetener formula. Quotation from Carol Hoffecker, *Federal Justice in the First State* (Wilmington: The Historical Society for the United States District Court for the District of Delaware, 1992), 111-13.
- 70 Winslow et al., *Delaware Bar*, 99.
- 71 Delaware State Bar Association (DSBA) minutes, January 1923.
- 72 DSBA minutes, February 8, 1923.
- 73 DSBA minutes, May 2, 1924.
- 74 Winslow et al., *Delaware Bar*, 588.

- 75 DSBA minutes, n.d. Layton was Wilmington City Solicitor from 1923 to 1931.
- 76 Ned Carpenter stated that the prominent lawyer was Henry Ridgely, Jr. (see Carpenter to Lanouette, June 25, 2008).
- 77 James T. McKinstry to William Lanouette, May 6, 1996, 3; *Who's Who in Delaware* (Chicago: A.N. Marquis Company, 1939), 505; Allen M. Terrell, Jr., May 31, 2006, in Richards, Layton & Finger library "Firm History" files, 8. Caleb Layton's brother, Daniel, had also practiced law in Wilmington for a time before returning to practice in Georgetown. In the 1930s, he served as attorney general and chief justice of the Delaware Supreme Court.
- 78 James T. McKinstry, March 29, 1996, in Richards, Layton & Finger library "Firm History" files, 4-5.
- 79 The document describing equity shares is as above, by McKinstry.
- 80 James T. McKinstry to William Lanouette, May 8, 2008.
- 81 Richards served as chief deputy attorney general from 1928 to 1931. See "Charles F. Richards, Attorney, Dies at 58," *Wilmington Evening Journal*, June 11, 1962, 1.
- 82 Winslow et al., *Delaware Bar*, 18-19; DSBA minutes, February 17, 1928.
- 83 DSBA minutes, February 1928.
- 84 On Redding, see Annette Woolard-Provine, *Integrating Delaware: The Reddings of Wilmington* (Newark: University of Delaware Press, 2003), 87-88. While there were almost 1,500 attorneys of African extraction nationally in 1950, Redding remained the only one in Delaware from 1929 until 1956, when Theophilus R. Nix was admitted. Winslow et al., *Delaware Bar*, 659-61.
- 85 This was a case over the value of Atlantic Refining Company stock. The case went to the U.S. Supreme Court, but a writ of certiorari was denied so the two never argued the matter. See *Hodgman v. Atl. Ref. Co.*, 273 U.S. 731 (1926).
- 86 According to Winslow et al., *Delaware Bar*, 590, Caleb Layton left Josiah Marvel's firm in 1928 "to join with Richards and Finger to form Richards, Layton & Finger, and the new firm was enlarged shortly thereafter when Richards' sons, Charles F. and Robt. H, Jr., joined the firm." The firm's cash books, however, do not bear this out. In the 1929 cash book, the firm is listed in sequence as "Robert H. Richards and Aaron Finger July 1-1927," "Robt. H. Richards-Aaron Finger-Charles F. Richards July 1-1928," "R.H. Richards-Caleb S. Layton-Aaron Finger-Charles F. Richards April 15-1929," and "Richards, Layton + Finger Apr 15, 1929-Dec. 31, 1929."
- 87 Roundtable, 12-13.
- 88 Roundtable, 13.
- 89 Hagley Library Acc. 1545, *Cash Book* July 1, 1927, to December 31, 1929; James T. McKinstry, March 29, 1996, in Richards, Layton & Finger library "Firm History" files, 4.
- 90 Battle Robinson to William Lanouette, June 26, 2008.

- 91 Charles Fleming Richards died on December 23, 1905. See Chapter 5, “Of the members of the bar of Sussex County,” ms. 1-2. Reed, *First State*, 45, 309; Susan E. MacNab to Stephen E. Herrmann, March 19, 1986, in Richards, Layton & Finger library “Firm History” files; *Who’s Who in Delaware*, 731.
- 92 Charles Fleming Richards was born on June 15, 1846, at a farm in North-West Fork Hundred, Sussex County, according to “Of the members of the bar of Sussex County,” ms. 349.
- 93 Winslow et al., *Delaware Bar*, 589; “Death Takes J. I. Boyce,” *Wilmington Evening Journal*, January 7, 1930, 1.
- 94 William Prickett, interview by William Lanouette, November 27, 2007, 4.
- 95 Adrian Kinnane, *Durable Legacy, A History of Morris, Nichols, Arsht & Tunnell* (Wilmington: Morris, Nichols, Arsht & Tunnell, 2005), 7; Lawrence M. Friedman, *American Law in the Twentieth Century* (New Haven: Yale University Press, 2002), 50.
- 96 William T. Quillen and Michael Hanrahan, *A Short History of the Delaware Court of Chancery*, 1993, 8, 9.
- 97 Ibid.
- 98 For an authority regarding this sentence, see note 99.
- 99 Carol E. Hoffecker’s *Democracy in Delaware: The Story of the First State’s General Assembly* notes that “the bill also described the role of the state chancellor as arbiter of legal disputes involving Delaware corporations.” See p. 136.
- 100 Kinnane, *Durable Legacy*, 7; Kinnane, *DuPont: From the Banks of the Brandywine*, 76; Arthur S. Link, *Wilson: The New Freedom* (Princeton: Princeton University Press, 1956), 33-36.
- 101 Friedman, *American Law*, 51.
- 102 “Judge Finger No Military Shirker,” *Wilmington Morning News*, May 21, 1918; Winslow et al., *Delaware Bar*, 716; Robert H. Richards to Aaron Finger, December 7, 1918, courtesy of David L. Finger; Reed, *First State*, 293.

## Chapter Two

- 1 Helen C. Winslow, Anne E. Bookout, and Patricia C. Hannigan, eds., *The Delaware Bar in the Twentieth Century* (Wilmington: The Delaware State Bar Association, 1994), 590.
- 2 Jane Richards Roth, interview by William Lanouette, December 20, 2007, 14.
- 3 Dorothy and David Finger, interview by William Lanouette, December 19-20, 2007, 9 (hereafter Dorothy & David Finger Oral History).
- 4 Roundtable, 15. On “dean” of lawyers, see also Winslow et al., *Delaware Bar*, 281.
- 5 James T. McKinstry, Roundtable, 12-13; Roundtable, 14.
- 6 Layton held the post until 1931. See Winslow et al., *Delaware Bar*, 212.

- 7 Harlan Scott to William Lanouette, June 25, 2008. Caleb Rodney Layton lived from 1851 to 1930 and served as U.S. Representative (R-Del.) from 1919 to 1923.
- 8 Edmund N. Carpenter II to William Lanouette, June 25, 2008.
- 9 Louis J. Finger, Roundtable, 14.
- 10 Roundtable, 14. See, for example, Hagley Library Acc. 1545, *Ledger D-I 1927-1958 I*. Hallock 1928-1951.
- 11 Roundtable, 15.
- 12 Edmund N. Carpenter II, “Memories of a Lucky Delaware Lawyer,” *Delaware Lawyer* 19, no. 3 (Fall 2001): 13.
- 13 Robert H. Richards III to William Lanouette, July 7, 2008.
- 14 Dorothy & David Finger Oral History, 19-20.
- 15 Joseph A. Rosenthal in “A Generation Speaks” roundtable discussion, *Delaware Lawyer* 19, no. 4 (Winter 2001): 32.
- 16 Delaware State Bar Association (DSBA) minutes from the early 1930s.
- 17 Randy J. Holland and Helen L. Winslow, eds., *Delaware Supreme Court* (Wilmington: Supreme Court of the State of Delaware, 2001), 375-76. Until this time, examinations were given in each of Delaware’s three counties. *IN RE*: February 1998, 18. John Maxcy Zane published *The Story of Law* in 1927.
- 18 Holland and Winslow, *Delaware Supreme Court*, 376; Winslow et al., *Delaware Bar*, 283.
- 19 The source for this claim is *E.I. DuPont de Nemours & Co. v. Fla. Evergreen Foliage*, 744 A.2d 457, 463 (Del. 1999), which cites *Phoenix Oil Co. v. MacKenzie Oil Co.*, 154 A. 894 (De. 1930) and referred to the three choices available to the defrauded buyer. “Today” refers to the date 1999.
- 20 Although Finger’s arcane citation was described by several members of the firm, none could produce a documentary reference to it.
- 21 The Annotated Delaware Code was adopted in 1953, *IN RE*: February 1998, 18; Roundtable, 13.
- 22 Carpenter, “Memories of a Lucky Delaware Lawyer,” 13.
- 23 *Who’s Who in Delaware* (Chicago: A.N. Marquis Company, 1939), 505; *United States v. Weirton Steel Co.*, 10 F. Supp. 55 (D. Del. 1935). The Supreme Court case that first found NIRA to be unconstitutional was *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); for background, see Carol Hoffecker, *Federal Justice in the First State* (Wilmington: The Historical Society for the United States District Court for the District of Delaware, 1992), 123-28.
- 24 Layton’s argument went directly to the heart of early opponents’ chief criticism of New Deal legislation—that it was an unwarranted and illegal extension of federal power into local markets and therefore a violation of the “commerce clause” of the Constitution. Although the 1935 National Labor Relations Act reenacted the essence of section 7(a) of the NIRA, it and other “Second New Deal” measures were not ruled unconstitutional largely because of the Supreme Court’s legendary “switch in time” incidental to the 1937 court-packing controversy. So while Layton’s argument succeeded in the short term, its importance was mitigated by subsequent events. On labor legislation and the New Deal,

- see Melvyn Dubofsky, *The State and Labor in Modern America* (Chapel Hill: University of North Carolina Press, 1994).
- 25 DSBA minutes, February 13, 1937.
- 26 In 1948, for example, percentage interests in the firm were 25 for Robert H. Richards, 22½ for Caleb S. Layton and Aaron Finger, and 15 for Charles F. Richards and Robert H. Richards, Jr.; James McKinstry Notes, March 29, 1996, in Richards, Layton & Finger library “Firm History” files, 5-6.
- 27 Louis J. Finger, Roundtable, 27.
- 28 Princeton Class of 1932 obituary, courtesy of Marjorie Canby Lallemand.
- 29 Max S. Bell, Jr., interview by William Lanouette, November 1, 2007, 11-13, 23 (hereafter Bell Oral History); “Attorney C. S. Layton Dies at 83,” *Wilmington Evening Journal*, December 31, 1969; “Lawyer H. M. Canby Dies at 60,” *Wilmington Journal*, June 1, 1971.
- 30 Bell Oral History, 8; Edmund (Ned) Carpenter, interview by William Lanouette, October 17, 2007, 35 (hereafter Carpenter Oral History); Richard Elliott, interview by William Lanouette, December 20, 2007, 10.
- 31 Bell Oral History, 23.
- 32 Allen Terrell, May 31, 2006, in Richards, Layton & Finger library “Firm History” files, 5; *Fed. United Corp v. Havender*, 11 A.2d 331 (Del. 1940); R. Franklin Balotti to William Lanouette, October 31, 2007.
- 33 *Loft, Inc. v. Guth*, 2 A.2d 225 (Del. Ch. 1938); *Guth v. Loft, Inc.*, 5 A.2d 503 (Del. 1939); *Black’s Law Dictionary*, 7<sup>th</sup> ed. (1999), 341.
- 34 Daniel J. Layton, Jr., was the son of Chief Justice Layton. The recruit was Edmund N. Carpenter II. See Edmund N. Carpenter II, “A Brief History of a Law Firm,” September 5, 2001, 5.
- 35 “Captain H. M. Canby Promoted to Major,” *Wilmington News*, December 18, 1944.
- 36 W. Emerson Wilson, “One du Pont’s Highway, Another’s Bridge,” *Wilmington News- Journal*, February 2, 1980, 12.
- 37 *Ringling Bros.-Barnum & Bailey Combined Shows Inc. v. Ringling*, 53 A.2d 441 (Del. 1947); Winslow et al., *Delaware Bar*, 367.
- 38 Carpenter Oral History, 13. On Carpenter’s mission, see Lloyd R. Shoemaker, *The Escape Factory: The Story of MIS-X* (New York: St. Martins Press, 1990), 216. See also A. R. Wichtrich, *Mis-X Top Secret* (Raleigh: Pentland Press, 1997), 67-71.
- 39 Carpenter Oral History, 10-16.
- 40 Dorothy & David Finger Oral History, 26; *Delaware Today*, October 1995, 44; Roundtable, 3.
- 41 Carpenter Oral History, 38.
- 42 See Winslow et al., *Delaware Bar*, 281, and Maureen Milford, “Freeing Lawyers to Do Casework,” *Wilmington News*, n.d. (1988).
- 43 Winslow et al., *Delaware Bar*, 99, 87-88.
- 44 Louis J. Finger, Roundtable, 17.

- 45 Winslow et al., *Delaware Bar*, 104; E. Norman Veasey, interview by William Lanouette, November 13, 2007, 25 (hereafter Veasey Oral History). The North American Building was an extension of the Ford Building where Robert H. Richards had first practiced law.
- 46 James T. McKinstry to William Lanouette, August 13, 2008.
- 47 Victor F. Battaglia, Sr., in “A Generation Speaks,” 28.
- 48 William Prickett, interview by William Lanouette, November 27, 2007, 12; Veasey Oral History, 25.
- 49 Battaglia, “A Generation Speaks,” 28.
- 50 Quoted *verbatim* from James L. Latchum in “A Generation Speaks,” 29-30. According to Latchum, in the same source, Richards was chairman of the Bar Examining Committee when he filed as a preceptor.
- 51 Dorothy & David Finger Oral History, 45; Louis J. Finger, Roundtable, 23; David L. Finger to William Lanouette, February 25, 2008.
- 52 For more on the Delaware Supreme Court in its “leftover judge” days, see the chapter entitled “The Supreme Court Until 1951” in Winslow et al., *Delaware Bar*, 365-66.
- 2 Robert H. Richards III, interview by William Lanouette, November 28, 2007, 5-6.
- 3 E. Norman Veasey, Roundtable, 21.
- 4 William T. Quillen, interview by William Lanouette, December 12, 2007, 5 (hereafter Quillen Oral History).
- 5 Notes by James T. McKinstry, 99998/115196, in Richards, Layton & Finger library “Firm History” files, 5.
- 6 Roundtable, 4; “Talley of Lawyers/Paralegals/Staff Beginning 1980 through Current,” RLFADMIN-3083007-1, in Richards, Layton & Finger library “Firm History” files.
- 7 Roundtable, 29; Richard G. Elliott, Jr., to William Lanouette, June 10, 2008, 2.
- 8 James McKinstry to William Lanouette, May 8, 2008; William T. Quillen, *Potter Anderson & Corroon. An American Practice. The First 175 Years* (Wilmington: Potter Anderson & Corroon LLP, 2001), 101-2.
- 9 Edmund (Ned) Carpenter II, interview by William Lanouette, October 17, 2007, 71 (hereafter Carpenter Oral History).
- 10 William Prickett, interview by William Lanouette, November 27, 2007, 5-6.
- 11 Helen C. Winslow, Anne E. Bookout, and Patricia C. Hannigan, eds., *The Delaware Bar in the Twentieth Century* (Wilmington: The Delaware State Bar Association, 1994), 627.
- 12 *Ibid.*

## Chapter Three

- 1 Only after the death of Robert H. Richards in 1977 did the firm adopt a mandatory retirement age of 70.

- 13 *Bata v. Hill*, 183 A.2d 180 (Del. Ch. 1962); William T. Quillen and Michael Hanrahan, *A Short History of the Delaware Court of Chancery*, 1993, 16; also in *Court of Chancery of the State of Delaware 1792–1992* (Wilmington: Delaware Court of Chancery, 1992), 44; William E. Wiggin to E. Norman Veasey RE: Firm History, February 12, 1987, 2-3.
- 14 *Wilmington Evening Journal*, June 11, 1962, 1.
- 15 Edmund N. Carpenter II, “Memories of a Lucky Delaware Lawyer,” *Delaware Lawyer* 19, no. 3 (Fall 2001): 12; Roundtable, 26.
- 16 Gregory P. Williams to William Lanouette, May 9, 2008.
- 17 “Veteran Attorney Elected to Select Legal Group,” *Wilmington Journal*, April 9, 1963; *Hughes v. Trans World Airlines, Inc.*, 195 A.2d 886 (Del. 1962); *Dann v. Chrysler Corp.*, 198 A.2d 195 (Del. Ch. 1963).
- 18 Dorothy and David Finger, interview by William Lanouette, December 19-20, 2007, 39.
- 19 Jane Richards Roth, interview by William Lanouette, December 20, 2007, 18 (hereafter Roth Oral History). That Christmas, Jane Richards gave her father a tray, a pitcher, and four glasses.
- 20 Staff roundtable, December 12, 2007.
- 21 Winslow et al., *Delaware Bar*, 26.
- 22 Charles F. Richards, Jr., interview by William Lanouette, October 30, 2007, 4.
- 23 Winslow et al., *Delaware Bar*, 594-95; “Dogsbodies of the DGCL: Revisiting Roles in the Landmark Achievement,” *Delaware Lawyer* 26, no. 1 (Spring 2008): 10-14.
- 24 Thomas P. Sweeney, interview by William Lanouette, November 15, 2007, 1-4 (hereafter Sweeney Oral History).
- 25 Wilmington’s other two tax lawyers at the time were Converse Murdoch at Potter, Anderson and Johannes Robert “Hans” Krahmer at Morris, Nichols, Arshnt & Tunnell. Sweeney Oral History, 5.
- 26 Sweeney Oral History, 13-14; Wayne Stanford to William Lanouette, July 12, 2008; Edward M. Luria, interview by William Lanouette, September 16, 2008; Crystal W. Carter to William Lanouette, September 16, 2008.
- 27 Richard G. Bacon, interview by William Lanouette, September 17, 2008.
- 28 “Lawyer, Community Leader, Rodney Layton, Dead at 61,” *Wilmington Evening Journal*, April 15, 1983, B4.
- 29 Richard G. Elliott, Jr., interview by William Lanouette, December 20, 2007, 30 (hereafter Elliott Oral History); *United States v. Barber*, 296 F. Supp. 795 (D. Del. 1969).
- 30 *See, e.g., Prashker v. Beech Aircraft Corp.*, 258 F.2d 603 (3d Cir. 1958); “Our Most Unforgettable Character: An Oral History of Bill Wiggin,” *Delaware Lawyer* 23, no. 2 (Summer 2005): 8, 13.
- 31 “Our Most Unforgettable Character,” 11.
- 32 William E. Wiggin to E. Norman Veasey RE: Firm History, February 12, 1987, 6.

- 33 *RL&F Times*, March 17, 1998, 3.
- 34 Quillen, *Potter Anderson & Corroon*, 109; Quillen Oral History, 14.
- 35 Alissa Rubin, “Delaware’s Point Man,” *American Lawyer*, January 1983.
- 36 Fenton Oral History, 23.
- 37 “Copeland Faces His Creditors,” *New York Times*, November 25, 1970, 51, 59.
- 38 Elliott Oral History, 3-5.
- 39 Elliott Oral History, 15.
- 40 Roundtable, November 28, 2007.
- 41 Roundtable, November 28, 2007; Elliott Oral History, 10.
- 42 Allen M. Terrell, Jr., interview by William Lanouette, October 31, 2007, 6.
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- 44 Fenton Oral History, 13.
- 45 *Ibid.*, 12-13.
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- 51 The idea of incorporation was likely Tom Sweeney’s, according to Frank Balotti. See Balotti to author, August 17, 2008; The announcement was made by Veasey. See E. Norman Veasey to All Personnel, July 5, 1978.
- 52 *Reeves v. Am. Airlines, Inc.*, 408 A.2d 283 (Del. 1979).
- 53 Carpenter Oral History, 48-50; *Florane M. Reeves v. American Airlines, Inc.*
- 54 James T. McKinstry memorandum to file, “Richards, Layton & Finger - Chronological Data,” May 6, 1996, 5.
- 55 Edmund N. Carpenter II, “Brief History,” September 14, 1998, 8.
- 56 Julian H. Baumann, Jr., interview by William Lanouette, November 28, 2007, 12.
- 57 Richard G. Elliott, Jr., to William Lanouette, October 25, 2007, 2; *HHMI Bulletin*, December 2003; Winslow et al., *Delaware Bar*, 663.
- 58 Roth Oral History, 2.
- 59 Winslow et al., *Delaware Bar*, 647.
- 60 *Ibid.*

## Chapter Four

- 1 In 1980 there were 23 directors: Richard J. Abrams; Richard G. Bacon; R. Franklin Balotti; Julian H. Baumann, Jr.; Max S. Bell, Jr.; Edmund (Ned) Carpenter II; Richard G. Elliott, Jr.; Wendell Fenton; Louis J. Finger; Stephen E. Herrmann; Glenn C. Kenton; Daniel L. Klein; Rodney M. Layton; Martin I. Lubaroff; James T. McKinstry; Robert Meyer; Charles F. Richards, Jr.; Robert H. Richards III; Jane R. Roth; Thomas P. Sweeney; Allen M. Terrell, Jr.; E. Norman Veasey; and William E. Wiggin. See historical and current data supplied by Wayne T. Stanford, RLFADMIN-3083003-1.
- 2 The Williams Act of 1968 amended the Securities Exchange Act of 1934 to establish ground rules for buying and selling public companies. It also set time limits by stipulating the minimum period the tender offer could be open and the number of days shareholders then had to make up—and even change—their minds.
- 3 R. Franklin Balotti to William Lanouette, May 7, 2008.
- 4 *Ibid.*
- 5 Richard G. Elliott, Jr., interview by William Lanouette, December 20, 2007, 26 (hereafter Elliott Oral History); *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985).
- 6 *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985); *Moran v. Household Int'l, Inc.*, 500 A.2d 1346 (Del. 1985).
- 7 Len Costa, “The Perfect Pill,” *Legal Affairs*, March/April 2005.
- 8 *Rosenblatt v. Getty Oil Co.*, 493 A.2d 929 (Del. 1985).
- 9 *Paramount Commc'ns Inc. v. Time Inc.*, 1989 Del. Ch. LEXIS 77, at \*89 (Del. Ch. July 14, 1989).
- 10 *News Journal*, July 25, 1989, 1; *New York Times*, July 25, 1989, D23.
- 11 Charles M. Elson, “Courts and Boards: The Top Ten Cases,” *Directors and Boards* (Fall 1977); *In re Caremark Int'l Inc. Deriv. Litig.*, 1996 WL 549894, at \*8 (Del. Ch. Sept. 25, 1996).
- 12 The Supreme Court’s opinion in Citigroup is a table decision, based on *Shae v. Armstrong*, 2006 WL 391931 (Del. Ch. Feb. 13, 2006). The court’s affirmance is *Shae v. Armstrong*, 911 A.2d 802 (Del. 2006) (TABLE), 2006 WL 3190507 (Del. Nov. 6, 2006) (ORDER). The SouthTrust case is *Stone v. Ritter*, 911 A.2d 362 (Del. 2006). The Court of Chancery decision underlying it is *Stone v. Ritter*, 2006 WL 302558 (Del. Ch. Jan. 26, 2006).
- 13 Jesse A. Finkelstein to C. Stephen Bigler, July 14, 2008; Jesse A. Finkelstein to William Lanouette, July 17, 2008.
- 14 Helen C. Winslow, Anne E. Bookout, and Patricia C. Hannigan, eds., *The Delaware Bar in the Twentieth Century* (Wilmington: The Delaware State Bar Association, 1994), 87-88.
- 15 Paul Altman, interview by William Lanouette, November 1, 2007, 1 (hereafter Altman Oral History); Wendell Fenton, interview by William Lanouette, October 31, 2007, 4.
- 16 Altman Oral History, 8. As of 2007, there were more than 276,000 Delaware corporations but more than 412,000 limited liability companies.

- 17 See Martin I. Lubaroff and Thomas L. Ambro, “The Delaware Financial Center Development Act,” *Banking Law Journal*, 99 (1982): 580, referencing *Marquette Nat’l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299 (1978).
- 18 David S. Swayze and Joseph A. Phillip, Jr., “Surfing the Interstate: Can Delaware’s Financial Center Revolution Survive Interstate Banking and Branching?” *The Delaware Lawyer* (Winter 1995) at 8.
- 19 See Martin I. Lubaroff and Thomas L. Ambro, “The Delaware Financial Center Development Act,” *Banking Law Journal*, 99 (1982); see also Swayze, *supra* note 2.
- 20 Summary of Action, American Bar Association, Board of Governors, June 10-11, 2005, Reports of Officers and the Executive Director, 6-7.
- 21 Thomas L. Ambro, interview by William Lanouette, November 29, 2007, 11.
- 22 Bankruptcy cases are always handled in federal court.
- 23 Winslow et al., *Delaware Bar*, 519. The other nine were Columbia Gas System, Inc.; Columbia Gas Transmission Corp.; Trans World Airlines, Inc.; USG Corporation; SPI Holding; Charter Medical; Memorex Corporation; Days Inns of America, Inc.; and Memorex Telex Corporation.
- 24 Mark D. Collins, interview with William Lanouette, September 26, 2008.
- 25 Stephen E. Herrmann, interview by William Lanouette, November 13, 2007, 4; Delaware Statutory Trust Act, 12 *Del. C. cc. 3801, et seq.* 1988.
- 26 Eric A. Mazie, “The Delaware Statutory Trust Act,” in *Linklaters* by Adam W. Glass, June 17, 2004.
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- 30 William E. Wiggin to E. Norman Veasey RE: Firm History, February 12, 1987, in Richards, Layton & Finger library “Firm History” files, 6; Joan and Joseph Rosenthal, “In Memoriam: William E. Wiggin,” *Delaware Lawyer* 23, no. 2 (Summer 2005): 5.
- 31 Robert H. Richards III, interview by William Lanouette, November 28, 2007, 15, 18; Winslow et al., *Delaware Bar*, 259.
- 32 Elliott Oral History, 9.
- 33 Wayne Stanford to William Lanouette, August 18, 2008.
- 34 Maureen Milford, “Freeing Lawyers to Do Casework,” *Wilmington News*, n.d.
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- 36 Wayne Stanford to William Lanouette, August 18, 2008.
- 37 William J. Wade, interview with William Lanouette, October 31, 2007, 4.
- 38 *RL&F Times* 3, no. 12 (December 6, 1999): 1.
- 39 R. Franklin Balotti to William Lanouette, May 9, 2008, 4.
- 40 Staff roundtable, November 28, 2007.
- 41 Winslow et al., *Delaware Bar*, 258-59. By the mid-1980s, more than 150 attorneys were participating.
- 42 Ted Spiker, “The Firm,” *Delaware Today* (October 1995): 79.
- 43 Stephen E. Herrmann to William Lanouette, June 13, 2008.
- 44 Staff roundtable, December 12, 2007. Gregory P. Williams recalled that as early as 1988 everyone in the office was on a first-name basis.
- 45 Staff roundtable, December 12, 2007.
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- 47 See *New York Times*, January 11, 2000, A1, C11.
- 48 Brigitte V. Fresco to William Lanouette, June 11 and July 7, 2008.
- 49 Litigation continued in and out of courts in Texas and Delaware, and Union Pacific ultimately abandoned its tender offer. See, for example, SEC filing *Union Pacific Resources Group Inc, et al. SC 14D1/A Pennzenergy Co.*, 6/23/97 EX-99.(G) (2).
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- 54 *Procter & Gamble Co. v. Nabisco Brands, Inc.*, Civil Action No. 94-333, U.S. District Court for the District of Delaware; *Procter & Gamble Co. v. Nabisco Brands, Inc.*, 771 F. Supp. 759 (D. Del. 1989).

## Chapter Five

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- 6 See, e.g., Lexis-Nexis Expert Commentary in 906 A.2d 27, 206 Del. LEXIS 207 (Del. June 8, 2006); *In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27 (Del. 2006) *In re Walt Disney Co. Deriv. Litig.*, 907 A.2d 693 (Del. Ch. 2005).
- 7 *Brehm v. Eisner* (*In re Walt Disney Co. Deriv. Litig.*), 906 A.2d 27, 2006 Del. LEXIS 307 (Del. June 8, 2006).
- 8 Country Overview, *Chambers USA*, Delaware 2007.
- 9 *Oracle v. PeopleSoft*, C.A. No. 20377 (Del. Ch.). See also David Millstone and Guhan Subramanian, “Oracle v. PeopleSoft: A Case Study,” *Harvard Negotiation Law Review* 12, no. 1 (Winter 2007); *In re Oracle Corp. Deriv. Litig.*, 867 A.2d 904 (Del. Ch. 2004); Roy Harris, “Delaware Rules,” *CFO Magazine* (August 1, 2006), with “Review of Delaware Cases” by Charles Elson; Allen M. Terrell, Jr., to William Lanouette, June 9 and 10, 2008.
- 10 *Frontier Oil Corp. v. Holly Corp.*, 2005 Del. Ch. LEXIS 57 (Del. Ch. April 29, 2005); Gregory V. Varallo to William Lanouette, June 6, 2008.
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- 12 Frederick L. Cottrell III and Jeffrey L. Moyer to William Lanouette, June 10, 2008.
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- 15 Jeffrey L. Moyer to William Lanouette, August 8, 2008; Jennifer I. Schenker, “Why Qualcomm Folded to Nokia,” *Business Week Technology* (July 24, 2008).
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- 20 Donald F. Parsons, et al., “Solving the Mystery of Patentees’ ‘Collective Enthusiasm’ for Delaware,” *Delaware Law Review* 7, no. 2 (2004): 145-61. See especially 156, Table 5.
- 21 Mark D. Collins, interview by William Lanouette, September 26, 2008; “Experience and Qualifications of Restructuring and Bankruptcy Group” RLF1-2455817-14 in “Firm History” RL&F Library.

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- 24 Donald A. Bussard and C. Stephen Bigler to William Lanouette, June 20, 2008.
- 25 James G. Leyden, Jr., to William Lanouette, July 10, 2008; A. Sidney Holderness, Jr., Brooke Wunnicke, eds., *Legal Opinion Letters Formbook*, 2nd ed. (New York: Aspen Publishers, Inc., 2002), 47; James G. Leyden, Jr., to William Lanouette, July 14, 2008. Ambro remains a member emeritus. Thomas L. Ambro, telephone interview with William Lanouette, August 13, 2008.
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- 32 Edmund N. Carpenter II, "A Brief History of a Law Firm," September 5, 2001, 1.
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- 34 Rita K. Farrell, "Actor Takes Center Stage as Disney Trial Grinds On," *New York Times*, December 8, 2004.
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