A TRIBUTE TO CHANCELLOR WILLIAM T. ALLEN

Aspects of Law

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When William T. Allen, Chancellor of the Delaware Court of Chancery, announced his intention not to seek reappointment, the *Seattle University Law Review* decided to put together a number of articles dealing with Chancellor Allen's contribution over the twelve years he served as a judge.[1] At one point early on, this merry mélange was going to be a Symposium but, budgets being what they are, we couldn't afford a banquet to speak after. The participants were not going to engage in conversation with one another, so we couldn't really call it a Colloquy, either. Neither did we anticipate giving others the chance to comment on us or on Chancellor Allen, so a Forum was no good.

We are not an organization specializing in the study of Chancellor Allen, so we couldn't call our articles Proceedings or Annals. This is a one-shot deal, so Annual Report is out, let alone the possibility of Jahrbuch.

Not only do we not anticipate future articles on Chancellor Allen, but these articles are not intended to be narrow, incremental contributions to the Alleniana. For those reasons we rejected the title Studies. But neither did we cast our net widely in any sort of systematic way, so that we feel it inappropriate to title this a Survey. It might have

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1. The articles are Jesse A. Finkelstein, *A Practitioner's Perspective on the Tenure of Chancellor William T. Allen*, 21 SEATTLE U. L. REV. 555 (1998); James C. Freund, *". . . Skepticism But Not Cynicism": Chancellor Allen's Scrutiny of Special Committees*, 21 SEATTLE U. L. REV. 559 (1998); D. Gordon Smith, *Chancellor Allen and the Fundamental Question*, 21 SEATTLE U. L. REV. 577 (1998); and Eric A. Chiappinelli, *Bill Allen in Class*, 21 SEATTLE U. L. REV. 613 (1998).

become a Festschrift except that no one is celebrating the fact that Chancellor Allen is leaving the bench. We can't call this a Retrospective because the articles don't canvass the Chancellor's judicial career in any programmatic way. Finally, of course, since he's not dead, our consideration of the title In Memoriam was a brief one.

So instead this is a Tribute[2] to Chancellor William T. Allen. Each of the articles deals with a different part of the Chancellor's career. Read together they provide a surprisingly consistent view of disparate aspects of one career in law. In that sense, although each article stands alone, together they are aspects of law. Before I describe these aspects, let me introduce Chancellor Allen.

William T. Allen is a native of Philadelphia and was born in 1944.[3] He was graduated from NYU in 1969 and received his law degree three years later from the University of Texas. While in law school he served as an Articles Editor of the *Texas International Law Journal*. Following his graduation from law school, Allen spent two years clerking for a United States District Judge in Wilmington, Delaware and then entered private practice until his appointment to the bench by Governor Castle in 1985. In the twelve years he served as Chancellor (his term expired in June 1997), he wrote more than 450 opinions.[4] Lexis reports that slightly over half were in the area of corporate law while just under half were in the other areas, such as trusts, that make up the Court of Chancery's subject matter jurisdiction.[5]

Jesse A. Finkelstein frequently appears as a lecturer at corporate and securities programs around the country.[6] He was graduated from Boston College Law School, where he was Executive Editor of the *Boston College International and Comparative Law Review*, and received his undergraduate degree from the University of Rochester. He is a

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2. The official title is Tribute, in the sense of an accolade, rather than in the sense of a forced payment. My personal preference for a collective noun for law review articles is Pod because, like whales, law review articles in a group tend to be large, cumbrous things with lots of blubber that most people never see but which a few intrepid people can glimpse if they make a real effort. I have to agree with the *Seattle University Law Review*'s editors that Tribute is much better than Pod for this group of articles.

3. All biographical information about Chancellor Allen is taken from THE AMERICAN BENCH: JUDGES OF THE NATION 507 (Marie T. Finn et al. eds., 8th ed. 1995).

4. Search of LEXIS, States Library, Dects File (Dec. 1, 1997).

5. Search of LEXIS, Corps Library, Decorp File (Dec. 1, 1997).

6. *See, e.g.*, Jesse A. Finkelstein & Russell C. Silberglied, Cede & Co. v. Technicolor: *Important Considerations for Appraisal Valuation in Two-Step Acquisitions*, 9 TUL. CORP. L. INST. (1997).

partner at the Wilmington, Delaware firm of Richards, Layton & Finger.

Mr. Finkelstein's *A Practitioner's Perspective on the Tenure of Chancellor William T. Allen*[7] is written in one of the oldest and most valuable legal genres: the sketch. The judge who is preserved in a sketch is epitomized in ways a full biography or a doctrinal analysis of his or her work cannot do. A judge's quotidian approaches and preferences can speak volumes to later judges, lawyers, and historians seeking to understand the art of judging. A thoughtful, accurate sketch captures these qualities better and more permanently than any other method.

Mr. Finkelstein's sketch of Chancellor Allen packs more insightful observations into a few pages than I can recall seeing in a long while. From the Chancellor's advice to new lawyers to his approach to precedents, to his style in fashioning opinions, Mr. Finkelstein speaks with the authority of one who has frequently appeared before the Chancellor and appeared with him on speaking programs. Scholars seeking the essential William T. Allen as judge need look no farther than Mr. Finkelstein's sketch.

James C. Freund first became known to a wide legal audience with his stunning book, *Anatomy of a Merger*.[8] Since then he has written several other books and innumerable articles both formal and informal. He is a transactional lawyer of the highest order, who was at the center of virtually every takeover battle in the last generation. One of his primary virtues has been that, while he has a deep knowledge of Delaware case law (and corporate and securities law, as well) and seriously sound judgment, he is not a litigator. In other words, his primary professional activities have involved trying to find common ground instead of finding common enemies. He is an alumnus of Princeton University and the Harvard Law School. He was a longtime member of, and is now of counsel to, the New York firm of Skadden, Arps, Slate, Meagher & Flom.

Mr. Freund takes the title of his article, "*. . . Skepticism But Not Cynicism": Chancellor Allen's Scrutiny of Special Committees*,[9] from a 1990 law review article by Chancellor Allen.[10] Mr. Freund focuses upon Chancellor Allen's opinions dealing with board of directors

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7. Finkelstein, *supra* note 1.

8. JAMES C. FREUND, ANATOMY OF A MERGER: STRATEGIES AND TECHNIQUES FOR NEGOTIATING CORPORATE ACQUISITIONS (1975).

9. Freund, *supra* note 1.

10. William T. Allen, *Independent Directors in MBO Transactions: Are They Fact or Fantasy?*, 45 BUS. LAW. 2055, 2059 (1990).

subcommittees appointed ad hoc to assess whether the corporation should enter into a change of control transaction. After putting the corporate law problem in context, Mr. Freund analyzes a series of Chancellor Allen's opinions in this area and adds his own reflections about what those opinions meant to the practicing bar. Those reflections are literally unique and make this article inimitable.

The main thesis of Mr. Freund's article is that the Chancellor was enormously helpful to the practicing bar by signaling in the language and tone of his opinions his views on the propriety of special committee procedures. The Chancellor's views, which are captured by his own phrase "skepticism but not cynicism," were transmitted in quotable, almost epigrammatic, bursts that seasoned corporate lawyers such as Mr. Freund could in turn use with their clients and litigation partners when considering various courses of action. I will not steal Mr. Freund's thunder by quoting those phrases nor by trying to describe Mr. Freund's reaction. As with so much of Mr. Freund's writing, the process of reading it is at least as pleasurable and as instructive as the ultimate wisdom he imparts.

D. Gordon Smith is an Associate Professor of Law at Lewis & Clark in Portland, Oregon. He was graduated from Brigham Young University and received his law degree from the University of Chicago where he was Comment Editor for the *University of Chicago Law Review*. He subsequently clerked for a judge on the United States Court of Appeals for the Fifth Circuit and then practiced law in Wilmington, Delaware, with Skadden, Arps, Slate, Meagher & Flom. He has been at Lewis & Clark for four years teaching business courses such as Corporations, Corporate Finance, Securities Regulation, and European Union Corporate and Securities Law.

Professor Smith titles his article *Chancellor Allen and the Fundamental Question*.[11] The fundamental question is the role of corporations in modern America and the debate is essentially dichotomous. Both sides view the ultimate answer to be that corporations are instruments of social policy and that therefore corporations' ends should match society's needs. The debate centers on the appropriate means to reach that end. The traditional view of corporations holds that society is best served when corporations have as their primary purpose the maximization of profits. The reform view is that profit maximization often works against society's best interests. As a consequence, the reform view is that corporations ought to act in accordance with social good as defined either by the corporation or by

11. Smith, *supra* note 1.

outside regulators even when profits are thereby lessened. Professor Smith argues that Chancellor Allen's reputation can be explained by the way in which he addresses this fundamental question. In Professor Smith's view, Chancellor Allen usually took the traditional view and that his greatness stems in part from his willingness to hew to the traditional view in the face of a Supreme Court that wanted more change.

Professor Smith then combines this broad theoretical perspective with meticulous analysis of case law. Professor Smith focuses on Chancellor Allen's treatment of the *Revlon* line of cases. He begins with a discussion of the Delaware Supreme Court's opinions from *Revlon* to *QVC*. He then describes Chancellor Allen's response to each of three Supreme Court decisions interpreting *Revlon*. Professor Smith finishes by defending Chancellor Allen's reputation from attack, principally an attack from Marcel Kahan.

I[12] am a professor of law at Seattle University School of Law. I was graduated from Claremont Men's College and Columbia Law School. Before becoming a law professor I clerked for a judge and practiced corporate law in Los Angeles. In the business area I teach business entities, corporate acquisitions, and securities regulation. My other courses are civil procedure and American legal historiography.

My article, *Bill Allen in Class*,[13] looks at Allen not as a judge but as a teacher. The thrust of my argument is that Bill Allen is not moving from the courtroom to the classroom. I argue that he is already in the classroom through an astonishing number of judicial opinions and other writing that is excerpted in all of the most widely used corporations casebooks. Because casebook editors make such frequent and wide ranging use of Chancellor Allen's opinions, he has influenced and will influence hundreds of law professors and thousands of law students in a more direct and pervasive way than his opinions alone could. In my view, Bill Allen's method of structuring his decisions has been an important element in the selection of his opinions for casebooks.[14]

I know that I speak for myself, the other authors, and the Law Review when I say that these articles are, indeed, a tribute. All of us in corporate law have been touched profoundly by Chancellor Allen's mind. We are offering these articles as a collective appreciation of the

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12. *See supra* text accompanying note *.

13. Chiappinelli, *supra* note 1.

14. As all authors are, I am tempted to go into more detail about my own writing. In this instance, though, I fear that if I elaborate much further I'll preempt myself.

work Chancellor Allen has done and as a collective welcome to him as he begins his academic career. If you are familiar with the accomplishments of Chancellor Allen we hope you will find these articles fitting. If the world of Delaware corporate law is new to you, we hope you will be intrigued by Chancellor Allen's career.