

BUSINESS LAW TODAY

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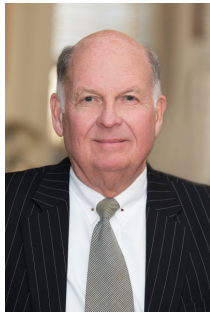
An Interview with Former Chief Justice Myron Steele

MEMBER SPOTLIGHT

Q&A with dynamic
Section personalities



LISTEN TO AUDIO



In his 25 years as a member of the Delaware judiciary, former Chief Justice of the Supreme Court of Delaware Myron Steele has published over 300 opinions resolving corporate litigation, LLC, and limited partner governance disputes. He also served on the Delaware Superior Court from 1988 to 1994, and served as Vice-Chancellor of the Chancery Court of Delaware before being selected for the Supreme Court bench in 2000.

He recently returned to private practice, where he is a partner at the Delaware law firm, Potter Anderson & Corroon LLP, and specializes in litigation.

* * *

What did you most enjoy about being a judge?

Without question, the ability to associate with the quality of people that were my colleagues during those years. Not just on the Supreme Court and Chancery, but also on the Superior Court of Delaware.

If you look at your career, what do you think best prepared you for becoming a judge?

I think the fact that I litigated. All three courts which I ultimately served were courts in which I actually practiced law. I had between 50 and 75 jury trials in the Superior Court. I was in the Court of Chancery relatively often. I should say sadly, I had appellate work to do because sometimes I won, sometimes I lost. It's difficult to

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THE LAST LAUGH



*"It appears my license is limited to
sidewalks and dog parks."*

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serve on a court and have your entire experience be on-the-job training.

If you look back at that time as a judge, what things would have made your job easier?

The quality of the lawyers that come before you. There's a marked difference between the natural-born litigator and those who learned to litigate by watching others and those who come to court every so often from a transactional practice because one of their favorite clients wants their favorite lawyer in court. The weakest performer typically is the third category.

That's a nice segue to the next question. What is a commonality among the most successful lawyers who appear before you?

First and foremost, they are focused. They understand they have a limited time to appear before the trier of fact, whether it's a jury or a judge. They are focused on exactly what they want to accomplish. They understand the law and facts that support them and they discard irrelevancies and they discard emotion. They simply get to the point and allow the judge to understand what's going on.

What about collegiality, professionalism?

One of the things that the Delaware Bar is famous for is a culture of collegiality. We rarely see contentious behavior or behavior that surprises the judge because it's so countercultural for us.

What advice if a lawyer is thinking about becoming a judge?

It's a wonderful public service opportunity. I would encourage enthusiastic people with, what our Delaware friend, Joe Biden, calls "fire in their belly." But before they do, know the court well on which they wish to serve. Have a good understanding of what that court does and why it operates the way it does. Don't just seek a judgeship for the sake of being a judge. That doesn't do them any professional good and it doesn't serve the public well.

You presided over many cases involving corporate governance. How has corporate governance changed over the years?

That's an entire afternoon's discussion. Let me just hit some highlights. First, the major change, clearly, is a shift to shareholder empowerment. When I first started practicing law 40 years ago, a majority of stockholders were retail stockholders. They bought their shares from the local broker. They may have had 100 to 500 shares.

Now, between 70 and 80 percent of the stock in at least Delaware-chartered, publicly-traded corporations, is held by institutional investors. They vary from private equity to the mutual fund community to public employee and union pension funds.

negotiation can offer business attorneys, shareholder activism, and more.

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Institutional shareholders have taken a more active interest in the way in which publicly-traded corporations are governed, and that's caused a shift in attitudes toward corporate governance: more transparency, more responsiveness from directors on boards and management. Also, sensibly, there is more discussion between management and boards with their institutional stockholders, many of whom are very sophisticated with their own high level of quality advisors.

But there are also institutional investors who have political agendas. Directors have to be sensitive to who their stockholders may be and their mission. There also has to be a focus on the fact that these institutional investors may hold stock in a competitor of the very corporation with whom they are working out issues of corporate governance. That's been a dramatic change over 40 years.

Most of the disputes you see in derivative and class actions are focused on issues of empowering stockholders to know more about and be able to affect more directly corporate governance decisions made by directors and officers and managers.

What do you think are the top pressing corporate governance issues today?

I'm going to restrict my comments to Delaware, but Delaware has a pretty good grasp of the national picture, given that 51 percent of the publicly-traded corporations are chartered here.

First is executive compensation. Trying to develop a metric that satisfies stockholders that is fair and not disproportionate to the income of workers and others in the community.

Secondly, it's the role of the financial advisor in M&A. Recent cases in Delaware highlighted this role and of the arguable requirement that directors should be more involved, with an understanding of a financial advisor's interests, beyond the immediate deal in which they are interacting.

There's an appropriate continuing focus on protecting stockholder voting powers because, other than selling your stock, the only direct role that stockholders have in crafting the internal governance of the corporation is their right to exercise the stockholder franchise.

You've been called an ambassador at large for the state urging lawmakers to keep the federal financial overhaul over the last several years from encroaching on state corporate laws. Why is this so important?

I believe absolutely in Justice Brandeis' quote, and I'm going to paraphrase it: the states are clinical laboratories in which experiments take place that can benefit the nation. The states, by development of the common law, are in a better position, because of the contextual situations that are presented to them in actual

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litigation, to shape the best principles of corporate governance. The federal response is usually a politicized reaction to a perceived crisis. It troubles me that what some people refer to as federal encroachment occurs at all. But much more troublesome is that the federal response isn't a long-term process. It's a rush to judgment with political constituents hammering at Congress to get something done in wake of a real or perceived crisis.

Whereas in litigation, there's intense fact finding, there's discovery, there's an objective, nonpolitical judge sitting on the bench, deciding whether or not under these precise circumstances, corporate governance should be reshaped. It's a thoughtful, measured way of improving and perfecting corporate governance principles.

During your time as Chief Justice, you went back to school and earned an LL.M which is pretty unusual. What made you want to go back to do this and how was it?

I loved it. I'm not terribly objective about it. I went back to my alma mater, the University of Virginia. Any excuse to get back there, I would be willing to take, but the real reason I wanted to re-immers myself in academics is because it reinvigorates. It was challenging. The interaction with other judges in the program was wonderfully helpful. With the different perspectives and backgrounds, it was almost like being in the army. It was also intellectually challenging. The program compelled me to write a thesis, which allowed me to focus on an issue of law that was important to me.

What was your thesis?

"The Role of Traditional Corporate Law's Fiduciary Duties in Alternative Business Organizations." I explored why I thought it was wrong to impose, by default, on what is essentially a contract entity, common law fiduciary duties from the corporate world. My view was these are alternative entities, and, therefore they should be treated as genuine alternatives. I examined a number of my cases that I decided when I was on Chancery and said I should have followed the contracts as written between the parties.

Where was it published?

In the *Delaware Journal of Corporate Law*.

You teach at three different universities. Do you have a favorite course that you like to teach?

I teach the same course at all three schools. So, I clearly have a favorite. It's a seminar, taught with a transactional lawyer. I focus on the role of the lawyer in the boardroom in advising directors of publicly-traded corporations. I talk about the directors' fiduciary duties, what problems they will see in the course of selling their company, an offer to buy their company, or hostile take-over of a

company. Every year, there are more cases that create either variations on the same theme or a new theme all together.

It's wonderful because I get to go back to the classroom setting. I have to keep myself up to date on all the cases whether I want to or not.

I'm going to switch gears again. I've read that you served in the U.S. Army and later the National Guard and instead of going to Vietnam, you were at Fort Benning doing court martials. What was that experience like?

You're taking me back a few years, aren't you? I went to Infantry Officers Basic with the understanding that I would ultimately become a military intelligence officer. I finished infantry school, fully expecting that I would be sent to Vietnam, but they either knew or discovered that I had a law degree and that I'd actually been practicing law before I was called to active duty, serving on loan from my law firm as a prosecutor. The army decided to keep me at Fort Benning to handle court martials, which is what I did for my active duty term. Then I went back to Delaware and finished up in the army with 24 years in the National Guard.

Army service was important to me. Somebody in my family has been in the army on this continent for the last 200 years. I have a daughter who is a West Point grad and a lieutenant colonel in the army, an aviator.

You've received so many awards. Is there one that's most valuable to you? Most meaningful?

There's a tie. The first is the medal I received from Kent County, which is the county in which I live. It's important to me not because it gets widespread publicity, but I'm the first lawyer that has ever been given this medal. To me, it's recognition from my hometown that I've served them well and nothing could mean more to me than that.

The other is the Honorary Doctor of Laws Degree from the University of Delaware, which was a huge welcomed surprise to me. That, to me, was my state telling me that I've served well and you can't get, in my view, can't get more emotionally satisfying thank-yous than that.

I heard you love to hunt. As a child, you hunted for quail and rabbits in South Carolina. What do you enjoy about it?

You left out squirrels. Actually, I've developed an absolute passion for what's called wing shooting. I shoot dove, ducks, and geese. It's a cultural thing. I am, at heart, a Southern man and hunting is in our DNA. It's an enjoyable experience to be outdoors. It's a lot of hard work. You get to work with a dog. I love my Labrador retrievers. Working as a team with them is my best thrill about water fowling and wing shooting.

I have great personal relationships with my hunting buddies – the commonality of purpose, the excitement of being outdoors, being one with nature. We play by all the rules. We eat what we kill. What we don't save, we give to what is, in effect, a local food bank.

You're also an avid sports fan and I believe you hold season tickets for basketball and football for your alma mater, the University of Virginia. Did you play these sports?

No, not at all. I wasn't big enough or fast enough. For basketball, I don't have what the kids today called "hops." I couldn't jump off the second stage of a step ladder. I played tennis in high school and that's about the extent of my athletic ability. But I love college sports. It's impossible for me to imagine anybody going to college and not caring about that college's sports performance. I follow everything from women's field hockey to football, basketball, baseball, lacrosse, everything. I do have season tickets, but I don't make many games. I make sure that someone is in my seat when I can't be there.

You recently returned to private practice joining the firm of Potter, Anderson and Corroon. What made you decide to return and not be a judge anymore?

There are many reasons. Let me just try to hit a couple. The first is I've served as a judge for 25 years. In my view, that's enough for anybody. I never had the view that I was irreplaceable. I know that there are at least a thousand Delaware lawyers who would do a better job than I did as Chief Justice. So, it was time to move on and make room for someone else.

The second reason is that I like to change my life from time to time just to reinvent myself.

How has the practice of law changed?

The word "dramatically" fits. The technology is overwhelmingly different. My firm is very particular about conflicts checks. When business comes in over the phone, you're very excited about it, but then you have to go through this laborious process of checking for conflicts. I haven't welcomed the return to timesheets.

I had my first oral argument in 25 years in front of a judge in South Carolina. That was a strange feeling standing at the podium instead of sitting on the bench. But it was a terrific experience.

You've served as judicial advisor to the Mergers and Acquisitions Committee of the ABA Business Law Section. What is then the value of your involvement of this Section?

The Business Law Section and in particular, the M&A Committee are probably the finest group of lawyers and the smartest and the hardest working lawyers I've ever been around. It's been wonderful to be associated with them and the opportunity to try to contribute to their program.

I learned a lot from them, having to be prepared meeting after meeting. To make presentations to them was challenging, but it helped me develop my skills as a judge and hopefully, my skills as a lawyer.

It sounds like you would advise young lawyers to get involved.

Absolutely. I can't understand why any business lawyer would not want to be an active member of the Business Law Section. And in particular, if you're going to do corporate litigation or transactional work, the M&A Committee is the place to be.

What are you working on now?

I have mediations and arbitrations scheduled. I've been doing expert opinion work. I'm not planning to go directly into court in Delaware until the people I served with have retired or gone back into private practice.

Do you feel like you're working harder now as compared to when you're a judge?

I'm working long hours. It's pretty intense. The biggest difference is I don't have as much control over my schedule in private practice as I had on the bench. I still travel. It's surprising that people are still asking me to come to their CLEs and be on panels and give speeches now that I am an untitled journeyman lawyer again.

Thank you so much for your time.