# Reminiscences of an Old-Time Washington Lawyer *

*As Told to* GRANT W. WIPRUD *of the D. C. Bar*

When I was a boy in Washington, public transportation was provided by horse-drawn streetcars which moved at a leisurely pace through the unpaved streets, stopping anywhere to pick up passengers. The winters then brought much more snow and cold to Washington than they do now; and I remember the horses laboring through the drifts, steam rising from their backs in the frosty air, while inside the streetcar we sat with our feet buried in straw to keep them warm.

That was long ago, and Washington then was part of another age. But the city, the people and the life of that time are still very real to a lawyer who has lived and practiced in Washington as long as I have.

I moved to the District of Columbia with my family during the Civil War, and though I was only a small boy at the time, I remember our arrival very well. There was then a housing shortage in Washington—as there has been in every war—and my father found it impossible to buy a home. He was forced to rent a house and, at an extortionate figure, to purchase the furniture already in it. Nevertheless, we were very fortunate. Our new home was a lovely little place, set well back among trees and flower beds. True, it was somewhat primitive by modern standards; it had no plumbing, and its rooms were lighted by candles and heated by fireplaces. But we thought nothing of these things, for gas lighting was still unknown, and plumbing and central heating were enjoyed only by the very wealthy. Nor did we think anything of the fact that for water we had to cross the street to a communal pump, though in wet weather, when the street was a quagmire, this meant precarious journeys across stepping stones. We found our home very comfortable, and we lived a good life there, with always plenty to eat and good clothes to wear.

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* Who prefers to remain anonymous. [ED.]

The great struggle between North and South was then in its last year, and each success which attended Northern arms was mirrored in moments of intense excitement in the lives of civilians back home in Washington—even in the lives of little boys. I well remember the blaze of candlelight which streamed from the windows of all public buildings on the night after Grant took Richmond, and on many another night after a momentous victory. On these occasions the entire town turned out into the streets to celebrate.

There was another and more poginant side to the war which left the deepest impress on my memory, young as I was. A short way from my home was a church which had been temporarily converted into a military hospital. To this hospital the wounded were brought from the battlefields in big covered wagons. Late at night these wagons would roll close by my bedroom in slow and mournful processions, moving through the dark and deserted streets to the hospital. Many a time I lay awake in the darkness, listening to the cries and groans of the wounded and the fall of the horses' hooves. Those are sounds which are with me still.

The same hospital provided excitement of a more pleasant kind for small boys. On sunny days convalescent soldiers lounged outside; and like soldiers in all wars, they were fond of children. They would tell us stirring tales of battle, and better, would fasten firing caps to the ends of their ramrods and allow us to set off great barrages by banging the ramrods on the ground.

Well, all that was when I was very young. The years rolled by and at length, on a hot summer's day in the late 1870's, I was admitted to the practice of the law in the District of Columbia. I found myself confronted by a system of courts much simpler than the one we know today. Apart from the jurisdiction exercised by the justices of the peace—later to be the province of the yet-unborn Police Court—there was but one local court: the Supreme Court of the District of Columbia. This court performed the dual function of trial court and of court of appeals.

The five judges of the court sat singly, in the fashion of our present-day District Court judges, to preside over the "trial terms." Appeals from the judgments entered in "trial terms" were heard by three of the five judges sitting as a "general term." From the decisions of the "general terms," appeals lay as of right directly to the Supreme Court of the United States.

Originally, there was nothing to prevent a judge who had presided over a trial from reviewing his own judgment as one of the appellate judges; and this duplication of roles in fact occurred on at least one occasion. But the rules of court were early revised to preclude such a situation from arising.

The five judges sitting on the bench of the Supreme Court of the District of Columbia when I was admitted to the bar were a colorful group known to Washingtonians as a "Yankee court."

Chief Justice David K. Cartter was a man of massive frame and leonine head who spoke with authority not only from the bench but within the highest councils of the Republican Party. He was popularly credited with principal responsibility for the nomination and election of Lincoln. A slight impediment of speech hindered him when he first began to speak, but this quickly yielded to a brilliant flow of language; and a well-developed instinct for the dramatic enabled him to capitalize effectively upon the hesitations in his opening phrases.

I well remember one courtroom incident which took place while Cartter was presiding. One of the few women attorneys then practicing in Washington, whom I shall call Miss Smith, had brought an action on behalf of another member of the fair sex, asking damages for seduction; and on the day in question the case came up before Cartter. The defendant demurred to the complaint, and Cartter sustained the demurrer. The court's ruling aroused the utmost indignation in the bosom of Miss Smith. She rose and demanded heatedly of the court:

"Well, what am I to do? I just don't know what to do. What am I to do?"

Chief Justice Cartter, with his usual slight stutter, replied dryly:

"Sister Smith, don't you go getting off into heat in *this* court. My advice to you is to go hire a lawyer."

Miss Smith left the courtroom forthwith—but whether in despair or in search of another lawyer, I never learned.

One of Cartter's associates on the bench was Andrew Wylie, a Virginia man. It was Wylie who issued the writ of habeas corpus to Mary Surratt, affording her a brief reprieve until President Johnson suspended first the writ and then, alas, the lady. Wylie was a very good judge, but he did have one marked peculiarity: at the outset of a trial he was hasty in forming an opinion on the merits which was reflected in all his rulings and observations—but he almost always reversed his opinion by the end of the trial. This pattern of judicial behavior was so nearly invariable that whenever I tried a case before Wylie, nothing could depress me more than to enjoy the court's favor and encouragement in the opening of my case.

Another of Cartter's associates was David C. Humphreys, a wiry little fighting cock who was easily the most colorful character on the bench. His principal attributes were a shrill voice and a boundless capacity for liquor. We lawyers were accustomed to seeing him in all stages of intoxication, both on and off the bench. On the bench, drunk or sober, he played the tyrant, and an irrascible one at that.

There were several strong-minded citizens of Washington, however, who gave Humphreys his comeuppance. One was Don Piagg, the editor of the National Capital Weekly, who repeatedly referred in his publication to "Judge 'Old Necessity' Humphreys," with the explanation that Humphreys was so dubbed because "necessity knows no law." Another and perhaps bolder stroke at the little martinet was dealt by Farrell, the barkeep whose lair was in the Bradley Building, across from the courthouse. Humphreys kept a glass of whiskey under the bench, and when it became empty—as not infrequently happened—he would send it across the street to Farrell for a refill. One day he sent it over and it came back not full enough to his liking. He sent it back again with the testy injunction that Farrell fill it *full.* Farrell filled the glass to the brim, and sent

it back with a slip of paper floating on the flood. On this paper he informed Humphreys that he had not realized the judge "wanted to take a bath in the stuff."

My first courtroom appearance before Humphreys ended in his entering judgment against me. I informed him that I was noting an appeal. "Appeal?" he shrilled incredulously. "Appeal from my order? I've a mind to commit you for contempt!"

On that occasion I was not only making my first appearance before Humphreys, but my first appearance in *any* court as an attorney — for I had been admitted to the bar only the day before. Although I had had but a few hours' notice that I was to argue the case, I was able to handle the matter with reasonable assurance. This was no particular credit to me; any other fledgling lawyer of the time could have done as well. In those days law students served as apprentices to practicing lawyers for several years, and so were thoroughly acclimated to the courts and their procedures by the time they were admitted to the bar.

In addition to Wylie and Humphreys, Cartter's associates on the bench included Arthur MacArthur, Douglas MacArthur's grandfather, and Abram B. Olin, a New York man and a very good attorney. These five were the judges of the Supreme Court of the District of Columbia before whom I practiced in the late 'seventies and early 'eighties. Before them I and my fellow lawyers tried cases and argued appeals on five days of the week. I say five days, because Saturday was Motions Day—or, as we attorneys called it, "Circus Day." This was a great day for repartee between the bench and the bar, and we all attended if we could, whether or not we had business in court. As a random example of the genial relaxation of courtroom austerity on that day, I recall one occasion when R. P. Jackson was the victim of judicial pleasantry. Jackson urged a motion upon the court; his adversary answered; then Jackson rose again, and was just well launched into his reply when the court stopped him, saying: "Mr. Jackson, notwithstanding your argument, the court is still with you."

So much for the weekly round; as for the round of seasons,

when I first entered practice a judge might sit all summer long, if he chose. Inevitably, it was Old Necessity Humhpreys who liked to hold court straight through the hot months. The bar didn't like this at all, and after several years of agitation, succeeded in persuading the court to promulgate a new rule whereunder court recessed on July 15.

In those days the old courhouse used to have entrances east and west, and only two courtrooms, one civil and the other criminal. Across the street stood the Bradley Building, in which my offices were located when I first entered practice. This building, later torn down to make way for the new Municipal Center, was owned by and named after Joseph Bradley, a leading Washington attorney who had defended Mary Surratt and who owned a farm on the present site of the Chevy Chase Club. It was a substantial structure with three floors above a ground floor and a high flight of steps running up to the first floor. The ground floor was occupied by a saloon over which the celebrated Farrell presided as barkeep. At recess time on court days the barroom was filled with attorneys and litigants.

The number of lawyers then practicing in Washington was, of course, much smaller than it is now. The Bar Association of the District of Columbia, when formed in 1874, had only twenty-five members, and for the first few years of its existence was much like an exclusive country club. Membership was by invitation only, and one black ball was sufficient to keep an attorney out.

Small though the Washington bar then was, its ranks contained many outstanding men. There were truly great orators then at the bar—men like Richard T. Merrick, Senator Dan Voorhees, and Senator Matt Carpenter, who would find few peers, if any, among the lawyers of this present time. On the other side of the ledger, it must be said that there was a good deal of heavy drinking then prevalent among Washington attorneys. Many of the young attorneys who were my contemporaries fell into the practice of having a stiff drink or two in the morning before arguing a case. Not a few of these men

became habitual drunkards — and yet they were a brilliant group. Fortunately for myself, I drank very sparingly at all times.

Among the more colorful figures then prominent in the Washington legal fraternity were a number of German immigrants distinguished alike by the vigor with which they practiced law and by the abandon with which they assaulted the English language. Nehemiah Muller, or Miller, was a notable member of this group. Arriving in Washington in 1863, he succeeded in securing appointment as a Justice of the Peace, despite his somewhat less than perfect command of English. When the Police Court was created several years later, he became what would now be called Assistant Corporation Counsel. In that capacity he once filed an information against a Washington liquor dealer, charging violation of his liquor license. The defendant was convicted and appealed, and therefore his case went to Trial Term of the D. C. Supreme Court for trial *de novo.* The case came on for hearing before Judge MacArthur —whereupon who should come forward as attorney for the appellant but Nehemiah Miller, who had relinquished his public office and had been retained by appellant as counsel. Before the trial could get under way, Miller announced to the court: "I move to quash the information." "On what ground?" asked the court. "It is defective," replied Miller in his heavy German accent; "I should know—I prepared it mineself!"

The simplicity of life in those days, as compared with the complexities of life in metropolitan Washington today, extended to the details of law practice. In illustration of this simplicity, consider the bookkeeping system employed to handle the funds of the law firm of Ross and Dean, as this system was explained by Mills Dean to a young lawyer who wanted to learn about bookkeeping. Mills Dean, a strapping six-footer who helped found the Washington Law Reporter, was asked by this young man to "show him the books." Dean showed him a cash drawer and a cash book. "See these, son?" he asked. "Well, when a fee comes in, we drop it in the cash drawer and enter it in the cash book; and when one of us takes some money

out of the drawer we note that in the cash book, too. But when big fees come in—five, ten or fifteen dollars—they never hit the cash drawer. We divide 'em right on the spot!"

That was a rough and ready system of bookkeeping, suitable for what was in many respects a rough and ready age. But as I look back to that age, I remember well its happier lineaments, too: the leisure, and the full savor of the life we lived. With all due respect to Capital Transit, I think that there was something to be said for the horsedrawn streetcar, moving slowly through the tree-shaded streets and bearing its passengers tranquilly and pleasantly to their destinations.