A topographic map of the Eastern United States, showing state boundaries and terrain features like the Appalachian Mountains and the Atlantic coast. The map is rendered in shades of brown and tan.

**SPILMAN THOMAS  
& BATTLE'S**  
**HISTORY *Of* SERVICE**

A decorative border at the top of the blue section featuring a repeating pattern of small, stylized flowers and leaves.

**THE FIRST**

**150**

**Elizabeth Jill Wilson**

**Prologue by Thomas L. Sager**  
Senior Vice President and General Counsel  
of the DuPont Company

A decorative border at the bottom of the blue section featuring a repeating pattern of small, stylized flowers and leaves.





Spilman Thomas & Battle's  
History of Service

# The First 150

By Elizabeth Jill Wilson



Prologue by Thomas L. Sager  
Senior Vice President and General Counsel  
of the DuPont Company



F I R S T   E D I T I O N

Published by Spilman Thomas & Battle, PLLC | Attorneys at Law  
Founded 1864

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# The Spilman Legacy

- 1864** Smith & Knight
- 1883** Knight & Couch
- 1893** Couch, Flournoy & Price
- 1896** Couch, Flournoy, Price & Smith
- 1899** Flournoy, Price & Smith
- 1904** Price, Smith & Spilman
- 1907** Price, Smith, Spilman & Clay
- 1924** Price, Smith & Spilman
- 1943** Spilman Thomas & Battle
- 1954** Spilman, Thomas, Battle  
& Klostermeyer
- 1993** Spilman Thomas & Battle



# Dedication

Michael J. Basile  
Managing Member  
Spilman Thomas & Battle, PLLC

This book is dedicated first and foremost to our clients, without whom we would not have survived the dynamism of the past 150 years. Know that you and your success are at the heart of every Spilman endeavor.

Secondly, and in equal measure, this book is dedicated to each member of the Spilman family, whose talents, resiliency and indomitable spirit have propelled this enterprise for a century and a half.



# Prologue

Thomas L. Sager  
Senior Vice President and General Counsel  
of the DuPont Company

Core Values and Client Focus. These are the hallmarks every successful company and organization strive for and, hopefully, achieve. How can a company, a law firm specifically, last 150 years or more? In our rapidly changing world, standing the test of time is not often seen. It requires vision, leadership, agility, and a culture committed to adapting to an ever-changing legal landscape.

My name is Tom Sager, and I serve as the Senior Vice President & General Counsel of the DuPont Company – a company founded in 1802 on the banks of the Brandywine River in Wilmington, Delaware, where it remains today. DuPont is truly unique in that it has successfully transformed itself several times over its 200-plus-year history to where it stands today as the “pre-eminent market-facing science company.” As a result of our strong core values, client focus, and innovation, we, perhaps like no other company, have been able to withstand the test of time. And that same DNA is embedded in all of our functions enabling them to provide competitive advantage to the company with legal being a great example. Since 1934, the Spilman firm has served as one of our trusted counsel, repeatedly demonstrating its commitment to DuPont through creative and results-oriented lawyering. Today, they remain among a very select number of firms known as the “DuPont Primary Law

Firms.” This distinction is one that was well earned and has never been taken for granted by the firm. Our unique relationship, which can be simply defined as a mutual commitment to each other’s financial success, continues to evolve and has stood the test of time both during periods of prosperity and in difficult economic times.

For an enterprise, such as Spilman, to thrive as it has for more than 150 years, it had to possess a truly unique and uncommon dedication and ability to meet its clients’ needs. Its longevity can be attributed to any number of factors including: vision, purpose, principled leadership, and adaptability. And sustained client relationships, which are a hallmark of the Spilman firm, can only exist based upon a solid foundation of mutual respect, trust and valuable services rendered. So, in the final analysis, that is the simple formula for the firm’s success over these many years.

When I reflect upon Spilman’s rich past and my own 37-year experience with the firm, I regard these lawyers as thought leaders in the profession. In addition, traits such as humility, loyalty, courage, and a client-first mentality come to mind. Those are the very characteristics that define this firm and a number of others within our network as well. As with any long-term relationship, we have had on more than one occasion situations where a healthy tension existed due to sharp differences of opinion. But in almost every instance, we worked through the issue, satisfactorily resolved it, and, perhaps most importantly, learned a valuable lesson along the way. No finger pointing resulted, and the client’s interests were addressed.

When I look to the future, I envision Spilman will continue to grow and flourish. The same values that have fueled and sustained this law firm from the 19th to the 21st century will certainly serve it well in effectively meeting the challenges of an increasingly competitive, global marketplace. It will continue no doubt to apply its laser like focus upon its clients’ needs and execute with speed and precision.

Spilman’s future success, like that of its competition, will largely turn upon its ability to attract and retain a highly energized and diverse team of professionals. And this is an area where I expect the firm will continue to outpace its competitors. So, heartfelt congratulations to my colleagues at Spilman for achieving this incredible milestone. You are, indeed, DuPont’s trusted counsel and one of our finest. We look forward to another 150 years of dedicated service and outstanding results. All the best!





## Chapter I

# Born Out of Conflict

The history of Spilman Thomas & Battle, PLLC is in its people: from the civility and intellect of Benjamin Harrison Smith to the integrity, vitality, and genius of Robert Scott Spilman in the early 1900s. The firm's 150 years of history is told by the lives of the individuals – a masterful orator and a pioneering contract draftsman; a Distinguished Flying Cross medal award winner and a frail World War I soldier honored for bravery; a presidential campaign aide and a federal tax expert; a West Virginia Senate president and gubernatorial aides; Confederate soldiers and Union loyalists; a horse farmer and a bank president; distinguished federal appeals court judges and a renowned circuit judge; a pioneer broadcast executive and a political historian. Each demonstrated great character and exceptional achievement; they also created a culture. The firm's decision-making always incorporates three concepts: what we are deeply passionate about; where we can be the best; and what drives the economic engine.

With its Appalachian footprint, the Spilman law firm is now in West Virginia, Pennsylvania, Virginia, and North Carolina. Its offices are strategically placed to optimize the economic engines of today – educational institutions, corporate hubs, technology corridors, and central distribution centers.

This culture, born during the nation's tragic domestic conflict of the Civil War in a state deeply divided by sentiment, has thrived and charted a course promoting diversity, collegiality, integrity, and the client's potential.

Certainly, at the time Benjamin Harrison Smith invited Edward Boardman Knight to join him in the practice of law in Charleston, Smith was an elder statesman with more than four decades of legal accomplishment in the Kanawha Valley. Smith's son, Isaac, a Confederate soldier, was banned from practicing law post-conflict, although father and son practiced together prior to the outbreak of hostilities between the states. Knight was a northerner, relocating to an area that was divided between loyalties.

Benjamin Harrison Smith was a formidable figure in the Kanawha Valley; he was striking in stature and mind. He often offended with his strong opinions and outspokenness. He was a man of many words, and more often than not was in the thick of the fray. He was considered one of the great land lawyers of the time and was called upon by United States presidents time and again to serve. He had compassion in a period of grave upheaval, opposing slavery and urging tolerance for those of contrasting opinions.

Edward Boardman Knight also was a man of serious countenance and great intelligence. He was precise in his writing and encyclopedic in his understanding of the law. He was highly respected by his peers and deadly to opponents in the courtroom. His eloquence in arguing a case was legendary. Yet, he always was courteous and considerate of others and, when appropriate, exhibited marvelous wit and humor.

Isaac Noyes Smith should have suffered from being in the shadow of his father; yet, he proved himself quite capable and talented in his own right, winning election to public office and establishing himself as the first "business lawyer" in the southern West Virginia Bar. He was an ardent and vocal advocate of the Kanawha Valley's future industrial promise.

With this compelling combination, the law firm forged land leases and mineral ownership agreements in business and industry. It subsequently evolved into another striking partnership at the turn of the century, when former West Virginia Senate President George E. Price joined the firm and, once more, elevated its status. When West Virginia was faced with disputes about its boundary line, Price was the lead counsel chosen by then-Governor Brooks Fleming to represent the state before the United States Supreme Court.

Price was a prolific writer and historian. His insight of human nature and motivation was keen. A highly moral man, Price also was known to be of gentle disposition. He was listed second in the law firm, behind Samuel Lightfoot Flournoy, a Confederate soldier and, later, a fellow senator in the West Virginia Legislature. Both were transplants to the Kanawha Valley from the Eastern Panhandle of West Virginia.

They soon were to be joined by Robert Scott Spilman, who surprised many by his election to practice in the Kanawha Valley. Spilman had expected to practice law with an uncle, whose own stature and standing in the legal arena of Richmond was practically unparalleled.<sup>1</sup> But he was influenced by his VMI roommate, John Dickinson of a legendary Kanawha Valley family, to move to West Virginia, where he soon made a lasting impression.

Robert Spilman was a meticulous man, as meticulous in his practice as he was in his dress. He was considered charming, energetic, relaxed, forceful but congenial, and sharp in mind and morals. He worked hard, and he played hard. He was among the most sought after in his profession and won accolades from those who knew him and were at the pinnacle of the profession. To this day, Robert Spilman is the only individual to complete the University of Virginia Law School program in a single year. He blazed a trail in legal wisdom and community service that still survives. Spilman reflects part of the core of the firm: to provide quality and value in all that it does.

The innovation of Isaac Noyes Smith as the state's first business lawyer is reflected today by The Battle Group, an elite litigation practice group of lawyers within Spilman that acts as a trial strike force to handle intense, complex, document-laden cases that require a special finesse. In 2012, the firm was one of 20 law firms throughout the country named in *The National Law Journal's* Midsize Hot List, which recognizes firms based on ability to spot emerging legal trends, commitment to controlling client costs, and ability to attract and retain top talent. The *NLJ* gave special recognition to The Battle Group.

The firm's Labor and Employment Group is another team of lawyers poised to address the challenges of the rapidly changing labor and business law. This group works as hard at keeping clients informed about policy changes as it does providing practical counsel. Charles L. Woody, a key influence in establishment of the Labor and Employment Group, has received

recognition from The College of Labor and Employment Lawyers for sustained contribution to the field of labor and employment law.<sup>2</sup> Spilman also has an employment, practice, and liability training service that helps companies and corporations minimize lawsuits and legal filings. It recently furnished clients with an “app” or application for smartphones to assist them in answering some of the most common labor and employment law questions.

Spilman focuses on financial challenges with its Bankruptcy and Creditors’ Rights Group, a well-tested, well-respected team with veteran lawyers. The Energy Group is a premier collection of attorneys focused on the volatile energy world, whether it is wind, oil, natural gas, coal, or emerging technologies in the Marcellus and Utica shales. Spilman is uniquely situated to understand these issues because of its roots in the Appalachian region, an area that historically has relied upon energy-based industries and faced economic challenges. The lawyers of these practice areas, like the early predecessors of the Spilman law firm, possess qualities that are prized as much as they are distinctive: loyalty, integrity, and perseverance. These are the hallmarks of Spilman Thomas & Battle.

As the world entered the 21<sup>st</sup> century, Spilman leaders realized the firm had the potential to provide more, and better, services to its clients by expanding its scope and size. Carefully managed, growth could be a huge bonus both in the professional development of its members and in the rewards for its clients.

Spilman has offices in three locations in West Virginia: Charleston, Morgantown, and Wheeling. The Spilman sphere of influence also extends throughout Appalachia with offices in Pittsburgh and Harrisburg, Pennsylvania; Roanoke, Virginia; and Winston-Salem, North Carolina. These locations provide geographic continuity even while they enhance the firm’s strategic vision for serving the legal needs of the Mid-Atlantic region.

Spilman’s headquarters in Charleston allows the firm to supply, as well as recruit, the state’s leaders and most influential people, such as current Managing Partner Mike Basile, a former state development officer and legal counsel to former Governor Gaston Caperton. Basile is recognized as one of the state’s most influential people of the 21<sup>st</sup> century. Indeed, Spilman boasts a plethora of former federal and state judges, prosecutors, and gubernatorial aides.

Spilman's other locations offer similar advantages to the firm as well as the opportunity to expand its services to areas outside of the Kanawha Valley.

Morgantown is the educational heart of West Virginia with its land-grant institution, West Virginia University, where the Spilman firm has established an endowed scholarship. It is a significant population and economic growth area that consistently ranks high in quality of life and business climate.

Wheeling, with its rich history in serving as the "Gateway to the West" in the 1800s, was a bustling manufacturing center and still is one of the smallest American cities that has a metropolitan-class symphony.<sup>3</sup> It remains a regional center for commercial and industrial opportunities as well as noteworthy educational institutions, including Wheeling Jesuit University.

Pittsburgh, labeled "Appalachia's urban capital" by the *Encyclopedia of Appalachia*, historically was the center of the American steel industry.<sup>4</sup> Now, it is better known for being a financial center; jobs in banking doubled in the Pittsburgh region in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries. Pittsburgh also is home to premier educational institutions such as Carnegie-Mellon and the University of Pittsburgh.

Harrisburg has its roots in the industrial development of the country. As Pennsylvania's capital, it also is the heart of the state government and boasts a large contingency of federal government agencies, as well. Resting in the Pennsylvania Dutch Country, Harrisburg recently has experienced a resurgence following several decades of industrial contraction. It now is considered one of the top places in the country to locate.<sup>5</sup> Spilman's office is in nearby Mechanicsburg.

Roanoke, with its majestic scenery echoing the beauty of West Virginia's mountains, has been "an important regional crossroads since before European settlement."<sup>6</sup> It boasts exceptional accessibility via rail and highway and is heavy in manufacturing interests. Similar to its sister-state, Virginia is a mecca for recreational and tourist activities, and Roanoke is the commerce capital of western Virginia.

Winston-Salem, nestled in the Piedmont region, serves as an important hub for education and medicine in the western region of North Carolina with the presence of both North Carolina Baptist Hospital and the Bowman-Gray Medical Center of Wake Forest University. It also boasts a growing financial

community. Like Pittsburgh, Winston-Salem serves as a gateway to the Appalachian region for transportation and commercial services, in addition to its strong ties to education and financial commerce.<sup>7</sup>

It is no wonder that Fortune 500™ companies now call on Spilman to act as lead counsel for cases in the Appalachian region. Indeed, Spilman is consistently named by DuPont, Coca-Cola Bottling Company Consolidated, and others as a “go-to” law firm. That designation stems from more than just legal expertise. Cultural intelligence and community understanding are inherent to the individuals who practice with Spilman. Many are natives with an innate understanding of the region in which they practice and its people. And Spilman makes a monumental effort to be engaged in each of these communities, both through personal relationships and as a corporate entity. Even though it comfortably serves large companies with thousands of employees, it also caters to family businesses that are just around the corner.

The Spilman law firm has involved itself in the community in numerous ways over the decades, with members serving as civic leaders, mentors for young people, participants in church councils, and volunteers for neighborhood activities. When Edward Boardman Knight died in 1897, for example, *The Daily Gazette of Charleston* opined that the city had lost its “most respected citizen.” George E. Price was a ruling elder of the First Presbyterian Church of Charleston and aided Henry Gassaway Davis in many of the latter’s charitable undertakings.<sup>8</sup> Robert Spilman served as president of the Charleston Independent District Board of Education and, during World War II, was active in the Kanawha County War Fund, as well as being Chancellor of the West Virginia Diocese of the Episcopal Church. Hawthorne D. Battle was a director of the Visiting Nurse Association and the Buckskin Council of the Boy Scouts of America, chairman of the Citizens Committee for Community Planning, and a lifetime member of the Salvation Army advisory board. Several members served in the military and won awards for valor, honor, and service. And that is just a snapshot of the investment they made in their communities and country.

Current Spilman members are equally rooted, whether giving individual service or, like many Spilman members, joining others to serve on advisory councils and committees for local civic boards and colleges. Spilman also has been named the Firm of the Year by the Legal Aid Society of West Virginia for contributing the most pro bono hours to a variety of cases involving issues such as domestic violence, family law, and consumer affairs.

The firm actively engages in the corporate and community well-being in each of its locations, hosting regional “SuperVision” conferences that help area businesses maximize their human capital and educate their employees about labor and employment issues. To provoke economic growth and community education, the Spilman law firm sponsors guest speakers and lectures in each of its locations, including a special initiative to cultivate and advance communities’ female leadership. The firm’s members regularly are published in legal reviews, magazines, and online features about current events, statutes, and federal and state policy proposals. The goal is to continually advise and educate.

The firm is equally attentive to professional gravitas. The people who work at Spilman consistently rank among the best, brightest, most experienced, and – collectively and comparatively to other large regional law firms – most youthful. As Managing Partner Basile refers to them – the “center cut” professionals. They must be more than just accomplished lawyers; they must bring something to the mix that is uniquely Spilman. As one international CEO has described it, “Price is price. Value is the total experience.”<sup>9</sup>

The lawyers who have served throughout the 150 years in the Spilman Thomas & Battle legal family always have exhibited that quality, the kind of quality that results in real value for their clients. They know that of which they speak.

So, whatever prompted the affiliation between Smith & Knight 150 years ago, it laid the foundation for what would become a lasting legacy of legal acumen and innovation, a commitment to the rule of law and the role of law, a devotion to, what one early legal creed opined, “deter men from evil, promote the general good, and ensure that the ‘particular rights of every individual may be preserved and maintained.’”<sup>10</sup>

What follows are highlights in the compelling story about the individuals and some events that have made Spilman Thomas & Battle, PLLC the progressive regional law firm that it is today.

Spilman Thomas & Battle – a legacy continues.





## Chapter II

# In the Beginning: Smith & Knight

Benjamin Harrison Smith did not plan to become a lawyer. The seventh of nine children born to Benjamin Smith and Elizabeth Cravens, Benjamin Harrison Smith thought he was destined to be outdoors, to work his family's land, to engage in physical exercise. By his own admission, he was a "hearty, careless youth" who did not care for school and was most happy when engaged in outdoor pursuits. He was fortunate that his family could indulge him outdoor activities in that they had a 369-acre farm on the outskirts of Lancaster, Ohio, a place called Pleasant Run.<sup>11</sup>

The Smiths relocated to Lancaster when Benjamin was a youth. He was born in Rockingham County, Virginia, in an area called "Cook's Creek" on October 31, 1797, in a region where three generations of Smiths had lived and thrived. Benjamin's father, after whom he was named, and mother, Elizabeth, lived in the "Old Stone House" for 28 years.<sup>12</sup> Elizabeth bore all nine of her children in Rockingham County.

'Smithland' ... stands on the southeast side of the Valley Pike, just a mile or two below Harrisonburg. It is one of the finest old country homesteads in many a mile. Situated near the brow of a lofty eminence, it commands a splendid view of vales, hills, and distant mountains. At the sharp turn of the pike just below the house, on the high bank at the left-hand side, the site of an old building may still be discerned; there, tradition says, the first justices of the county sat in their initial sessions.<sup>13</sup>

Clouds about the practice of slavery were gathering, and the elder Benjamin and several of his friends determined to move west to aid in the manumission of their slaves.<sup>14</sup> The elder Smiths bought a large tract of land near the headwaters of the Hocking River in central Ohio in 1809, moving the family there permanently in 1810.<sup>15</sup> As planned, they also brought a number of the family servants who subsequently settled in Lancaster and became “good and useful citizens.” Among them was Scipio Smith,<sup>16</sup> who ran a tin and coppersmith trade and became the first black businessman in the town. He was described as “a reputable man, a good workman, honest and industrious.”<sup>17</sup>

The move from the foothills of the towering, wooded landscape of the Allegheny Mountains to the rolling countryside and vast farmlands of eastern Ohio must have seemed quite an adventure to a young boy. It was an arduous undertaking for the parents of nine children, however, as transportation routes across the wilderness of western Virginia were scattered and of dubious quality. The Smith family would have had to travel either north toward Winchester, Virginia, and then due west through the rugged terrain to Clarksburg, or likely have taken their chances across what later became the James River and Kanawha Turnpike, a treacherous and sometimes hazardous route that boasted breathtaking scenery but certainly was not for the faint-hearted.

They also were traveling to what was still very much frontier country, even though the attacks by native American Indians by this time were on the wane. Lancaster traces its origins in a trailblazing expedition by Ebenezer Zane, who was seeking to open up a corridor from Wheeling, Virginia, to Maysville, Kentucky. By generally following an earlier Indian trail, Zane cut a path in a roughly 90-degree arc from Ohio's eastern border to the state's southwestern boundary. Completed in 1797, it opened up the southern half of Ohio to settlers from Virginia and Kentucky. A list of the 100 most prominent early residents indicates nearly half came from Virginia, Maryland, or Kentucky, and more than a quarter of the total was from Virginia. Despite the influx of settlers, roadways in the region would remain primitive and “wretched” until the mid 1800s.<sup>18</sup> Zane's Trace was not much better as roadways went, but Lancaster's central location along the route made it ideal for settlement and helped its development as an economic base. A journal entry by Josiah Epsy, who visited Lancaster (then called New Lancaster), described it this way:

The soil around New Lancaster is exceedingly rich and productive, and that neighborhood is filling and improving more rapidly at present than any in the state.<sup>19</sup>

In 1811, another traveler called Lancaster “a handsome little town” that had “about 100 homes.” Newspaper advertisements showed new enterprises were cropping up frequently in the period immediately following the Smiths’ relocation, including the Lancaster Ohio Bank, the town’s first financial institution, which opened in 1816.<sup>20</sup> It was to the outskirts of this small, but bustling, town that Benjamin Smith traveled in 1810.

Young Benjamin had attended school in Harrisonburg, Virginia, a short distance from the homestead for three years under the tutelage of Mr. Clark, “who instructed in the English branches only.”<sup>21</sup> When he reached Ohio, he attended school for a short time before devoting himself solely to working on the farm, from 1812 to 1815. A knee injury forced bed confinement for some weeks, and it was this event that appeared to change his course in life. He picked up a book entitled, “Thinks I to Myself,” which he read through without stopping. His appetite whetted, he requested the loan of some books from a neighbor and developed a love of reading. He did not understand the many classical allusions, however, and so he decided to pursue more formal education.

The educational institutions available in the early 1800s, especially west of the Alleghenies, were few and scattered. And education, particularly at the college level, in the 1800s generally was only available for white males from affluent families, although formal education was highly regarded by the general population. The number of students attending a “college” in any given year in frontier country would be, at best, in the dozens, and while some students would continue long enough to earn a degree, others might only attend for a period of months or a few years.

Ohio was still very much in the settlement stage; it had been designated a state for a little more than a decade in 1815, and the school that would become Ohio University still was in its early throes as it was the first institution of higher learning in the adolescent country’s Northwest territory.<sup>22</sup>

The General Assembly of the new state of Ohio had passed an act to establish a university in Athens in 1804. This was a significant event for a town of about 150 families. Four years later, in a two-story, two-room brick structure,

the school started with three students. The concentration of study was not what was considered college-level as the students of the frontier were not prepared for the advanced teachings of the Northeast schools. Thus, it consisted more of preparatory school instruction in grammar, arithmetic, Latin, Greek, geography, mathematics, logic, rhetoric, and natural and moral philosophy. Indeed, it was not until Benjamin Harrison Smith was leaving the school that it began to offer true, contemporary college-level courses. For this preparatory education, students needed to pay only a few dollars, mainly to cover the cost of firewood for heating the building and other general living expenses. In return, students were required to “recite six days a week, be examined quarterly by trustees, and appear once a year in public exhibition.”<sup>23</sup>

This two-room building generally was referred to as the academy, and, in September 1818, the school completed a second building, the College Edifice. Any degrees conferred at the time came from the academy, or “Seminary” as it was officially called, and the academy then became a preparatory school, in earnest, for Ohio University once the second building was completed.<sup>24</sup>

Benjamin Harrison Smith's entry into the Ohio Seminary in 1815 is noteworthy beyond his being one among a couple of handfuls of students. Many of the students were young, some under the age of 12. By 1815, when Benjamin Harrison Smith is said to have begun his academic studies, he was nearly 18 years old. It is also remarkable that his father, in his will, had taken note of the boy's “highly advanced intellect” and made provisions in his bequeaths to pay “necessary and reasonable expenses in finishing and completing (young Benjamin's) education.”<sup>25</sup>

Benjamin Harrison Smith remained at Ohio Seminary for four years and worked hard during the period.<sup>26</sup> Then, he returned to Lancaster and studied law for two-and-a-half to three years with Thomas Ewing, who had graduated from Ohio Seminary only four years earlier.

Ewing was an admirable mentor, having been one of the first two students – the other being John Hunter, who died in 1816 – to earn degrees from the Athens school. Ewing had secured a position in the law office of General Philemon Beecher, a leading lawyer in Lancaster and a state legislator, in 1817. With General Beecher away at the General Assembly, Ewing had supreme opportunities to develop the law practice and quickly made his reputation; he eventually married General Beecher's daughter.<sup>27</sup>

Ewing's influence on Benjamin H. Smith set the course for the remainder of Smith's life; it was Ewing who suggested that Charleston, Virginia, was a favorable place for Benjamin to practice law. Ewing was very familiar with the then western Virginia town along the banks of the Kanawha River; he had traveled several times to the Kanawha Salines – about 20 miles upriver from Charleston – a decade previously to earn money for college. Indeed, the Kanawha Salines, in many ways, was far more bustling in the early to mid-1800s than nearby Charleston, with “taverns, stores, churches, and an academy, and as a shopping center it far outdistanced the slow-growing neighboring town of Charleston.”<sup>28</sup>

Still, the Kanawha River Valley offered great opportunities to a budding and enthusiastic young lawyer, particularly one with the outgoing personality and intellect of a Benjamin Harrison Smith. Following a preliminary visit, Benjamin moved to Charleston on May 27, 1822, and opened his law office.<sup>29</sup>

It probably was inevitable that land titles soon would occupy his attention. In the late 18<sup>th</sup> century, the Virginia legislature attempted to help populate western Virginia by dramatically reducing the price per acre – from \$5.80 prior to 1788 to a mere two cents in 1793. Millions of acres were patented in the region, but the “haphazard” method in which the patents were issued, often without proper surveys, resulted in perpetual land disputes, “producing a profitable living for generations of lawyers.”<sup>30</sup>

Many speculators, having acquired their land holdings for a pittance, aimed at keeping their outlays to a minimum by refusing to pay the taxes. The state clearly recognized the problem and repeatedly tried to redress it by issuing legislation declaring lands of which taxes were in arrears were to be forfeited to the state and sold at public auction. Yet successive legislatures, composed largely of wealthy landowners, left loopholes in the law.<sup>31</sup>

Benjamin Smith soon established a successful law practice in the Kanawha Valley, which was teeming with development not only from the salt business, but timber and mining, river transportation, and flatboat construction to transport the salt. Smith's willingness to work hard and stick with his task soon won him a steady flow of clients. In 1823, for example, he brought 60 lawsuits in the spring term of the court, at that time the largest docket of any lawyer at the bar.<sup>32</sup>

On December 19, 1826, Smith married Roxalana Emmeline Noyes, the daughter of Isaac and Cynthia Morris Noyes.<sup>33</sup> She bore a son, Isaac Noyes Smith, in 1832, as well as two daughters.<sup>34</sup> This union with the Noyes family said much about the prospects and initial success of Benjamin H. Smith. Isaac Noyes, the elder of four brothers, came to the Kanawha River Valley in 1804. He was joined by his brother Bradford a few years later and the two soon were busy acquiring land, interests in the salt business, and establishing a reputation as significant merchants.<sup>35</sup> Isaac subsequently married the daughter of one of the other prominent families of the valley, that of William Morris.

Benjamin Smith's union with the Noyes family was advantageous to both. The Noyes family was among the wealthy residents of the valley. Smith's legal acumen would be useful in their business pursuits and his law practice could only benefit by the connections members of the Noyes family could provide. He clearly was on respectable terms with his in-laws, as well. A newspaper ad in the *Western Virginian* published December 20, 1826, read as follows:

The firm of Brigham & Noyes is now dissolved by mutual consent of the members of the firm. They are anxious to realize all debts which may be due to it, and for this purpose have placed their claims in the hands of Benj. H. Smith Atty. for collection, who, unless they are speedily settled, is directed to commence suit upon them.

Isaac Noyes  
Bradford Noyes  
Franklin Noyes  
William Brigham<sup>36</sup>

Smith's star continued to rise. In 1833, he was elected to the Virginia State Senate and was re-elected in 1835. Many of those who urged him to run wanted his assistance in improving the land laws, particularly as they affected lands in western Virginia. Smith declined to run a third time, but at the last minute he was persuaded to do so and was re-elected again. He resigned at the end of the first year of that term because he believed his work on the land laws was accomplished. The desired legislation was passed in 1838. That same year, Smith was granted an honorary A. M. degree from Ohio University – the equivalent of a master's degree.<sup>37</sup>

Sometime during his professional life, Smith acquired the title “colonel.” The origin of this title is not known.<sup>38</sup> Smith was regarded as the top lawyer in the state regarding land laws, according to George W. Atkinson,<sup>39</sup> a member of the bar who wrote several publications about West Virginia Bar members and prominent citizens. For a period of more than 40 years Smith “was actively employed in every land case of importance in the Circuit Court, and in many out of it, most of them being of great complexity, and involving lands of great value.”<sup>40</sup>

“In all of the vast number of land cases in which the Colonel has been engaged as an attorney, about nine-tenths of them have been decided in favor of his clients. This, of itself, would establish his reputation as a land lawyer,”<sup>41</sup> Atkinson noted.

Land was central to the social order in colonial and post-Revolutionary America, and it also was central to the study of law.

The problem of securing deference to recently arrived ‘gentlemen’ was paradoxically made more intractable precisely because of the availability of that hallowed, precious commodity that in England had always assumed to be a guarantor of both authority and order, and liberty, as well – land. Everyone somehow knew then, as they do now, that ‘land law was the kernel and core of common law.’<sup>42</sup>

William S. Laidley, a contemporary of Smith and Knight and author of history about Charleston and the Kanawha Valley, also recognized Colonel Smith as the premier land lawyer in the region. The land was generally “wild,” uncultivated, uninhabited, and rich with timber, coal, oil, and gas, which made the property valuable even if the landowner had to pay the taxes while reaping none of the benefits. If the owner could afford to keep title to the property, however, it benefited later generations.<sup>43</sup> John H. Tinney, president of the West Virginia State Bar, remembered Colonel Smith this way:

Colonel Smith was able to craft and obtain passages of Constitutional provisions and statutory implementation of a system that not only was just and equitable, but enabled generations of title examiners to approve titles to lands where there were conflicting claims. This system provided a jumpstart to the settlement and commercial development

of West Virginia. Colonel Smith deserves a lion's share of the credit for our state's development. Moreover, he left a legacy of law that long outlasted him. He truly deserves to be remembered as a West Virginia lawyer patriot.<sup>44</sup>

Colonel Smith's status as a pre-eminent lawyer gained him the attention of numerous U.S. presidents, beginning with Zachary Taylor, who appointed Smith the District Attorney of the United States for the Western District of Virginia in 1848. Smith remained in the office during Millard Fillmore's presidency. Because Smith was a Whig,<sup>45</sup> he was not re-appointed by Franklin Pierce, a Democrat, in 1856. In 1850, Smith was elected to the Virginia Constitutional Convention, in which he took a prominent part.<sup>46</sup> He also was involved in the events leading up to the division of the Commonwealth of Virginia. Granville Davisson Hall, the official reporter of the convention, noted:

The member who appeared to be most zealous and influential in shaping the action of the Convention in this matter [forfeited and delinquent lands] was Col. Benjamin H. Smith, delegate from Logan. Colonel Smith was a resident of Charleston, and at the time U.S. District Attorney, a lawyer of ability and experience and perhaps more familiar with the subject of Virginia wild lands than any other member of the Convention. He had been permitted to come upon a petition signed by fifteen refugees claiming to be from Logan County, who were at Camp Piatt, the headquarters of the 44<sup>th</sup> Regiment.

Several other members of the Convention held seats by credentials quite as slender as these, but none of them attempted to exercise such a controlling influence as Colonel Smith. He did not come into the convention until late in the session, and all appearances indicated he had sought admission to a seat only because of his interest in the subject.<sup>47</sup>

Indeed, as James H. Brown, delegate from Kanawha, noted during his motion to seat Colonel Smith, the situation in Logan County was difficult for those who supported the Union: "Those are the difficulties the people of Logan labor under and the reason I imagine that drives them to the necessity of

selecting a gentleman to represent them who lives out of the county.”<sup>48</sup> They wanted someone who could oversee and protect their interests in the land because of their concerns.<sup>49</sup>

In January 1861, the Virginia Legislature adopted resolutions which it hoped would enable Virginia to act as mediator between the Federal government and the seceded states, and called a Convention to deal with the secession question. The Convention was strongly in favor of preserving the Union if states’ rights could be preserved. However, when Lincoln issued a call for volunteers to force the seceded states back into the Union and after Fort Sumter was fired on, the mood of the Convention changed. It adopted an ordinance of secession to be submitted to popular vote.

Many of the delegates from the western counties went home. Meetings were held in a number of western counties in favor of preserving the Union. At a large meeting held in Clarksburg in April 1861, resolutions were adopted recommending to those counties deemed favorable that each send delegates to a Convention in Wheeling in May. Kanawha, if invited, did not send delegates. The April Convention urged a vote against the ordinance of secession and adopted the position that if the statewide Virginia vote was in favor of secession, the northwestern counties were to appoint delegates to a second convention, to be held in Wheeling in June.

The popular vote in Virginia was in favor of secession. The Wheeling Convention met and, acting upon the theory that it constituted the proper government of the Commonwealth of Virginia and thus had the power to do so, declared void all acts taken by Virginia to secede and to carry on war against the United States. By resolution, it also vacated all state offices. Claiming to be a reorganization of the Virginia government, it elected Francis H. Pierpont Governor of Virginia and filled other state offices. The newly appointed General Assembly then met and elected U.S. Senators, who, with the Representatives selected at a May election, were admitted to Congress and this “Restored” government was recognized by the Federal government as the legitimate government of Virginia. The “other” Virginia long resented this, but, having seceded from the Union, was not in a legal position to do more than complain.

The Convention reassembled in August, passed an ordinance providing for the formation of a new state, and called for a popular vote to be held in 39 designated counties. The vote was overwhelmingly in favor of formation of

the new state, and, at a Convention held in Wheeling in November 1861, a Constitution was adopted. It was to be submitted to a popular vote in April 1862. The assent of the Commonwealth of Virginia to the formation of the new state was given by the “Restored” government of Virginia, and was approved by Congress.

At this Convention, Colonel Smith strongly advocated the inclusion of all of the territory west of the Blue Ridge and the location of the capital at White Sulphur Springs, but the Convention was not persuaded.<sup>50</sup> From the outbreak of the war, Smith was outspoken in defense of the Union. Atkinson said Smith did more than any other man in the Kanawha Valley to prevent the state from seceding and remained a staunch friend of the Union throughout the war. The Federal government wanted the Eastern Panhandle counties in the new state because the Baltimore & Ohio Railroad, linking the east with Ohio, ran through these counties; this is one of those matters later contested in the Supreme Court case of *Virginia v. West Virginia*,<sup>51</sup> regarding the boundary line between the two states.

Colonel Smith again was tapped, this time by Abraham Lincoln in 1862, to serve as the United States Attorney for the Western District of Virginia, soon to be West Virginia, and he continued in that office until 1867, when he resigned.<sup>52</sup> A recommendation letter written by U.S. Senator Thomas S. Carlile and signed by State Auditor Samuel Crane and State Treasurer Campbell Tarr exhorted President Lincoln to pick Colonel Smith for the post because he “is one of the ablest lawyers in this part of the state, comes from the right locality, has held the office under Fillmore’s administration and will accept it now from a sense of duty to his country. No better selection could be made ...” At the bottom of Carlile’s letter, U.S. Senator Waitman T. Willey added his endorsement, saying “the appointment of Col. Smith will give almost universal satisfaction, and add great influence to our moral strength in NW Virginia.”<sup>53</sup> Atkinson said that Smith was regarded by the Attorney General in President Lincoln’s cabinet as “one of the ablest of the one hundred or more District Attorneys then in the service of the United States.”<sup>54</sup>

Following the war, Colonel Smith opposed the Federal government’s measures against the South. He was among a small minority of “pro-Union Democrats” who adopted the title of “Conservative party” in an attempt to attract support of conservative Republicans who were unhappy with the disenfranchisement of tens of thousands of citizens. Smith was an obvious choice as the Democrats’ nominee for governor of West Virginia in 1866.

Smith launched his main attack against the registration law and the disenfranchising amendment to the state constitution and carried the campaign to the remote corners of the state. It was without avail. Though the Conservative party retained some representation of both branches of the Legislature the entire state ticket went down to defeat. Conservatives must have received scant satisfaction from the fact that their candidate for governor was defeated by a majority of 6,644 votes in a total of 40,960 votes cast.<sup>55</sup>

Clearly it was too soon after the war for the new state to elect a Democrat to lead it.<sup>56</sup> Smith did, however, serve one term in the West Virginia Legislature, during which time he successfully fought off an effort to repeal a bill locating the state Capital at Charleston. He also, undoubtedly, played a part in the elimination of the “test oath” that prevented his son and others who fought for or sympathized with the Confederacy from engaging in the practice of law. Isaac Noyes Smith began practicing with his father in 1852 and was elected to the West Virginia Legislature in 1860. His stint with the Confederate Army, however, interrupted his legal profession until the test oath was repealed.

Smith again was approached to be the Democratic Party’s gubernatorial candidate in 1868, but he “refused emphatically” to permit his name to be considered at the party’s state convention.<sup>57</sup> Eventually, Colonel Smith turned more of the practice over to his son and devoted the greater portion of his time to his large farm on the Kanawha River about seven miles down river from Charleston in the area now known as Dunbar.<sup>58</sup>

Although he assisted in the trial of important cases, it is likely he retired completely from practice following his son’s death in 1883. A map of Charleston in 1873 shows the Smith & Knight law offices on Front Street, the precursor to the current Kanawha Boulevard, on the river side of the street between Capitol and Hale streets.<sup>59</sup>

Colonel Smith, however, was “not kindly treated by a portion of the people,” according to Atkinson in his *History of Kanawha County*.<sup>60</sup> William S. Laidley, author of *A History of Charleston and Kanawha County*, expressed similar observations:

“We do not know why he was not regarded with favor by some ... [but] [P]erhaps he ... expressed his opinions too freely on the subject of slavery, or on some political, or church, question, for he never hesitated to speak out, without using any tact or evasion ... .”

Laidley also wrote that Colonel Smith “was of a temperament that made him friends, and that also made him unpopular with some. That is, he was outspoken as to his own opinions and firm in his convictions.”<sup>61</sup>

He apparently had a tender side to his character, however. One historical account involves a temperance event led by Colonel David Ruffner; following the colonel’s death, a Methodist clergy was describing the event to a gathering:

Before the preacher finished his description, the audience was in tears; some wept aloud. One deep, manly voice sobbed so loud as to be heard over the whole house. It was the voice of that great-hearted lawyer, Col. Ben Smith.<sup>62</sup>

Colonel Smith loved the practice of law and worked hard at it. While he never was known as a great orator, he was considered an effective lawyer because of his common sense and his studiousness in ascertaining the fine points. It was said that in later years, he became fully engaged in a case after it began, working around the clock to master the salient points. Despite his reputation for outspokenness, he did not hold grudges and was open to listening to the opinions of others.<sup>63</sup>

His efforts to “quiet” West Virginia’s land titles – providing clear title to land so that purchasers were assured of legal ownership – are credited with providing the foundation for local and regional economic development in the state, which led to the period of dramatic growth in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries.<sup>64</sup>

West Virginia’s property law, through constitutional revision, legislative reenactment, and case law, significantly reformed a dysfunctional system into one which provided individuals and corporations the security of clear title. Benjamin Smith was an active participant in the 1850-1851 West Virginia Constitutional Convention as well as in the formulation of West Virginia’s first Constitution of 1863. Smith’s views were ably represented at the Second Constitutional Convention in 1872 by his partner, Edward B. Knight ... Smith was a key participant in many of the important property law cases in pre- and post-Civil War West Virginia, which provided much of the early case law clarifying the constitutional provisions. He also played a

key role in establishing the legal basis for the development of West Virginia resources which followed in the latter part of the century.<sup>65</sup>

This strong, forceful man who had a presence to match his personality died December 10, 1887, at age 90. His grave is in the Spring Hill Cemetery in Charleston, West Virginia.

## **Edward Boardman Knight**

Edward Boardman Knight, perhaps, was the perfect complement in law to Colonel Smith. Where Colonel Smith was well known for being opinionated, Edward B. Knight was described as one of even temper and kind disposition.<sup>66</sup> Where Colonel Smith was more outspoken, Edward Knight was more orderly and methodical. He had a serious demeanor, but a lively wit.

He was a man of striking appearance, with large, powerful head, with strong mouth and expressive eyes. He never moved from his position when addressing the jury and his only gesture was with his right hand, and when standing before the jury he was as dangerous as a two-edged sword. He never overstated the testimony yet to the very full he got it before the jury. He had a splendid voice, deep and musical, with his mind full of the knowledge of the law, understanding its reason, and with a tremendous memory for evidence, he poured forth to a jury a great stream holding in it all the wisdom of the cause.<sup>67</sup>

The connection that brought Edward B. Knight and Colonel Smith together is not clear, although it likely occurred through the Noyes family.<sup>68</sup> Both families had settled in Newbury, Massachusetts. Three of John Knight's daughters, Elizabeth, Mary, and Hannah, married three of Nicholas Noyes' sons, Cutting, Timothy, and James, in 1674, 1681, and 1684, respectively.<sup>69</sup>

Edward Boardman Knight was born August 22, 1834, in Hancock, New Hampshire, the son of Asa Knight and Melinda Adams Knight. His parents owned a farm in the southwest part of town. He learned the machinist's trade, but he abandoned that pursuit at age 21 and went to study at the New London Literary and Scientific Institute, a co-educational secondary school. He was graduated from Dartmouth College in 1861 and taught for a brief time at Washington, then read law with George W. Everett at New London, New Hampshire. He was

admitted to the bar in 1863. He practiced for a short time in New London and Dover, New Hampshire, and in 1864<sup>70</sup> “was offered a partnership in an old and established law firm in Charleston, W.Va., which he accepted, and at once moved to the place ...”<sup>71</sup>

Knight soon acquired a reputation in Kanawha and became a successful lawyer. On September 18, 1864, he married Hannah Elizabeth White of Newport, New Hampshire. They had three children – Edward Wallace, Harold Warren, and Mary Ethel. (Mary Ethel married George W. McClintic, who served for many years as United States District Judge in the Southern District of West Virginia.) Knight’s wife died in 1878, and he subsequently married Mary Elizabeth White, who was Hannah’s sister. Despite spending most of his life in Charleston, Knight never tired of returning to his roots; he loved the outdoors, especially fishing and similar outdoor sports, and spent summers in the beautiful hills of surrounding Sunnipee Lake, New Hampshire.<sup>72</sup>

Knight’s knowledge of the law was reputed to be encyclopedic in a day when textbooks and encyclopedias were not readily available. A lawyer had to carry much of the law in his memory, and Atkinson in *Bench and Bar of West Virginia* credits Knight with a keen ability to sort through his vast understanding and apply it in very effective ways. Indeed, Atkinson was of the opinion that Edward Knight had very few equals in the legal profession.<sup>73</sup> Isaac N. Smith was quoted as saying that Knight was “the purest-minded man with the highest moral ideals” he had ever known.<sup>74</sup>

Governor William A. MacCorkle, who wrote an extensive journal reminiscing his life in West Virginia, referenced Knight at length and told a story at his own expense.

I was traveling in northern New York and was riding in the smoking room with a gentleman who had boarded the train at some local station. After awhile my companion asked me if I was from the South, and I informed him that I was from West Virginia. He mentioned several people and among others asked if I knew Mr. Knight. I replied, “Yes.” He said, “He is a very great lawyer.” I answered, “Yes, he is.” He said, “He is a great speaker, has a lot of wit and humor.” I agreed with him. He added, “I was there four or five months ago and they were trying a moot case at the capitol. I was directed to the meeting. I heard that the Federal judge was to preside and that it was going to be an interesting affair and I went.

Mr. Knight made a great speech. He kind of cleaned up that other lawyer." I said, "Yes, I expect he did." I did not think it necessary to tell him that I was the "other lawyer."<sup>75</sup>

Governor MacCorkle also contrasted Knight with William A. Quarrier, the brother-in-law of Isaac Noyes Smith. Quarrier, MacCorkle said, was "the most learned common law lawyer that I have ever known," and "the greatest master of common law pleading of his day either in Virginia or West Virginia." Knight, he said, had more business acumen than Quarrier and was especially adept with contract law.

[Mr. Knight's] great forte, however, was in the general trial of a case. In the examination of witnesses he had very few equals. I remember well that he frequently repeated the last words of the witness and when the witness answered he used the expression "Aha! Aha!" The combination of great knowledge of practice and pleading, ability to cross-examine, splendid oratorical abilities, and great experience as a trial lawyer made him dangerous in any class of case.<sup>76</sup>

Knight also served as the solicitor of the City of Charleston for several years and was a member of the 1872 constitutional convention in which the 1863 constitution for West Virginia was re-written.<sup>77</sup> The constitution, particularly Article XIII on land titles, gave protection to claimants who had paid taxes on their land, and it provided for the dispensation of delinquent lands. It also restored the right to vote to former Confederates, an issue very close to the law partners. The issue of land titles and Article XIII are credited for the robustness of voter turnout to approve the constitution in August 1872. Knight was "the principal author of this most important article with its complex and significant ramifications."<sup>78</sup>

A map of the City of Charleston, believed to have been made in 1876, shows the law office of Smith & Knight on the bank of the Kanawha River, diagonally across Kanawha and Court streets, from the courthouse – roughly the same location as it is now. Governor MacCorkle described Charleston during the mid-1800s as "a conservative old aristocratic town ... inhabited largely by one class of people."

The litigation at the Bar of Kanawha largely arose from the settlement of the land titles and much of it had its source in the lumber business, which was most important in this

section. The controversies from contracts about coal mining were just coming to the attention of the court. The state was then flooded with false land titles which had been purchased for a song by many people throughout the north.<sup>79</sup>

Knight also was among the leading statesmen considered in 1887 as “proper candidates for United States Senator.”<sup>80</sup> Imagine, then, this partnership of Edward B. Knight with his “striking appearance” and “orderly mind,” and Benjamin H. Smith, “one of the strong men of Kanawha, strong physically, mentally and financially.” It is little wonder that contemporaries remarked upon both in such depth. Following the death of Isaac N. Smith, Knight formed a partnership with George S. Couch; the two practiced together for eight years until Knight’s retirement in 1892.<sup>81</sup>

Edward Boardman Knight died December 16, 1897.<sup>82</sup> A newspaper account said he died of “stomach trouble,” and that despite his “vigorous and rugged constitution,” he had been ailing for several months.<sup>83</sup> A lengthy funeral service was held at Kanawha Presbyterian Church two days later in what was described as dreary rainfall. Pallbearers included two key figures in the succession of the law firm: George S. Couch and George E. Price.<sup>84</sup> One of the notices about his death said he “ranked among the ablest lawyers of his state and retained his position as long as he remained in the profession.” Another said his death left behind him “nothing more hurtful to his memory than the earnest respect and the abiding affection of every person who ever came in contact with him.”<sup>85</sup>

He is buried in Spring Hill Cemetery in Charleston.

There is no question both Smith and Knight were held in high regard. In 1901, when Congress divided West Virginia into two federal court districts, Judge J.J. Jackson, who had presided over the entire state until the divide, was honored at a banquet at the Hotel Ruffner. He reflected on the changes that had occurred since his arrival four decades previously and lamented the passing of so many distinguished members of the West Virginia Bar and among those he mentioned were Benjamin H. Smith and Edward B. Knight.<sup>86</sup>

## **Isaac Noyes Smith**

After the end of the Civil War and the repeal of the “test oath,” Isaac Noyes Smith began to practice law again with his father and the estimable Edward B. Knight. I.N. Smith, or “Isaac,” brought considerable experience to the firm. Born in Charleston in April 1832, he was the only son and second child

of Benjamin and Roxalana. He was graduated from Washington College in 1852 and then studied law at Judge Brockenbrough's law school, after which he probably "read law" with his father.<sup>87</sup> After joining his father in the practice, he soon became an active and respected member of the bar.

In 1858, Isaac, along with many other young men of Kanawha, joined the Kanawha Rifles, a militia group organized and led by George Patton, the grandfather of General George S. Patton of World War II fame. The group drilled, learned military procedures, studied military tactics, etc. Smith began as a private, but was later elected an officer. When the Civil War began, the Kanawha Rifles became the 22<sup>nd</sup> Virginia Regiment. Smith was second in command of the Regiment, a major.<sup>88</sup>

He also was elected to the Virginia Legislature in 1860. In the same year, he married Caroline S. Quarrier, the daughter of Alexander W. Quarrier and Caroline Shrewsbury Quarrier.<sup>89</sup>

When Isaac was permitted to return to the practice of law following the war, he quickly became a prominent figure at the bar, and for years there was little important litigation in Kanawha County that did not have the firm of Smith & Knight engaged on one side or the other. "He came of an ancestry marked by strong, brave, and able men and his distinction at the bar was only less than that of his father, who survived him," William Laidley wrote. "He was a conscientious member of the Presbyterian Church and for many years was an elder."<sup>90</sup>

Governor MacCorkle noted that Isaac was not a great courtroom orator, generally, although he had the wherewithal to be quite eloquent. But he did become one of the pioneer business lawyers of Kanawha at a time when business and industry were in the infancy in the region. The post-Civil War period saw the development of the great business lawyers of New York, Boston, and other commercial centers, as the railroad, steel, textile, and other industries developed.

I was in court in the spring of 1882 when Mr. Isaac N. Smith handed in a decree dismissing and settling the famous old salt case of Dickinson and Shrewsbury. This was the Jarndyce versus Jarndyce<sup>91</sup> of the Kanawha Bar. I remember Mr. Smith's speech concerning this case. It was a very beautiful and touching address. The case had been pending for about sixty years and was a very remarkable

piece of litigation. Mr. Smith in glowing language told the court of the great industrial and political changes that had taken place in the world and especially in this country since the institution of that suit, – the Mexican War, the great Civil War of our country, the War of 1871 and others. Mr. Charles Hedrick arose and asked that the court appoint a day for formal obsequies of the case. It was set for Saturday following Mr. Smith's statement. I regret that the wonderful and interesting history detailed by the lawyers was not preserved.<sup>92</sup>

Governor MacCorkle also described Isaac as the first business lawyer in the southern West Virginia Bar. He was the first, along with Quarrier, to author a contract for coal mining. The two men “practically originated the coal lease,” an instrument that still is in use in the industry. Isaac also was a great believer in the development of the Kanawha Valley and its future industrial promise, a belief that would become reality.<sup>93</sup>

He is credited with securing \$2.5 million of Virginia State funding for railroad construction from Covington to the Ohio River. His remarks in the Virginia House of Delegates about the legislation were worthy enough to be printed in a stand-alone pamphlet by the *Richmond Enquirer* shortly before the onset of the Civil War.<sup>94</sup> While the entire script is worth reading, one passage, in particular, is poignant in its eloquence and recognition of what was likely ahead.

In this crisis of national and state affairs, with the stirring appeal of a sister state invoking union for the south, and disunion with the north, still ringing in our ears – when in lowly hut and lordly hall – in the cluster of humble citizens and the halls of legislation – the cry ‘to arms, to arms’ is heard, shall Virginia, in her preparation for the worst, leave a portion of her citizens unprotected? Is it her policy to place us in the forefront of the battle, as the defenders of the southwestern frontier, and having put arms in our hands, to leave us to our fate, beyond all hope of succor and relief? Sir, if such is her purpose, these arms can only be regarded as a poor pittance, wrung from your niggardly hand by the universal outcry of her outraged and injured people, rather than the generous promptings of state pride and paternal feeling. Could I speak for my people, I would scorn the

aid so tendered. I would refuse the cold charity, which, finding me beset with danger, and surrounded by foes, is content to give a pitiful alms, where a brother's strong arm and cheering voice is needed for support. Disregarding a kindness so limited, I would have our people look to themselves only for protection and defence. (sic) The past has shown their bravery, and the hearts that nerved the settlers of the forest, when they sought, and sought successfully, to drive the red man from his home, still live in the youthful bosoms of their descendants. As a lineal descendant of the first white man who planted his home in the wilderness of the Kanawha valley – as the representative of the sons of those who, alone in the unbroken forest, lurked, month after month, far from home, from family and friends, to watch the movements of the white man's foe, and give timely warning of approaching danger – as the citizen of a town where stood, and in part I believe still stands, the old log fort which sheltered my fathers – as the spokesman of a constituency whose companion is the unerring rifle – whose pleasure is the arduous chase – to whom the rugged mountain is a plain, and the freedom of the lonely forest a delight – I stand here to say, that when Virginia forces the necessity upon us, we can and will fight our battles, without help from those who would refuse it now. We can fight for our hearthstones and the honor of our state; but when the crisis is past, if success shall crown our efforts, and if the dangers of fanatical invasion and servile insurrection shall have been averted, sing no paeans here over Virginia's glory – raise no triumphant jubilate over deeds in which you have no lot nor share; but if the horrors of civil and servile war shall desolate our valley – if mad fanaticism 'on murderous deed intent,' shall crush with overwhelming force the power that will surely meet its every step, and desolation, ruin, and foul murder mark the path of the hated but victorious foe – it will then be yours to mourn the fate of those you have disregarded – to curse the narrow policy which led you to despise their cause.

To some, the conception of such results seems exaggerated; to others they are probable; and to others of this body, such

scenes are thought to be momentarily impending – but no matter which view is realized, those whom these difficulties are to affect, feel deeply the position they occupy, but knowing their danger, if need be, will dare to bravely face it.<sup>95</sup>

Isaac and Caroline Quarrier Smith had six children: Benjamin Harrison, who died; Alexander Quarrier; Harrison Brooks, who later became a member of the firm; Elsie Quarrier; Isaac Noyes Smith, II; Christopher Tompkins; and Winston Shrewsbury, who died as an infant.<sup>96</sup>

Isaac died at his home in Charleston at age 52 on October 6, 1883, four years before his father's death. His death effectively ended the partnership of Smith & Knight.



## Chapter III

# Transition Years: The Road to Spilman

The law firm that eventually became Spilman Thomas & Battle went through a period of transition following the death of Isaac N. Smith and the retirement of Colonel Benjamin Smith. Edward B. Knight joined George S. Couch, forming Knight & Couch until Knight retired January 1, 1892.

The business ties that were fostered during the early Smith & Knight years continued under Knight & Couch. This also marked the beginning of strong relations between the law firm and local banks, which were coming to the fore. Couch, in fact, served as president of two separate banks, as well as being engaged in the practice of law. He was described as decisive and clear-headed in business and would have been a very wealthy man had he lived to see the fruition of his investments.<sup>97</sup>

Governor MacCorkle was indebted to Couch because of an incident in MacCorkle's early adulthood that he later revealed in his memoirs:

I once had an experience with Mr. Couch which exemplifies the character of the man. At one of my lowest financial depressions I was entirely broke but people did not know about it. I went to him and told him that I wanted thirty-five hundred dollars. I said, "Mr. Couch, you know I haven't a thing to put up for it and I do not care to ask anyone to endorse a paper, in other words I am broke." He said, "I know that, but I am going to lend you thirty-five hundred dollars anyway, for you are young and I know you will pay

it back.” He loaned me thirty-five hundred dollars from his bank without any security. I made a deal with that thirty-five hundred dollars that cleared me thirty thousand dollars and put me on my feet, and I owe an everlasting debt of gratitude to him, which I always tried to fulfill in everything that pertained to him. It is but right that I should mention him in connection with this part of my life. He never said a word about it, never told anyone he had done it, but at one time I had an opportunity to return it and you may be assured I did.<sup>98</sup>

## George S. Couch

George S. Couch was born in Mason County, then Virginia, on January 1, 1852. He received his education in Mason and then, in 1868, entered college in Marietta, Ohio. Upon graduation in 1872,<sup>99</sup> he studied at Arbuckle on the Kanawha River with his father, a lawyer, until April 1873, and he was admitted to the bar the same year.<sup>100</sup> He moved to Charleston and, according to William Laidley's *History of Charleston and Kanawha County*, earned a reputation as an able lawyer.

He was a descendant of Samuel Couch, born September 16, 1752, probably in Pennsylvania. Samuel Couch purchased several thousand acres of land in Goochland County, Virginia, where he settled in 1777. He originally had numerous slaves, but he converted to Quaker and subsequently liberated them.

Samuel's son, Daniel, was born in Hanover County, Virginia, on April 9, 1782. He married Sarah Richardson, who was born June 21 of the same year, and they moved to Mason County, settling on a farm along the Kanawha River that formed a part of the land granted to General Washington for his military services. Daniel and Sarah's son, James Henry Couch, was born in Hanover County, Virginia, on the old homestead known as “French Hay,” on August 3, 1821. He resided on the farm or plantation in Mason County and became a lawyer and a man of great influence, according to Laidley. He was a delegate to the secession convention at Richmond in 1861. He opposed secession but, seeing that it was going in that direction, he withdrew before the vote.

James Henry Couch was well known and highly esteemed, Laidley said, and a staunch Democrat. He married Helen J. Waggener, who was born July 5,

1825, the daughter of Colonel Andrew Waggener and Attara Bell. The colonel was killed while riding a horse on the highway in the Civil War, just after the battle of Point Pleasant.

George Couch followed in his father's footsteps in law, first forming a partnership with Charles Hedrick, then Edward B. Knight. According to Laidley, the firm of Knight & Couch was recognized as the leading law firm in Charleston. He was the organizer and, up to the time of his retirement from business, the president of the Kanawha National Bank. Couch also was the first president of the Charleston National Bank, which was founded in 1884. By the turn of the century, Charleston National boasted \$300,000 in capital, while Kanawha National listed \$100,000 in capital, and both were a short distance apart on Charleston's main business street, Capitol. Couch was a Democrat but avoided active participation in politics. He also was a member of the Presbyterian Church.

In addition to his legal and banking interests, he was invested in real estate. It is believed that the town of Dunbar, a short distance from Charleston to the west, was located on a farm Couch owned. He is said to have named the town after his friend David Dunbar, a lawyer.

Couch married Laura McMaster in Marietta, Ohio. She was born in New York, the daughter of the Rev. James W. and Mary Baker McMaster. The Couches had three children, George S. Couch, Jr., Mary McMaster, and Lucy Richardson.<sup>101</sup> Couch and his wife lived within walking distance of his office, on the north side of the Kanawha River on the east side of Bradford Street, about a half-mile from the Courthouse and city building.

At the beginning of 1892, Edward B. Knight retired from the active practice of law. His son, Edward W. Knight, was associated with the firm. Couch, having numerous business obligations, did not wish to be responsible for all of the cases that had been taken on by the firm Knight & Couch. Edward W. Knight agreed to join with two other lawyers, James F. Brown and Malcolm Jackson, to form the law firm Brown, Jackson & Knight. It later became the firm of Jackson, Kelly, Morrison & Moxley; then Jackson, Kelly, Holt & Moxley; and then Jackson, Kelly, Holt & O'Farrell. Today, it is known as Jackson Kelly.<sup>102</sup> George S. Couch, Jr., became a partner in Brown, Jackson & Knight.

To handle the cases that George S. Couch, Sr., took with him, he formed a new partnership with Samuel Lightfoot Flournoy and George E. Price, two

lawyers from the northeastern part of the state. Couch, Flournoy & Price existed until 1900, when Couch retired to return to his Mason County farm and breed race horses. Harrison B. Smith, the son of Isaac Noyes Smith, had joined the firm in 1896 and, upon Couch's retirement, it became Flournoy, Price & Smith.

The reputations of Flournoy and Price already were well known in the Kanawha Valley, as both served in the West Virginia Legislature. Indeed, during the contentious political upheaval of the late 1880s and early 1890s in West Virginia, both men were recognized as leaders in the state Senate, with Price serving as the Senate President, and both he and Flournoy were nominated for the top position when the body was unable to reach agreement on who its next leader should be.<sup>103</sup>

## **Samuel Lightfoot Flournoy**

Samuel Lightfoot Flournoy was born November 25, 1846, in Chesterfield County, Virginia. He spent most of his youth in Richmond, where he attended school until age 17. He enlisted in the Confederate Army during the Civil War. He was assigned to the Virginia 13<sup>th</sup> Light Artillery Battalion, Company A.<sup>104</sup> William Laidley reported that Flournoy was "a brave and efficient soldier in war, and in times of peace was no less courageous in facing the problems of life."

Flournoy took a classical course at Hampden-Sydney College, graduating in 1868, and then taught school for four years. He studied law during the period and was admitted to the bar in 1873. His interest in politics led him to run for the West Virginia Senate, to which he was elected in 1885 and again in 1889. Flournoy previously had served as mayor in Romney, Hampshire County, being elected three times to the position. On April 8, 1875, he married Frances A. White, and the couple had four sons and a daughter.<sup>105</sup> Flournoy moved to Charleston in 1890.

"During his two terms in [the state Senate] he was particularly useful, serving on such committees as the judiciary, privileges and elections, federal relations, immigration and agriculture, and public printing," Laidley wrote. "His vast fund of general information made his advice and counsel exceedingly valuable."

Flournoy and Price often were looked to by other legislative members for leadership because of their intellect and integrity. It is clear, particularly during the political battles of that period, that they acted in many ways as moral compasses for the Democratic Party. Flournoy also, apparently, enjoyed the occasional outing. A squib in the *New Dominion* newspaper in 1893 had him among a five-member party that was fishing in the South Branch of the Potomac River, about 12 miles south of Romney. Governor MacCorkle, who also was in the fishing party, pronounced the trip as “one of the most enjoyable he has had for a long time,” despite a downpour that diminished the angling prospects.<sup>106</sup>

A letter dated August 8, 1901, shows the firm occupied Rooms 32 to 40 in the Citizens National Bank Building, which was on the southeast corner of Capitol and Quarrier streets in Charleston. The letterhead lists the name of Ivory C. Jordan “below the line,” indicating he was an employee but not a partner. A second letter, dated December 23, 1902, is on similar letterhead but Jordan’s name is missing. He continued to practice in Charleston into the 1950s.

Flournoy died on January 29, 1904.

Dr. J.C. Barr and Dr. Ernest Thompson, pastors of the First Presbyterian Church of Charleston, conducted services for Flournoy on February 1, 1904.

“This is the eighth time that the sad duty has devolved upon me, in this church, of officiating at the funeral of a Ruling Elder, and this last seems to be the saddest of all,” Barr said in his eulogy. “We are now called to give up one who, until a few months ago, seemed to us to be still in the prime of life. He was so energetic in his business, so youthful in his feelings, so deeply interested in all that concerned the public welfare, and so regularly with us in our places of worship, that we felt that his useful life would remain uninterrupted for many years to come.”

## **George E. Price**

George E. Price was just two years younger than Flournoy, but his career extended well into the 20<sup>th</sup> century. Indeed, he practiced law in West Virginia for a total of 63 years.<sup>107</sup> He was the senior member of the firm from Flournoy’s death until 1938. The two men had been close friends as well as business associates. Both started their careers in the Eastern Panhandle and

were elected to the West Virginia Legislature, then relocated to Charleston permanently, where they lived next door to each other at 417 Virginia Street and 419 Virginia Street, respectively. Harrison B. Smith lived a short distance away, a block closer to the river, at 512 Kanawha Street, now Kanawha Boulevard.<sup>108</sup> In 1904, the firm became Price, Smith & Spilman, and by 1907 it was named Price, Smith, Spilman & Clay. These four men were the heart of the firm for nearly two decades, each boasting the highest rating in legal ability in *Martindale's American Law Directory* as well as “very high” recommendations from their peers.<sup>109</sup> The firm engaged in “General civil practice in State and Federal Courts.”<sup>110</sup>

George E. Price was of Welsh descent, according to George Atkinson in *Bench and Bar of West Virginia*. He was born on a farm in the South Branch Valley near Moorefield, Hardy County, Virginia, on November 9, 1848. He was a grandson of Thomas Price, who served as a colonel in the American Revolution.<sup>111</sup> After attending school in Moorefield, he entered Georgetown University, where he was an honor student, and from which he graduated *cum laude* in 1869.<sup>112</sup> He then read law with his uncle, General James M. Coale, for two years in Frederick, Maryland, and in December 1871 was admitted to the Frederick County Bar, where he began the active practice of law. He remained in Frederick until 1875, when he moved to Keyser, Mineral County, West Virginia.

Price practiced law in Keyser from 1875 until 1890. In 1882, he was elected to the West Virginia Senate, where he served for eight years; he was elected President of the Senate during the legislative sessions of 1885, 1887, and 1889.

He presided with dignity and absolute fairness, and at the same time, he was one of the most active and efficient members of the body, being the patron of several bills which were of Statewide importance. Whilst he was a safe and sane legislator, his stronghold was then, as now, his erudite knowledge of the law, which served him well upon all occasions and at all times.<sup>113</sup>

Price was employed in many important cases. It is said that he and Spilman, between them, litigated the titles to much of the land in southern West Virginia between 1900 and the First World War. Perhaps the best-known case in which Price was involved was *Maryland v. West Virginia*,<sup>114</sup> in which he

was appointed by Governor Brooks Fleming to represent West Virginia in a dispute between the states over a boundary line. This was a case of original jurisdiction in the United States Supreme Court, under Article III, §2 of the U.S. Constitution. Charles I had granted a charter to Cecilius Calvert, Baron of Baltimore, from the headwaters of the Potomac River to the Pennsylvania line; the grant to Lord Fairfax for the “northern neck” of Virginia was supposedly south of the same line, but as usual the language was different and both descriptions vague. At the first hearing, the Court agreed mostly with the West Virginia position and appointed commissioners to run the line; at the second hearing, West Virginia’s argument that the line was on the north bank of the Potomac River was rejected, but it was held that the line was at the low, as opposed to the high, water mark on the south side, and the Court decreed that the costs of running the line be split evenly. The 1912 opinion finally fixed the boundaries and markers.

Price was married on June 12, 1878, to Sallie A. Dorsey, daughter of John A. Dorsey, of Howard County, Maryland. They had four sons: John Edmund Price, who was employed by the law firm between 1907 and 1912, but who later engaged in real estate in San Francisco;<sup>115</sup> Richard McSherry Price, also employed by the firm for a time (1912 or earlier to 1914), said to have been an investment banker in Seattle, Washington; Thomas Brooke Price, who became a partner in the firm; and George Dorsey Price, who became an officer in the U.S. Navy.

Following the death of Samuel Flournoy, the Price family moved to the east in the increasingly fashionable residential area of Charleston, settling at 1119 Virginia Street. Price was, for many years, the Ruling Elder of the First Presbyterian Church, just a short walk away. It is told that when he led the congregation in prayer, he began by saying, “Lord, this is Price, George E., speaking.” He served for many years as a director and vice president of Kanawha Banking and Trust Company, and the board’s chairman, and as counsel for its Trust Department. He also was an organizer of the former Kanawha National Bank.

Price was known for his eloquence and diplomacy in times of dissension, particularly in the Legislature. He often was one of the primaries selected when matters of delicacy, ethics, and efficacy were at stake. He often voted with the majority leadership, but he was not afraid to be independent of it, too. When corruption was alleged in an attempt to pass legislation in the state Senate in 1883, Price was chosen to chair the investigating

committee.<sup>116</sup> He also was one of those designated to revise the rules of the state Senate, a task of great importance in a legislative body.<sup>117</sup>

Price was considered an immensely knowledgeable lawyer who stood “in the forefront of his profession.” Notably, he told Hawthorne D. Battle that despite his many cases that went to trial, “No jury ever ... rendered a verdict that his heart wasn’t in his mouth. He said he never got used to it.”<sup>118</sup>

He was considered a dean of the West Virginia Bar. In 1923, for example, it was he who was designated to speak on behalf of the State Bar Association at the dedication of the West Virginia University Law School building. The Association had been a stalwart advocate of the Law School. Price remarked about the evolution of the legal profession – from those who “read” law with an experienced lawyer for learning to the formal education at a law school, and the weight of responsibility that weighs on lawyers in society.

[The Law School building] represents the idea that it is to the interest of the state that the best facilities shall be afforded our young men and women to acquire a legal education and that those who practice the law should be adequately and properly trained for the responsible duties belonging to this profession. The legal profession should stand as the repository of the great truths upon which our civil and religious liberties depend, and should be recognized as that power which can be confidently looked to for preserving the administration of even-handed justice between man and man.<sup>119</sup>

Price again was called upon as a highly respected senior member of the bar at the Association’s meeting in 1926 to make recommendations about how to deal with unethical behavior by members of the bar. The Bar Association already had adopted a code of ethics, but how to deal with lawyers who failed to live up to it? It was, Price said at the Bar Association meeting in 1926, a difficult task.

The relation between an attorney and his clients is one of trust and confidence, and the relation which the attorney sustains to the court as one of its officers requires the strictest integrity and honorable conduct under all circumstances. The best guarantee that an attorney will live up to these requirements is to be found in the character of the man himself.<sup>120</sup>

Price suggested what appears to be the beginning of the State Bar: that courts “appoint two or more members of the bar in good standing as a committee on the conduct of the members of the bar and prescribe that it shall be the duty of this committee to hear all complaints or charges that are made against members of the bar . . .”<sup>121</sup> The final decision about disciplinary action would rest with the West Virginia Supreme Court.

Price took the legal profession very seriously, but he also had a great sense of humor. H.H. Corrie, an accountant whose office was on the 10<sup>th</sup> floor of the old Kanawha Banking & Trust Building, told Charles B. Stacy, whose office also was on the 10<sup>th</sup> floor, that he had read Governor William MacCorkle’s book, *The Recollections of Fifty Years*, and asked Price whether the old-time lawyers who were praised extravagantly by MacCorkle were really such “giants at the bar.” Price stroked his goatee and chuckled, saying, “Oh pshaw, no, they just seemed so to William.” Corrie particularly relished the story, Stacy said, because Governor MacCorkle married a first cousin of his grandmother, a Goshorn, and was “exposed to him from time to time at dinners, banquets and 4<sup>th</sup> of July speeches from the balcony of the old library,<sup>122</sup> and regarded him with his flowery, old-fashioned political style of speech as a windbag.”

Harrison B. Smith lauded Price as a trial lawyer of outstanding skill and ability. Price, he said, particularly was cognizant of the business interests in a state that at the time were developing rapidly.

His career as an advocate covered the period when the complex land titles of West Virginia were in process of settlement through litigation in both the federal and state courts, and his name will be found as counsel in the reports of many of the cases . . . which have become landmarks in the West Virginia law of real estate.

Price, in representing the state against Maryland, wrote the briefs and argued the case orally in the Supreme Court of the United States. The Supreme Court “upheld interesting principles advanced by Price in an opinion in favor of West Virginia (225 U.S. 1), since recognized as an important precedent in a long line of cases which have reached that Court involving controversies between sovereign states,” Smith said.

Price served as general counsel for the former Coal & Coke Railroad and is credited with aiding Henry Gassaway Davis in many of the entrepreneur’s charitable endeavors.<sup>123</sup>

Price and his wife celebrated their 50<sup>th</sup> wedding anniversary nearly 10 years before he died, issuing invitations to a reception at their home on June 12, 1928.<sup>124</sup>

Price died at his home on a Sunday morning, February 6, 1938. Pallbearers at his funeral were related to the firm: Frederick L. Thomas, Hawthorne D. Battle, Jackson D. Altizer, Howard R. Klostermeyer, Robert S. Spilman, Harrison B. Smith, Alexander W. Flournoy, and I. Noyes Smith.<sup>125</sup>

## **Harrison Brooks Smith**

Harrison Brooks Smith was destined to become a lawyer; he was a direct descendant of several lawyers in the Kanawha Bar. His aptitude led him to business and banking, and it is to him that many Charlestonians owe credit for significant business development in the early part of the 20<sup>th</sup> century.<sup>126</sup>

Harrison B. Smith was born September 7, 1866, the son of Isaac Noyes Smith and Caroline Quarrier Smith. He attended Kanawha public schools and the Kanawha Military Academy before continuing his studies at Washington and Lee University and Princeton University. He briefly attended the University of Virginia Law School. An attack of typhoid fever prevented him from completing his schooling there, and he studied law in the office of his uncle, William A. Quarrier, in Charleston. Smith was admitted to the bar in 1889 and practiced for several years with W.W. Adams as the firm Adams & Smith. In 1894, he joined Couch, Flournoy & Price and remained a partner in the firm until 1942. A few years after joining the firm, he also took on the duties of city solicitor. His participation in the general practice dwindled after about 1910 because he acted as counsel for business interests.<sup>127</sup> He was known to say that he would get the business and let others [in the firm] do the work.<sup>128</sup> He was president of the George Washington Life Insurance Group, the Charleston Trust Company, and Elk Banking Company. He also was principal owner of two land companies, West Virginia Coal Land Company and Kanawha Company, and he served as a director and later president of Kanawha Banking and Trust Company.

Smith married Katharine Dana Bowne, of New York, and they had three children, Harrison Bowne Smith, Helen Dana Smith, and Alexander Q. Smith. They first lived in the well-to-do section of east Charleston at 1223 Virginia Street, with a summer residence across the Kanawha River on a hill. In 1916, they built an imposing and impressive Georgian mansion overlooking the

Kanawha River Valley from Charleston's South Hills. Named "Bougemont," the Corinthian-columned structure was built from materials transported on the river to a dock constructed specially by Smith, then hauled up a winding carriage road in horse-drawn wagons. It boasted a spring-fed swimming pool and statuary garden, and eight bedrooms.<sup>129</sup> Bougemont still presides over downtown Charleston nearly a century later from its impressive perch, retaining the grace and grandeur of its early years. Both of Smith's homes are listed on the National Register of Historic Places.<sup>130</sup>

Bougemont was a fitting setting for Harrison B. Smith's hobbies; he was an avid musician, playing the organ at his church, Kanawha Presbyterian, and conducting the choir, which was known for its fine music. He long was associated with the Mason College of Music and Fine Arts<sup>131</sup> and was an ardent supporter of the Charleston Music Association. He also had a 150-pipe organ in the music room at Bougemont and was a nationally known composer.<sup>132</sup>

A sports enthusiast, Harrison Smith is credited with introducing both tennis and golf into the Kanawha Valley. He was one of the organizers of Glenwood club, which later became the Edgewood Country Club, a Charleston fixture.

Due to his versatility of talent, quick mind, sympathetic imagination, and broad culture, Mr. Smith was a singularly engaging associate and companion, loved and admired in the circle of his friends and associates. His was a full life, marked by the catholic range of his tastes and interests. It has been truly said that it is Mr. Smith's monument, surely, that he lived quietly but effectively to enrich the lives of many men and women of his community who, though they might not have known him personally, could not escape the broadening influence of his personality. His generous spirit will long march in a community which he and his forebears did much to make a better land for future generations.<sup>133</sup>

Smith died October 18, 1942, at Bougemont, after a long illness.





## Chapter IV

# Price, Smith & Spilman

# Price, Smith, Spilman & Clay

The law firm was relatively stable throughout the early 1900s. George E. Price was an elder statesman, and Harrison B. Smith was highly respected in the banking and business community. Robert S. Spilman, Sr., joined the firm in 1900, and he recruited Buckner Clay in 1903. Samuel Flournoy's death in 1904 caused a name change, but the makeup of the firm remained substantially the same for nearly 40 years. Others joined the firm – Edmund Caskie Harrison, T. Brooke Price, Arthur B. Hodges, and David C. Howard – although both Harrison and Clay soon would be gone – one a casualty in World War I and the other to a debilitating disease. As the new century advanced into the 1920s, the firm grew. Spilman and Smith led the way in expanding Charleston by building large homes on what would become known as South Hills.

Now called Price, Smith, Spilman & Clay, the law firm added several partners and associates. Arthur B. Hodges, T. Brooke Price, and David C. Howard all were listed as partners as of April 28, 1924, and that same year John J.D. Preston, Frederick L. Thomas, Edgar J. Goodrich, and Hawthorne D. Battle were listed as associates. In 1928, J.M. Woods became a salaried partner, and the following year, Jackson D. Altizer became an associate. Robert S. Spilman, Jr. became an associate in 1932. Two years later, Howard R. Klostermeyer became an associate. The principal figures of the law firm for the next four decades were in place.

According to reminiscences of the older partners and evidence surviving from the time, the firm was highly organized from the end of World War I to

the Great Depression. The leadership in achieving this level of organization appeared to come from Buckner Clay, David C. Howard, and T. Brooke Price, with the necessary support of Price and Spilman. The firm attorneys kept time records, they had the latest technical equipment, and the internal organization was good.

The effect of the Great Depression on the firm was substantial. Income figures for the period 1912 to 1950 are instructive. The net income for 1933, for example, was only half of that in 1929. Edgar Goodrich joined the Board of Tax Appeals, and John Preston began work at the state Public Service Commission. The loss of David C. Howard in an automobile accident in 1931 was a tragic blow to the firm. Although real estate and coal had been in a downturn throughout the 1920s, activity in these areas practically ceased after 1930. Banks closed, real property was forfeited for taxes, and mortgages were foreclosed. H.D. Battle and Charles B. Stacy reviewed a large collection of files that Battle had worked on in the early 1930s – all of them loan foreclosures on real estate.

Subsequently, Arthur B. Hodges withdrew from the firm in 1934. Two years later, T. Brooke Price withdrew from the firm to become general counsel to Western Electric Company, a subsidiary of AT&T. He eventually became Vice President and general counsel of AT&T and relocated to New York City.

Essentially, the structure of the firm until the 1950s was a bookkeeper and a lawyer serving as an “office manager,” – something like a managing partner. It is believed Howard served in this capacity until his death; Brooke Price then took on the duties until he left the firm. H.D. Battle then held the job until he joined the Navy during World War II.

The firm in the 1930s kept an impressive list of major clients, including Kanawha Banking & Trust Company; Westmoreland Coal Company; Boone County Coal Company; Raleigh Coal and Coke; Clifton Oil and Gas; Sharples Solvents Company; Barium Reduction Corporation; Lewis, Hubbard & Company; George Washington Life Insurance; National Supply Company; Oil Well Supply; and Fairbank Morse Company.<sup>134</sup> By the mid-1930s, the firm had added several other companies as clients, including C.H. Mead Coal; Little War Creek Coal; Elk River Coal and Lumber; Kanawha & Mississippi Barge Company; Charleston Electric Supply; Shonk Land Company; Charleston Trust Company; C&P Telephone of West Virginia; Point Pleasant Water and Light; Diamond Ice and Coal; Charleston Milling Company; Charleston Mail Association; Cambridge Gas Company; and Charleston Transit Company.<sup>135</sup> The firm was local counsel for half a dozen insurance companies, as well.

Other members of the firm contributed much to the whole of the firm, but one man, above all, dominated the landscape and had an immeasurable influence on the Charleston community, the state, and the legal profession generally – Robert S. Spilman. The firm was entering a phase that, in retrospect, could easily be labeled “The Spilman Years.”

## **Robert S. Spilman, Sr.**

Robert Eden Scott Spilman was the epitome of the southern gentleman: smart, charming, gracious, soft-spoken, mannerly, meticulous in his work and in his home life, with a wry sense of humor. He worked hard, completing a two-year program in law school in just one year – the only law student at the University of Virginia to accomplish that feat.<sup>136</sup> His immediate indoctrination into the law firm in Charleston, West Virginia, showed him to be the quick study that his formal education had indicated. Within a year of joining the law firm, he was submitting documents to the court under his own name.<sup>137</sup>

He was described by one partner of the law firm as the man who, “without any question, was the outstanding member of the Firm in the 20<sup>th</sup> century.” Spilman came by it honestly. His ancestors, both the Spilmans and the Scotts (his mother’s family) were early settlers in the area of Warrenton, Virginia, and both took a lively interest in the affairs of their county and state, furnishing a number of county officers, judges, and representatives of Fauquier County in the Virginia Legislature.

On the wall of Spilman’s office was a framed copy of a handwritten warrant that appointed a Spilman ancestor as one of the first lawyers admitted to practice before the courts of the Colony of Virginia.<sup>138</sup>

Spilman’s paternal grandfather, John A. Spilman, was a successful merchant and businessman at Warrenton, Virginia.<sup>139</sup> William Mason Spilman, his eldest son and father of Robert S. Spilman, enlisted at the age of fifteen in the Warrenton Rifles, commanded by Captain John Quincy Marr. He was wounded at Williamsburg. After recovering, he joined the cavalry and served for a time as a scout under Colonel John S. Mosby, and later with the famous Black Horse Troop, until the close of the war. After the war, he engaged in business at Warrenton and, subsequently, in enterprises that took him to Mexico and South America.

Robert E. Scott, Spilman's maternal grandfather, was one of the leading Virginia lawyers of his day. In politics, he was an old-line Whig. Like most of the residents of that part of Virginia, he was opposed to secession until he conceived Virginia practically had been forced out of the Union. He took a prominent part in the Virginia legislature, which passed the ordinance of secession. A few years later, during the Civil War, he was killed, near his home at "Oakwood," while engaged with other men of the neighborhood in attempting to capture two stragglers from the Federal army who were terrorizing the community.<sup>140</sup>

Robert Eden Scott Spilman was the eldest of four children. He was born March 22, 1876. He was educated in the public and preparatory schools of Warrenton. His father left Warrenton during this time to prospect in South America, leaving Robert to be "the man of the house."

Young Robert entered Virginia Military Institute in Lexington in 1892 at the age of 16 with a State Cadet Scholarship. His uncle, Robert E. Scott, Jr., was an 1878 graduate of VMI and his second cousin, also named Robert Scott Spilman, was in the Class of 1893. Apparently, they were known as "Big Bottle" and "Little Bottle," but for reasons unknown. Robert held the ranks of corporal, first sergeant, and captain during his VMI years, played second-team football for three years, and was co-manager of the football team during his senior year. He graduated in 1896 and was awarded the Jackson Hope Medal for the cadet with the highest academic standing in his class for the four years in college.<sup>141</sup>

For a year after graduation from VMI, Spilman served as Commandant of Cadets at Sewanee Grammar School, part of the University of the South at Sewanee, Tennessee. He then returned to VMI, where for two years he served as an assistant professor in the Department of Modern Languages. While so engaged, one of his students in English and Military Tactics was George C. Marshall, later to become the first five-star general in American History and the author of the Marshall Plan to reconstruct and expand the economic foundation of Western Europe. They remained good friends for life. During Spilman's second year of teaching, his father returned from South America with yellow fever and died in December 1898.

On the advice of his uncle Scott, Spilman resigned his position and enrolled in the University of Virginia law school in the fall of 1899. He was expected after graduation to join his uncle's law firm in Richmond. Instead, he "made

a decision to go out on his own and accepted the challenge<sup>142</sup> to work at Flournoy, Price & Smith in Charleston. He was admitted to the West Virginia bar the same year – 1900. He may have been influenced by his VMI roommate, John Dickinson, a member of an old Kanawha Valley family.

Robert S. Spilman quickly established himself as a lawyer of excellent ability and energy. He was described as “one of the able, rising young lawyers of West Virginia.”<sup>143</sup> A partner in the firm later described him as “the greatest lawyer I have ever known in any way, shape or form.”<sup>144</sup> In 1907, he married Eliza Polk Dillon, daughter of Colonel Edward Dillon of Indian Rock, Virginia.

The two met when he was teaching at VMI; Eliza Dillon was studying in Boston to be a kindergarten teacher. She was in Lexington, Virginia, to be with her mother following the death of Eliza’s grandfather. It took seven years for Robert Spilman to win Eliza’s hand. They had four children: Robert Scott, Jr., and Frances Polk, twins; Edward Dillon; and Lisa Polk. Frances contracted scarlet fever at age five and died at age 13.<sup>145</sup>

They lived on the East End of Charleston for a few years until they moved across the Kanawha River not far from Bougemont, building a large house on Roscommon Road in what is now called South Hills. A small newspaper story about the house’s construction observed that the setting “commands one of the most beautiful views up Kanawha river with the hills of Kanawha City in the background.”<sup>146</sup> The house is described in detail in a novel by Mary Lee Settle, a talented author of *Beulah Quintet* fame who was from Charleston, West Virginia.<sup>147</sup>

Eliza Dillon Spilman was prominent in Charleston Society and a southerner in sentiment. Known as “Miss Eliza” by many of her family members, she was an avid poet. Stories tell of her accompanying Spilman on his fishing trips, where she would sit on the bank and read or write poetry.<sup>148</sup> Her daughter later published a book of Miss Eliza’s poetry, a charming and interesting collection of family stories, snapshots, and beautiful poems. Miss Eliza also was a singular force in chairing the West Virginia chapter of the Robert E. Lee Memorial Foundation, which eventually purchased and restored Stratford Hall, a beautiful Virginia mansion that was the birthplace of the Lees who signed the Declaration of Independence and, generations later, the famed Civil War general. Spilman joined his wife in their recognition of General Lee, occasionally giving talks about the general from a legal perspective and

paying tribute to the devotion of a “great American” to his cause.<sup>149</sup> He also shared her love of literature and poetry, often carrying a leather-bound volume of Shakespearean plays or poems in his pocket of his jacket, even during his fishing trips.<sup>150</sup>

Spilman’s legal career spanned nearly 60 years. There were few, if any, of standing in West Virginia’s political, legal, judicial, and business circles during the first half of the 20<sup>th</sup> century who did not know Robert S. Spilman. When legal questions arose, more often than not it was Spilman to whom businesses turned for advice. But even as he built his reputation as an exceptional lawyer, he was extremely active in the community, serving on the local school board, the county war fund, and the state Chamber of Commerce. He also remained active with his alma mater through the VMI Foundation. He served as president of the West Virginia Bar Association in 1919 and was president and served on the State Board of Law Examiners for 21 years. When he resigned, the West Virginia Supreme Court said his “service has exhibited impartiality, profound knowledge of the law and great tolerance.”<sup>151</sup> He was a member of all the local and regional bars, including the American Judicature Society and the American Law Institute. Somehow, he also found time for service as a director on the boards of several local companies and the Kanawha Banking & Trust Company.

He served on the Charleston Memorial Hospital Association Board of Trustees, presided over the West Virginia Chamber of Commerce and the C&P Telephone Co. Board, and he founded the Charleston Open Forum, a speaker/lecture series begun in the 1930s for “the civic and cultural betterment” of the community. Mr. and Mrs. Spilman also were among prominent Charlestonians who formed the Symphony Society “to cultivate public taste for good music.”<sup>152</sup>

He was the lead lawyer and a participating lawyer in hundreds of cases, including the famous *Red Jacket* case, which pitted the union miners of southern West Virginia against non-union Red Jacket Consolidated Coal and Coke Company. The sometimes-violent dispute sparked the notorious “Matewan Massacre” and was at the root of the battle on Blair Mountain quelled by federal troops in 1921. This same case also scuttled the chances of President Herbert Hoover’s nominee for the Supreme Court of the United States, John J. Parker, in 1930. Parker had written an opinion as a member of the United States Court of Appeals for the Fourth Circuit in the *Red Jacket* case, “transforming him from relative obscurity into a symbol of anti-labor

conservatism.”<sup>153</sup> Spilman also served as the voice of the Kanawha coal operators’ association in many of the contentious and sometimes violent encounters with miners in the 1920s.<sup>154</sup> Spilman, himself, acknowledged the significance and importance of the *Red Jacket* case in a comment he made to the West Virginia Bar Association nearly 30 years later. His remarks at that meeting in 1950 are a rare glimpse into the mind of this brilliant lawyer, and tangible evidence that he was convinced the battles between labor and business were far from over.

Robert S. Spilman was, in many ways, what one might refer to as the “go-to” man in the first half of the 20<sup>th</sup> century.

When outgoing Governor Homer Holt and incoming Governor M.M. Neely got into a dispute about who was entitled to appoint someone to fill Neely’s suddenly vacant U.S. Senate seat, Spilman was Holt’s legal adviser and represented him in the subsequent court action.<sup>155</sup>

When state employment service chief C.P. McKenna was accused of criminal misuse of “official” postal privileges, Spilman represented him in the federal court case.<sup>156</sup>

When a national trucking company sued West Virginia to block a state law barring double-decker automobile transports from its highways, Spilman represented the state.<sup>157</sup>

When the West Virginia Board of Education became embroiled in a lawsuit about changing textbooks in four elementary school subjects, it hired Spilman, who also served on the Charleston Independent school board.<sup>158</sup>

When two gas rate cases disputing rates on natural gas in West Virginia and Kentucky made it to the United States Supreme Court, Spilman argued on behalf of the West Virginia Public Service Commission.<sup>159</sup>

When the grandstand crashed at Laidley Field during a football game, Spilman was the chairman of the school board committee appointed to take up the issue.<sup>160</sup>

When Governor William Marland removed two officers from the West Virginia Turnpike Commission, Spilman joined the state attorney general in arguing the case before the West Virginia Supreme Court of Appeals.<sup>161</sup>

Spilman was highly sought after not only because of his courtroom skills in arguing cases, but also because of his meticulousness in drafting legal documents. Colleagues often described the hours and days Spilman would labor over drafts of a coal lease, for example, examining every word and phrase with great care. He possessed an excellent vocabulary that he used with precision; he was direct and thorough, avoiding legal jargon as much as possible. When an associate wrote a memorandum for Spilman, he never neglected to go over the memo with the associate, having marked it up appropriately beforehand, politely pointing out the errors, sloppy thinking, omissions, poor organization, and poor expression. On the other hand, if he approved of a product, his highest accolade was to pronounce it “a very lawyer-like” document.

He rarely took criminal cases, although he would do it as a personal favor. Hawthorne D. Battle mentioned a case in which Spilman was representing a public official, the aforementioned C.P. McKenna, accused of misusing a stamp machine to the tune of \$2.17. The case was before Judge George W. McClintic, a friend of Spilman's, but the judge did not believe Spilman should be involved in a case involving such a minimal amount. Throughout the trial, the judge made his disapproval known to Spilman, who finally lost patience and told McClintic that he had no right to pick the lawyer's clients. After the trial ended, the judge sent a clerk to Spilman's office to inquire why the talented lawyer had not been over to visit for several weeks. Spilman replied that if the judge wanted to visit, he could come to Spilman's office. More time passed and the judge finally relented by visiting Spilman and apologizing for his conduct during the trial.<sup>162</sup>

Spilman was not afraid to lobby, either, when he believed in the purpose. A fellow lawyer told of an instance when proposed coal legislation was pending in Congress. The legislation was designed to help the bituminous coal industry by establishing minimum prices and prescribing certain marketing rules. The coal association and segments of the coal industry were pushing for it to pass, but a considerable segment of the industry also was opposed to the legislation, contending it was economically unsound and contrary to constitutional premises. “Most of the lawyers – certainly the best of them – were of the opinion the proposed legislation was unconstitutional and about ten of us, as I now recall, prepared and signed an opinion to that effect,” wrote Landon C. Bell. Spilman was one of ten, even though his firm often represented coal companies.<sup>163</sup>

Spilman was active politically. A Democrat, he was vocal in his support of candidates, especially at the local level, but he was a respected voice in national politics as well. He was a proponent of congressional powers to regulate industries and the compulsory arbitration of wage disputes and control of labor conditions;<sup>164</sup> he believed adamantly in the need for citizens to exercise their right to vote, and those who did not do so, he believed, should have that privilege removed.<sup>165</sup>

His support of public education was unyielding. During his keynote address at the dedication of the new Charleston Senior High School in September 1926, he underscored the primal importance of a so-called “free” public education system, one he said contrasts with European and other systems because it is “essentially an American product.”

It is said that about 43 per cent (sic) of our taxes are for education, for the support of our public schools, normal schools, state colleges and university. It is evident, therefore, that there is nothing free in such a system and it is well that this is so, because it is only those things which are acquired at some cost or some sacrifice to which we attach value. So instead of our public schools being free, they are paid for by every property owner and supported liberally by his taxes. ... [O]ur government remains a republic and not a democracy – but the people rule, and must rule. It is no more possible for an ignorant people to rule wisely than for a fool to depart from his folly. And whatever may be the situation in other countries, it is, I think, perfectly clear in ours, that we shall exist as a great and free people so long only as the majority of us have the ability to think straight and the will to execute accordingly. This being so, the necessity for a liberal and enlightening system of education, available to all citizens who are entitled to share in the operation and maintaining of the government, without respect to wealth or position, is imperative.<sup>166</sup>

Access to learning was paramount, and Spilman deserves credit for attempting to make such access universal. As a member of the county school board, for example, he made a specific request to allocate \$4,800 for the library of Charleston’s black population and advocated the library’s hiring of an assistant librarian over the objections of another board member. The

number of borrowers and circulation of books from the library, he said, was remarkable and worthy of the community's support.<sup>167</sup> His decision to run for re-election to the school board in 1929 was not his own, according to a letter to the editor of the *Charleston Daily Mail* by a "Tax Payer of the City of Charleston;" rather, Spilman was doing so at the behest of his friends.

The fitness of a candidate is judged by many things, and in Mr. Robert S. Spilman, we have about all of the qualifications that could be asked of anyone. He is one of our most able lawyers, which is a great asset to the Board of Education. He is well informed on all matters pertaining to the business and educational problems confronting the Board of Education of our fast-growing city with school facilities second-to-none. Mr. Spilman, while a Democrat in politics, never lets his political faith interfere with his handling of business matters and as our Board of Education is non-partisan, this makes him all the more fitted for this important post. . . . Anyone who does not know Mr. Spilman should make inquiries of him before voting, as it is certain that everyone who knows him will vote for his re-election on Tuesday.<sup>168</sup>

Indeed, Spilman was so well known in the community by the 1930s, that his name regularly appeared in headlines as "Spilman Says" or "Spilman Supports" and in newspaper ads for radio programs: "Hear Robt. S. Spilman, Attorney" about various issues ranging from support for the Red Cross to national elections to the death of President Warren G. Harding.<sup>169</sup>

He was not afraid to take the lead on controversial or unpopular causes, including an extension of the school district to take in Charleston's south side in 1915 and, later, an attempt to change the city charter from a mayoral form of government to a non-partisan, city manager form. The latter, although supported by several leading civic groups, was derided by opponents as "the most audacious piece of ripper legislation ever presented to the West Virginia Legislature."<sup>170</sup> The charter movement failed, and the city administration against whom Spilman was fighting would remain for two more decades. Spilman, now in his mid-70s, almost certainly felt a sense of déjà vu in 1951 when he again entered the fray of a city election, this time in support of existing Mayor Carl Andrews, during a radio broadcast. Spilman's remarks bear out why he was dubbed by the *Charleston Gazette*

as “one of Charleston’s unwavering advocates of good government” and “a man of unquestioned reputation.”<sup>171</sup>

A vital consideration which must be kept in mind if we are to choose wisely, is that partisan politics has no more place in the selection of the management which is to run a municipal corporation than it has in the selection of the management of a private business corporation. ...Shall we return to office Mr. Andrews, under whose administration the affairs of this city have greatly prospered, or shall we substitute for him the representative of an organization which, during 28 years of opportunity, failed either to recognize, or, if recognized, to accomplish the many important reforms which Mr. Andrews has accomplished in four?<sup>172</sup>

One national election, in particular, caused Spilman great distress and prompted him to break with the Democratic Party: the 1940 re-election campaign of Franklin Delano Roosevelt. Not only did Spilman not support a third term for Roosevelt, but he appeared before the Independent Willkie Club of Charleston and broadcast in a nine-station radio hook-up a speech advocating that other Democrats join him in voting for Wendell Willkie. It was prompted, Spilman said, by “the presence of a great emergency” for the Republic.

It is no easy thing for decent people to break ties and to lay aside influences which have shaped from childhood our political thought and action. ... The time has come for good Democrats who hold close at heart the preservation of Democratic principles and constitutional government, to stand up and be counted. If we do less we shall not keep the faith of our fathers. ... It is entirely plain that the paramount duty of a good Democrat is to save democracy, not to perpetuate a party name. Laying aside all other considerations, this demands that we vote against the perpetuation in power of a President who has already held that office for the extreme tenure permitted under our traditions and Democratic principles. This is why every good Democrat should vote for Willkie. Our duty being clear, may it never be said that you or I or any true Democrat failed to see it and, seeing it, perform it. Unless

we do so, ours will be the responsibility, not lessened because we act under the urge of party regularity, of placing in imminent jeopardy the structure of government 'which has made this nation great and kept its people free.' Not in my day, not in your time, may this happen.<sup>173</sup>

While Spilman was a giant in the community, he was a slight man in physical stature. Soft-spoken and meticulously mannered, he wore formal attire – three-piece suits and bow ties and always was very properly dressed.<sup>174</sup> Dinners at the Spilman house were a formal affair, conducted in the dining room and served by a wait staff.<sup>175</sup>

Spilman also had a keen sense of humor. Lisa Spilman Sutphin recalled one event involving her father when she was a baby.

Mother was well known to be absent-minded. The story goes that when I was a baby, she took me to town and deposited me with some friends who ran the "Women's Exchange." She returned home without me. Father suddenly appeared and asked, "Where is Lisa?" Mother replied, "I must have left her at the Women's Exchange," to which Father said, "What did you get for her?"<sup>176</sup>

Spilman's wit also appeared in unlikely places, such as the questionnaire distributed to graduates of the University of Virginia by the Alumni Association to keep abreast of their activities. Spilman had completed several of these during his professional life. Late in his life, he dutifully filled in the blanks of the questionnaire once more, elucidating his education, family members, scientific and literary activities, war service, civic responsibilities, and church affiliations. At the bottom, the questionnaire had a small space for "Remarks."

"Uneventful lawyer's life," Spilman observed.<sup>177</sup>

His favorite relaxation was fishing. Stories of his fishing trips with his favorite companions, who included Holmes Morton and Judge George W. McClintic, were told with great relish. A frequent theme was the efforts of the others to enjoy their bourbon without Judge McClintic, a stern advocate of prohibition, discovering it. Mrs. Sutphin said her father and others on these fishing trips would "slip into the woods and take a swig or two" before rejoining the judge for dinner.<sup>178</sup>

Spilman suffered a mild stroke in November 1955.<sup>179</sup> He died on May 30, 1958.

The accolades that have been written about Robert Eden Scott Spilman, particularly after his death, are many and eloquent. Pulitzer Prize-winning editor Jack Maurice of the *Charleston Daily Mail* was a great admirer of Spilman. Anyone who read his memorial to the lawyer could conjure up a picture perfectly:

He was a thin, wiry man of boundless energy and lasting strength. It seemed for a time he was indestructible, and it comes as a shock to know that at 82 years R.S. Spilman, Sr., is gone, his career ended and his counsel stilled.

He was, by any measure, one of Charleston's and West Virginia's senior and most distinguished citizens, one of the last of a generation which combined great personal achievement with a deep sense of obligation to the public good. ... There was something of the old Roman about the man – Cato, perhaps – with his great sense of rectitude and his deep and conscientious involvement in the lives of others about him. What he believed, he believed. What he disliked, he disliked intensely. What he did, he did thoroughly. And what he said, he said with a sharpness of insight and an artistry of phrase which commanded attention. ... <sup>180</sup>

Perhaps one of the best tributes to Spilman, however, came more than a decade after his death, from Judge Hardy Dillard, a former dean of the University of Virginia Law School, Carnegie Fellow at the University of Paris, a Fulbright Lecturer at Oxford University, and a Carnegie lecturer at The Hague. During a lecture at the 1968 National Conference on Continuing Legal Education in Chicago, Judge Dillard said he wanted to speak about how to preserve the insights of the really great lawyers for the benefit of younger professionals. He would illustrate what he meant by a discussion of the two greatest lawyers he ever had the privilege to know. His legal “practice” had been confined to two summers he spent working for law firms while he was in law school. The first summer, he worked for Davis, Polk & Wardwell in New York at a time when John W. Davis was considered the pre-eminent lawyer in the United States. The other summer he worked for Price, Smith, & Spilman, where he encountered “the great West Virginia lawyer” Robert Spilman.

The encounter with John W. Davis was one-stage removed. You are all familiar, perhaps, with the Oral History program that Columbia under Allan Nevins has stimulated. It happened that I was privy to reading John W. Davis' reminiscences from early life on through, a large document, and I've seen two chapters in his projected biography. Now, it would have been a great pity to the historian if that record had been lost ...

With Bob Spilman, the instance was different. I asked him if he could give me any insights on the art of drafting contracts, and for an hour he talked about the changing ways in which the art of drafting contracts had evolved. ... [I]t would be a great pity, indeed, for our profession to lose the accumulated insights of the Bob Spilmans and the John W. Davises of our profession. ...<sup>181</sup>

Later in his speech, Judge Dillard again referred to Spilman, calling him "one of the great lawyers of the 20<sup>th</sup> century." On that assessment, there is no rebuttal.

## **Buckner Clay**

Buckner Clay had no ties to West Virginia, but when his friend, Robert S. Spilman, contacted him in Atlanta to invite him to consider joining the law firm, Clay accepted. The two met in law school at the University of Virginia, Buckner Clay having started ahead of Robert Spilman.

Buckner Clay was born December 31, 1877, near Paris, Kentucky, the fourth of six children born to Ezekiel F. and Mary Woodford Clay. The Clays were among the earliest settlers in the Virginia colony. Buckner Clay's great-grandfather, General Green Clay, was a soldier in the American Revolutionary War and served in the legislatures of Virginia and Kentucky. He later commanded the Kentucky militia in the war of 1812. Buckner Clay's grandfather, Brutus J. Clay, was a colonel in the Confederate Army. Following the war, he settled on his estate, called "Runnymede," in Bourbon County, Kentucky, and raised thoroughbred horses.<sup>182</sup>

Buckner Clay chose a different path. He was graduated from Kentucky University in 1897 and then attended law school at the University of Virginia. He was admitted to the bar at Paris, Kentucky.

Buckner Clay became a full member of Price, Smith & Spilman in 1907, expanding the firm's name to Price, Smith, Spilman & Clay. He married Juliet Staunton, who was from a prominent Charleston family, in 1916, and they had two children, Lyell and Buckner, Jr.

George Atkinson described Buckner Clay as “a young man of sound morals, high-grade integrity, well-educated and thoroughly grounded in legal principles. He is a zealous worker, a close student of sound judgment, and a careful pleader.”<sup>183</sup> He was registered Democrat, but was not interested in political office. Interested in current literature and science, he was described as “an interesting and delightful companion.”<sup>184</sup>

His was an honest, logical mind. He rarely had any difficulty in apprehending the truth in any case. His mind traveled along straight lines, and sometimes he found it difficult to follow the line of reasoning of others who were less direct. Perhaps his most distinguishing characteristic was thoroughness and carefulness in all that he did. This characteristic was shown particularly in the preparation and trial of the cases in which he was employed. There was (sic) no halfway measures with him.<sup>185</sup>

He was a member of the Charleston Public Library board of directors and served on the library committee appointed by the Charleston Board of Education. Buckner Clay also is credited with being a driving force in establishing and building Charleston's Edgewood County Club.

He and Robert Spilman worked in tandem on legal cases, going to great pains to prepare each other. If Clay had a case, Spilman would write a brief in opposition and vice versa. They prepared thoroughly and challenged each other to ensure that all aspects were covered.<sup>186</sup>

Buckner Clay became ill in June 1923 and died later that year on November 26. He was under consideration for a judgeship at the time of his death.<sup>187</sup>

In 1994, Buckner Clay's sons gifted the University of Virginia Law School with \$2 million to build the south hall, the law school's formal front entrance, in honor of their father. It is called Buckner Clay Hall.

## Edmund Caskie Harrison

Edmund Caskie Harrison was an accomplished lawyer, but, due to his brother's writings, is better known for his time as a soldier in World War I. He was remembered in a very personal way through the eyes of his brother, Henry Sydnor Harrison, an accomplished author who wrote in 1919 a book called *When I Come Back*, based on the letters Edmund wrote during his time as a soldier.

Edmund, known as "Jack," and his brother, Henry, experienced a classical and literary education and assisted their father in teaching at his school in New York. Both were born in Sewanee, Tennessee, where Caskie Harrison<sup>188</sup> was a Greek and Latin scholar at the University of the South. The elder Harrison was well respected in his field and was credited with doing "more perhaps than any other man to raise and establish the educational standards of the University." The Trustees also said that through his "energy, activity, and efficiency he contributed in many other capacities to the material, as well as intellectual, life and growth of Sewanee."

Professor Harrison went on to establish a classical training school in Brooklyn and published Odes of Horace in English verse, which was "much praised" by Henry Wadsworth Longfellow.<sup>189</sup> It is, perhaps, then no surprise that Jack, Henry, and their sister, Norvell, would be accomplished in writing and literature.<sup>190</sup>

Jack initially had a difficult time with his schooling. He enrolled in Columbia University in 1898, but in spring 1900 "owing to ill health he left college at [the] end of his sophomore year acc[ording] to his brother."<sup>191</sup> Following his father's death in 1902, Jack returned to Richmond with his mother, Margaret Coleman Sydnor, and sister.<sup>192</sup> Jack Harrison became a private tutor with a family in Richmond, then returned to school to study law in the 1905-1906 academic year. He is listed in the 1907 class at Richmond College. He passed the bar exam that same year.

It is not known how Jack Harrison decided to settle in Charleston with the law firm. He was a cousin of the wife of Robert Scott Spilman, although the family connection is unclear. Still a bachelor, Jack had the good company of his sister, called "Nora," and his mother, who moved to Charleston with him. Henry, already a successful journalist and budding novelist, joined them in January 1910,<sup>193</sup> moving to a city that by now boasted 11 banks, 15 public

schools, and 39 churches. The city was expanding to the east, and senior members of the firm were living primarily in that area, a brisk walk or a short ride from their offices, now on the fifth floor of the Coyle & Richardson Building on Capitol Street.

Jack, who joined the law firm in 1907, was described by Senator Price as someone who “brought to the practice of his profession a mind well trained and cultivated ... a fine lawyer, and before his death had attained to a well recognized standing amongst the best of the lawyers of the Charleston Bar. Some of the briefs which he had written in cases in the Supreme Court of Appeals were models in legal learning and style and forceful argument, and yet with it all he was a modest, unassuming gentleman at all times.”<sup>194</sup>

Judge C.A. Woods of the United States Court of Appeals for the Fourth Circuit said few lawyers had made such an impression on him as Jack Harrison – ability, earnestness, candor, and sympathy.

From my first acquaintance with him, I coveted the privilege of closer association and friendship. I feel that he had before him an illustrious career not only of professional success, but of usefulness and distinction as a citizen. Notwithstanding his great modesty, there was in him that magnetic quality which would make every good man aspire to better things. Really, I feel his death as a personal sorrow.<sup>195</sup>

He was a reserved man; some would describe him as, perhaps, painfully shy, a gentle man, not one to seek frivolities or insignificant interaction. A friend described him as “gentle as an old lady.”

Here was a man so averse to mere hail-fellow customs that, on the streets at home, he would often take sudden circuitous routes, just to escape a block or two of meaningless propinquity: I have known him to arrive late at his office by reason of these proceedings.<sup>196</sup>

For 10 years, Jack Harrison worked as a lawyer. Then, he shocked his family members and friends by deciding to enlist in the U.S. Army at age 35, two weeks shy of his 36<sup>th</sup> birthday – the cutoff for military service at the time.

His announcement to his family was met with incredulity and questions, particularly why he would choose to enter as a private rather than seek an assignment that would put his legal training to work. Jack Harrison's response is telling:

The departments don't need help. More people want those jobs than there are jobs for. You notice that the Judge Advocate General never advertises for men. But every billboard in the country is always reminding you: "The Army, Navy, and Marines need you." Well, I think the place to go is where they need you.<sup>197</sup>

While he was visiting some friends, he offhandedly mentioned his intentions after declining an invitation to stay the night: "I must catch No. 2, to go over to the camp and enlist."

"This action was thoroughly characteristic of Mr. Harrison," Price later wrote. "He felt it his duty to take part in the actual fight and his modesty led him to accept a private's place, whereas he was well qualified to have taken a position of command."

It was a defining moment; the shy, modest man who was known for his delicate health and gentle disposition, became a stalwart soldier, steady and true, whose letters to his family about his robust appetite and improved physicality were beheld in wonder and bemusement. He also hid his education and profession from fellow soldiers.

In the first days at the Virginia camp, he was sounded on the matter of a clerk's job, a snug berth doubtless; he evaded it, denying on the direct inquiry that he was fitted for such work. To the first lad who asked him what he did at home, he admitted his lawyership, but he instantly regretted that damaging confession, and his reply to subsequent inquiries was that he 'did office work,' and, if pressed, 'worked in a law office.'<sup>198</sup>

Jack Harrison maintained throughout his correspondence with his brother that he was far from the serious fighting and certainly removed from danger. As it turned out, that was completely opposite of the truth.

The volunteer who had once ‘worked in a law office’ had, of course, his small duty to discharge. He was now, as he had noted a few weeks earlier, ‘mostly a telephone man.’ It was the function of the telephone detail to set up and operate the battalion switchboard and maintain the lines which fed it. ... [T]here was the fact, not mentioned by the writer, that existing lines, when destroyed by fire, must at all hazards be re-established immediately. So it happens that the duty of the telephone detail often leads it where the shells fall thickest.<sup>199</sup>

Harrison, described as a faithful friend, beloved comrade, and noble spirit by his law partners, was killed on November 1, 1918, in Argonne Forest, near Cunel, France, by shrapnel from a German high-explosive shell. His body was buried in a small American Military Cemetery near Romagne.<sup>200</sup> His death came 10 days before military combat in World War I was declared at an end.

For those of us in the 21<sup>st</sup> century, that may appear to be the end of the story. But Henry Sydnor Harrison and sister Nora deemed otherwise. First, they established the Edmund Caskie Harrison Fund in connection with St. John’s Episcopal Church “for the relief of sickness in the City of Charleston.” The fund still exists and continues to provide help for those in need.<sup>201</sup> They also labored for more than two years to arrange for Jack Harrison’s remains to be returned to his homeland. And so, after being buried twice in France, first in a temporary grave and then in the impressive and immaculate American Cemetery where row after row of identical white crosses bisect the rich green lawn, Jack Harrison’s remains were shipped back to the United States. He arrived in the port at Hoboken, New Jersey, in July 1921.<sup>202</sup> Henry Sydnor Harrison accompanied his brother’s remains on the train south to his final resting place – a “family cemetery” in Richmond, Virginia.

Henry spoke reverently of his brother:

I tell this story, not as a record of achievement, but rather as a tale of a lamp set on a hill. All his life, by the secret springs that make men what they are, this man sought to do well inconspicuously. But his gift was always rather too big for that; the bushel could never quite hold the light. And in the end, as I see it, his exposure was dazzling and complete.

Deliberately imposing obscurity upon himself, he found it impossible to remain obscure. Having performed the feat of becoming a soldier, he became an example to soldiers; what impelled him to volunteer once impelled him to go on volunteering – ‘always the first;’ and when he died, among a thousand gallant deaths, his death was memorable and distinguished. But I see no change here, no revelation. Devotion to an ideal of magnanimous behavior, not conditioned or qualified by the smallest regard for himself, had marked this man throughout his life; and if he won the love of young soldiers in a camp or a pit, he had been not less blessed in more familiar surroundings. His great exploit at the wars was only this: that he kept on being himself.<sup>203</sup>

Edmund Caskie Harrison's grave is in Shockoe Hill Cemetery. It is adorned by a plain, gray sandstone cross.

## **T. Brooke Price**

Thomas Brooke Price left West Virginia to seek an Ivy League legal education. He became an editor of the *Harvard Law Review*. After graduation, Price joined a New York law firm.<sup>204</sup> But a promise from his father, the estimable George E. Price, for a partnership in the family law firm brought him home for a while.

T. Brooke Price was born August 31, 1890, in Keyser, Mineral County, where his family had moved in 1875. His father had been elected to the West Virginia Senate in 1882 and moved his family to Charleston soon after Brooke Price was born.

Brooke Price grew up in a house at 1119 Virginia Street. He had three brothers, Edmund, Richard, and George. His daughter, Caroline, remembers being told that her father was somewhat frail as a child and that he was bedeviled by his two older brothers. He attended Charleston schools and was graduated from Charleston High School in 1907.

He attended Hampden-Sydney College, a school in Virginia and transferred to Johns Hopkins University in Baltimore and apparently entered as a freshman. He clearly took his legal studies and work very seriously, but he had a quirky sense of humor. He lived with relatives while in school, and he contributed to his support by singing in minstrel shows.<sup>205</sup>

He earned his law degree from Harvard University in 1915 and subsequently worked at Winthrop & Stimson in New York.<sup>206</sup> He returned to West Virginia, but the war caused him to join the U.S. Navy in 1918. When he was to sail from New York to serve his sea duty, he came upon another Charlestonian, David M. Giltinan, Sr. Giltinan was accompanied by his wife-to-be, Elsie Q. Smith, who, in turn, was accompanied by a friend, Caroline B. Ward.<sup>207</sup> Price, a tall, slender young man with light brown hair and hazel eyes,<sup>208</sup> was smitten with the beautiful and elegant Caroline. He served as an ensign and lieutenant on the U.S.S. *O'Brien* and U.S.S. *Benham* at Queenstown, Ireland, and Brest, France.<sup>209</sup>

When he returned home, he and Caroline courted and were married January 24, 1920. They had three children: Edwin in late 1920; Anne in 1925; and Caroline in 1930. Charles Ward built them a large house above and facing on Lower Ridgeway Road in Charleston,<sup>210</sup> and the family lived there until they left the city in 1936. American Telephone & Telegraph Company, impressed by some work Price had done for them, wooed him to come to work in New York. Initially, he was the counsel to Western Electric, a subsidiary. For a year he lived in the New Weston Hotel and returned to Charleston by train on weekends.<sup>211</sup> His mother was very ill, and Caroline stayed in Charleston to take care of her. After Mrs. Price died in 1937, the family moved to Morristown, New Jersey. His daughter said he missed Charleston and became more serious in his demeanor. Every morning Price walked to the train station to catch the 8:20. In the evening, his secretary would call and tell Mrs. Price on which train Price would be so that someone could meet him. He also maintained his membership in the West Virginia Bar and the West Virginia Bar Association even after his move to New York.

Price served as general counsel for Western Electric for several years, then moved to the parent company, AT&T. He was vice president and general counsel of AT&T from 1951 to 1955. One of his significant accomplishments during the years he served as general counsel to AT&T was working out the consent decree with the Justice Department that held off the breakup of the company until the 1980s. His daughter, Caroline, recalled this:

I think the lawyers who worked for him found him mostly terrifying, at least some of the time. One man told his wife (who wrote my mother), 'He looks as if he was weaned on a pickle but he's really a sweetie.' That's a good description. Among other things he was known for a clear and elegant prose style, which contributed to his success as much as the clarity and quickness of his mind.

I certainly found him terrifying at times. But he was also entertaining and funny, told stories, and sang songs. He was a man of simple tastes, unpretentious, utterly dependable. He was always gentle and understanding with his children when they needed him. And he was a model of integrity and honor.

He loved Spike Jones records, reading, and walking. He never stopped buying books and never gave any away. He was a fast reader and memorized easily, and never tired of complaining about the poor quality of his children's education because we could not recite 'The boy stood on the burning deck!'<sup>212</sup>

Robert Spilman deserves at least some credit for the path of Price's life. A proposed "electrification" of the railroads in Virginia and West Virginia prompted AT&T to hire Spilman to challenge the plan. The telephone company's contention was the railroads' electrification would injure telephone lines, which often ran parallel to the railroad tracks. Spilman gave much of the work involving the case, which had national implications, to Price because the latter was much quicker at digesting technical, scientific documents related to the case. As noted, the company was so impressed with Price's work, it offered him a position.<sup>213</sup>

Price also was among those tapped to serve on the commission to revise the State Code of West Virginia in 1931. He served as secretary of the group.<sup>214</sup> Hawthorne D. Battle had a succinct description of Price when he was pointing out a photo to young associates: "He looks efficient, and he was efficient."<sup>215</sup>

The older lawyers in the firm had an immense respect for Price, based on their experiences of working with him and, as well, because he had "gone out into the big world," and achieved great success and recognition. The firm carried Price's name on the letterhead as "Of Counsel" or "Associate Counsel" for many years, perhaps on the theory that he might some day return to practice with the firm.

Charles B. Stacy recalls meeting Brooke Price once, when he was in Charleston in the 1950s. Stacy remarked, "He was an impressive man in appearance, and very courteous. He was working on his own estate plan and, although AT&T has several lawyers, there was, understandably, no one who had any knowledge in the estate planning area, particularly regarding the federal estate tax."

Brooke Price did return to the state in 1954 to address the West Virginia Bar Association about “The Abuse of Discovery Procedures,” a speech for which he received noted acclaim.

My interest in the matter has been heightened by the contrast between the complicated and burdensome proceedings I now see and the trial procedure with which I was familiar in my earlier years of practice here in West Virginia. In those days, litigation proceeded by methods that were simple, brief, and effective. Most cases were promptly disposed of, win or lose, and clients got answers to their opposing contentions.

In actions at law, pleadings were simple, even rudimentary, and, in a matter of weeks or a few months, without preliminary maneuvers, the case could be tried and disposed of. On the chancery side the bill and answer were more elaborate and things moved somewhat less expeditiously, but usually counsel went promptly to work presenting the testimony of their own witnesses and cross-examining those of the other side. ... How far these conditions prevail and those methods are followed today I should not presume to say. I do not contend that they were the best methods or could be applied effectively in other places or with litigation of a different character. I recall them only for the contrast they present to the picture I wish now to present to you and for the emphasis they give to the doubts and questions that have arisen in my mind over the way in which some courts are functioning and some cases are being handled today.<sup>216</sup>

Price died in 1977 after a series of strokes. He is buried in the Mountain View Cemetery in Charleston.

At one time, there was a substantial collection of firm letterheads covering many years, but the file was lost or thrown away. The lost file also contained the minutes of a firm meeting at which Brooke Price was appointed Secretary, as the youngest partner present. He and Buckner Clay presented a strong argument that the firm had grown and, as a result, needed more structured organization. One new practice was to take minutes of meetings to ensure a record, as well as clarification, of decisions made. The minutes were in Price’s handwriting, probably to keep them from being dictated to a secretary and, thus, to keep them private.<sup>217</sup>

Hawthorne Battle recalled that Brooke Price had, as noted earlier, married Caroline, the daughter of Charles Ward and Gypsy Fleming. The Wards had another daughter, Margaret, who married Robert E. McCabe. Ward built for them a large house near his own on Staunton Road in Charleston. Battle said that one day he returned to the office from lunch and mentioned to Price that he had seen Price's brother-in-law.

Price replied, "Who's that?"

"Bob McCabe," Battle said.

"Humph!" Price said. "Not *my* brother-in-law! My *wife's* brother-in-law."

## David C. Howard

David C. Howard was born on January 3, 1889, in Dodge Center, Minnesota, the oldest of two children born to John Howard and Alice Fairbanks Howard. He attended public schools and earned his A.B. degree from Carleton College in Northfield, Minnesota, in 1910.

Howard attended Harvard University, where he received a Master of Arts degree, then went on to Harvard Law School, receiving his law degree in 1914 with a distinguished record. At college and during his post-graduate and legal courses he made a mark as a debater and public speaker, and he served as a coach for the Harvard University debating teams. In law school, he made it to the final round of the Ames Competition, the "most coveted reward for excellence in forensics and moot Court work."<sup>218</sup> He came to West Virginia to be an associate professor at West Virginia University's College of Law, where he advocated advanced education standards and worked to increase the institution's prestige. In 1917, he joined Price, Smith, Spilman & Clay, but he remained active in the academic community, contributing articles to a number of law periodicals and lecturing about taxation at the Michigan Law School and WVU. He also served as a trustee of the Edmund Caskie Harrison Memorial Fund.<sup>219</sup>

Colleagues and acquaintances credited him with a brilliant mind, and he reputedly could dictate a legal brief or document almost perfectly on the first attempt.<sup>220</sup> *The Harvard Report* described him this way:

He developed a skilful (sic) technique in presenting cases to the officials of the Bureau of Internal Revenue and the legal organization of the Treasury Department, and achieved a

brilliant record in handling the many controverted points arising under the tax laws. His services were soon in demand as a counselor in financial matters and an associate of other lawyers in transactions involving questions of taxation. At the Michigan and West Virginia University Law Schools he was chosen as a lecturer on Federal taxation.<sup>221</sup>

He set legal precedent when he was working on a case involving the estate of John Q. Dickinson, establishing that an individual could give away his estate in contemplation of death. Hawthorne D. Battle referred to Howard as a “tax genius.” Most of his legal work was related to the oil and gas industry.<sup>222</sup>

Howard’s personal life was marked with tragedy. He married Edith Goodrich on August 22, 1916. She died two years later on October 5, 1918. Howard was married again on August 8, 1926, to Virginia Hoff, a society editor at the *Charleston Gazette*. That marriage ended in divorce a short time later.

Howard lived at Summit, Lincoln County, West Virginia, which was, at that time, a generous commute to Charleston. He died September 2, 1931, of injuries he suffered in an automobile accident near his home. He was 42.

## **Frederick L. Thomas, Sr.**

Frederick L. Thomas was the second longest serving member of the law firm, behind Robert S. Spilman, Sr. He joined the law firm in 1919 and continued there until his death in 1969 – the same year the law firm lost Robert S. Spilman, Jr.

Thomas was born in Lansing, Fayette County, on June 14, 1892, the son of Ulysses Grant Thomas and Cora Alice Calloway Thomas. He attended West Virginia University, where he was a sergeant in the Cadet Corps. He served as a lieutenant in the U.S. Army in World War I.<sup>223</sup> His interest in the military remained with him throughout his life. Thomas was the appeal agent for the Kanawha County Selective Service, a post he held for several years, and a member of the Army and Navy Club of Charleston.

He attended West Virginia University Law School where he excelled academically, becoming a member of the Order of the Coif and the Phi Delta Phi legal fraternity. He was graduated from law school in 1917 and put his legal training to use by joining the legal department of United Fuel Gas Company.<sup>224</sup> Two years later, he joined Price, Smith, Spilman & Clay, where he worked closely with Robert Spilman, Sr. The two became close personal friends.<sup>225</sup>

He married Leafy Woofter, whom he met in high school, on December 24, 1917. They had three children, Virginia, Frederick, Jr., and Robert S., who was named for Robert Spilman, with a middle name of Simpson from the Woofter side of the family.<sup>226</sup>

Thomas was married to his work and rarely took vacations. Charles Davis, the firm's office manager, went to the post office two times each day to pick up mail. Virginia Thomas remembers her father returning to the office on many evenings to check the afternoon mail.<sup>227</sup>

He also was a member of the Lotus Club, a group "of young barristers, possessing like ideals and homogeneous sympathies, tastes, and ambitions who meet fortnightly in informed seriousness to improve their mode of expression and to augment their store of knowledge by an interchange of contributions."<sup>228</sup> Another soon-to-be member of the firm, John J.D. Preston, also was a member.

Much of Thomas's legal work involved corporations such as AT&T and DuPont, and he often represented them in issues before the state Public Service Commission. One labor dispute, in particular, was a highly publicized and highly charged event – the DuPont Belle Works strike of July 1948. At issue was union representation for workers at the plant. Workers went on strike on the morning of July 12. Picket lines formed, rail service and riverboat service at the plant were threatened, and violence broke out. State Police were brought in, and the battles in court ensued. The Governor's Office was forced to get involved in the dispute. It was a national story. The atmosphere inside and outside the plant, and in the courtroom scenes, was electric for the entirety of the 12-day strike.

In a History of the Belle Works Strike compiled by the law firm, it notes that a bulletin from the U.S. Chamber of Commerce called attention to two important developments in labor relations cases stemming from the Belle Works situation:

- (1) The power of Congress, as set forth in the Taft-Hartley Act, to require registration by labor unions as a condition precedent to their use by the National Labor Relations Board processes, has been sustained by the United States Supreme Court. This particular section previously had been upheld unanimously by a lower three-judge federal court. The right of Congress to require the filing of non-communist affidavits by unions has been upheld in the

lower federal courts but this particular point has not yet been passed upon the United States Supreme Court. This naked issue is expected to reach the high court shortly in several cases now pending. It was the failure of the United Mine Workers to comply with either or both of these provisions of the Taft-Hartley Act which rendered that union ineligible for consideration in the du Pont (sic) election held in June, out of which the recent strike situation was developed. ...

(2) Restrictions on compulsory unionism, as imposed by state law, are attracting wide attention. Section 14 of the Taft-Hartley Act permits states to apply, within their respective areas, more stringent rules against compulsory unionism, than the provisions of the Taft-Hartley act, if their respective legislatures see fit to impose them. These more restrictive state laws usually take the form either of a complete ban on all or several kinds of compulsory unionism or they can be simply a more restrictive control of the union shop than is now found in the federal law. A Colorado statute offers a fair example of the latter. This statute requires voting approval by three-fourths of the employees before a union shop can be legalized.

Thomas and Hawthorne D. Battle handled much of the legal work and advised the company; papers and court documents describing the event are vivid and disturbing. Once it was over, a member of the law firm took the time to apply some humor by producing a lengthy poem detailing the progression of confrontation and violence. The somewhat satirical and whimsical account ends:

Now the controversy's ended,  
 But du Ponters aren't forgetting  
 How the Belle Works was defended  
 When the miners had us sweating;  
 And they oft' will be repeating  
 Through these hollers, West Virginian,  
 How the strikers took a beating  
 (Or, at least, that's my opinion).<sup>229</sup>

Thomas, a Republican, also served as president and a director of Midvale Collier Company and a director of Crab Orchard Coal and Land Company. He served as a member of the West Virginia Public Assistance Council from 1933-1936 and, in 1934, was chairman of the Kanawha-Clay Chapter of the American Red Cross.

He was a “farm boy” at heart, and he “often said he came to the city to make some money so he could go back to the country,” his son, lawyer Frederick L. Thomas, Jr., said. “He had a farm that belonged to my grandfather, and he enjoyed farm life in his retirement. . . . He also had a real country sense of humor. He was pretty well liked by everyone.”

Frederick L. Thomas, Sr., died in Charleston on September 9, 1969.

## **John J.D. Preston**

John J.D. Preston was born in Lewisburg, a member of the well-known Preston family that lived there for many generations. The son of John A. and Lilly Davis Preston, he was born December 1, 1892. He was named for John J. Davis, a prominent lawyer, legislator, and businessman of Clarksburg. He was a cousin of John Hornor Davis and James H. Davis, III, who later was a partner in the firm.

Preston attended the Greenbrier Military Academy, then attended Washington and Lee University, where he was graduated in 1913 with his bachelor's degree and in 1917 from the law school. He was a second lieutenant in the field artillery in World War I. Following his military service, Preston joined the firm in 1920 and was named a partner in 1930. Like Frederick L. Thomas, Preston was a member of the Lotus Club and is listed as “temporary chairman” on the club program of the annual banquet held at the Ruffner Hotel in Charleston in 1924.

In 1933, he withdrew to become chairman of the West Virginia Public Service Commission. He also went into practice with his cousin, J. Hornor Davis, to form Preston & Davis. James H. Davis, III, and William B. Maxwell, III, also were members of that firm who later joined Spilman.

An accomplished lawyer, Preston later served as the city solicitor of Charleston. He was known for his good sense of humor. One anecdote involved the size of cubicles in the men's bathroom on the eleventh floor of

the Kanawha Banking & Trust Building, which were described as “clearly designed for a race of midgets.” Preston drafted a detailed complaint against the bank, alleging damages and requesting restitution and remedies to alleviate the situation, and then “served” the document on the bank. Members of the firm had great enjoyment from the event, but no action resulted. The bank took the position that it was up to the firm to alter the amenities.<sup>230</sup>

Preston married Agnes Young Noyes on June 9, 1943. He died ten years later on February 14, 1953.

## Edgar J. Goodrich

If David Howard established the law firm as having a solid reputation in the taxation field, Edgar J. Goodrich became one of the leading authorities in the state on the topic. (Howard was married to Goodrich’s sister.)<sup>231</sup> Goodrich’s association with the firm lasted only eight years, but his reputation in the taxation field went beyond state borders. He left to become a judge on the United States Board of Tax Appeals in Washington, D.C.

Goodrich ultimately embarked on the practice of law in Washington following his stint on the Board of Tax Appeals, becoming the principal Washington partner of Guggenheimer & Untermeyer, a New York law firm. He authored the first edition of the ALI-ABA monograph on “Practice Before the Bureau of Internal Revenue,” for many years the only work on the subject.

Edgar J. Goodrich was born at Anoka, Minnesota, on November 15, 1896, the son of George Herbert Goodrich and Mary Ann (Funk) Goodrich, according to *West Virginia Today* published by the West Virginia Editors Association. Goodrich received his Bachelor of Law degree from the University of Iowa in 1922, although World War I and stints in the military interrupted his formal education for some years. Goodrich was an active thespian throughout his college years. College yearbooks picture and mention him in several productions and numerous extracurricular clubs.<sup>232</sup>

In 1922, he married Beula E. Lenfest, whom he brought to Charleston. They had three children: George Herbert, Mary Alice, and Charles Lenfest. Goodrich joined the firm as an associate specializing in federal and state taxation. He was admitted to the Bar in Iowa and Minnesota in 1922 and in West Virginia in 1923.<sup>233</sup>

Goodrich became active in Republican politics and was one of the organizers of the Union League of Kanawha County, a Republican group formed in 1931 to promote the party and its agenda. Goodrich told the *Charleston Daily Mail* that the group was to fulfill a desire for “new blood.”

“Several members of the present organization (GOP) heretofore have been identified with the various elements of the party and it is the purpose and hope of the league to harmonize the factional differences now existing in the party, and by uniting the factions to give strength to the party,” he said.<sup>234</sup>

Within a few months, Goodrich had been tapped by President Herbert Hoover to become a member of the 16-member U.S. Board of Tax Appeals in Washington. He was endorsed by former U.S. Senator Nathan Goff and Senator Henry D. Hatfield, both of West Virginia, and W.S. Hallanan, a national Republican committeeman from West Virginia. He also was recommended to the post by the American Bar Association.<sup>235</sup> *The Charleston Gazette* congratulated Goodrich, calling him “a lawyer of high standing who has made a study of income tax questions ... a gentleman of character and honor. Charleston loses a bright, rising lawyer, with many friends and admirers; but the judicial branch of the income tax administration will gain a competent and conscientious member.”<sup>236</sup> The firm wished him well, and he was feted with a “stag dinner” at Edgewood Country Club by several friends, including the members of the law firm.<sup>237</sup>

When Hoover lost the election to President Franklin D. Roosevelt in 1934, Goodrich resigned. President Roosevelt congratulated Goodrich for his “high character of public service.”<sup>238</sup> Goodrich then accepted a position with the New York firm Untermeyer-Guggenheim, and he subsequently sought membership in the Washington, D.C., Bar.<sup>239</sup>

His son, George Herbert Goodrich, a judge of the Superior Court of the District of Columbia, said his father was active in the American Bar Association and served on its Judicial Selection Committee. He also was active in the local bar associations and an active member of the American Law Institute. In the 1950s, Goodrich also served as president of the Board of Directors of Friendship House, an organization that assisted needy families. A large part of Goodrich’s legal philosophy was that lawyers had a duty, where possible, to assist the less fortunate members of society on a pro bono basis – a belief that, according to his son, made the law a profession and not a business. Goodrich died on April 5, 1969, in Washington, D.C.

It is possible that one of the reasons Goodrich and John J.D. Preston left the law firm in the 1930s stemmed from effects of the Great Depression. Business slowed considerably following the 1929 stock market crash, and the size of the firm decreased.<sup>240</sup>

The law firm in 1930 consisted of George E. Price, Harrison B. Smith, Robert S. Spilman, John M. Woods, Arthur B. Hodges, T. Brooke Price, and David C. Howard. Associates were John J.D. Preston, Frederick L. Thomas, Edgar J. Goodrich, Hawthorne D. Battle, and Jackson D. Altizer. Their clients included Kanawha Banking & Trust; Westmoreland Coal Co.; Boone County Coal Corp.; Raleigh Coal & Coke; Clifton Oil & Gas; Sharples Solvents Co.; Barium Reduction Corp.; Viscose Co.; Lewis, Hubbard & Co.; George Washington Life Insurance; National Supply Co.; Oil Well Supply; and Fairbank Morse Co.<sup>241</sup>

Within four years, with the departure of Goodrich and Preston and the death of David Howard, the law firm listed its members as: George E. Price, Harrison B. Smith, Robert Scott Spilman, John M. Woods, Arthur B. Hodges, T. Brooke Price, Frederick L. Thomas, and Hawthorne D. Battle. Associates were Jackson D. Altizer and Robert S. Spilman, Jr.

## **Hawthorne Dill Battle**

Hawthorne Dill Battle's nickname fit his deep southern "Tidewater" drawl. Called "Honey" by a family servant when he was a child, the name stuck. But he could be anything but a "honey" when hard questions needed to be answered, and he was as formidable an adversary as he was a staunch ally.<sup>242</sup> A lit cigarette perennially hanging from his lip, Honey Battle was no pushover, and he was blessed with intelligence, integrity, and a marvelous sense of humor. He was a memorable figure dedicated to his work, his family, and his community, and he liked nothing more than outdoor pursuits – hunting, gardening, and, especially, fishing.

"Hawthorne Battle brought to the practice of law and his other endeavors many exceptional qualities. Every task was approached with impeccable integrity, sound judgment, unique and exceptional legal skills, keen wit, and good humor," memorialized the West Virginia Bar Association.

"Hawthorne Battle was a distinguished member of this bar. Those who had the privilege of practicing with him, as advocate or adversary, will remember his tireless energy, attention to detail, and his dedication to the

practice of law and to the integrity of the bar,” said Frederick L. Thomas, one of his law partners.

Hawthorne Battle was born in Petersburg, Virginia, on December 15, 1901, the son of Henry Wilson Battle, D.D., a minister of the Baptist Church, and his wife, Margaret Stewart Battle. In 1906, the family moved to Greensboro, North Carolina, and in 1910 to Charlottesville, Virginia. Henry Wilson Battle's father was a lawyer in Alabama and served as a Confederate General during the Civil War. Battle had three brothers: John Stewart Battle, born in 1890; Henry Wilson Battle, II, born in 1892; and James M. Battle, born in 1900. John was a lawyer in Charlottesville and later served as Governor of Virginia from 1950 to 1954. Henry was a chemist in Louisville, Kentucky. James was an insurance executive in Seattle, Washington.

Battle also had two sisters: Florence, born in 1894, and Emily, born in 1896. “Florrie” was superintendent of primary education for the State of Connecticut and an author of children's books. Emily was married to J. Edwin Wood, II, M.D., a cardiologist on the medical faculty at the University of Virginia.

Honey Battle received his law degree from the University of Virginia in 1924, where he was a member of the Board of Editors of the *Virginia Law Review* and was elected to Phi Beta Kappa and Order of the Coif. Battle said he was recruited to the Charleston firm by Robert S. Spilman in 1924. As was the case with most of the young lawyers with the firm at the time, he received experience in all areas of the firm's practice, including real property, commercial law, taxation, trials, and appeals. He became a partner in the firm July 1, 1931, along with John J.D. Preston and Frederick L. Thomas.

He married Martha Julia Thomas of Charleston in 1929. They had four children: Hawthorne Dill Battle, Jr., who died in 1947; George Thomas Battle, a partner in the firm; Henry W. Battle III, and Martha Battle Stathers. His grandson, Hawthorne Dill Battle III, is a partner of the firm.

Honey Battle's stint with the law firm was interrupted in 1942 when he enlisted with the U.S. Navy, even though he already was 41 years old. He served as a lieutenant until his discharge in 1945. He served as the firm's “Office Manager” for five years before taking his military leave. After his return, he and State Senator J. Hornor Davis combined their talents in 1946

to draft and secure enactment of legislation permitting joint city-county health departments; they persuaded the City of Charleston and Kanawha County to organize the combined Kanawha-Charleston Health Department. Battle subsequently served as the first president of the combined Health Department.

Battle took another leave from the firm in the 1950s. He had acted as counsel for the Charleston interests of the Tierney family of Bluefield. Lewis Tierney moved to Charleston and organized WCHS-TV, Inc. Upon Tierney's death, Battle was asked to take over as president of the television station. He spent several years as the chief executive of the television station, the radio station, and its affiliates. When he negotiated a favorable sale of the station in 1960, he returned to the law firm.

His wit and humor are legendary, and many tales about him have been passed down through the years, including one that occurred while Battle was in the Navy. He was on a hotel elevator with his good friend General "Hank" Everest, and they planned to get together for a drink. As he got off the elevator, General Everest said, "I'll see you in your room, Honey; I'll bring the whiskey." Not surprisingly, this raised the eyebrows of the other occupants of the elevator.

Charles Stacy recalls a favorite event involving Battle's deep Virginia accent, when he overheard Battle's exchange with a secretary. She had typed Battle's dictation and returned it to him. She was subsequently called into his office and was heard to say in a pleading voice, "But Mr. Battle, that's what I have, a-s, *as*."

Battle: "Dammit, cain't yew spell, *as*, dammit, *as*!?"

Secretary: "But Mr. Battle, that's what I have, a-s, *as*."

After this sequence was repeated a couple of times, with rising volume and heat, finally Battle said, "Dammit, cain't yew spell 'as,' *h-e-i-r-s*!"

The younger lawyers in the firm at the time had nothing but respect for Battle, who served as associate supervisor in 1974 as a valued partner. He treated associates and summer clerks as if they were his children. Although tough, demanding, and critical, an associate learned from the interrogation. If the thinking was sloppy, Battle was merciless. He had his own ideas about punctuation, which he understood clearly was intended to promote

clarity of expression. An associate had to be prepared to defend a position with Battle. With a twinkle in his eye, he would relent and say he agreed with the associate's position: he just wanted to see what the associate had to say about it.

For Honey Battle, Robert S. Spilman was the greatest of lawyers and men. Both shared a deep belief in the importance of quality writing, clear writing, writing as a craft; they also believed in service to the community and to the bar, and of personal and firm integrity. They were like-minded. If one worked hard and worked to his best ability, the rewards, monetary and otherwise, would follow. In his later years, Battle would have a session with the young associates just joining the firm to point out the photos of each of the firm's early founders and members; he would tell stories and anecdotes about each. He wanted the legacy of the firm and the reputations of the early members to pass to the next generation.<sup>243</sup>

His propensity to express his opinions was marked during an address to the West Virginia Bar Association at its 74<sup>th</sup> meeting in 1958, when Hawthorne Battle was president of the organization. He devoted his speech to "A Curse on Lengthy Judicial Opinions."

"We live in an age of efficiency and streamlining, yet we have steadily sunk deeper and deeper into the abyss of judicial verbosity," he lamented at the beginning of his speech. He concluded it a relatively short time later "lest you invoke a curse upon lengthy speeches discussing 'A Curse Upon Lengthy Opinions.'"<sup>244</sup>

A speech he made 10 years earlier to the same group began with another example of his famous wit:

I think your President fixed my time on the program (Saturday morning) with some malice. Apparently, he thought that after the sociability of last night a talk about wills and trusts would have a sobering effect upon you; and I, having spent last night on the train, admit I talk to you about death and estates with a kind of satanic vindictiveness actuated entirely by envy.<sup>245</sup>

Hawthorne Dill "Honey" Battle died on December 11, 1984.

## Judge John M. Woods

John M. Woods was, by all accounts, a forthright, honest, and conscientious person, and a devoted scholar and student, all good qualities for a lawyer and for the judge that he later became.

Known by two nicknames, “Slim” during his famous athletic days at Washington and Lee University, and “Mike” to his friends, John M. Woods was, perhaps, destined to become an authority figure.

He was born November 1, 1869, the son of F.M. and Julia M. Woods, in Stafford County, Virginia. His early school consisted of one year of tutoring from his father, and then a few years at a private school in Martinsburg, West Virginia. He then attended Pantops Academy near Charlottesville, Virginia. He spent his freshman year at Washington and Jefferson College in Washington, Pennsylvania, taught at a private school in Martinsburg the next year, and enrolled in Washington and Lee University Law School at Lexington, Virginia, in 1890. In addition to studying law, he also had classes in modern languages and English, mathematics, natural philosophy, geology, and biology, and was a member of the Washington Literary Society. Woods was graduated with a bachelor of law degree in 1892 along with 23 classmates, including two others from West Virginia.

Again taking a role of authority, Woods then taught for two years, two hours a day, at the Potomac Academy in Romney, West Virginia. While there, he was admitted to the bar.

He and Colonel Robert W. Monroe joined to create a law firm in Romney on March 1, 1893, and it remained so for three years. Then, he returned to Martinsburg to go in partnership with J. Nelson Wisner, forming Wisner and Woods, but only for a year. In April 1899, he formed a partnership with Senator Charles J. Faulkner and the Honorable S.W. Walker to create Faulkner, Walker and Woods. He also served as the Berkeley County prosecuting attorney for 10 years. His partnership with Faulkner remained until January 1, 1913, when Woods became Circuit Judge. Atkinson describes Woods as “a successful practitioner and an able trial lawyer.”<sup>246</sup>

In 1924, Woods ran for a seat on the West Virginia Supreme Court of Appeals, but was unsuccessful. Charles Stacy was told that Woods was a friend of Senator George Price, and the senator induced Woods to become a partner in

the Charleston law firm. As a young college student, Woods was handsome with a wide forehead, prominent cheekbones and a shapely, trimmed mustache. Stacy remembered Woods as a “tall, scholarly, courteous man” who spent most of his time in the library on the 10<sup>th</sup> floor of the Kanawha Banking & Trust building conducting research about law and producing carefully considered opinions and memoranda.

Woods also was an accomplished athlete at Washington and Lee. In the mid-1950s, the elevators were being replaced in the KB&T Building, and members of the law firm had to walk up to its offices on the 10<sup>th</sup> and 11<sup>th</sup> floors; Woods was said to set a pace at the street level and never slow or falter all the way to the top.

In the early 1920s, Woods gained national prominence while he was presiding over treason trials in Charles Town, West Virginia. Several United Mine Workers members, including William Blizzard, were charged with inciting an insurrection with an armed march on Logan County. The trials, of which there were only a few involving treason up to that time, were moved to Jefferson County on a change of venue motion. Both sides of the controversy recognized Woods for his fairness and the way he conducted proceedings. At one point, Woods overruled a motion for a directed verdict of one of the defendants in the treason trial. The remarks he made reveal his depth of character and wisdom:

The American people are very human – just like other people. We have parties, we have classes, we have too much of it. We have people that accentuate incidental differences of that kind, and we have conflicts. We have industrial conflicts. We have trouble between capital and labor, and the main design on both sides very often seems to be to inflict so much suffering on the body politic that it will rise up and take sides, one way or the other.

People go too far, allow themselves to be carried too far by their passions and by their selfish interests. They take a too narrow view of things. They are not concerned for the general welfare so much as for the welfare of themselves and their own particular class and it often betrays them into excesses. They cannot expect, when they allow themselves in their excitement and in their resentment

– sometimes resentment against conditions that are not right, [although] justifiable to some extent – but when they allow themselves to be carried beyond the limit set by the law, they cannot expect the long suffering public all the time to sit by and let them carry on that way. The public, generally – not one class, not two classes, but all the classes, the great body politic – is mostly concerned with the proper enforcement of the law and the proper regard for the law on the part of all citizens and nobody has the right to forget that primarily he is a citizen of his state and a citizen of the United States, and that he owes his chief allegiance to those two sovereigns, and that he must obey the laws that his people as a whole have made. And if he is not satisfied with those laws or the way they have been enforced, he must not carry fire and sword among the people and try to remedy conditions by the destruction of the lives of those within the protection of the laws of the state or by threatening the peace of the state, and bringing terror to the hearts of the citizens of the state.<sup>247</sup>

Woods also was appointed as a hearing officer for the area to determine the status of “conscientious objectors” under the Selective Service Act. For this, he received no pecuniary compensation, but he took the position very seriously. With his authoritative knowledge of the Christian Bible, he devoted many hours to study further articles of faith and facets of the many religions around the world.

He was able to lend a sympathetic ear to the claims of the true conscientious objector, notwithstanding that he was an ardent supporter of the war effort and had suffered a grievous personal wound when a nephew, John Mitchell Bacon, whom he had reared from childhood, lost his life in a bombing raid over Germany. On the other hand, his knowledge of the subject enabled him to ferret out the ‘pretenders’ who invariably knew less about the tenets of their faith than did Judge Woods.

Woods retired in 1956 because of failing eyesight and went to live with a daughter in Coral Gables, Florida. He died there on May 5, 1966.

## Robert S. Spilman, Jr.

Robert Scott Spilman, Jr., was a “deep thinker.”<sup>248</sup> He took after his father in that respect. The Spilman Center, central headquarters of Spilman Thomas & Battle, is named for both Robert Spilman, Sr., and Robert Spilman, Jr.

The younger Spilman, “Bob,” was born January 6, 1908. He was a good student and active in the community. He stayed active playing tennis at Edgewood Country Club and became quite proficient. He followed in his father’s footsteps, attending Virginia Military Institute, from which he was graduated in 1928. He joined the Kappa Alpha fraternity, a legacy of his father. He next accepted a professorship at VMI to teach American History. Bob Spilman then elected to attend Harvard University Law School.

He was graduated in 1932 and returned to West Virginia to be admitted to the State Bar. Judge George McClintic swore Bob Spilman to the West Virginia Bar. “Mr. Spilman,” McClintic said ominously, “your oath to support the Constitution includes the 18<sup>th</sup> Amendment of prohibition. If you support it, it will be a damn sight more than your father!”<sup>249</sup>

That same year, he became an associate at Price, Smith & Spilman and within five years he was made a partner. Throughout this time, he continued his devotion to tennis and captured the West Virginia Bar Association’s Men’s Doubles Tennis Tournament championship in 1938 with partner Wright Huggess. There was some speculation that his devotion to tennis also helped him in his courtship and eventual marriage in 1941 to Ann Hatfield Miller, also a renowned tennis player in West Virginia.<sup>250</sup> Ruffner Alexander, a cousin, described him this way:

He was a very bright man. He worked hard and he played hard. That’s probably why he died prematurely. He was either all work or all play. He was a great hunter; he particularly liked to bird hunt. ... He served in the military in World War II. He was just a really hard worker.<sup>251</sup>

A friend of the family recalled the different atmospheres in the senior Spilmans’ house with Robert, Jr. The former was much more formal. Family dinners were held once a week at Roscommon Road; Bob and Ann’s house was more casual, as was their demeanor. Bob seemed to rarely speak at the family dinners. His father always questioned Bob’s son and his friends

about how they spent their day. It was a congenial – for the younger people somewhat intimidating – experience to attend those formal family dinners.<sup>252</sup>

Bob Spilman was very active in the community. He was an influential voice in most of the key development in Charleston during the 1950s and 1960s. He advocated rezoning parts of central Charleston to allow for more business development and expansion. He introduced an ordinance that would widen city thoroughfares to enhance the downtown business district. He served as special counsel to the City of Charleston when it annexed large areas surrounding the city, tripling the physical area of the city and boosting the population totals to make it the largest city in the state. He served on city council and, for 20 years, was chairman of the Municipal Planning Commission.<sup>253</sup>

He joined his father in unsuccessfully pushing for a change in the city charter from a mayoral administration to a non-partisan city manager form of government. The contentious special election of 1946 was bitter and resulted in charges of illegalities in the voting process. A subsequent attempt to change the charter the following year also was defeated. The Interstate road through central Charleston also was a controversial issue. In typical Bob Spilman fashion, he reviewed the city council minutes for years previous, pointing out how the through-city route would address many of the needs and problem areas in Charleston expressed by council for decades. He argued against those advocating a bypass route, saying “bypass routes are only for smaller, insignificant towns.”<sup>254</sup>

Despite his vocal presence in many of the decisions about Charleston’s development, he firmly rebuffed attempts at recognition. Early in his tenure on City Council, colleagues offered a resolution to name a road in what is now South Hills “Spilman Drive.” Bob Spilman immediately quashed the effort.<sup>255</sup> His leadership and willingness to take on controversy led the city’s Democratic leaders to urge Bob Spilman to run for mayor in 1947 to “crack the tough Republican machine,” a suggestion he firmly declined.<sup>256</sup>

Page Henley was hired by Bob Spilman in 1963 to join the firm. Henley recalls an event that is particularly telling about Bob Spilman’s character. The firm was representing a company that had been turned down in a bid to supply the state with school buses. The reason given by Governor Wally Barron’s administration was that the bus supplier’s paperwork had some technical flaws that were disqualifiers. The Barron administration was known

to be corrupt. Bob Spilman grabbed Henley one day and said, "We're going to see the governor." Spilman and Henley were shown into the Governor's Office, an elegant office and an imposing atmosphere (visitors must be admitted by State Police Troopers). Spilman methodically laid out the argument in support of the bus supplier. The governor was holding fast to the original decision. Spilman reached for the briefcase he had handed over to Henley and removed a document.

"Governor, this is a complaint I plan to file tomorrow morning," Spilman said. There was a pause; Spilman slid the document across the governor's desk and continued. "If you are prepared to hang yourself, I am prepared to supply the rope."<sup>257</sup>

"I was convinced we wouldn't get out of there alive," Henley said. "The next morning the governor's secretary called and said that the administration had further reviewed the application and our client would get the order for buses."

Like many of the other members of the law firm, Bob Spilman was a director at the Kanawha Banking and Trust Company, the Peerless Eagle Coal Company, the West Virginia Coal Land Company, the Kanawha Company, and the James River Hydrate and Supply Company. He also served as vice chairman of the Charleston charter board, as a member of the Charleston Community Chest Board, and as a trustee of the Greater Kanawha Valley Foundation.<sup>258</sup> From 1942 to 1946, he served as a lieutenant colonel in the U.S. Air Force on active duty in the Far East. He received a certificate of appreciation in recognition of his duty during the U.S. Strategic Bombing Survey in the Pacific Theater in December 1945.<sup>259</sup>

Bob and Ann Miller had one son, Robert Scott Spilman, III. He was killed in an automobile accident in 1960, shortly after he began college at Vanderbilt University. The accident occurred on U.S. 60 on the east end of Charleston.

Bob Spilman died in his sleep a few days after he and his wife moved into the senior Spilmans' home on Roscommon Road – November 3, 1969. He had spent the day lifting books in his library for the move. He was president-elect of the West Virginia State Bar Association at the time of his death.

Other members of the firm recall his death with shock. "We weren't prepared for it," Hawthorne D. Battle said. "It was a tremendous loss to the firm."

"He died far too early, and his reputation would have continued to grow," Henley said. "He was very competent, a very excellent lawyer."

Bob Spilman was “an industrious and enterprising man of integrity,” according to West Virginia Supreme Court Justice Thornton G. Berry, who delivered a memorial to him at the beginning of the Kanawha County Circuit Court term in 1970.

“He was a loyal friend, an erudite lawyer, a gentleman, and a scholar.”

## **Howard R. Klostermeyer**

Howard R. Klostermeyer spent his life in Charleston, dedicating his efforts to the community that raised him. Born January 29, 1904, Howard Randolph Klostermeyer was the only child of F.G. and Carrie Klostermeyer. His father was the son of German immigrants and had done well in his new homeland, becoming a pharmacist and living on Charleston’s East End.

Howard Klostermeyer attended public schools in Charleston and attended West Virginia University, where he served as Historian of the Freshman Class.

“There was little we knew of our future destiny ... when seven hundred strong we first tread the venerable halls of West Virginia University in search of higher learning,” he wrote in the 1923 school yearbook. “How vivid is the remembrances of that final struggle to collect our courage as we passed beneath the direful portals which led to the awe-inspiring registrar.”

Howard Klostermeyer put his writing skills to use further when he continued in law school, graduating in 1926.<sup>260</sup> He joined William G. Conley in a law partnership after being accepted to the bar in Charleston in 1926. He joined Price, Smith & Spilman nine years later and achieved partner within a few years, along with Robert Spilman, Jr.<sup>261</sup>

He was an “outstanding trial lawyer of high repute and actively engaged in litigation in the local, state, and federal courts and in appellate practice in the state, and federal courts for most of his years of active practice,” said W. Victor Ross in his tribute to Klostermeyer before the Kanawha County Bar Association. He also noted Klostermeyer’s many appearances before several federal agencies, such as the National Labor Relations Board.

His expertise in labor and business relations was extensive, as he was a member of the Panel of Arbitrators, American Arbitration Association, and the International Association of Insurance Counsel.

Howard Klostermeyer married Katherine Smith, also of Charleston, and they had three children: Frederick H., William H., and Alice Ann.

He served as general counsel for the Charleston Transit Company, which operated the local and interurban transit systems in Charleston and Kanawha County. A lifelong Republican, Klostermeyer served as treasurer of the state Republican Finance committee and six years as a member of the Kanawha County Board of Education.

He died after a short illness on July 22, 1983.<sup>262</sup>

## **Jackson D. Altizer**

One biographical description of Jackson Duncan Altizer notes that he “seems almost to have been bred for the law.” He was descended from a long line of legal minds, beginning with his father, Riner G. Altizer, who came over the Alleghenies to practice law in West Virginia. Riner Altizer settled in Clarksburg in 1901 during an oil and gas boom and within a few years had married Columbia Duncan. The same year the couple had their first child, Jackson Duncan, Riner Altizer also took in a new partner, Philip P. Steptoe. When Riner Altizer became general counsel at United Fuel Gas Co. in Charleston in 1914, young Steptoe went into practice with another young Virginian in Clarksburg, Louis A. Johnson, establishing the beginnings of another West Virginia law firm, Steptoe and Johnson.

But Jackson D. Altizer had his mother's law legacy as well. Columbia Altizer's father, James Jackson Duncan, was a lawyer, as was James's father-in-law, George Hay Lee. Judge Lee hailed from Shenandoah County, Virginia, but relocated to Clarksburg to practice law. Lee's first wife, Jane Duncan, was the daughter of a prominent Clarksburg lawyer and judge, Edwin Steel Duncan. James Jackson Duncan's maternal grandfather, John George Jackson, and great-grandfather, Colonel George Jackson, also had prominent positions during the Revolutionary period and were early noted practitioners in law.<sup>263</sup>

Jackson D. Altizer, was born April 16, 1905. He grew up in west Charleston in Edgewood and was graduated from Dartmouth College in 1926. He entered Harvard University law school in September 1926 and graduated in 1929. He became a partner at Price, Smith & Spilman in 1935. In 1939, he left to take a position on the legal staff of American Telephone & Telegraph.

Duncan was married in 1926 to Frances Greetham. He died June 22, 1957.

## William Victor Ross

William Victor Ross was an incredibly smart man. Elected Phi Beta Kappa and a member of Order of the Coif, Victor Ross was a leading, superb student at West Virginia University.

He was born in Oxford, Doddridge County, on November 10, 1913, the middle child of three sons born to Clarence Harland Ross and Mabel Camilla Sullivan. His parents moved to Charleston following the birth of his younger brother, Charles Henry. An older brother, Clarence Darrell, died of a brain tumor while Victor Ross was serving in World War II.<sup>264</sup>

Ross attended Charleston schools, and he was active in track, drama, and debating. At West Virginia University, he continued his extracurricular activities as a member of the Debate Society and the track team. As a sprinter, he participated in the 1936 Olympic trials, in which he raced against the famous runner Jesse Owens.<sup>265</sup>

He was graduated from West Virginia University with a bachelor of arts degree in 1937 and from the WVU College of Law in 1939. He then joined the firm.<sup>266</sup> Ross enlisted early when World War II broke out and later was commissioned a major and assigned to the Judge Advocate General Corps after officers training school.<sup>267</sup>

In October 1943, Ross married Robert S. Spilman's secretary, Katherine Amelia Quint, in New Orleans, Louisiana, where then-Lieutenant Colonel Ross was based.<sup>268</sup>

A staunch Republican, Victor Ross gained attention in 1952 when he was tapped to be treasurer of the West Virginia Eisenhower For President Committee.<sup>269</sup> He also was a counselor to two West Virginia governors, as well as several state officials. One of the more publicized cases on which Ross worked was the West Virginia Modern Budget Amendment – a landmark case that greatly broadened the powers of the state's governor, making it one of the strongest executive positions in the country.<sup>270</sup> The administrations of Governors Cecil H. Underwood and Arch A. Moore, Jr., would turn to Ross for help and legal advice on other issues.

Lee Feinberg recalls finding several autographed photos of Republican West Virginia governors and various state dignitaries among Ross's personal things in Ross's desk following his death. Among them was a personal letter to Ross from President Eisenhower, signed "Ike," thanking him for his service to the Eisenhower campaign. Feinberg knew Ross's wife and called to ask whether

she wanted to keep it. Her response was a clear “no,” he said; she was a staunch Democrat!<sup>271</sup>

At Spilman Thomas & Battle, Ross's work included advice in the acquisition and handling of coal and timber properties, appellate litigation, and workers' compensation issues. Ross also was counsel for the West Virginia Savings & Loan League.<sup>272</sup>

He was modest about his political connections as well as his highly admired talents as an appellate lawyer, and he was described as being “almost oblivious” to his revered status.<sup>273</sup> He also had a little bit of an “absent-minded professor” quality, as well. Members of the firm recall times when Ross would disappear suddenly in the middle of a dictation session with his secretary because he had remembered something he needed to do, and then return to finish the dictation as if he never left.

His wife, Katherine Amelia Ross, died July 8, 1966. Ross married Dorothy Jane Pettigrew two years later in White Sulphur Springs.<sup>274</sup> He continued to practice with the firm, acting as a mentor and leading partner, until his death.

He died June 27, 1992.

## **Wood Bouldin, Jr.**

Wood Bouldin, Jr., was one of the tax experts who worked at Spilman Thomas & Battle during the mid-20<sup>th</sup> century. He is credited with being the principal drafter of the West Virginia income tax law.<sup>275</sup>

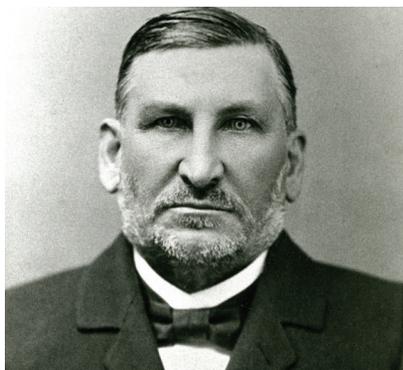
He was born December 7, 1917, to Wood Bouldin, Sr., and Fannie B. Morton McCoy, in Kingston, West Virginia. He was the first of two children. His father was an accountant, so it should come as no surprise that Wood, Jr., had the genes for tax law. He graduated from Washington and Lee University in 1937 and then attended Harvard University Law School. His last year in law school, Bouldin published “The Gross Income Tax Liability of West Virginia Coal Corporation,” which still resides in Harvard's Special Collections.

Bouldin served as a Lieutenant in the Navy in World War II, then returned to the law firm in Charleston. He was considered a leading tax authority in the state and served on several tax committees with the West Virginia State Bar and American Bar Association. He married Mary Howard; they had three children.

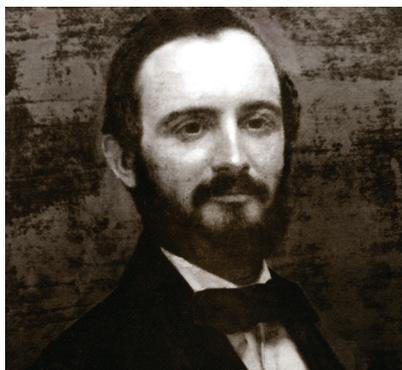
Bouldin suffered a heart attack on a downtown Charleston street and died on January 2, 1965. He is buried in Spring Hill Cemetery in Charleston.



*Benjamin Harrison Smith*



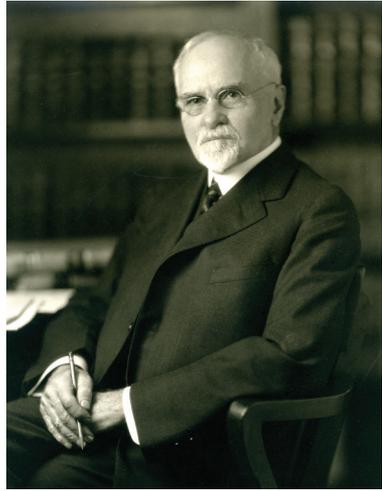
*Edward Boardman Knight*



*Isaac Noyes Smith*



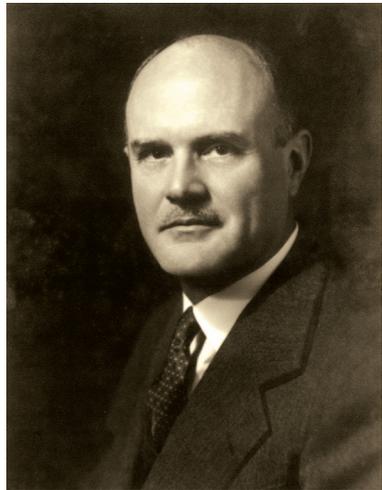
*George S. Couch*



*George E. Price*



*Buckner Clay*



*T. Brooke Price*



*Robert S. Spilman, Sr.*



*David C. Howard*



*John J.D. Preston*



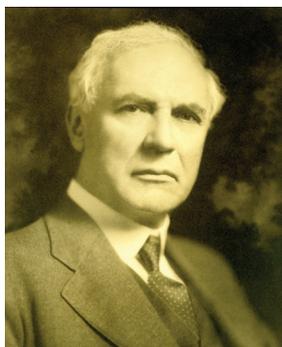
*Edgar J. Goodrich*



*Frederick L. Thomas, Sr.*



*Hawthorne D. Battle*



*John M. Woods*



*Robert S. Spilman, Jr.*



*Frederick L. Thomas, Jr.*



*W. Victor Ross*



*Wood Bouldin, Jr.*



*Charles B. Stacy*



*Spilman* 🌿 *The Early 1980s*



*Spilman* 🌿 *The Late 1980s*



*Spilman  The 1990s*



*Spilman  The Early 2000s*



## Chapter V

# Spilman Thomas & Battle: The 1960s, 1970s, and 1980s

The 1960s were a period of transition and evolution for the legal profession. Spilman Thomas & Battle's legal work centered on business transactions and client advice. Natural resources and the region's chemical industry formed the core of the firm's clients early on,<sup>276</sup> but the firm engaged in all areas of practice common to the larger law firms in West Virginia, such as real property, taxation, trusts and estates, and workers' compensation. Overall, about 60 percent of the firm's business was corporate, the remainder litigation.<sup>277</sup> Many of the partners had family-owned businesses, and so it was "convenient" to run the family businesses out of the law firm.<sup>278</sup>

The previous two decades were marked by sacrifice as four of the firm's leading lawyers left for military duty: Robert Spilman, Jr., Hawthorne D. Battle, Wood Bouldin, and Victor Ross all served in World War II. Fred L. Thomas, Jr., served in World War II and the Korean War as an Air Force fighter pilot. In 1955, Robert S. Spilman, Sr., suffered a stroke and, while he was not greatly impaired, members of the firm were faced with the reality that they had known some day would come: that this icon soon might no longer be with them.

"He continued to come to the office, but then Mr. Spilman died. ... My father had a heart attack around the same time," Thomas, Jr., recalled. "Mr. Battle had left to run WCHS-TV. He was gone. ... All three were gone – Spilman, Thomas and Battle. Here the young guys were without our leading lawyers."

And law firms were changing: attorneys were moving into more specialized fields. While it was still necessary to understand all the basic fundamentals of

law, more and more lawyers found a particular niche of expertise. In the late 1960s and early 1970s women were admitted to professional schools.

The courts were moving to “civil procedure,” which simplified processes, eliminated some of the arcane legal rules, and increased dramatically the discovery and disclosure prior to actual court proceedings. This contributed to the development of specialized legal fields.

Spilman Thomas Battle and, now, Klostermeyer, was a firm of a dozen lawyers in the 1960s, with the roster of schools represented throughout its history reading like a Who’s Who of top law schools.<sup>279</sup> The firm occupied the top three floors of the Kanawha Banking & Trust Building on Charleston’s main street, Capitol Street.

Page Henley, who was recruited from the University of Virginia law school by Bob Spilman, recalls his first impression when he first saw his office at the KB&T building. “I remember seeing this old rug and a spittoon adjacent to my desk. That was my world,” Henley said. “I stayed in that room during my entire time with Spilman.”

Spilman, Jr., Thomas, Jr., and Klostermeyer now were the senior members of the firm. James H. Davis and William B. Maxwell, III, had come over from the Preston & Davis law firm in the 1950s, and Victor Ross and Charles B. Stacy rounded out the leadership.<sup>280</sup> Other lawyers who had passed through the firm during the war years included William R. Laird, III, James Crouse, P. Gibson Terrie, Wendell Basye, and L.B. Hamblen. Stuart Thayer, a brilliant young lawyer from Charleston, also was with the firm for a little more than a year before being recruited to Sullivan & Cromwell in New York. He was the first lawyer at Sullivan & Cromwell to be recruited from another law firm.<sup>281</sup>

Klostermeyer was a noted trial lawyer and conducted much of the appellate work; Spilman, Jr., handled corporate work and politically charged legal matters; Thomas, Jr., handled bank business, company mergers and acquisitions, and coal and mineral holdings. Stacy handled tax issues, and Maxwell addressed largely real property, forfeited land, and chancery/fiduciary matters. Davis, a state senator, had connections with several industrial and manufacturing companies, as well as banks. Ross did real estate and chancery law, as well as workmen’s compensation, as it was called then. Thomas Battle, who had joined the firm, left after a brief stint

to be an assistant to then-state Tax Commissioner Howard Hardesty. Battle soon was promoted to state Tax Commissioner, where he stayed for several years before rejoining the Spilman law firm.<sup>282</sup>

And even though the firm was large by 1950s and 1960s standards in West Virginia, it still was very much a family. Members socialized together; members' wives also socialized together; and everyone knew what joys and sorrows were visited upon each other. Charles Stacy often would remark, "We're not a law firm; we are just a bunch of brothers, sitting in the same building, each of us with his own law practice."<sup>283</sup>

Page Henley, a Charleston native, and William C. Payne, a Columbia University law graduate, soon would join the group. They were the young associates. When Bob Spilman died suddenly in 1969, it was a shock. He had served as a continuum for clients who came to the firm because of his father. He was an attraction to clients in his own right, usually corporations.

Thomas, Sr., died months later. It was another era drawing to a close.

The firm's offices in the KB&T building also were showing their age. "The floors were very narrow. There were probably 10 offices to a floor. Essentially we were on two and a half floors of that very old, sort of majestic, building and bursting at the seams," recalls Lee Feinberg, who joined the firm in 1973. "In the late 1960s, Charlie Stacy put his foot down and said, 'We look like we're a law firm out of the 1910s.'"<sup>284</sup>

Stacy, a Yale law school graduate, likely was influenced, in part, by his active participation in the American Bar Association's tax law group, which exposed him to members of law firms in larger cities. In addition, he was fascinated with "gadgets," so he was current on the rapidly developing technology in law offices.<sup>285</sup>

It was he, according to several partners, who spearheaded the move to "bring the law firm into the 20<sup>th</sup> century." He insisted on hiring a consultant to revamp the firm, relocate its offices, update the equipment and operating procedures, and reorganize the secretary/stenographer pool. John Tinney recalls how the firm moved from the "manual typewriters with five onion skin copies" of each document to the firm's "first computer, which had to be taken to the 11<sup>th</sup> floor by a crane outside the building because there was no way to fit the computer into the elevator."<sup>286</sup>

“When I arrived here in 1973, the firm had gone through a two- or three-year ordeal, and the offices looked pretty modern,” Feinberg said. “This looked like a Richmond law office; it had the practice of modern accounting systems, a modern way of dealing with the secretaries. People uniformly give Stacy credit for making us a modern law firm in the 1970s. ... It pales in comparison to what we are now (in the 21<sup>st</sup> century), but he deserves a lot of credit for making us a modern law firm.”<sup>287</sup>

It was at this time that the firm started to “grow,” bringing in one, or even two, associates a year. Indeed, members from this period begin describing their experiences by declaring what number they were in the firm – number 12 or number 14. John Tinney joined the firm in 1971; Lee Feinberg came as a summer intern in 1972 and joined in 1973, and Charles L. Woody, a Florida State law school grad, joined the following year. Feinberg and Woody remember this period as a very positive time for them professionally. Both were attracted to a firm that had stature in the community and region, but one in which they could have serious, hands-on experience immediately.

“I recognized that, clearly, the younger lawyers here were going to get to do a lot more interesting stuff and do it sooner, and faster, than people in big firms,” Feinberg said. “The pay scale was much better in bigger cities ... (but) I felt like I would be trying cases the first year out of law school and all my friends likely would be sitting in the law libraries writing memos for the first three or four years.”

Woody, a law clerk to Judge John A. Field, Jr., on the United States Court of Appeals for the Fourth Circuit, met members of the Spilman law firm during his year-and-a-half tenure. He, too, was attracted by the opportunity for more hands-on experience.

“Spilman had a core group of lawyers that had been practicing 20 or 25 years – Bill Payne, Page Henley, Tom Battle. I went to work basically for George (Guthrie) and Page,” Woody said. “I did litigation with George and labor and employment work with Page ... who let me get into court early and let me do as much as I wanted to do, but always with the idea that I could go to him to have something read or ask questions and get directions.”

The firm never was short on work – between labor unrest involving the coal mines and the inflammable and sometimes violent Kanawha Schools Textbook protest. In one year alone, Woody recalls handling 65 injunctions involving mainly the textbook protests and the wildcat strikes at the mines.<sup>288</sup>

“There was a period of instability in the leadership of the United Mine Workers. That began in the late ‘60s and continued to the late ‘70s. Every summer, it seems, we had great strikes,” Henley agreed. “I was in court probably every day for months getting injunctions or bringing contempt citations for the union violating injunctions. ... That was probably the most hectic time I ever had.”<sup>289</sup>

John Tinney, who joined the firm in 1971, was particularly interested in courtroom work and “rushed to the front of the line” to do trial work, particularly with the firm’s lead trial lawyer, Howard Klostermeyer. James H. Davis was another lawyer who provided Tinney with opportunities to represent several large companies involved in lumber and national forest coal reserves and mining.

Then, a major event occurred: Spilman Thomas Battle & Klostermeyer hired a female.

Henley, who was the primary recruiter for the firm at the time, said it was clear Spilman eventually would hire women, but some of the senior members were reluctant “to jump into that.” He recalls one incident, in particular, that drove home to the firm action was needed. The firm was conducting legal work for a large, nationally recognized client. Henley had been given the name of the client’s counsel – someone with two initials and a surname. When he was told the counsel had arrived for a meeting and was in the firm’s conference room, he was surprised to find a woman sitting there.

“I took the lady down to the conference room on the next floor where other members of the firm were waiting. When we walked into that conference room she had a grin on her face because she knew we were not expecting her,” Henley said, laughing. “One of her first questions was, ‘How many women do you have in the firm?’ Klostermeyer quickly parried, ‘None, but Mr. Henley is working on that.’”

It was a short time later that the firm hired Stephanie Racin, a Morgantown native who had not planned to begin practice in Charleston, but fate intervened and it was just the type of position in the type of place that she had been seeking. The firm welcomed her warmly. It was a small firm – less than 20 lawyers – and despite women being a minority in the legal profession, Racin said the Spilman law firm was a very pleasant place to work. When she and her husband had their first child in 1982, she took maternity leave.

At the end of the designated time, she was not ready to return. The law firm was very accommodating, Racin said. "This wasn't something particularly that law firms did. ... They were very gracious and very fair in the way they treated us."<sup>290</sup>

The firm had the same attitude about community service and collegiality toward clients and opponents alike. Respect, an appreciation for other views, and support of each other were their creed. The older, more experienced lawyers made a point of bringing the younger lawyers along, keeping their doors open for consultation and promoting congeniality. The young lawyers, in turn, relished the chance to get to do work in the courtroom and participate in trials and hearings, rather than be boxed into hours of research in a library.

"For a while, I was the only associate, and it was all these (experienced) guys and me," George G. Guthrie recalled. "The first time I wrote anything out, I wrote it completely in longhand. It was 22 pages long. Charles Stacy saw it and said, 'I see you are from Duke, and you can't spell.'" Stacy, a product of Spilman, Sr., and others, was exacting. So was Hawthorne Battle.

"He would tell me things, watch out for me. He always said, 'Remember, in this business, what you write is going to be either a monument or an epitaph, so make it right.' I still have a photograph of him in my office," Guthrie said.

Stacy often told a story about asking Honey Battle to look over a document he had drafted. When it was returned it looked as though Battle "had cut himself because it had so much red on it," Tom Battle said. "He was meticulous in his attempt to have things correct, both in verbiage and in the legal side of it. He was a stickler for the appearance of the office, too. He wanted things to be looking right in the reception area and what was then the secretaries' room. But he was generous with his time. We had sort of an open-door policy and someone could walk in at just about any time and have a conversation with him."

Bill Payne recalls Battle as being particularly astute in managing the firm's clients, one of the trickiest and most difficult matters when lawyers in the same firm have responsibilities to opposing sides. Somehow, Payne said, Battle would sort through it to maintain the highest ethical standards. He held the final say about the firm's position in any legal matter.

One of the more experienced members to join the firm following the death of Spilman, Jr., was James Robinson, who had represented Bethlehem Steel and was an expert in real property. He would continue to represent Bethlehem Steel in one of the more notable cases the firm handled involving Shonk Land Co., which had leased several thousand acres of coal property to the steel company. When a change in management occurred at Shonk, the new owner alleged royalties due it had not been paid. Shonk contended Bethlehem Steel had forfeited its lessee position because of it. The trial court held for Shonk and issued a huge verdict. The West Virginia Supreme Court reversed on the forfeiture issue and reduced the verdict. Nevertheless, Bethlehem Steel made a decision to leave the area following that case.<sup>291</sup>

Another landmark case soon after that in the 1970s involved the Charleston Memorial Hospital and its eventual expansion into a large multi-facility corporation – Charleston Area Medical Center – that now is the premier center for health care in southern West Virginia. The hospital became embroiled in a lawsuit by a doctor it considered unqualified to remain on the hospital staff. The issue ended up in the United States District Court, which upheld the hospital’s position.<sup>292</sup> Spilman also won the appeal. The firm also handled much of the hospital’s subsequent expansions, bond issues, and ancillary work.<sup>293</sup>

Another Spilman landmark case involved DuPont’s production of an ammonia product at the Belle Works. Producing the substance required a large amount of natural gas, which DuPont obtained via Columbia Gas. The unit price of gas dropped to less than market value and Columbia Gas brought suit to aggregate the contract, which would cost DuPont millions of dollars more for the term of the contract. Although the chances for DuPont to counter it under utility law seemed remote, Klostermeyer decided to give the case to a then-young attorney with the firm, John Tinney, to represent DuPont. The Public Service Commission agreed with DuPont and refunded the chemical company millions of dollars. The case was appealed to the West Virginia Supreme Court, which affirmed the PSC’s ruling. It was a largely unprecedented finding.<sup>294</sup>

Spilman again was on the winning side in a famous – some would say infamous – case involving Shaffer Equipment and a Superfund site. Superfund sites were hot topics in the 1980s and 1990s as the U.S. Environmental Protection Agency took over regulation and cleanup of industrial sites that had been contaminated. Spilman, representing Berwind Land Company, secured a

dismissal of the case because of misconduct by the U.S. Justice Department lawyers handling the case on the opposing side.<sup>295</sup> The ruling was appealed to the United States Court of Appeals for the Fourth Circuit, which agreed with the lower court's ruling.

Ernst & Young turned to Spilman in the 1980s when the state Insurance Commissioner alleged negligence in its audit of Blue Cross and Blue Shield of West Virginia, which had gone bankrupt. The highly publicized case went against the state and the commissioner.

The law firm decided to shorten its name in 1993 and removed the name Klostermeyer from its title, 10 years after his death and after the death of his spouse. The firm moved into its new building, The Spilman Center, on Kanawha Boulevard in Charleston. At the time, the firm was in the United Center in Charleston, with satellite offices in Morgantown and Parkersburg.

While much of what gets publicity involves litigation, the firm always has been recognized for its handling of day-to-day business matters for clients. As one lawyer described it, Spilman Thomas & Battle has a “blue-chip reputation” and to this day maintains its “Hawthorne Battle imprint of the highest integrity, honesty, and ethical service to the client and the profession.”

Members of the firm from the early 1900s might not recognize the energetic regional conglomerate that now exists and is continuing to expand. At its core, the firm remains the committed, close-knit group it always has been, with members watching out for each other; it is a unique atmosphere that continues to spark superior work and quality service for clients.

## **G. Thomas Battle**

Tom Battle inherited his father's finesse in his ability to sift through issues and disputes at the law firm and find the right outcome, delivered in his quiet, deliberate way, guiding younger members with a gentle, but firm, hand.

Born in Charleston on November 15, 1931, Tom followed in his father's footsteps and attended the University of Virginia. He received his bachelor's degree in 1954 and earned his law degree from the University of Virginia in 1960; the same year, he was admitted to the bar.

As many might expect, Battle joined the law firm, but he left in 1962 to become Assistant Tax Commissioner of West Virginia. He then became state

Tax Commissioner in 1965, a job he held for four years. In that position, he earned praise for his attention to detail. One case of note involved tax fraud. Cigarette taxes were collected by means of a stamp on the package. A company in Huntington was forging the stamp, thereby, bypassing having to pay the tax. The company was caught.

Upon his return to the law firm, Battle immediately established himself as a talented lawyer and exemplary community leader. He served as chairman of the West Virginia Chamber of Commerce and The Greater Kanawha Valley Foundation. He also served on the boards and held officer positions with the Herscher Foundation and the Gordon C. and Mildred R. Jackson Foundation.

He has received several awards and distinctions, including as a West Virginia Bar Foundation Fellow, and he was awarded the West Virginia Bar Association Award of Merit in 2005. His tax law expertise was recognized throughout his career; he has contributed to several publications, including the *Commerce Clearing House Guidebook to West Virginia Taxes*, the *ABA Sales and Use Tax Desk Book*, and the *ABA Property Tax Desk Book*.

## **Frederick L. Thomas, Jr.**

Frederick L. Thomas, Jr., is known as much for his flying capabilities as his legal career and, throughout his life, he has shown equal enthusiasm and skill in all his pursuits. The Korean War fighter pilot successfully completed more than 100 combat missions in Korea and led a ground support mission of P-51 aircraft, earning him the Distinguished Flying Cross Medal in 1951.

Born in Charleston on March 4, 1923, to Fred L. Thomas, Sr., and Leafy Woofter, he was the second of three children. He attended West Virginia University for his undergraduate and law degrees. After graduation from law school in 1949, he was admitted to the bar and joined the firm.

Other members of the firm remember Thomas would take just about any opportunity to fly, carrying members to meetings associated with the legal practice in his small private plane.

The Distinguished Flying Cross medal he received is awarded to those who exhibit “heroism or extraordinary achievement while participating in an aerial fight.” The medal was initiated following World War I. One of the first recipients was Charles Lindbergh in 1927.

The citation accompanying the medal described Thomas's extraordinary achievement in leading a flight of four F-51s:

[He] displayed outstanding airmanship and navigational skill when he led his flight through marginal weather which curtailed further operational flying. Utilizing the ordnance on his aircraft to its greatest advantage, Lt. Thomas pressed successive attacks on supply stores in the vicinity of Kosong, Korea. Despite adverse weather conditions and intense ground fire in the target area, Lt. Thomas continued to press devastating attacks until all ammunition had been expended. As a result of this attack, several large fires and a series of explosions were observed. Lt. Thomas personally destroyed three buildings and inflicted considerable damage on several others. Upon completion of the attack, he assembled his flight and safely led it to base during the hours of darkness. By his personal courage and devotion to duty, Lt. Thomas has brought great credit upon himself and the U.S. Air Force.<sup>296</sup>

Thomas was not in Charleston when the award and citation arrived; Thomas, Sr., was pictured in the *Charleston Gazette* holding a photo of his son and the citation.

Upon Lt. Thomas's return, the law firm members gave a dinner party in his honor. Robert Spilman, Sr., who served as toastmaster, remarked on Thomas, Jr.'s, extreme modesty.

"When I left Korea, the fighting was still going on," Thomas replied. "And when I got back, I found the firm hadn't folded. I have reason to be modest." Then, he sat down.

Thomas met his wife, Mary Delle Wilson, when she was in Charleston to visit her aunt, who lived across the street from the Thomases. He had just returned from Korea. He married the concert pianist a short time later.<sup>297</sup>

Thomas gradually retired from the firm in 1986 and divides his time between an island house in South Carolina and a home in the mountains of western North Carolina.

He continued to fly but decided to sell his single-engine plane when he reached the age of 80; he promptly rented the plane from the buyer for another two years.

## Charles B. Stacy

Charles B. Stacy was the motivating force for so many advances in the law firm, including this history. He was with the firm for more than half a century, and many members credit him with moving the law firm into the modern age.

Born September 2, 1924, in Charleston, he was the second son of George and Patty H. Stacy. His father owned a retail grocery store, and he was named after his grandfather, who was born in England and moved to the United States. His grandfather became a realtor who married a Virginian named Virginia.

Stacy attended Yale University, where he earned his bachelor's degree in 1948 and his law degree in 1951. He was admitted to the bar and became an associate at Spilman the same year. In 1957, he took a leave of absence to serve as vice president of Lewis-Hubbard Corporation. When he returned in 1958, it was as a partner in the firm.

A noted tax lawyer, Stacy was very active in several tax organizations, including the West Virginia Tax Institute, the American College of Trust and Estate Counsel, the American College of Tax Counsel, the American Bar Foundation, and the American Law Institute; he also served on several tax-related committees and continuing legal education committees in the West Virginia Bar and the American Bar associations. He was the only West Virginia representative selected by President Jimmy Carter to serve on an 11-member nominating panel for the United States Court of Appeals for the Fourth Circuit.<sup>298</sup> The nominating panels were begun by Carter to help him in his selection of federal judges. Stacy's enthusiasm for history inspired him to begin a history book about the Spilman law firm; his writing is the foundation of this publication.

Stacy served in the Army Air Corps in World War II. He also was a leader of the Greater Kanawha Valley Foundation, former president of the Charleston Rotary Club, and on the Board of the West Virginia Symphony, in addition to serving on several other civic organizations and fundraising groups. He was married to Judith Wilner. They had two children: Charles B. Stacy, Jr., and Judith Stanley, who predeceased him.<sup>299</sup>

Stacy died November 9, 2002.

## James P. Robinson

James Poe Robinson was established as a successful lawyer when he joined the Spilman firm in 1967. He was considered a property “guru” when he arrived and often represented coal interests for the firm.<sup>300</sup>

Robinson attended Fairmont State College and then West Virginia University law school, where he was a member of the Board of Student Editors of the *West Virginia Law Quarterly*. He graduated in 1939. The Grafton native immediately went to work for the U.S. Army Corps of Engineers, then served as an infantry officer during World War II.

His involvement with the military would continue through the next decade. A member of the U.S. Army Reserve, he taught a Reserve Officer Training Corps program at Kent State University during the Korean War; then he commanded an Army Reserve artillery battalion for 10 years in Clarksburg. He also practiced with Stathers & Cantrall in Clarksburg until moving to Charleston to join Spilman, Thomas, Battle & Klostermeyer.<sup>301</sup>

Robinson, described as quiet and mild-mannered, had legal training in his blood. His father, Jedidiah Waldo Robinson, was a successful lawyer in Grafton. The young Robinson, the middle child of three sons born to Jedidiah and Sarah Caroline Poe, had his share of criminal defendants and court-appointed cases early in his career. He recalled his first appointed case out of law school – it cost him 100 hours in donated time.<sup>302</sup>

He was active in the community, serving as president of the Lions Club and chairman of the Charleston Salvation Army Advisory Board. He also was president of the West Virginia Bar Association, a senior member of the Phi Alpha Delta Law Fraternity, and a member of the College of Law Emeritus Club.

He was born May 29, 1914. Robinson died December 3, 1993, following a long illness.

## **William B. Maxwell, III**

William B. Maxwell is as much an accomplished historian as he was a lawyer.

The Clarksburg native was born June 2, 1925, the second son of Frank J. and Clara G. Maxwell. He attended Harvard College, earning his degree in 1949, and then went on to receive his law degree from West Virginia University in 1952. He was admitted to the bar the same year.

Maxwell joined the practice of Preston & Davis in Clarksburg, where he worked for 13 years. When that firm dissolved, many of the members joined Spilman Thomas & Battle in Charleston. He served as deputy commissioner of Forfeited and Delinquent Lands in Kanawha County from 1963-1979 and as special commissioner of accounts for nearly the same period.

His love of history, however, has led him to write several publications, including one particularly of note about the founder of the Spilman firm entitled, "Benjamin Harrison Smith and the Quieting of West Virginia's Land Titles." Other works range in topic from early settlers of the Kanawha Valley to other law firm members, including Jackson D. Altizer.

With an encyclopedic memory for detail, Maxwell is considered to be one of the firm's historians. He retired in 1989.





## Chapter VI

# Spilman Thomas & Battle: The Legacy Continues

In 2012, Spilman Thomas & Battle was one of 20 law firms nationwide to be named in *The National Law Journal's* Midsize Hot List – a ranking of firms committed to controlling client costs, at the cutting edge of legal trends, and top tier in their ability to attract and retain talent. The recognition came on the heels of *U.S. News & World Report* and *Best Lawyers*® naming Spilman Thomas & Battle a “Best Law Firm” at the national level for employment law – the only law firm headquartered in West Virginia to receive the acclamation. In 2012, the firm was recognized by *U.S. News & World Report* and *Best Lawyers*® at the national level for Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization law.

These accolades affirm the course Spilman Thomas & Battle is charting. Building on its history of leadership, integrity, and “A-plus” legal work, the firm is expanding its footprint, increasing its practice diversity, and controlling its overhead while continually striving to deliver value to clients. The firm is now younger, leaner, broader, and more diverse.

“We are a regional law firm that also has a national presence,” says Eric Iskra, chairman of the firm’s Labor and Employment practice group and head of client relations. “The reason why I believe we are so successful is what we refer to as our value proposition – that we are a regional firm headquartered in Charleston, West Virginia. Because we are in Charleston, West Virginia, we are able to control costs and keep billable rates lower than other regional and national firms. It puts us in a unique position to offer true value to our clients.”<sup>303</sup>

In the 1990s, the firm was serving clients throughout West Virginia, maintaining its headquarters at Spilman Center, a four-story, 55,000 square-foot brick and glass office building overlooking the Kanawha River in Charleston. It had established an office in 1992 in Morgantown, one of the state's fastest growing cities in population and economic development. Morgantown is home to the state's flagship university, two major hospitals, and a leading generic pharmaceutical manufacturing facility. With its small-town feel but big-city amenities, Morgantown is a vibrant, bustling north central West Virginia hub.

During that decade laws affecting employment and labor mushroomed, and the firm – always a leader in labor and employment practice – recognized a significant increase in client needs in that field. By 2004, it was clear a Spilman presence in Pittsburgh made sense. The city has an industrial past and a strong business presence. Labor and employment issues abound. To head the Pittsburgh group, Spilman turned to David Robertson, a former general counsel of Weirton Steel and a close friend to Spilman Managing Member Mike Basile. Robertson was a natural for a law office in what used to be referred to as “the Steel City.” Today, Pittsburgh symbolizes regional renewal with its growing economic diversity of financial services, advanced manufacturing, digital technology, and life sciences. Spilman is located in the heart of this thriving city's “Golden Triangle.”

Ronald Schuler, who now heads the Pittsburgh office, said it has expanded from a labor and employment-focused practice to include creditors' rights litigation, corporate finance, real estate, and intellectual property. The oil and gas industry also views Spilman as a go-to law firm.

“The Pittsburgh office is a small, but full-service, office for middle-market clients,” Schuler said. “We are a group of professionals who have trained in large firms or spent significant amounts of time as in-house counsel. It is a unique perspective in that if you have been the client, you are able to see issues through the eyes of the client. The training in large firms enables us to do sophisticated work at a much lower rate than other law firms in Pittsburgh.”<sup>304</sup>

The same kind of bonds and client ties that helped establish the Pittsburgh office prompted the firm to establish an office in Winston-Salem in 2006. Some of the firm's biggest clients in West Virginia – Coca-Cola Bottling Company Consolidated and E.I. du Pont de Nemours and Company – also operate in North Carolina. The firm teamed up with one of Iskra's closest friends, Jeffrey

Patton, to open an office. Its roots were in labor and employment but the practice soon expanded to litigation and corporate matters. From this location in the North Carolina Piedmont, Spilman also manages litigation and trial dockets in neighboring South Carolina and Tennessee.

The Roanoke, Virginia, office came a year later when the firm Melchionna & Day and Spilman partnered together. The foundation of the partnership was the corporate practice with a common client and close personal ties between F. B. Webster Day and David Ferretti, who is in charge of lawyer administration at Spilman. The Commonwealth of Virginia consistently ranks high in economic activity and business climate. The Spilman Roanoke focus was on wealth management, banking and finance, bankruptcy and creditors' rights, consumer finance, tax law, and bond/public finance. The litigation and labor and employment practice areas since have gained eminence.

“Melchionna & Day law firm had a good practice and good clients, but we were frustrated that no employment law could be handled in-house,” said Day, the office’s managing partner. “Spilman has done a fair amount of public finance and commercial transactions; from day one it had expertise in the employment field. ... We are able to do for existing clients things that Melchionna & Day was not able to do before. We are better able to serve clients from a firm-wide perspective.”<sup>305</sup>

Spilman opened an office in 2009 in Mechanicsburg, Pennsylvania, near the capital city of Harrisburg. The decision stemmed, in part, from collaboration on energy legal matters between Lee Feinberg and Susan Riggs in Charleston and Derrick Price Williamson in Pennsylvania. The rapid development of the Marcellus and Utica shales prompted the need for legal services in the region.

The Greater Harrisburg Area office has a rich practice in public utility, energy, and environmental matters, especially focusing on government regulation, compliance issues and litigation. Harrisburg also ranks high in the top cities nationally in which to do business. Harrisburg’s managing partner, Derrick Price Williamson, also serves in the leadership of the West Virginia Energy Users Group, an association of large, energy-intensive industrial, chemical, manufacturing, and institutional concerns. Many of the members are Spilman clients. The association is an active participant in litigation and investigations before the West Virginia Public Service Commission involving energy issues and energy rates, which are key in energy production costs.

With the Spilman footprint extending from the Northeast to the Mid-Atlantic and South, the law firm is uniquely situated to provide clients broad-ranging support and service, Williamson said.

“I think it provides the flexibility and adaptability to staff cases throughout the region in our footprint and near our footprint,” Williamson said. “Absent that broad-ranging support of the entire law firm, it would not be practical to provide the services we do on a national and regional basis. It’s all part of the same fabric of doing good work and making the best decisions for our clients.”<sup>306</sup>

Spilman uses sophisticated video and telecommunications to maintain a steadfast commitment that its seven locations are part of a single whole: the One-Firm Initiative.<sup>307</sup> The idea is to serve clients in multiple locations seamlessly. The 2012 recognition at the national level for being a “Best Law Firm” in Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law was a direct reflection of the firm’s team approach on behalf of a client. Members from the Roanoke and Wheeling offices – Paul M. Black, now a U.S. Bankruptcy Court judge, and Arch W. Riley, Jr., respectively, co-chaired Spilman’s Bankruptcy and Creditors’ Rights practice group.

“When we decided to go beyond West Virginia’s borders, it really changed us from a dominant statewide firm to a region-dominant firm,” Iskra says. “It was almost all client-driven. Our clients viewed the expansions very favorably, and we were able to pick up work in those areas because of their presence there.”

The companies, too, are changing their approach to legal needs. DuPont made a decision to reduce the number of law firms that handled its business around the country and the world from several hundreds to several dozen. Spilman had to earn its stripes to remain one of those key go-to firms.

“It was a ‘primary law firm network.’ It was a living and breathing experiment in which we have learned to identify our client’s long-term interest and our client’s economic interest and work through our legal matters to help accomplish and fulfill those interests,” said Niall Paul, leader of Spilman’s Battle Group practice. “At first, it seemed a little funny: when you are refurbishing your office, buy DuPont carpet. Encourage other clients to use DuPont products.”<sup>308</sup> But then, it began to make sense.

Charles Woody long had taught younger associates and members that investing in clients beyond the legal services was important. He had set the example

both as a mentor and a quality lawyer. DuPont was challenging the firm to take actions to quantifiably expand and achieve that same doctrine. When the firm hired attorney Michael Basile, a former state economic development executive and gubernatorial senior counsel who became the firm's managing partner, the formula for success was complete. Basile, who joined the firm in 1997, brought with him an energetic and exceptional entrepreneurial spirit that, combined with the "invest in your clients" doctrine, set a new course.

"The thing that makes us unique – we were able to take that old school kind of traditional lawyer/law firm model and, without losing all the really good things that it had and still has, turn it into something that can survive today, really prosper, and, really, better serve our clients," said Heather Heiskell Jones, head of the firm's litigation department. "It hasn't been growth for growth's sake; it has been adding people with talent in areas of demand to serve client needs."<sup>309</sup>

"Mike Basile's message really was one of entrepreneurial spirit for us, but also for our clients," Paul agreed. "It is really looking for ways to partner with our clients in ways we probably had not thought of before, certainly as a business."

In addition, DuPont wanted its law firms to look like its communities – diverse ethnically with equal gender distribution and broader legal practice areas. And it demanded from its law firms a new paradigm – not charging for two or three years' worth of litigation and then settling the case on the courthouse steps. Spilman quickly adopted the Early Case Assessment approach for all of its clients. Encouraged by another DuPont program, Spilman has launched a Women's Initiative, gatherings in which female leaders in the community are invited to speak and provide opportunities to network with other female professionals.

The Spilman law firm has taken its foundation of Smith & Knight and Price, Smith & Spilman and combined it with technology and business acumen to yield the optimum result and value for the client.

"A lot of what was going on (in the legal industry) was 'hurry up and get bigger. Bigger is better, bigger is stronger.' What we decided to sell clients was the opposite," Paul said. "We are not 'big.' When you hire us, you don't pay \$300 an hour for a second-year associate who has never seen a courtroom. When you hire us, you get the lawyers you hired; you get the experience you hired; when you pick up the phone, you talk to the lawyers you hired."

And the law firm works in teams. To execute the approach fully, the firm formed specialty groups of lawyers to target specific areas and responses tailored to clients' needs. One is The Battle Group, an elite litigation strike force that specializes in complex cases that require particular skills. It comprises experienced trial lawyers who are comfortable in high-stakes litigation. It was recognized, particularly, by *The National Law Journal* in selecting the Spilman law firm for its Top 20 Midsize Hot List.

The firm strives to keep clients informed of developments and trends in law, statutes, and litigation related to their businesses. "SuperVision" is a labor and employment law conference held multiple times each year. The firm's labor and employment attorneys also generate e-mail newsletters and continual postings on the website, as well as its new smartphone "app."

The approach, in its totality, is, in the words of Paul, "counterrevolutionary" to what is happening nationally.

Today's recruitment efforts are targeted and meticulous. Each lawyer must be "top circle." As important, she or he also must be a fit for the Spilman family.

"We are all rowing together. When I first came here, one of the things I heard, even as a young associate and even as a summer clerk, is that this is a firm that takes care of its own," Paul said. "We have changed a lot about the way we do things and our size. But, in 20 years, that aspect about our firm has not changed."

"We all like each other," Jones agreed. "It's answered by our personalities. First, we all know we are going to come to work and do absolutely top-notch service for our clients. We must do the best legal work, without exception. It has to be excellent. But we all like each other. It is such a congenial group, so cohesive, so much in tune with the balance that has to be struck."

That has been the hallmark of the firm, Bill Payne, a former member who left the firm to become general counsel of a coal company, said. "You have to get the right people there with the right character. They have done a good job with that. And it has been around a long time. That's the definition of longevity."

Basile appreciates non-legal sector business models and points to Southwest Airlines as a company that was analyzed when Spilman was formulating its 21st-century business plan: it started small, built an enduring legacy, focused on the people, calculated a growth strategy of filling voids, ensured employees were enjoying their work, and was an efficiency champion. The result of those

components is success. As a result of the expansions, the lawyers of the Spilman law firm collectively are licensed to practice in more than half the states in the country.

It explains the regional footprint that has evolved during the past decade: lawyers in the seven locations that Spilman now occupies fill needs in those locations, have expertise in the dominant business and industry present in those regions, and meet the standards of the Spilman core values. The lawyers commit to the communities in which they live with public service.

As Olin Melchionna, a senior member in the Roanoke office, explained, it allows the firm to “provide our clients with access to a wider range of legal fields, as well as the resources and staffing to help in the larger matters of our clients.”

“It has allowed us to tap the talent we have in the firm no matter where they are located to best serve our clients,” Jones agreed. “We saw opportunities to serve clients who were disenchanted with large firms. That, combined with several of our members really standing out and gaining the confidence of clients to handle cases on a national basis, made us a go-to firm.”

That “go-to” status for several national companies is hard-earned. It is a title that the firm has won repeatedly beginning with *Corporate Counsel* magazine in 2006. A firm that secures the title “possesses the fundamental credentials of having been named as a ‘Go-To’ law firm by one or more of the top 500 general counsels surveyed,” the magazine said. The firm has continued to earn the designation and similar recognition in specific categories from a multitude of publications and companies.

Lauding Spilman for its “Meeting the Challenge” award, DuPont recognized the firm for cost-effectiveness in the delivery of legal services and savings; outstanding legal services in particular areas, such as government affairs; and sustained contributions in support of DuPont’s operating model and legal and consulting advice.

Coca-Cola Bottling Co. Consolidated pointed to Spilman lawyers’ employment law training program as a revolutionary approach to labor and employment liability. The firm conducts regular training sessions with company managers to help spot problems early and address issues before they reach the legal conflict stage. The hands-on, personal contact approach has been the difference.

“The guys at Spilman have been to our corporate facilities; they’ve been to our sales facilities; at one point they came down and toured our manufacturing facility here in Charlotte,” Coca-Cola Bottling’s employment relations manager said. “I’ve worked with law firms that have never been to one of our facilities – all the contact is through phone and e-mail. But the folks at Spilman have really taken the time to get to know this organization.”

Spilman has reached beyond the Mid-Atlantic region to ensure that it is securing every advantage for its clients. In 2008, it joined World Services Group, a global membership association open to top providers of professional business services. With more than 130 member firms operating in 115-plus countries and throughout the United States, it is a global network in legal services available to clients of member firms.

Spilman had to pass rigorous standards to become an exclusive member, including: be a leading business in its service area; achieve the highest professional reputation within the professional community; and display unparalleled depth of practical experience in its region.

“Our leadership position is the result of two philosophies: a commitment to responsive service and an investment in seamless technology. They help us remain at the forefront of client interaction, communication, and information delivery,” Mike Basile said. “Our goal is simple – create value for every client. That goal has remained at the core of our culture for 150 years.”

The legacy of the earlier members of the law firm must continue. The “young associates” of 30 and 40 years ago now are the mentors and teachers of today’s Spilman law firm. It is a weighty responsibility, but one that the senior members of the firm take very seriously. Each contributes in significant and meaningful ways to the community through service on civic boards, community fundraising efforts, and volunteer programs, true to the founding fathers of the firm. They are stellar individuals who happen also to be highly talented and effective lawyers.

“The young people coming into the practice should respect the history that the firm has developed over the years in providing solid legal service and respecting the client’s wishes and representing their best interests,” Tom Battle said. “Quality individuals always have been associated with the firm. The lawyers respected each other. And I think the firm has always had a good deal of respect in the profession.”

“All were superb lawyers, but they were better people,” George Guthrie said. “The respect of them and among them was pervasive.”

Hawthorne Battle, who seemed to find the right words for every occasion, said it best to the young associates when he gathered them together to tell them the firm’s history:

“These lawyers (who came before) ... because of them our firm had great prestige and had all the law work it could handle. That has been passed on to the present generation. The responsibility to continue and enhance that reputation is yours. As I have often said to young lawyers coming here with a great record from law school, ‘Once you get out, you are on your own.’ So, that is true of us who are still here. We may have a prestigious law firm, but we won’t have it very long unless you do the work with the same excellence that these distinguished lawyers did.”





# Endnotes

- 1 Sutphin, Lisa Spilman, *Collected Poems of Eliza Dillon Spilman*, page 4, and University of Virginia Special Collections, Deceased Alumni Records, Robert S. Spilman.
- 2 *Sunday Gazette-Mail*, July 1, 2012, page 5E.
- 3 Abramson, Rudy, and Jean Haskell, *Encyclopedia of Appalachia*, page 389.
- 4 Abramson, pages 441-443.
- 5 Wikipedia, [en.wikipedia.org/wiki/Harrisburg,\\_Pennsylvania](http://en.wikipedia.org/wiki/Harrisburg,_Pennsylvania).
- 6 Abramson, page 380.
- 7 Abramson, pages 389-391.
- 8 *The Charleston Daily Mail*, February 7, 1938, page 2.
- 9 Schultz, Howard, chairman and chief global strategist of Starbucks Corporation.
- 10 Roeber, A.G., *Faithful Magistrates and Republican Lawyers, Creators of Virginia Legal Culture, 1680-1810*, page 87.
- 11 Laidley, William S., *History of Charleston and Kanawha County and Representative Citizens*, page 949.
- 12 Smith, Chris, *From the Shenandoah to the Kanawha*, page 205.
- 13 Wayland, John Walter, *A History of Rockingham County, Virginia*, page 68.
- 14 Maxwell, William B. III, *Benjamin Harrison Smith and the Quieting of West Virginia's Land Titles*, page 9. Maxwell notes the family long had been involved with Bishop Francis Asbury of the Methodist Episcopal Church, who shared a strong anti-slavery sentiment with his mentor, John Wesley. Also, Smith, *From the Shenandoah to the Kanawha*, pages 206 & 219. Wayland, in *A History of Rockingham County*, notes by 1810 there

were 200 “free Negroes,” a change attributed to the work done by the Methodists and other religious organizations in support of emancipation. Wayland, page 107.

15 Wiseman, Charles Milton Lewis, *Centennial History of Lancaster*, page 67.

16 He later renamed himself “Scipio Africanus.” Contosta, David R., *Lancaster, Ohio, 1800-2000: Frontier Town to Edge City*, page 16.

17 Contosta, page 67.

18 Contosta, pages 14-17.

19 Contosta, page 18.

20 Contosta, page 18.

21 Atkinson, George W., *History of Kanawha County from its Organization in 1798 until the Present Time*, page 260.

22 Brinkley, Alan, *The Unfinished Nation: A Concise History of the American People, Vol. I*, page 221.

23 Hoover, Thomas Nathanael, *The History of Ohio University*, pages 1-5; 21-41.

24 Hoover, page 35.

25 Smith, Chris, *From the Shenandoah to the Kanawha*, pages 211 & 216. Benjamin Smith the elder died in 1817 when he was 56 years old. His will left each of his children the equivalent of \$1000, but he added a proviso about expenses for Benjamin Harrison Smith to complete his education. Benjamin Smith (the elder) and Joseph Cravens were among seven nominated by Bishop Asbury to serve as Trustees of the area's first school in 1794. This suggests a foundation of some education in both the Smith and Cravens families, which also would help explain the desire to support his son's formal education to such a degree. Wayland, *A History of Rockingham County, Virginia*, page 283.

26 Several contemporary secondary sources indicated Benjamin H. Smith “graduated” from “Ohio University.” The timeline suggests he did study at Ohio Seminary for four years to learn the requisite foundation of classical studies to enable his legal education, but he is not listed among the graduates of the school between the years 1815 and 1825. See footnote 38.

27 It is entirely possible that Ewing was a large influence on Colonel Smith in other matters, as well. Ewing was a Whig, as Colonel Smith was for a time, and the elder rose to become a U.S. Senator and, subsequently, was named to cabinet positions by two presidents – Secretary of the Treasury under William Henry Harrison and Secretary of the Interior under Zachary Taylor. He was nominated to be Secretary of War under Andrew Johnson, but was not confirmed by the U.S. Senate. Colonel Smith was tapped to be the U.S. Attorney for the western district of Virginia by

President Taylor and remained in service under President Fillmore. Ewing also was said to have substantial influence with Abraham Lincoln; Colonel Smith took the position of U.S. Attorney again under President Lincoln. *Thomas Ewing Family Papers Collection*, University of Notre Dame Archives; Miller, Paul Ingersoll, "Thomas Ewing: Last of the Whigs," Dissertation, Ohio State University, 1933.

28 Dayton, Ruth Woods, *Pioneers and Their Homes on Upper Kanawha*, pages 128-129.

29 Colonel Smith's brother, General Daniel Smith, practiced medicine in Ohio and, later, in East Bank, Virginia, a short distance from Charleston. He was a delegate to the Virginia General Assembly six times, beginning in 1828. It is not clear whether the brothers' return to Virginia was simultaneous or one followed the other, although Daniel's service in the General Assembly predated Benjamin's and at least one source places Daniel in Virginia first. A *Centennial History of Lancaster* says Colonel Smith represented Fairfield County in the Ohio legislature in 1814 and 1815, then moved to Charleston in 1819. This sequence, however, does not fit with events listed in primary sources.

30 Shaffer, J.W., *Clash of Loyalties*, page 23.

31 Shaffer, page 23.

32 Atkinson, George W., *History of Kanawha County*, page 261. It should be noted that Atkinson wrote his history in 1876, when Colonel Smith was still living.

33 Isaac Noyes was one of three brothers, descendants of French Huguenots, who came to Kanawha in the early 1800s, became merchants and engaged in the salt business.

34 Smith, page 227.

35 McCabe, Brooks F., Jr., *Col. Benjamin Harrison Smith: His Family and Its Impact on Charleston, West Virginia*, unpublished document, page 2.

36 Cohen, Stan, with Richard Andre, *Kanawha County Images: A Bicentennial History, 1788-1988*, page 27.

37 As noted earlier, the Ohio University archives do not have Colonel Smith listed as a graduate during the period he would have completed his college degree; Atkinson explains that Smith received the honorary degree "which became his by right of graduation eighteen years before, but had not been given at the time, because of the fact that the University was not authorized by law to confer honorary degrees." Atkinson, page 262; Ohio University Catalog.

38 There is some speculation that he may have been a member of the county militia at some time and, it being customary in the militia to elect officers annually, some officers were often referred to thereafter by their

highest rank. Chris Smith, in his family history, notes that Smith's father gained the title of Lieutenant from his participation in the Revolutionary War; his grandfather was a Colonel from participating in the Battle of Point Pleasant and the Revolutionary War; and his great-grandfather was a Colonel from his service in Ireland, the French and Indian War, and the Cherokee Indian War.

39 Atkinson and William S. Laidley are contemporary secondary sources for the time period and people who settled in the Kanawha Valley in the 1800s.

40 Atkinson, page 262.

41 Atkinson, page 262.

42 Roeber, A.G., *Faithful Magistrates and Republican Lawyers, Creators of Virginia Legal Culture 1680-1810*, page 36.

43 Laidley, page 286.

44 *West Virginia Lawyer*, August 2001, page 4.

45 The Whig party emerged in 1834 as a coalition of National Republicans (from the old Federalist Party), Anti-Roman Catholics, and disgruntled Democrats brought together by perceived executive power grabs by President Andrew Jackson. In Virginia, the Whig Party generally "favored government action on behalf of the common good. In practice, this meant promoting internal improvements, public education, strong banking and high tariffs," as the *Encyclopedia Virginia* astutely summed it up. For western Virginia, this especially rang true as the region believed it was being ignored in favor of the more prosperous, settled Piedmont and Shenandoah areas. The party elected its first president, William Henry Harrison, in 1840, and its second, Zachary Taylor, in 1848. However, by then both the Whig Party and the Democratic Party were disintegrating, each adopting the other's policies, and were almost indistinguishable. Thereafter, the anti-slavery movement gained strength, splinter parties were formed, and the new Republican Party fielded its first Presidential candidate.

46 Ambler, Charles H., in *West Virginia: The Mountain State*, lists Smith as among those outstanding "so-called Fathers" of the state.

47 1862 Constitutional Convention, also from Maxwell, page 13.

48 McCabe, Brooks F., Jr., unpublished paper "*Benjamin Harrison Smith, the West Virginia Constitution, and Land Titles*," pages 1-2.

49 Maxwell, William B., interview by the author, 2010.

50 Atkinson, page 263. West Virginia's population was quite small, particularly in areas such as Kanawha and Greenbrier, which encompassed large regions. The total population of Kanawha and Greenbrier in 1790, for example, was only about 6,000. By 1830, however, the population had grown to three times that number, and other counties had been carved out

of them, reducing their acreage. By 1860, Kanawha County, in its present boundaries, had a population that totaled 16,151. During the next 70 years, West Virginia was an economic boom state because of the large number of jobs occurring in the timber, mining, and oil and gas industries. In 1930, Kanawha County's population totaled 156,667, according to *The Historical Atlas of West Virginia*, pages 207-230.

51 Reported at 78 U.S. 39, 20 L.Ed. 67 (1871).

52 Historical accounts differ on the exact term Smith held the office under Lincoln. Stacy says he held it from 1862-1867. Atkinson and Gibbons say he was appointed in 1861 and resigned in 1868. Laidley says Smith served under Lincoln for four years. Atkinson, in *Bench and Bar*, reiterates Smith's time as U.S. Attorney but also says Smith represented Kanawha County in the General Assembly of Virginia in 1855 and in the Legislature of West Virginia in 1870.

53 Correspondence, Thomas S. Carlile, et al., to Abraham Lincoln, Morgan Library, 9<sup>th</sup> October 1861.

54 Atkinson, page 263.

55 Summers, Festus P., *Johnson Newlon Camden: A Study in Individualism*, 1937, pages 124-125.

56 No Democrat could be elected until the members of the Democratic Party, most of whom had been Confederate sympathizers, were allowed to vote, and this did not occur until 1870. The immediate result was that a Democrat was elected Governor, and the 1871 West Virginia Legislature was controlled by the Democrats. See George E. Price's *Political History of West Virginia*. The Democratic Party was referred to as the "Let-Up" party.

57 Summers, pages 130-131.

58 *West Virginia Historical Magazine*, Vol. 1, No. 3, page 15.

59 Andre, Richard, and Stan Cohen, *Kanawha Images, Volume 2*, page 27.

60 Atkinson, *History of Kanawha County*, page 261.

61 Laidley, *A History of Charleston and Kanawha County*, pages 287 and 950.

62 *West Virginia Historical Magazine*, Vol. 2, No. 1, page 52.

63 Atkinson, pages 264-265, and Laidley, pages 287-288.

64 McCabe, Brooks F., Jr., unpublished paper, page 2, and Maxwell, William B., III, unpublished paper, "Benjamin Harrison Smith and the Quieting of West Virginia's Land Title," page 7.

65 McCabe, Brooks F., Jr., "Benjamin Harrison Smith, Land Titles, and the West Virginia Constitution," *West Virginia History*, Spring 2012, page 22. For a more thorough and enlightening description of the effect Smith had on West Virginia's development and land titles, see the entire article by McCabe.

- 66 Atkinson, *Bench and Bar of West Virginia*, page 47.
- 67 Atkinson, *Bench and Bar of West Virginia*, page 47.
- 68 As referenced earlier, Benjamin H. Smith was married to Roxalana Noyes.
- 69 The authors are indebted to William B. Maxwell, III, and *A Genealogical Dictionary of the First Settlers of New England* by James Savage, originally published in Boston, 1860-1862. It was reprinted with notes and a cross-index by Genealogical Publishing Co., Baltimore, Maryland, 1965-1990.
- 70 The year in which E.B. Knight came to Charleston is in some dispute because it ranges in several contemporary publications from 1861 to 1865.
- 71 Ramsdell, George A., *The History of Milford*, page 346.
- 72 Atkinson, *Bench and Bar*, page 48; Laidley, page 424.
- 73 Atkinson, *Bench and Bar of West Virginia*, p. 47.
- 74 Laidley, page 424.
- 75 MacCorkle, Governor William A., *Recollections of Fifty Years*, page 57.
- 76 MacCorkle, page 57.
- 77 Edward Boardman Knight, Alumni Records, Special Collections, Dartmouth College.
- 78 McCabe, Brooks F., Jr., *West Virginia History*, “Benjamin Harrison Smith, Land Titles, and the West Virginia Constitution,” Spring 2012, page 22. Also Maxwell, William B., III, *Benjamin Harrison Smith and the Quieting of West Virginia’s Land Titles*, unpublished manuscript.
- 79 MacCorkle, page 49.
- 80 Summers, page 304.
- 81 Laidley, page 424.
- 82 Where Knight died is in some dispute. *The Wheeling Intelligencer* reported his death occurred in Charleston; other reports place his death at his farm in Greenbrier County, “Tuscawilla.”
- 83 *Wheeling Intelligencer*, December 17, 1897.
- 84 *The Daily Gazette*, Charleston, December 18, 1897, page 1.
- 85 *The Daily Gazette*, December 16, 1897.
- 86 *The West Virginia Bar*, August 1901, page 263.
- 87 The Washington and Lee Alumni Directory reports his graduation from the College in 1852, followed simply by “L,” which, according to the key, indicates that he studied law but did not graduate. Judge Brockenbrough’s school, which later became Washington and Lee University Law school, was not a degree-granting school, however, until it became part of the University and, thus, no year of “graduation” would be appropriate.
- 88 The history of Isaac’s experiences in the Virginia campaign of 1861,

his resignation from the army, his subsequent conduct during the war, and the problems he encountered in returning to the practice of law are set out in *West Virginia History, A Virginian's Dilemma*, Volume XXVII, April 1966, Number 3.

89 The Quarriers lived at the corner of Capitol and Quarrier streets in Charleston.

90 Laidley, *History of Charleston and Kanawha County*, page 937.

91 A fictional, eternal case made famous by Charles Dickens in *Bleak House*. The *Dickinson v. Shrewsbury* case stemmed from the partnership of John Dickinson and Joel Shrewsbury, who amassed a fortune from their salt works and related businesses. When they agreed to dissolve the partnership, they disagreed about the distribution of assets each should receive; the case went on for 60 years.

92 The records of Dickinson & Shrewsbury were preserved in the attic of the Dickinson residence in Malden, West Virginia, which was the home of Mary Price Dickinson Ratrie. In 1985, Colonel Donald C. Pauley transcribed 183 pages of notes made by William Dickinson, Jr. as a summary of the history of the firm, for use in the lawsuit between Dickinson and Shrewsbury. This transcript was typed and reproduced in an edition of 50 copies under the name of *Dickinson Papers, Part I, The Col. William Dickinson, Jr. Notes*.

93 MacCorkle, *The Recollections of Fifty Years* (1928), page 115.

94 The remarks, a copy of which is retained in the West Virginia State Archives, are quite lengthy – running more than 20 pages and published in 1860. In them, Smith argues that the railroad is necessary for the economic development of the entire state, particularly for exporting, rather than being a primarily local or western counties' issue. It is clear the heart of the matter rested in the continuing domination of eastern Virginia to the detriment of the western region's development, a disagreement that helped spark the split and creation of a new state, West Virginia, three years later.

95 *Remarks of Mr. Smith of Kanawha on the Covington and Ohio Rail Road Bill in the House of Delegates of Virginia*, Richmond Enquirer Print, 1860, West Virginia State Archives.

96 Alexander Q. Smith married Ethel Appleton; Elsie Q. Smith married Frederick M. Staunton; and Isaac Noyes Smith Jr. married Elizabeth Dana.

97 MacCorkle, page 145.

98 MacCorkle, page 145.

99 Blazier, George J., *Marietta College Biographical Record of the Officers and Alumni*, 1928.

100 *Marietta College Catalog 1868-1869 and Marietta College Deceased Alumni File*, Special Collections, Marietta College Library.

101 Mary McMaster Couch was educated in the Peebles-Thompson school in New York City and married Dr. H.H. Young of Charleston. They had two children, Mazie Hopple and William George. Lucy Richardson Couch married Henry Edmundson Payne, vice president of Payne Shoe Company; they had a son, Henry E. Payne, Jr.

102 Crislip, Stephen R., *A Modern History of a Law Firm Known as Jackson Kelly*, Appendix B, page 85.

103 West Virginia's political leadership went through a volatile period in the 1880s and early 1890s. In the election of 1888, two men with ties to industry were pitted against each other in the governor's race. Nathan Goff, Jr., a Republican, won the election by 106 votes based on official results, but A. Brooks Fleming, a Democrat, challenged the results. Both men took the oath of office on inauguration day. The incumbent, E.W. Wilson, then refused to vacate the office, according to the *West Virginia Encyclopedia*. The issue finally was decided by a party-line vote in the Legislature.

104 Ancestry.com, <http://trees.ancestry.com/tree/32160213/person/181950937456>.

105 Laidley, page 792, and Ancestry.com: <http://trees.ancestry.com/tree/32160213/person/18195093745>. R. Parke Flournoy was graduated from the West Virginia University Law School and admitted to the bar in 1899; Harry L. became Charleston's city auditor; Samuel L. was graduated from WVU Law School, as well, and was admitted to the bar in 1911; and Alexander W. was clerk and collector for his oldest brother, Parke.

106 West Virginia Archives, *MacCorkle Collection*, Scrapbook No. 3, page 323, *New Dominion*, September 23, 1893.

107 The West Virginia Bar Association, *Proceedings of the Fifty-Fourth Meeting of the Association*, pages 128-129.

108 *Charleston City Directory, 1897 and 1901*.

109 *Martindale's American Law Directory Annual, 1922*, page 826.

110 *Martindale's American Law Directory Annual, 1922*, page 826.

111 *The Charleston Daily Mail*, February 7, 1938, pages 1-2.

112 Atkinson, *Bench and Bar of West Virginia*, page 99.

113 Atkinson, *Bench and Bar of West Virginia*, page 99.

114 217 U.S. 1, 54 L.Ed. 645 (1910); 217 U.S. 577, 54 L.Ed. 888 (1910); 225 U.S. 1, 56 L.Ed. 955 (1912).

115 *West Virginians*, The West Virginia Biographical Association, 1928.

116 *Journal of the Senate*, West Virginia Legislature, 1883, page 254.

Senator Price also was lauded for his speech in 1887, when lawmakers deadlocked on the selection of a U.S. Senator. The deadlock stemmed from a revolt by members of the Democratic caucus against Senator J.N. Camden based on allegations of political corruption. Atkinson and Gibbens remark

- on Senator Price's "geniality, experience and impartiality" at the opening of the 1889 session, as well, noting that he "is a fluent speaker, a close reasoner, and has the confidence and esteem of even political opponents."
- 117 *Journal of the Senate*, West Virginia Legislature, 1883, page 297.
- 118 Videotape of Hawthorne D. Battle, Spilman Archives.
- 119 West Virginia Bar Association, *Proceedings of the Thirty-ninth Annual Meeting*, pages 211-214.
- 120 West Virginia Bar Association, *Proceedings of the Forty-second Annual Meeting*, page 208.
- 121 West Virginia Bar Association, *Proceedings of the Forty-second Annual Meeting*, pages 209-210.
- 122 On Lee Street in Charleston, where the National Bank of Commerce building, now Huntington Bankshares, stood.
- 123 *The Charleston Daily Mail*, February 7, 1938, page 2. Senator Price also served on the board of the Davis Child Shelter and the county library commission.
- 124 *Charleston Gazette*, June 5, 1928.
- 125 *The Charleston Daily Mail*, February 8, 1938, page 2.
- 126 West Virginia Bar Association, *Proceedings of the Fifty-ninth Annual Meeting*, pages 31-32.
- 127 Atkinson, *Bench and Bar of West Virginia*, page 356, and The West Virginia Biographical Association, *West Virginians*, page 159.
- 128 Videotape of Hawthorne D. Battle, Spilman Archives.
- 129 *Sunday Gazette-Mail*, May 15, 2011, pages 1F and 8F.
- 130 Smith, page 244.
- 131 Memorial delivered by Robert S. Spilman at the West Virginia Bar Association, *Proceedings of the Fifty-ninth Annual Meeting*, pages 31-32.
- 132 *Charleston Gazette*, October 19, 1942, page 1.
- 133 West Virginia Bar Association, *Proceedings of the Fifty-ninth Annual Meeting*, page 31-32.
- 134 *Martindale's American Law Directory Annual*, 1930.
- 135 *Martindale-Hubbell Law Directory*, 1934 and 1936.
- 136 Lisa Spilman Sutphin, Spilman's daughter, said her father was the only person to have graduated from the University of Virginia law school in a single year. UVA alumni records confirm he completed the two-year program in one year. Spilman also was elected to *Phi Beta Kappa* in law school because VMI, which he attended in undergraduate school, did not have a chapter, according to Mrs. Sutphin. Sutphin, page 4, and interview with a firm representative.
- 137 Spilman Law Firm Bound Volumes, West Virginia State Archives.
- 138 Charles B. Stacy said it hung on the wall in the office of Spilman's

son, Bob, after the elder's death, but efforts to find it have not been successful. Several other members of the law firm also recall its presence. The Virginia Historical Society, in answer to a query, indicated there were several actions by the Colony of Virginia's General Assembly to require official approval of some sort by the governor and his Executive Council for people to take up the profession of lawyer. A search for further corroboration of the Spilman document was unfruitful.

139 Some ancestral records suggest the Spilman's ancestors were among the first colony to settle in Virginia in the early 1700s at what later was known as Germantown. For further reading on this colony and the Spilman-Spielmann family, see Germanna First Colony at [www.germannafirstcolony.org](http://www.germannafirstcolony.org).

140 Fauquier County, Virginia, Board of Trade Historical Notes, pages 36-40. The name "Eden" in the family presumably stems from the close association between the grandfather of Robert Eden Scott, the Rev. John Scott, and his friend and patron, Sir Robert Eden, Governor of Maryland, 1768-1776. Robert E. Scott's father, John Scott, was a distinguished judge of the Fauquier Circuit Court and the old General Court of Virginia.

141 Sutphin, page 4.

142 Sutphin, *Collected Poems of Eliza Dillon Spilman*, page 4, and interview with firm representative, April 4, 2009. Mrs. Sutphin credits Harrison B. Smith with asking Spilman to join the law firm. They were, she said, close friends.

143 Atkinson, *Bench and Bar of West Virginia*, page 366.

144 Videotape of Hawthorne D. Battle, Spilman Archives.

145 Sutphin, pages 5-6.

146 *Charleston Daily Mail*, October 30, 1922, page 6.

147 Holmes Morrison, former chairman of One Valley Bank, was a childhood friend of Robert Spilman, Jr., and visited the Roscommon Road house often. He, as well as Spilman's granddaughter, Gay Barclay, confirmed the description contained in Settle's book, *Charley Bland*.

148 The Spilman house now is owned by former Governor Gaston Caperton.

149 *Charleston Gazette*, January 17, 1940, page 18; *Charleston Daily Mail*, January 16, 1940, page 11.

150 Sutphin, page 12.

151 *Charleston Daily Mail*, December 24, 1934, page 2.

152 *Charleston Daily Mail*, November 14, 1921, page 14.

153 Fish, Peter Graham, "Red Jacket Revisited: The Case that Unraveled John J. Parker's Supreme Court Appointment," *Law and History Review*, Vol. 5, Issue 01, pages 52-102; U.M.W.A. vs. Red Jacket Co., 18 F. 2d 839 (1931).

## ENDNOTES

- 154 *Charleston Daily Mail*, June 11, 1922, page 1.
- 155 *Charleston Daily Mail*, September 27, 1940, page 17.
- 156 *Charleston Daily Mail*, May 4, 1940, page 1; *Charleston Gazette*, May 3, 1940, page 1.
- 157 *Charleston Gazette*, September 28, 1940, page 1; *Charleston Daily Mail*, September 27, 1940, page 17.
- 158 *Charleston Daily Mail*, April 24, 1932, page 12; *Charleston Gazette*, April 1, 1932, page 1; *Charleston Daily Mail*, May 13, 1932, page 26.
- 159 *Charleston Daily Mail*, October 16, 1928, page 13.
- 160 *Charleston Daily Mail*, November 13, 1923, page 1.
- 161 *Charleston Gazette*, September 2, 1954, page 21.
- 162 Videotape of Hawthorne D. Battle, Spilman Archives.
- 163 Bell, Landon Covington, *Southsider, a Lawyer's Life: Law, Lumber, and Coal*, page 308.
- 164 *Charleston Daily Mail*, August 1, 1920, page 6, reprint of editorial in the Wheeling newspaper.
- 165 *Charleston Gazette*, October 29, 1924, page 5.
- 166 Spilman, Robert S., printed speech at the dedication of the Charleston Senior High School, September 20-24, 1926, Spilman Archives.
- 167 *Charleston Daily Mail*, August 10, 1927, page 1.
- 168 *Charleston Daily Mail*, May 20, 1929, page 5.
- 169 *Charleston Gazette*, March 21, 1945, page 16; *Charleston Daily Mail*, April 18, 1931, page 1; *Charleston Daily Mail*, July 18, 1920, page 4; *Charleston Daily Mail*, August 10, 1923, page 17.
- 170 Former state Senator Walter S. Hallanan, *Charleston Daily Mail*, March 7, 1931, page 1.
- 171 *Charleston Gazette*, April 15, 1951, page 6.
- 172 *Charleston Gazette*, April 14, 1951, page 1.
- 173 *Charleston Daily Mail*, November 3, 1940, page 10.
- 174 Albert Schwabe, interview with a firm representative, September 25, 2011.
- 175 Holmes Morrison, interview with a firm representative, 2010.
- 176 Sutphin, page 7.
- 177 University of Virginia, *Deceased Alumni Files*, Robert S. Spilman.
- 178 During the years when the sale of alcoholic beverages was forbidden, as judge for the Southern District of West Virginia, Judge McClintic sentenced to Federal prison many West Virginians who had been caught manufacturing moonshine by the "revenooers." It was said that it was an awesome sight when a consignment of convicted moonshiners was marched across the South Side Bridge in Charleston to the C&O Railroad Station to await the arrival of the "George W. McClintic Sunshine Special" to convey

them to the Federal prison in Atlanta, Ga.

179 *Charleston Daily Mail*, November 10, 1955, page 40.

180 *Charleston Daily Mail*, May 31, 1958, page 4.

181 ALI-ABA Library Archives, Chicago National Conference transcript, October 12, 1968. A copy and drafts of Judge Dillard's prepared remarks, which vary somewhat from the transcript quoted, are available at the University of Virginia Law Library Special Collections.

182 West Virginia Bar Association, *Proceedings of the 40th Annual Meeting*, pages 47-49.

183 Atkinson, *Bench and Bar*, page 525.

184 West Virginia Bar Association, *Proceedings of the 40th Annual Meeting*, pages 47-49.

185 West Virginia Bar Association, *Proceedings of the 40th Annual Meeting*, pages 47-49.

186 Videotape of Hawthorne D. Battle, Spilman Archives.

187 University of Virginia School of Law, *Benchmark*, Volume 1, Number 2, October 1994.

188 Caskie Harrison began his professional life at Sewanee in 1870 and was in charge of the Classical Department for 12 years. *Sewanee: The University of the South Trustees Proceedings of 1903*, page 44, Archives and Special Collections, Jessie Ball DuPont Library, The University of the South.

189 *Herringshaw's Encyclopedia of American Biography*, page 454.

Caskie Harrison, according to the encyclopedia, also wrote notes on the *New Edition of Goodwin's Greek Moods and Tenses*, which "attracted considerable attention in the educational world."

190 Norvell Harrison also was a successful writer. She had several short stories published in periodicals of the time, including the *Woman's Home Companion* and *The Smart Set*.

191 Columbia University Alumni Federation Archives, Butler Library, New York, NY.

192 Caskie Harrison died October 12, 1902, at the age of 54. *Sewanee: The University of the South Trustees Proceedings of 1903*, page 44, Archives and Special Collections, Jessie Ball DuPont Library, The University of the South.

193 MacDonald, page 43.

194 Memorial by Senator George E. Price, West Virginia Bar Association. *West Virginia Bar Association, Proceedings of the Thirty-fifth Annual Meeting*, pages 54-57.

195 Harrison, Henry Sydnor, *When I Come Back*, pages 7, 63-64; West Virginia Bar Association, *Proceedings of the Thirty-fifth Annual Meeting*,

page 54.

196 Harrison, *When I Come Back*, page 28.

197 Harrison, *When I Come Back*, page 9.

198 Harrison, *When I Come Back*, page 27.

199 Harrison, *When I Come Back*, pages 49-50.

200 Details of Jack Harrison's death and the original sites of his first burial are included in a January 25, 1919, letter written to Senator Price by Emory H. Niles, Captain of the 313<sup>th</sup> Field Artillery.

201 Archives, St. John's Episcopal Church. *Charleston Daily Mail*, November 1, 1919.

202 U.S. *Military Burial Files of Edmund C. Harrison*, RG92 1915-1939, Box 2133, National Archives and Records Administration, College Park, Maryland.

203 Harrison, *When I Come Back*, pages 67-68.

204 Harvard University Law School Archives, *Harvard Class Report 1916 and 1921*. Price worked at the New York law firm 1915-1916. For more on Winthrop & Stimson, see *Winthrop, Stimson, Putnam & Roberts: A History of a Law Firm*, New York, 1980.

205 Caroline Edmunds' correspondence to Charles B. Stacy.

206 Winthrop & Stimson was evolved from Root, Howard, Winthrop & Stimson of New York, a highly reputable law firm. Henry L. Stimson later went on to serve as U.S. Attorney for the Southern District of New York; Secretary of War under President Howard G. Taft; special peace envoy to Nicaragua for President Calvin Coolidge; and Secretary of State for President Herbert Hoover. *Winthrop, Stimson, Putnam & Roberts: A History of a Law Firm*, 1980, pages 6, 19 and 27.

207 Caroline Ward was the daughter of Charles Ward, who owned Charles Ward Engineering Works, which built steamboats across the river from Charleston at what later was the Trojan Steel Company location. Charles Ward was married to Gypsy Fleming, the daughter of former West Virginia Governor Aretas Brooks Fleming. Caroline Edmunds' correspondence to Charles B. Stacy.

208 *World War I Selective Service System Draft Registration Card*, 1917-1918, Ancestry.com, <http://search.ancestry.com/iexec?htx=View&r=an&dbid=6482&iid=WV-19923824622&fn=Thomas+Brooke&ln=Price&st=r&ssrc=&pid=21614864>.

209 *Harvard University Class Reports* 1916 and 1921.

210 The house was acquired from the Prices by Mr. and Mrs. Frederick G. Bannerot, who lived there until Mrs. Bannerot's death in 1992.

211 According to David Giltinan, Jr., Price often brought with him on the train a supply of good whiskey, which was not readily available in

Charleston at the time. On one occasion, he was forced to abandon it on the train to avoid Federal agents.

212 Charles B. Stacy recalled that his oldest brother, who was born in 1911, could recite it. It was intended, he said, to inspire heroic ideas in young people, and began: "The boy stood on the burning deck/Whence all but he had fled ..."

213 Videotape of Hawthorne D. Battle, Spilman Archives.

214 *Official Code of West Virginia*, "Final Report of the Commission to revise and codify the statute laws of West Virginia," Joint Legislative Committee on Revision of the West Virginia Code, 1931. Special Collections, Harvard University.

215 Videotape of Hawthorne D. Battle, Spilman Archives.

216 West Virginia Bar Association, *Proceedings of the Seventieth Meeting*, pages 67-75.

217 The same thing happened, Stacy noted, to him and Wood Bouldin when they made several proposals for a more orderly and thoughtful approach to firm governance. Spilman supported this proposal and nominated Stacy as secretary. He was told he must type the minutes himself to keep them private, which he did.

218 West Virginia Bar Association, *Proceedings of the Forty-seventh Annual Meeting*, pages 168-171.

219 The West Virginia Biographical Association, *West Virginians*, 1928; *Charleston Gazette*, September 3, 1931, page 1.

220 H.H. Corrie, an accountant who worked with the firm for many years, told Charles B. Stacy this about Howard. Stacy also said he was told by several people that Howard practically ran the WVU law school from Charleston.

221 *Harvard Class Report 1939*, Harvard University Law School Historical and Special Collections, pages 43-44.

222 Videotape of Hawthorne D. Battle, Spilman Archives.

223 *World War I Selective Service System Draft Registration Cards*, 1917-1918, Ancestry.com, <http://search.ancestry.com/iexec?htx=View&r=an&dbid=1002&iid=WV-2240292-3119&fn=Frederick+Lionel&ln=Thomas&st=r&src=&pid=559174>.

224 *Charleston Daily Mail*, September 9, 1969, page 1.

225 Frederick L. Thomas, Jr., interview with firm representative, January 2012.

226 Virginia T. Jones, interview with firm representative, June 2012.

227 Virginia T. Jones, interview with firm representative, June 2012.

228 *Annual Banquet of the Lotus Club Program*, June 21, 1924, private papers, Virginia T. Jones.

- 229 *A History of the Belle Works Strike*, July 1948. Private papers, G. Thomas Battle.
- 230 Charles B. Stacy, personal recollections.
- 231 Videotape of Hawthorne D. Battle, Spilman Archives.
- 232 University of Iowa Yearbooks, *The Hawkeye*, 1919-1923.
- 233 Howes, Durward, *Who's Who Among the Young Men of the Nation*, Volume 2, page 178.
- 234 *Charleston Daily Mail*, January 13, 1931, page 17.
- 235 *Charleston Daily Mail*, March 19, 1931, page 1.
- 236 *Charleston Gazette*, March 20, 1931, page 6.
- 237 *Charleston Daily Mail*, April 19, 1931, page 1-Society section.
- 238 *Charleston Gazette*, February 1, 1935, page F-3.
- 239 Clark, Walter E., ed., and West Virginia Editors Association, *West Virginia Today*.
- 240 Preston became one of the first panel of “judges” with the West Virginia Public Service Commission and later became the city attorney of Charleston.
- 241 *Martindale's American Law Directory Annual 1930*.
- 242 Memorial by Frederick L. Thomas at the West Virginia Bar Association, *Proceedings of the 101st Meeting and the 98th Annual Meeting*, January 16, 1985.
- 243 Videotape of Hawthorne Battle, Spilman archives.
- 244 West Virginia Bar Association, *Proceedings of the 74th Meeting and 72nd Annual Meeting*, pages 59-66.
- 245 West Virginia Bar Association, *Proceedings of the 64th Annual Meeting*, pages 102-113.
- 246 Atkinson, *Bench and Bar of West Virginia*, p 217.
- 247 West Virginia Bar Association, *Proceedings of the 82nd Annual Meeting*.
- 248 Several people interviewed for this publication referred to Bob Spilman in precisely the same way independent of each other, calling him “a deep thinker.”
- 249 Videotape of Hawthorne D. Battle, Spilman Archives.
- 250 Groff, Debbie Davis, *The Spilman Family, Robert S. Spilman, Sr., and Jr.*, unpublished manuscript, 1994.
- 251 Alexander, Ruffner, interview with firm representative, 2010.
- 252 Morrison, Holmes, interview with firm representative, 2010.
- 253 *Charleston Daily Mail*, November 3, 1969, page 1.
- 254 *Charleston Daily Mail*, March 22, 1960, page 1.
- 255 *Charleston Gazette*, October 22, 1935, page 12.
- 256 *Charleston Daily Mail*, February 2, 1947, page 4.

- 257 Henley, Page, interview with firm representative, 2012.
- 258 *Charleston Daily Mail*, November 4, 1969, page 12.
- 259 Groff, Debbie Davis, *The Spilman Family, Robert S. Spilman, Sr., and Jr.*, unpublished manuscript, 1994.
- 260 *Monticola*, West Virginia University Yearbook, 1923, page 128; United States Census 1920, Kanawha County, Sheet No. 10-B, both from Ancestry.com. [http://search.ancestry.com/iexec?htx=View&r=an&dbid=1265&iid=40146\\_b084350-00131&fn=Howard+R&ln=Klostermeyer&st=r&ssrc=&pid=170912332](http://search.ancestry.com/iexec?htx=View&r=an&dbid=1265&iid=40146_b084350-00131&fn=Howard+R&ln=Klostermeyer&st=r&ssrc=&pid=170912332). [http://search.ancestry.com/iexec?htx=View&r=an&dbid=6061&iid=4389743\\_00877&fn=Howard+N&ln=Klostermeyer&st=r&ssrc=&pid=37380557](http://search.ancestry.com/iexec?htx=View&r=an&dbid=6061&iid=4389743_00877&fn=Howard+N&ln=Klostermeyer&st=r&ssrc=&pid=37380557).
- 261 *Martindale-Hubbell Law Directory Annual 1936*.
- 262 Kanawha County Bar Association, *Memorial Tribute*, September 12, 1983, Spilman Archives.
- 263 The firm representative is indebted to William B. Maxwell, III, for the information about Jackson D. Altizer.
- 264 Ancestry.com, <http://trees.ancestry.com/tree/10288039/person/-664606913/media/4?pgnum=1&pg=0&pgpl=pid%7cpgNum>.
- 265 West Virginia Bar Association, *Proceedings of the 109th Meeting and 106th Annual Meeting*, page 105.
- 266 A notation in the law firm papers indicates Ross joined the law firm in 1937, and another source has him joining in 1938, but this is unlikely as he was still in law school at the time.
- 267 *Charleston Daily Mail*, March 2, 1952, page 20.
- 268 *Charleston Daily Mail*, October 28, 1943, page 10.
- 269 *Charleston Daily Mail*, March 2, 1952, page 20.
- 270 Sullivan, "Modern Budget Amendment," page 489.
- 271 Lee Feinberg, interview with firm representative, January 2012.
- 272 West Virginia Bar Association, *Proceedings of the 109th Meeting and 106th Annual Meeting*, page 105.
- 273 Feinberg, interview with firm representative.
- 274 Ancestry.com, <<http://trees.ancestry.com/tree/10288039/person/-664606911/photo/4b614a94-b682-427e-a731-53947bb38ea6?src=search>>.
- 275 *Charleston Daily Mail*, January 3, 1964, page 20.
- 276 Among the clients listed in *Martindale-Hubbell, 1956*, were *Charleston Daily Mail*; WCHS-TV; WCHS Radio; Peters Creek Coal Co.; Loewenstein & Sons Hardware; WV Malleable Iron; Kanawha City Co.; and Crab Orchard Coal & Land. The firm was local counsel to C&P Telephone; DuPont; American Viscose; Allied Chemical & Dye Corp.; TruTemper Corp.; National Lead Co.; Westmoreland Coal; Anchor Coal

Co.; and Prentice-Hall Corporate System.

277 William C. Payne, personal recollections, May 2011; George Guthrie, interview with firm representative, June 2012.

278 Charles L. Woody, interview with firm representative, 2009.

279 The list of schools represented in the history of the firm is, indeed, impressive: Ohio University, Dartmouth, Washington and Lee, Georgetown, Yale, Columbia, Harvard, University of Virginia, and Boston, to name a few. In addition, West Virginia University “was ahead of most institutions in neighboring states in setting minimum educational requirements for the College of Law students. The only institution in Pennsylvania, Ohio, Maryland, Kentucky or Virginia with prerequisites that approached those of West Virginia University was the University of Virginia.” Bailey, Kenneth R., *Raising the Bar: A History of the West Virginia Bar Association, 1886-2007*, page 25.

280 William B. Maxwell, III, interview with firm representative, 2010.

281 George C. Kern, Jr., interview with firm representative, 2009.

282 William B. Maxwell, III, Page Henley, John Tinney, Tom Battle, Fred Thomas, Jr., interviews with firm representative, 2010-2012.

283 Feinberg, December 2011.

284 Feinberg, December 2011.

285 Tinney, January 5, 2012.

286 Tinney, January 5, 2012.

287 Feinberg, December 2011.

288 Woody, 2009. The Kanawha County Textbook controversy stemmed from a disagreement over the selection of textbooks for the county’s schools. The controversy escalated and subsequent boycotts at schools soon spread to businesses, industrial plants, and coal mines. The protests became violent and vandalism spread. The disputes continued sporadically over a span of three years. Source: *The West Virginia Encyclopedia*, pages 392-393.

289 Henley, January 2012. He recalls one court event, in particular, involving a woman who had been arrested related to the picketing. The woman, a self-described Christian, was asked by Judge Dennis Knapp to clarify her position against the textbooks. The woman, Henley said, replied something like: “Damn it, your honor, all we want is to get that god-damn dirty language out of those books!” Henley also said a high official at the Episcopal Church of which he was a member had to be taken to a “safe house” on occasion because anti-textbook activists threatened to kill him.

290 Stephanie Racin, interview with firm representative, 2012.

291 169 W.Va. 310, 288 S.E.2d 139.

292 361 F. Supp. 398.

293 George G. Guthrie, interview with firm representative, June 2012.

- 294 Tinney, April 2012.
- 295 Tinney, April 2012.
- 296 *Charleston Gazette*, January 11, 1952, page 1.
- 297 Heather Heiskell Jones, interview with firm representative, 2009.
- 298 *Charleston Daily Mail*, July 12, 1977, page 8A.
- 299 *Charleston Daily Mail*, November 10, 2002, page 13.
- 300 Guthrie, June 2012.
- 301 *Charleston Gazette*, October 2, 1974, page 12.
- 302 *Charleston Gazette*, October 2, 1974, page 12.
- 303 Eric Iskra, interview with firm representative, 2012.
- 304 Ronald Schuler, interview with firm representative, 2012.
- 305 F. B. Webster Day, interview with firm representative, 2012.
- 306 Derrick Price Williamson, interview with firm representative, 2012.
- 307 The law firm utilizes an early case assessment analysis. The firm analyzes a case and provides clients with a detailed assessment about the likely course of the case, what it will take to win the case, what the possibilities are of winning the case, and how the firm defines “winning the case” to ensure the firm and the client understand each other. The firm also presents alternatives to resolving the case.
- 308 Paul, 2009.
- 309 Jones, 2009.



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## About the Author

### Elizabeth Jill Wilson

Elizabeth Jill Wilson has been a journalist and writer for more than 30 years. She served as a broadcast and print journalist in West Virginia and South Carolina for 15 years, including as broadcast editor and statehouse reporter for The Associated Press.

She was press secretary to West Virginia Governor Gaston Caperton during his second term, 1993-1997. Since leaving state government, she has been a freelance writer. The West Virginia native lives on a farm in her home state with her husband and their two Pembroke Welsh Corgis.

ABOUT THE BOOK  
*The First 150:*  
*Spilman Thomas & Battle's History of Service*



*The First 150: Spilman Thomas & Battle's History of Service* is a rich amalgamation of the economic and cultural development of a region, the individuals who influenced and drove that development, and a legal community that has stood the test of time and flourishes today to strive for the best for its clients. The law firm, now in its 150th year, remains true to the principles of its founding members: to be passionate about their cause, be the best at any endeavor undertaken, and stay focused on the outcome.

A document recording the history of the firm was begun more than two decades ago by then-partner Charles B. Stacy, a noted tax lawyer and a motivating force in the firm's expansion in the latter part of the 20th century. Stacy pieced together excerpts from biographical publications, historical writings by the firm's members, memorials penned for presentation at court, and "facts, reminiscences, observations and comments, relevant and irrelevant," as he noted in an early draft of the book. Stacy died in 2002.

Six years later, the firm hired Jill Wilson to complete the remarkable story that Stacy had begun. The former Associated Press reporter and gubernatorial press secretary retraced Stacy's footsteps and expanded the scope of his work to include primary sources and archival documents from across the country.

What has resulted is a chronological advancement of the firm's development, beginning with the partnership of the indomitable Benjamin Harrison Smith and the erudite Edward Boardman Knight. One of the most remarkable chapters focuses on the firm's namesake, Robert Scott Spilman, who remains a pillar of intellect and leadership in the community long after his death.

Perhaps among the most notable discoveries was a speech delivered more than a decade after Spilman's death by Judge Hardy Dillard, a former dean of the University of Virginia Law School, speaking at a National Conference on Continuing Legal Education. A published transcript of the speech made no mention of Spilman, yet Stacy, who attended the conference, had said Dillard commented at length about him. Ms. Wilson tracked down the actual transcript lauding Spilman some time later thanks to a diligent librarian at the American Law Institute Library, and Dillard's remarks now are recorded for all to enjoy.

The book describes some of the landmark cases of the firm, including a pivotal case in the coal mine wars of the 1920s; a U.S. Supreme Court case involving a dispute between states over a boundary line; and a sometimes violent labor dispute at DuPont's Belle Works. It also chronicles some of the members who have bridged the transition from a "white shoe law firm" of the 1900s to a diverse, collegial, progressive legal powerhouse in the mid-Atlantic region.

The Spilman Thomas & Battle, PLLC of the 21st century in many ways bears no resemblance to its roots, with a footprint spanning several states and a national presence in key legal arenas; yet, it is still true to its foundation, and the accolades it has received in recent years affirm that it remains a law firm with a distinct history – and a history of distinction.