

## Bill Allen in Class

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In the Fall of 1996 I read a news article about a Delaware Supreme Court case involving corporate law.<sup>1</sup> Buried at the end of the article was the suggestion that William T. Allen, Delaware's Chancellor for over ten years, was contemplating leaving the bench.<sup>2</sup> My first reaction was surprise coupled with sadness. Chancellor Allen was, I thought, at fifty-two, well under the age when many people retire. Although the heyday of takeovers had passed, there surely were many such battles going on in which he could have a say. Takeovers aside, corporate law as a discipline seemed as alive today as it ever had. Surely the Chancellor would have been reappointed for the asking.<sup>3</sup> Even if he did not intend to serve out a full twelve year term, he could serve half or so and then retire.

Startled as I was to learn that he was leaving, I was delighted to discover where he was going. The article said he was deciding between teaching jobs at Harvard, NYU, and Stanford.<sup>4</sup> Delighted, but not surprised. He had visited at law schools a few times while Chancellor.<sup>5</sup> I also had seen him several times as a speaker at Northwestern's Securities Regulation Institute, and Tulane's Corporate Law Institute.<sup>6</sup> Over the intervening months, the grapevine reported that NYU was the school of choice for the Chancellor. In due time, NYU law

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1. Stephanie Strom, *A Setback for Perelman Affects Tactic on Mergers*, N.Y. TIMES, Oct. 24, 1996, at D5.

2. *Id.* ("People close to Judge [sic] Allen. . . said he probably would not seek renomination next year. . . .").

3. See, Diana B. Henriques, *Top Business Court Under Fire*, N.Y. TIMES, May 23, 1995, at D1 (Joseph Flom, a premier takeover lawyer, "deemed it highly unlikely that Governor Carper . . . would deny Chancellor Allen a new term. 'People would be shocked,' Mr. Flom said. 'Bill Allen is an extremely competent judge.'").

4. Strom, *supra* note 1, at D5.

5. He has been an adjunct professor at Penn, and has visited at Stanford twice and at Yale. *Five More Stars Join Law School's Permanent Faculty*, NYU, Autumn 1997, at 27.

6. E.g., 8 TUL. CORP. L. INST (1996) and 23 SEC. REG. INST. (1996).

school's glossy magazine featured Professor William T. Allen among its new faculty hires.<sup>7</sup>

Given the scholarliness of his opinions and his experiences as a visiting professor, it was clear that Professor Allen would start his new life as an academic of the first water. This was my vision of the Chancellor as Professor: All of us in academia would look forward to having Bill Allen as a colleague and to seeing his effect on the academic side of corporate law. We'd mingle with him at conferences and read the no doubt prolific scholarship he would produce. These meetings and written pieces would in turn prod our own thoughts and thus work their way to our students. By the close of his career in academia, students throughout the country would have been exposed indirectly to, and influenced enormously by, the mind of William Allen. If Holmes's aphorism about the life cycle of case law were true,<sup>8</sup> Bill Allen seemed likely to extend his influence, perhaps by decades, by shifting from the judiciary to the professoriate.<sup>9</sup>

But then I realized that Bill Allen's classroom influence was enormous already. I don't mean simply the students he has taught when a visiting professor. Nor do I mean, exactly, the *œuvre* of opinions which has educated all of us interested in corporate law. Rather, it suddenly occurred to me that Allen's thoughts have *directly* shaped the views of literally thousands of law students already. His opinions and articles are featured prominently in the corporations casebooks used in virtually all American law schools. I find this aspect of Bill Allen's influence to be truly astonishing. A trial court judge whose first opinions appeared only twelve years ago finds his thoughts pervasively presented to nearly every law student in America. It may not be an exaggeration to say that, in moving from enormously influential judge to professor, Bill Allen will both effect and affect law in a way matched only by that of Joseph Story, who combined teaching at the Harvard Law School and service as an Associate Justice on the

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7. *Five More Stars Join Law School's Permanent Faculty*, *supra* note 5, at 26. The magazine also reports that Allen will have a joint appointment with the business school and that he will be director of a new Center for Law and Business. *Id.*

8. "It is a great mistake to be frightened by the ever-increasing number of reports. The reports of a given jurisdiction in the course of a generation take up pretty much the whole body of the law, and restate it from the present point of view. We could reconstruct the corpus from them if all that went before were burned." OLIVER WENDELL HOLMES, *The Path of the Law*, in COLLECTED LEGAL PAPERS 167, 169 (1920).

9. Perhaps the most salient example of corporate law academics' influence extending beyond the single generation ascribed by Holmes to case law is ADOLF A. BERLE, JR. & GARDINER C. MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* (1932).

Supreme Court of the United States. I can think of no other important judge who moved to teaching after a distinguished career on the bench.

Nor is Bill Allen represented in the casebooks by just a leading opinion or two. Once I began to look through the current casebooks, I was struck by the variety of issues the editors had chosen to illustrate through the work of Bill Allen. Half a dozen casebooks published by the three principal casebook publishers deal with corporate law.<sup>10</sup> All of them have at least one excerpt from an opinion or an article by Chancellor Allen. Four of them have at least five different excerpts and one, the most magisterial of corporation law casebooks, has seven.<sup>11</sup> In all, no fewer than fifteen different opinions and three different articles are presented in the various casebooks.<sup>12</sup> What follows is a brief précis of the pedagogical settings for Allen's work.

### A. A Typical Casebook

Let me start by describing to what students in a typical corporations class might be exposed. One of the most popular casebooks is O'Kelley and Thompson's. The authors of that book use six of Chancellor Allen's cases in five different settings. Assuming the professor moves through the material in the same order as the casebook presents it, a student's first encounter with the Chancellor is through *Grimes v. Donald*,<sup>13</sup> an illustration of the scrutiny courts will give management agreements that arguably infringe on the board's statutory duty to manage the corporation.<sup>14</sup> Chancellor Allen views the issue in the *Grimes* case as an example of the larger social choice of locating all corporate power in the board rather than in the ultimate owners

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10. ROBERT W. HAMILTON, *CASES AND MATERIALS ON CORPORATIONS* (5th ed. 1994); LEWIS D. SOLOMON, ET AL., *CORPORATIONS LAW AND POLICY* (3d ed. 1994); JOEL SELIGMAN, *CORPORATIONS* (1995); JESSE H. CHOPER, ET AL., *CASES AND MATERIALS ON CORPORATIONS* (4th ed. 1995); CHARLES R. O'KELLEY, JR. & ROBERT B. THOMPSON, *CORPORATIONS AND OTHER BUSINESS ASSOCIATIONS* (2d ed. 1996); and WILLIAM L. CARY & MELVIN ARON EISENBERG, *CASES AND MATERIALS ON CORPORATIONS* (7th ed. 1995).

11. Joel Seligman, in the introduction of his casebook, is explicit in his belief that corporate law has become essentially federal securities law. Thus, he treats securities law much more extensively than other casebooks. SELIGMAN, *supra* note 10, at xxi. Nonetheless, he uses at least one Allen opinion, *Lacos Land Co. v. Arden Group, Inc.*, 517 A.2d 271 (Del. Ch. 1986); SELIGMAN, *supra* note 10, at 511. The most magisterial casebook in corporate law is CARY & EISENBERG, *supra* note 10.

12. I am including in this tally only principal cases or excerpts and extended note discussions from the casebooks cited in note 10 *supra*.

13. *Grimes v. Donald*, No. 13358, 1995 Del. Ch. LEXIS 3 (Jan. 12, 1995), *aff'd*, 673 A.2d 1207 (Del. 1996), *excerpted in* O'KELLEY & THOMPSON, *supra* note 10, at 186.

14. The board's duty to manage the corporation is found at DEL. CODE ANN. tit. 8, § 141(a) (1991).

(i.e., the shareholders) or the corporate executives (i.e., management).<sup>15</sup> The student is also exposed to a description of a complicated employment agreement which the Chancellor deftly distills to two pages.<sup>16</sup> Finally, the student gets the benefit of Chancellor Allen's analysis, not only of the corporate law issues, but of the drafting issues as well. Evaluating the central contractual language, the Chancellor calls it "foolish," "ill-conceived," "unskillful," and "badly flawed."<sup>17</sup>

The student's second exposure to Chancellor Allen is in a corporate opportunity case, *Cellular Information Systems, Inc. v. Broz (Broz)*.<sup>18</sup> The student learns that the corporate opportunity doctrine is an offshoot of the basic duty of loyalty and that it is roughly analogous to the tort of misappropriation.<sup>19</sup> But then, having explained generally what corporate opportunity is about, the Chancellor introduces a factual wrinkle that, in other hands, might have muddied the opinion. In the *Broz* case, though, Chancellor Allen uses the quirk to explicate how corporate opportunity and misappropriation are different and shows how the duty of loyalty is fundamentally grounded in the director's agreement to serve as a director.<sup>20</sup> As an extra fillip, the student sees Chancellor Allen grappling with a recurrent issue of equity: how the appropriate remedy is to be shaped.<sup>21</sup>

The importance of remedy is brought home in the next encounter with Chancellor Allen. It is difficult to imagine a more recondite corporate law issue for a student in a survey course than the question of whether a shareholder may recover rescissory<sup>22</sup> damages in a cash out merger. The issue is an important one, though, because the availability of rescission rather than appraisal provides enormous incentives for management to structure transactions that arguably overcompensate shareholders; conversely, the absence of rescission as an available remedy encourages management to undercompensate the owners.

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15. O'KELLEY & THOMPSON, *supra* note 10, at 190.

16. *Id.* at 188-89.

17. *Id.* at 193.

18. *Cellular Info. Sys., Inc. v. Broz*, 663 A.2d 1180 (Del. Ch. 1995), *rev'd*, 673 A.2d 148 (Del. 1996), *excerpted in* O'KELLEY & THOMPSON, *supra* note 10, at 416.

19. *Id.* at 421.

20. *Id.* at 421-22.

21. *Id.* at 426-28.

22. Which for some reason the Delaware courts insist on calling "rescissory." *See, e.g., International Equity Capital Growth Fund, L.P. v. Clegg*, No. Civ. A. 14995, 1997 WL 208955, at \*1 (Del. Ch. Apr. 22, 1997).

Nevertheless, Professors O'Kelley and Thompson edit Chancellor Allen's 1994 opinion in *Cinerama Inc. v. Technicolor, Inc.*<sup>23</sup> to present a perfectly clear (though admittedly intricate) description of the remedy issues in a cash out merger.<sup>24</sup> By the time students have worked their way through the ten casebook pages of the Chancellor's decision, they have seen how rescissionary damages are different from appraisal awards and two premises that animate the granting of rescission.<sup>25</sup> (Quite a lot for an assignment that is half as long as the usual class hour's reading.)

Professors O'Kelley and Thompson next use Chancellor Allen to address an area of corporate law that is every bit as problematic as the rescission versus appraisal question: whether a shareholder who sells a control block of shares to a person who then damages the corporation is liable to the corporation or its minority shareholders. In *Harris v. Carter*,<sup>26</sup> Chancellor Allen epitomizes a series of non-Delaware leading cases that contemplate liability in some instances. He roots his decision that liability will be predicated on the foreseeability of harm in basic tort law duties. Those duties, says the Chancellor, control over the specific setting of corporate law with its assumption of free alienability.<sup>27</sup>

Finally, Professors O'Kelley and Thompson present Chancellor Allen's views on one of the most central, though least explicitly discussed, aspects of corporate law: the equitable nature of corporate rights and their enforcement through the Delaware Court of Chancery. The concrete setting is the power of the courts to examine with heightened scrutiny managerial actions that impede shareholder voting rights. In one of the Chancellor's most thoughtful opinions, *Blasius Indus., Inc. v. Atlas Corp. (Blasius)*,<sup>28</sup> he explores the theory of the most basic decision in corporate law: the allocation of power between shareholders and directors.

In the *Blasius* case, the Chancellor eloquently affirms the power of the courts to overturn legal board action (legal in the sense that no statutory provision has been violated) when the action is inherently inequitable. In doing so, he revivifies a tradition of Delaware corporate

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23. 663 A.2d 1134 (Del. Ch. 1994), *aff'd*, 663 A.2d 1156 (Del. 1995).

24. *Id.*, excerpted in O'KELLEY & THOMPSON, *supra* note 10, at 824.

25. *Id.* at 827-30.

26. *Harris v. Carter*, 582 A.2d 222 (Del. Ch. 1990), excerpted in O'KELLEY & THOMPSON, *supra* note 10, at 852.

27. *Id.* at 859-61.

28. 564 A.2d 651 (Del. Ch. 1988), excerpted in O'KELLEY & THOMPSON, *supra* note 10, at 952.

law that was in danger of being overlooked in the takeover era of the 1980s.<sup>29</sup> With a deft application of the power to distinguish cases having substantially similar facts, the Chancellor rescues the *Blasius* setting from the deference to the board that would have been expected and, instead, holds that the board cannot disenfranchise the shareholders unless it can show a "compelling justification." The only justification for the board's disenfranchising the shareholders is a paternalistic one that the Chancellor rejects, saying, "The theory of our corporation law confers power upon directors as the agents of the shareholders; it does not create Platonic masters."<sup>30</sup>

### B. *The Range of Issues for Which Casebooks Use Chancellor Allen*

Using a casebook such as *O'Kelley & Thompson* suggests what a typical corporations student might encounter in the course of a semester's study of corporate law. Let me now broaden my focus and take the current corporations casebooks as a group to see the areas in which they use Chancellor Allen's writings.

Four of the casebooks use Chancellor Allen's writings to illustrate, at the most abstract level, attributes of the corporate form itself. *Cary & Eisenberg* uses *Katz v. Oak Indus., Inc.*<sup>31</sup> and *Crédit Lyonnais Bank Nederland, N.V. v. Pathé Communications Corp. (Crédit Lyonnais)*<sup>32</sup> to address the constituencies to which directors owe their duties. *Choper, et al.* also uses *Crédit Lyonnais* in this way.<sup>33</sup> *Hamilton and Solomon, et al.* both use a law review article, *Our Schizophrenic*

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29. That tradition is usually referred to as the *Schnell* line of cases from *Schnell v. Chris Craft Indus.*, 285 A.2d 437 (Del. 1971). In contradistinction to the *Schnell* line of cases was the so-called "equal dignity" line holding that each section of the Delaware corporation law was entitled to equal dignity such, meaning that the Delaware courts would largely sanction board actions that comported with the corporations code even though, if other sections of the code had been applied, the action would have been impermissible. See *Hariton v. Arco Elec., Inc.*, 188 A.2d 123 (Del. 1963).

30. *Blasius Indus.*, 564 A.2d at 663, excerpted in O'KELLEY & THOMPSON, *supra* note 10, at 966. Immediately following the discussion of the *Blasius* case, Professors O'Kelley and Thompson present a squib of another Chancellor Allen case, *Stahl v. Apple Bancorp, Inc.*, 579 A.2d 1115 (Del. Ch. 1990), excerpted in O'KELLEY & THOMPSON, *supra* note 10, at 966. In *Stahl*, the Chancellor declined to give a strong reading to *Blasius* on facts that arguably would support application of the "compelling justification" standard.

31. 508 A.2d 873 (Del. Ch. 1986), excerpted in CARY & EISENBERG, *supra* note 10, at 232.

32. No. 12150, 1991 Del. Ch. LEXIS 215 (Dec. 30, 1991), excerpted in CARY & EISENBERG, *supra* note 10, at 233.

33. *Crédit Lyonnais Bank Nederland, N.V. v. Pathé Communications Corp.*, No. 12150, 1991 Del. Ch. LEXIS 215 (Dec. 30, 1991), excerpted in CHOPER, ET AL., *supra* note 10, at 46.

*Conception of the Business Corporation*, to show both the enduring tensions in corporate law and Allen's approach to the subject.<sup>34</sup>

The bulk of any Corporations course deals with the internal governance rules of corporations. Those rules allocate power among the primary constituencies of shareholders, directors, and officers; grant shareholders rights in securing and protecting their interests; and describe the fiduciary duties of directors and officers to the corporation and its shareholders. As might be expected, Chancellor Allen is represented in all three aspects of corporate governance in nine different decisions.

Two casebooks, *Cary & Eisenberg* and *Solomon, et al.*, use the *Blasius* decision to present the question of the appropriate allocation of decisional power between shareholders and directors rather than using the case, as *O'Kelley & Thompson* does, for its teachings about a change of control setting.<sup>35</sup> *Cary & Eisenberg* also uses a post-*Blasius* case, *Hoschett v. TSI International Software, Ltd.*, to expand upon the same point.<sup>36</sup> Finally, as we have seen, *O'Kelley & Thompson* uses *Grimes v. Donald* to examine the limits on the constituents' power to circumscribe board authority.<sup>37</sup>

Two Chancellor Allen opinions dealing with shareholder rights are included in four of the corporations casebooks. *Cary & Eisenberg* and *Solomon, et al.*, employ *RB Associates of N.J., L.P. v. Gillette Co.* to explicate shareholder inspection rights beyond the statutorily required shareholder list.<sup>38</sup> *Seligman and Choper, et al.*, use *Lacos Land Co. v. Arden Group, Inc.* to show the limits of using the corporation's certificate of incorporation to disenfranchise shareholders by creating dual class voting stock.<sup>39</sup>

Fiduciary duties are traditionally divided into the Duty of Care and the Duty of Loyalty. Chancellor Allen's opinions involving both aspects are represented in several casebooks. On the Duty of Care

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34. William T. Allen, *Our Schizophrenic Conception of the Business Corporation*, 14 CARDOZO L. REV. 261 (1992), excerpted in HAMILTON, *supra* note 10, at 600 and excerpted in SOLOMON, ET AL., *supra* note 10, at 8, 11.

35. *Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651 (Del. Ch. 1988), excerpted in CARY & EISENBERG, *supra* note 10, at 265 and excerpted in SOLOMON, ET AL., *supra* note 10, at 428.

36. *Hoschett v. TSI Int'l Software, Ltd.*, 683 A.2d 43 (Del. Ch. 1996) (Allen, C.), excerpted in MELVIN ARON EISENBERG, CASES AND MATERIALS ON CORPORATIONS 1997 SUPPLEMENT, at 30.

37. See *supra* note 13 and accompanying text.

38. No. 9711, 1988 Del. Ch. LEXIS 40 (Mar. 22, 1988), excerpted in CARY & EISENBERG, *supra* note 10, at 318 and excerpted in SOLOMON, ET AL., *supra* note 10, at 440.

39. 517 A.2d 271 (Del. Ch. 1986), excerpted in SELIGMAN, *supra* note 10, at 511, and excerpted in CHOPER, ET AL., *supra* note 10, at 546.

side, Cary & Eisenberg uses *In re Caremark Int'l Inc. Derivative Litigation*<sup>40</sup> to suggest that the much criticized Delaware case of *Graham v. Allis-Chalmers Mfg. Co.*<sup>41</sup> is, indeed, dead. Solomon, *et al.*, uses the case in similar fashion.<sup>42</sup>

As I have noted, Professors O'Kelley and Thompson use the *Broz* case to teach the corporate opportunity aspect of the Duty of Loyalty.<sup>43</sup> Choper, *et al.*, uses *Crédit Lyonnais* to give an example of a rare situation in which the directors owe allegiance, not to the corporation's shareholders, but to its creditors.<sup>44</sup>

Finally, in the change of control situations, several of the most well known Chancellor Allen opinions surface. A speech and a law review article are used in two casebooks to survey the 1980s takeover mania.<sup>45</sup> Two cases, *Harris v. Carter*<sup>46</sup> and *Mendel v. Carroll*<sup>47</sup>, show two related aspects of the sale of control. *Harris*, as we have seen, deals with a selling shareholder's potential liability for subsequent damage to the minority shareholders.<sup>48</sup> The *Mendel* case visits the classic issue of whether a shareholder who sells a controlling block of shares at a premium to the market price may keep the premium or must share that premium pro rata with the minority shareholders.<sup>49</sup>

O'Kelley & Thompson and Choper, *et al.*, between them present four of Chancellor Allen's opinions in the classic 1980s hostile takeover

40. 698 A.2d 959 (Del. Ch. 1996), *excerpted in* EISENBERG, *supra* note 36, at 72.

41. 188 A.2d 125 (Del. 1963).

42. *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959 (Del. Ch. 1996), *excerpted in* JEFFREY D. BAUMAN & ELLIOTT J. WEISS, CORPORATIONS LAW AND POLICY 1997 UPDATE MEMORANDUM, at 2.

43. *See supra* note 18 and accompanying text.

44. *Crédit Lyonnais Bank Nederland, N.V. v. Pathé Communications Corp.*, No. 12150, 1991 Del. Ch. LEXIS 215 (Dec. 30, 1991), *excerpted in* CHOPER, ET AL., *supra* note 10, at 237.

45. William T. Allen, U.S. Corporate Governance in a Post-Managerial Age (Oct. 20, 1993), *excerpted in* HAMILTON, *supra* note 10, at 1133, 1165; William T. Allen, *Independent Directors in MBO Transactions: Are They Fact or Fantasy?*, 45 BUS. LAW. 2055 (1990), *excerpted in* SOLOMON, ET AL., *supra* note 10, at 1311.

46. 582 A.2d 222 (Del. Ch. 1990).

47. 651 A.2d 297 (Del. Ch. 1994).

48. *See supra* notes 26-27 and accompanying text.

49. *Mendel*, 651 A.2d at 298, *excerpted in* CHOPER, ET AL., *supra* note 10, at 983.



setting. *Blasius*<sup>50</sup>, *Stahl*<sup>51</sup>, *Interco*<sup>52</sup>, and *Time*<sup>53</sup> are all used to show the limits on target management defensive measures.

### C. Why Bill Allen's Writings Are So Teachable

I have examined the kinds of opinions a typical corporations casebook includes and also the range of issues for which casebooks use Chancellor Allen's writings. It remains to be seen whether we can be explicit about the qualities of those writings, the judicial opinions in particular, that make casebook editors select them.

One quality that helps immeasurably is Allen's prose style. His writing is absolutely pellucid. This makes his work valuable in at least two ways. First, it allows students (and lawyers generally) to grasp quite complex transactions with as much ease as possible. Second, the usual concomitant to pellucidity is brevity. While surely not epigrammatic, Chancellor Allen's opinions are compact, thus allowing for many ideas and descriptions to unfold quickly. To an editor trying to pack as many doctrines as possible into as few casebook pages as possible, this must be a significant virtue.

This precision in writing melds with another skill that all judicial opinions share to some extent. Virtually all opinions lay out the facts, articulate the rule of decision, and draw a conclusion from application of the rule to the facts. Chancellor Allen's writing style, as I have just observed, sets out the facts and the operative rule of law with extreme clarity. His style also permits him to draw his legal conclusion in a way that I think must be particularly attractive to students. Nothing is worse, and few things more common, in a casebook opinion than for a student to find an opinion's facts and law clear but the discussion of the application of one to the other and the conclusion that follows to be adumbrated. Many judges, having set out the major and minor premises, simply skip to the holding. They do not elaborate on the logical path by which they go from the general rule to the specific result. Chancellor Allen, by contrast, is always explicit about the way in which the results follow from his predicates. This aesthetic,

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50. *Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651 (Del. Ch. 1988), excerpted in O'KELLEY & THOMPSON, *supra* note 10, at 952.

51. *Stahl v. Apple Bancorp, Inc.*, 579 A.2d 1115 (Del. Ch. 1990), excerpted in O'KELLEY & THOMPSON, *supra* note 10, at 966.

52. *City Capital Assocs. v. Interco Inc.*, 551 A.2d 787 (Del. Ch. 1988), appeal dismissed, 556 A.2d 1070 (Del. 1988), excerpted in CHOPER, ET AL., *supra* note 10, at 917.

53. *Paramount Communications, Inc. v. Time Inc.*, [1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,514 (Del. Ch. 1989), *aff'd*, 571 A.2d 1140 (Del. 1990), excerpted in CHOPER, ET AL., *supra* note 10, at 919.

explicating the consequences of his thinking without elision or *ipse dixit*, helps the student understand the result of choosing one rule over another and helps the student to grapple with the question of whether the judge is right.

So far I have described characteristics common to opinions generally, even though I hope I have made clear how Chancellor Allen excels at them. He goes further in two different ways which, while not unique to him, are, I believe, the qualities that account most for his representation in corporate law casebooks. First, he typically describes the origin of the rule at issue. While many judges do this from a sense of pedantry, Chancellor Allen is thoroughly instrumental in his use of doctrinal background. The point of talking about where a rule has come from is so that one can intelligently know how the rule ought to be shaped (or rejected) today. From a pedagogical view, this allows a student to make a more informed and intelligent opinion of whether a rule is appropriate.

Finally, Chancellor Allen has a knack of stating the core of a case in such a way that he abstracts the legal question to precisely the level at which casebooks are pitched. In other words, Chancellor Allen introduces the issue by raising the level of abstraction to the same level as the casebook rubric. This skill instantly allows the student to connect the case to what has come before and what is to come after. He or she can then imbed the case in the continuum of his or her understanding of corporate law, ready to be retrieved at will.

Let me use the *Broz* case as excerpted in O'Kelley & Thompson to illustrate some of these ideas.<sup>54</sup> The case involved a director of Cellular Information Systems, Inc., Mr. Broz, who caused his wholly owned corporation to acquire rights to a cellular telephone system in Michigan. In about three pages Chancellor Allen limns the facts with a thoroughness that will allow for ample consideration in class of the appropriate result, but will not result in 50 minutes spent diagramming the facts on the board just to spend the next 50 minutes discussing the case.<sup>55</sup> *Then he sets up the basic issue and raises it to a level of abstraction that jibes well with the casebook. Professors O'Kelley and Thompson place Broz in the following schema:*

Chapter 4, Fiduciary Duty, Derivative Litigation, and the Business Judgment Rule

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54. Cellular Info. Sys., Inc. v. Broz, 663 A.2d 1180 (Del. Ch. 1995), *rev'd*, 673 A.2d 148 (Del. 1996), *excerpted* in O'KELLEY & THOMPSON, *supra* note 10, at 416.

55. *Id.* at 418-21. If I tried to summarize the facts I'd either do so much less elegantly (and with more prolixity) than the Chancellor or I'd just scratch the surface. Neither approach seems appropriate here.

D. *Law and Private Ordering Regarding Management Self-Interest*

2. Common Law Approaches to Managers' Pursuit of Self-Interest

b. *The Corporate Opportunity and Unfair Competition Doctrines*<sup>56</sup>

Chancellor Allen locates the legal issue in four sentences that nearly mirror the editors' four rubrics:

It is basic that service as a director of a corporation entails the voluntary assumption of a duty of loyalty to the corporation, and in some instance to the stockholders directly. Broadly speaking this duty prevents or remedies conduct in which a corporate officer or director uses her power with respect to corporate processes, or property, or her access to confidential corporate information, to advantage herself in a transaction that is not entirely fair to the corporation. The so-called corporate opportunity doctrine, at least when one considers the core cases it covers, falls easily within this concept of loyalty. The classic corporate opportunity cases involve instances in which officers or directors use for personal advantage information that comes to them in their corporate capacity, by diverting a profitable transaction from the corporation.<sup>57</sup>

The Chancellor next describes the background of the corporate opportunity doctrine and the current Delaware incarnation of that rule.<sup>58</sup> Then he applies the rule to the facts<sup>59</sup> and wrestles explicitly with the difficulty in shaping an appropriate remedy.<sup>60</sup>

*Broz*, as the Chancellor creates it, is a wonderful casebook case. It gives the student precisely what he or she needs to know in terms of corporate law doctrine and adds sufficient facts and policy implications so that the student can imagine how the case could have been differently disposed of and whether it would have been preferable to do so.

D. *Bill Allen in My Class*

When I first learned that Chancellor Allen was to become Professor Allen, I was delighted for myself and my students as well as for academics and law students generally. I knew his influence on my own thinking about corporate matters and I anticipated that, as a law

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56. *Id.* at 317, 401, 402, and 412.

57. *Id.* at 421.

58. *Id.* at 421-22.

59. *Id.* at 422-26.

60. *Id.* at 426-28.

school professor, his influence on others would be equally pervasive and more immediate. What I hadn't understood was that Bill Allen is already in my class and has already influenced my students. It seems to me entirely possible that American corporate law in the thirty or forty years starting from 1985 will have been made by, and discussed in terms framed by, William T. Allen. We had all of us, students and scholars alike, best understand that Bill Allen is in class.