

State of the Judiciary
Chief Justice E. Norman Veasey, Delaware Supreme Court
Message to the Legislature
May 25, 1994

It is my honor and statutory responsibility at this time to "give to the General Assembly information of affairs concerning the state of the judiciary, and recommend to its consideration such measures as (the Chief Justice) shall deem expedient." 10 Del. C. 1901.

Like the State of the Judiciary Message which I was privileged to present in May of last year to a joint session of the General Assembly, I will limit this message to one central theme -- a partnership among the three branches of government to forge a refined structure for our judiciary to serve the citizens of our state more efficiently, fairly, promptly, and expertly, and to be a model for the nation.

The clearest way I can present this central theme is to divide it into three parts:

the judicial branch today;

requests for action in this session of the General Assembly; and

the future of the judiciary.

Many of you may have noted a column by Harry Thernal of The News Journal on April 18, 1994, entitled "Reasons to be proud you're from Delaware." Among the many proud attributes of our state, he mentions the judiciary and the fact that "the foremost (national) corporate battles...take place in Delaware's Chancery and Supreme courts."

The national preeminence of Delaware's judiciary includes not only the Court of Chancery and the Supreme Court, but our other courts, as well.

For example, the Superior Court, one of the nation's most respected general jurisdiction trial courts, has stepped up to the plate with the help of the judges of the Court of Chancery to provide an entirely new and creative expedited handling of major commercial litigation to implement the governor's initiative and Senate Joint Resolution 28. This flexible pilot program holds the promise of being a national model, the results of which will be evaluated periodically in the future to measure its effectiveness and the impact on.... [missing]

The outstanding achievements and reputation of our courts continue even as changes in our judiciary take place. Despite these changes, the judiciary of Delaware will maintain its high quality service and exemplary national reputation. For example, the Supreme Court has been undergoing change. Our late, revered Chief Justice Christie was replaced in April 1992 by the author of this message. Justice Horsey, the author of many landmark corporate decisions, who served with distinction on this Court for 16 years, was replaced earlier this year by Justice Harnett, a 17-year veteran of the Court of Chancery and a wise expert in corporate law and many other areas of the law. Justice Moore has served the Court with distinction for 12 years and

is likewise the author of many landmark corporate decisions. His term is coming to an end, and if he is to leave the Court, I would expect Delaware's nationally- recognized tradition of judicial excellence to be respected and continued by the appointment and confirmation of a successor who will be a person experienced and expert in corporate law and other legal disciplines.

Chief Justice Christie, Justice Horsey, and Justice Moore, along with Justice Walsh and Justice Holland, have made and continue to make an indelible mark on the jurisprudence and high standing of the Delaware Supreme Court. There is no question that the Court will continue to function expertly and to enjoy the same national preeminence without any diminution in quality, efficiency, or reputation.

Delawareans have considerable reason to be proud of all our courts. The record of our trial courts is exemplary. To be certain, there are times when trial courts must be reversed for error or otherwise. But reversals are rare and happen in less than 10 percent of the cases. This is a great credit to our trial courts. Although time and space do not permit me in this message to commend individually the judges of these courts, it is clear that the Court of Chancery, Superior Court, Family Court, Court of Common Pleas, and the Justice of the Peace Courts are all in excellent shape despite judicial changes and the difficult workload conditions in those courts. Requests for action [missing]

In last year's State of the Judiciary message, I asked the General Assembly and the governor to join me in a partnership to assure that Delaware will be preeminent not only in the quality of its judiciary and judicial decisions, but also in the structure of its judicial system. That structure does need attention, possible revision, new resources, and coordinated planning to achieve excellence as we approach the 21st Century.

I was deeply gratified that the General Assembly and the governor approved Senate Joint Resolution 14, creating the Commission on Delaware Courts 2000. The Commission, co-chaired by O. Francis Blondi, Esquire, and Rodman Ward, Jr., Esquire, included a diverse, brilliant, and extraordinarily hard-working group of legislators, judges, public officials, lawyers, and citizens. The commission and its excellent staff produced the Commission's Final Report dated May 16, 1993, along with the Interim Report dated February 21, 1994. These reports are outstanding accomplishments and were delivered on time.

Time does not permit the inclusion in this message of a reference to all -- or even most -- of the commission's recommendations. I shall mention only the most immediate priorities:

The commission recommends a number of reforms for implementation by the judiciary under its constitutional authority and management responsibility. Steps are already under way to accomplish many of these administrative advances.

Second, the Commission's Final Report contains legislative and budgetary priorities. Legislation has been drafted and is being introduced to implement many of these reforms. Although I respectfully request your favorable consideration of all the proposals included in these pages, I would like particularly to emphasize the need for prompt action in this session on at least the constitutional amendments; the Family Court and the Court of Common Pleas should be granted

constitutional status. The Constitution should also be amended to increase the terms for Justices of the Peace from four to six years. I respectfully suggest that the "first leg" of these constitutional amendments should be accomplished in this session of the General Assembly so the "second leg" can be taken up in the First Session of the 138th General Assembly.

And the first leg of the constitutional amendment on senior judges was adopted by the 136th General Assembly. It is essential, if this provision is to become a part of the Constitution in the near future, that the "second leg" be adopted by this session of the 137th General Assembly.

These constitutional amendments are extremely important for the effective functioning of the courts and will advance the principle that we should look first to staff, technology, alternate dispute resolution mechanisms, and other options before seeking the creation of new judgeships. Not only are Family Court judges and Court of Common Pleas judges entitled to constitutional status, these constitutional amendments would provide the chief justice with the full flexibility to assign any judge from any constitutional court to any other court as the need arises, and those needs will inevitably arise.

Likewise, the senior judge provision is needed to establish a solid and flexible system for the chief justice to designate retired judges to judicial duties so their valuable experience can be devoted to the work of the courts in handling the heavy and constantly fluctuating caseload.

Some ideas previously under consideration (such as consolidation of Court of Common Pleas and/or Family Court with the Superior Court) have not been recommended and I concur with that decision. Legislative reforms Various statutory reforms are proposed in the Commission's Final Report. Here are a few examples of priority measures which I respectfully request the General Assembly and the governor to consider favorably in this session:

The civil jurisdiction of the Justice of the Peace Courts should be raised to include cases in which the matter in controversy is \$15,000 or less and the court's procedures should be revised to create procedures for default judgments in civil actions.

The civil jurisdiction of the Court of Common Pleas should be increased from \$15,000 to \$50,000.

Jury trials in criminal misdemeanor/traffic cases should be provided in the Court of Common Pleas in New Castle County as they are presently provided in Kent and Sussex Counties. Jury trial capability in the Court of Common Pleas for New Castle County should eliminate transfers from the Court of Common Pleas to Superior Court for jury trials. Likewise, the Court of Common Pleas should [missing] appeals from the Justice of the Peace Courts.

The criminal jurisdiction of the Court of Common Pleas should be increased to include all misdemeanor drug offenses.

Senate Bill 309 with Senate Amendment No. 1 relating to the Victims' Bill of Rights should be passed to place responsibility for victim contact in the Department of Justice for cases heard in the Court of Common Pleas, Family Court, and the Justice of the Peace Courts.

The Court of Common Pleas should have jurisdiction over all civil matters currently in the Superior Court involving motor vehicle operation and licensing, and legislation should be enacted to permit Superior Court Commissioners to perform in the Court of Common Pleas functions enumerated in the legislation. Legislation should be passed to implement the one-trial-day jury term of service program in the Superior Court. The judicial operating and capital budget

In line with the philosophy of providing staff and other resources in lieu of new judgeships to handle the heavy caseload, there are a number of recommendations for the FY 1995 budget in the Commission's Final Report. There are many other priorities too numerous to mention in the Judiciary's FY 1995 Operating and Capital Budget Requests and in the Commission's recommendations. The judicial branch of government is very appreciative of the support of the governor and the General Assembly of the budget and other priorities of the judicial branch. The future of the judiciary

We have taken, and are taking, giant steps toward the creation of a nationally-recognized model judicial system on the cutting edge of technology and modern court management. We are small enough and expert enough in all branches of government to accomplish that.

The Commission's Final Report is one step. It is not the kind of report which should be allowed to languish on a shelf. It is a coordinated action plan presented to all three branches of state government.

After these legislative priorities have been considered in this session, I respectfully request that the General Assembly, the governor, and the judiciary turn to other recommendations detailed in the Final Report. There is a long list of important reform measures. I will not burden you at this time with a catalog of these measures, except to say that I support nearly all of the commission's recommendations and I expect to address specifically a number of them in the near future.

We must have a judicial system which is modern, fair, and efficient. We must provide equal access to the courts for all our citizens and we must excel in all that we do in the administration of justice.

Fairness is essential to what we do every day. Throughout our court system, we have taken, are taking, and will be taking, steps to assure equal treatment in the courts for all our citizens and equal employment opportunity in the staffing of our courts. As Chief Justice, I promulgated Administrative Directive No. 90 in February 1993, declaring that bias and prejudice of all kinds will not be tolerated and directing the submission of reports of any findings of bias for future action.

As a first step we focused on gender fairness. In cooperation with the Delaware State Bar Association, a task force was created and has been studying [missing] may be insensitivity to gender fairness and to take appropriate measures. As the gender fairness study reaches its conclusion, we will focus on the scope of a study of racial and ethnic fairness in an effort to increase sensitivity in all aspects of our work to continue to improve diversity in staffing and fairness in handling cases.

The judicial system must not only be efficient and prompt, but it must be fair and perceived as fair. We need to look at ourselves, ask ourselves the tough questions, and make these improvements happen.

These constitutional amendments are extremely important and will advance the principle that we should look first to staff, technology, alternate dispute resolution mechanisms, and other options before seeking the creation of new judgeships.