

State of the Judiciary
Chief Justice E. Norman Veasey, Delaware Supreme Court
Message to the Legislature
July 6, 1997

This year Delaware celebrates the centennial of our current State Constitution adopted in 1897. Delaware, the first state to ratify the United States Constitution in 1787, established its own Declaration of Rights and its first Constitution in September 1776, two months following the Declaration of Independence. This Delaware Constitution was followed by the Constitutions of 1792 and 1831.

The convention that produced the Constitution we now celebrate commenced on Dec. 1, 1896 and ended with its final product on June 4, 1897. On that very day this year we will celebrate its 100th birthday with a symposium in Dover involving our bench and bar as well as distinguished leaders and scholars from throughout this nation. We look forward to the Joint Session of the 139th General Assembly on June 10 to commemorate that historic event and the accomplishments of our forbearers in drafting and adopting one of the finest constitutions of any state.

All of these events will be preceded by the unveiling of a new book entitled "The Delaware Constitution of 1897 - The First Hundred Years." This magnificent work, co-edited by Supreme Court Justice Randy Holland and Harvey Rubenstein, Esquire, is a compilation of 16 scholarly chapters by distinguished Delawareans on various aspects of our Constitution, in a foreword to the book, signed by the governor, president pro tempore of the Senate, speaker of the House and the chief justice, we said:

The rich mosaic of Delaware's history is captured exquisitely in microcosm in "The Delaware Constitution of 1897 - the First Hundred Years."

The Delaware Constitution of 1897 itself stands tall as a document of impressive proportions and balance. The language emerging from the Constitutional Convention a century ago presents with clarity and good sense the most important tenets of our government: the separate and interdependent powers and responsibilities of the three branches of government, as well as the guarantees of liberty for all our citizens.

Article IV of the Delaware Constitution relates to the Judiciary. It is this rock which forms the foundation of what has been described by many as the finest judiciary in the nation. Justice Joseph Walsh of our Supreme Court, in writing the chapter relating to the formation of our current judicial structure as it emerged from that Constitutional Convention, said:

The Convention of Delaware's constitutional convention on Dec. 1, 1896, took place at a time of profound change as the state moved from a predominantly agricultural society into the industrialized twentieth century

By far the most significant change in the judicial branch that resulted from the 1897 convention related to those provisions which governed the selection and tenure of members of the major

judiciary.

Under the Constitution of 1831, judges had been appointed by the governor for life, without the need for Senate confirmation. The Delaware [missing] ensued in the convention reflected the strong feelings of those advocating such change.

Opponents of an elective judiciary seem to have had much the better of the dispute in the convention debates. Perhaps their strongest arguments lay in the experience of other states, particularly Pennsylvania, New York, and Maryland, where partisan elections had resulted in politically-oriented and poorly qualified judges.

Perhaps the strongest argument against the election of judges, however, was the claim that qualified members of the bar would not subject themselves to the election process in order to gain bench. Eventually, the convention adopted the system that has endured to this day: appointed by the governor for 12-year terms subject to Senate confirmation. One of our most interesting developments that arose from the debates of the 1897 constitutional convention was the requirement that the Delaware judiciary reflect a political balance, i.e., that it not be dominated by appointees of one political party. This constitutional requirement continues in effect and marks Delaware as one of the few states to mandate political balance in its judiciary.

It is clear from a reading of the debates that the delegates to the 1897 constitutional convention were determined to make significant changes in the method of selection and the tenure of members of Delaware's major judiciary. To a degree, those changes, particularly in opting for an appointive judiciary, were contrary to the popular trend then apparent throughout the United States. But the system adopted, characterized by its bipartisanship, long terms, and appointment subject to confirmation, has served the state well in the century that followed. Thus, it can be said that the delegates, in their formulation of a judicial article, provided a sound foundation for the benefit of future generations of Delawareans.

It was not long after the 1897 Constitution was adopted that the Delaware Judiciary surged into national prominence. About the turn of the century the modern corporation statutes became an important issue to the developing industrialization of America. Delaware's corporation law became a model that attracted large and small corporations to incorporate in our state. Nationally important litigation testing and expanding on the statutory law began to dominate the docket of Delaware's Court of Chancery in the early part of the 20th Century. That phenomenon continues today. Over the past 80 to 90 years the Delaware Court of Chancery and the Delaware Supreme Court have earned the respect of "Corporate America" and stockholders alike, to such an extent that we are now approaching 300,000 Delaware corporations, including about 60 percent of the Fortune 500 -- the largest and most productive corporations in America.

Delaware corporations pay to the state a franchise tax and fees for the right to be subject to our laws -- our statutory law, which the General Assembly modernizes every year, and the jurisprudence administered every day by our courts. The franchise tax and corporate fees will produce this year about \$375 million accounting for over 20 percent of our total state revenues. Beyond that there is a substantial "ripple effect" of economic benefit coming into our state treasury as a result of this corporate and court activity, including: employment growth in the

legal and business sector; service, hotel, housing, food and transportation industries; and personal income taxes of those working in the corporate sector. This economic benefit helps Delaware avoid a sales tax, and the fact that we have tax-free shopping itself produces additional [missing]

Why do so many companies incorporate here and remain Delaware corporations when other states can simply copy our statutory law even as it is constantly being amended? The answer is trust -- trust in all three branches of our government. But primary emphasis by knowledgeable observers outside of Delaware has been placed on a unique respect of our Judiciary.

Our courts have demonstrated their excellence, expertise and expeditious treatment of cases through the years. That has continued today and, hopefully, will not be diminished in the future. But it should never be taken for granted. We must continue to serve all of our citizens, including our corporate citizens, with the quality they have a right to expect. Upcoming judicial appointments will be critical, and the need for resources and facilities should not be ignored.

Certain aspects of Delaware's court system stand out. Beyond Delaware's reputation for excellence in the corporation law, there are many other examples. The Superior Court's outstanding management of huge and complex international insurance coverage cases, the availability of summary proceedings for major commercial disputes, its management of huge caseloads and the success of its nationally-recognized Drug Court are further examples. Family Court (through its fine work in child support and domestic violence), the Court of Common Pleas (with its excellent handling of the increased jurisdictional load), and the solid work of the understaffed Municipal Court and Justice of the Peace Courts are part of the mosaic of Delaware's judicial competence. Indeed, all of Delaware's courts contribute to the stature of the Judicial Branch. This stature would be enhanced by the passage of constitutional amendments making Family Court and the Court of Common Pleas constitutional courts and the consolidation of the Court of Common Pleas with the Wilmington Municipal Court.

Moreover, Delaware lawyers practice in an environment where professionalism, competence, civility and fairness to clients and courts are expected and are emphasized and enforced by our courts. Although our small Delaware Bar is generally viewed as superior and more professional than that of many other states, we recognize that there are problem lawyers in our Bar and we work every day to promote and enforce principles of ethics and professionalism, firmly disciplining those lawyers who cross the line.

Even as we are currently observing the Summit on Volunteerism taking place the last week of April in Philadelphia, we are proud to note, as I did in a recent letter to Gen. Colin Powell (which he graciously acknowledged). I applaud your work on volunteerism. There is much of that going on in the legal profession where lawyers are donating services to help the poor, civil causes and court system.

I call on lawyers and other citizens frequently to do pro bono work for the improvement of court systems as well as representation of the poor and to argue as amici. In short, I think many lawyers are good examples and the legal profession could do more. Delaware is leader in many respects. I am proud that we are providing national leadership not only in judicial excellence, but

in lawyer professionalism and volunteerism. It is Delaware's very good fortune that its unique status in business law and jurisprudence produces these benefits. Many other states today are [missing] economic capability to create new judgeships and fine courthouses, but they will have a difficult time replicating the quality of our judiciary or Delaware's historic cooperative, honest and common-sense business environment.

Delaware's small size is usually an asset. But we suffer from a diseconomy of scale compared with our larger neighbors when it comes to allocating state funds to make our court facilities user- friendly for the people of our state who are litigants, victims, witnesses, jurors and employees. I respectfully suggest that such an allocation is vitally important to the welfare of our state and should be a high priority. Regrettably, Delaware's citizens (including individual residents as well as our corporate citizens) have had to endure for too long the frighteningly unsafe and unsatisfactory surroundings of the Daniel L. Herrmann Courthouse and the Family Court Building in Wilmington. We need urgently to replace these facilities. Delaware's national preeminence in corporate and business matters, through the sheer force of intellectual accomplishment and work ethic, continues to flourish and helps provide enormous revenue for Delaware in spite of these surroundings.

But the day may be coming when the national users of our courts will wonder why Delaware tolerates such conditions for our courts. Most importantly, Delaware citizens who use these facilities in criminal, civil and family law cases deserve better. Relegating our courthouse users to increasingly inconvenient, unsafe and uncomfortable facilities puts at risk too much that is valuable to our State.

The need for a Justice Center is not a need to correct the inconvenience and discomfort of judges. It is a need to make our courts acceptable and user-friendly for our citizens and to match the international prestige of our Judiciary with an efficient, modern, adequate -- but certainly not a luxurious -- physical plant. Although millions of dollars in the past have been put into an attempt to fix these buildings, the Herrmann Courthouse and the Family Court Building cannot be further renovated so that they may be made to work. The evidence is compelling that a new, combined facility with appropriate safety arrangements is both feasible and essential. Despite the passage of years when no action was taken while costs escalated and valuable sites eluded us, the solution is now within our reach. We can make a modest start this year with planning money and options for site acquisition, leading to the reality of a new courthouse to coincide with the beginning of the new millennium.

The State of the Judiciary is excellent. The conditions under which it operates continue to be pulled down to unacceptable levels by outmoded and insecure facilities. We must never risk the safety and comfort of our citizens or the national prestige of our courts by continuing shabby surroundings, inefficiency and insecurity. We are in danger of running that risk, but it is not too late to correct our course. Time is of the essence. Even as we celebrate a great Centennial, we must look urgently to the future. I have great confidence in the common sense of all of our branches or government. Together-and with the understanding of the Delaware citizens-we will get the job done.

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