

State of the Delaware Judiciary: Problem Solving in Judicial Management
Chief Justice E. Norman Veasey, Delaware Supreme Court
Message to the Legislature
May 1, 2001

Mr. Speaker Spence, Lt. Governor Carney, members of the House of Representatives, members of the Senate, members of the Judiciary, public officials, and citizens of Delaware. I have the honor and the statutory responsibility to report to you on the State of the Delaware Judiciary, which is excellent. We are building on our successes and working on our challenges.

I want to begin by expressing my thanks for the outstanding cooperation and support of the General Assembly and the Governor over the nine years that I have had the honor to serve as Chief Justice. This collegial interdependence among the three branches in Delaware is essential to the continuing progress of our State, and I do not for one minute take it for granted.

Overview of the System and the Courts

You all have copies of our Annual Report containing the details of our operations. I will not repeat the material you have seen there. But I do want to update you on a few ongoing matters that relate to problem-solving in the court system as a whole and in the individual courts.

Systemwide

As to the court system as a whole, our problem-solving efforts are focused primarily on the following:

1. speedy trials;
2. building on our progress in technology;
3. achieving effective integrated case management systems;
4. relieving the problems of the unfairness and cost to the taxpayers of the excessive and prolonged incarceration of pre-trial detainees;
5. upgrading salaries of state employees;
6. finishing and equipping court facilities in all three counties; and
7. developing innovative techniques of judicial management.

I will address these items more comprehensively in a few moments. But it is important at this point to note that progress is being made in these areas because the courts are working uniformly together through our Council of Court Administrators and Dennis Jones, our new State Court Administrator, to produce systemwide solutions.

The three branches of government have worked very effectively together in many areas, but I would like particularly to note the progress on building and improving court facilities, particularly the New Castle County Courthouse. As we build and improve new courthouse facilities in all three counties, we must be ever mindful that these facilities are for the benefit of the public, not for the convenience or comfort of judges, staff and lawyers.

In this connection, it is important that we allocate significant resources, including an adequate proportion of the space in these facilities, to provide working centers to assist the ever-increasing number of self-represented litigants. For example, in the Family Court alone there are now over 70% of the litigants who are self-represented. Serving these litigants who cannot afford a lawyer or who do not want one requires us constantly to rethink how we do business. So, for example, we need to find a way to reallocate a modest amount of space in the New Castle County Courthouse to service this increasing demand.

Related to our mission of public service is the need to provide top-notch security in our buildings. By Administrative Directive No. 119, dated December 1, 1999, I appointed an outstanding committee, co-chaired by Judge Bill Carpenter and the Secretary of Public Safety, to examine how we can best provide state-of-the-art security in our courthouses. Just yesterday the Committee provided to me its report, which is being released to the public. One of the key recommendations of the report is that the Judicial Branch should be authorized to move to a more professional service analogous to the United States Marshal service. This should be done in cooperation with the Department of Public Safety, including the creation of a separate division of Capitol Police dedicated to court security.

Public trust and confidence in the court system is essential and requires vigilance by courts in many areas. But we must always make it a priority that our courthouses be both safe and user-friendly. To that end we will concentrate on helping the public to navigate our courthouses to avoid confusion and the proverbial "run around". Our goal is to make a court experience as positive, efficient, professional and friendly as possible under the circumstances for victims, litigants, media, witnesses, jurors, spectators, and our national and local corporate citizens.

Supreme Court

In the Supreme Court, we have been able to manage our growing and increasingly complex caseload, maintaining our nationally-respected record for decisions that are promptly rendered and jurisprudentially sound. In addition, we have improved our website and our court visitation programs, which a number of you have taken advantage of. Also, we have opened further the window on our processes with our virtual docket system that provides public access electronically to briefs and other filings. Future goals include a state-of-the-art electronic filing system and oral arguments on the Internet. We celebrate this year the Fiftieth Anniversary of the great history and national stature of Delaware's separate Supreme Court. Each of you will soon be receiving a book being published to commemorate that event. It is the product of many people working under Justice Randy Holland's guidance and his fine hand.

Court of Chancery

The Court of Chancery continues to carry out in superb fashion its internationally respected work in the corporate area. The judges of that Court are extraordinarily busy and effective. They continue to enjoy the highest level of national esteem. The prestige of that Court is further enhanced by its high-tech approach to litigation and advanced mediation techniques. We are hopeful that the General Assembly will approve the constitutional change necessary to modernize the Register in Chancery system in a fair and efficient manner, and also approve the

Senior Judge constitutional change.

Superior Court

The Superior Court continues to do an outstanding job while being saddled with increased numbers and complexities in criminal cases and an inordinate number of resource-draining capital cases. In addition, civil case filings in Superior Court have grown from 5,644 in 1990 to 9,523 in 2000, and this civil calendar includes complex cases involving liability for the payment of billions of dollars in claims. National attention is being focused not only on the Superior Court's problem-solving through its Drug Court and its innovations (including a proposed Re-entry Court), but also on its important national role as the commercial litigation center for claims involving money damages. Delaware's attractiveness as a high-tech business and litigation center was recently featured in the Metropolitan Corporate Counsel publication that many of you may have seen.

Corporate decision-makers are very interested in, and carefully consider, the quality of the courts (and now their technology) when choosing where to incorporate and to litigate. I cannot over-emphasize the importance of technology in the courts, not only to speed the disposition of cases and enhance the Court's national respect as a business court, but also to improve the safety of the police and public on the streets. Real-time data shared throughout the criminal justice system enables police, judges, and corrections staff to make better decisions on investigations, bail, sentencing, release and attempts to purchase firearms by convicted felons.

Family Court

Much progress is being made in the Family Court by the implementation of its Performance Standards, the Court Improvement Project and other initiatives. I am very pleased with the improvements in problem-solving by the Family Court, particularly over the past two years. Moreover, the judges and staff of that Court continue to attempt to address the many concerns and challenges that remain. It has been my custom to present the State of the Judiciary Message around National Law Day. That is today. This is the 44th year that Americans have paused to reflect on our legal heritage and our good fortune in living under the rule of law. Since Law Day was originally proclaimed by President Eisenhower in 1958 to counter the then-bellacose military observations of May Day by the Soviet Union, various annual themes have been emphasized. The national theme of Law Day this year is "Celebrate Your Freedom: Protecting the Best Interests of Our Children". The Family Court of Delaware is a national leader in the area of protecting children, and its focus on the best interests of children continues to enhance its performance.

Court of Common Pleas

The Court of Common Pleas, with the help of the additional resources provided by the General Assembly, is handling its enormous workload, and it continues to collect significant fines and costs for the benefit of the State. But this Court continues to need help to support its outstanding judges and staff. For example, we are addressing the problem of demands for jury trials in minor traffic offenses that tend to clog the system. First, through the increasing use of the probation

before judgment technique, the acute problems are being temporarily diminished by avoiding demands for jury trials in many cases. Second, I have appointed a special court committee that is working with Senator Blevins to produce a more permanent legislative solution potentially involving the decriminalizing of minor traffic violations, thus taking them out of the realm of jury trials.

Justice of the Peace Court

The Justice of the Peace Court system is an extremely well-managed organization that dispenses justice fairly and efficiently to more of our citizens than any other court. It also is an efficient collector of fines and costs for the benefit of the State. I would like briefly to bring you up to date on a few new developments in the Justice of the Peace Courts: (1) on April 23rd in Middletown we opened a new Court 9 to replace the facility that was destroyed by arson last year; (2) the hours of Court 20 in the Public Safety Building in Wilmington have been expanded to 24 hours, 7 days per week; (3) at Court 18 we have established a "cyber court" dedicated to processing videophone proceedings on an expedited basis; and (4) we have proposed a pilot project providing deputy attorneys general, public defenders and staff to handle cases at Court 20 in Wilmington. If approved, this pilot project should lead to new efficiencies and reduce time frames for resolution of cases at the lowest possible court level, thereby eliminating a significant number of cases that would otherwise transfer to the Court of Common Pleas.

The Economic Climate

The Delaware Judicial Branch is a relatively small user of state appropriations, compared with some of the larger executive departments. The Judicial Branch is allocated about 2.7% of the state budget to run its operations for the benefit of the citizens. The operating budget and capital improvement requests of the Judiciary for FY 2002 will soon be considered at mark-up by the Joint Finance Committee and the Joint Bond Bill Committee. Some of these are of critical importance. For example, the new New Castle County Courthouse must run efficiently for the Delaware public and our corporate citizens from day-one, which is September 2, 2002. The same is true in the technology area, particularly the case management systems. So, these issues must be addressed now.

We are keenly aware of a very problematic general decline in Delaware's revenue. The Judicial Branch is cooperating with the other two branches to manage this challenge, and we have been working closely with the Governor and the Budget Office on a problem-solving plan. I note parenthetically that the economic picture is not entirely gloomy. The Corporation Franchise Tax, which is collected by the Secretary of State's Office under Chapter 5 of Title 8 of the Delaware Code, accounts for over 22% of the entire budget and it continues to expand. The growth rate from FY 2000 to FY 2001 is estimated to be over 10%, and the growth rate from FY 2001 to FY 2002 is estimated to be over 5%. In real dollars this should result in revenue of about \$550 million from the Corporation Franchise Tax alone in FY 2002.

The General Corporation Law adopted over the years by the General Assembly and the continuing extraordinary efficiency of the Secretary of State's Office contribute significantly to this economic benefit. Moreover, the conventional wisdom around the nation is that the

expertise. stable body of judicial decisions, prompt service and modern techniques of the Court of Chancery, Supreme Court and Superior Court are largely credited with maintaining Delaware's preeminence as the corporate domicile of choice for over 300,000 corporations, including a substantial majority of the Fortune 500 companies.

We cannot be smug about, or take for granted this enormous economic benefit. Other states are taking aggressive steps to compete with Delaware by improving their business courts with the goal of attracting incorporations, businesses, and business litigation to their states. We need to maintain our competitive national position as well to continue to enhance the trust and confidence of our residents. This objective has not been short-changed by lack of effort on the part of the Judiciary or lack of support from the Executive and Legislative Branches, and the new New Castle County Courthouse is a prime example of this interbranch problem-solving.

As I noted, the Judicial Branch has agreed to cooperate with the Budget Office in reducing some of our FY 2002 budget requests. We have responded with a detailed plan of budget cuts, increased revenue from fees and costs and an innovative program of volunteerism. That volunteer program will be designed to save taxpayer dollars by organizing a well-managed small army of volunteers to perform at little cost to the State some functions that might otherwise have to be performed by future increases in paid staff.

Urgent Priorities in Problem-Solving

There are some urgent priorities that must be addressed. As we look into the future, I would like to discuss a number of challenges of long duration that represent problem-solving opportunities for the three branches of government over the next 18-24 months. These challenges are in the areas of information, communication, and incarceration. Delaware has information systems that compare favorably with those of other states. But that is not good enough. Delaware is small enough and our people are expert enough so that we should have the best systems attainable. We are not there yet, and we need urgently to get there.

The Judicial Branch needs better information systems to manage its operations in a more businesslike manner. When a defendant who has been convicted in a criminal case comes before a Superior Court Judge for sentencing, the judge must be made aware of pending charges in other courts, recent case dispositions on other charges, or sentences which the defendant is currently serving. When the defendant arrives at the Department of Correction, the receiving clerk must know how the sentence just imposed relates to other sentences or other cases. When the presiding judge or the case manager in Superior Court wants to know which defendants are still in custody awaiting trial and which of those has been in custody the longest, the system needs consistently reliable information.

There are additional problems in the area of communication. When a clerk in the Justice of the Peace Court enters information about a new offense, that information must be made available to the Court of Common Pleas or the Superior Court when that defendant moves further into the criminal justice system. Currently, the information on that defendant has to be re-entered in both the Court of Common Pleas and the Superior Court systems. Moreover, the new information must be available to the Justice of the Peace Court if the defendant is later arrested on a new

charge.

What occurs in the Court of Common Pleas or the Superior Court must be available to the Department of Correction when the defendant is sentenced. The Department of Correction depends on a piece of paper filled out by a court staff person and transported with the defendant to prison to tell correction officials of the court action. The information in this document must be electronically transmitted and must be exactly the same as the information entered into the case management system of the Superior Court or the Court of Common Pleas.

Finally, there are problems of incarceration and incarceration costs. We have all heard statistics of the extraordinary sums that Delaware spends per year to house pre-trial defendants. We all lament the length of time it takes for a case to move through the criminal justice system from arrest to disposition. Delaware's prison population is made up of an unacceptably high percentage of pre-trial detainees. That problem is traceable to exploding caseloads, an extraordinarily high number of capital cases and the increasing complexity of litigation. That is unfair to the accused and expensive for the taxpayers.

The Judicial Branch must be, and will be, the lead problem-solver in this area. We know we will receive the support of the Attorney General, Public Defender, and the Department of Correction, all of whom have echoed this same concern and agreed to work with the courts to solve these problems. The Judicial Branch is addressing the problem aggressively in a way that may well make Delaware the most coordinated justice system in the United States.

On December 1, 1999, I issued Administrative Directive Number 118 appointing the Speedy Trial Guidelines Committee, chaired by Justice Joseph T. Walsh. That committee released its comprehensive report on November 1, 2000, with a host of findings and recommendations that are now being implemented. Many of you have studied that report and its underlying data. On April 10, 2001, I issued Administrative Directive Numbers 127 and 128.

Directive No. 127 creates the Uniform Case Processing Committee, chaired by Carole Kirshner, Court Administrator of the Court of Common Pleas. This committee has been charged with recommending and implementing a single case management system for use by all of the courts in Delaware. The committee will build on the six months of work already completed by a subcommittee of the Judicial Branch Technology Policy Committee chaired by Chief Magistrate Griffin.

Directive No. 128 created the Delivery of Criminal Justice Policy Committee, also chaired by Justice Walsh. That committee is charged, among other things, with:

- Implementing the Final Report of the Committee on Speedy Trial Guidelines
- Reducing the pre-trial prison population
- Reducing the length of pre-trial detentions

The results of the work of both of these committees should produce better information and better communication that will lead to meaningful and achievable goals to speed up and improve the fairness of justice. Cases will come to trial more quickly and there will be more certainty in

sentencing. For example, these committees will help us to have specific numerical goals on the maximum number of days pre-trial detainees may be held pending trial. Similar goals of the percentage of pre-trial detainees to the total prison population should be set and maintained at the lowest level feasible. The keys to success are:

- DELJIS and the Judicial Information Center (JIC) must provide reliable, up-to-date information on all detainees in our prison system.
- The Release Date project that is being worked on cooperatively by a committee co-chaired by Superior Court Judge Jerry Herlihy and Correction Commissioner Stan Taylor must work effectively.

We must provide an integrated case management system that works for all of the courts in Delaware. Cooperation among the courts, Attorney General, Public Defender, and members of the Bar to achieve speedy trial goals is essential.

Up-to-date information on all detainees in our prison system will allow Justice Walsh's committee to address both individual case problems and general process problems. The completion of the integrated case management system by Ms. Kirshner's committee will provide the same information to all of the courts, corrections, and the public in a system of integrated, real-time, single-entry information. It will also allow for electronic filing and expanded information for the general public, the courts, the General Assembly and the Executive Branch.

State Employee Compensation

I close my presentation with a request to raise the financial compensation level of all State employees. The State of Delaware is one of the State's largest employers, but State salaries are, at least, 7 to 10% behind those offered to private sector employees and other city and county governmental employees. Turnover is also a problem. Turnover, inability to fill vacancies, and lack of time to train new employees makes it impossible for the courts to serve the citizens of Delaware as they deserve to be served. There is a significant negative impact that low salaries and insufficient pay increases have had on morale of employees and the operations of the courts.

The difficulty in recruiting and retaining qualified employees, particularly in technology positions and in key clerical positions has reached crisis proportions. This is particularly true in the tight Wilmington job market, which is aggravated by the city wage tax and high parking expenses. State employees are looking to its leaders for solutions. I hope we can work together to find those solutions. The salary structure and personnel systems urgently need revamping, and employee compensation needs to be upgraded. The State must be innovative and businesslike in developing competitive incentive plans, pay-for-performance plans, career ladders, longevity pay and competency-based pay plans. The State must, at a minimum, continue the policy from the current fiscal year that does not permit existing employees to be feathered.

In an effort to address the problem comprehensively, but also urgently, I suggest the formation of a three-branch task force, including public officials, employee representatives and private sector representatives. The task force should address inequities throughout the system, modern business ideas, antiquated classifications, competitive pressures, geographic pay differentials (dealing with issues like the Wilmington Wage Tax and parking costs), pre-tax benefits for parking and

transportation, longevity pay, creating a line for overtime pay, a permanent, institutionalized merit bonus system and other solutions.

As a temporary solution, pending this overarching analysis, I am recommending to the Governor, the Budget Office and to State Personnel specific upgrades and reclassifications of key employees in the Judicial Branch. I also propose an employee bonus plan for the Judicial Branch that would not cost the taxpayers any more money but would give us an incentive to save a targeted amount of appropriated funds annually and to reallocate these savings to employees in the form of merit bonuses. We think this proposed bonus plan is a "win-win" proposition, but it is only one piece of the puzzle. I hope I can count on your support in getting the State of Delaware to a comprehensive solution to the problem of State employee compensation.

Conclusion

The principal goal of the Delaware Judiciary is easily stated: We need to have, for our individual and corporate citizens, the most modern court system achievable, coupled with old fashioned values of work ethic, integrity, fairness, efficiency, competence, and promptness. We have lots of work ahead. We had better get on with it in the traditional way the three branches in Delaware solve our problems by working together. Thank you again for giving me the honor of sharing with you the State of the Delaware Judiciary.