

State of the Judiciary: Toward a Cost-Effective Justice System
Chief Justice E. Norman Veasey, Delaware Supreme Court
Message to the Legislature
2003

Good afternoon. Mr. Speaker, Lieutenant Governor Carney, Members of the House, Members of the Senate, Members of the Judiciary, public officials and citizens of Delaware. It is a high honor for me to appear in this Chamber and speak briefly with the members of the General Assembly about the State of the Judiciary. I start with the same recognition of the State's projected deficit that was the beginning point of our presentations to the Joint Finance Committee and to the Bond Bill Committee. But today, I'd like to emphasize the theme of cost-effectiveness as it applies to the entire system of the administration of justice.

As I believe everyone in this Chamber knows, the centerpiece of my presentation to you is the absolute necessity that we provide this year the first part of the funds necessary to establish the new comprehensive criminal and civil case management system with a financial component. That system has been in development for over two years with the assistance and participation of the Department of Technology, the Controller General, the Budget Office. We call that system COTS C-O-T-S which stands for commercial-off-the-shelf software. But in the Judiciary, we also call it "Courts Organized to Serve."

But it's not only a judicial court project. It is a widely supported, broad-based system that cuts across the entire gamut of the administration of justice. First, in the criminal justice system it will tie the police and the courts and the corrections together into one efficient technological continuum. But its value to the State of Delaware goes well beyond the public safety necessities of the criminal justice system. COTS will produce a businesslike efficiency we need going forward to keep our courts at the top of the nationally respected corporate and commercial venues. Simply put, we need COTS to maintain the competitive edge of the State in our valuable business franchise.

My message today goes beyond COTS as its centerpiece. The broader view, as I see it, is an overall focus on cost-effectiveness. COTS will be cost-effective and your investment in the \$2.57 million that we've asked the bond bill to consider will reap big dividends in the future of efficiencies that will flow through the State operation. The other aspects of cost-effectiveness that I will touch on today include aggressive steps, with your support, in the Judicial Branch to cut costs, generate revenue and improve operations through businesslike practices. Beyond the business steps in the Judicial Branch, I ask your continuing and responsible focus on the costs of the criminal justice system. I want to join with you in an effort to build on your innovative steps to examine systematic, permanent methods to reduce the demands and the stress on all the components of that system. Analyzing from top to bottom these costs and demands on the administration of justice will help the three branches come to a more cost-effective solution.

Delaware is like many states that are experiencing a serious financial shortfall. But Delaware is unlike other states in the way the judicial branch is treated by the other branches. The citizens of Delaware have benefited from a harmonious-as distinct from a confrontational-relationship

among the three branches when it comes to the role of the judiciary in handling the citizen's rights and business law.

The tradition of the three branches working together in Delaware is vital not only because of public safety and fairness concerns but because of our expert service to our corporate citizens.

And I want to thank the Members of the General Assembly and the Governor for what you have done and what you are continuing to do to help the Judicial Branch do its work for our citizens.

Our courthouses in all counties are now, or in the process of, becoming state-of-the-art facilities to litigate cases. The largest, of course, is the new New Castle County Courthouse. And that massive building is underway but it's undergoing its "shakedown cruise" with a few bugs that you many have read about. I don't mean real bugs, but I just mean things like heat balance. But what we have been able to do in this magnificent Courthouse is to move cases along faster in a more user-friendly way for our citizens.

And the citizens of New Castle County are very fortunate for the courage and foresight of the General Assembly and the Governor, but also of citizen groups. Ned Carpenter and Chuck Welch who are here today spearheaded the committee that got that job done. And I am honored that they are here today, and I want to recognize and thank them publicly.

In Kent County, since the acquisition of the Courthouse from the County and the remodeling, we have developed state-of-the-art, high-tech facilities there. Further acquisition and renovation will round out these much-needed court improvements.

And in Sussex County, as you recently read, we have a truly magnificent courthouse. A new one for the Court of Chancery and the Supreme Court and this new courthouse is long overdue and has ended years of "exile" by the Chancellor and by Justice Holland. But it's worth the wait, because we now have in Sussex County a courthouse worthy of Delaware's preeminence and service to the citizens of Sussex County and our corporate citizens all over the world.

I want to thank you for providing us with these good workplaces, and the tools you have given us.

We do need to ask for a modest amount of additional tools. And I want to thank the Governor and the General Assembly for acting diligently to fill judicial vacancies with outstanding people. We do need additional judgeships, but we are not asking for the creation of them in this economic crisis. We are confident that the Governor and the Senate will continue to fill vacancies promptly so that we can continue to do our work.

The State of the Judiciary is excellent in Delaware. That's the good news. The bad news is that we are at a crossroad this year where we desperately need your help. Proxy statements of corporations of companies reincorporating in Delaware tell their stockholders in plain English that we have a stable business environment, and that environment is made so not only because of the outstanding judicial service of the Court of Chancery and the Supreme Court, but also

because of the responsible and forward-looking service and legislation and of the Secretary of State's office of the Executive Branch and the legislature in keeping our laws up to date.

As you know, the recent Harris poll commissioned by the United States Chamber of Commerce, ranked Delaware number one in ten major litigation categories. This is a poll of over 800 corporate general counsels of very large companies. They rated the Delaware Courts best in the nation for perceived fairness or reasonableness in litigation. And this excellence and national prominence of the Delaware Judiciary is not confined to the Court of Chancery and the Superior Court. It extends to the Supreme Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Courts. But I give special credit to the Superior Court in this poll because, if you look at the kind of litigation that they're talking about, it centers on the kind of litigation handled so excellently by the Superior Court.

All of this provides us with a competitive edge, but we must not rest on our laurels. People in other states are trying to "out-Delaware Delaware" in our outstanding judicial service.

And we can keep it up by continuing our breath-taking work ethic as we continue to work through these problems. We need state-of-the-art techniques and technology, and we need your help.

The operating budget requests and our bond bill requests are well below what's needed for these increasing caseloads. The only reason we have held back in asking you for funds is because of the economic shortfall. But what we are requesting now is the bare bones of what is essential.

I'm very proud of the way that members and staff of the Judicial Branch of government have operated in this crisis. Our staff willingly works hard and effectively while deserving pay raises and rational job reclassifications that are long overdue and need to be addressed.

And I am proud of the record of our trial courts in their timeliness and processing of cases and the low reversal rate of all of our Courts in the Supreme Court.

But we don't need to continue to work our people to the limits. That brings me to COTS.

Managing the caseloads of the courts is a complex process that increasingly requires the use of state-of-the-art technology. Unfortunately, our courts are currently forced to rely on a mix of automated and manual systems.

Protecting the public is paramount and the case management system will do that. Also, it will continue the pre-eminence of our Courts.

One way we will make COTS work is that all judicial officers and staff will work as a team and the processes we will use will be uniform. That implementation step will happen because it will be part of the constitutional authority of the Chief Justice requiring uniform processes.

COTS fits nicely into two recent events that you all are familiar with. Senate Bill 50, the probation reform legislation that has recently been signed into law, is a step that needs COTS. Judge Richard Gebelein informed the Bond Bill Committee that the implementation of Senate Bill 50 makes it "even more important that the courts acquire a modern data system." So that the judge has access immediately to all sentences on the individual;" [and we must) be able to communicate to the affected court, to the Department of Correction, both institutional and probation, Court Collections and Court Clerks."

Second, Senate Bill 58, the legislation that provides for efficient adjudication of technology disputes and mediation proceedings for business disputes, when it's passed finally and signed, will be facilitated by COTS. Once in place it will enhance our national reputation and perception-and it is a correct perception-that the Court of Chancery and our other courts are at the cutting edge of being able to process technology and business disputes efficiently. This project is an example of the harmony among the three branches of government. Governor Minner and I both addressed this concept in our recent messages to the General Assembly. Justice Carolyn Berger of the Supreme Court has worked with the Chancellor and Governor Minner's team to bring Senate Bill 58 to a near reality.

Brings me to cost effectiveness. The beauty of the three-branch harmony and interdependence that is the hallmark of Delaware government's culture is that we are able to work together. To me, that means not only that we must limit spending to vital needs and judiciously raise revenues, but that we also have to oversee our fiscal policies so that we can be considering value-enhancing opportunities.

Let me list a few things that we have done and are doing in the Judicial Branch to work with you toward this goal.

We have cooperated with the Governor and the Budget Director to trim our FY '03 positions to bare bones minimum.

We've cut back our FY '04 budget request to rock bottom. We do need \$727,300 to address the ever-growing and constitutionally mandated costs of indigent defense services and we hope that will be forthcoming.

We have judiciously raised court fees so that we will have additional \$2 million of additional revenue that we expect to generate in '04 out of our court fees and it's already in the revenue stream. This \$2 million, or near \$2 million is almost enough to cover our down payment of 2.5 million on COTS. We have significantly enhanced our collection of fines, costs, and restitutions.

This joint effort of Senate Bill 58 will raise additional revenue because of the high filing fees that will be required either on the technology side or the mediation side of that.

And then finally let me say we're implementing the recommendations of the Court Resources Task Force that was chaired by Jim Gilliam, Jr. Among the cost-effective initiatives of the Task Force are:

- Streamlining the Administrative Office of the Courts.

- Appointing a liaison justice, Justice Holland, to oversee the functioning of the Administrative Office of the Courts.
- Designating each of our presiding judges of the trial courts as a point person for other recommendations of the Gilliam Task Force.

I will not go into any further detail on the many business-like recommendation of the Court Resources Task Force except to note that I have taken the very first step to implement the recommendation of the Task Force that an Equal Justice Fund be established within the Delaware Community Foundation. This task force worked diligently. Citizens doing public service on a pro bono basis most effectively and expertly and I am delighted that Jim Gilliam is with us today. He headed this superb team and I want to thank him publicly for the outstanding public service.

Cost effectiveness is more than just internal modernization. It requires that all the pieces of the justice system work together.

We start out with the premise that every part of our criminal justice system has a cost. Capitol cases have a cost. I'm not asking you to repeal the death penalty, but you have to recognize that the apparatus necessary to prosecute, defend and appeal a capital case are enormous so we must continue to recognize that as we go forward with our cost analysis. And we have a lot of capital cases to process.

Justice Walsh, said in his Law Day Speech on May 1st the following:

When I joined the Superior Court in 1972, the Court had on its docket 5 to 6 murder cases each year in New Castle County and not more than a total of 10 statewide. That pattern continued for most of the seventies. Today in New Castle County alone we have 25 capital murder cases on the docket. One of these cases requires weeks of jury selection, trial, and penalty determination. The number of judges in the Superior Court has increased from 11 to 19 – not quite double – while the number of serious felony prosecutions has increased fivefold. That's from Justice Walsh.

The criminal justice apparatus must staff those cases with prosecutors, defense lawyers Public Defenders, clerks, bailiffs, capitol police. And so, we have the inevitable costs of the appeals as well.

You were very kind today to pay tribute to Justice Walsh and I just want to thank him publicly. He is here with his wife, Maddie, and he has deserved the superlative words that you've given him, that have been "spread on the record." He has asked me on more than one occasion to tone down my tendency to be effusive when I'm complimenting him. But now, on behalf of the Judicial Branch, I want to echo what you have done and thank him for his exemplary service. Justice Walsh.

One of his many contributions is speedy trials. He has headed two committees the most recent of which is the Delivery of Criminal Justice Policy Committee and Justice Myron T. Steele will be taking over that responsibility and Justice Steele has great expertise in the area. He also served

on all constitutional courts, he's our Liaison Justice to SENTAC and he has also headed up our efforts for indigent services. That process will be going forward. But we have to recognize that, as we look at speedy trials, as we look at the fine work that SENTAC is doing, we have to recognize what Commissioner Stan Taylor told us in his report to the Joint Finance Committee. And that is that the Department of Correction admits and releases over 20,000 offenders each year and that number is growing by 225 or 250 a year. And he says that because of that growth we're going to have to start planning a 1000-bed facility that will cost \$85 million in construction costs and \$20 to \$35 million in operating costs. So, he says that it's time to review the sentencing policies and practices of the state in order to mitigate those costs.

SENTAC and others are studying the wisdom relating to reform of mandatory minimum sentences. You have two bills in the House, House Bill 35 and House Bill 52, people are talking about the compromises and permutations of those provisions. And I'm not going to get into which is better or what other system should be done. But every time we turn around, we see what's happening with mandatory minimums. At least eight states have abolished them or adjusted them significantly as a cost-cutting measure.

Just this week we saw in the News Journal about the federal legislation relating to the Amber Alert Law that ties a judge's hands so that the inflexible aspect of a one size fits all problem is going to result in enormous costs.

The American Bar Association has adopted what they call a "Blueprint for Cost-Effective Pretrial, Detention, Sentencing and Corrections Systems." And I have had that handed out to each of you with a copy of the State of the Judiciary message, the Bond Bill presentation and the budget presentation of the judicial branch of government and I really request that you look at it, I don't want to take your time today to go through it but in that blueprint, for example, they call on each state government to review sentencing laws, probation and parole guidelines, mandatory sentencing alternatives and the like. I'm not saying that these are the way to go or that any one of these things should be studied. I think we can get some grants to study them, but I do think that what we really need to do is to look at that 107 of the ABA, consider what needs to be done and go from there.

Given Commissioner Taylor's gloomy prediction about the 1,000 prison bed facility, and the \$85 million, Judge Gebelein wrote to me recently and he said:

Now is the time to abolish "mandatory minimum" sentences. For one thing, they are a throwback to pre "truth in sentencing" times when various statutes were enacted to require a specific sentence and to require it be served. Continued study, he said, of the entire sentencing structure must go on. SENTAC has begun to study it and it has become clear that the policy decisions in one area of the system greatly impact the other.

Which brings me to my conclusion and that is that we have two kinds of demands on our system. One is a healthy demand, and one is a toxic demand. The healthy demand includes business and civil litigation that serves our injured citizens, families in need and our business enterprises. The toxic demand is the demand placed on our criminal justice from police, court, corrections. Crime is toxic. We have to bring individuals accused of crime to a fair and swift trial and we have to

incarcerate violent and repeat offenders. It is the criminal justice system that places incredible stress on our resources and the people who work in the system. We have made substantial progress toward reducing backlogs and getting criminal cases to trial. We need more help in that connection. All through the system, from the Public Defender, the prosecutors to the courts and corrections.

We cannot expect our judges, and our other employees to continue to keep up with the pace. At the same time, we cannot ask you for everything that we need. We do ask you for the minimum \$727,000 for indigent services, and the minimal \$2.5 million in the Bond Bill Committee for COTS. We have to do that, in my opinion, this year. But we need to find, however, ways to reduce the toxic aspects of the demand. We need the cost-benefit study of all of our sentencing systems from A to Z, we ought to look at that ABA "Blueprint," and we ought to look at every way we can be more cost-effective throughout the system, and I know that you're doing that.

It is a high honor to serve you as Chief Justice of this great State of my birth. My wife, Suzy is here, and we both look back on the challenging eleven years that we've already had in this public service and we look forward to one more year to work with you in accomplishing these goals. Mr. Speaker, President pro Tempore, Lieutenant Governor, I want to thank you very much for the privilege of presenting this Message to you today.