

State of the Judiciary
Chief Justice E. Norman Veasey, Delaware Supreme Court
Message to the Legislature
2004

Thank you very much, Mr. Speaker, President pro Tempore Adams, Lieutenant Governor Carney, Members of the 142nd Delaware General Assembly of the State of Delaware. I appreciate very much also the attendance of my judicial colleagues here today and many of my distinguished friends from around the State and former Governor Dale Wolf is here I see. Thank you, Governor, for being here. Friends too numerous to mention but Mr. Majority Leader thank you very much for acknowledging my wife's presence. That's one presence I would also like to acknowledge, putting up with me for 48 years and leading me and guiding me through the last twelve years as Chief Justice.

Well, it's a high honor for me to appear here in this Chamber to give my final State of the Judiciary Message. And in each of the prior eleven State of the Judiciary Messages I've had a theme that I've tried to develop for that particular message and this year, I have two themes: and one is the recognition and excellence of our trial courts and some thoughts for the future.

And, before I go there however, I would like to express my deep gratitude to the General Assembly and the Governor for your great support of the Delaware Judiciary over the past twelve years. And on a personal note, I'd like to thank the members of the House and the members of the Senate for honoring me with your very moving Tributes that were personally delivered to me by delegations from each of the Houses to the retirement dinner that was given for me last Monday, March the twenty-ninth. It was a great occasion, and I was deeply honored and I was also honored that evening when the Governor graciously presented to me the "Order of the First State". For all of these singular honors, I am very grateful, and I will cherish them forever.

The State of the Delaware Judiciary is excellent. As I leave office, I look back in retrospect and look forward prospectively over the landscape of our court system as a vital keystone of Delaware's government and its economy. First the look back.

A leader of any organization strives to make certain that the organization has not been harmed or diminished on that leader's watch. The leader hopes, moreover, that maybe the organization has been improved on that leader's watch. I believe the Delaware Judiciary has not been harmed or diminished in the past twelve years. And I hope that history will show over those 144 months that we were productive in performance improvements that have yet to be measured but can be measured.

I would measure the success of that history by the primary standard that's used by national judicial bodies such as the Conference of Chief Justices and the National Center for State Courts. And that standard is public trust and confidence. It is essential that the Judiciary, as a separate branch of government, must have that public trust and confidence. Otherwise, the promise of the rule of law that is vital to our civilization is an empty, unfulfilled promise.

There are no definitive or statistical criteria to measure public trust and confidence. In our annual reports and in our budget presentations to the Joint Finance Committee we quantify and set forth most urgently our needs in the context of what is realistic for the Judiciary to request. And what I would like to do today is give you a brief overview of some of the accomplishments and needs of our court that are most important to leave you with.

We all hear regularly and happily about the international recognition and preeminent reputation of the Delaware Judiciary. And in the retrospective, I'd like to try to demonstrate to you where to place that credit. And in terms of the prospective to look ahead – I will mention a few categories where the leadership of all three branches of government should consider focusing their priorities to affect public trust and confidence in the Judiciary.

Well, first in the Supreme Court and all of the Justices in Delaware enjoy a distinguished reputation of unquestioned integrity, competence and stability. And although the Supreme Court sets the tone and the policy for the Judiciary, a court system is only as good as its trial bench. And as for the allocation of credit or the assessment of credit for the preeminent local, national, and international reputation of our courts, I give that lion's share to our trial courts. The Court of Chancery, the Superior Court, the Family Court, Court of Common Pleas, and the Justice of the Peace Court.

First, there is no doubt in the minds of business leaders inside and outside Delaware that the Court of Chancery is the crown jewel of our Delaware Judiciary. Proxy Statements of corporations seeking stockholder approval to move their state of incorporation to Delaware regularly praise all three branches of Delaware's government. And in focusing primarily on the Judiciary, they say, and I'll quote a short excerpt from one of them:

The Delaware Court of Chancery, which brings to its handling of complex corporate issues a level of experience, a speed of decision and a degree of sophistication and understanding unmatched by any other court in the country, and the Delaware Supreme Court, the only appeals court, which is highly regarded and currently consists primarily of former Vice Chancellors and corporate practitioners.

That's just one little quote from one of these proxy statements. Well, the views expressed in all these proxy statements have been and continue to be the overwhelming sentiment among managements, directors, and institutional investors. The Delaware Court of Chancery is regarded by legal experts as the national court of first instance in resolving disputes in corporate America. That reputation and the reputation of all of our courts has tangible results for our State, contributing well over 20% of our annual revenue.

Well, this "verdict" if you will, of competence is likewise reflected in the appellate record of these courts before our Supreme Court. And this is true for all these courts where appeals go directly to the Delaware Supreme Court. There are three of those, Chancery, Superior and Family.

The overwhelming majority of decisions in the Family Court are never appealed. To some extent that reflects the economic pragmatism of a particular matter, but it also reflects the respect--even

for the losing party – of the integrity and expertise of that Court. And where there are appeals, from the Delaware Court of Chancery to the Supreme Court, the data that I've had researched over the last 12 years show that over 83% of Chancery judgments are affirmed by our Court. And the General Assembly and the Governor have shown increasing confidence in that Court with the new law in technology disputes and the new mediation-only procedure.

We have competition, we have competition from other states, but we also have competition from the Federal Government. The Federal Government has laws and has regulations that threaten us by intruding into the internal affairs of Delaware corporations. We can't do much about that but we must continue to supply swift and certain justice in all areas of the law to maintain the strength, integrity and competence of the Judicial Branch.

Next, the Superior Court. It's an extraordinary court of general jurisdiction. And like the Court of Chancery, it also enjoys a glittering national reputation. Indeed, we have celebrated again this year-for the third year in a row and, I think, Mr. Majority Speaker, you referred that the Delaware Court system is the Number One court system in the United States for liability systems by a poll of the United States Chamber of Commerce. That poll, conducted professionally among a cross section of 1,400 business lawyers by the Harris Interactive poll, ranked our courts first in the following categories: overall treatment of civil litigation, treatment of class actions, punitive damages, timeliness, discovery, scientific evidence, judges' impartiality, and judges' competence. And that poll showed also that an overwhelming 80% of those surveyed report that litigation environment in a state could affect important business decisions. And I think this bodes well for Delaware's economy.

Well, as you can see from these categories, the principal credit for the outstanding accomplishments of this number one rating belongs to the Superior Court. What is even more remarkable is that this Court maintains this superb civil case record while handling a full docket of serious criminal cases that are increasingly complex including a burden of a large number of death penalty proceedings.

In the Superior Court as well as in the Court of Chancery the affirmance rate by the Delaware Supreme Court is impressive over the past 12 years of my tenure. And those data show the following affirmance rate for the Superior Court: over 86% for civil cases, over 92% for non-capital crime cases and over 86% of capital cases.

Given the diverse and increasingly heavy workload of the undermanned, understaffed Superior Court over these twelve years, this very positive affirmance rate is a great tribute to that Court.

The third of the three courts where direct appeals go to the Delaware Supreme is the Family Court. That Court has extraordinarily wide and diverse jurisdiction. Their docket includes child custody, termination of parental rights, adoption, protection from abuse, divorce, alimony, marital property, crimes against children, juvenile delinquency, and many related aspects of family law. I know of no other specialized family court in this country that has a broader portfolio of jurisdictional subject matter.

Moreover, this Court has instituted innovative procedures to improve its quality and

effectiveness of delivering justice. This Court, along with the Court of Common Pleas and the Justice of the Peace Court, is the court that most of our citizens see. Yet our Family Court handles these stressful and ever growing (in numbers and complexity) caseload with skill and compassion. Family Court Judges who, like the other trial courts, are shorthanded and need more judges and resources, and they deserve great credit and thanks for the extraordinary work they do.

Like the Court of Chancery and the Superior Court, this Com1 also has a stellar record of success on review by the Delaware Supreme Court – a finance rate of over 87% over this twelve-year period. Again, a high tribute to that Court.

And although I have stressed the appellate records of these three courts where direct appeals go to the Supreme Court, I have equal praise for the Court of Common Pleas and the Justice of the Peace Court. These courts, as I said about the Family Court, are high volume court that people see, they're the "people's courts." And because they are high volume courts, they have to develop and have developed innovative techniques to provide swift, fair, and equal justice to our citizens. They are experts at efficiency, whether it's the use of videophones, expansion of Drug Courts, Truancy Court, or enhancing vitally needed collections of fines, assessments, and restitutions.

All in all, we have the finest court system in the nation from the Justice of the Peace Court to the Supreme Court. And the important point is that we must keep our courts on top. All three branches of government must continue Delaware's cooperative and interdependent policy of providing the needed resources to help our courts, nourish the environment of administrative efficiency of the court system and avoid obstacles that adversely impact our courts.

Systemwide, over the past twelve years, we have seen many advances in the Delaware Judiciary. And that's part of a team effort, that's not just me, that's everybody working together. This has come about not only as a result of the teamwork of the judges, but also as a result of the foresight and assistance of a succession of seven General Assemblies and three Governors over my twelve-year tenure. And I'll just mention a few of these very briefly.

Remember the Commission on Courts 2000? That was started in my first year as Chief Justice with a Joint Resolution of both the House and the Senate that supported major structural reforms in our court. And with the help of the General Assembly and three Governors, we've built modern courthouses in all three counties, including the New Castle County Courthouse where we just put an art exhibit up yesterday as part of our program. And our courts have become user- friendly.

We have modern, uniform and technological and other processes established through our Judiciary, including the COTS which has now proven to be effective. New advances in electronic filing and high-tech litigation that is at the national cutting-edge. Businesslike efficiency has been a top priority. You remember the Court Task Force that was chaired by the late Jim Gilliam, Jr.

Inter-branch cooperation has been advanced through these State of the Judiciary Messages, annual invitations to members of the General Assembly and others to come visit our courts

and through a Three-Branch Personnel System Reform Task Force that I'll talk about at the end.

Task forces and committees on Racial and Ethnic and Gender Fairness have been established. Administrative Directives against any bias in the court systems.

Delivery of Criminal Justice Policy which is speedy trials and many other advances in our Court are being implemented.

But one of the things that maybe not everybody sees is our judges are ambassadors.

Our judges go out all over the country to speak about ethics and corporate governance and matters that are important to Delaware. So, we have a long list, I have a list in the written version, of twenty-five additional things I'm not gonna bore you with right now that have been done in various categories of uniform systems that we have that this team has established.

Let me give you a little look ahead and then I'll sit down.

As we all know, no organization of national importance can afford to remain static, only tweaking its systems and improving at the margins. And Delaware Judiciary is no exception. We cannot be static.

The greatest asset, and I say this all over the country, of the State of Delaware in this competitive environment that I mentioned earlier is the spirit of cooperation among all three branches of our government. Together we can stay on the cutting edge by improving. And I would like to mention a few ways.

One, with respect to providing resources to help our Judiciary maintain its excellence, I have already presented to the Joint Finance Committee operating budget requests, and we will likewise be presenting capital budget requests to the Bond Bill Committee.

Those requests include vital needs for modest resources for our existing judicial officers. And in addition, we have put before the Joint Finance Committee a comprehensive documented case for additional judgeships in several courts.

The continuation of our proven COTS case management system and courthouse improvements in all three counties are on the table and will be before the Bond Committee.

In terms of overall priorities for the State of Delaware, there is a need, in my view and mentioned this in my State of the Judiciary Message to you last year, to continue to look at the overall criminal justice policy, much of which impacts our courts.

We start with the reality that many pieces of legislation in the criminal justice area have an impact, have a cost and those costs are there and they need to be recognized and you are recognizing them.

There are violent offenders who must be incarcerated and there are nonviolent offenders serving mandatory minimum sentences in our prisons. The mandatory minimums impact costs and courts and I applaud the General Assembly, as well as the Department of Correction and the Speedy Trial Committee of the Judiciary and SENTAC for stepping up to the plate and bringing focus and some action to the problem. Legislation passed last year and legislation before you this year are significant.

Last year I mentioned in this address the American Bar Association "Blueprint for Cost-Effective Pretrial, Detention, Sentencing and Corrections Systems." That resolution which was 107 at the American Bar Association is a comprehensive one, and I gave you a complete list of what they were doing.

But now you have before you in this session House Bill No. 358. I think it was mentioned earlier today that would create a special commission on criminal justice. According to that bill, it would undertake a comprehensive review of Delaware's charging decisions, pre-trial detention, plea bargaining, sentencing, correctional systems, rehabilitation, programming, offender re-entry mechanisms, services, programming available in the community, and further, to identify modifications that can be made in those systems to improve their cost-effectiveness, in conformance with justice, public safety and constitutional requirements. And you can see that cuts across the board because what we have to be responsible for is not only efficiency in the court but providing indigent services. That is a very important thing.

My wife and I just got back from Seattle, picked up the Sunday paper and, reading it on the plane that said their indigent system is failed. Their public defender system is failed. Their lawyer system is failed. Why? Because they don't have the money and they haven't had the resources and they haven't had the cooperation that you all have provided to us.

I think the concept in House Bill Number 358 that has wide sponsorship in both Houses is a concept that is a good one and I think it's consistent with the idea of the study I suggested last year. I hope you will favorably consider that bill.

In terms of general reform, there are two other things that I would like to briefly mention. One is the Personnel System. In the Judicial Branch alone, for example, there are two personnel systems. Some courts have a State Merit System, other courts have the Judicial Branch Personnel System. Over two years ago a Three-Branch Task Force was created jointly by the Governor, the Speaker of the House, the President Pro Tem of the Senate, and the Chief Justice. We all signed this Memorandum of Understanding, and the purpose of that Task Force is to rationalize and reform the current State compensation and benefit structure. I would respectfully urge that the Task Force work move forward.

Second, I'd like to mention again the Court Resources Task Force that had been chaired by Jim Gilliam. The Final Report was given to us in 2002. I think you have copies. That Report recommended a number of things that have already been implemented for businesslike efficiency in the Judicial Branch. And in addition to the recommendations that

have been implemented, there's one that's in the process of implementation and that's the creation of a Permanent Advisory Committee on Administrative Efficiency of business and legal experts. And you can see all of this in our administrative directives that are on our website. Well, that permanent committee is hard at work to coordinate and make more effective the various administrative functions that are distributed throughout the Judicial Branch. That committee is expected to make important recommendations in the future. And some of those can be accomplished under the Constitutional authority of the Chief Justice. But others may require legislation and I am certain you will be hearing more from this committee and the next Chief Justice.

Let me say in conclusion it has been a high honor for me to serve this State as Chief Justice for this past twelve years. It has likewise been an honor and a pleasure to work with all of you and your predecessors and I shall be interested in seeing the continuing progress of the Judiciary under the next Chief Justice who will-I am certain-have the support of this body, future General Assemblies, this Governor, and future Governors.

So, I want to thank you very much for all your help and support. And thank you particularly for the privilege of addressing you today.