

State of the Judiciary

Chief Justice Leo E. Strine, Jr., Delaware Supreme Court

Message to the Delaware Bench and Bar Conference

June 4, 2014, at Chase Center on the Riverfront, Wilmington, Delaware

Good afternoon. At this moment, I can't help but think of Chief Justice Steele. There are two reasons for that. First, I would much prefer at this moment that he were still Chief Justice. Then I could just concentrate on two things: being able to check my e-mail furtively without being caught by the Chief Justice; and beating everyone to the bar at the upcoming reception. But the more important reason is the debt we owe him as members of the Bench and Bar. Myron cares deeply about our state and its judiciary and was a great ambassador for us all. I was proud to have been a foot soldier for him when he was Chief Justice and am grateful for all the help he continues to give me.

I also would be remiss without recognizing Justice Jacobs, who will soon leave our Court. Jack Jacobs has the finest red pen and one of the sharpest minds in the law. His commitment to quality in judicial opinion-writing is a model for us all to emulate. I shall miss him, as I will also miss Judge Toliver's good humor, enormous common sense, and dedication to justice.

I also want to say a personal word about the recipient of the First State Distinguished Service Award. When I was counsel to the Governor, I was privileged to work closely with Art Connolly, who was doing important public service as Chairman of the Public Integrity Commission. No senior lawyer could have been more gracious to young lawyers or a better role model of how a distinguished practitioner can help his community. His loss is an enormous one and there could be no worthier recipient of this high honor. I also beg your indulgence to let me thank two groups of people. The first are all the judges, staff, and members of the Bar with whom I was privileged to work during the 15 years I was a member of the Court of Chancery. There is no more special community than the Chancery one, and I will always be honored to have served on that Court. I also thank my new colleagues. The Justices and the staff have been patient sherpas to me in this new role, and I respect how much they have done to make our system of justice what it is.

I will now turn to the basic subject of this address. The good news is that insofar as my obligation is to give you a down and dirty on the state of the judiciary, the reality is that our judiciary remains strong. Compared to other states, cases are disposed of in a more timely manner. The relationship between the Bar and our courts is excellent. Entrepreneurs and business executives around the world continue to view Delaware as the domicile of choice for business entities. Our Judiciary's expert resolution of corporate and commercial disputes is an important reason for the success of what is now one of Delaware's leading industries.

Through a challenging period of tight budgets, morale has remained high. Judges and staff in all the courts understand the importance of what they do for the people of Delaware, and handle the sensitive matters entrusted to them in a professional and timely manner. Across the board, whether it be in the Justice of the Peace Court, the Court of Common Pleas, the Family Court,

the Superior Court, or the Court of Chancery, our trial courts create a fair, welcoming, and respectful environment for litigants and their counsel. Whether it be in criminal law, tort law, family law, or corporate and commercial law, Delaware remains a great place to be a lawyer or serve the public in the Judiciary. Perhaps that is because there remains the feeling between even opposing counsel in cases that the overall cause of justice for the citizens of our small state must always be kept in mind.

Thus, the good news is that we remain in a sound state as a Judiciary. But we did not get to that sound place by contentedly accepting accolades. We got to where we are today because our predecessors prepared to meet the challenges of the future. The legacy they left us comes with the corresponding responsibility to act as stewards for coming generations. And the future presents us with as many challenges, as it does opportunities.

Meeting The Business World's Need For Cost-Effective And Timely Dispute Resolution

The increasing globalization of the economy and the perception that the United States is a high-cost and slow place to resolve business disputes present two of the most important challenges Delaware must address. Not only that, but the United States is increasingly viewed as a nation that reacts irrationally to financial crises by adopting corporate governance initiatives proposed by interest groups that have no reasonable relationship to the fundamental problems that gave rise to the crises. In fact, many of these reactive responses seem to exacerbate some of the conditions that did lead to market failures, which include the increased susceptibility of public corporations, including financial institutions, to the momentary sentiments of an intrinsically speculative stock market.

Delaware's domestic market share has, if anything, grown during this period, because our state's commitment to a principled form of corporate law has not wavered. Our law holds managers accountable to stockholders for honoring their fiduciary duties and vigorously protects stockholder voting rights while giving managers the flexibility they need to make good faith business decisions without undue fear of liability or constant intermeddling. Delaware's comparative stability has made it even more attractive to those who form entities in the United States, as shown by the fact that 83% of domestic IPO's last year involved Delaware entities.

But our future is tied, as it should be, to the future of our nation. And it is natural that U.S. market share should fall in an expanding world economy. That is not a bad thing if the pie grows for everyone and the U.S. still remains competitive. The danger, of course, is that we assume that we will always be pre-eminent, when advantage must be earned constantly. In the legal area, the United States faces serious competition. We are perceived as a nation where it is difficult to resolve business and other legal disputes in a timely and affordable manner. Private arbitration's promise is, if not broken, then unreliable, as private arbitration increasingly involves all the costs of litigation, and even more, because the arbitrators themselves have incentives to drag things out, the breadth of discovery matches that of regular litigation, and parties often fight costly, time-consuming battles about whether matters should be resolved by arbitration at all.

Several years ago, our General Assembly adopted two innovative statutes to address this

problem. Those statutes were being embraced nationally by the business community, as the statutes were increasingly the dispute mode of choice in important markets such as the Silicon Valley. Regrettably, a federal court in Philadelphia issued a divided ruling striking down these statutes because they violated two judges' reading of unsettled precedent, a reading that, if good law, would invalidate long-standing dispute resolution procedures used in their own federal court system. But, consistent with our history, Delaware is not wallowing in defeat.

Instead, the Governor, the Corporate Law Council, and key elements of our Bar are working on a different approach to be ready for consideration by the General Assembly in January. The courts have pledged, as is our tradition, to help in that effort. That is because we recognize that when all three branches of government and the Bar come together, discuss issues of common concern candidly, and reconcile our differences, we have the best chance of coming up with good public policy for the people of Delaware. An effort of that kind has already begun so that Delaware can offer business entities a cost-effective, voluntary means to resolve business disputes in a faster and cheaper manner if they are willing to forego the costs of lengthy proceedings and full-blown discovery.

The purpose of these efforts is often mistaken as a desire on Delaware's part to attract dispute resolution for dispute resolution's sake. That is not the purpose. The purpose is to give entrepreneurs around the world an incentive to form entities in Delaware, because if they do, those entities will have the advantages not only of our well-developed corporate law, but of our state's proven ability to help them resolve commercial disputes swiftly and expertly. In dynamic, emerging markets like Brazil and Chile, which lack dispute resolution institutions adequate to the demand, Delaware's dispute resolution capacity provides a needed answer for international joint ventures. In our own domestic market, Delaware's dispute resolution capacity helps key industries, such as our technology sector, solve disputes faster and cheaper, and thus be more competitive. This type of initiative is consistent with our best tradition, which rests not on being the cheapest place to form an entity – we are Bergdorf Goodman, not the Dollar Store. It rests on our genuine integrity, high standards of fiduciary responsibility, and our provision of a neutral playing field on which those whose interests are legitimately at stake can tangle and get well-reasoned decisions with real world business speed.

Managing Our Limited Resources More Effectively

Another key on-going challenge we face is the likelihood that state revenue growth will continue to be modest. For our Judiciary, that means that we must expect to do the important work entrusted to us with at best, stable resources. We cannot expect to add positions to address the challenges that we confront. Rather, we must be open to new ways of doing business, by rethinking old processes and using technology wisely.

In approaching the future, we, as judges and lawyers, also have to reflect on the reality that management is perhaps not our strength. We who are law-trained love a good debate, we all have ideas for how things can be run better, but we also often have little patience for consistency and follow-through. Caught up, as we should be, in resolving our large dockets of cases, we devote ourselves to administration and broader policy almost avocationally, and we plant many random flowers indeed. The problem with that random approach is that it doesn't

work for gardeners, and it works even less well in a large organization, with limited resources, and whose actions affect other important elements of state government. The single best educational program in the world is probably U.S. military basic training, and the reason why may rest largely in one proposition: An entire organization agreed to take a very high-quality curriculum and focus on teaching it in the best and most consistent manner everywhere. The risk is taken that someone has a more perfect curriculum, on the rational intuition that if the agreed-upon curriculum is of high quality, the military will be stronger by having everyone focus on teaching it well to all incoming soldiers. In plain terms, one very good idea implemented everywhere well equals excellence. Thirteen excellent, but different ideas, implemented inconsistently and in a patchwork manner equals, well, a kind of hell.

We are guilty of a bit of the latter kind of behavior. Some of our courts are not in fact fully statewide courts. They operate differently in different counties, forcing lawyers, citizens, and agency partners to deal with inconsistencies that are not rational. Within almost all of our courts, we have pockets of innovation, in many cases inspired by the availability of short-term grant funds, that have not grown into statewide institutionalized approaches. This patchwork approach is also the product of an overwhelming number of commissions, task forces, committees, and working groups that members of the Judiciary, executives in important state agencies, and legislators are asked to staff. The proliferation of these bodies enables conflict avoidance. Rather than force the Judiciary, for example, to speak with one voice about key issues like sentencing approaches, groups that have overlapping mandates for identical policy areas allow for continued discordance, as instead of policymakers having to come to agreement, they can populate different forums that proceed in different conflicting directions at once.

A good example of this phenomenon are the so-called “problem-solving courts” that have been established in our various trial courts. Each of these courtrooms is grounded in good intentions and with a rational basis that doing things differently might create better results for offenders in the form of less recidivism, a more positive life, and therefore also a safer community. But I say each of these courtrooms because it is clear from speaking to key partners like the Department of Correction, lawyers, and the trial courts involved that our problem-solving courts have not adopted consistent, state-wide approaches with measurable standards. Instead, we have different approaches being taken across counties, and across courts, such that there is in fact no statewide approach to drug courts in Delaware. The same can be said of the mental health courts, the veterans’ courts, and so forth.

These all have worthy goals. But if the goals are worthy, our commitment to them must be genuine enough that we make them function in a manner that is consistent and adopt real standards to measure their utility. That is important as a matter of public safety, too. If Probation and Parole is forced to work more intensively with particular offenders – say ones who have committed misdemeanors – then Probation and Parole will have less time to supervise others who may pose a greater danger to the public – such as those who have committed felonies. The difficult job of rationing scarce resources is critical precisely because it does involve rationing. If Probation and Parole has to deal with different approaches by, say, two problem-solving courts and then by judges issuing sentences to old fashioned, run of the mill, low level felons who are not subject to the jurisdiction of a problem-solving court, Probation and Parole might well find itself overwhelmed, trying to find a way to do impossible

things given the challenge of large case loads of, by definition, not ideal clients. Even things as seemingly mundane as scheduling, can translate into time that Probation officers cannot spend doing the things that all the various judges would like them to do.

None of us are perfect of course, and that includes our partner agencies. But the vast bulk of those who serve our public in the Department of Correction, the Division of Youth Rehabilitative Services, and agencies that provide treatment to offenders such as Delaware Health and Social Services, care deeply about helping offenders get on a better path and protecting the public from crime. By working respectfully with each other and trying to understand and address each other's needs, we are likely to accomplish our shared objectives more effectively. We are also likely to better improve all of our institutions, if we are open to constructive input from our teammates. Our state only funds a certain level of treatment resources and of probationary oversight. These resources must be used wisely. Determining what is the best way to use these resources based on objective criteria and trying to aid the Department of Correction, YRS, and HSS in deploying them prudently should be our goal.

In the coming year, we will establish a process that looks at the various problem-solving courts and that invites agencies to be at the table as respected partners. The goal will be to hammer out consistent, statewide standards and benchmarks for their operation. This process will be a contentious one, as various judges have varying strong views on these issues. But if the goals are ones in which we believe in good faith, then we cannot avoid the hard work of making a decision on a very good approach to focus on implementing well and consistently. We cannot duck that hard work and pretend that different approaches will produce good results over time, and pretend that it does not put an unfair strain on scarce resources.

Similarly, I confess to struggling to figure out what SENTAC, the Criminal Justice Council, and the new Delaware Justice Reinvestment Oversight Group all do and how they work together. Their mandates overlap in fundamental ways, creating the potential that we have several less than optimal efforts to address key issues rather than one more effective, if still imperfect, one. I am committed to learning more about this critical work, and working with all of our judges and the other Branches of government to come to a better place, and to have the Judiciary reconcile its internal, good faith differences, so that we can work with our partners to do a better job in this most difficult of areas.

To accomplish that, we will be asking some of our strongest judges, particularly from our Superior Court, who have vast expertise in criminal justice, to give us their best thinking about how we can create an internal method of resolving our differences. The goal is simple to state, but hard to achieve: to try to commit as much as possible to identifying consistent and predictable judiciary-wide approaches to tough criminal justice issues. If we can do that and engage in continual efforts to communicate in a respectful way with important partners like the Department of Correction, the Department of Justice, and the Public Defender, we may be able to deploy scarce treatment resources more effectively to reduce recidivism and improve the consistency of sentences for similarly situated offenders.

Giving The Judicial Branch The Autonomy And Flexibility To Operate More Efficiently and Effectively

But just as we pledge to continually try to improve our approach to management, so too will we ask to be given more flexibility as an independent Branch of government to manage the limited resources available for judicial administration. Through the diligence of the Supreme Court and Court of Chancery in particular, an increasing portion of the judicial budget comes from non-General Fund sources. By the Judiciary's efforts, the other Branches of government have been given more leeway to deploy the General Fund to meet other pressing social needs. We hope to continue to be able to fund our needs without increasing our reliance on the General Fund. To do that, however, we also need to have the corresponding flexibility to deploy non-General Fund sources of revenue ourselves *and* on a dependable basis. If we can implement that concept with the Governor and Joint Finance Committee in good faith, there is room for us to make needed improvements in key areas such as technology and our human capital with less burden to state taxpayers.

Investing In Our Key Capital: Our Employees

In that regard, I do feel obliged to talk about pay. And I do not mean the pay of judges. The highest priority of our Judiciary this year remains the one set by all the judges last autumn, which is to obtain some increase in compensation for our employees. The court clerks, case managers, judicial assistants, bailiffs, and administrators make us all look good. They treat lawyers and citizens with respect and they go about their demanding jobs with good humor. But they have absorbed an effective pay cut over the past 10 years. With this year's tight budget, little relief seems on the way.

Nonetheless, it is important that we speak up for them, and especially for the approximately half of our employees who work in this city. For too long, our Wilmington-based employees have been treated inequitably, because they are forced to pay for parking when the state pays for free parking for employees in other locations. The average wage for our employees in the New Castle County Courthouse is \$30-\$40,000 a year. Parking costs at least \$1500 a year in Wilmington. Therefore, this wage inequity is large and has gone on too long. This inequity is especially unfair because the NCCCH is one of the hardest working buildings in show business and the per person productivity in that building is extremely high. The Judiciary itself has tools that can be used to help fix this inequity for these hardworking employees, and we support fixing the inequity for Wilmington-based employees in the other Branches of government, including the hardworking employees of the Public Defender and Department of Justice who face this same situation. We hope that our partners in the other Branches will help us solve this problem, if not this Spring, then next year. But solve it we should, because it is just not fair, and we end up losing good employees to other better-paying, less stressful jobs.

Dignified And Safe Courthouses Are Essential To Doing Justice

As with our human capital, so too is there a need to reinvest in our physical capital. The facilities for our Family Court in Sussex and Kent County do not meet minimal standards. We are open to new modes of thinking, such as the possibility of meeting future needs by building a single-high quality facility in a location convenient to citizens of both counties and using that facility in concert with smaller sites in the traditional county seats to handle other less

security-sensitive cases. By working in partnership with the Children's Department and the key elements of our Family Court Bar, it may be possible to identify certain types of cases – such as criminal cases – that would best be handled at a single facility with co-located offices for state agencies providing services to the litigants and with space to meet the needs of other courts. We do not wish to dictate solutions, but we do need the support of the General Assembly and Governor to solve the pressing need for new facilities. We promise to be innovative and to respect the public's need for a cost-effective approach.

The Smart Use Of Technology

Another priority area we must address smartly is technology. Generating large amounts of information has never been easier and that presents immense challenges for the Judiciary. But the only way for the justice system to address a world in which an e-mail is now seen as a formal mode of communication is by embracing technology in an effective way.

In asking for the General Assembly's and the Governor's support for stable and predictable technology funding, we admit that not all of our technology efforts have been as successful as we hoped. For too long, we endeavored to create our own state-of-the-art case management system with a private vendor. The resulting product – a modestly helpful and already outdated one – has the characteristics that come from too many designers in the mix, too little capacity, and a propensity to require technology to adapt itself to old processes, rather than using technology to do things in new, more efficient ways. We perhaps failed to remember that while Delaware is mighty, it is not large. Our government is smaller than many large corporations, virtually none of which endeavor to write and own their own enterprise software.

This candid self-reflection should not be seen as a criticism that we failed. Our Judiciary did not. Like the other branches of government and the private sector, our efforts have been mixed, but with overall very positive results. Even our effort to build our own case management system has resulted in operational improvements that have helped us manage increasing information flows without increased staff.

But our most innovative initiative was our partnership with File & Serve Xpress, credit for which goes in large measure to Justice Ridgely, Chancellor Chandler, President Judge Vaughn, and Chief Justice Steele. By going to a best-in-breed electronic filing vendor, we benefited from the evolutions in the product that reflect our vendor's experience and input from many sophisticated court systems. By doing a public-private model, we implemented e-filing at a net benefit, NOT COST, to state taxpayers, and enabled the extension of e-filing in an affordable way to cases involving pro se litigants, guardianships, and now trusts and estates. By working with a private vendor, the customer service for e-filing is provided by the vendor, not state employees, and is available on a 24/7 basis, not only to the courts themselves, but even more importantly, to the lawyers, paralegals, and legal assistants at law firms who file documents with the courts. Not only that, but our e-filing product, while not substituting for the platonic ideal of a functional case management system that all judges dream of but that nowhere exists, gives judges, law clerks, court clerks, and lawyers a searchable docket in every case, allows for the creation of useful reports, and eliminates the need to keep paper archives.

As we go forward, we need to learn the lessons of the past and build on our successes. Under the leadership of Justice Ridgely and our Judicial Information Center, we hope to move forward with a bold and cost-effective vision. That vision has several key elements. We will endeavor to create the first statewide civil system of justice in which all cases in all courts are filed using the same high quality e-filing system. This will help our legal community by allowing law offices to work with only one system when they file cases in any court in our state. We will challenge ourselves and our e-filing partner to go further and use e-filing in criminal cases, embarking on this process in felony cases in our Superior Court. These cases already, by law, involve attorneys on both sides, attorneys who are required to e-file their appellate papers.

To manage the caseloads of the future, we cannot stay mired in the past. To learn from our experience trying to build our own case management system, we will instead concentrate on finding the best private sector vendor we can, and commit to a culture that is open to new ways of doing business and brings the same sort of public-private partnership approach to the case management side of the technology question as we have brought to e-filing.

Our prior efforts have already made it possible for our e-filing vendor to populate any leading case management system we select. To support this vision, we will challenge our Administrative Office of the Courts and court administrators to identify one effective approach, not five, to redesigning court paper flow processes, to commit to that single approach for a period of at least five years, and to develop management training and implementation techniques to be used by all courts. Likewise, we need to agree on consistent judiciary-wide approaches to purchasing and replacing technology such as phones and desktop computers, and get the cost savings and service efficiencies that come with scale purchases and stable replacement schedules. By doing one very good approach in a full-bodied way, we will make much more progress than if separate courts (or as often the case, separate units within particular courts) try different approaches in isolation. Scale matters to efficiency and in getting real impact.

But, to accomplish this vision, we need the support of the General Assembly and Governor to create a stable Judicial Technology Fund that we can use to deploy and replace technology cost-effectively, and we appreciate the leadership of the Delaware State Bar Association in supporting that important idea.

Increasing Access To Justice For Ordinary People

Our recognition that e-filing must be implemented in a manner sensitive to the economic realities that face our litigants is but one example of our Judiciary's larger concern about access to justice. With the support of the trial courts, our Supreme Court committed itself to the creation of an Access to Justice Commission last autumn. Since that time, a lot of internal thinking has been done about how to make such a Commission not merely another high-falutin sounding body committed to all generalized good things, but instead something that gets real things done that help real people have more access to the legal services they need. We also do not use the term "access to justice" narrowly, but in the larger sense of making sure that our nation's promise that each of us is endowed with certain fundamental rights and entitled to equal respect is honored.

Within the coming months, the Commission will be appointed and have a very specific work plan. That work plan will focus on, among other things, ensuring that the organizations that provide legal services to the poor are coordinated and deploy limited resources efficiently. Only after examining whether that is the case will the Commission consider whether additional funding is needed and what creative means are available to address funding gaps. To guarantee that we get the best thinking, the Commission will include members of the private sector with high-level business and financial acumen, who can ask the kind of business questions that those of us who are lawyers might not.

Consistent with the idea of having an outside perspective, the Commission will not be populated by government insiders but by members of the Bar and the public at large. The Judiciary and its staff – and other key constituencies such as Community Legal Aid Society, Delaware Volunteer Legal Services, and Legal Services Corporation of Delaware – will serve as resources and provide support, but the Commission’s voting members will have a citizen’s perspective.

To supplement the services provided by organizations like CLASI and DVLS, the Commission will look for ways to obtain more pro bono service from the Bar, particularly from lawyers who do not practice litigation and who serve as corporate in-house counsel. The Commission will also identify ways that we can provide lawyers with the training and resources to practice in new areas with competence.

Relatedly, the Commission will confront the economic realities that make it difficult for lawyers to provide legal services to ordinary middle class clients while meeting ethical standards and being able to make a living. By definition, clients of limited resources cannot pay unlimited fees. Practicing criminal or family law is challenging enough without piling on top of it the burden of running a small business. Hiring a secretary is difficult on the fees provided, much less an accountant, and the need to deal with many clients paying small fees (often unreliably) – or worse, not paying them at all – makes setting up an efficient approach to financial management hard. We do not have easy answers, but we do hope the Commission can do some good. With the support of incoming Bar President Yvonne Takvorian Saville, the Office of Disciplinary Counsel led by Kate Aaronson is going to work with the Commission to create high-quality, free CLE programs that focus on how to run a small practice ethically *and* cost-effectively. The Commission will also endeavor to see whether there are private sector businesses around the nation that provide business management services to help small legal practices operate effectively and whether they might expand their market to Delaware. As a general matter, the Commission will see what can be done to make it more feasible to make a decent and sane living while representing clients of modest means.

Likewise, the Commission will also examine whether in certain areas of critical need – such as family law or landlord-tenant law – we should authorize representation by paraprofessionals or more limited forms of representation by lawyers themselves. This is a sensitive subject, but we cannot ignore it, because many of our brethren with limited means go without any representation at all because they cannot afford it and because they do not qualify for free legal services. In fact, when I wrote this speech, some members of our staff wanted me not to refer to landlord-tenant cases because by Rule, we allow artificial entities to have their property manager represent them in court. But human beings do not get that chance. Of course, that

means that the “have’s” who are major landlords are given rights that the human beings who are their tenants may not exercise.

The Commission will also look at our internal approaches to helping litigants with limited means. For example, our traditional law libraries are great resources, but their usage has been diminished by the Bar’s access to Westlaw and Lexis-Nexis. These law libraries should not be closed. But it is time to examine what their role should be and to perhaps transform their focus. Many of our courts devote resources to helping pro se litigants but they mostly do so in isolation. The law libraries may be the natural home for pro se assistance centers that involve staff from various courts cross-trained to provide litigants with across-the-board help. With the input of a Commission of private citizens our efforts to help litigants navigate the system can become more effective.

One other tangible area the Commission will examine is a delicate subject that we cannot ignore, which is the disturbing disparity between the percentage of our citizens, who are black and the percentage of our citizens who are incarcerated who are black.

We have made great strides in ending racial discrimination and providing a more equal opportunity to all citizens. But we owe a moral duty to not ignore that the wrongful practices of centuries of oppression have resulted in harm that still demands our attention and concern. Right now, approximately 22% of our citizens are black, but nearly 60% of the male prisoners held in Delaware prisons are black. I do not pretend that the causes of that shocking statistic are easy to identify or that it can be put down simplistically to the vestiges of a racist past. But we cannot ignore this terrible reality if we are truly committed, as we should be as a Bench and Bar, to the cause of real justice.

As part of the Judiciary’s larger efforts to work with the Governor and General Assembly on solutions to the unsustainable growth in our prison population, the Commission will therefore take a specific look at whether our black community is getting too much access to a particular form of justice – criminal justice – in comparison to equally situated citizens. We have no expectation that there will be simple answers to the question of why, much less easy solutions. But we will ask the hard questions and see whether there are means – such as ensuring that there is a more objective risk assessment available in more cases so that equally situated defendants are more likely to receive equal treatment – to make some difference.

Involving The Bar And Our Constituents In Setting An Agenda For The Future

The role of the Access to Justice Commission acts as a bridge to what you are all most wanting to happen, which is for me to finish this speech. As you have seen, the Commission’s mandate will not involve broad generalities. We will be looking to tackle other issues, but not by just plowing forward using platitudes borrowed from other states. Rather, we are going to engage the Bar and public in the process of identifying the key issues that affect our justice system generally, including other areas for the Access to Justice Commission to explore.

To do that, we have asked the finest lawyers in our state to help us take a hard look at ourselves and give us feedback about what we are doing well, and what we can do better. To

that end, the Delaware Chapter of the American College of Trial Lawyers has agreed to work in concert with the leadership of the Delaware State Bar Association to conduct a survey giving practitioners the chance to provide confidential input about how we are doing as a court system in all the key practice areas. Admission to the ACTL is a professional honor of the highest kind, and available only to those who demonstrate excellence as a trial lawyer. The local ACTL membership has strong lawyers in almost all practice areas, and it is working with Bar President Greg Williams to supplement their work team with key Bar members from areas such as family law and administrative law, where the ACTL does not have as much representation. Through this means, we hope to forge an agenda for the future that is shared by the Bench and Bar because it is the genuine product of our collaborative efforts to hear the views of those who are in the trenches on a daily basis.

The ACTL survey will also look at opportunities to resolve cases more quickly and less expensively. Therefore, it will ask probing questions about subjects like administrative law, which have an important effect on our economy. For example, it will inquire whether there are areas of administrative law review that are irrationally bifurcated between two different courts, whether there are layers of review than can be cut out, and whether there is a need for our state to implement a consistent approach to administrative review by re-examining our state's Administrative Procedures Act for the first time since it was adopted approaching 40 years ago. Likewise, it has been nearly a generation since the jurisdiction of the various trial courts has been examined, and it is timely to do so, using a ground-up approach that involves input from the practitioners who handle various kinds of cases.

The Judiciary is grateful for the leadership shown by President Williams in expressing the Bar's willingness to help the Judiciary obtain the resources it needs to improve our system of justice. President Williams had the courage to say that he believed that the Bar would be more motivated to help if the Judiciary would deepen our commitment to involving the Bar in our policymaking process. By that means, the Bar will have a stake in the Judiciary's policy agenda, because the Bar will have helped us develop it, and thus will be our partner in advancing the interests of our system of justice.

Through the joint ACTL/DSBA survey, we therefore hope to not only develop the outlines of a policy agenda to address long-term needs, but also to further enhance the type of Bench-Bar collaboration that is a hallmark of Delaware's legal tradition.

Making It Easier To Be A Lawyer And A Good Spouse And Parent

The ACTL study is also going to ask questions about a subject that is, I fear, trending in the wrong direction. It has long been true that there are easier ways to make an equally good living than practicing law. Put aside the debt from law school if you can, but what you can never put aside are the endless documents that must be understood, put into proper context, and considered against the requirements of a dynamic legal environment. That historically demanding aspect of the practice has now been exacerbated by technology.

Clients produce more and more information cheaply, demand answers in unreasonable time frames, and do not hesitate to burden lawyers with e-mail and even text questions at all times of

day and with no regard to the concept of a weekend. Correspondent counsel have reacted to e-filing by considering midnight to be the standard time to file NON-expedited papers.

These practices endanger law practice on both the qualitative and the human dimension. The qualitative aspect is often overlooked, but clients who demand hasty, instant answers to problems that even a decade ago would have been the subject of a careful, deliberative process among colleagues will get answers that are not well thought out. Likewise, when out-of-state counsel routinely file at crazy times of day, there is a natural tendency for the local lawyers not to be as involved in the final draft as should be the case, leading to poorer products for the clients and increasing the possibility that briefs that do not meet Delaware standards of quality slip through for filing.

But there is also a human dimension that is troubling. Regularly, around Wilmington, lawyers, paralegals and legal assistants are forced to work until midnight for no good reason, simply to file non-expedited papers. No hour of the day is left for lawyers to be with their families, undisturbed by client and business interruptions. Some young lawyers even have told me that they put their fruit device next to them when they sleep, because they fear that if they do not respond instantly to an email at whatever hour of the day, they will compromise their careers.

This is madness, and it disproportionately affects young women lawyers. Some day we may get to a fully equal society where men are as likely as women to be the parent with the heaviest role as care giver. We are on our way to that time, and many male lawyers are deeply involved with their children's lives. But the reality remains that women still comprise the vast majority of the parents who are the primary care giver for their children.

With discipline and the help of a supportive spouse and extended family, it is possible for a lawyer to practice at the highest levels and be a present parent. You can do that and work long hours. But, it is maddening and dispiriting when technology, instead of empowering us to live fuller, more balanced lives, has caused an undisciplined, sloppy, never-ending approach to the business day.

The courts cannot possibly address this problem alone, but we can ask questions about ourselves. On Chancery, for example, we committed to not releasing non-expedited opinions after a certain time early on Friday afternoon. Why? Because lawyers should not have their Friday evening ruined because a judge decided to empty his outbox, causing the lawyers to scramble to find clients and discuss the implications of a non-expedited opinion, when that could wait until Monday. That just . . . well, I won't use the precise technical term, but it does, especially if you lose. Even during the week, there is really no reason for courts to put an opinion out after 5:00 p.m. and then burden the lawyers' evening.

And in terms of e-filing, the ACTL is going to ask you whether the filing day should not end as it always did, at 5:00 p.m. for non-expedited filings. When there is an expedited case, our courthouse doors have always been open. But it harms legal staff's life and increases costs to file routine papers that the lawyers have had many weeks to prepare at midnight. Cases will not leave Delaware because we take a sane approach to this issue, and we will likely get more carefully prepared papers if this form of midnight madness stops.

But rather than dictate solutions, we are going to have the ACTL ask a series of questions about the ways in which the courts might help lawyers strike a better work-life balance, through scheduling orders that avoid having filings due the day after holidays or on Mondays, and in other ways where, without diminishing the quality we all expect of ourselves, we can get things done in a manner that makes life as a lawyer a bit less crazy. Our hope is to identify ways to lessen the need for lawyers to make stark choices between professional success and personal and parental fulfillment.

More generally, we hope you will respond to the survey's request for your input, and be willing to roll up your sleeves and help us with these important issues that are vital to doing justice. You make our Judiciary look good every day. Without the continued dedication of an amazing Bar of lawyers, our state would not be as prosperous and not have the reputation it has.

Therefore, on behalf of all the Judiciary, we thank you for serving the public and the cause of justice. I am grateful, too, for your patience with my remarks today. Now, to the Bar part of the Bench and Bar.....