

STATE OF THE JUDICIARY ADDRESS

By

CHIEF JUSTICE DANIEL L. HERRMANN

Ninth Annual Delaware Joint
Bench-Bar Conference

June 5, 1974

My colleagues of the Bench and Bar:

It is a privilege for me to present to this Joint Bench-Bar Conference the first State of the Judiciary Address to be presented in Delaware.

It is not a novel idea; the delivery of a State of the Judiciary Address by the Chief Justice has become a fast growing trend. Such Addresses are delivered annually to Joint Sessions of the Legislatures in about 12 States; and to State Bar Associations in about four other States. As you know, Chief Justice Burger, for the past several years, has delivered a State of the Federal Judiciary Address to the American Bar Association Convention - there only because he has not been able to convince the Congress to invite him to address a Joint Session for the purpose. It is my hope that an invitation will be forthcoming soon from the General Assembly of our State so that an Annual State of the Judiciary Address may be delivered by the Chief Justice directly to the legislators who may thus learn, at first hand, the successes, the failures, the problems and needs of

- 1 -

NCJRS

APR 25 1978

ACQUISITIONS

46762

our court system and the administration of justice in our State.

In the meanwhile, however, I am thankful for this opportunity to report to you, and through you, to the people of Delaware, on the State of our Judiciary.

It is my hope that such report by the Chief Justice may become an annual and traditional event in this State. For the proper administration of justice is the business of all citizens - not just lawyers and judges. Our system of government is no stronger than our courts and our courts are no stronger than the strength of the public's confidence in them. It is in this spirit that I make this Report on the state of the judiciary in Delaware, and express my hope that other similar Reports will be made periodically, because it is my deep conviction that an informed public is essential to the maintenance of confidence in the rule of law as administered by our courts.

This afternoon, I shall spend some time pointing with pride - much more time viewing with alarm - and then the remaining time allotted to me will be spent in looking forward with hope.

First some generalities as to the system as a whole - and then some specifics as to each of the courts in our system.

We have needed a searching reexamination of our basic judicial system for a long time. It may have served well enough in the past. But it is not working well enough now. The present tendency to visit the sins of antiquated methods on the heads of the judges who inherited that system looks more toward the ancient practice of abusing the bearer of bad tidings than toward constructive improvement.

We must face squarely the proposition that the increasing volume of business, criminal and civil, pouring into our courts annually, will become too great to handle properly as the system is now constituted and equipped, unless we do some things soon about modernizing the system and making it more effective.

Seventy years ago, Dean Roscoe Pound made a monumental and celebrated speech on the improvement of the administration of justice. He said that the work of the American courts in the 20th Century could not be carried on with the methods and procedures of the 18th and 19th Centuries. I suggest to you that in this year 1974, although we have made some progress over the years, we still cling, far too much, to practices, procedures, and attitudes that Dean Pound said were already obsolete at the beginning of this century. Changes in our social, political, and economic life have created a wide range of new problems for the courts. There is too much reliance by us on methods and procedures that are inefficient, outworn, and inadequate to deliver prompt justice at reasonable cost to the consumer of justice.

The people of our State deserve and demand a system of justice, at reasonable cost, that is fair, prompt, efficient, just and orderly. We, in our profession, exist to serve those who seek justice. When justice is delayed or denied, it becomes too costly, or too technical, it is the ordinary citizen, the consumer, who suffers. The citizen should not have to wait an unreasonable length of time for redress of a private wrong; and a person charged with a criminal offense, presumed innocent as he is until convicted, is entitled to a final judicial determination as to his guilt or innocence within a reasonable time. Those of us engaged in the administration of justice, especially in these trying days, must do all we can to restore the confidence

of our people in government generally, and specifically to solve, as best we can, those problems that retard our efforts toward the highest possible degree of excellence in the Judicial Branch of Government.

It is for these reasons that we need and should have the Constitutional Amendments, now pending in the General Assembly, which would go so far in "cranking up" and modernizing the machinery of justice in our State. The Constitutional Amendments to which I refer have been in the making for several years and have had the dedicated study and support of many distinguished Delawareans - lawyers, judges, and laymen alike. These Constitutional Amendments, which, at last count were only five votes short of final enactment in the House of Representatives, would give us, you will recall, the following: elimination of time consuming jury trials in small civil cases and in certain misdemeanors; reduction of the size of juries; elimination of grand jury proceedings at the option of the Attorney General; sharp limitation of multiple appeals; elimination of multiple trials by abolishing trials *de novo*; enlargement of the Supreme Court with the authority to sit in panels; and retired constitutional judges would become available to supplement our judicial manpower at small cost to the State.

For the necessary modernization and improvement of the court system of our State, I urge the final passage by the House of Representatives of these pending Constitutional Amendments. It is my earnest hope that our system of justice may have in operation the important benefits of these constitutional changes and improvements by July 1, 1975, the effective date of these Amendments which are now so near and yet so far. These improvements will, I am convinced, put Delaware in the vanguard of the jurisdictions now working toward a better and more viable system of administration of justice.

I have referred to the necessity of more prompt and certain justice if the courts are to meet the present and future requirements of our people. This is especially urgent in the field of criminal justice. A more prompt and certain criminal justice must be our goal. Fairness, both to society and to the defendant, requires undelayed disposition of criminal charges. Prompt and certain justice is the only deterrent to crime we actually know. It is apparent that the problem of speedy disposition of criminal cases is becoming more and more serious as time goes on. Public regard for the system is being measured increasingly by our performance in this area.

Periodic reports continue to show too many detainees in the overcrowded Correctional Centers waiting too long for preliminary hearing, or indictment, or trial; and the reports show too many alleged offenders at large too long awaiting trial.

To this end, I have called on all courts to accept a goal in 1974 of a maximum time period of four months between arrest and trial in felony cases - and a maximum time period of one month between arrest and trial in misdemeanor cases. These goals are modest in comparison to those adopted elsewhere. Our courts are striving valiantly to meet these goals and will continue to do so, even though the judicial efforts have produced understandable groans from overworked and overcrowded other parts of the law enforcement system.

The policy of our State courts will be to give priority to criminal cases - as is required by law in the Federal system. This determination to speed-up the criminal process in Delaware is addressed to the protection of the public as well as the right of the defendant who is presumed to be innocent until tried and convicted.

In the effort to improve our administration of criminal justice, a Supreme Court Advisory Committee of distinguished members of this Bar and Bench, under the capable chairmanship of former Attorney General H. Albert Young, has been at work for several months on the A.B.A. Standards of Criminal Justice, preparing a comparative analysis showing wherein our Statutes and Rules of Court may be improved in the field of criminal justice.

The sense of urgency in the administration of justice is reflected in the recently promulgated Rule of the Supreme Court requiring that each opinion or order of the Supreme Court, or a justice thereof, shall bear two dates immediately under the caption of the case: (1) the date of final submission to the Court for decision; and (2) the date of the filing of the opinion or order. It is anticipated that this practice will be adopted in other Courts soon. And, along the same lines, I shall propose a Rule soon calling for an explanatory report as to any matter under advisement in any Court for more than 60 days.

Also indicating the sense of urgency in the administration of justice, the Supreme Court has just promulgated a new Rule requiring preparation of transcripts of testimony within a specified number of days after an appeal is taken, encouraging abbreviation of the transcript in any way possible, and prescribing sanctions for failure to comply. Also, a distinguished Advisory Committee has been appointed under the chairmanship of E. Norman Veasey, Esquire, to overhaul and modernize all of the Rules of the Supreme Court. And a management study of the Supreme Court and the Court Administrator's Office is now being made by the National Center for State Courts.

Noteworthy, too, is the most recent Report of the Grand Jury of New Castle County on the speed-up of the criminal justice system.

Now, of course, civil justice may not be neglected. We must have whatever it takes to handle both segments of justice adequately. This is not now the situation. The resolution of civil cases between citizens, or between citizens and their government, may not be permitted to become the "stepchild" of the law. People with civil claims, many of whom cannot afford the heavy cost of litigation, are too often forced to stand by in frustration, and often in want, while they watch the passage of time eat up the value of their case. The public has been patient, sensing on the one hand the need to improve the quality of criminal justice, but also experiencing frustration at the inability to vindicate private claims and rights promptly enough.

The Courts of our State must be enabled to take care of both civil and criminal litigants without prejudice or neglect of either. We are now equipped to accomplish this. To this end, we must have sufficient judges, sufficient courtrooms, sufficient clerical assistance, sufficient court reporters, sufficient prosecutors, sufficient public defenders and sufficient of all else necessary to enable us to give to the people of this State civil and criminal justice of the quality and the tempo they deserve.

In this connection, the people of our State should realize how small a portion of the State's Annual Operating Budget is spent for the Judicial system in their State. In the fiscal year 1973, of the State's total operating budget of almost \$318 million, less than \$6 million, or 1-3/4% of the whole, (including the costs of the jury system) was spent for the Judicial Branch of the State Government - a co-equal, separate and independent Branch of State

Government, though it is. In fiscal 1974, of the total of about \$338 million, only about \$7 million, or about 2%, was spent on the Judicial Branch; and in the approaching fiscal 1975, the plans contain about the same proportions.

These percentages do not compare at all favorably with the 4% average prevailing in most States.

The court system in our State, generally speaking, is a neglected branch of government. Our system of justice, I believe, is suffering from a severe case of deferred maintenance. Deferred maintenance becomes especially apparent when the machine is forced to carry too heavy a load.

Any improvement in the courts - internal organizational improvements however great - will not attain a good, just, and efficient court system unless the system possesses the necessary resources - human and material. To fulfill their tasks and to restore and maintain confidence, the courts need and must have the sympathetic understanding and help of the other two branches of government.

In the area of court space, we can report progress. The corridor-project in the Wilmington Public Building is on schedule. It is promised by mid-October. It will include on the first floor level three new jury courtrooms with related jury conference rooms, judges conference rooms, lawyer-client conference rooms, spaces for law clerks and and news media - and other spaces. And on the upper level, there will be chambers for three Superior Court Judges, their secretaries, and new space for pre-sentence personnel. This will help greatly the intolerable crush suffered by the Superior Court for years. It is not comparable, of course, with the Federal Taj Mahal recently opened at 9th and King Streets; but we are grateful for small blessings.

We now have a lendlease arrangement for the discarded Federal courtroom in the Post Office Building. And so we count our blessings. These additional facilities will serve only to meet present needs, however, the future will bring new demands upon the court system, of course. The time will come soon - within the next five years we hope - that the new City-County Office Building will be ready in the Wilmington Civic Center - at which time it is our long range plan that the Public Building will become The Court House - permitting a spreading out of now sadly crowded and unsafe quarters for Judiciary, staff personnel, Prothonotary, and Recorder of Deeds, and a return to the Court House of Family Court, Attorney General, Public Defender, probation personnel - and other related services.

The Court of Common Pleas has been able to obtain a modest second courtroom in Wilmington, so that both Judges may work simultaneously. This has been accomplished by another piece-meal operation of moving clerical staff to the Odd Fellows Building with consecutive loss of efficiency and convenience.

The Family Court, housed now in the discarded Delaware Power and Light Building at 6th and Market Streets, is better off physically then it was in the cellar of the Public Building - but how proud of it can we be when the courtroom benches and fixtures are homemade - put together by maintenance men; when chairs and spectator benches in the courtrooms are as motley a group as you could see anywhere; when the courtrooms lack floor coverings, window drapes, and proper lighting; and when ten Family Court Judges have no library in the building with which to work. We must concentrate on the physical needs of the Family Court in the months ahead.

It is encouraging to note that the Dover Court House inadequacies are now receiving active attention by the Levy Court and Bar of Kent County and by the Long Range Courts Planning Committee. The Superior Court in Kent County has been badly handicapped by lack of suitable facilities for years - and, difficult as is it for a stranger to realize, our great Delaware Court of Chancery does not have a courtroom of its own in our State Capitol - using most often the Office of the Register in Chancery for hearings. No court system in the State is more in need of remedy than the Court of Chancery situation in Kent County. Architectural planning is now in progress in Dover and we can look forward with hope to something happening there soon, comparable with the fine new Court House in Georgetown, of which we may all be justly proud.

I would remiss if I failed to mention the serious housing needs of the Justices of the Peace system. There is hardly a Justices of the Peace Court in the State that does not need a major face-lifting. I have visited each Justices of the Peace Court in the State, except one. Most of the Justices of the Peace Courts are badly overcrowded and very shabby. The Justices of the Peace Court facility in Georgetown is shameful; and the Justices of the Peace Court facility in Dover is hardly better. We have corrective action in this area of our court-family too - but we have a long and hard road to travel before the Justices of the Peace housing situation may be considered satisfactory.

Unification of the Courts is another important goal in our effort to improve the quality of justice in our State. An important essential of a sound judicial establishment is a simple system of courts. The work of the best Bench and the best Bar may be greatly handicapped by a multiplicity of courts with overlapping jurisdictions. A simplified court organ-

ization, and efficient administrative supervision, are essential ingredients of a system of most effective justice. The goal is to eliminate a multiplicity of courts, unrelated to one another, each with its own sphere of operation, its own singular procedure. The goal is to allow us to use our judicial manpower in the best and most efficient manner in all parts of the State - by assigning judges to the places and the courts where the burden of the work is most demanding and the judges most needed. The goal is specialized departments of a unified one-tier trial court system - not specialized courts or specialized judges.

To this end, the Long Range Courts Planning Committee has been working for several years towards the integration of the Family Court, the Court of Common Pleas and the Municipal Court into the Superior Court - and the integration of that mysterious cluster of 12 courts throughout the State, known as the Alderman Courts, into the Justice of the Peace System. There is special importance in integrating the Family Court into the Superior Court, thus making it a constitutional court. The Family Court is the court with the greatest influence on the young and the family in trouble. The status of the Family Court as a lesser court deprives it of the prestige and standing it should have to function most effectively. The Alderman Courts should be either abolished or integrated into the judicial system. Only recently, the Long Range Court Planning Committee discovered who and where they all were. The least that must happen is that Alderman Courts, handling about 10,000 cases a year, come within the constitutional supervision and control of the Chief Justice.

The progress is slow in the area of court unification but I am confident that progress will be made, in due course of time. In the meanwhile,

the recent merger of the separate Court of Common Pleas in each County into a statewide system was a constructive step forward in the right direction.

Legislation is now in progress to merge the Municipal Court with the Court of Common Pleas, and to integrate Common Pleas into the Superior Court.

During the past year, after many months of study and consideration by distinguished lawyers and judges of our State, the Supreme Court promulgated the new Delaware's Judges Code of Judicial Conduct.

With very few changes, our new Code follows the A.B.A. Code of Judicial Conduct being adopted generally in many States. We did not eliminate, as did one of Sister States last week, the Code's prohibition against a judge's receiving cash gifts at testimonial dinners; nor did we eliminate the A. B.A. Code's requirement that judges file public reports on all compensation received for extra-curricular services; nor did we eliminate certain other conflict-of-interest aspects of the new Code. Copies of the new Code of Judicial Conduct are available in the Office of the Court Administrator. It is our hope that the new Delaware Code of Judicial Conduct will do its part in restoring the faith and confidence of the public in our branch of government.

I come now to a very important item in this Report: the matter of judicial compensation. The members of Delaware's judiciary are suffering economically by reason of inflation and the unfortunate fact that there has been no increase of income for any constitutional judge for over four years.

This has been the fact of judicial life, even though compensation of private employees and other State employees has been increased substantially over the years, in addition to periodic increases based on incentive, cost of living, years of service, or promotion in grade. To further neglect the State Judiciary in this regard is grossly unfair and is highly detrimental to the morale of our corp of hardworking and dedicated State Judges. And this in the face of ever-increasing workloads in all Courts. The result has been an adverse effect upon morale, serious consideration by several good and experienced judges throughout the system of the possibility of resignation in fairness to family obligations. The failure to provide fairly for judge's compensation will make it more and more difficult to prevail on the best of our experienced lawyers to take judicial appointments - and we must not settle for less than the best. Nothing is more essential to the quality of justice than the caliber of the people who become our judges.

Here are the facts: The Delaware Supreme Court Justices receive \$34,000. per year, the Superior Court and Chancery Court Judges receive \$31,000., the Common Pleas Judges \$29,000., the Family Court Judges \$27,000., and the Justices of the Peace \$10,000.

I call to your attention the odious comparisons:

	<u>Supreme Ct. Jstcs.</u>	<u>Trial Ct. Jdgs.</u>
Pennsylvania	\$ 50,000.	\$ 42,500.
New Jersey	48,000.	40,000.
Maryland	40,000.	35,500.
New York	55,000. (headed for \$60,000.)	43,000.
Federal (Circuit Cts.)	42,500. (headed for \$52,500.)	40,000.

Bills have been introduced in the General Assembly, and are now pending, which would raise the compensation of Delaware Judges closer to the range where they ought to be in view of the going rates of compensation of judges in nearby States. Excellent committees of lawyers and judges have been working hard for months in support of those Bills. I earnestly invite the attention of the public, the General Assembly and the Bar to this serious matter of improving judicial compensation.

One of the biggest obstacles in our effort to improve the management of the courts continues to be the lack of good information regarding operations. This would include both operational information and management information. The information that is available is not timely, accurate, or in a form that is useful to the courts.

We need a computer-based information system to serve the courts as well as other agencies of the criminal justice system. We are far behind many jurisdictions in the field of data compilation, data processing, and computerization which, elsewhere, have been extended to jury selection, policing of court dockets, calendaring of cases, and other modern management techniques.

As a first step toward establishing such an information system, there has been initiated a series of related studies of the problems of the courts, together with proposed solutions that would involve the use of the computer. These studies will be completed, we expect, at the end of this year.

One of the outcomes of these studies should be prompt improvement of the existing operations of the courts. Another outcome should be the gradual implementation of a computer-based information system in the courts of our State.

We cannot overlook much longer the place of the computer in the administration of justice.

Now, I have spoken minutes so far. My allotted time this afternoon has expired. The Address I had prepared for delivery today is another time as long as that which I have so far delivered. The speech I cannot deliver this afternoon deals with each individual court of the State, its accomplishments, its failures, its needs and its problems. I hope that at a Winter Session of the Bar Association I may be invited to give the rest of my Address on the State of the Judiciary. In the meanwhile, however, in order that you and others in the State may be thinking about some of the matters that, in my judgement, should be brought to the attention of the people of the State without further delay, I give you this thumb-nail sketch as quickly as possible:

(1) The Supreme Court: We are the last of all the high State courts in the country with less than five justices. Almost 300 appeals were filed in the Supreme Court in 1973; and it appears so far this year that the volume of new appeals will not be less. Compare the 21 appeals in 1955, the 93 in 1966 and the 205 in 1970. The enlargement of the Supreme Court, with authority to sit in panels of three justices, presently before the General Assembly, is most urgently needed in the interest of the maintenance of high standards and traditions of the Supreme Court of Delaware.

(2) The Court of Chancery also reports startling increases in workload. In 1961, when the Court was expanded to its present three judge size, there were 206 new cases filed. In 1973, there were 420 new filings. Moreover, the Chancery Court has taken over a large part of the jurisdiction formerly handled by the Orphans' Court; and the new Probate Code will put additional workload on the Court of Chancery. We must address ourselves to these matters.

(3) The Superior Court requires our very special attention. The great influx of cases of all kinds, especially the avalanche of drug cases, plus the constant additions to this already overburdened Court of new functions and jurisdictions by Statutes, have brought this Court, in my judgement, to a critical situation which deserves and demands the special attention of us all. The problems of the Superior Court go far beyond any need for improved practices, procedures, and administration. Such efforts at improvement in the Superior Court can amount to little more than a temporary holding effort until the Court is provided with adequate personnel and facilities and until jurisdictional changes have been made to relieve the seriously overburdened and harassed Superior Court Judges.

I propose to appoint soon an Advisory Committee of lawyers and judges to study and to make recommendations for the relief of the Superior Court's workload, especially with respect to shifts of jurisdiction among the Courts.

(4) Family Court needs additional clerical and professional staff to handle the thousands of sensitive cases that come before it each year. And very importantly, for the personal security of the judges and staff, it needs bailiffs to assure "order in the Court".

(5) The Justices of the Peace are seriously understaffed and undermanned. They need many additional clerks, constables, bailiffs - and they all need a living wage. We must do all that we can to up-grade this member of the judicial family with which most of our citizens come into contact.

(6) I must pass over the Courts of Common Pleas and the Municipal Court under the exigency of time. Suffice is to say for now that the clerical staffs of those Courts, too, are seriously undermanned and underpaid.

In brief, therefore, I put it to you bluntly: - I think that the Court system of Delaware is the long neglected branch of government - which is suffering seriously from deferred maintenance and which must have not only greater financial support, but broad moral and civic support as well.

Time also requires that I postpone to another day a discussion of other important matters relevant to the improvement of our system of justice, including (1) the new Delaware Administrative Procedures Act presently before the General Assembly; (2) the new Probate Code, also presently before the Legislature; (3) the advisability of eliminating from the judicial process certain so-called "victimless crimes"; (4) the feasibility and the advisability of the appellate review of sentences in criminal cases; (5) the need for a new look at the deferred-payment procedures now in force in our Justices of the Peace system; (6) the need for a permanent Court-Correctional System Council; (7) the need for a permanent Court-Police System Council; and many other areas in the justice system which may need a fresh look.

We must get to such matters in due course of time - but I will not take your time, today, to explain that Rome was not built in a day, or that half a loaf is better than none.

Again, I am happy to have had this opportunity to report to you, and through you, to the people, the State of our Judiciary as I see it. Most of my remarks have necessarily been directed to matters of administration and the non-judicial problems that confront the judicial branch of government. You must not be misled by the emphasis I have placed on

administrative affairs. Judges, of course, recognize that our business is judging cases and rendering decisions. We do not intend to let problems of administration deter us from our primary obligation of settling disputes and guarding the Constitution and rights of individuals. We simply seek the tools to perform the tasks assigned to the Judicial Branch of the State Government in the most expeditious and most effective manner possible.

In our present crisis of confidence and faith in government, the greatest contribution that members of the Bar and Bench can make to the preservation of human freedom under law, and to the perpetuation of the American system of justice, is to simplify and to modernize and to render more effective the judicial process, from the lowest court on the State to the highest. The Bench and Bar are qualified to furnish leadership in this urgent task; but the understanding and cooperation of the other two Branches of Government are essential to the task.

The improvement of the administration of justice must be undertaken where needed, without delay, with a seriousness of purpose and fixed determination, by all concerned at all levels of government and at all levels of the profession. This is something we owe to the State, to ourselves, and to the profession. When we of the profession cannot, unaided, do the job, we owe a duty to our State, to ourselves, and to our profession, to call upon the other two Branches of Government and to call for the aid of competent laymen. The history of judicial reform in England and the United States affords many examples of what legislators and laymen can do if given competent professional leadership in reforming, modernizing and simplifying court systems.

Daniel Webster once said: "Justice is the highest interest of man on earth." It is pursuant to that thought that I make this 1974 State of the Judiciary Address.

