

**STATE OF THE JUDICIARY ADDRESS**

**By**

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**TENTH ANNUAL DELAWARE  
JOINT BENCH - BAR CONFERENCE**

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ACQUISITIONS

## My Colleagues of the Bar and Bench:

For the second time, it is my privilege to report to you, and through you to the people and General Assembly of our State, upon the State of the Judiciary and the administration of justice in Delaware.

Since I delivered the first State of the Judiciary Address at the last Joint Bar-Bench Conference, the State Senate has adopted the first half of a Senate Concurrent Resolution and the House has adopted the first half of a House Concurrent Resolution, inviting the Chief Justice to deliver a State of the Judiciary Address before a Joint Session of the General Assembly. Neither invitation is effective, of course, until both Houses get together on one of the invitations.

Hopefully, the invitation will be completed soon so that, like Pennsylvania, Maryland, and about a dozen other States, the Chief Justice of Delaware will have the opportunity occasionally to speak directly to the General Assembly about the progress and the problems of the Courts of the State.

Until then, it is my chosen duty on an occasion such as this, to talk for about 30 minutes — and it is your duty to listen for about 30 minutes — and I do hope that we finish together.

Today, I have some good news and some bad news. I shall both point with pride and view with alarm as I report the progress, problems, and plans of the Judicial Branch of the State Government.

### I.

First, from the Point-With-Pride Department:

(1) The much-needed enlargement of the Superior Court facilities in Wilmington was completed during the past year, almost doubling the courtroom capacity of that Court in this County.

(2) And there are the on-going Court House projects in Dover, which promise a hearing room for the Court of Chancery and an additional Superior Court room in the present Kent County Court House almost immediately and, we hope, a new Court House facility in Dover in the near future.

(3) During the past year, there was a major breakthrough in the area of judicial salaries, which I report with all due appreciation to the few members of this Association who labored valiantly toward that important goal, and to the General Assembly and the Governor who made it possible. (No thanks to those of this Association who sat on their hands and did not help.)

One piece of unfinished business in that area is our failure to date to up-grade the compensation of Justices of the Peace so that we may retain and obtain the best available people for those important judicial posts. I respectfully urge the Governor and General Assembly to rectify that situation as soon as possible. A compromise increase from \$10,000. to \$13,000. has passed the House of Representatives. Hopefully, it will pass the Senate soon. While it is not the \$15,000. it should have been, it is progress and it deserves the active support of the lawyers of the State.

(4) During the past year the Carpenter Committee has put Delaware in the vanguard of States to establish tighter guidelines for the enforcement of the Rules of the Delaware Lawyer's Code of Professional Responsibility relative to the handling of client's funds - all to the credit of the Bar and Bench of this State, as has been recognized nationally by the A.B.A. Journal and others.

(5) And during the past year, the Judges of the State have made a more determined effort to accelerate the disposition of cases after submission. As of June 1, monthly reports from each Court show that the Supreme Court has only three cases under advisement for more than 90 days; the Superior Court has only two cases under advisement for more than 90 days; Chancery Court only one case under advisement for more than 90 days; Family Court only four cases under advisement for more than 30 days; and Common Pleas Court and Municipal Court report no cases under advisement for more than 30 days.

I challenge any State Court system in the land to beat that record!

(6) During the past year, there has been enacted a new Probate Code after very important work by the Lynch Committee of this Association and by the Long Range Courts Planning Committee. This has resulted in long-needed reform in this area of the administration of justice.

(7) And the State Council on the Administration of Justice has been reactivated in recent months. This group is charged by Statute with the duty of studying the administration of justice in this State and making recommendations from time to time to the Governor, the General Assembly, and the public as to the improvement thereof. The Council has taken a position of leadership and has recently published an urgent Special Report on the needs and problems of the Courts, the Attorney

General, and the Public Defender, which deserves your close attention and the close attention of all those concerned with the administration of justice in our State.

(8) It is our expectation that, beginning this year, we will begin to develop a computer-based court information system. This will be a joint effort with the Legislative and Executive Branches of State Government, with substantial Federal funding, aimed at meeting the information needs of the courts and other agencies of the criminal justice system.

We must move from the present situation - where we must spend hours to obtain information relating to the status of cases or the status of individuals - to a position in which we shall be able to obtain more accurate and complete information in minutes and even seconds.

The computer-based court information system which is about to happen, we hope, will provide us with the timely, complete, and accurate information that the system of justice needs to operate most efficiently and effectively, and to plan for future operations.

(9) During the past year we have inaugurated a reporting system that allows us to keep closer track of cases involving persons in custody awaiting trial in any court. This includes both adults and juveniles. These periodic reports serve to focus the attention of Judges on such cases so that all that can be done will be done to remove the defendant from a detentioner status at the earliest practicable time, in fairness to the defendant and to help relieve the serious overcrowding in the detention and correctional facilities of the State.

(10) We point with special pride this year to the accomplishments of the Superior Court in its recent acceleration of criminal justice. The emphasis was on crimes of violence, substantial felony drug cases, and cases in which defendants were in custody awaiting trial. In its so-called "Blitz" in March and April, the Superior Court went a long way toward the elimination of its backlog of serious felony cases. For example, during that six-week intensive effort, in which Judges, prosecutors, defenders, and their supporting staffs went far beyond the call of duty, 12 first degree murder cases and 2 second degree murder cases were disposed of, as were 3 kidnapping cases, 4 rape cases, 28 cases of robbery in the first degree, 13 cases of robbery, 9 burglary cases, 12 assault cases, and numerous other felony cases, as well as a collection of problem non-felony cases that had

been continued too many times.

By directive of the Supreme Court, this concentrated effort toward more prompt and certain justice will be continued in the future by the Superior Court at each Term of Court by devoting the major portion of each Term exclusively to the disposition of criminal cases, until such time as the backlog and the time-lag of serious cases have been eliminated.

Permit me to digress briefly while on this subject. The goal for felonies in this State has been established at four months between arrest and trial; and the goal for misdemeanors at one month between arrest and trial. This is not an overly ambitious goal, compared to others being established throughout the country. Our goal was set for 1974; we did not make it; we shall continue our efforts without discouragement however long it may take.

The urgencies remain. Prompt and certain justice is still the only deterrent to crime we actually know. Justice delayed is still too often justice denied. Public regard for the judicial system is still being measured increasingly by our performance in the area of criminal justice — and this at a time when we are told that the violent crime rate for our State was up 34% last year, twice the national average — and at a time when the President of the United States is calling for mandatory prison sentences for violent crimes and recidivists, because of the genuine and understandable alarm of our people about their lack of safety on our streets and in our homes.

Swift justice protects societal interests as well as those of the accused. In addition to the general concern that those accused and awaiting trial be treated with decency and fairness and in accordance with their constitutional rights, there is, especially these days, a societal interest in providing a more prompt and certain justice — a societal interest which exists separate from, and at times in opposition to, the interests of the accused. The public is increasingly concerned with the effective prosecution of criminal cases, both to detain those guilty of crime and to deter those contemplating crime and to detain those guilty of criminal offense. Lest there be any misunderstanding — our pursuit of a more prompt and certain justice is never to be speed for speed's sake. None of us aspires to be the fastest gavel in the East. We pursue justice — justice for society and justice for the defendant — and the time element is an important element of such justice.

For these reasons, the Courts of our State — for the time being — must give priority to the administration of criminal justice. Unfortunately, this must mean, under present conditions, a further backlogging of civil cases. This we regret; but it must be the situation until such time as the Courts are furnished with the personnel and the facilities to handle both criminal and civil caseloads without prejudice to or neglect of either. We are not now equipped to do this.

I urge the members of the Bar who are complaining about unavoidable delay in civil cases to do more than stand around and gripe about the situation. Enter into the on-going effort and help us to obtain the tools — the personnel and the facilities — to enable us to deliver to the people of this State both civil and criminal justice of the quality and the tempo they deserve.

(11) Those are some of the more significant developments and accomplishments of the past year in the administration of justice. Other developments, which bear only mention now because of the restrictions of time, are these:

(a) We are developing a stronger line of communication between the Judicial Branch and the other two Branches of State Government.

(b) We are working on a stronger line of communication between the Judicial Branch and the correctional authorities, with special emphasis upon the number of detentioners being held for trial — and the length of their detention — and their relationship to the seriously overcrowded conditions in the correctional institutions.

(c) There has been a further strengthening of the line of official communication between the Judiciary and the Bar via, for example, the Long Range Courts Planning Committee, the various Supreme Court Advisory Committees, and the newly assumed functions of the Executive Committee of the Association by which it undertakes to come to the defense of any Judge or Court under unjust public attack.

(d) There is a continuing emphasis on Judicial education, from the J. P.'s on up.

(e) We are developing a closer cohesion and unification of the separate Courts of the State into more of a system of courts — administratively, budgetarily, and legislatively — under the constitutional authority and responsibility of the Chief Justice as the “administrative head of all the courts in the State”.

(f) And during the past year, the Alderman Courts throughout the State have been organized and are being assisted, for the first time in a systematic way, by the J. P. Administrator and the State Court Administrator.

## II.

Turning now to the View-With-Alarm Department:

(1) First a few statistics showing the ever-growing workload of the Courts:

(a) In the Supreme Court, the year 1974 brought 281 new appeals filed; and we have 131 so far this year. This is an unreasonable workload for the smallest State Supreme Court in the Nation. It is interesting to compare our approximately 300 appeals per year with Dr. Dolan's computation of 325 reported cases heard by the Delaware Supreme Court in all the half century between 1900 and 1950; the average caseload during that period being "a little over 6 each year", and "the greatest number decided in any one year being 13."

The enlargement of the Supreme Court to five justices, with authority to sit in panels of three, is most urgently needed in the interest of the maintenance of the high standards and traditions of the Supreme Court and to reduce the call on busy Trial Judges to extra duty on the Supreme Court.

(b) In the Court of Chancery, there were 434 new filings as compared with 206 in 1961 when that Court was last expanded to the present three Judges. In addition, the new Probate Code will add substantially to the workload of the Court of Chancery. A third Vice Chancellor will be high on our priority list next year.

(c) In the Superior Court, new criminal cases increased by 35% in 1974 alone; and in civil work, new cases filed in 1974 are up over 60% over the previous five year period.

The Superior Court requires our very special attention. The great influx of cases of all kinds, especially the avalanche of drug and drug-related criminal cases, plus the constant additions to this already overburdened Court of new functions and jurisdictions by new statutes, such as the newly created proceedings for involuntary commitment to mental institutions, have brought this Court 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.

Innovation and administrative efforts at im-

provement in the Superior Court can amount to little more than a temporary holding effort until that Court is provided with adequate personnel and facilities and until jurisdictional changes have been made to relieve the seriously overburdened Superior Court.

I foresee the need for five more Superior Court Judges in the near future. We must not close our eyes to the facts of life in the essential business of the delivery of justice to the people of our State carried on by the Superior Court.

(d) In the Family Court, the current statewide caseload is approximately 20,000 juvenile and domestic relations cases each year; and that Court collects over \$5 million yearly in support payments for dependent spouses and children. The current caseload represents almost a 50% increase over the last two or three years. During that same period the staff of the Family Court has been increased statewide by only four new State employees. And the physical facilities of the Family Court in New Castle County are still far below par. What Court, worthy of the name, should have to get along with homemade furniture, no law library, no bailiffs for the security of the judges in emotion-packed courtroom situations, no carpets, no proper window coverings?

(e) The statewide Court of Common Pleas has experienced an 83% increase in civil cases and a 19% increase in criminal cases between 1972 and the end of 1974. This was accomplished without any increase in personnel. It is obvious that the Court of Common Pleas needs additional personnel to handle the additional civil caseload.

(f) In the Municipal Court, the caseload continues to increase. An example is the following: during the first quarter of fiscal 1973-74, the average monthly case intake was 427. During the first quarter of fiscal 1974-75, the average monthly intake was 750. Again, no needed personnel have come to the Court despite the great jump in caseload.

(g) As to the J. P. Courts: When the present J. P. system was created in 1966, the system had 137 clerical employees and handled approximately 34,000 cases per year. The system today has 147 employees (only 10 more than 10 years ago) while the caseload has increased almost threefold — to approximately 90,000 cases per year. A Bill is now pending in the General Assembly to increase the number of J. P.'s in the State from 53 to 58. I urge its passage as soon as possible.

The physical needs of the Justice of the Peace

System are urgent: The J. P. Court facilities, for the most part, are a disgrace to the State. There is neither sufficient janitorial, nor secretarial, nor clerical staff, nor bailiffs, to maintain and run the Courts properly; and there is neither adequate equipment nor adequate space to keep them functioning properly. A long range legislative program of dramatic physical improvement is required to maintain this system of "people's courts" as they should be maintained.

Specifically, and as illustrations only, we point to the Georgetown J. P. Court where the Justices of the Peace themselves and their staff recently had to paint the facility. And we point to the crowded conditions at J. P. Court No. 10 on the Kirkwood Highway, and J. P. Court No. 11 in New Castle, where it is not uncommon for the small quarters to be so crowded that litigants and witnesses are obliged to wait in line outside the building for justice to be dispensed, inclement weather notwithstanding. The Justice of the Peace Courts have been the victims of neglect and deferred maintenance. From the point of view of staff and quarters, the J. P. Courts are, today, a sad reflection upon the administration of justice in our State.

We hope to inaugurate this year a 10 year building program addressed to the replacement or modernization of every J. P. Court in the State. The pending Capital Bond Bill has provision for the replacement of the badly deficient J. P. Courts in Georgetown and Dover. We hope that the next Capital Bond Bill will provide for replacement of J. P. Court 10 on Kirkwood Highway and Court 11 near New Castle. The J. P. Court facilities have high priority in our planning.

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This is the alarming situation as we in the Judiciary see it. The Courts are innovating, insofar as they can by Rule of Court and procedural changes, in our effort to meet this ever-mounting workload without adequate staff and facilities. As one example: The Supreme Court has been driven to the disposition of more and more appeals by orders without opinions — following the lead of the Third Circuit and other jurisdictions. We do this regretfully — but we have found it inescapable, as have the overburdened appellate courts of other jurisdictions.

But administrative change alone cannot overcome the critical problem of inadequate personnel and facilities in our Courts.

In its Report, the State Council on the Administration of Justice, in discussing the needs of our system of justice, refers to

“the increasing critical situation”; the “deplorable situation”; the Council’s “shock by the totality of the mounting gravity of the situation”; and its attempt to “sound the alarm”. And the Council’s Report summarizes its views in the following language:

“In this day and age, it is vitally important to the health and well being of the State of Delaware that these arms of State Government [i.e., the Courts, the Attorney General, and the Public Defender] receive adequate legislative and financial support so that they can promptly, efficiently and fairly fulfill the basic requirement of the State — that is, to provide swift and efficient justice to the citizens through the Courts. It is a real peril to the whole State to allow the judicial system to get into further trouble.”

In this year’s effort to alleviate as much of these needs as are deemed possible in one year, the Judicial Conference has adopted, and the Council on the Administration of Justice and the Long Range Courts Planning Committee have endorsed, the following minimum legislative program, in addition to budget requests:

**For the Superior Court:**

(1) Transfer from Superior Court to Family Court all divorce jurisdiction, including ancillary proceedings (effective September 1, 1975).

(2) Add to Superior Court two additional Judges this year.

(3) Transfer from Superior Court to Court of Common Pleas and Municipal Court jurisdictions as follows:

(a) The offense of possession of marijuana and certain other drugs.

(b) The offense of carrying concealed deadly weapon, changing this offense from felony to misdemeanor status.

(c) Wherever value is line of demarcation between felony and misdemeanor, increase minimum to \$300.

(4) Increase civil jurisdiction of Common Pleas Court to \$5,000.

(5) Make motor vehicle appeals to the Superior Court subject to constitutional limitations, i.e., \$100. or 30 days.

**For the Family Court:**

(1) Add to Family Court another additional Judge this year.

(2) Give J. P.'s exclusive jurisdiction over juveniles on motor vehicle equipment violations.

For the Justices of the Peace Courts:

- (1) Increase J. P. salary to \$15,000.
- (2) Add two additional J. P.'s in New Castle County this year.
- (3) Vest in Chief Justice authority to relocate any J. P. Court within 10 miles of a County line.

For the Municipal Court:

- (1) Transfer responsibility for full-time Judges from City to State.
- (2) Increase salaries of full-time Judges to Family Court and Common Pleas Court range.

I urge the Governor and the General Assembly to give careful consideration this year to this minimal legislative program. And I urge the members of the Bar to demonstrate more interest and involvement this year than they have in the past in the Court's legislative programs.

III.

Let me now turn briefly to some plans and aspirations of the Courts for the near future:

(1) The renewal of efforts to obtain a new Judiciary Article of the State Constitution, similar to that which was lost "for the want of a vote" last year, remains high on our priority list.

(2) The Long Range Courts Planning Committee, under the Chairmanship of Chancellor Quillen, has the following items, among others, in process:

(a) An Administrative Procedures Act, the drafting of which has been completed and submitted to the Governor — who last week predicted its passage soon.

(b) The creation of a Delaware Remuneration Commission to put the scale of compensation of the Governor, the General Assembly, and the Judiciary on a more firm, more fair, and more dignified basis for all concerned.

(c) The integration of the Municipal Court into the Court of Common Pleas.

(d) Traffic offense legislation which would permit

payment of fines by mail and decriminalize certain traffic offenses.

(3) The acquisition by the State, for the Courts, of the Post Office Building and former Federal Court House, on Rodney Square, now seems probable within the next two or three years. It will become Federal surplus property soon and Governor Tribbitt and Secretary Babiarz are showing real interest and leadership toward this acquisition. The hope is to move the Family Court and other components of the system of justice into that Building if we can acquire it - and I earnestly hope that we can.

(4) We look forward to the availability of the entire Public Building in Wilmington for Court and affiliated usages within the next two or three years - when the County and City Governments vacate and move into the new City-County Office Building. This will permit space relief in the Public Building for the Prothonotary, the Recorder of Deeds, the Law Library, the Court of Chancery, the Public Defender, and others now in cramped quarters.

(5) During the coming year we look forward to the assumption by the Superior Court of its criminal docket. With the help of a Delaware Agency to Reduce Crime grant, the Superior Court is now preparing to take over the calendaring of all criminal trials under a modern comprehensive case management system which will incorporate modern case flow methods beneficial, we hope, not only to the criminal calendar but to the civil calendar as well.

(6) Among other developments we look forward to for the next year to two are these: (a) consideration of a new Code of Evidence; (b) the report of the Young Committee on the A.B.A. Standards of Criminal Justice and action thereon; (c) the report of the Veasey Committee on new Rules of the Supreme Court and action thereon; and (d) the report of the Welsh Committee on more reasonable fees for court-appointed counsel for indigent defendants.

(7) Also, during the coming year or two I shall ask for exploration and evaluation by Bar and Bench of the following subject matters: (a) the new amendments to the Federal Rules of Criminal Procedure; (b) the use of paralegals in the Court system; (c) a beefing up of the pre-sentence capability; (d) the expediting of mental examinations in criminal cases; (e) appellate review of sentences in criminal cases; (f) the reclass-

ification of lesser traffic "offenses" to non-criminal traffic "infractions" — thus eliminating the necessity of trial by jury and other expensive and docket-clogging aspects of criminal cases; (g) the elimination from the judicial process of other so-called "victimless" crimes; (h) the appointment of J. P.'s on a bi-partisan political basis, similar to our other courts; (i) mandatory continuing education for lawyers.

## CONCLUSION

Before closing, I return to a theme that may have been noticeably recurrent in my remarks here today: that is, the necessity of more active involvement by more lawyers in the needs and the problems of the Courts.

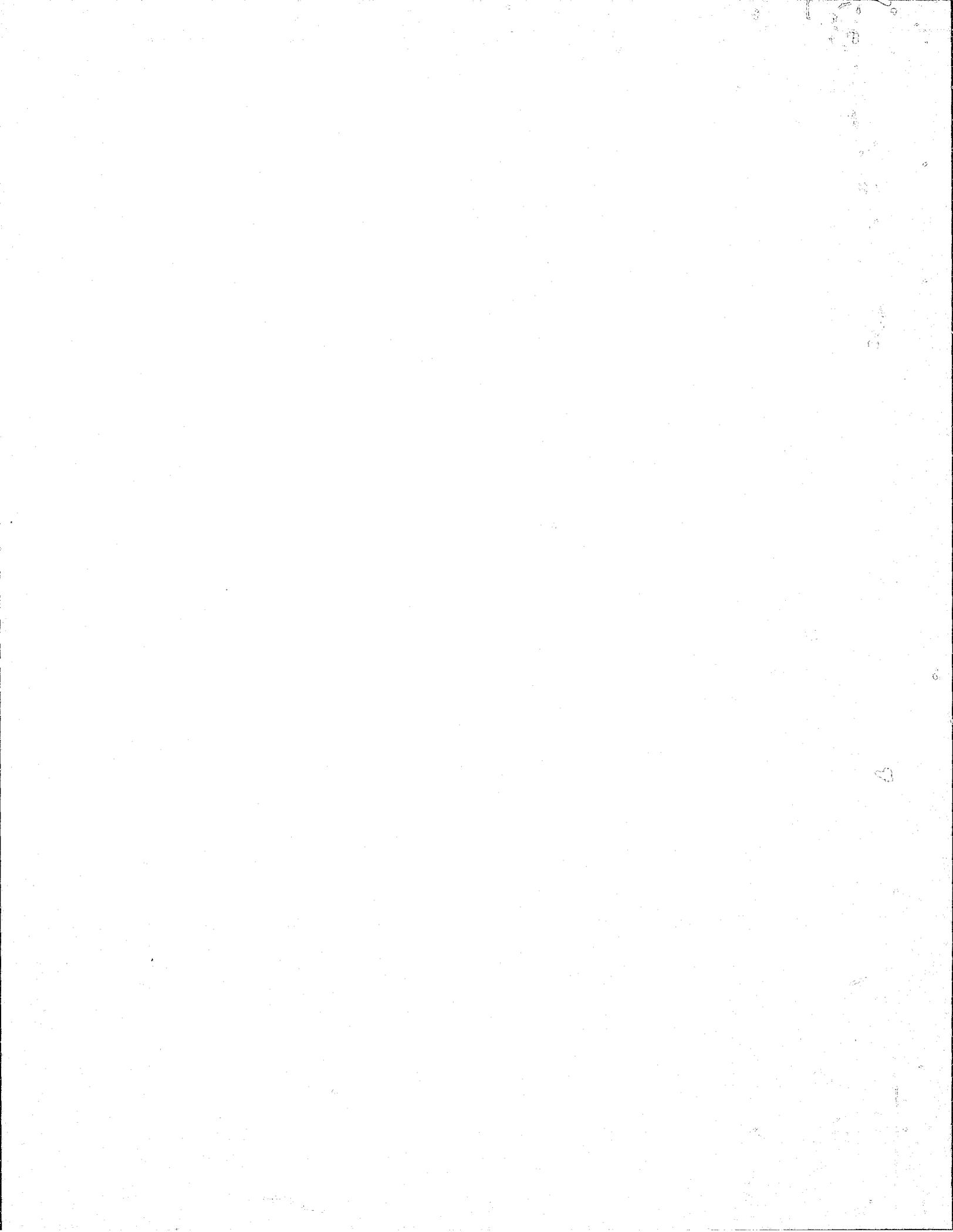
Each of you is an officer of the Courts. Each of you has a professional and a personal obligation to devote a portion of his time and effort — each month, each year — to the improvement of the system of justice to which your life and your livelihood are so closely related. Each of you, as a citizen learned in the law, has a very special obligation to help solve the needs and the problems of the Courts.

And so, members of the Delaware Bar, I urge each of you to spend less of your time griping and complaining about judicial delay and shortcomings, and more of your time in helping to solve the problems and needs of the judicial system.

In 1846, the legend goes, Henry David Thoreau was jailed in Concord, for refusing to pay his taxes as a political protest. Visiting Thoreau, Ralph Waldo Emerson, peered through the cell bars and asked: "What are you doing in there?" Whereupon, Thoreau is said to have replied: "What are you doing out there, my friend?"

The Courts and the legal profession are charged with the delivery of justice at a time when the institutions of our society are being tested with a vehemence this Nation has never known before.

The greatest contribution that any of us can make to the preservation of freedom under law, and to the perpetuation of the American system of justice, is to render more effective the judicial process — from the lowest Court to the highest. It is in this context that I put Thoreau's question to each of you: "What are you doing out there, my friend?" as we seek the necessary tools in our pursuit of excellence in the administration of justice.



**END**