



**PRESENT: (Cont'd)**

Joseph C. Schoell, Esq.  
Deputy Legal Counsel to  
Governor Ruth Ann Minner

Charles S. McDowell, Esq.  
President of the Delaware Bar  
Association

Andrea L. Rocanelli, Esq.  
Acting Chief Counsel  
Office of Disciplinary Counsel

William D. Johnston, Esq.

Edgar J. Smith, Jr., Esq.

**ALSO PRESENT:**

Distinguished friends and relatives of  
The Hon. Mary Miller Johnston

Friday, October 31, 2003  
Courtroom No. 8B  
12:00 p.m.

PRESENT:

As noted.

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PRESIDENT JUDGE RIDGELY: Welcome to the Special Session of the Superior Court commemorating the Investiture of Mary M. Johnston as a judge of the Superior Court of Delaware.

We will begin with the invocation by the Reverend Dr. Jonathan E. Baker of Aldersgate United Methodist Church.

Dr. Baker.

REVEREND BAKER: Let us pray.

We thank you, oh God, for raising up your servant, Mary Johnston, for such a time as this, in our state, in our nation, and indeed in our world.

We acknowledge and affirm today Mary's gift of the sermon and compassion and courage and grace that will equip her for the work of a judge of the Superior Court of Delaware, and we celebrate this wonderful accomplishment.

And with this high honor comes the awesome responsibility of being a vessel for justice. So

Look graciously upon your servant, Mary.

Where there is need, supply. Where there is pride, temper her with humility, and remind her of her dependence upon you. But most of all, send upon her the power of the sermon; that she may know the truth steadily, and follow it faithfully.

Bless her husband, Bill, and her daughters, Ellen and Amy, and all of her family as they journey together in this new responsibility.

May their love and devotion and the promise of your presence be their rock and their strength.

For we pray in your name, Amen.

THE AUDIENCE: Amen.

PRESIDENT JUDGE RIDGELY: We will now have, if you will remain standing, please, the singing of "*America, the Beautiful*" by Tina Betz, Director of Cultural Affairs for the City of Wilmington.

Ms. Betz.

*(America, the Beautiful was sung.)*

PRESIDENT JUDGE RIDGELY: Please be seated.

*(Audience complies.)*

Ms. Betz, that was lovely. Thank you.

MS. BETZ: Thank you very much.

PRESIDENT JUDGE RIDGELY: Let me re-introduce those who are with me on the bench today --

CHIEF JUSTICE VEASEY: Beginning with what's his name?

(Laughter.)

PRESIDENT JUDGE RIDGELY: To my right is Chief Justice E. Norman Veasey of the Supreme Court of Delaware.

To my left is Justice Randy Holland of the Supreme Court of Delaware.

And to the right of Chief Justice Veasey is Resident Judge Richard R. Cooch.

And to the left of Justice Holland, in the empty chair at the moment, is where Superior Court Judge Mary M. Johnston will be seated soon.

In the jury box -- you can tell by their red sashes -- are the judges of the Superior Court and other distinguished guests. Welcome all.

I want to give a very special welcome to the family members of Judge Johnston who are present today: Their grandmother, Ethel Tower; her mother,

Doris Miller; her husband, Bill Johnston; their daughters, Ellen and Amy; sister, Karen Teague, with her husband Kerry Teague; and Janean Laidlaw; a brother, John Miller; a niece, Grace Laidlaw; a cousin, Alyce Tower-DeGennaro, with her husband Frank, and children, Maggy, David, and Erin.

And Bill's family is here, as well. His brother, Don Johnston, with his wife, Junko Johnston; Uncle Edgar J. Smith, Jr., you're going to hear more from him later, at the end. Uncle John Johnston, Aunt Vicky Johnston, Aunt Suzanne Smith, and Mary Johnston, welcome all of you especially.

The Court also wants to recognize all the members of the Delaware Senate and House who are present, the Members of the Delaware judiciary and the Bar, New Castle County public officers, and Mary Johnston's many friends, including those who will speak today, and I will be introducing shortly.

Again, to each of you all, a very warm and special welcome to the Superior Court. These are great occasions, an investiture into the Superior Court.

We are here to commemorate the beginning of

Mary Johnston's career as a member of the Superior Court, our state's general jurisdiction trial court.

The proceeding of investiture is one of historical robing with a special ceremony significant of public commitment under oath.

The robe itself is a symbol of impartiality and the judge's solemn duty to administer equal justice on behalf of the people we serve.

The robe and the red sash worn by the Superior Court judges today symbolizes the heritage and continuity of the Superior Court as a law court with a common law and common bond to the United Kingdom as a law court in Delaware with a history of more than 300 years.

Our speakers today will tell you more about Mary Johnston, a judge who brings impressive credentials and experience to our court.

Many of us have known Mary for a long time; and she has already joined us at many events, including judges' meetings and retreats, which will remain -- some of those discussions, we won't elaborate upon. They have all been fun, and we had a good time with her already.

(Laughter.)

We are well aware of her very strong credentials, which I will not elaborate upon, because others will.

We do know that Judge Johnston will serve the public with distinction as a Superior Court judge, and we have great confidence in that.

It's now my pleasure to ask The Honorable E. Norman Veasey to render his remarks at this time.

Chief Justice Veasey.

CHIEF JUSTICE VEASEY: Thank you, president Judge Ridgely.

Judge Johnston, members of your family, distinguished members of the Judiciary and elected officials, and distinguished people, thank you all for being here.

Mary, thank you for agreeing to be a judge of the Superior Court.

I'm going to talk a little bit about the woman, and then about the court, and then about the judge.

The woman has glittering credentials; we will hear more about those, but I was particularly

struck by the music degrees, a master's from Northwestern, a bachelor's from Wittenberg College, and a JD degree from Washington Lee. More about that later, because therein lies a tale.

(Laughter.)

Of course, Mary has been a member of the Bar for almost 20 years, an honor, the most important arm of the Superior Court, the disciplinary arm of the court has been served well by Mary and her staff as Chief Disciplinary Counsel. She is the "top cop" to keep the lawyers in line, and an expert on ethics. And I'm sure Justice Holland, as the Liaison Justice to the Office of Disciplinary Counsel and the Board on Professional Responsibility, will have something to say about that.

But, Mary, I was sort of wondering: why did you pick Halloween?

(Laughter.)

I wore my tie. I thought, would this be all right? I couldn't come in costume, because I didn't have anything suitable, but I thought I'd wear this tie.

(Laughter.)

I think it's great that your investiture is on Halloween. And I guess that has something to do with the name change that I got when I first came in here.

(Laughter.)

You never know what's going to happen on Halloween, but I was reminded that -- my wife tells me that I have five months and seven days to go on my term as Chief Justice.

And she says, "You know, you'll go from who's who to who's he."

(Laughter.)

I think I'm there already, just as long as I get my pension.

(Laughter.)

A little bit about the court. I'll put the Halloween tie away. And I don't have a red sash, although it was offered to me, I wouldn't want to be an imposter.

But this is a great court. We have the opportunity to interact with the court in these educational conferences and to review their fine work on appeal. And about 95 percent of the Superior

Court's work is affirmed on appeal. That's very important. And that is a high tribute to the judges of this court and the leadership of this court. And this court has received national acclaim. All of our courts have received national acclaim. And all our courts were lumped together in a recent Harris poll survey of the United States Chamber of Commerce. But the Superior Court deserves largely the credit for that, because this survey had to do with these ten areas where Delaware was ranked No. 1: Overall treatment of tort and contract litigation; treatment of class action; punitive damages; timeliness of summary judgment and dismissal; discovery; scientific and technical evidence; judges' impartiality; judges' competence, judges' predictability; and jury's fairness.

And I think that this court gets this national acclaim is widely respected.

President Judge Ridgely is about to become chair of the State Trial Judges' Division of the American Bar Association. And wherever I go talking about our courts, I get great compliments about this court. And that will bring me now to talk about the

judge, the new judge.

Let me talk about that tale first. It seems that Bill Johnston, Mary's husband, and Mary went to Washington Lee. They were close to each other. I think Bill was class of '58 -- sorry, I was class of fifty something.

Bill was '82. Mary was '84. And they were featured on the cover of a Washington Lee magazine as a "power couple" under the heading "*Love in the Law School*." I think it had a further subheading. But what the article said was, Mary was quoted as saying, "Every weekend is a honeymoon." I like that. And Mary was dubbed by her fellow members of the editorial board, she was -- she was the article's editor of the Law Review as the "road queen" in her many trips North, because Bill was practicing law up here, with Young, Conaway, Stargatt & Taylor, and Mary was still down in Lexington, Virginia. So there was a lot of back and forth, and forth and back. Actually, Bill had a judicial clerkship with Chief Justice Herrmann, and then he went to Young, Conaway. And they were splitting their time driving back and forth.

Bill became somewhat of a poster child for incivility, you may remember this.

(Laughter.)

Not that he was uncivil, but he was a victim of an uncivil lawyer from Texas. And this took place in Texas. And it was duly noted by the Delaware Supreme Court. Bill got a lot of mileage out of that. And I don't think that Texas lawyer is going to mess with Bill anymore, now that his wife is a judge.

(Laughter.)

Anyway, more about that article, I'm sure, from other people. But Mary, Judge Johnston, has already been sworn in. I had the privilege of doing that. Justice Berger was on the bench with me when we had a swearing in of Mary shortly after her confirmation so she could get to work sooner rather than later.

And Mary brings to this court those good-earned credentials, brains, and harmony that will come out of her musical background, civility, and the work ethic that has come to exemplify this court. So, Mary, I know that you'll definitely grace

this court. You'll bring great assets to it. And I want to welcome you as a member of the judiciary, and give you my congratulations.

(Applause.)

PRESIDENT JUDGE RIDGELY: Thank you, Chief Justice.

Now we will have the robing with The Honorable Richard R. Cooch assisting in that. The sash is sometimes the hardest part. He's going to assist in that.

(Robing process held.)

The oath has previously been administered as the Chief Justice has indicated, so welcome.

JUDGE JOHNSTON: Thank you.

(Applause.)

PRESIDENT JUDGE RIDGELY: We are going to have the opportunity to hear soon from Judge Johnston, so we will let her get oriented to this view from here, and hear from other speakers in the interim.

Our next speaker will be Joe Schoell, Esquire, from the Governor's Office on behalf of the Governor.

MR. SCHOELL: Thank you, Your Honor.

Chief Justice, Judge Johnston, other members of the Bench and Bar, and, of course, Mary's family, I'm privileged to have the opportunity to speak on behalf of Governor Minner at this wonderful event.

The Governor wanted to be here in person, but as a lot of you know, she underwent knee surgery earlier this week, and she regrets that she is not available to share this special moment with Mary and her family. Although I'm here to speak for the Governor, I have to say a few things about Mary on my own behalf, because I've known her for quite some time.

I first met Mary in the summer of 1991, when I was a summer associate with Morris, James, Hitchens & Williams. And at that time, Mary was a partner with the firm, practicing in corporate and commercial litigation. And I got to know her, and I got to know Bill. And I had many opportunities to work with her. And Mary exemplified the kind of lawyer that I wanted to become at that time. She is a very deeply committed professional. She is a gifted and a very talented thinker. She's a zealous advocate for her

clients, or she was at the time. And those were things that I admired. But more importantly, Mary has always struck me as somebody who had a wonderful balance in her life, somebody who made time for things that were equally, if not more important than the day-to-day riggers of practicing law.

She has, over the course of her career, provided exemplary service to the Bar, exemplary service to her community, and exemplary service to her church. She has devoted herself to her family especially, and is very proud of her family.

And she has also indulged in an intense interest in music, as the Chief Justice pointed out. And I had no idea how intense until I attended Mary's confirmation hearing with the Delaware State Senate, where I think several senators were a little disappointed that Mary had maybe forsaken her musical talents to pursue a career in the law. This didn't surprise me because, since I spent a fair amount of time down there, I realized some of our senators like musicians a little more than they like lawyers.

(Laughter.)

JUDGE JOHNSTON: So does everybody else.

MR. SCHOELL: But the law is a better place for Mary having joined it.

When I finally joined the firm as an associate at Morris James, in 1992, I was very disappointed because Mary had left.

With her two young daughters at home, she decided to take some time off and devote more time to family, and really made a courageous decision to spend several years out of the workplace.

When she returned, she has devoted herself to public service. And I think that we're all much better off for it.

And over the last several years, as we all know, I think she has had one of the most demanding and difficult jobs that the Delaware State Bar has to offer, and that's serving as Chief Disciplinary Counsel, and making sure that our Bar is the best it can be, and that we serve the public as we are required to do.

Governor Minner has a very deep appreciation for the importance of our court system and our judiciary.

Time and again, as the Chief Justice just

noted, our courts have been recognized as among the very best in the nation. And the strength of our court system depends, in large part, on the character of the men and women who are willing to serve. And I know that the Governor has sought out people who not only have the aptitude and the work ethic to do the job, but people who have the temperament of compassion, the sense of fairness, and the patience necessary to serve our citizens fairly.

The Governor has every confidence that Judge Johnston will bring all of those important qualities to the Bench, that she will improve upon a court that is already first rate, and she will make herself, the Governor, and all Delawareans proud.

Good luck, Your Honor.

JUDGE JOHNSTON: Thank you.

(Applause.)

PRESIDENT JUDGE RIDGELY: Thank you,  
Mr. Schoell.

I do have a letter that I would like to read from Mayor James N. Baker, who could not be here today.

It is addressed to The Honorable Mary

Miller-Johnston.

"Dear Judge Johnston, on behalf of the citizens of Wilmington, I congratulate you on your recent appointment as an associate judge of the Superior Court for the State of Delaware.

The citizens of the City of Wilmington and State of Delaware are fortunate to have such a dedicated public servant presiding over our courts, to ensure the fair administration of justice. Perhaps we will have the opportunity to meet in the future. In the meantime, if I or the city administration can be of assistance to you in your new role, please call on me.

Again, congratulations and best wishes.

Sincerely, James N. Baker."

Mary, I hand this down to you.

(Letter furnished to Judge Johnston.)

Our next speaker is Charley McDowell, Esquire, president of the Delaware State Bar Association.

Mr. McDowell.

MR. McDOWELL: Thank you, president Judge Ridgely. May it please the Court. I address

distinguished members of the judiciary, and friends and family of our new judge. It's a tremendous privilege for me, as president of the Delaware State Bar Association, to be able to participate in this event.

And, Judge Johnston, I appreciate your asking me to attend. Excuse me for having my back halfway to you.

The investiture of a new judge is always a great event, because it gives us an opportunity for you to hear about her achievements in her past career, and we can anticipate what she will do in the next chapter of her legal and now judicial career.

And also in this season, when we hear political advertisements from our neighboring jurisdictions for the elections of judges, we can celebrate again how fortunate we are, in Delaware, to have such a good process for the selection of judges.

And, Joe, please take back to your boss the appreciation to the Delaware Bar for presenting us with another outstanding member of the judiciary.

So you're probably familiar and you're going

to hear more and you've already heard some about Judge Johnston's very successful legal career to date, her eight years of doing corporate and complex civil litigation as an associate and partner at Morris James, and then Staff Attorney to the Delaware Supreme Court and Deputy Counsel, Chief Counsel for the Office of Disciplinary Counsel, which is a terribly important part of our judicial system, here in Delaware, in the administration of justice.

From the Bar Association's perspective, it's also very important that she has served on the various Supreme Court committees. She was a frequent presenter at CLE seminars, and she has been active in Bar section matters, and she serves as a judge in the high-school mock-trial competition. She has also been active in community affairs. In particular, she was president of Children and Families First. And all of this experience, we know, is in very good standing as she approaches the challenges of being on the bench, and we know that you'll do an excellent job. But there's a part of her background about which you might not be so familiar, although one of the difficulties of this type of ceremony, where the

speakers all don't get together and find out what the other is going to say, you probably heard -- you heard a little bit about Judge Johnston's musical interests and her background, but I thought I would focus on that just a little bit more. Because she's got a bachelor's degree, in music, from Wittenberg, and then she spent a year in Germany studying organ performance and conducting. And she then received a Master in Music -- a Master of Music and Organ Performance at Northwestern University. But, unfortunately, her real avocation, the opportunities didn't present themselves for a career in music, I think, and so she decided to pursue the law, as you heard. And she went to Washington Lee, where, as you heard, she met another law student from out East, Bill Johnston, and the rest is history. So much the better, obviously, for Delaware. So the point I guess I was going to make is that if sometime in the future, we see a special line item in the judiciary's budget request in the legislature for an organ recital room in the judge's lounge in New Castle County Courthouse, I bet we will know where that came from.

(Laughter.)

But all levity aside, Judge Johnston, the Delaware Bar is very fortunate to have a person of your character and abilities to be appointed to the bench. We know you will have a successful career, and we wish you well.

JUDGE JOHNSTON: Thank you very much.

(Applause.)

PRESIDENT JUDGE RIDGELY: Thank you very much, Mr. McDowell.

I now call, with pleasure, Justice Randy J. Holland for his views.

Justice Holland.

JUSTICE HOLLAND: Thank you.

Chief Justice, members of the Bench, Judge Johnston, members of your family, and distinguished guests and friends.

It really is an honor to be here on a day when we are gathered together to honor a remarkable person who joins a remarkable court with remarkable colleagues. It's quite a tradition that she becomes part of. And I think the tradition is exemplified by two of the colleagues that she'll join who are on the

bench here this afternoon.

We revere the Declaration of Independence. Judge Cooch, in his own right, a distinguished member of this court, is a collateral descendent of Caesar Rodney, who we all know rode to Philadelphia to sign the Declaration of Independence.

The Constitution, which is the foundation of our rule of law, something that our country is so proud of, is something that we, in Delaware, cherish, in particular because we are The First State.

President Judge Ridgely, a direct descendent from Nicholas Ridgely, who signed the Constitution on behalf of Delaware to help make Delaware The First State, right across the street on The Green where president Judge Ridgely presided on the Superior Court to this day.

Although the Superior Court appears in the Constitution of Delaware of 1831 for the first time, as president Judge Ridgely mentioned, it really traces its heritage back to 1669.

And these red sashes that you see all the judges on the Superior Court wearing this afternoon were worn by their predecessors who sat on the Court

in 1669. But the Superior Court isn't a court that rests on its laurels or its tradition.

The Chief Justice has mentioned that a Harris poll of all of the major companies in the United States concluded that the Superior Court was No. 1 in every category of performance. And if it's possible to enhance a No. 1 standing, I'm sure Judge Johnston will do that. And the Superior Court has done that by taking the lead in electronic filing, in a drug court, in technology for case management, in arbitration and mediation, everything that makes modern administration of justice possible.

Chief Justice Veasey, in the past, has referred to the Superior Court as the bellwether court, a court of general jurisdiction. By far, as we know, its most significant jurisdiction is over capital cases.

I brought with me a statue of justice, (indicating), which I'm sure you could have imagined, so it's clear in your mind, but if we look at this, we recall that we have the scales of justice, where impartial justice, that's blindfolded, treats all the litigants impartially, and then has the sword in her

hand in the event that justice has to be administered swiftly. Well, those scales have real meaning on the Superior Court, where the judges, all of whom you see here, wearing these red sashes, individually are called upon to weigh the aggravating and mitigating circumstances, and then conclude whether death is the appropriate punishment.

But it's individuals, not statues, that uphold the rule of law. And it's natural on a day like today to say, well, what kind of person should we trust with that awesome authority? What are the qualities that we're looking for? And we find those qualities in a book entitled, *The Counselors*. And in that book, it's a series of 18 conversations with 18 women who have changed the world. Now, that book is a happy sequel to another book that was called *Barred from the Bar*.

In the earlier book, it recounted the struggle of women to get admitted to the legal profession.

When Judge Johnston was born, there were less than ten women who were members of the Delaware Bar.

When Judge Johnston was born, there were no women judges in Delaware.

On a lighter note, when Judge Johnston was born, the Chief Justice was admitted to the Bar.

(Laughter.)

The names of these 18 counselors, these women who changed these opportunities for women, are well-known to all of us, if I recited them to you. And certainly the opportunities that Judge Johnston has had is attributable to those women. But I was struck by the similarities between Judge Johnston's background and two of those women in particular. And that's Justice Sandra Day O'Connor and Justice Ruth Bader Ginsburg. And as you will see, they have comparable character and courage, scholarship, integrity, similar personal interests and backgrounds and devotion to their families.

Justice O'Connor, like Judge Johnston, began her career as a trial judge on a state court.

Justice O'Connor grew up on a ranch. Judge Johnston grew up in a farming community.

And you learn something in both of those settings. You start early, you stay late. You

develop an incredible work ethic.

And as Justice O'Connor said in her book, "You learn one lesson. No excuses, just results." And that certainly has been exemplified in Judge Johnston's life.

But another quality we're looking for is scholarship. That's important for any judge. As you heard, Judge Johnston graduated magna cum laude from college. She also graduated, with honors, from law school. She was the lead editor of the Article Section of the Law Review. But she had two other significant accomplishments.

As a judge on the Superior Court, one of the things she will be doing quite a bit is making evidentiary rulings. She received the highest grade awarded to anyone in her law school in Evidence. She also received the highest grade awarded to anyone in her law school in Trust and Estates. Even as a student, she was a scholar in her writings. She published a Law Review article dealing with evaluating the sufficiency of evidence and the weight of evidence, something that will certainly come in good stead when she has the scales of justice in her

own hands. But she didn't stop writing when she was in law school. She continued to write. She was an editor on the Constitution Book of 1897. She wrote a chapter on lawyer discipline in the Golden Anniversary Book, and just this year published an article about multi-jurisdictional practice and ethics in the Delaware Law Review. These are good qualities that will hold her in good stead in researching and writing her judicial opinions.

But when we are looking for qualities on a court of general jurisdiction, the breadth of jurisdiction calls for a breadth of experience, and Judge Johnston certainly has that.

She was a litigator with one of the most prestigious firms in Wilmington, and during that time focused on complex and corporate litigation.

She appeared in the Superior Court, the Court of Chancery, and the United States District Court, the Delaware Supreme Court, and the Third Circuit Court of Appeals.

She continued to hone her skills as a litigator as a member of the Staff Attorneys of the Delaware Supreme Court, and as a member of the Office

of Disciplinary Counsel. Those two positions are particularly significant. As you know, appellate courts are frequently not unanimous. But on the Delaware Supreme Court, the only thing that requires unanimity is when we select someone to serve the court as a Staff Attorney, or at the Office of Disciplinary Counsel, in particular as the Chief Disciplinary Counsel, but Mary Johnston was an acclamational choice, and that says a lot. The Delaware Supreme Court entrusted her with the responsibility of regulating lawyer discipline. And not simply lawyer ethics, she regulated the unethical practice of law, the unauthorized practice of law. And when people would apply for the Bar examination and had questions about their character, she would do those investigations. In exercising those responsibilities, she learned to be firm but fair in making decisions that could really end people's professional careers.

On the Superior Court, she will continue to be challenged to exercise mercy with justice, but she brings additional qualities. The Superior Court is an extremely busy court. The capital cases and the