

## State of the Judiciary

Chief Justice John C. Bell Jr., Pennsylvania Supreme Court  
Message to the Pennsylvania Bar Association  
January 29, 1971, in Harrisburg, Pennsylvania

We have, as we all know, a new Constitution, which became effective in almost all its provisions on January 1, 1969. It provides for a unified Judicial system consisting of all the Courts in Pennsylvania, each and all of which are under the power and supervision of the Supreme Court. In this Court is reposed the supreme Judicial power of the Commonwealth, with such power and jurisdiction as may be provided by Order of the Supreme Court, or by law.

Throughout our State, the workload of the Courts is increasing tremendously. For example, the volume of appeals to the Supreme Court has enormously increased, and, I believe, far exceeds that of any other highest State Court in the Nation. In 1969 there were 478 appeals to the Supreme Court of Pennsylvania; in 1970 there were 551 appeals. This does not include 480 allocatur petitions in 1970, an increase of 121 over 1969, nor does it include 905 miscellaneous petitions which were filed last year.

It is almost impossible for us to dispose of all these appeals by a detailed Opinion, with the result that we will soon have to hand down many Per Curiam Opinions reading "Judgment affirmed," or "Decree affirmed, with costs," etc.

Numerous provisions of the new Constitution are ambiguous, and will be subject to Court interpretation for many years to come. However, many of its provisions are wise. For example, it created (1) a new Appellate Court, known as the Commonwealth Court, and (2) the Office of a Statewide Court Administrator, and (3) the Judicial Inquiry and Review Board, and (4) it made very substantial changes in the districting and in the numbers and powers of Justices of the Peace and the requisites for such a position.

Pennsylvania is the 39th State to adopt a Statewide form of Court administration. The Court Administrator and his staff have been studying Court administration throughout Pennsylvania, but particularly in Philadelphia, where they have been successful in substantially improving the situation which exists in that City. They have been successful in substantially improving the situation which exists in that City by streamlining many of the existing practices in criminal cases.

## JUSTICES OF THE PEACE

Before the new Constitution, there were approximately 4,500 Justices of the Peace. The number of magisterial districts has been changed, and the number of Justices of the Peace greatly reduced to 592. It will be of interest to note that Justices of the Peace are now on a salary basis, and no longer have the authority or power to retain the costs imposed in the civil and criminal cases which come before them. These costs are now payable to the County and are transmitted by the Justices of the Peace to the County in which the magisterial district lies. This is a big improvement, and likewise will result in additional funds for the Counties throughout

Pennsylvania. Moreover, the varying practices and procedures before members of the minor Judiciary have been standardized, so that a litigant bringing suit in one magisterial district will follow the same forms and procedures as a litigant in another magisterial district.

Now for bigger things!

In this confused and terribly troubled world in which we live, countless people are urging or screaming for change. They want something different, something new. In their minds, change - any and every change - has become synonymous with progress and improvement. This widespread belief, this craze for change, has even infected our Courts, with the result that a decision of the highest Courts is, in the words of Justice Owen J. Roberts, like "a restricted railroad ticket, good for this day and train only." In order to improve and expedite Justice, it is both important and imperative that we reexamine and reevaluate our Courts and their administration, our Judicial processes and our entire Judicial System - but with St. Paul's admonition (I Thessalonians 5: 21) ringing in our ears and kept constantly in our minds: "Prove all things; hold fast that which is good."

I have recommended 56 reforms - more reforms than any Chief Justice in the history of Pennsylvania. I believe that 25 of these reforms have been adopted, but I continue to hope that each and all of them will be adopted. However, as in the domestic and foreign fields, we do not have the resources or the money for all the improvements which are essential, and therefore we must resort to priorities.

More specifically, what can and should we do to expedite Justice and particularly to curtail this constantly increasing tidal wave of crime? What priorities should be quickly adopted?

## PRIORITIES

Our first priority is a triple one - more Judges, especially in Philadelphia - better Judges - and speedier and more certain Justice.

1. *More and Better Judges:* The Judicial Department comes home in its effects to every man's fireside; it passes on his liberty, his property, his business, his contracts, his damage claims, his reputation, his very life. Isn't it therefore vitally important that we should elect as Judges, men of real legal ability and high integrity - men who are absolutely and completely independent, with nothing to influence or control them but God and their Conscience and the Law? Expressed in other words, our Judges must be selected and elected primarily for their legal ability, and not primarily for their political affiliations. In order to achieve this widely desired goal, this imperative priority, the Courts need your help as never before.

For reasons with which you are all familiar, our Courts are swamped with a constantly increasing tidal wave of litigation, both criminal and civil. The F.B.I. Uniform Crime Index reports that, during the first six months of 1970, crimes increased 11 per cent over the same period in 1969, and that violent crimes as a group increased 10 per cent.

We would be unrealistic if we did not realize that some recent Court decisions have unwisely and unnecessarily jeopardized the safety, the security and, in fact, the very welfare of our law-abiding citizens. As Justice Black said in his dissenting Opinion in *Harrison v. United States*, 392 U.S. 219, 226, "I agree that holdings like this make it far more difficult to protect society against those who have made it impossible to live today in safety."

We constantly forget that for at least a couple of centuries, the basic and primary reasons for our criminal laws have been the protection of society, and I can only hope that the Supreme Court of the United States, under the wise leadership of Chief Justice Burger, will soon recognize that Justice is not a one-way street - one way for criminals only - but is a two-way street for both the law-abiding citizens and the criminals.

2. *Expediting Justice*. As Chief Justice Burger recently pointed out: "We took our basic legal juridical structure from England, and it was then and is now fundamentally one of the best, if not the best, ever developed to resolve conflicts among human beings and between individuals and the State. If we do not examine our Judicial machinery carefully, thoughtfully and critically . . . we will experience chaos in the Courts, with an enormous and diverse impact on private civil rights and on law enforcement and the security of persons and homes and property; and with all this, a loss of confidence in our [Judicial] system." Chief Justice Burger went on to point out that "the long trials, both civil and criminal, which are so common in the United States, are virtually unknown in England."

Particularly in Philadelphia, the delays in all forms and kinds of litigation, and especially the delays and backlogs in murder and in major criminal cases, are jeopardizing Justice and are a disgrace to our Courts and to our entire Judicial system. The backlog in murder cases in Philadelphia now totals 354, although 48 of these are in a deferred status. In the civil field, it takes over four years to bring a case to trial. Philadelphia needs at least ten additional Judges, more courtrooms and facilities, more Court personnel and probation officers. However, I am glad to add that the Judges in Philadelphia realize how deplorable the existing conditions are and they, with the aid of the Philadelphia Judicial Council and the Philadelphia Bar, are working hard and cooperatively to solve the problems confronting them and to remedy these conditions as quickly as possible. Moreover, it is obvious that some of these reforms can only be accomplished with the aid of the Legislature and this will require your ardent support. Now when you approach the Legislature you must keep in mind that many of them are politicians, and you cannot always rely on politicians. It reminds me of the story of the two politicians who had the same girlfriend. She became pregnant, and they did not know what to do or whose it was, so they tossed a coin and the man who lost took Mamie to Florida. Three months later he sent his pal a telegram: "Mamie had twins, mine died."

3. Every violator of any and every law should be quickly and adequately punished for his violation or defiance of the law. In order to restore respect for Law and Order, and protect society, this means that a deterring sentence must often be imposed, and that probation instead of a jail sentence must be sparingly and carefully used, and only when a Court is convinced that such a probationary punishment is fair, wise and safe for society.

4. A person convicted of crime should have one, and only one, direct appeal, and this must be taken within 30 days of the final judgment, order or sentence, and one and only one post-conviction hearing, either by such a P.C.H.A. hearing or by a habeas corpus proceeding, or by any similar proceeding, and this must be taken within two years after any final decision. Cf. "Is Innocence Irrelevant?" by Judge Henry J. Friendly (University of Chicago Law Review, Vol. 38, Fall 1970).
5. Our penal institutions must be greatly improved and modernized, and a far better rehabilitation program must be adopted.
6. *Elimination of peremptory challenges*: I have often advocated and re-advocated the elimination of peremptory challenges. As you all know, the Constitution ordains an impartial jury of the vicinage. Nearly every lawyer for the plaintiff and nearly every lawyer for the defendant - and in criminal cases, nearly every lawyer for the defendant and nearly every District Attorney - want a "partial," not an "impartial" jury - a jury which will favor his client's cause. This kind of a jury - a "partial" jury - they attempt to secure by peremptory challenges instead of solely by challenges for cause. I realize that the elimination of peremptory challenges may be unconstitutional. See *Swain v. Alabama*, 380 U.S. 202. Unless we can greatly and rapidly (1) improve our Judicial system and Judicial processes and (2) expedite Justice, litigation, both civil and criminal, which is constantly and rapidly increasing, will create such colossal backlogs that the result will be chaos in our entire Judicial system.
7. It will expedite Justice in both the criminal and civil fields if, as I have likewise frequently recommended and - continue to strongly recommend, a jury verdict be valid (except in murder and manslaughter cases) whenever nine out of 12 jurors agree on a verdict.
8. I have advocated for many years the trial of civil cases by a Judge without a jury, or by a lawyer or lawyers sitting as an arbitration panel, where, realistically, the claims do not exceed \$10,000 or \$15,000. This would tremendously expedite litigation in the civil field, enormously reduce the civil backlog, especially in Philadelphia, and at the same time render speedy Justice. Chief Justice Burger recently said that 35 years ago, England, the mother-country of the Common Law, abolished jury trials for civil cases with a few minor exceptions, such as slander and libel. If we do not quickly make a similar change, the only other solution - and it is one which I believe we will reluctantly but inevitably have to come to - is to adopt some sort of workmen's compensation proceedings to cover all civil cases.
9. I oppose making any decision in the criminal field retroactive. However, I strongly recommend that when an Appellate Court adopts new or different principles, standards, tests, or overrules prior decisions, or changes the law in any way, it should make this new or changed law clear, certain, definite, and specific, and should likewise state whether it takes effect and applies immediately or prospectively or retroactively.

If the leaders of the Bar will constantly and forcefully advocate the principles, the reforms and the priorities which both the Courts and the Bar want and desperately need, we can tremendously

improve our Judicial system and greatly expedite Justice.