

State of the Judiciary

Chief Justice Benjamin R. Jones, Pennsylvania Supreme Court

Message to the Pennsylvania Bar Association

January 21, 1972, in Pittsburgh, Pennsylvania

Mr. President, Officers of, House of Delegates of, and other members of the Pennsylvania Bar Association.

I deem it a great privilege and an honor to speak to you at this time. Having been Chief Justice for less than three weeks, although a member of the Court for 15 years, it is with some degree of hesitation that I speak on the topic assigned to me, "The State of the Judiciary in the Commonwealth."

Many years ago Daniel Webster in his address on Justice Story said: "Wherever the Temple of Justice stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the progress of our race. And whoever labors on this edifice with usefulness and distinction, connects himself, in name, and fame, with that which is as durable as human society."

On this 250-year-old Temple of Justice your Association for many years has labored with fidelity and great distinction. I compliment this Association not only on that which over the years it has attempted and accomplished but upon that which it is seeking now to do to improve and enhance the administration of justice in our Commonwealth. This Association has always been in the forefront of efforts to improve the calibre and the quality of the judiciary and to remove the judiciary, insofar as possible, from politics, political activity and political influence.

MERIT SELECTION OF JUDGES

If the public is to have confidence in the judiciary it must be satisfied that the judiciary is above and beyond politics and political considerations. Courts motivated by political considerations cannot and do not deserve public confidence and the court system must be entirely divorced from the political process. When it comes to the election or the appointment of a judge I cannot agree with those who say that past political activity should eliminate a lawyer from any consideration for a judgeship, but I feel strongly that past political activity on the part of an aspirant for election or appointment as a judge should not be an essential or a primary consideration. Integrity, sense of humanity, legal ability, independence and fairness should outweigh all other considerations in the selection of judges, whether by the appointive or elective process. It is my hope that your Association will continue its efforts to improve the calibre of our judiciary and will devise a new and proper merit system for the selection of judges at both the appellate and trial levels and in both our urban and nonurban judicial districts. To that end, I, as an individual, interested in a high quality of judicial performance and anxious to restore public confidence in our judiciary, will lend my efforts toward any movement seeking the selection of judges on a purely merit basis.

BAR ASSOCIATION GOALS

Last July, Chief Justice Burger, speaking to the American Bar Association, aptly said: "A strong, independent, competent and courageous legal profession is imperative to any free people and this Association has a duty to take the lead to provide it. We live in a society that is diverse, mobile, and dynamic, but its very pluralism and creativeness makes it capable of both enormous progress or debilitating conflicts that can blunt all semblance of order. One role of the lawyer in a Common Law system is to be a balance wheel, a harmonizer, a reconciler. He must be more than simply a skilled legal mechanic. He must be that but in a larger sense he must also be a legal architect, engineer, builder, and, from time to time, an inventor as well. This is the history of the lawyer in America and in this respect he is unique among the lawyers of all societies." This statement of the Chief Justice could well furnish the goal of every Bar Association.

SINGLE STATEWIDE DISCIPLINARY SYSTEM

Over two years ago the Supreme Court of Pennsylvania, through its Board of Governance, created a special committee chaired by Gilbert Nurick of Harrisburg, a past president of this Association, to survey existing procedures in Pennsylvania relating to discipline of lawyers and to submit recommendations for a more effective system. Responsible members of the bench and bar had long recognized that the existing system was inefficient and in the eyes of the profession and the public alike, insufficient to command the confidence of the bench, bar, and the public. As you know, at about the same time, the American Bar Association's Special Committee on Evaluation of Disciplinary Enforcement was concluding its study conducted under the chairmanship of Mr. Justice Tom C. Oark. The Nurick Committee was fortunate in having as its consultant Michael Franck, Executive Director of the State Bar of Michigan, who was also the reporter for the Clark Committee.

One year ago the Board of Governance circulated the preliminary report of its special committee to the members of the bench and bar for comment.

Last June this House of Delegates generally approved the recommendations of the special committee calling for a single statewide disciplinary system under the authority of the Supreme Court. On December 1, 1971, the Board of Governance filed its final report with the Supreme Court, and I now report that on Wednesday of this week, with some variations and recommended changes, we have approved in principle the plan for adoption. We expect to implement the new disciplinary rules by appointment of the new nine-member Disciplinary Board of the Pennsylvania Supreme Court within the very near future, and hopefully to have the new system staffed and in operation by July 1, 1972.

The new rules not only encompass fundamental changes in structure and staff, centralizing disciplinary enforcement on a statewide basis, but totally revise practice and procedure as well. They incorporate solutions to some of the most vexing problems which in the past have impeded effective disciplinary enforcement, including provisions for prompt action against attorneys convicted of serious crimes; the transfer to inactive status of attorneys disabled by mental illness or addiction to drugs or intoxicants, with provision for reinstatement to active status on proof of rehabilitation of all attorneys, and also provide for periodic assessments in order to share the cost of enforcement among all members of the Pennsylvania Bar.

The initial assessment fee has been set tentatively at \$25 per Pennsylvania attorney. On the basis of a budget study to be conducted by our Court and the special committee, we trust that this assessment will be sufficient to finance the new system.

We earnestly solicit the cooperation of the organized bar as we inaugurate this new system of disciplinary procedures. We know, as you do, that the number of our brethren who abuse the unusual privilege which is the practice of law are few. We also know that our public trust is such that those who abuse this trust must be disciplined and disciplined promptly and effectively.

I must point out that the new disciplinary rules will not apply to any special judicial investigation in existence at the time the rules are finally adopted and that such investigation, together with any disciplinary proceedings arising therefrom, will be concluded under the procedure established for the conduct of the investigation. All other disciplinary investigations which are pending when the rules become effective will be transferred to the jurisdiction of the new Disciplinary Board, except that any case then pending with respect to which a formal hearing has been commenced shall be concluded under the old procedure.

As your Chief Justice, I pledge to you that the new system when formally inaugurated will be administered with fairness, both to the Bar and to the Public.

REPORT ON JUDICIAL CASE VOLUME - FILLING NEW JUDGESHIPS

During the past year, the Office of the State Court Administrator published the First Annual Report on Judicial Case Volume compiled from three sets of forms sent to each county, and the report reflected the input, disposition and the current inventory of civil, criminal and miscellaneous matters before the Courts of Common Pleas of the Commonwealth.

The importance of accurate statistics being forwarded to the State Court Administrator cannot be overemphasized. When fifty new judgeships were budgeted by the Governor's Office, the State Court Administrator, on the basis of these statistics, was asked to recommend to the Legislature where additional judges were needed and these recommendations were followed generally. In a few instances, however, the Legislature created additional judgeships beyond the recommendation of the Court Administrator or failed to create a judgeship where not requested. These statistics are useful in determining where visiting, former and retired judges should be assigned and to enable the court system to foresee trouble areas and to predict trends.

ANNUAL INSTITUTE FOR DISTRICT JUSTICES

The Office of the Court Administrator conducted the First Annual Institute for District Justices of the Peace. It lasted five days and courses in criminal and civil law, ethics and administration were given by experts in the several fields covered. There are 588 Magisterial Districts in Pennsylvania, created or approved by Order of our Court and one hundred and thirty-seven (137) District Justices, or approximately one-fourth of all of them, attended this Institute. The Court Administrator's Office expects to hold a similar educational institute annually covering approximately one-fourth of all of the District Justices each year, so that at the end of four years all will have had the benefit of the courses.

DISTRICT JUSTICES' MANUAL AND STATISTICAL REPORTING FORMS

In connection with this, a Manual was prepared containing lecture notes, and distributed to all District Justices in the Commonwealth. The Court Administrator's Office is also planning a more formal manual to guide District Justices of the Peace. The Court Administrator has standardized the practice in the civil area for all District Judges by promulgating forms for a case from its inception to an appeal. The Office has also approved standardized forms for criminal matters.

The Office of Court Administrator also is planning to design statistical reporting forms for District Justices of the Peace so that the court system will have the benefit of these statistics on a statewide basis. At the present time, some Judicial Districts are collecting statistics, some are not, and not all are using the same form.

In serving the magisterial system in the Commonwealth, a Deputy Court Administrator has made numerous trips to a large number of counties in the State in order to assist the Justices of the Peace and the President Judges, and the Court Administrators for Justices of the Peace, with their problems in this field. There still remain many problems with respect to our magisterial system. The Court Administrator's Office has asked legislative help in this respect. Senate Resolution 23 calls on the Joint State Government Commission to investigate all the problems in this field, and to make recommendations to the legislature and it is to be hoped that the legislative leaders will take some action in this respect in the near future.

ACTIVITIES OF THE COURT ADMINISTRATOR

The Court Administrator has been instructed by the Court to compile the budget for the whole judicial system, and is in the process of doing so at this time.

The Court Administrator's Office conducted a four-day Conference of Trial Court Administrators, of which the State now has approximately twenty-two. This conference provided a training forum and opportunity to exchange ideas so as to increase the effectiveness of court administration by comparison with other counties. A joint Conference of President Judges and Trial Court Administrators was subsequently held. There are certain problems peculiar to President Judges, most of which are in the administrative field, and this Conference gave these judges the opportunity to discuss these problems with each other and with their Administrators. The meeting was so successful that the President Judges requested that it be conducted on an annual basis and include all President Judges in the Commonwealth. The Court Administrator's Office has scheduled an orientation course for 85 newly elected judges which will be held April 2 to the 5th, 1972. This Seminar is being conducted in cooperation with the Conference of State Trial Judges and the teaching faculty will be composed of experienced jurists.

In accomplishing many of the foregoing objectives, the Court Administrator's Office has had the help and cooperation of the Pennsylvania Conference of State Trial Judges.

The Court Administrator's Office has obtained federal grants from the Governor's Justice Commission to send trial judges to the National College at Reno, to cover the costs of the Committee to standardize jury instructions, evaluation of Public Defenders Offices in

Pennsylvania and other related judicial studies. training and educational projects.

COURT BACKLOGS

During the year 1971, the projected statistics demonstrate that there were 58,616 defendants charged in the Common Pleas Courts of Pennsylvania with indictable offenses, of which the dispositions totaled 53,813. Adding the difference to the 1970 inventory of 26,343 leaves us with an inventory of active pending criminal cases of 30,879, an increase of over 17 per cent over 1970.

On the civil side, the projected statistics demonstrate that there were 21,900 new cases marked "ready for trial" and 31,507 cases were removed from the trial stream by disposition or transfer to arbitration. The inventory of civil cases at the end of 1970 was 28,284 and in 1971 was 18,105, which represents a decrease of 36 per cent from 1970.

Cases referred to arbitration increased substantially in 1971 with 35,069 new cases and 24,842 disposals. The inventory at the end of 1970 was 13,975 and in 1971 was 22,086, an increase of 58 per cent, 1971 over 1970.

SUPREME COURT WORKLOAD

We have now had some experience under our new Constitution with its creation of the Commonwealth Court and under the Appellate Jurisdiction Act. In all candor I tell you that this experience has demonstrated that the impact of these innovations has not resulted in a drastic decrease in our Court's workload. In the eleven-year period from 1960 to and including 1970, the statistics show: in 1960 we heard, either orally or by submission, 340 appeals, and in 1970, 523 appeals, an increase of 65 per cent; miscellaneous petitions increased from 590 in 1960 to 828 in 1970, an increase of 71 per cent; petitions for allocatur increased from 127 in 1960 to 482 in 1970, an increase of 263 per cent. In 1970, as I have stated, we heard 523 appeals, whereas in 1971 we heard 454 appeals, a decrease of only 69 cases; 828 miscellaneous petitions were disposed of in 1970, as compared to 676 in 1971, a decrease of 152 petitions; on the other hand, allocatur petitions numbering 482 in 1970 increased to 799 in 1971, an increase of 317. In work terms, in 1971 each member of our Court was assigned to write approximately 65 opinions and to study and write reports - which are in reality short opinions - in 133 allocatur petitions. When you consider that excluding the approximate 15 weeks of Court Sessions, when we can necessarily do nothing save sit in Court by day and read the next day's briefs by night, we have approximately 37 weeks, inclusive of holidays and any vacation time, in which to study for and prepare 65 opinions and 133 allocatur petitions. Perhaps this will indicate to you why we on the Court feel frustrated at the magnitude of our workload. It is my hope that we have reached the crest in the number of appeals presented in our Court. To the method of handling more expeditiously allocatur petitions we must give our immediate attention because this has become an overwhelming burden.

DEVELOPMENTS IN PHILADELPHIA AND ALLEGHENY COUNTIES

In Philadelphia and Allegheny Counties, two experiments are now underway. The first is that of

referral of cases to arbitration with limits of \$10,000, and the second is that initiated by Judge Sydney Hoffman and District Attorney Specter, with the imprimatur of our Court, called the "pre-indictment program." Both these experiments are working fantastically well and it is my belief that such experiments should be continued and perhaps extended, upon request, to many other counties of the Commonwealth. I am happy to note that in Allegheny County, although the number of civil cases pending is 5,190, the average age of each case is 16.2 months, a statistic which was the lowest of any metropolitan court in the country. On the criminal side, although the backlog is now 4,361 (open indictments) cases, the average length of time in all cases, including homicides, from indictment to conviction (exclusive of sentence) is 9.1 months.

In Philadelphia, on the civil side of the court we have awaiting arbitration 10,172 cases and 5,681 jury and non-jury cases; on the criminal side we have 4,559 cases, which include 489 major homicide, 1,694 miscellaneous major crimes and 2,377 general trial. With the creation of 25 new judgeships, the almost round-the-clock court sessions and a determined effort on the part of Philadelphia judges to attack head-on the backlog problem, the present backlog, I hope, will be drastically reduced.

NEW PROCEDURES PLANNED

In the future, through the energetic and devoted services of the men who compose our Civil and Criminal Procedural Rules Committee, we hope to devise new procedures which will aid in the expedition and disposition of cases both on the civil and criminal sides of our Courts.

250TH ANNIVERSARY OF THE SUPREME COURT

Lastly, but most importantly, I want to remind you that this year marks the 250th anniversary of the founding of our Court. Founded 54 years prior to the birth of our nation and 67 years prior to the formation of the Supreme Court of the United States, this year marks a most important milestone in the legal history of our Commonwealth. Such an event requires first that we mark it well. To that end we intend to have an appropriate ceremony on May 1st in Independence Hall, where our Court first met in the then State House from 1743 until 1790, and where again in 1960 we, as a Court, met for the first official session in that hallowed hall in 170 years. Our Court has a committee composed of Justices Eagen, O'Brien and Pomeroy which will work in collaboration with the Pennsylvania Bar, the Philadelphia Bar and other Bar Associations in making arrangements for proper and appropriate commemoration of this remarkable anniversary.

This event secondly should serve as an occasion for a rededication on the part of the bench and the bar of this Commonwealth to the ideals of our profession. Most urgently, we must restore in the public mind that which is now sorely lacking - confidence in the integrity of our judicial system, its efficacy to cope with the tremendous amount of litigation now flooding our court system and its ability to cooperate in the enforcement of the law so as to restore law and order and eradicate violence from our streets, a violence which has created real fear and terror in the minds of the law-abiding community. In this 250th year, let us prove that we are worthy of our great heritage by becoming "activists" in seeking to instill in the public mind the knowledge that our judges and lawyers are doing their utmost to render justice, a justice which will brook no delay, which will act with impartiality and which will be attuned to the conditions of our day and

age.

I am aware of the responsibility of the office of Chief Justice in an integrated court system and that such responsibility requires industry, dedication, purpose and a willingness to accept the proposition that there is upon the door of the Chief Justice the adage "The buck stops here." On behalf of my colleagues and myself, I pledge to the bar of this Commonwealth and to the public our awareness of the problems existent in our court system, our willingness to cooperate to solve these problems and our realization that these problems must be met and solution attempted not tomorrow but today.