State of the Judiciary in the Commonwealth
Chief Justice Benjamin R. Jones, Pennsylvania Supreme Court
Message to the Pennsylvania Bar Association
February 2, 1973, in Philadelphia, Pennsylvania

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

Once again - now, by reason of the passage of time, with a bit more maturity as Chief Justice -- I speak to you on "The State of the Judiciary in the Commonwealth." On this I speak only for myself; I do not presume to speak for my brethren on the Court.

Last year I congratulated the Association on that which it had attempted and accomplished over the years for the betterment of our profession and the advancement of the administration of justice. Today - with much greater emphasis - I again compliment this Association for the giant steps it has taken in so many new directions not only for the improvement of our profession and the judicial system in this Commonwealth but also for the creation of a potentially better understanding on the part of the public of the problems now facing lawyers and judges and that which is being done in an effort to solve these problems.

In the field of public opinion vis-a-vis the legal profession and the judiciary, perhaps the most sensitive area lies in a suspicion that some lawyers and some judges lack integrity and probity and that venality, rather than honesty, motivates them and that these lawyers and judges are subject to no sanctions for any misconduct on their part. My answer is twofold: first, we now have statewide Disciplinary Rules which are being impartially and sternly enforced against miscreant lawyers by our Disciplinary Board and, second, we now have a Judicial Inquiry and Review Board which is empowered to enforce upon all judges adherence to the Canons of Judicial Ethics under sanction of suspension from judicial duties or removal from judicial office.

RULES OF DISCIPLINARY ENFORCEMENT- THE DISCIPLINARY BOARD

On March 21, 1972, our Court, at the suggestion of your Association, promulgated Rules of Disciplinary Enforcement for members of the bar, provided for the creation of a nine-member Disciplinary Board and vested in this Board, subject to supervision by our Court, exclusive disciplinary jurisdiction over every attorney admitted to practice in the Commonwealth. On November 1, 1972, after months of preparation for its task and for the selection of the necessary personnel, the Disciplinary Board became effective and local Boards of Censors ceased to exist.

This Board, in the brief term of its existence, has made very significant progress under the leadership of its devoted Chairman, Gilbert Nurick. It has completed the myriad details of organization, opened offices in Harrisburg, Philadelphia and Pittsburgh and is well on its way to becoming a highly effective organization for the policing of members of the bar and assuring the public that the members of the bar will live up to the high ethical standards of our profession. The Board has recruited a very well qualified and dedicated staff and twenty-four hearing committees have been appointed throughout the Commonwealth. I am happy to report an

overwhelmingly favorable response of the members of the bar to the call to service as members of these hearing committees.

The statistics of the backlog of old cases now before the Board and of new complaints are distressing and unequivocally establish that a drastic new state-wide system of discipline was sorely needed and long overdue. When the Board assumed jurisdiction it inherited over two hundred cases then pending in the various local and state disciplinary agencies, many of which had languished for unreasonable periods of time. During the first two months of its operation, the Chief Disciplinary Counsel received 222 new complaints. Granted that many of these undoubtedly were frivolous and did not involve charges of unethical conduct, a substantial number did allege serious misconduct and formal proceedings will be instituted in those instances where the facts so warrant.

This Board performs a vital function. If the public is to have faith and confidence in the legal profession, it must know that the members of that profession will not countenance misconduct on the part of any attorney, no matter how prominent he or she may be. Although the transgressing lawyers constitute a very small percentage of the bar, their conduct causes substantial damage to the overall reputation and image of our profession. The new Board is discharging its sensitive mission with the realization that the bar simply must prove that it is capable of policing itself. The old system was wholly inadequate to the task and I am confident that the new disciplinary structure will provide the answer. The administrative office of our Court has received numerous phone calls from as far away as Hawaii, Alaska and Florida asking questions about the Disciplinary Rules and the necessity of compliance with them. By July 1, 1972, most attorneys in Pennsylvania had filed the necessary statement and paid the annual fee.

I am proud of the fact that, by the creation of this Board and the adoption of the Disciplinary Rules, our Commonwealth was the first nationwide to provide realistic and effective protection to the public against any misconduct on the part of any member of the legal profession. The tools to banish from our rolls unethical lawyers are at hand; the public and this House of Delegates can be assured these tools will be used.

JUDICIAL INQUIRY AND REVIEW BOARD

The Judiciary Article of the 1968 Constitution mandated the creation of a Judicial Inquiry and Review Board to consist of five judicial members appointed by our Court and two lawyer and two non-lawyer members appointed by the Governor. Our Court and the Governor duly made the appointments and that Board has been in operation since the early part of 1969.

In 1969 the Board considered forty-four complaints; in 1970 eighty complaints; in 1971 one hundred fifty-seven complaints; in 1972 one hundred seventy complaints. Its jurisdiction extends over all members of the judiciary - judges at the appellate and trial levels, district judges and justices of the peace. Its function is to investigate complaints received and, if the facts warrant, to hold hearings to determine whether or not the judge has been guilty of any misconduct. It has the authority to recommend to our Court an interim suspension from office prior to hearing, suspension from office after hearing or removal from office. During the four years of the Board's existence, our Court, upon its recommendations, has entered forty-eight interim suspension

orders, ten definitive suspension orders and removed - from office one judge and one justice of the peace.

In my view, this Board performs an extremely valuable and important service to the judicial system and to the public. It acts in the capacity of ombudsman to hear any complaints of the citizenry, lawyers or judges against judicial actions or inactions; its very existence acts as a warning to all judges that any misconduct on their part is subject to investigation and review by a completely impartial body responsible to our Court; it possesses the plenary power, after proven misconduct, to recommend severe and condign punishment even to the extent of removal of a judge from office. I am happy to note that, in the four years of the Board's existence, its recommendations, without exception, have been acted upon favorably by our Court. Moreover, I might add that if the sixty-day reports required to be filed by all the trial judges in the Commonwealth reveal cases undisposed of within a reasonable time by any judge without good demonstrable cause, I will have no hesitancy, after notice to the dilatory judge, to cite such judge to the Board for disciplinary action. In this day and age there is no place in the judicial system for any judge who does not perform, with diligence and reasonable speed, his duties; if a judge does not so perform, he should be relieved of his duties. I commend this Board for the industry, impartiality and the manner in which it has performed its duties.

COURT ADMINISTRATOR

The office of Court Administrator has proved most important in the administration of justice. This office, composed of the Court Administrator, two Deputy Court Administrators, one Assistant Deputy Court Administrator and eight other employees, was created by our Court under the mandate of Article V, section l0(b), of the Constitution. In addition to the functions of the Court Administrator in connection with the Disciplinary System, reporting on Judicial Case Volume, the Institute for District Justices, District Justices' Manual and Statistical Reporting Forms for District Justices, the Court Administrator and/or the administrative office receives and processes reports of the Common Pleas judges under Pennsylvania Rule of Judicial Administration No. 703, which deals with dispositions of cases assigned to judges which have been delayed sixty days or more, exercises leadership in attempting to upgrade the administrative skills of the Common Pleas and District Justice Court Administrators, participates in the conduct of educational conferences and seminars of judges and court administrators, is a member of the new Judicial Council and supplies staff for its meetings, acts as the Court's liaison officer with the Legislature, audits the financial transactions of the Superior Court and, when necessary, the Commonwealth Court and the courts of common pleas and other lower courts, prepares the budgets for his office, the courts of common pleas and lower courts, and the district justices and presents these, as well as those prepared for the Commonwealth, Superior and Supreme Courts to the Budget Secretary, designs rules for the distribution of funds appropriated by the Legislature to reimburse the counties for the costs of operating the courts and distributes the checks therefore, participates in attempting to work out the problems of the Philadelphia court system and applies for and supervises the expenditure of LEAA funds from the Governor's Justice Commission for court projects at the state level.

ABA "CODE OF JUDICIAL CONDUCT"

Last summer the American Bar Association, after considerable study by a special committee of that Association on Standards of Judicial Conduct, approved a "Code of Judicial Conduct." Subsequently, our Court requested a recommendation from your Association concerning the Code and your Board of Governors, at its October meeting, made certain recommendations which were transmitted to our Court. At our November session, we heard a Committee of the Pennsylvania Conference of State Trial Judges, which suggested certain revisions in the Code. The Judicial Council has made recommendations to our Court concerning the Code with certain modifications considered appropriate for Pennsylvania. I hope that no later than our April session in Philadelphia our Court will adopt the Code, perhaps with some minor modifications, and that this new Code will receive the imprimatur of our Court and will effectively govern the conduct of judges, both at the trial and appellate levels, throughout the Commonwealth.

On January 18th of this year, our Court considered a recommendation of the Minor Court Rules Committee concerning a Code of Judicial Conduct applicable to district judges and justices of the peace. We approved, with several minor modifications, the recommendation of that Committee and on January 18th I signed an order rendering effective immediately this code of judicial conduct for the minor judiciary.

JUDICIAL COUNCIL

In the early part of 1972 our Court formed a Judicial Council, a fifteen-person body composed of judges and lawyers. Since the organization of that Judicial Council on June 28, 1972, the Council has met five times, including a meeting held earlier today. The first order of business for the Council was necessan1y directed to organizational matters: we adopted rules and established procedures for operation, created and defined the duties of our several Committees -- Executive, Finance, Operations and Personnel - and authorized an Advisory Committee on appellate rules to fill an obvious gap in the rule-making scheme of the unified judicial system. It is the function of the Judicial Council to make recommendations to our Court and to the General Assembly on a broad range of matters of concern to the judicial system. As examples of the work accomplished by the Judicial Council in its short tenure in office: the Council recommended to our Court a revised Rule of Judicial Administration on the seniority of judges and a new Rule on the Selection of President Judges, which recommendations were accepted and adopted by our Court at our session in January 1973; recommended to our Court a new Rule of Judicial Administration on the handling of inactive cases, and - a revised Rule of Judicial Administration providing a central place for filing local rules of court to overcome a very serious deficiency in our judicial system where even our Court has had no way of knowing the local court rules in effect in the various counties; and recommended to the General Assembly the inclusion of district justice matters in the sting witness fee system applicable to the courts. The Council, I predict, will play a most important part in the administration of justice in the Commonwealth.

DISTRICT JUSTICE SYSTEM

The new district justice system is now three years old and by this time next year the terms of all of the holdover justices of the peace and aldermen elected under the 1874 Constitution will have expired and the system established by the new Judiciary Article will be on its own. Our Court Administrator has been working closely with a task force of members of the General Assembly

established to work on a number of problem areas of the system and I have been advised that your incoming President. Mr. Powers, has proposed a study by a special committee of your Association to evaluate the new system and to recommend changes, if indicated. I welcome your interest and assure you of our cooperation in that field.

MERIT SELECTION OF JUDGES

I come now to one subject in which I have tremendous interest, one which I consider absolutely vital to our judicial system and one to which I spoke to your Association last year in Pittsburgh - the merit selection of judges at both the appellate and trial levels in all the judicial districts of the Commonwealth. On January 25th of this year, the Philadelphia Evening Bulletin editorialized in part as follows: "Any real effort to improve the administration of justice in Pennsylvania has to begin with the way judges are selected. Nothing can more certainly restore confidence in the system than choosing judges less through politics and more on merit." The President's Commission on Law Enforcement and Administration of Justice in 1967 stated: "No procedural or administrative reforms will help the courts, and no reorganizational plan will avail unless the judges have the highest qualifications, are fully trained and competent, and have high standards of performance."

Last fall a Committee of your Association called upon the Governor of this Commonwealth to seek his support and to put into effect a merit plan for the selection of judges. Shortly thereafter, the suggestions of the Committee were clearly and convincingly articulated by that splendid lawyer, Bernard G. Segal, in the following manner:

> "For many years informed opinion in the United States bas favored merit selection of judges. Leaders in the movement for judicial reform, amply supported by the media, have urged that important as elections and politics may be in determining who shall serve in the executive and the legislative branches of government, political considerations are not the proper basis for judicial selection. Citizen cynicism concerning our courts, and the judges who serve in them, will not be eliminated until our people are convinced that politics is not the primary consideration in the selection of judges. Merit selection provides the answer.
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> Precedents are ample and provide substantial assurance both as to the rightness of this course and as to its likelihood of success. The surge of States adopting this program in recent years establishes that it is emerging as the modern answer to the yearning of citizens to take and keep their judges out of politics. Today, 26 jurisdictions have merit selection and tenure plans, either entirely or substantially.
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> Originally sponsored by the American Judicature Society more than 50 years ago, embraced in 1937 by the American Bar Association, and adopted in Missouri by referendum in 1940, merit selection of judges has operated with success and general satisfaction wherever it has been instituted. Indeed, after having been in effect in Missouri as to the statewide appellate courts and large city courts, it was extended to additional trial courts in a rural area by popular referendum just a few years ago. No State having adopted a plan of merit selection or merit tenure, or both, has ever given

up the plan, and no Governor or Mayor, having instituted it, regretted having done so."

"Until 1970 voluntary merit selection plans were instituted informally by action of the Governors and Mayors. However, in 1970, Governor Marvin Mandel of Maryland promulgated his merit selection plan by formal Executive Order. In 1971, Governor Reubin Askew of Florida, Governor Jimmy Carter of Georgia, and less than five months ago Governor John J. Gilligan of Ohio promulgated such Executive Orders providing voluntary plans for merit selection of judges. We are advised that these four eminent Governors are highly pleased with the favorable responses of the media and the public."

"The unequivocal facts are that wherever merit plans have been adopted, a better caliber of judges has resulted; greater public acceptance of the selection process has followed; and the Governors have been relieved of the political pressures of office-seekers, their friends, and their political sponsors. The public is reassured, knowing that judges, who can have no political platform are selected on a merit basis. This is not to say that there is anything wrong about a lawyer's having been politically active prior to appointment to the Bench. Lawyers traditionally are leaders in politics. The American Bar Association has strongly urged that political activity should not bar a lawyer from appointment as a judge, any more than it should be his primary qualification."

ADOPTION OF MERIT SELECTION BY EXECUTIVE ORDER URGED

Merit selection of judges is an idea that must be adopted now, not in the future: I urge the Governor of this Commonwealth to institute immediately by executive order the plan for the merit selection of judges at both the appellate and trial levels. The present method of judicial selection in the Commonwealth is entwined with politics that the ability of the individual appointed is too often of secondary importance and political affiliation rather than professional ability is the criterion. We must face up to the fact that there has to be a better method of judicial selection than that presently in force, a method that would remove the judiciary from partisan politics, assure us of qualified judges and restore the public's faith not only in the ability of its judges but in the manner in which they are selected. Under the non-partisan merit plan judges are politically independent and public confidence in the individual judges in the judicial system and in the administration of justice is greatly enhanced.

The ability of a judge rather than his particular political affiliation is of vast importance if we are to successfully carry out the work of the judicial system.

Of course, the best way to secure merit selection of judges is to provide for such selection by constitutional fiat. The time involved and the urgency of the present problem are such that we cannot await a revision of the Constitution.

I earnestly recommend to the Governor that in the event of a vacancy, either in a state-wide or a local judicial office, he appoint by executive order a nominating commission to advise and assist

him in filling judicial vacancies. If such were done by executive order the Governor would be obligated to rely upon the list submitted by such a panel, reserving the right to ask the panel to submit further names of qualified individuals. There are at the present time vacancies in judicial office in the Commonwealth and I hope and trust that the Governor, in appointing to such vacancies, will nominate a commission to submit a list of qualified persons from which he can fill the existing vacancies.

The time is now, not tomorrow, for the adoption of a sound, efficient merit selection of judges. If we are to instill in the minds of the public confidence in judges - a confidence which is very frankly sorely lacking today - we must have upon the bench of the Commonwealth the most qualified and able persons, persons of integrity, ability and experience. I urge upon this Association that it use its every effort to persuade the Governor to adopt the commission method for the selection of judges and remove the judiciary from partisan politics.

INCREASE IN JUDICIAL SALARIES SECURED

In recent days we have rectified at long last a very critical problem involved in the administration of justice - that of providing adequate compensation for the judiciary. I have always maintained that, unless the compensation of judges was increased, two very dire results would follow: first, we would lose many able, competent and experienced, judges now rendering splendid judicial service who could leave the judiciary and enter into private practice at much greater compensation; and, second, we would be unable to attract to the bench the type of persons qualified, by integrity, experience, ability and temperament, to be good judges. In recent months I have been faced with the possibility that, if judicial salaries were not increased, our system would lose at least twelve to fifteen able judges.

Fortunately, through the well-considered reports of the Commonwealth Compensation Commission, the efforts of the Pennsylvania Conference of State Trial Judges, excellent editorials in most of the news media and last, but certainly not least, through the vigorous efforts of the officers and members of this Association, we have now secured an increase in judicial salaries.

The recommendation of increased compensation by the Compensation Commission, the support of that recommendation by your Association and most of the news media and the approval of the Commission's recommendation by a majority of the General Assembly present a real challenge to the judiciary: All these actions were predicated upon the belief that judges would fulfill their judicial duties with integrity, diligence and ability. It is now up to the judges to be worthy of the confidence reposed in them and by their actions to prove they are entitled to this increased compensation. I say to the judges of this Commonwealth that they must either perform their duties with diligence or sacrifice the goodwill of those who made possible this increased compensation. The time has come to "fish or cut bait."

SUPREME COURT WORK LOAD

I would be less than honest were I to report that the Appellate Court Jurisdiction Act and the creation of the Commonwealth Court have served to alleviate the workload of our Court since

we now have more work than ever before in the history of the Court. Last year we were called upon to consider 482 cases, either argued or submitted (or ten more than 1971) and 654 allocatur petitions.

This situation arises from several causes. First, we grant entirely too many petitions for allocatur. In 1972, 654 petitions for allocatur were filed of which 155, or better than 23%, were granted. Compared with the Supreme Courts of California, New Jersey and most of the other states, we are granting double the number of allocators they do in these other Supreme Courts. My brethren are fully aware of my position in this respect because I have spoken to them time and time again. Too many cases are being heard by our Court which should have been finalized by the decisions of either the Superior or the Commonwealth Courts and we are forced thereby, as a result of the ensuing workload, to neglect appeals of greater magnitude. A second cause is the fact that there are entirely too many per curiam opinions in the Superior Court. In so stating, I recognize the very, very large workload of the Superior Court last year, 668 cases orally argued, 445 cases submitted on briefs and 4,287 miscellaneous petitions - and I further recognize there are many instances where per curiam opinions are appropriate vehicles for the disposition of appeals.

We face the inevitable and understandable fact that because of the great number of per curiam opinions we have dissatisfaction on the part of the bench, and bar and the litigants before that Court.

To remedy this situation, my recommendation is twofold: first, that the Superior Court, in lieu of simply per curiam opinions, write in appropriate cases memorandum opinions giving their reasons for affirmance; and, second, more important, a revision of our present Constitution to relieve this situation. As to the latter - I know that which I suggest will certainly not meet with the approval of my friends on the Superior Court - my experience is that it has now become a necessity for a revision of our Constitution to increase the membership of the Superior Court - now a constitutional court - from a membership of seven to a membership of thirteen with the power in that Court to sit in panels of three, each panel to be presided over by the President Judge. The Constitutional Convention should have. changed the structure and the powers and duties of the Superior Court; that it failed to do so is tragic. I urge upon this Association that it exert its efforts, its prestige and knowledge to try to bring about a constitutional revision to make the Superior Court a thirteen-member court empowered to sit in panels.

Lastly, we must acknowledge that, despite efforts at improvement, we are still far from solution of the "backlog problem" on the criminal and civil sides of our courts.

In 1972, the statistics show there were 61,055 defendants charged in Pennsylvania with indictable offenses and the dispositions totaled 57,167. Adding the difference to the 1971 inventory of 29,441 leaves us with active pending criminal cases of 33,329, or an increase of over 14% over the previous year.

While the new criminal cases rose only 1.5%, the dispositions fell by 1.7% even though there was an increase of forty-seven new judges during 1972.

In 1972, on the civil side there were 22,200 new cases marked "ready for trial" and 20,200 cases

were removed from the trial system by disposition or transfer to arbitration. At the end of 1971 the inventory of civil cases was 18,000: in 1972, 20,127, an increase of 12%.

It is also worth noting that the inventory of criminal cases within and outside of Philadelphia is increasing at the same rate and that arbitration has had a most salutary effect on the civil side of the Philadelphia court system.

Despite the creation of new judgeships in various counties, despite new techniques, such as the preindictment program and arbitration up to $10,000, and despite the efforts of many hardworking president judges such as President Judge Jamieson and administrators, we are making tittle or no progress in diminishing the backlog of both criminal and civil cases.

RECOMMENDED IMPROVEMENTS

The truth is self-evident that our system of the administration of justice, particularly in the criminal field, needs drastic improvement. Such improvement can only be accomplished by the concerted and dedicated efforts of every judge and every lawyer in the Commonwealth and, hopefully, with greater understanding of our problems on the part of the public. We must take a new, hard, fast look at our criminal system. Criminal case disposition, at both the appellate and trial levels, must be increased; that means more hours of work for all judges; that means less dilatory tactics on the part of lawyers; that means more intelligent screening of cases, more readiness to try cases, more effective measures to insure at the time of trial the presence of necessary witnesses and less requests for continuances of the part of Commonwealth counsel; that means continuances allowable only for real, not fanciful cause shown; that means more hours spent in actual trial and longer actual working days for both judges and counsel; that may even mean holding in each courtroom several trials daily - one beginning early in the morning and adjourning late in the day and one beginning late in the afternoon and extending to late evening hours, under different judges, of course. In short, what is required is a better organized and more thoroughly planned system.

Crime and violence are paralyzing with fear every community, urban and non-urban. Responsibility for this situation is placed on the system of administration of justice and encompasses every step in the criminal process: the police, the judiciary at all levels, the district attorneys, defense counsel, the prison system and the pardoning and parole procedures. We in the system must take more affirmative and innovative steps toward the prevention of crime as well as the punishment of those convicted of crime. We must step up the procedures so that those accused of crime, whether on bail or not, may be more speedily tried and, once convicted, placed in confinement awaiting finalization of their convictions. We must improve our post-trial procedures so that we come to a point where appeals from convictions are finalized and the flood of habeas corpus and PCHA petitions arrested. In the sentencing of those convicted of crimes our judges must be more realistic and make sure properly convicted criminals are not let loose upon our streets to do again that which they did before. Also of paramount importance, we must initiate reforms in our prison systems so that prisons can become places truly bent on rehabilitation rather than places for breeding more crime.

UNITED STATES SUPREME COURT GUIDELINES

At both the appellate and trial levels, in the criminal field we are bound by the guidelines set forth by the United States Supreme Court, many of which I personally applaud and believe to have been long overdue. However, in the interpretation of these guidelines too many judges are apt to "strain at a gnat and swallow a camel" or "pick fly specks out of pepper" and go far beyond the letter and spirit of the guidelines. As a result of this semantic, legalese and technical interpretation, the pendulum has swung so far toward protection of the rights of those accused of crime as to ignore the equally protectable rights of the victims of crimes and society. I believe that the time has come for a proper balancing of the rights of the accused and the rights of society.

IMAGE OF JUSTICE SYSTEM MUST BE IMPROVED

All of us who are interested in the administration of justice, whether lawyers or judges, have an awesome responsibility in this day and age in the performance of our duties. We must - I repeat, we must - improve the image of the judicial system - and that includes members of the legal profession - in the public eye and we must, by our actions, restore trust, confidence and faith in the public in the integrity of our judicial system. Time and again we have been told that the judiciary is the bulwark for the protection of individual liberties; over the last several decades the public, with reason, has come to doubt our viability to protect human rights. I trust that in the days to come this Association, acting in concert with the judiciary at all levels, may do something to really vitalize the administration of justice, to reduce the backlog problem and to restore in the public mind a trust and confidence in the integrity of judges and a realization that judges are cognizant of and will protect not only the rights of those accused of crime but also the rights of society.

I am reminded of that which Marcel Proust once wrote: "Wisdom is not given to any of us. We must each travel the long, bard road which no one can take for us. We must each in our own conscience decide what is right or wrong and learn to live with it." May such wisdom be visited upon all of us.