State of the Judiciary in the Commonwealth
Chief Justice Benjamin R. Jones, Pennsylvania Supreme Court
Message to the Pennsylvania Bar Association
May 16, 1975, in Pittsburgh, Pennsylvania

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

For the fourth time I am privileged to report to you on the "State of the Judiciary in the Commonwealth." Last year I noted the critical nature of the times in which we live. Today, as then, the times are still critical, albeit for different reasons. As it affects the administration of justice the most distressing situation is the prevalent attitude of the public vis-a-vis judges and lawyers.

PUBLIC IMAGE OF THE JUSTICE SYSTEM

The public is highly critical, perhaps with good reason, of that which is taking place in the administration of justice and places the blame on both the judges and the lawyers. Barely a day passes that the news media does not feature stories on the so-called leniency of judges, on the high rate of recidivism of persons accused and convicted of crimes and yet still walking the streets and on plea bargainings which, seemingly, countenance the dismissal of more serious in favor of less serious offenses and, seemingly, disfavor both the victims of crime and the public at large. The news reports berate the dismissal of charges against persons accused of crimes whose confessions have been suppressed because such confessions were not obtained within a few hours after they were taken into custody. These stories portray judges and lawyers as overly protective of the rights of the accused and underly protective of the rights of victims of crime and, thus, create a public image which destroys confidence and trust in the efficacy and integrity of the judicial system.

I fully believe the primary task which now confronts us in the legal profession is to determine how we can restore public confidence in the administration of justice. The problem is not novel - even in Biblical times the lawyers of that day and age were attacked - but the lack of novelty does not detract from the very serious import of the problem. This problem must be solved. In my twenty-three years on the bench I have never received so much mail from so many well-intentioned and involved persons who are dismayed at the present course of the law, particularly in the criminal area. We must realize that we of the bench and bar have "lost face" in the eyes of the public. In the days ahead top priority must be given to a restoration of public trust in the law and a reassurance to the public that the law is still the bulwark of liberty.

Last year I mentioned that Governor Shapp, on May 1, 1973, had signed an executive order pledging himself to appoint two Commissions: (1) a Commission composed of seven members - three laymen, three lawyers and myself - to recommend to him, in the event of a vacancy in a judicial office at the appellate level, a list of three names from which he pledged to make his appointment; and (2) the other Commission composed of two lawyers and three laymen, to be implemented by the addition of laymen and lawyers from those judicial districts where - in

vacancies in trial judgeships occurred, which would submit to the Governor three names from which he pledged to make his appointment. I am happy that the Governor has continued by a new executive order to insure merit selection of judges to fill vacancies as they occur on the bench and, thus, place politics on the "back burner" when members of the judiciary are to be selected.

While the merit selection of judicial appointees is a major step forward in eliminating politics and political machinations from the judicial system arid assuring the appointment to the bench of able, honest and industrious persons, another major step needs to be taken. Unfortunately, our recent constitutional changes did not provide for a "retention" ballot to keep in office those appointed by the Governor who, after such appointment, have shown themselves qualified. We cannot expect men and women, of the type who are qualified to serve on the bench and whom the public deserves to have as judges, to accept such appointment unless they can be assured, so far as humanly possible, that they can avoid a political and partisan election campaign and terms in office of short tenure. The retention of appointed judges on a merit basis will require passage of appropriate legislation by the legislature at two consecutive sessions of a proposed constitutional amendment to be voted on by the electorate. I urge this Association to bend every effort now to awaken the legislature to the absolute necessity of the passage of this vital legislation and to arouse the electorate to demand such an amendment. The merit selection of judges has been accomplished by executive order; the merit retention of judges remains to be accomplished. That should be a major goal of this Association and the Association should call upon the legislature to pass the necessary legislation. Without the merit retention of judges we have a half and not a full loaf.

JUDICIAL AND PROFESSIONAL RESPONSIBILITY CODES

The conduct of judges and the conduct of lawyers are now governed by a Code of Judicial Conduct and a Code of Professional Responsibility, both approved by our Court. The former Code governs the conduct of every judge at the trial and appellate levels in the Commonwealth and the latter Code governs the conduct of lawyers. The approval of these Codes does not per se improve the conduct of lawyers and judges, but it does give to our Disciplinary Board and to our Judicial Inquiry and Review Board the requisite sanctions to impose on miscreant judges and lawyers. I repeat what I said last year that compliance with these two Codes must and will be strictly demanded and enforced by our Court.

JUDICIAL INQUIRY AND REVIEW BOARD

The Judicial Inquiry and Review Board is doing a magnificent job. The Executive Director, Richard E. McDevitt, is called upon from time to time to speak before groups in other states which are still limited to impeachment procedures and, through the American Judicature Society, shares the experience of our Board with other jurisdictions encountering problems. Pennsylvania is leading the way to enforce the Code of Judicial Conduct by its Judicial Inquiry and Review Board.

Matters handled by the Board include complaints from litigants, lawyers, president judges, court administrators, district attorneys and reports appearing in news media. In magisterial districts the

individual tends to believe that the justice is his own personal representative sitting for the purpose of giving him the justice to which he believes himself entitled. The justice is usually a non-lawyer, with a large case load of small civil claims and criminal matters brought in by local police and state police. Because of these factors the justice of the peace is especially vulnerable to complaints charging violations of court rules, administrative procedures and the Standards of Conduct prescribed by our Court, comparable to the Code of Judicial Conduct applicable to other judges.

Complaints against judges are directed to alleged incompetency, intemperate and discourteous conduct, misconduct as an attorney prior to ascendancy to the bench and improper delays. However, we must recognize that the majority of complaints come from disappointed litigants and defendants who envisage the Board as an appellate body and who are seeking personal remedies.

With an augmented staff the Board now has substantially decreased its backlog, increased its investigation coverage and has reduced the work ordinarily handled by the Attorney General's office by drawing charges, checking evidence sufficiency and researching legal issues for briefs and arguments. The increasing recognition of the Board's importance and value to the maintenance of high standards of conduct and competency in the judiciary is resulting from an increase in selected complaints of substance from professional sources.

On December 31, 1973, there were forty-four complaints pending against justices of the peace and ten complaints against judges; complaints against justices of the peace received in 1974 totaled forty-seven and against judges eighty-one. During 1974, the Board disposed of seventy-four complaints against justices of the peace and seventy-nine complaints against judges, and on December 31, 1974, had pending only seventeen complaints against justices of the peace and twelve against judges. In its case disposition, the Board dismissed, after investigation, complaints against fifty-nine justices of the peace and sixty-eight judges and dismissed five complaints against justices of the peace whose term of office expired during investigation or who died while under investigation. Two justices of the peace resigned while under investigation and four justices of the peace and ten judges were admonished and warned. Our Court reprimanded one justice of the peace, suspended one justice of the peace, removed one justice of the peace and dismissed charges against one justice of the peace and one judge. This Board provides the public with the assurance that the conduct of judges at all levels and that of justices of the peace is really being policed and that misconduct on the part of a justice of the peace or of a judge will not only be countenanced but will be punished.

DISCIPLINARY BOARD

The Disciplinary Board, after two and one-half years, has been actively engaged in disciplining the members of the legal profession. Gilbert Nurick, a former President of this Association, can well be called the "Father of the Disciplinary Board." I regret that as of April 1 of this year, Mr. Nurick requested, for personal reasons, not to be reappointed, his first term having expired. I cannot begin to tell you of the devotion, the loyalty and industry exhibited by Gilbert Nurick and of the immense amount of time and effort he expended in the work of the Board. All the members of the Board, in addition to Mr. Nurick, have given of countless hours to the work of

the Board and, together with 106 members of various hearing committees throughout the Commonwealth, deserve our support in the future and praise for that which they have accomplished in the past. During the period of its existence from November 1, 1972, to March 31, 1975, there were a total of 4,144 complaints received, of which 3,292 have been finally disposed of; the balance as of March 31, 1975, consisted of 852 undisposed complaints. During 1974, 1,707 complaints were received, 1,759 disposed of and petitions for discipline were filed in thirty-nine cases. Twelve of the petitions for discipline were dismissed, four lawyers have been disbarred, twelve suspended, two subjected to public censure, seven privately reprimanded and sixty lawyers given informal admonitions. In an impartial and highly effective manner the Disciplinary Board serves both the interest of the public and the interest of this Association by disciplining members of the profession and providing for punishment where punishment is indicated. To the members of this Board - the ombudsman of the public vis-a-vis the lawyers - we should all be deeply grateful.

CRIMINAL AND CIVIL BACKLOGS

One of the frustrating factors in the administration of our judicial system is the backlog, both criminal and civil, in our appellate and trial courts. With the increase in crimes and more criminal cases coming into the system each year, the effort to eradicate the criminal backlog becomes more and more difficult. The ever increasing motor vehicle litigation, augmented by new and different forms of litigation, such as environmental lawsuits, various class actions, civil rights actions, etc., add to the burden of keeping the backlog in line. The creation of new judgeships has helped a great deal but the creation of such new judgeships has added emphasis in most of the judicial districts to the crying need for more space for courtrooms and other facilities for an efficient judicial system. Particularly in Philadelphia is the need for more court-related space acute since the present facilities are wholly inadequate. With a new Federal Building nearing completion in Independence Mall and with a vacancy in the near future of the present Federal Building at Ninth and Chestnut Streets, we do have an opportunity for more space wherein to place the civil side of the court system. I am informed that the acquisition of this building would greatly relieve the under spaced system. Former President Judge Jamieson and I have both written to Senators Scott and Schweiker urging them to secure the passage by the Congress of the necessary legislation to turn over the old Federal Building to the Philadelphia court system. I urge this Association, the Philadelphia Bar Association and the Philadelphia Judicial Council to join in securing this building and thereby render more viable the court system in Philadelphia.

SUPREME COURT CASE LOAD

Turning from generalities to specifics, may I report that in our Court in 1974 there were 883 appeals filed. We heard oral arguments or had submitted to us 582 cases, the largest number in the history of our Court and which represented an increase of approximately 24% over 1973. We sat last year for fifty-six days hearing oral arguments, approximately 15% of the entire year. Of these cases submitted or argued each judge was assigned approximately eighty-three opinions to be written. I would remind you that these eighty-three opinions per judge would have to be written during the time when we were not hearing oral arguments, which means that each judge would have approximately three and one-half days per opinion. Some opinions can be written

within that time but the bulk of the opinions can be written only after extensive research, study of the record and briefs and careful preparation. To continue at this rate would be impossible.

I realize full well that our Court has been criticized by many judges, lawyers and laymen for delay between the time of argument or submission and the time an opinion is handed down. Perhaps my explanation of the work load of our Court will make understandable this delay. In order to alleviate our work load, as of April 7, 1975, all equity cases will now be heard by the Superior Court, which will greatly decrease our case load. At the same time, I am assured by the President Judge of the Superior Court that that Court can assume this additional work load.

In addition to our opinion writing, we had 724 petitions for allocatur filed, each of which had to be studied, and considered by the members of the Court and 1,407 miscellaneous petitions, such as petitions for supersedeas, prohibition, mandamus, to fix bail, for continuance, etc., and we were called upon to assign 551 judges from one judicial district to another throughout the Commonwealth.

SUPERIOR COURT CASE LOAD

The Superior Court also has a tremendous work load which it is handling better than it ever has. Last year 2,203 appeals were filed, 796 cases were heard on oral argument, 859 cases were submitted on briefs and 1,268 opinions were filed. In addition thereto, that Court had presented to it 4,731 petitions of a miscellaneous nature.

COMMONWEALTH COURT CASE LOAD

In 1971 the Commonwealth Court docketed 1,301 cases, either within its original or appellate jurisdiction; last year 1,713 cases were docketed, an increase of 31%. That Court heard 687 cases argued as contrasted with 363 cases in 1971, an increase of 89%. Evidentiary hearings, original jurisdiction cases and de novo hearings in direct administrative appeals consumed 302 days of its judicial time, contrasted with 95 in 1971. In 1974 the Commonwealth Court handed down 731 opinions contrasted with 293 in 1971. These statistics, of which the Commonwealth Court can well be proud, are of an ominous nature in that all the judges of that Court presently feel and believe that they are working at maximum capacity, if not, in fact, beyond it. May I add that, in order to keep abreast of the work in the appellate courts, each appellate judge must now work thirteen to fourteen hours per day for five days of the week, plus hours each weekend. That is why I am becoming known as "Jones, the one-time fisherman!" To the alleviation of the present work load in all three appellate courts, the members of such Courts and this Association should give immediate thought. It has been my recommendation that the Commonwealth Court be increased in size to at least ten members, to be administratively restructured along the lines of having three of its judges on a rotating basis assigned to its original jurisdiction responsibility, with the remaining seven concerned with hearing arguments and disposing of direct appeals from state administrative agencies and from decisions of Courts of Common Pleas within its appellate jurisdiction.

POSSIBLE RESTRUCTURING OF SUPERIOR AND SUPREME COURTS

I have suggested for years, much to the consternation of some of the members of the Superior Court, that that Court also be restructured, realizing full well that such restructuring would require a constitutional amendment. That Court cannot continue - and it is a hardworking Court - with its tremendous work load unless it becomes an enlarged Court with the right to sit in panels, each panel to be presided over by the President Judge. Such restructuring would not take away from the dignity of the Court but would greatly aid an overworked Court. I heartily recommend that this Association seek through appropriate legislation and a vote of the electorate an amendment of the Constitution along these lines.

As to our Court, it may well be that the time will come when we, too, will have to be restructured as Supreme Courts in other parts of our country have been restructured. With equity jurisdiction now in the Superior Court, I hope that for the present we can successfully keep abreast of our work, reduce our backlog and enable us to produce better opinions.

BACKLOGS - STATE-WIDE PERSPECTIVE

In regard to backlogs, on a state-wide basis the situation in some judicial districts is improving while in others it is not. A comparison of the state-wide judicial statistics of the Courts of Common Pleas in 1974 with the preceding year shows an overall increase, both in the criminal and civil areas, in new case filings, dispositions and inventory. In 1974 263,359 new cases were filed, an increase over 1973 of 20,044 cases or 8.2%. Dispositions for the year reveal that the trial courts were working effectively and removed 261,729 cases, a 7% higher disposition rate than in 1973. Despite this increase in dispositions and removal of a substantial number of inactive cases, the inventory of undisposed cases increased - an increase of less than one-half of 1% - to 89,185 cases.

New criminal cases are following the national trend and show an increase of 6.6% in 1974 over 1973 to 60,638 defendants, with almost equal dispositions of 60,420, up to 5.1%. However, it is noteworthy that the inventory of criminal cases decreased by 3.8% to 26,804 defendants.

New civil case filings were up in 1974 over 1973 1.6% to 19,597 and dispositions dropped 6.6% to 19,134 cases. The net result is an increase of 2.5%, for an inventory of 18,949 undisposed cases.

Arbitration continues its major role as a diversionary tool in the civil case volume, removing 30,392 cases from the system.

Divorce has experienced an increase in work load, with new filings of 35,462, up 4.4% in 1974 over 1973. The number of dispositions, 33,621 cases, was similar to the preceding year. The inventory increased 15.6% to 13,649.

Juvenile cases increased in 1974, new cases up 30% to 35,120, dispositions up 24% to 38,990 cases, with a net increase in inventory of 4,388 undisposed cases, up 35%.

Increases were experienced to a lesser degree in domestic relations cases, with 41,806 new cases, up 11%; 42,133 dispositions, up 14%; and 5,305 cases still inventoried, down 5.8%.

Other categories showing like increases were post-conviction appeals, custody cases, mental health petitions, adoptions and Orphans' Court audits.

As of the first of this year, there were 89,185 undisposed cases. Of this total inventory, criminal cases account for 30%, civil cases "at issue" 21%, arbitration 17%, divorce 15%, domestic relations 6%, juvenile cases 5%, and the remaining 6% is composed of Orphans' Court matters, adoptions, custody cases, post-conviction appeals, mental health petitions and other miscellaneous matters.

As to the state-wide minor judiciary, exclusive of the Philadelphia Municipal or Traffic Courts or the Pittsburgh Police Magistrates, during the last six months of 1974 there were a total of citations and complaints of 765,745, of which at the end of the year 667,903 had been disposed of.

In the Philadelphia Traffic Court the total traffic citations were 1,750,000, of which by the end of the year 818,417 were disposed of. I am happy to report that, while the disposition in 1974 exceeded 1973 by only 4,000, there is every indication that the situation will improve and that on a twelve-month basis the dispositions will have increased in cases of 15%. In that court the collections increased $706,000 over 1973 and collections should increase $1,000,000 over 1973 in the fiscal ten-month period.

In Allegheny County there were 8,423 criminal defendant records received in 1974, a decrease of only 25 cases as compared with 1973. Eight thousand fifty-nine defendant cases were disposed of in 1974, 3,091 less than in 1973, which resulted in an increase in inventory of undisposed criminal cases from 2,397 in 1973 to 4,109. in 1974. In the civil area in Allegheny County there were 5,026 cases marked ready for trial, an increase of 226 cases. Four thousand sixty-one cases were disposed of, an increase of 650 cases as compared with the preceding year, and the inventory of undisposed "ready" civil cases increased from 4,367 to 4,519 in 1974.

In the areas of arbitration, juvenile and domestic relations, there were substantial reductions achieved in the inventories in all instances. In the Philadelphia Municipal Court there were 28,676 defendant case records received in 1974, an increase of 370, but the court disposed of 33,385 cases, a disposition increase of 6,535. The number of undisposed criminal cases in Municipal Court for 1974 was 4,585, a reduction of 3,022 cases from the preceding year. It is evident that the Philadelphia Municipal Court is proving a most valuable asset in helping to decrease the Philadelphia backlog.

A study of the court figures in Philadelphia County indicates that on January 7, 1974, there were 540 active homicide defendant records, that during 1974 new homicide defendant records entered the system to the extent of 456 and that previously deferred homicide defendant records were reinstated during the year in the amount of 49, making a total homicide record of 1,045. During 1974 610 homicide defendant cases were disposed of so that at the end of the December term there were 407 active homicide defendant records, which included 151 cases which had been tried and sentence deferred, and at the end of the first four months of this year there were 256 homicide cases available for trial.

In miscellaneous major criminal cases, exclusive of homicide cases, there were 1,288 active cases on January 7, 1974, 1,582 new cases entered the system and previously deferred major case defendant records reinstated during the year totaled 116. Of 2,986 major case defendant records to be disposed of, the Court of Common Pleas of Philadelphia County disposed of 2,113 of those cases and at the end of the December term there were only 681 active major case defendant records, which reflected a decrease in this category of 607 during the year period. Taking into account that 111 of the 681 cases had been tried and the defendants await sentences, the deferred major case backlog in this category was at 539 at the beginning of the year.

A.R.D.

I might add that a valuable tool in solving the backlog throughout the Commonwealth has been the A.R.D. program. By the use of A.R.D. approximately 18,000 cases in the criminal area were removed from the trial stream. To those counties which have not adopted such a program, I recommend this program as a vital tool in clearing up the backlog in the criminal area. The problem of the backlog must be met. To do so will require more efficient administrative procedures in bringing cases to trial, more cooperation on the part of prosecutors and defense counsel and, last but certainly not least, harder work than ever on the part of our judges. We who are engaged in the administration of justice must make up our minds to eradicate the backlog.

RULES COMMITTEES

I want to thank the members of the Criminal Procedural Rules Committee, the Civil Procedural Rules Committee, the Minor Court Civil Procedural Rules Committee and the Orphans' Court Rules Committee for the excellent and devoted work which they have done and are doing. Our Juvenile Court Judges' Commission has prepared and presented new rules of procedure in juvenile cases which are now awaiting approval by our Court. I might add that we have now by rule permitted the appointment of masters in the juvenile field, which should correct some of the fault in the present system. We are awaiting a report from the Appellate Court Rules Committee headed by James A. Montgomery, Jr., former Chairman of this House of Delegates. With the submission of their suggestions, followed by court actor, we will bring up to date our appellate court procedures, which I hope will be of help to the appellate courts as well as to the members of the bar.

MEDICAL MALPRACTICE

In recent months we have witnessed the growth of a new and disturbing situation in the field of medical malpractice law. Large verdicts in some states have resulted in fantastically increased premiums for medical malpractice insurance and in fact the cessation of writing malpractice policies by some insurance companies. In recent weeks we have read and heard about halts and slowdowns on the part of some members of the medical profession, which cannot help but be of very serious import to all of us in the Commonwealth. Doctors are forced to the position of either retiring, practicing without malpractice insurance or else, if they can secure the insurance, passing the tremendous increase in premium on to the patients. All of us are affected by this problem. Critics have leveled the charge at members of our profession that a major reason for

increased malpractice premiums lies in the contingent fee agreements which the critics urge are excessive and unrealistic. I do not believe that setting a maximum contingent fee alone will solve the problem. A possible solution to the medical malpractice problem might be the creation of panels, independently selected, composed of members of both the legal and medical professions and lay persons. I understand that you will be considering this subject during this meeting. I believe that a screening process, as a condition precedent to the institution of suit, can discourage frivolous claims. But the process should be mandatory, whether by rule of court or by statute. I assure you that any plan which you recommend calling for a rule of court on this subject will receive the immediate and serious attention of our court and our Civil Procedural Rules Committee.

I urge this Association to continue its study of this problem and, in cooperation with members of the medical profession, come up with a plan which would protect injured patients and, at the same time, reduce the costs of medical malpractice insurance premiums. So long as the critics level charges against the legal profession such charges seriously impair the public image of our profession. I believe it is incumbent on this Association to arrive at an answer which will satisfy the public that members of our profession are serving the public interest.

INCREASE IN CRIME

On each occasion I have had the honor to speak to you I have stressed that the number one problem in our society today is the alarming increase in crime, particularly crime of a violent and vicious nature. I start out with the proposition that every person should be protected from criminal conduct in his home, his place of employment and on the streets. Both in urban and non-urban areas crimes of violence have increased so that our citizens are not only aroused but alarmed and frightened. We in the judiciary must share the blame for the present situation. Criticism is leveled at the judiciary and, in my view, with some reason, for the too frequent reversal of convictions on purely technical grounds and for laying down rules which "handcuff" the police, prevent full and expedient solution of crimes and hamper efficient police protection. We seem in many instances to have substituted legalese for common sense in the enforcement of the criminal law. Victims of crimes and other members of society have rights which we are bound to respect, just as we are bound to respect the rights of those accused of crime. We are faced with a challenge which we must meet. We must face up to the fact that if we are to deter crime and adequately punish for criminal conduct, a stricter enforcement of our criminal law is a prime requisite. We cannot fully abolish and eradicate crime but we can aid in the prevention of future crimes by using common sense in dealing with those accused of crimes rather than searching for "fly specks in pepper" to set aside convictions.