

State of the Judiciary in the Commonwealth
Chief Justice Michael J. Eagen, Pennsylvania Supreme Court
Message to the Pennsylvania Bar Association
May 11, 1978, in Pittsburgh, Pennsylvania

I assumed the Chief Justiceship of Pennsylvania on March 1, 1977. On May 13, 73 days later, I appeared before this August body at your meeting in Hershey and said in part: "The court system, including the Supreme Court, is not without its problems and one of the major problems- if not the major problem is the unreasonable delay in many instances in the disposition of litigation." At least you must admit my words started things happening.

I am not here today to make excuses or to offer a defense of the Supreme Court. I readily concede and publicly acknowledge as I did on May 13, a year ago, that in recent years some decisions have been too long delayed by the court. I hasten to point out, however, that in some instances, if not in most instances, a satisfactory explanation can be given for the delay. But if a delay occurred in only one instance where it could have been avoided, it was one delay too many.

I said a moment ago, I am not here to offer a defense on behalf of the Supreme Court, for the court needs no defense. From my studies of other state appellate courts and my conferences with the Chief Justices of other states, I am persuaded the Supreme Court of Pennsylvania is one of the hardest-worked top appellate courts in the United States. The records prove that the Supreme Court of Pennsylvania hears more than twice the number of appeals heard by the Supreme Court of the United States, The New York Court of Appeals, the Supreme Courts of California, Ohio, New Jersey, Michigan, Illinois, Massachusetts, Florida, Texas, Wisconsin, and many Federal Circuit Courts of Appeal. I realize statistics are, more often than not, deceiving, but, for what they are worth, permit me to cite a few. In 1976, the Supreme Court of Pennsylvania filed a total of 583 opinions. In 1977, it filed a total of 740 opinions, 473 of which were majority opinions. By comparison the Supreme Court of California filed 191 opinions in 1976 -- 583 in Pennsylvania, 191 in California. The Supreme Judicial Court of Massachusetts filed 256 opinions, and the Supreme Court of New Jersey filed 167. I do not intend to imply by this that numbers are the all-important or the prime consideration. In my mind quality is and should be the ultimate goal; in fact, efficiency measured solely by productivity or speed is not likely to improve the quality of justice and may be just as destructive as the inefficiency it seeks to replace. Assembly-line disposition of cases should never be the substitute for full and reflective justice. It is true that both fairness and speed are vital to our legal system, but never let the need for speed overwhelm our quest for justice.

I have suggested to our court, without much success to date, that we are prone to discuss too much in our opinions and that more refined and concise opinions would not only be wise but would tend to accomplish speedier justice. I have on occasion quoted Dean Laub, who said dissenting opinions are like the sex life of a hippopotamus - no one is really interested except another hippopotamus. In this connection, it may prove of interest that, since the first Law Day in 1958, the appellate courts of this nation, both state and federal, have rendered opinions requiring more than 1,200 volumes for their publication and totaling more than 1,000,000 printed pages. In 1977, the appellate courts of this nation handed down 46,000 opinions of which about

3,000 were the decisions of the appellate courts of this commonwealth. One might ask if a practicing attorney can keep pace with such a growing mountain of paper.

Coincidentally, you may have observed that in the last few months our court has disposed of more appeals without opinion than was the practice heretofore. For this I assume responsibility, but I hasten to assure you that in every instance the issues posed by the appeals were carefully considered and discussed, and no appeal has been finalized until each and every member of the court has had the opportunity to study the briefs filed by counsel.

Now let us focus on the more important specifics. When I addressed your body in 1977, I not only decried the delays in the disposition of litigation on all levels of the Pennsylvania court system, but I stated: "My administration is dedicated to utilizing every reasonable means to eliminate or reduce these delays." Because of the court's efforts and cooperation, I have been able to keep my promise.

On March 1, 1977, there were a total of 281 appeals heard and awaiting decision in the Supreme Court. However, as of April 1, 1978, this number was reduced to 160. Moreover, some of these 281 appeals had been awaiting decision since 1974. But as of April 1, 1978, 13 months later, all 1974 and 1975 cases had been disposed of. Furthermore, of the 420 appeals presented to the court in 1976, only four are still awaiting decision, and of the 386 appeals heard in 1977, more than half have been finally disposed of. More importantly, unless some unexpected circumstances interfere, I assure you that, after the fall session of court in Pittsburgh this coming September, every appeal heard prior to March 15, 1978, will have been decided and finalized. In other words, in September the court will have decided every appeal which was heard six months or more prior to September, and the court is determined thenceforth to decide all appeals within six months of presentation.

My focus so far has been on what I frequently term the "court's backlog." This, of course, is a problem only the court can solve and, as I have indicated, the court has faced up to this problem and is well on the way to solving it. But there is another problem, in my view a more serious one, which the court cannot solve by itself. This is what I term the "prothonotary's backlog."

Prior to 1968, the traditional role of the Supreme Court was to decide the appeals presented to it. Under the judiciary article of the new constitution, the court has been given the added responsibility of welding into reality the concept of a unified judicial system. The problems incident to the supervision of the state's court system require untold time and attention by every member of the court. These added administrative duties, plus the "Law explosion" or increase in judicial business, have made it impossible for the court to keep abreast of the number of appeals filed. Beginning with 1975 and continuing into 1976 and 1977, a substantial number of appeals were not reached during the year of filing. This has caused a delay in appeals being listed for hearing and has created a "prothonotary's backlog" which will continue to grow and result in chaos unless checked. Corrective action is urgently needed. In this, you can and must help.

After months of study and discussion, I am convinced that the only answer is to make the Supreme Court a Certiorari Court and transfer its direct appellate jurisdiction to the intermediate appellate courts. It is my personal opinion that this can be effected through legislation. But to increase the present jurisdiction of the intermediate appellate courts, without first increasing the personnel of these courts, would be sheer folly, and would deny litigants the fair and effective

appellate review to which they are constitutionally entitled. To increase the membership of the superior court will require a constitutional referendum. Legislation authorizing this referendum is pending.

The Superior Court came into being in 1895 by virtue of an act of the legislature. Its membership then, as it does today, totaled seven members. The appeals that come before it generally arise from litigation in the courts of common pleas. In 1895, there were 83 common pleas judges in Pennsylvania. Today there are 285. In Philadelphia, there were 16 such judges in 1895. Today, there are 81, plus 22 municipal court judges who are assignable to the court of common pleas.

The number of appeals filed in the superior court has increased 1,200 per cent in the last 20 years. In 1977, a total of 3,700 appeals were filed in the superior court. A total of 1,830 appeals were argued or submitted to the court for decision. I suggest to you that it is physically and mentally impossible for seven individuals to give fair and effective attention to 1,830 appeals in a period of 12 months. Something must give. The quality of work these good men are capable of cannot possibly be achieved under such circumstances.

Since 1895, the Superior Court has sat en banc in every case. Each member of the court has participated in every hearing and in every decision. I am very pleased to inform you that on Tuesday of this week, May 9, with the acceptance of President Judge Jacobs and the other members of the Superior Court, an order was entered directing that, beginning on or before September 1, the Superior Court will sit in panels in hearing appeals. I must admit this order was authorized several days ago but I delayed its entry until May 9, because Tuesday was my birthday and this progressive step was a most welcome birthday present. On May 9, orders were contemporaneously entered assigning and authorizing Senior Judges Watkins and Montgomery to participate as members of the court on these panels.

While the foregoing will do much to improve appellate court administration in Pennsylvania, much more needs to be done. If the jurisdictions of the Superior Court and the Commonwealth Court are to be increased and if litigants are to receive a fair and adequate appellate review, additional personnel for these courts is mandatory. In accomplishing this, your voice and support are important and may well be persuasive. I realize this improvement will take money, but I am confident the citizens of Pennsylvania are prepared to see more of their tax dollars go towards improving the efficiency and fairness of their courts. In this context, I call to your attention that, while Pennsylvania is the third largest state in the nation, it ranks eighth in the number of intermediate appellate court judges. For instance, our neighboring State of Ohio, with substantially less population than Pennsylvania, has 34 intermediate appellate court judges. New Jersey, with 65% less population, has 22.

While my remarks today have concentrated on delays and the need for improvement in the administration of the appellate courts, do not think for a moment we have ignored or are ignoring kindred problems existing on the trial-court level. Through an efficient state-court administrator, delay in the disposition of civil litigation in the trial courts is under serious study.

Finally, may I point out that, though the business of the courts is essentially the public's business, by and large the public does not know much about its courts. The results of a major national survey recently announced demonstrate that most people are either uninformed or misinformed about how courts operate, and, as a result, public confidence in state and local courts is very low.

Three out of four of those questioned in the survey conceded they knew little or nothing about courts; 37% expressed the belief that a defendant charged with a criminal offense in court must prove his innocence; 30%, believed it is the district attorney's task to defend a criminal defendant. These examples, and there are many more, emphasize the public's lack of understanding of its judicial system. This lack of understanding has frequently led to severe and, in some instances, unwarranted criticism. But, as guarantors of the constitution, courts cannot always be popular institutions and must not strive for high ratings in popularity polls. Nonetheless, the courts and the members of the legal profession must strive to improve the operation of the courts so that the administration of justice will be better served.

I again dedicate myself to this end. I earnestly and humbly enlist your help. God willing, we'll do the work we set out to do.