State of the Judiciary Message for 1980
Chief Justice Michael J. Eagen, Pennsylvania Supreme Court
Message to the Pennsylvania Bar Association
May 1980 in Hershey, Pennsylvania

For the fourth time, I am privileged to appear before this distinguished group as Chief Justice of Pennsylvania to report on the State of the Judiciary. This is my last appearance before you for this purpose. While my elected term as Justice of the Supreme Court continues until January 5, 1981, yesterday I met with Governor Thornburgh and personally tendered my resignation both as Chief Justice of Pennsylvania and as a Justice of the Supreme Court effective September 23, 1980. I am convinced my resignation on the day the new court year begins in September will substantially enhance a more orderly transition and continuity in the business of the Court. Hopefully, the early announcement will also expedite the appointment of my successor. As I emphasized to the Governor yesterday, the Court having a full complement to carry on its work is extremely important. I have been urged to continue as a Justice of the Court until my term of office officially terminates. While I appreciate the compliment, I have rejected the suggestion for several reasons, one of which is graphically demonstrated by a recent experience.

For many years, the same priest, whom I fondly knew as "Father Mike," served as Pastor of St. John's Church in my hometown of Scranton. Upon his retirement, instead of taking up residence in the Diocesan Hospice for Retired Priests, he continued to live in St. John's Rectory. A few months later, I ran into the young priest assigned to succeed Father Mike as Pastor of St. John's and inquired how Father Mike was getting along. The young Pastor responded: "the only one who thinks Father Mike has retired is the Bishop." I do not wish to inflict such a problem on the Chief Justice-to-be, the Honorable Henry X. O'Brien, a man of sterling qualities and great promise.

My focus initially this morning is on the Supreme Court, the governing body of our unified judicial system. Given the great volume of appeals and the multitude of other problems that constantly confront the Court, the Court's performance justly merits the approval and commendation of everyone. However, please note that I stressed, "given the great volume of appeals and the multitude of other problems" the Court must face. As I emphasized in my first report to you on May 13, 1977, just 73 days after assuming the Chief Justiceship and have repeated frequently since, the Supreme Court cannot possibly meet today's challenges effectively and render the quality of justice it should until it is a court of discretionary jurisdiction.

A giant step in that direction was achieved with the approval of the constitutional amendment in last November's election which removed the constitutional limitation of the number of judges on the Superior Court. But to finalize this urgently-needed restructuring of appellate court jurisdiction, enactment of implementing legislation is needed in the General Assembly. I for one prayerfully hope this legislation will be forthcoming without further delay. Aside from the fact that this change will advance the quality of justice throughout the entire state court system, I have an undeniable personal interest in seeing and helping its finalization before I hang up my judicial robe. I think I have earned the privilege to participate in the organization of the new certiorari Court and help develop its rules of internal procedure.

For one thing, I would emphasize the advantage of meaningful pre-argument preparation by every member of the Court. The benefits of this were demonstrated when the members of the Supreme Court accepted assignment to the Superior Court to sit as members of the panels which heard and decided the appeals transferred from the Supreme Court. The staff of each Justice accepted the responsibility of preparing a meaningful memorandum in each appeal. I emphasize meaningful. For example, my staff conducted the same extensive study of the briefs, record, and the law in each case prior to the oral argument that it does in cases assigned to us for the writing of an opinion after oral argument and prepared a memorandum. A copy of the finished memo in each case was given to each member of the panel. As a result, oral argument was directed to the crucial facts and issues and rendered more telling; the writing of the opinion was facilitated; and, the time for disposition of the appeal was reduced dramatically.

I do not want to digress, but I cannot forego this opportunity to publicly extend my deep gratitude to the members of this association and in particular to the President, Sid Krawitz; to the incoming President, Dave Fawcett; to the Executive Director, Peter Roper; and, to Lew van Dusen and others on his committee who worked so tirelessly and effectively in support of the constitutional amendment, the first step necessary to effectuate this needed change in our appellate court jurisdiction.

To indicate how the Supreme Court is presently meeting its responsibilities, may I cite the record.

When the Court met recently in Philadelphia on April 14, the proposed majority opinion had been written and circulated among the Justices of the Court in every appeal heard prior to March 1, 1980, and, in most instances, these opinions were approved and filed during the April session. A relatively small number were held temporarily for revisions or the preparation of dissenting opinions.

And here is another important fact: the average time range between argument and filing of the opinion in 1979 was 90 days - a time range which was not achieved in recent years and which is remarkable when the Court's workload is taken into consideration. However. There are presently 795 open appeals or 795 appeals waiting to be heard by the Court. While this number represents a reduction, in October, 1978 there were 1032 open appeals. This reduction was accomplished by a program wherein we transferred approximately 300 appeals from homicide convictions pending in the Supreme Court to the Superior Court. These appeals were heard by panels of three judges which sat in special session during the summer months of 1979. A Justice of the Supreme Court sat on each panel. The order transferring jurisdiction of these cases included certain constitutional safeguards, namely the right of the appellant to petition for a hearing of the appeal before the Superior Court en banc and/or the right to petition the Supreme Court for special allowance of appeal to that Court from the Superior Court's decision. This permission could have been granted by the vote of two justices in the exercise of a very wide discretion. The program was eminently successful and received wide commendation. A challenge to its constitutionality was rejected by the Supreme Court of the United States.

However, there were several discordant notes. The program was criticized in some quarters as

being unfair to the already overburdened Superior Court. One newspaper said editorially the Supreme Court is dumping its cases on an already overworked Superior Court. I shall always sing the praises of President Judge Cercone and the members of the Superior Court for their cooperation in this special program and similar efforts to improve the court system, but certain facts should be noted, and I cite these facts merely to set the record straight and in no way to belittle the work of the Superior Court.

In the hearing and disposition of the appeals transferred to the Superior Court from the Supreme Court, only two active Superior Court judges participated, President Judge Cercone and Judge Wieand. While four senior Superior Court judges participated, judges retired from the Superior Court or from any other court who request senior status are assignable by the Chief Justice to any court in the Commonwealth where their services are needed. We deliberately refrained from insisting that all of the judges of the Superior Court participate in hearing the transferred cases because several members of that court were already overwhelmed with work.

I cannot overemphasize how urgently the help of additional judges is needed in the Superior Court. The number of appeals filed in this court is increasing every year. and the workload has reached staggering proportions. If the judges of the Superior Court are to dispose of the work expeditiously and give each appeal the study and scholarly review the judges of that court are capable of, more judicial help must be provided and provided without further delay. After hearing every appeal en banc for the first 83 years of its existence, the Superior Court was finally induced over bitter resistance to sit in panels, and with the exception of a few die-hard traditionalists, the bench and bar agree that this was the most progressive step in the court's history. I concede the panel system is not yet letter-perfect, but President Judge Cercone is determined to make it so, and, after additional judges are made available, there is no reason why it should not be as perfect as human hands can make it.

In recent months the Commonwealth Court lost its able President Judge through the early and unexpected death of Judge Bowman. As the First President Judge of this important court, Judge Bowman so welded and organized this court that from the very first day, it enjoyed universal confidence and respect. Judge Jim Crumlish is the court's new President Judge. He is an effective worker - a producer - and I assure you the leadership of this good court is in very excellent hands.

During my term as Chief Justice, we initiated and stimulated many programs to improve the Pennsylvania state court system at every level. I recently asked Judge Barbieri, the dedicated administrator of the State Courts, if he had any suggestions for this address. I received a five page, typewritten paper from him last Friday, purporting to list accomplishments of 1979. He titled the paper, "What is a Chief Justice of Pennsylvania." I quote from the introduction: "I find it more staggering than I thought it would be to make this cursory study.... Frankly, I don't know how a conscientious Chief Justice can manage to survive."

You have been very patient, and I will not discuss each and every one of these efforts at this time. but I hope you will bear with me while I refer to a limited number. We succeeded in securing some very competent people to assist Judge Barbieri in his responsibility of administering the state court system which is no small undertaking. As one of the individuals

long associated with the office recently commented, "The office has really begun to move." Through the efforts of the State Court Administrator's office and with the advice of experts, we have adopted new fiscal policies in the appellate court system. With the advice of the Pennsylvania Economy League, we have adopted a new job classification and salary schedule and are eliminating inequities that have existed in that area.

The Pennsylvania Judicial Council has been reactivated after several years and will now be a meaningful arm of the Supreme Court. We recently enjoyed one of the most interesting and constructive meetings in the history of the Council. For the first time, its membership includes members of both sexes, lay representatives, and a member of the Senate and the House of Representatives.

Through the cooperation of Sidney Krawitz and members of this association, the Supreme Court has been provided with effective, able, legal representation pro bono in several cases instituted against the Court in recent months. This type of litigation is more numerous than you are aware and is increasing. Funds necessary for the operation of the court system were being diverted. To put it very simply. members of this association have saved these funds. The Supreme Court is sincerely grateful.

Through the cooperation and work of the State Trial Judges Conference, an amendment to the post conviction hearing act will soon be proposed to the General Assembly. This amendment should correct the present problem of multiple appeals emanating from one criminal conviction. More importantly, it should save the trial courts many days spent in post-conviction hearings and do so without denying the convicted person a fair and complete review of the prosecutorial proceedings.

The main problem in the courts, of course, is congestion and delay. This condition is attributable in part to the very nature of our judicial process. "Our judicial system delivers a precise brand of justice. Pleadings and motions refine the issues; interrogatories, depositions, and other discovery devices identify every potential relevant fact; a matrix of evidentiary rules ensures that the court hears only the pertinent facts and weighs them properly; and, appellate review ensures that all procedures and rules were adhered to." Needless to say, this very thoroughness is time-consuming and expensive, but it probably improves the quality of justice. However, there are additional delays, man-made delays, which are unnecessary and which should be eliminated. The tools necessary to correct the delays at the appellate court level have been discussed earlier in this address.

To help render the trial system in the civil courts more efficient, we initially entered a rule imposing interest penalties on delay in bringing cases to trial. This was directed at insurance carriers, some of which have been notorious for pretrial delay. The Trial Lawyers Association loved and applauded this rule. The insurance companies complained long and loud and finally instituted litigation in the Federal Courts to invalidate the rule. God be praised for the suit was dismissed just days ago.

Then we entered the so-called "240 Day Rule" requiring that the certificate of readiness be filed within 240 days after the action is instituted in the absence of good reasons for further delay. I

have not heard from the insurance companies on this rule, but shall we just say there is an absence of applause from the trial lawyers group. I shall return to this in a moment.

Very recently we entered an order requiring the judges of the trial courts to file a report in the office of the Chief Justice on or before May 1 setting forth every matter on their desks awaiting disposition and an explanation if undue delay in disposition was evident. The judges in most part responded graciously, but, being lawyers at heart, most waited until the last day to file and many were filed late. This last-mentioned order was not intended to embarrass any member of the judiciary but rather to gain information from which we hope to pinpoint the causes for delay in the court trial system.

Now as to the "240 Day Rule," which seems to give some lawyers much concern - through this rule we intend to prod the judiciary into taking control of the movement of litigation rather than sitting back and leaving the control to the lawyers. To establish my case that this rule is long overdue, may I cite some very persuasive facts.

I refer first to two appeals argued before the Supreme Court during the recent April session in Philadelphia. These appeals came from different eastern Pennsylvania counties. In one, the cause of action arose on July 6, 1964. Seven years and several months passed before the certificate of readiness was filed. The trial took place ten years and seven months after the cause arose. Given the fact that the plaintiffs lawyer enjoys a very successful practice and was in no hurry for his fee - how about the injured plaintiff - could he afford to wait so many years for the money due him? Moreover, the court has probably been blamed for the delay when in truth much of the blame lies elsewhere.

In the second case, the certificate of readiness was not filed for seven years and eleven months after the cause arose.

Well, you may say, these are extreme cases; maybe so, but similar delays occur more often than you may suspect.

And may I cite some additional proof that the rule is wise?

The National Center for State Courts has been studying the causes of delay and congestion in the courts of several metropolitan areas throughout the United States. At our insistence, Philadelphia and Pittsburgh were included in this study, and the report of the study in these counties will be released in the immediate future. But allow me to give some facts in advance.

In Philadelphia, prior to the filing of the certificate of readiness, the courts did not, prior to the "240 Day Rule," monitor case progress. The attorneys controlled the flow of the case. In the average major common pleas case, two years or more elapse from the time of the filing of the complaint to the time a certificate of readiness is filed; in Allegheny County, the certificate is filed within ten months. In Philadelphia in the average arbitration case, over thirteen months elapse before the certificate is filed; in Allegheny County, arbitration cases are tried and disposed of in less than five months. Some of this difference may be explained satisfactorily; nonetheless, these facts persuade me that the courts should and must take control of the movement of

litigation.

Several additional projects to improve the court system are under study, such as the need for an increased accountability of the judicial system and its members; for fixed divisions of the courts of common pleas in large counties; for a regional grouping of judicial districts to effectuate a better use of judicial resources and to facilitate judicial assignments to districts needing assistance.

And now, before I close, may I express abundant thanks to everyone for the assistance and support given me during the last three years. May I also make a few specific recommendations, to this association.

A judicial center to house the three appellate courts and related agencies would improve the efficiency of the court system to no end. More than three years ago, a special committee chaired by Lew van Dusen of this association recommended the establishment of such a center. I earnestly urge that you commence an effective effort to bring this about.

Some unthinking people are advocating that the Chief Justice of Pennsylvania be elected by the members of the Supreme Court. Fight such a move. Never allow it to happen. It would be a disservice to the Court and give rise to cliques and bitter personal differences in the Court's membership. However, I do favor and think it wise to effect a constitutional amendment limiting the tenure of the Chief Justice to a certain number of years. Most states do this.

Under the rules of judicial administration, the selection of the judges to administer the divisions of the courts of common pleas in certain counties has been determined by the vote of the judges of each division. But this method led to such bitterness among the judges that the Supreme Court decided a few days ago to amend the rules and vest the selection of these administrative judges in the Supreme Court. I emphasize - the court has no cause for dissatisfaction with the service rendered by the judges presently in these positions.

Finally, may I urge the members of this association to give meaningful support to good and conscientious judges who face retention election. You may not realize it, but a conscientious judge is in a precarious position seeking retention. If he or she lives up to the rules, there are several limitations to what they may do to further their interests. A substantial number of voters - sometimes estimated as high as 30% - vote "No" automatically and without good reason. An unscrupulous individual with a fixation against a judge can do much to sway the remaining number of votes necessary to defeat retention. We are all interested in promoting competent and conscientious individuals to the bench. I say - let us fight to help them stay there.

I suffer no sadness because my judicial tenure is coming to an end. I do suffer some frustration knowing there are so many things yet to do for the improvement of the court system. But then, I think of my childhood days when, at the end of the day, my mother would insist it was bedtime, and I would complain the darkness came too early. She would respond, "M.J., there is tomorrow." - Yes, there is tomorrow.