

State of the Judiciary in the Commonwealth
Chief Justice Samuel J. Roberts, Pennsylvania Supreme Court
Message to the Pennsylvania Bar Association
May 4, 1983, in Hershey, Pennsylvania

It is an honor and a privilege to be here this afternoon to deliver the annual "State of the Judiciary Message" to this distinguished assemblage. I am extremely proud of the progress and achievements of the Pennsylvania judiciary, and I am delighted to have the opportunity to share that pride with the members of this Association. I am afraid, however, that the official title of my address is somewhat incomplete, for to discuss the state of the Pennsylvania judiciary without at the same time discussing the state of the Pennsylvania Bar would be like discussing Juliet without mentioning Romeo - the two are inseparable.

INTERDEPENDENCE OF BAR AND BENCH

It has been said, and rightly so, that a strong Bar makes a strong Bench. I suspect that all judges would agree that their task is made easier and their judgment more likely to be just when a case is well presented and debated by able advocates on both sides. So, too, lawyers who never appear in our courtrooms as advocates contribute greatly to the efficiency of our adjudicatory process by their skillful drafting and negotiation, which keep thousands of potential disputes from ever reaching our courts. Thus it is both with pride as a member of the Bar of this Commonwealth for over fifty years and with gratitude as a member of the judiciary that I salute the achievements of the Pennsylvania Bar in the pursuit of legal excellence and in dedicated service to the profession, to the public, and to our system of justice.

STATE AND LOCAL RULES COMMITTEES

Through diligent, volunteer service on state and local rules committees, members of the bar have contributed their insight and expertise to the improvement of the machinery of justice. Our Court is sincerely grateful to these committee members, and to their colleagues in the law who offer them advice and suggestions. The efforts of these men and women are particularly important now, as all rules committees have been requested to examine existing rules of court with a view toward reducing their complexity and increasing their efficiency.

DISCIPLINARY PROGRAM-CLIENT SECURITY FUND

May I also express our Court's continuing and deep appreciation to all those who have served our outstanding disciplinary program, contributing the equivalent of a million dollars a year in hours of volunteer service on the Disciplinary Board, hearing committees, and professional guidance and fee dispute committees. Financed completely through individual contributions by members of the bar, the program has earned a well deserved national reputation for excellence during its ten-year history and has served as a model for programs in other states. We are also grateful to the members of the Bar who helped to create the Client Security Fund and who serve on its Board. The existence of a lawyer-financed fund to provide redress to clients who have suffered financial loss through lawyer malfeasance reflects well on the quality and concern of our

Pennsylvania practitioners. It is a further reflection on the fine quality of the lawyers of this Commonwealth that last month, the Supreme Court found it possible to reduce the annual lawyer contribution to the Client Security Fund from \$50 to \$40. And we can expect that, in the future, there will be still further reductions. I hope that all of you are as proud as I am to be a member of a Bar and a court system which have led and continue to lead the nation in effective professional self-regulation.

LAWYER COMPETENCY

We can also be proud of the high level of lawyer competency in this Commonwealth. With the help and advice of members of the legal profession, particularly those who serve on the Board of Law Examiners, we have maintained - and we shall continue to maintain - high standards for bar admission. Through the efforts of our state and local bar associations, we also have a wealth of excellent continuing education programs to assist lawyers in serving their clients and the court by enhancing their legal skills and their awareness of developments in the law. Having seen first-hand the ability and ongoing commitment to professionalism of Pennsylvania lawyers, I continue to oppose the idea that our lawyers should be subjected to the needless burden and expense of an additional qualification test in order to try cases in the federal courts. As it is, more than 90% of all the cases in the courts of this country are resolved in state courts; and nothing indicates that our state practitioners, who confront the full range of state and federal issues in our state courts, are somehow unable to handle the remaining 10% of litigation that takes place in the federal courts.

Thanks to our colleagues who have contributed their time and effort to maintaining and improving the quality of lawyers in this Commonwealth. the Pennsylvania Bar is a strong bar indeed.

Of course. just as a strong bar makes a strong bench so a strong bench makes a strong bar. The more efficiently and consistently a judicial system functions. the more efficiently and effectively can lawyers perform their professional duties. Thus. it gives me great pleasure to report that this Commonwealth's Unified Judicial System is in the best shape it has ever been in and getting better every day.

CONTINUING IMPROVEMENT OF THE EFFICIENCY AND QUALITY OF JUSTICE

As you know, our courts are faced with a staggering and steadily increasing caseload - over 300,000 cases were filed in Pennsylvania in 1982. Far from foundering in this sea of litigation. the judges of this Commonwealth have made clear their dedication to the continuing improvement of the judicial process and their determination to meet every challenge with excellence, recognizing at the same time that solutions cannot be realistically achieved simply by adding more judges and increasing judicial budgets.

Immediately upon my induction as Chief Justice, I wrote to the president judges of all the trial courts of the Commonwealth requesting that they report on what steps were being taken to advance the efficiency and quality of justice in their courts, particularly through the use of existing professional and administrative resources. The responses, I am pleased to say, have been

both enlightening and encouraging, and I would like to share with you some of the recurring developments.

INCREASED USE OF MASTERS

Throughout the state our trial courts have sought to maximize the efficient use of available judicial time through the increased use of masters, hearing officers, and arbitrators wherever appropriate. Not only are these non-judicial officers able to bring many cases to settlement without the expenditure of judicial time and effort, but also by developing and framing the issues thoroughly, they help to reduce the time needed for judicial disposition in those cases which do ultimately require action by the courts.

INCREASED JURISDICTIONAL MAXIMUM FOR ARBITRATION

In order to permit even greater expansion of the use of non-judicial personnel where it is warranted, we have recently asked the Legislature to increase the statewide jurisdictional maximum for arbitration from \$20,000 to \$40,000. If the Legislature should agree, each judicial district will of course be able to set the limit within the maximum best suited to its needs.

SCHEDULE CONTROLS

Of course, steps taken to increase the availability of judicial time are of little use if they are not combined with steps to assure that this time is used to maximum efficiency. Thus it is heartening to see that many of our courts have adopted procedures to ensure that the court's business runs on schedule, including the imposition of sanctions on those who abuse our scarce and costly professional and physical resources through unnecessary delay.

Many courts of the Commonwealth are also implementing an individual calendar system, with random assignment of cases to each calendar. The benefits of a system in which judges control their own cases from start to finish are obvious, as is the crucial importance of the random assignment of cases to individual judges. Indeed, random case assignment should be the practice in every court, whatever system is used, for as we all know, even though the actual possibility of judge-shopping may be remote, simply the appearance that any litigant has had a hand in selecting the judge of his case detracts from the public's respect for the impartiality and integrity of the judicial process.

There are, of course, many other thoughtful programs and procedures which our courts of common pleas have adopted to improve the quality and efficiency of their adjudications; but, in my view, more important than any single innovation is the sincere and enthusiastic commitment shared by trial judges throughout the Commonwealth to a continuing search for ways to do better justice and to the goal of excellence in every segment of our Unified Judicial System.

APPELLATE COURTS

That same commitment is shared in equal measure by the judges of our appellate courts. Notwithstanding the loss of a fine and dedicated jurist in the untimely death last January of Judge Gwilym Price, the Superior Court has continued to perform with distinction its herculean task of

deciding several thousand appeals a year. In addition to instituting a pre-appeal settlement program which has helped to preserve judicial resources, the Superior Court has also recently begun sitting in panels in counties throughout the state, thus making appellate justice both more convenient and more affordable to many litigants. The Commonwealth Court, with both original and appellate jurisdiction, has also worked diligently to keep pace with the increasing number of suits brought by citizens against their government, adjudicating with skill and care the rights of man and state. As I have said before, the term "intermediate appellate court" is something of a misnomer when applied to our Superior and Commonwealth Courts, for their adjudications are final in over 90% of the cases they hear, a figure that underscores the heavy responsibility entrusted to these courts and reflects well indeed upon their fulfillment of that responsibility.

Our Supreme Court, I can assure you, has pursued the goal of judicial excellence with unqualified zeal. In our task, we have been aided by the welcome advent of Mr. Justice Stephen Zappala, who, in his judicial skill and capacity for hard work, has proven himself a worthy successor to the seat occupied with distinction for so many years by our friend and colleague, former Chief Justice O'Brien. We have also been fortunate indeed to have the help of our tireless and talented Court Administrator, Judge Abraham Gafni, in discharging our constitutional responsibility to administer this Commonwealth's Unified Judicial System with maximum efficiency and effectiveness. Judges and court administrators throughout the state have been working enthusiastically with the Administrative Office of Pennsylvania Courts, and we are confident that this commendable spirit of mutual cooperation will lead to increasingly efficient court administration throughout our Unified Judicial System.

STATEWIDE CONTINUING JUDICIAL EDUCATION PROGRAM

One major project which Judge Gafni and his staff are undertaking for our Court is the establishment of a statewide continuing judicial education program, with a curriculum and faculty of the highest caliber. It will be a Pennsylvania program distinctly relevant to Pennsylvania jurisprudence, providing instruction in both practice and procedure at times and places convenient to all members of our Commonwealth's judicial system without undue intrusion on the daily functioning of our trial courts. To make this program as successful and meaningful as it can possibly be, we are seeking the assistance of all of Pennsylvania's fine law schools as well as the aid of members of the Bar, and I urge you to contribute your talents to this important endeavor.

SUPREME COURT OF PENNSYLVANIA

As seriously as we take our responsibility to the entire unified judicial system, our Court has not neglected its own caseload, which for many years suffered from an intolerable backlog. Thanks in large measure to the efforts of this Association, the Legislature in 1980 enacted the "certiorari" bill, reducing the Supreme Court's direct appellate jurisdiction to enable the Court to devote more of its time to those matters most appropriate for its consideration. However, as a consequence of the large number of appeals pending in our Court at the time of the bill's adoption, combined with a predictable increase in subsequent petitions for allowance of appeal, the effects of the certiorari bill are only gradually being felt.

This year our Court, which had the third heaviest workload of any state supreme court in the nation in 1982, has been working harder still in an effort to reduce our backlog as quickly and completely as possible. It is with the greatest personal and professional pride that I report to you on this important aspect of the state of the judiciary. By increasing the number of cases scheduled for each of our 1983 sessions, our Court will have heard some 225 cases by the end of May, more cases in five months than many supreme courts hear in a full year. At the conclusion of our December session, all appeals filed prior to this year will have been heard, as well as a large number of the appeals filed in 1983. We will have reduced the number of appeals awaiting argument to fewer than 60 cases. Our Court will be more current than at any time in its history and more current than any other appellate court in the country.

This Commonwealth's judicial system is more unified than ever, with a shared commitment to fair and prompt adjudications of the highest quality and the willingness to make every effort necessary to achieve that goal. Like its Bar, Pennsylvania's Bench is strong indeed.

CONSTRUCTIVE PARTNERSHIP OF BENCH AND BAR

Although the Bench and the Bar are both essential elements of our legal system, I believe that the success of our system of justice depends in large measure upon the strength of the partnership that is forged between the Bench and the Bar. The courts of this Commonwealth need and deserve the responsible support of all members of the Pennsylvania Bar; and the lawyers of this Commonwealth need and deserve the responsible support of all members of our judiciary.

Our courts, and, indeed, our entire legal system have always depended for their vitality on informed and constructive criticism from all segments of our society - and I can assure you that where action is warranted, we shall act swiftly and decisively to correct the problem. But when criticism of our courts is expressed, we should bear in mind the early canon of professional ethics which warns that "judges, not being wholly free to defend themselves, are particularly entitled to receive the support of the Bar against unjust criticism and clamor." It is the duty of the members of the Bar both to defend our courts against unfair attacks and at the same time to criticize where appropriate, giving "careful thought," as Professor Sutherland put it, "to the professional quality of that criticism, lest we encourage citizens generally to carp at our judges in the spirit of political warfare."

This kind of constructive support from the Bar is crucial to an independent judiciary and to the public's respect for the rule of law. On the other hand, large financial contributions from members of the Bar to candidates for judicial office are a kind of support that may well serve to bring the judiciary's independence and impartiality into question. Moreover, the repetitive and almost constant requests made upon lawyers for contributions to judicial campaigns create an unseemly relationship between judicial candidates and lawyer-contributors. Certainly, if the receipt of contributions from lawyers is to be an acceptable practice, there should be appropriate limitations and controls - with full, timely, and effective public disclosure readily available so that counsel, litigants, and all who may be interested will know the candidate's receipt of such contributions, the identity of the contributor, and the total amount of the contributions.

CODE OF JUDICIAL CONDUCT - DISPUTED LEGAL OR POLITICAL ISSUES

The absolutely vital requirement that the judiciary be independent and unbiased is, of course, also the foundation of that section of the Code of Judicial Conduct which states that a judge - or a candidate for judicial office - should not announce his views on disputed legal or political issues. Some have argued that this important precept, already too often ignored, infringes upon a judge's First Amendment right to freedom of expression. I suggest to you that such an argument completely misses the point. The question is not whether a judge - or one who aspires to be a judge - has the constitutional right to say anything he or she wishes to say. Rather, the question is whether our system of fair and equal justice can have any meaning at all when those who are bound to render their decisions impartially have announced their decisions - even within their own minds - before they have heard the argument of counsel and fairly considered the facts of the case. Such impulsive, before-the-fact decision-making has no place in any system that honestly aspires to the ideal of justice. And if the entire Code of Judicial Conduct were to disappear tomorrow, I would hope that all the judges of this Commonwealth would continue to abide by it as faithfully as if it were etched in stone.

THE PURSUIT OF JUSTICE

We must never forget that ours is a profession of ethics and ideals. Surely, if there is one shared goal toward which all members of the Bench and Bar who are worthy of the profession aspire, it is the ideal of justice - a society where all cases are well presented and fairly and expeditiously decided, and every person is equal under the law. This is the goal to which we must devote the full power of the partnership of our strong Bench and strong Bar, taking pride in the strengths of our system, defending and improving them while recognizing and eliminating the weaknesses. With that kind of partnership, we can lead the nation in advancing the cause of justice and the rule of law.

May I emphasize again how tremendously proud I am of the accomplishments of the Pennsylvania Bench and Bar. You should be proud, too. Nonetheless, we cannot afford to rest on our laurels. The task of balancing the rights of litigants with principles of judicial economy and efficiency grows increasingly difficult. Every year brings new and complex challenges to every segment of our legal system, and at the same time, available judicial resources seem to grow ever more scarce.

Thus all of us, every judge and every lawyer in this Commonwealth, must commit ourselves to a continuing process of examination and communication, exchanging our ideas and sharing our expertise so that we may make the most efficient possible use of the resources available to us. We must work hard - harder than ever before - and we must not cease until the ideal of justice becomes a reality for all our fellow citizens.

When I was inducted as Chief Justice, I said that I was "full of hope that the dedicated men and women who serve the cause of justice in this Commonwealth can meet every challenge by working together with a shared commitment to a judicial process of the highest quality." Having met with and heard from judges, lawyers, legislators, and concerned citizens throughout the Commonwealth over the past four months, I know first-hand the depth and breadth of that commitment, and I am confident that together we can achieve our goal of a unified judicial

system of uniform excellence.