

State of the Judiciary in the Commonwealth
Chief Justice Robert N.C. Nix Jr., Pennsylvania Supreme Court
Message to the Legislature
January 30, 1984, in Harrisburg, Pennsylvania

Thank you for that warm reception. Sometimes we on the court do not always believe that you feel such warmth in the cockles of your heart for us, and it is very reassuring.

Mr. President, Mr. President Pro Tempore, Mr. Speaker, Honorable Members of the Senate, and Honorable Members of the House of Representatives:

We are here today to establish what I trust will become a tradition that will contribute to the enhancement and the quality of government throughout Pennsylvania. My personal great admiration, respect, and appreciation of the enormity of the responsibility of the members of this great legislative branch should be easily understood in view of my personal family background.

The only precedent for this occasion was the appearance of Chief Justice Benjamin R. Jones, who appeared before this illustrious body during a "Law Day" observance on May 1, 1973. It is my hope that we today will establish a tradition of communication as a vehicle to inform this body and the people of Pennsylvania of the state of their judiciary.

At the outset, let it be noted that I speak as the Chief Justice and that my views do not necessarily reflect those of my colleagues, who are here with me today, unless I specifically indicate otherwise.

The judicial branch is, of course, one of three separate and equal branches of the government of this Commonwealth. Its independence, like the independence of your branch, must necessarily be jealously guarded by the respective members of that branch. However, there are significant areas where our responsibilities in the judicial branch overlap with your obligations in the legislative branch. Each within the confines of our constitutionally defined responsibilities and obligations must seek to synchronize our priorities to reach the common objective - a fair, a just, an effective and efficient system of justice for all of the citizens of this Commonwealth. In my judgment, communication and a mutual understanding of the problems and concerns are essential for a harmonious discharge of our respective duties.

In 1968 the people of Pennsylvania demonstrated their commitment to the establishment of an efficient and effective system of administration of justice when they adopted Article V of our Constitution. Prior to the adoption of that judiciary article, the structure and operation of our judicial system was governed by the Constitution of 1874. The unprecedented increase in litigation during the 20th century, the newly perceived demands of constitutional mandate, the blossoming of a myriad of new areas of civil liability, the ever-increasing complexity in our commercial transactions, all combined to render our former structure obsolete and incapable of performing the task for which it was initially designed. In 1968 the people of Pennsylvania saw fit to design an innovative structure that I am firmly convinced permits an accommodation to a

changing world and offers a vehicle by which we can reach unprecedented levels in efficiency and effectiveness in dispensing justice.

The cornerstone of the 1968 judiciary article is a unified judicial system. This concept, like most fundamental concepts of constitutional jurisprudence, possesses a sufficiently amorphous quality that allows the elasticity necessary to meet changing needs. Thus, the full exploitation of the potential of the 1968 mandate will depend upon the wisdom and the foresight in the interpretation and the implementation of that mandate. The judicial and the legislative branches of our government share this responsibility.

I am pleased to say to you today that since 1968 we have made great strides in the implementation of that unified system. We have developed a rulemaking process for the development of statewide rules of practice and procedure which allows input from the entire legal community. As a result, we have established a comprehensive body of statewide rules of practice and procedure replacing the proliferation of local rules that previously existed.

While our present rules allow for full participation by the legal community, there must also be input by the public at large where the subject matter of the rule of practice is a matter of serious public concern. It is my strong belief that a sunshine concept must be seriously considered in those situations, and I am now talking about situations where our rules affect matters of grave public concern.

We have been successful in achieving a high degree of uniformity in bar admissions and the regulation of the conduct and the discipline of lawyers and judges. I state with great pride that our disciplinary system regulating the conduct of lawyers has become a model for the country. I would like to publicly commend disciplinary counsel and his staff, whose dedicated and tireless service has contributed greatly to our success in that area. I will discuss later in this message the regulation of the conduct of judges.

We have made significant advances in the utilization of judicial manpower by imaginative deployment of senior and retired judges, who must be commended for their dedicated service, not infrequently without compensation. We have augmented our cadre of sitting judges to enable us to manage an ever-increasing workload. We have recently experimented with the concept of regionalization to achieve maximum deployment of our active trial judges. By breaking the artificial and unwarrantedly restrictive confines of judicial districts drawn on county lines, we have found that there is enormous potential for additional judge hours, without the need for the creation of additional judgeships and the concomitant increase in the courts that would be borne by the beleaguered taxpayers of Pennsylvania. I intend fully to exploit this potential in the area of regionalization without unduly taxing our judges or diminishing the quality of their performance.

I know that in some quarters recent decisions of our court have been viewed as a refusal by the judicial branch to make financial disclosure. I am pleased to advise you that such an assessment is incorrect. Within 30 to 60 days, I am confident that the court will promulgate a rule requiring financial disclosure by all - and I emphasize the word "all" - judicial officers.

It is also my expectation that the court in the coming months will also pass a rule requiring appellate judges to account for their expenses. It is my firm judgment that such rules are essential to meet the degree of accountability the people of Pennsylvania have a right to expect from their public officials, and there is no basis for exempting judges from that rule.

In this context, I am pleased to advise you that the Supreme Court and the Superior Court do not have proprietary funds. Moreover, on Friday of last week, I wrote to the president judge of the Commonwealth Court, directing him to immediately transfer to the General Fund all moneys being held by that court, and I want to emphasize that that action resulted from a unanimous vote of the Supreme Court.

I am fully committed to the continuing education of judicial personnel. This commitment derives from a recognition that a comprehensive program of this nature is essential to the quality of excellence to which I am committed.

The Administrative Office of Pennsylvania, at my direction, recently conducted a survey of our system of automation in the district justice and trial courts. The survey results were unfortunately disturbing. Despite considerable effort and expenditures for computer equipment and computer software by numerous counties, only a few courts have managed to replace the archaic methods of retrieving case management information or to control financial data. Moreover, much of the investment in computerizing court operations has resulted in wasteful duplication. Among the 555 district offices and among the 67 courts of common pleas, the basic operational feature and management concerns are largely identical. There is no need to squander precious resources by inventing the same wheel again and again. This proliferation of incompatible court computer equipment and software programs must be stopped, and we will promulgate regulations to prevent it in the future.

The effective administration of justice requires computer technology to assist in the processing of our huge caseloads - more than 2,500,000 minor judiciary cases and more than 350,000 trial court cases per year - and the monitoring and control of financial transactions within the system, which total several billion dollars per year. It requires a statewide integrated system of computer resources. This is our objective, and this we are confident that we will be able to achieve.

I mentioned at the time of my induction that there would be a revised calendar which would provide for a greater presence in Harrisburg by the Supreme Court. I am pleased to announce that the first of these new sessions will occur tomorrow. By the way, parenthetically, I hope we are as warmly received tomorrow as you were kind enough to receive me today and in the days to come.

In candor, I cannot ignore that there have been suggestions that the route of a constitutional amendment be considered. An area recently cited as a subject for possible constitutional change is in the area of selection of judges. It is my view that this is a political question to be properly resolved through the political process, and therefore, I decline to make public comment upon this subject, either now or in the future. However, regardless of the manner by which we elect or select judicial officers, what is always important is the policing mechanism which must effectively supervise the conduct of judges, and it must also have the confidence of the people of

Pennsylvania that that mechanism can be and will be effective. Thus, if a constitutional change is to be considered, I would offer the following suggestions. I again emphasize that I am now expressing my personal views.

I recognize that the position of judicial officer invites frivolous and unfounded complaints. These hardworking and dedicated people should be safeguarded from vindictive assertions which lack substance. However, where the allegations are of sufficient magnitude that they would require public censure, suspension, or removal, and preliminary investigation has established that there is substantial evidence that the offense did in fact occur, the proceedings should then become public, and the public's right to know should supersede any right of the judicial officer to confidentiality.

Of equal importance, there is a need to establish within that system a permanent, professional disciplinary counsel, with adequate staffing to investigate and, where necessary, to prosecute complaints received. A few moments ago, I mentioned that we in Pennsylvania have an outstanding disciplinary system for lawyers. In that system, disciplinary counsel has the right to appeal to the court a recommendation of the board deemed by that counsel to provide an inadequate sanction for the conduct for which the inquiry was conducted. I think this right of appeal in the hands of a trained, well-qualified disciplinary staff is absolutely essential to the effective operation of any system policing our judges.

I would also suggest that any new provision should specifically designate the judicial members of the Board of Inquiry and Review. I believe that membership on that board should be given to the president judge of the Superior Court, the president judge of the Commonwealth Court - and, by the way, at this point the Commonwealth Court has no representation on that board - two president judges of courts of common pleas, and a district justice. As presently constituted, the district justices have no representation on the board, even though their members are subjected to the complaints before that board as are any other of the judges in the unified judicial system. It seems to me fairness dictates no less.

If a constitutional amendment is to be considered, an additional area which deserves attention is the selection of president judges in courts of more than seven judges. Presently, where membership of a court consists of more than seven judges, the members of that court elect the president judge. Experience over the last several years has proven without doubt the injection of this elective process has been a disrupting factor in the efficient and effective operation of our court system. The president judge is vital to the administrative process. It is his or her responsibility to serve as the immediate supervisor of the judges of that particular court. When that officer is dependent upon the popularity of those members of the court that that person must supervise, the effectiveness of the administration of that court is immeasurably impaired. I therefore recommend that the president judges should be appointed in place of the present system of election.

History reveals that all societies have been judged by the quality of justice they dispense. I am convinced that we in Pennsylvania can enter the 21st century with a system of justice that is fair, that is equal, that is accessible, and that is responsible. Of equal importance, it must be a system

that has the confidence of the public. I say to you today that I am committed to this goal because I believe the people of Pennsylvania deserve that kind of judicial system.

I thank you for your patience, and I look forward in the future to have another opportunity to come before you and address you. Thank you